



**Siemens Mobility Limited**

# **FRAMEWORK**

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

**TfL 01042**



DATED 31<sup>st</sup> August 2018

- (1) LONDON UNDERGROUND LIMITED
- (2) SIEMENS MOBILITY LIMITED

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**FRAMEWORK AGREEMENT**

In support of Siemens and Predecessor systems on the London  
Underground Network

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THIS FRAMEWORK AGREEMENT is made on 31<sup>st</sup> August 2018

**BETWEEN:**

- (1) **LONDON UNDERGROUND LIMITED**, registered number 01900907 whose registered office is at address 55 Broadway, London SW1H 0BD (the "**Employer**"); and
- (2) **SIEMENS MOBILITY LIMITED**, registered number 00016033 whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, GU16 8QD (the "**Contractor**").

**RECITALS**

- (A) The Contractor installed train signalling and control systems (the "**Systems**") for that part of the Underground Network known as the Central line for the Employer. The Systems require upgrade and support works to avoid obsolescence and to improve reliability, availability and maintainability of the Central line or other train signalling, control or telecommunication systems installed by the Contractor.
- (B) To deliver the Project the Parties have agreed to enter into this Framework Agreement and further that this Framework Agreement and the Appendices to it will as far as reasonable practicable be used as the basis of work to be carried pursuant to any future Associated Contract.
- (C) From time to time the Employer may require the Contractor to provide Works and the Contractor has confirmed that subject to and in accordance with the terms of this Framework Agreement subject to agreement of Prices it is willing to provide Works.
- (D) This Framework Agreement sets out the terms and conditions (as may be amended in accordance with this Framework Agreement) that shall apply to all contracts for such Works carried out by the Contractor from time to time over the next five years (or any such extended period in accordance with this Framework Agreement).
- (E) The documents forming the Framework Agreement are the terms and conditions herein and:
  - (a) Appendix A – Form of Parent Company Guarantee
  - (b) Appendix B – Legal Opinion Template
  - (c) Appendix C – Call-Off Conditions of Contract under Option A
  - (d) Appendix D – Call-Off Conditions of Contract under Option E
  - (e) Appendix E – Schedules to forms of contract at Appendices C and D

- (f) Appendix F – Form of Agreement Template
- (g) Appendix G - Project Contract Data Part One Template
- (h) Appendix H - Project Contract Data Part Two Template
- (i) Appendix I – Initial Consultation Process
- (j) Appendix J – Form of Request for Tender Template
- (k) Appendix K – Commercially Sensitive Information

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**NOW IT IS AGREED THAT:**

**1. DEFINITIONS**

1.1 In this Framework Agreement the following expressions shall have the following meanings and other words and expressions used shall be as defined in the Call-Off Conditions to be used for the Project Contracts:

- (a) **"Associated Contract"** means:
  - (i) this Framework Agreement;
  - (ii) any Project Contract;
  - (iii) any other contract that has been entered into, or that may at any time be entered into between: (i) the Employer or any member of the TfL Group (or a combination of them) and (ii) the Contractor or an Group Company (or a combination of them);
- (b) **"Business Day"** means any day other than a Saturday or Sunday or a public bank holiday in England;
- (c) **"Call-Off Conditions"** means the amended and restated conditions of contract for ECC main Options A and Option E included in Appendices C and D, including the schedules referred to therein. The schedules to the Call-Off Conditions are attached at Appendix E;
- (d) **Commercially Sensitive Information** means the information listed in Appendix K which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss;
- (e) **"Contract Data"** means Contract Data as defined in the ECC;
- (f) **"Contract Information"** means (i) the Framework Agreement and any Project Contracts in their entirety (including from time to time agreed changes to the Framework Agreement and any Project Contracts) and but excluding Commercially Sensitive Information and (ii) data extracted from the invoices submitted pursuant to clause 5 of the Project Contracts, 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;
- (g) **"Data Protection Legislation"** means: any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive)

Regulations 2003 and from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and any other legislation in force from time to time in the United Kingdom relating to either or both privacy or the processing of Personal Data;

- (h) **"Defined Cost"** has the meaning given to that term in the applicable Call-Off Conditions;
- (i) **"Dispute"** means any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
- (j) **"Dispute Resolution Procedure"** means the procedure for resolving Disputes under this Framework Agreement at Schedule 8 of Appendix E;
- (k) **"ECC"** means the Engineering and Construction Contract Third Edition published by the NEC at the date of this Framework Agreement (incorporating 2006, 2011 and 2013 amendments);
- (l) **"Completion Date"** has the meaning given to it in the applicable Call-Off Conditions;
- (m) **"Form of Agreement"** means the form of agreement for a Project Contract substantially in the form set out in Appendix F;
- (n) **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- (o) **"Group Company"** means any group company of the Parent Company incorporated in the United Kingdom;
- (p) **"Framework Contract Data"** means the Contract Data (Parts One and Two) in Appendix G and H of this Framework Agreement;
- (q) **"Information"** means information recorded in any form held by or on behalf of the Employer or any other member of the TfL Group;
- (r) **"Information Request"** means a request for any Information under the FOI Legislation;
- (s) **"Parent Company"** means the Contractor's ultimate parent company;

- (t) **"Parties"** means the Employer (including its legal successor and assigns) and the Contractor;
- (u) **"Price for Work Done to Date"** has the meaning given to that term in the applicable Call-Off Conditions;
- (v) **"Prices"** has the meaning given to that term in the applicable Call-Off Conditions;
- (w) **"Prohibited Act"** means as defined in Schedule 1 (Additional Definitions) at Appendix E;
- (x) **"Project"** means Works to support Siemens and Predecessor systems on the Underground Network from time to time requested by the Employer to be undertaken by the Contractor;
- (y) **"Project Contract"** means a contract to be entered into between the Employer and the Contractor for the purpose of carrying out any Works;
- (z) **"Project Contract Data"** means the Contract Data (Parts One and Two) included in each Project Contract;
- (aa) **"Project Manager"** means the person appointed from time to time by the Employer to act as project manager for the purposes of a specific Project Contract;
- X (bb) **"~~Request for Tender~~"** means a request issued by the Employer's Representative on behalf of the Employer identified in the request in the form set out in Appendix J;
- (cc) **"Subcontractor"** has the meaning given to it in the applicable Call-Off Conditions;
- (dd) **"Subconsultant"** is a person or corporate body who has an appointment with the Contractor to provide services specifically for the Works as defined in the relevant Project Contract;
- (ee) **"Safety Breach"** means as defined in Schedule 1 (Additional Definitions) in Appendix E and to form part of each Project Contract;
- (ff) **"Systems"** means any components, computers, software, firmware and operating systems, printed circuit boards, assemblies, sub-systems, line-side equipment, wiring, and associated support equipment including power systems supplied, or designed by, the Contractor or its predecessors on the Underground Network;

- (gg) **"TfL Group"** means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The Employer is a member of the TfL Group;
- (hh) **"Transparency Commitment"** means the transparency commitment stipulated by the Local Government Transparency Code 2015 (including any subsequent legislation) in accordance with which the Employer and the TfL Group are committed to publishing their contracts, tender documents and data from invoices received;
- (ii) **"Underground Network"** means the London Underground Network; and
- (jj) **"Works"** means the works and/or services relating to the Systems specified or described in or to be developed pursuant to a Project Contract or in an instruction given in accordance with a Project Contract, such Project Contract to be instructed in accordance with clauses 6 and 7 of this Framework Agreement.

## 2. INTERPRETATION AND CONSTRUCTION

- 2.1 Words importing the singular include the plural and vice versa.
- 2.2 Words importing gender include any other gender and the neuter. The neuter includes the masculine and the feminine.
- 2.3 References to "includes" or "including" mean without limitation.
- 2.4 References to Appendices are to the Appendices to this Framework Agreement.
- 2.5 The headings of sections, clauses and sub-clauses are included for convenience only and do not affect the interpretation or construction of this Framework Agreement.
- 2.6 Unless stated as "Business Days" any periods of time referred to in this Framework Agreement and expressed in "days" shall be calculated in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
- 2.7 Where an act is required to be done within a specified period after or from a specified date the period shall begin immediately after that date.
- 2.8 Any reference to a statute or statutory provision and all statutory instruments, orders, by-laws, directions and notices made pursuant to it (whether made before or after the date of this Framework Agreement), include a reference to the same as from time to time amended, modified, extended, re-enacted, consolidated or replaced.
- 2.9 Any undertaking under this Framework Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

2.10 Any use of the expression "person" or "parties" in this Framework Agreement includes any individual, partnership, local authority, company or unincorporated association or organisation.

2.11 Nothing in the Recitals shall affect in any way the interpretation of the provisions of this Framework Agreement or any Project Contract.

### 3. DURATION OF THIS FRAMEWORK AGREEMENT

3.1 The appointment of the Contractor under this Framework Agreement shall commence from the date of this Framework Agreement and shall continue for a period of five (5) years and, if notified in writing by the Employer no later than three (3) months before the end of the five (5) year period, a further three (3) years.

### 4. THE GEOGRAPHICAL EXTENT OF THIS FRAMEWORK AGREEMENT

This Framework Agreement applies to Projects in England.

### 5. NO REPRESENTATION AS TO GUARANTEE OF FUTURE WORKS

This Framework Agreement does not constitute any guarantee that the Employer will instruct the Contractor to carry out any Works or any particular or future Projects.

### 6. SCOPE OF THIS FRAMEWORK AGREEMENT

6.1 This Framework Agreement relates to the carrying out of works relating to the Systems only including upgrade and support works to the Systems by the Contractor for the Employer.

6.2 The Employer may at its absolute discretion and from time to time issue a Request for Tender to the Contractor in accordance with the procedure set out in clause 7 during the duration of this Framework Agreement.

6.3 The Employer is not able to guarantee the extent of the Works or of the Project Contracts that may be entered into pursuant to this Framework Agreement. As a result, no minimum or maximum values shall apply to this Framework Agreement or to any Project Contracts.

### 7. PROCUREMENT OF PROJECT CONTRACTS

7.1 If the Employer requires the provision of a Project, it shall issue a request in the form of a Request for Tender. For the avoidance of doubt, the Parties acknowledge that neither the Contractor nor the Employer shall be obliged to enter into a Project Contract following the issue of a Request for Tender under this Framework Agreement nor shall the Employer be obliged to accept any tender or offer made by the Contractor pursuant to any such Request for Tender.



7.2 Following initial consultation with the Contractor in accordance with Appendix I, in the Request for Tender the Employer will select (at his sole discretion) one of the following main Options (as have been amended and restated in the Call-Off Conditions and in accordance with Secondary Option Z and incorporating the schedules at Appendix E) of the ECC to be the basis of a Project Contract:

- (a) Option A: Priced contract with activity schedule; or
- (b) Option E: Cost reimbursable contract.

7.3 Any one or more of the following ECC Secondary Options (as have been amended and restated in the Call-Off Conditions and in accordance with Secondary Option Z) may be agreed by the Employer and the Contractor. The Employer and the Contractor may select any combination of the Secondary Options depending on the particular requirements of the Project:

- X1 – Price adjustment for inflation
- X2 – Changes in the law
- X3 - Multiple currencies
- X5 – Sectional Completion
- X6 - Bonus for early Completion
- X7 - Delay Damages
- X12 - Partnering
- X15 – Limitation of the Contractor's liability for his design to reasonable skill and care
- X16 - Retention
- X18 – Limitation of Liability
- X20 - Key Performance Indicators
- X21 – Single Point Design Responsibility
- X23 - Key Person Succession Plan
- X24 – Fee Cap
- X25 - Escrow Agreement

- X27 - Design compliance
- Y(UK)2 - The Housing Grants, Construction and Regeneration Act 1996
- Y(UK)3 - The Contracts (Rights of Third Parties) Act 1999
- Z - Additional conditions of contract (as incorporated in the Call Off Conditions)

It is agreed that Secondary Options X16, X21 and X27 are not requirements of the Project which will be recorded in the Contract Data Part A of the Project Contract but may be required on future Associated Contracts. X24 may be used if the Project Contract uses the Call Off Conditions of Contract under Option E.

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- 7.4 The Contract Data for each Project Contract will be completed in accordance with the Framework Contract Data.
- 7.5 The Contractor shall complete the tender documentation including Part Two of the Contract Data in accordance with the Request for Tender (including without limitation the Framework Contract Data) and return it to the Employer within the agreed tender period.
- 7.6 Each Project Contract will be procured in accordance with applicable law and entered into on terms and conditions consistent with this Framework Agreement.
- 7.7 Each Project Contract shall incorporate the Call-Off Conditions for the applicable main Option selected by the Employer in accordance with clause 7.2.
- 7.8 Where the Employer selects or agrees to main Option A pursuant to clause 7.2, the tendered total of the Prices tendered by the Contractor shall in those cases be calculated by reference to any agreed rates, prices and item charges (including in relation to the Data for Schedule of Cost Components) set out within the Framework Contract Data and the Pricing Schedule.
- 7.9 Where the Employer selects or agrees to Option E pursuant to clause 7.2, the Contractor shall provide a first forecast of the total Defined Cost calculated by reference to the agreed rates, prices and item charges (including in relation to the Schedule of Cost Components) set out within the Framework Contract Data and the Pricing Schedule.
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- 7.10 In responding to each Request for Tender in accordance with clause 7.9 the Contractor will also undertake (a) to use reasonable endeavours to ensure that his proposed Subconsultants and Subcontractors provide equivalent information in relation to the detailed breakdown of the Prices or Defined Cost, or (b) to provide information as to the calculations used by the Contractor in assessing or understanding or evaluating how a price provided by a proposed Subconsultant and Subcontractor may have been determined..

- 7.11 Following receipt of the Contractor's tender submission pursuant to clause 7.5, the Employer may, within ninety (90) days of the date that the tender submission was received and by giving notice in writing:

- 7.12 [REDACTED]
- (a) accept the Contractor's tender, in which case clause ~~7.14~~ shall apply; or
  - (b) notify the Contractor that the tender is not accepted (giving reasons) and may request that the Contractor provides a new tender submission. ; or
  - (c) notify the Contractor that the Project Contract will not proceed.

- 7.12 If, following the receipt of the Contractor's tender submission pursuant to clause 7.4, the Employer wishes to accept the Contractor's tender, the Employer and the Contractor will execute the Form of Agreement within ninety (90) days of the date that the tender submission (or the new tender submitted pursuant to clause 7.11(b)) was received.

- 7.13 The Contractor is responsible for all and any of its own (and its Group Companies') costs, charges and expenses arising from or associated with the process in this clause 7 and the Employer shall not be liable for any such costs, charges or expenses, which shall be borne by or on behalf of the Contractor whether or not the Contractor enters into a Project Contract with the Employer.

## 8. PAYMENT

The Contractor shall be paid for the Works it provides to the Employer in accordance with the provisions of the relevant Project Contract. For the avoidance of doubt no obligation to make any payment to the Contractor will arise under this Framework Agreement.

## 9. ASSIGNMENT

- 9.1 The Contractor may assign, transfer or novate this Framework Agreement or any of its rights hereunder to any member of the Group Company with the prior written consent of the Employer which may not be unreasonably withheld or delayed provided always that a parent company guarantee in the form at Appendix A and legal opinion in the form at Appendix B has been delivered and the parent company guarantee or any replacement approved by the Employer (which may not be unreasonably withheld or delayed) remains in force.
- 9.2 The Employer may assign, transfer or novate this Framework Agreement or any part of its rights hereunder to any member of the TfL Group with the prior written consent of the Contractor which may not be unreasonably withheld or delayed.
- 9.3 Within fourteen (14) days of any written request by one party, the other party shall execute a deed of novation in favour of any member of the TfL Group or the Contractor's Group to whom this Framework Agreement is being novated.

## 10. TERMINATION

10.1 The Employer may for any reason without cause and at its sole discretion terminate this Framework Agreement by providing 90 days' written notice to the Contractor.

10.2 The Contractor may not terminate this Framework Agreement without the prior written consent of the Employer which shall be in the Employer's sole discretion.

10.3 Either the Employer or the Contractor may terminate this Framework Agreement by written notice if at any time:

(a) the other party commits any material breach of this Framework Agreement provided that in the case of a remediable breach, the injured party must have provided the defaulting party with prior written notice of the breach and the defaulting party must have failed to remedy the same within 14 days of such prior written notice;

(b) the other party (being a person or firm and including any partner in a firm), becomes bankrupt, has a receiving order or administration order made against it, makes any composition or arrangement with or for the benefit of its creditors, makes any assignment for the benefit of its creditors, grants a trust deed for and on behalf of its creditors or is the subject of any applications made under the Insolvency Act 1986 for the sequestration of its estate;

(c) the other party (being a company) enters into any form of liquidation (other than for the purpose of solvent reconstruction or amalgamation), has a receiver, administrator or administrative receiver appointed in respect of the whole or any part of its assets, has a winding up order made, makes any assignment or composition with any of its creditors or makes any material change in its ownership which in the sole discretion of the injured party adversely affects the ability of the other party to undertake any existing or future Project Contract; or

(d) the other party ceases or threatens to cease carrying on business.

10.3A The Employer may terminate this Framework Agreement by written notice if at any time:

(a) the Contractor commits a Safety Breach in relation to a Project Contract, provided that the Employer issues prior written notice of the Safety Breach to the Contractor and the Contractor fails to remedy the same or propose a remedy within 30 days of receipt of the notice or such further period as the Parties may agree; or

(b) the Employer has a right to terminate pursuant to clauses 27.3 or 27.4 of this Framework Agreement.

- 10.4 Existing Project Contracts will be unaffected by termination of this Framework Agreement. Existing Project Contracts may only be terminated in accordance with and subject to the terms and conditions of those contracts.
- 10.5 The liability of the parties under a Project Contract following any termination of this Framework Agreement will be determined solely in accordance with the terms and conditions of those contracts.
- 10.6 Termination of this Framework Agreement for any reason whatsoever will be without prejudice to any rights of action or remedies of either party in respect of any breach of the terms of this Framework Agreement by the other.
- 10.7 The provisions of Clauses 8 (Payment), 10 (Termination), 11 (Disputes), 12 (Waiver), 13 (Entire Agreement), 14 (Agency), 15 (Non Exclusive Agreement), 17 (Third Party Rights), 19 (Data Protection), 20 (Freedom of Information), 21 (Data Transparency), 22 (Severability), 23 (Confidentiality), 24 (Publicity), 26 (Governing Law and Jurisdiction), 27 (Prohibited Acts) and 29 (Limitation of Liability) and any other clauses or Appendices that are necessary to give effect to those clauses survive the termination or expiry of this Framework Agreement. In addition, any other provision in this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement does so.

## **11. DISPUTES**

- 11.1 The Parties shall follow the Dispute Resolution Procedure for the avoidance and resolution of Disputes.

## **12. WAIVER**

Failure by either Party to exercise or enforce any right conferred by this Framework Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right or of any other right on any other occasion. A waiver of any default shall not constitute a waiver of any other default.

## **13. ENTIRE AGREEMENT**

- 13.1 This Framework Agreement supersedes any previous agreement, arrangement or understanding between the Employer and the Contractor in relation to the matters dealt with in this Framework Agreement and represents the entire understanding and agreement between the Employer (and other members of the TfL Group) and the Contractor in relation to such matters.
- 13.2 The Contractor acknowledges and agrees that he has not relied upon any prior representation by the Employer or any other member of the TfL Group in entering into this Framework Agreement. The Employer acknowledges and agrees that he has not relied upon any prior representation by the Contractor or any Group Company in entering into this Framework Agreement. For the avoidance of doubt nothing in this

Framework Agreement excludes any liability of either Party to the other for fraudulent statements or misrepresentation.

- 13.3 This Framework Agreement may only be varied by a deed in writing signed by the Employer and the Contractor.

14. **AGENCY**

Nothing in this Framework Agreement shall be deemed to create a relationship of principal and agent between the Employer and the Contractor.

15. **NON EXCLUSIVE AGREEMENT**

The appointment of the Contractor under this Framework Agreement is non-exclusive and the Employer may at any time in its absolute discretion appoint any other person to provide Works or Projects.

16. **COUNTERPARTS**

This Framework Agreement may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.

17. **THIRD PARTY RIGHTS**

- 17.1 Subject to Clause 17.2, the Parties do not intend that any of the terms of this Framework Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act") by any person who is not a party to it.

- 17.2 Any member of the TfL Group has the right to enforce the terms of this Framework Agreement as if they were a party to this Framework Agreement in the place of the Employer in accordance with the Third Party Act.

- 17.3 Notwithstanding clause 17.2, the Parties are entitled to vary or rescind this Framework Agreement without the consent of any member of the TfL Group.

18. **NOTICES IN WRITING**

- 18.1 Any notice in respect of this Framework Agreement (but not for a Project Contract) shall be deemed to have been given if sent or delivered to the person at the address given below or such other person or at such other address as may from time to time be notified by either Party to the other in writing.

- For the Employer:

Name: TBA

Address: TBA

- For the Contractor:

Name TBA

Address TBA

18.2 Any notice shall be deemed to have been given to the other Party 4 days after the date of posting (if by letter), on the day of transmission if by facsimile transmission and on the day of delivery if delivered by hand.

18.3 In an emergency an oral notice may be given subject to it being confirmed in writing by the issuing Party within 3 days.

## 19. DATA PROTECTION

19.1 The Parties shall at all times comply with the Data Protection Legislation (including any subordinate legislation made under from time to time) and any policies issued by the Employer from time to time in relation to the processing of data and shall not by any act or fault cause the other Party to be in breach of these requirements.

19.2 The Contractor:

- (a) takes appropriate technical and organisational security measures satisfactory to the Employer against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Legislation) and against accidental loss, destruction of, or damage to such Personal Data;
- (b) provides the Employer and Project Manager with such information as they may reasonably require to satisfy themselves of compliance by the Contractor with the requirements of this clause 19;
- (c) cooperates with the Employer and Project Manager in complying with requests or enquiries made pursuant to the Data Protection Legislation.

## 20. FREEDOM OF INFORMATION ACT 2000

20.1 The Contractor acknowledges that the Employer and other members of the TfL Group:

- (a) are subject to FOI Legislation and agrees to assist and co-operate with the Employer to enable the Employer to comply with his obligations under the FOI Legislation, and



- (b) may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Contractor.
- 20.2 Without prejudice to the generality of clause 20.1, the Contractor agrees and procures that his Subconsultants and Subcontractors will agree to:
  - (a) transfer to the Employer or such other persons as may be notified by the Employer to the Contractor each Information Request relevant to this Framework Agreement, the Works or any member of the TfL Group that the Contractor or his Subconsultants and/or Subcontractors (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
  - (b) in relation to Information held by the Contractor on behalf of the Employer, provide the Employer with details about and/or copies of all such Information that the Employer requests and such details and/or copies are provided within 6 days of a request from the Employer (or such other period as the Employer may reasonably specify), and in such forms as the Employer may reasonably specify.
- 20.3 The Employer (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Employer. The Employer acknowledges that certain technical or financial information of the Contractor or its group companies, forming part of this Framework Agreement or otherwise available to the Employer, is a trade secret or otherwise confidential or commercially sensitive.
- 20.4 The Contractor acknowledges that the Employer (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- 21. **DATA TRANSPARENCY**
- 21.1 The Contractor acknowledges that the Employer is subject to the Transparency Commitment. Accordingly, notwithstanding clause 20 and clause 23, the Contractor hereby gives its consent for the Employer to publish the Contract Information to the general public.
- 21.2 The Employer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its 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 its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to clause 21.1. The Employer shall make the final



decision regarding both publication and redaction of the Contract Information. The Employer in exercising its absolute discretion to redact acknowledges that certain technical or financial information of the Contractor or Group Companies, forming part of this Framework Agreement or otherwise available to the Employer, is a trade secret or otherwise confidential or commercially sensitive.

- 21.3 The provisions of this clause 21 will survive any termination of this Framework Agreement for a period of 6 years from termination.

**22. SEVERABILITY**

If any term, condition or provision contained in this Framework Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Framework Agreement.

**23. CONFIDENTIALITY**

- 23.1 The Contractor shall, and shall ensure that his Subconsultants and Subcontractors and Group Companies treat all information (including information concerning the Employer or any member of the TfL Group) derived from or obtained in the course of the Framework Agreement as confidential and shall take all the necessary precautions to ensure that its employees and Subconsultants and Subcontractors and their employees treat such information as confidential.

- 23.2 Other than for the purpose of carrying out the Works or performing its obligations under any Associated Contracts, the Contractor shall not disclose any information or documents concerning this Framework Agreement to any third party. The Contractor undertakes to treat any information provided by the Employer as confidential and use such information solely in connection with this Framework Agreement.

- 23.3 The Employer shall, and shall ensure that his Subconsultants and subcontractors and other members of the TfL Group shall, treat all information (including information concerning the Contractor or an Group Company) derived from or obtained in the course of the Framework Agreement as confidential and shall take all the necessary precautions to ensure that its employees and contractors and their employees treat such information as confidential.

- 23.4 Other than for the purpose of performing its obligations under any Associated Contracts, the Employer shall not disclose any information or documents concerning this Framework Agreement to any third party. The Employer undertakes to treat any information provided by the Contractor as confidential and use such information solely in connection with this Framework Agreement.

- 23.5 Notwithstanding this clause 23, the Parties agree that the Employer may disclose on a "need to know" basis:

- (a) to LUL, Her Majesty's Railway Inspectorate and the Employer's financiers, bankers and shareholders from time to time, this Framework Agreement and information relating to it; and
- (b) to any member of the TfL Group such information on technical and operational matters relating to this Framework Agreement as is reasonably required by such member of the TfL Group,

and the Contractor consents to such disclosure provided that such disclosure is in relation to this Framework Agreement and that the recipients of the information are subject to confidentiality restrictions similar to those contained in this Framework Agreement. Further, the Employer may disclose any information pursuant to clauses 20 and 21 and the Contractor consents to such disclosure as set out therein.

- 23.6 The obligations in this Clause 23 shall not apply to confidential information that is in or comes into the public domain through no fault of the other Party or those for whom it is responsible or if disclosure is required by law.

24. **PUBLICITY**

The Contractor shall not append its name or give authority to the appending of its name to any publicity concerning this Framework Agreement or any Project or any Project Contract or indulge in any publicity concerning this Framework Agreement or any Project or any Project Contract without the prior written consent of the Employer.

25. **COMPETITION LAW**

Nothing in this Framework Agreement constitutes a breach of the Competition Act 1998 or the Enterprise Act 2002 and the Contractor and Employer each recognises that in carrying out the provisions of this Framework Agreement and any Project Contract its directors and employees must ensure that they comply with all relevant provisions of those Acts.

26. **GOVERNING LAW AND JURISDICTION**

This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

27. **PROHIBITED ACTS**

- 27.1 The Contractor does not and uses his reasonable endeavours to procure that his Subconsultants and Subcontractors do not commit any Prohibited Act.
- 27.2 The Employer may audit and check any and all such records as are necessary in order to monitor compliance with this clause 27 at any time during performance of this Framework Agreement and during the 12 years thereafter.

27.3 If the Contractor, any of his shareholders or any Subconsultants and Subcontractor or anyone employed by or acting on behalf of the Contractor or any of his agents commits any Prohibited Act, this constitutes a material breach of this Framework Agreement or a Project Contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 10.3A of this Framework Agreement.

27.4 If a Prohibited Act is committed by an employee of the Contractor or by any Subconsultant or Subcontractor (or employee or agent of such Subcontractor) then the Employer may (at his sole discretion) choose to serve a warning notice upon the Contractor instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Contractor removes or procures the removal of the relevant employee or Subconsultant or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subconsultant or Subcontractor this constitutes a material breach of this contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 10.3A.

28. **PARENT COMPANY GUARANTEE**

28.1 The Contractor shall, upon receipt of any written request from the Employer, provide a parent company guarantee in the form at Appendix A and legal opinion in the form at Appendix B in respect of all of its obligations pursuant to this Framework Agreement and the Contractor's obligations under the Project Contracts.

29. **LIMITATION OF LIABILITY**

29.1 Save for liabilities arising under Clauses 19, 20, 21, 23 and 27 and without prejudice to the Parties' rights under Project Contracts, neither Party shall be liable to the other for any losses of whatsoever nature whether direct, indirect or consequential arising of or in connection with the Framework Agreement, in particular (without limitation) the termination of this Framework Agreement or the failure by the Employer to issue or the Contractor to accept a Project Contract.

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

<sup>1</sup>  
THE COMMON/CORPORATE SEAL of  
LONDON UNDERGROUND LIMITED  
was affixed to THIS DEED  
in the presence of:

~~Signature of Director/Secretary~~

~~Print name of Director/Secretary~~

~~Signature of Director~~

~~Print name of Director~~

Authorised Sign

EXECUTED AS A DEED  
by SIEMENS MOBILITY LIMITED  
acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary







**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**Appendix A**

**(Schedule 2)**

**Parent Company Guarantee**





**SCHEDULE 2**

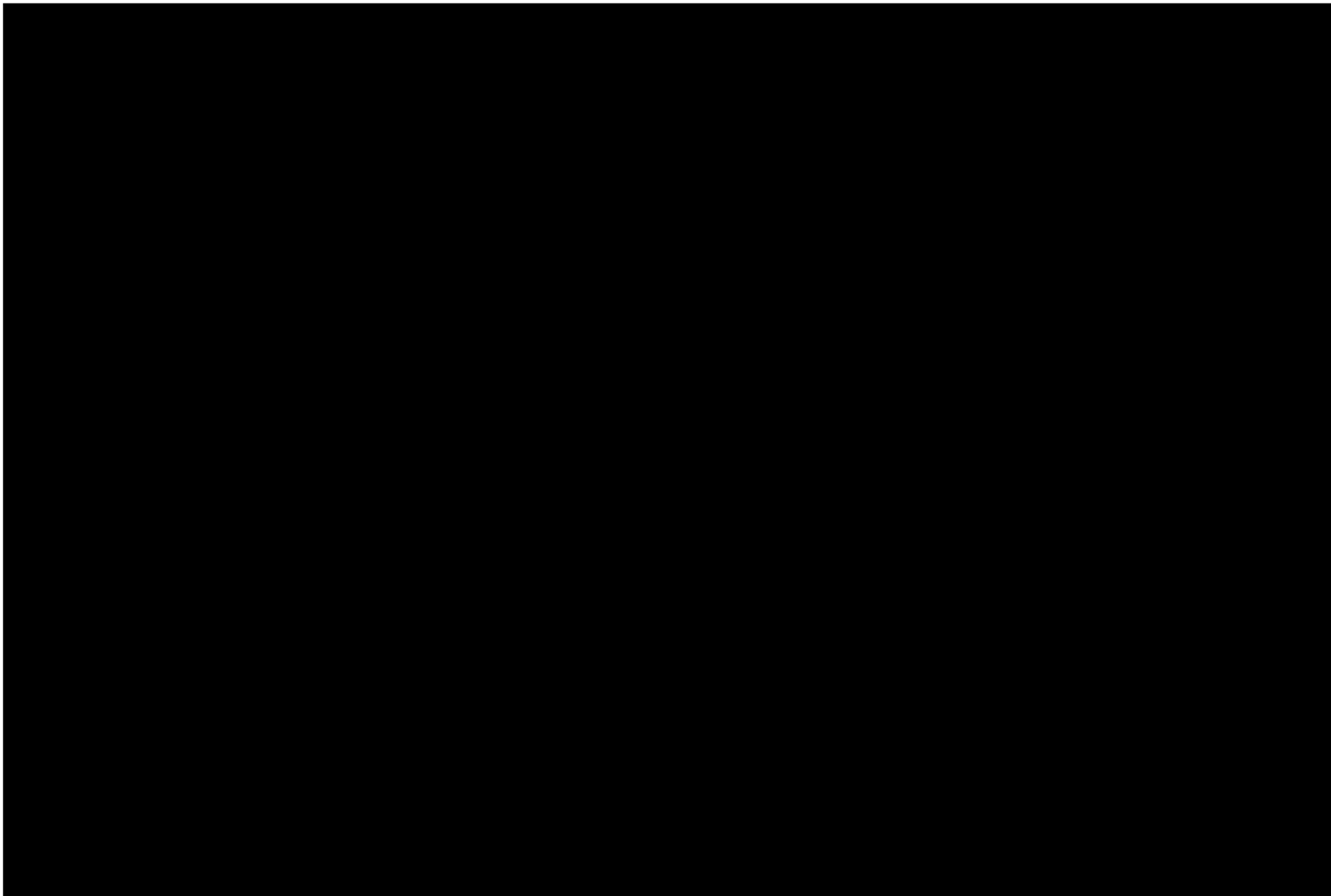
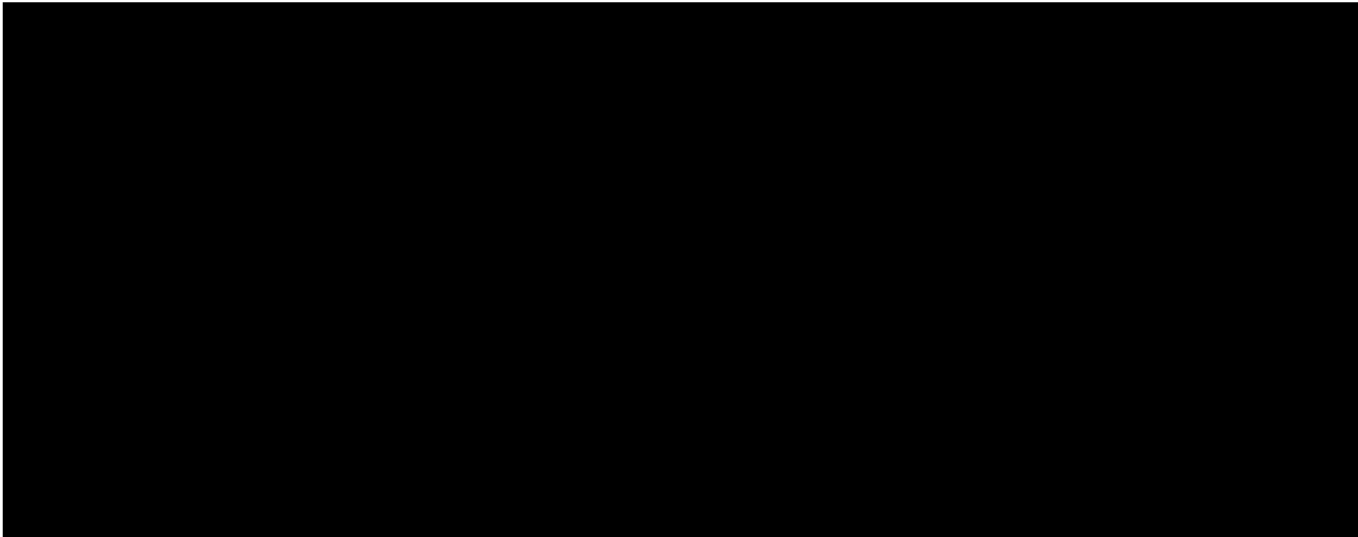
Form of Parent Company Guarantee

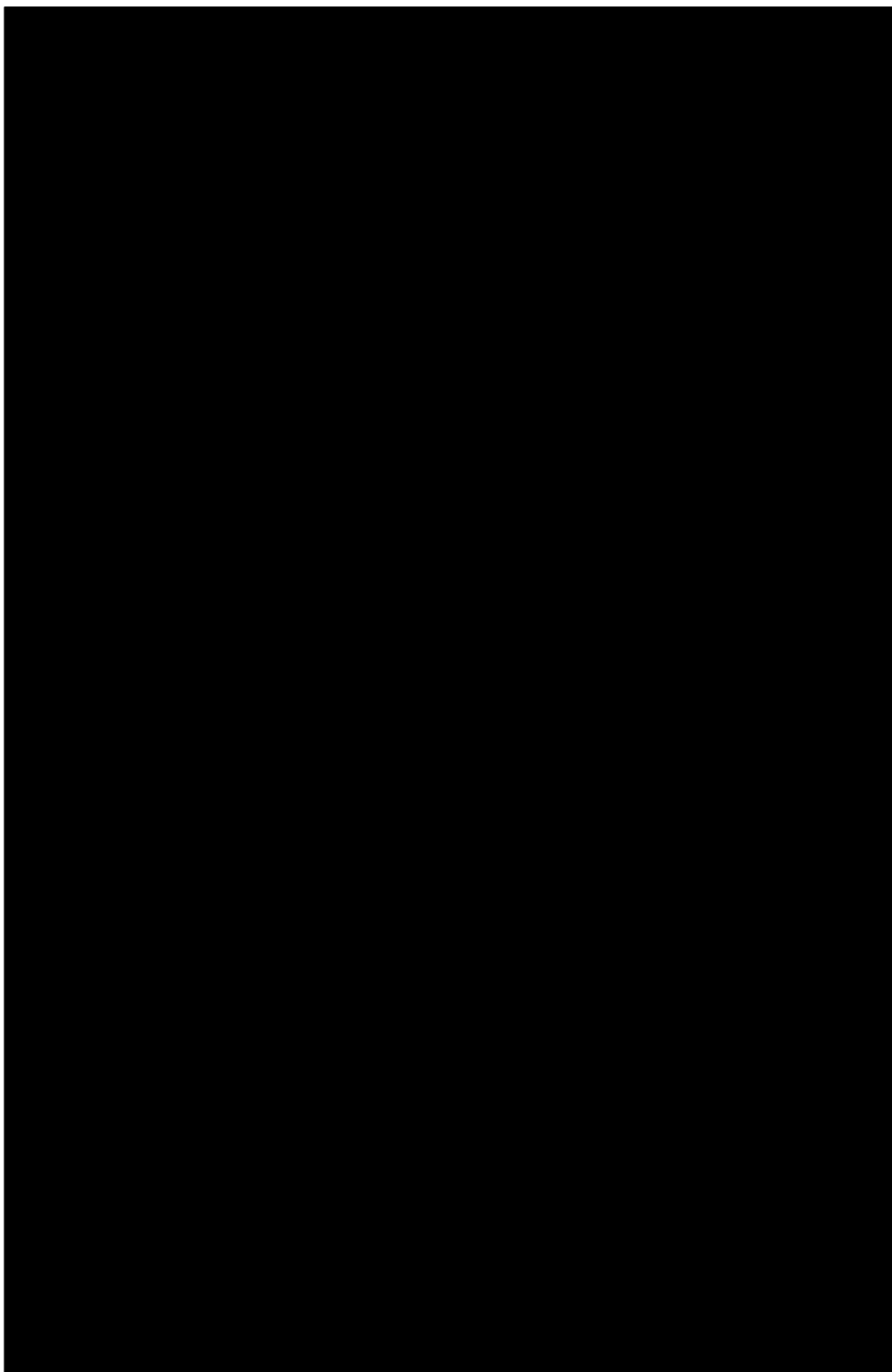
**PARENT COMPANY GUARANTEE No.**

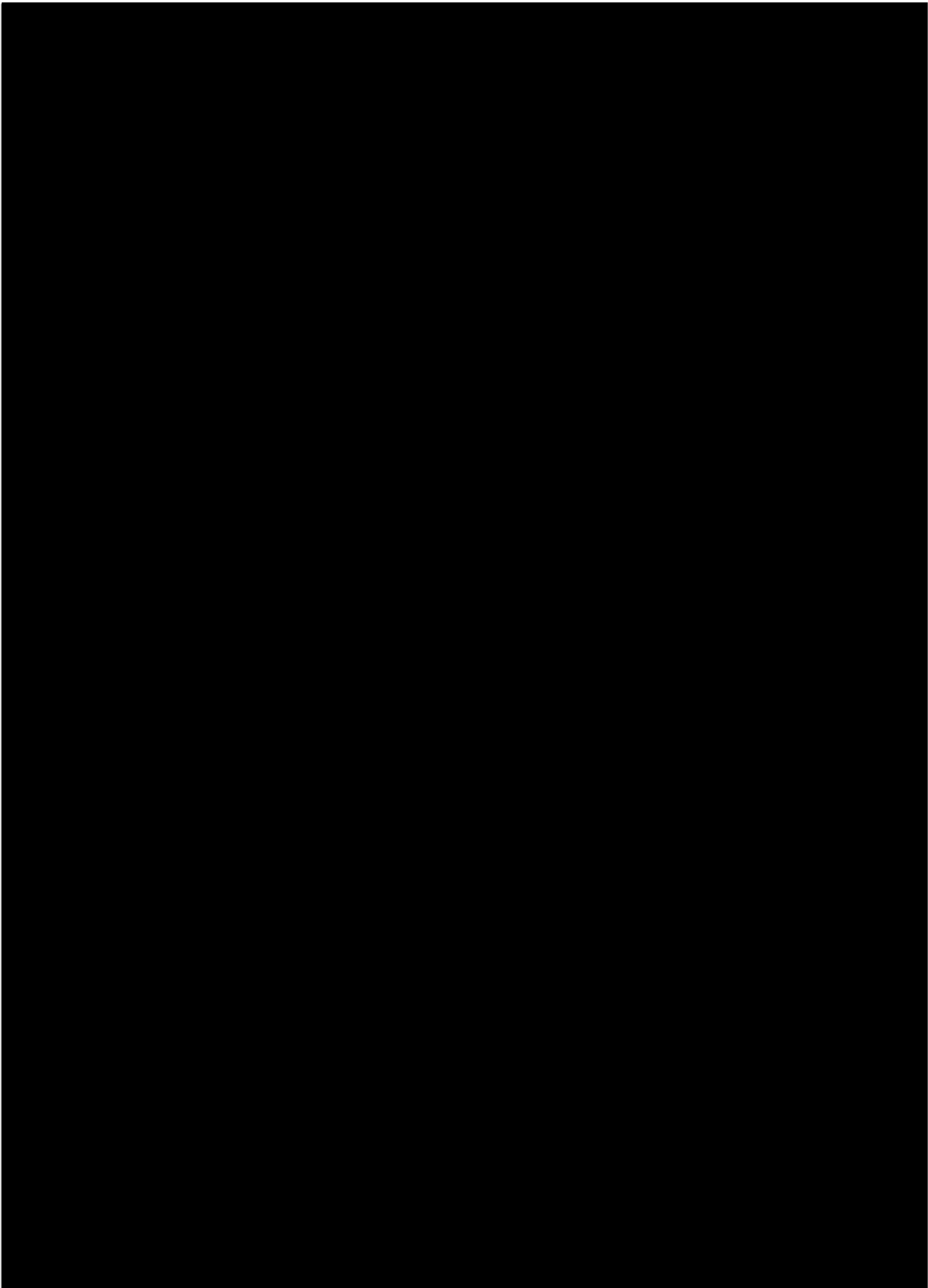
**THIS GUARANTEE** is made this [            ] day of [            ]

**BETWEEN:**

1. **SIEMENS AKTIENGESELLSCHAFT**, a company established in Berlin and Munich, Germany, company number, 12300 Berlin-Charlottenburg and 6684 Munich and with registered office at Wittelsbacherplatz 2, D-80333 Munich (the “**Guarantor**”); and
2. **LONDON UNDERGROUND LIMITED**, with registered office at 55 Broadway, London SW1H 0BD, company number 01900907 (the “**Beneficiary**”).













**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**Appendix B**

**(Schedule 3)**

**Legal Opinion Template**





**SCHEDULE 3**

Form of Legal Opinion Letter



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DRAFT DATED [ ] MARCH 2018

SUBJECT TO REVIEW OF FINAL DOCUMENTATION AND  
LEGAL OPINION COMMITTEE APPROVAL AND INTERNAL REVIEW.

SUBJECT TO CHANGES IN LAW (IF ANY).

---

[NAME OF LAW FIRM] OPINION LETTER  
(GERMAN LAW)

ISSUED IN CONNECTION WITH  
A [ ] PARENT COMPANY GUARANTEE [ ] IN CONNECTION  
WITH [ ] THE CENTRAL LINE LIFE EXTENSION PROJECT  
WITH  
LONDON UNDERGROUND LIMITED [ ]

---



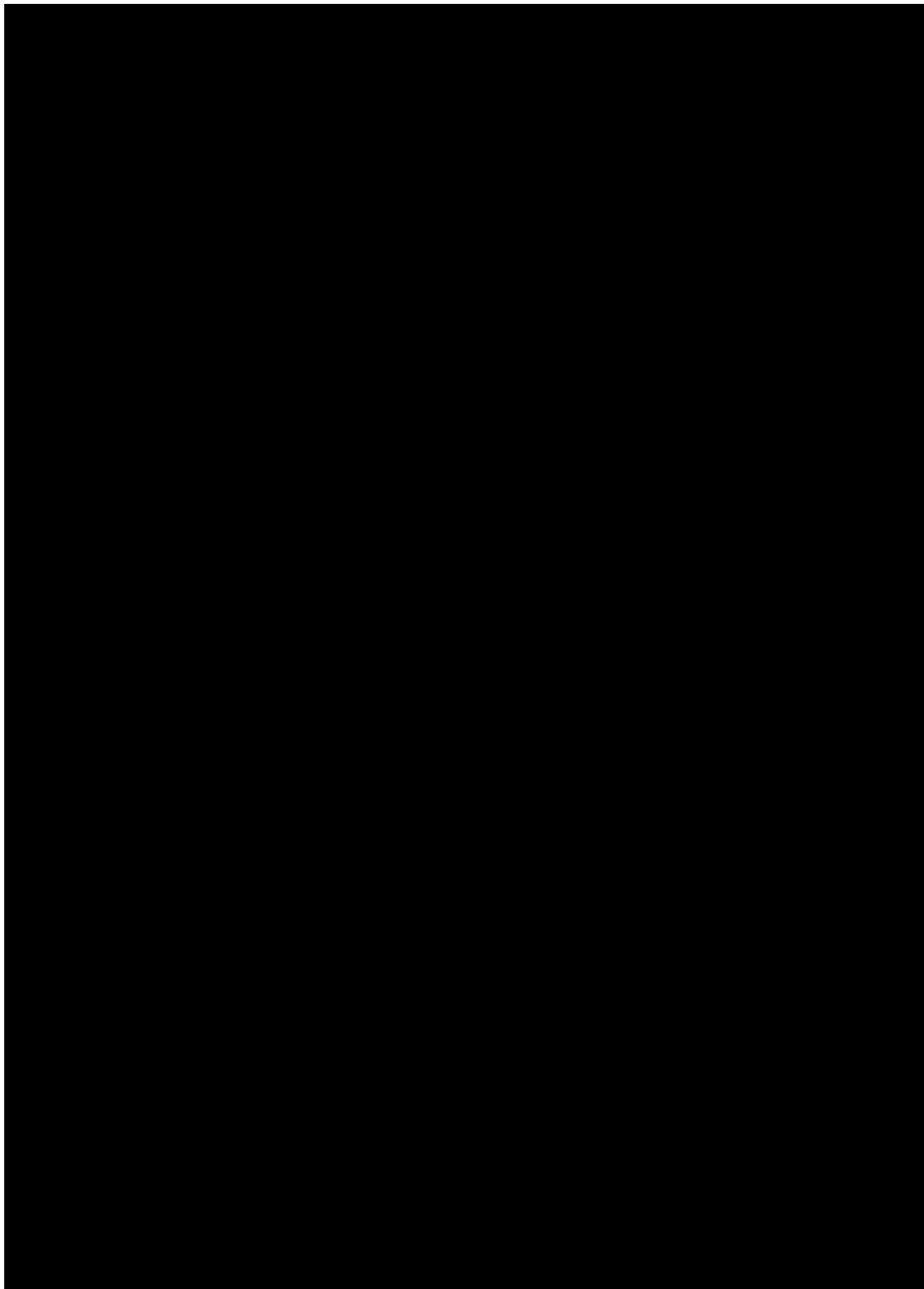
Draft 1

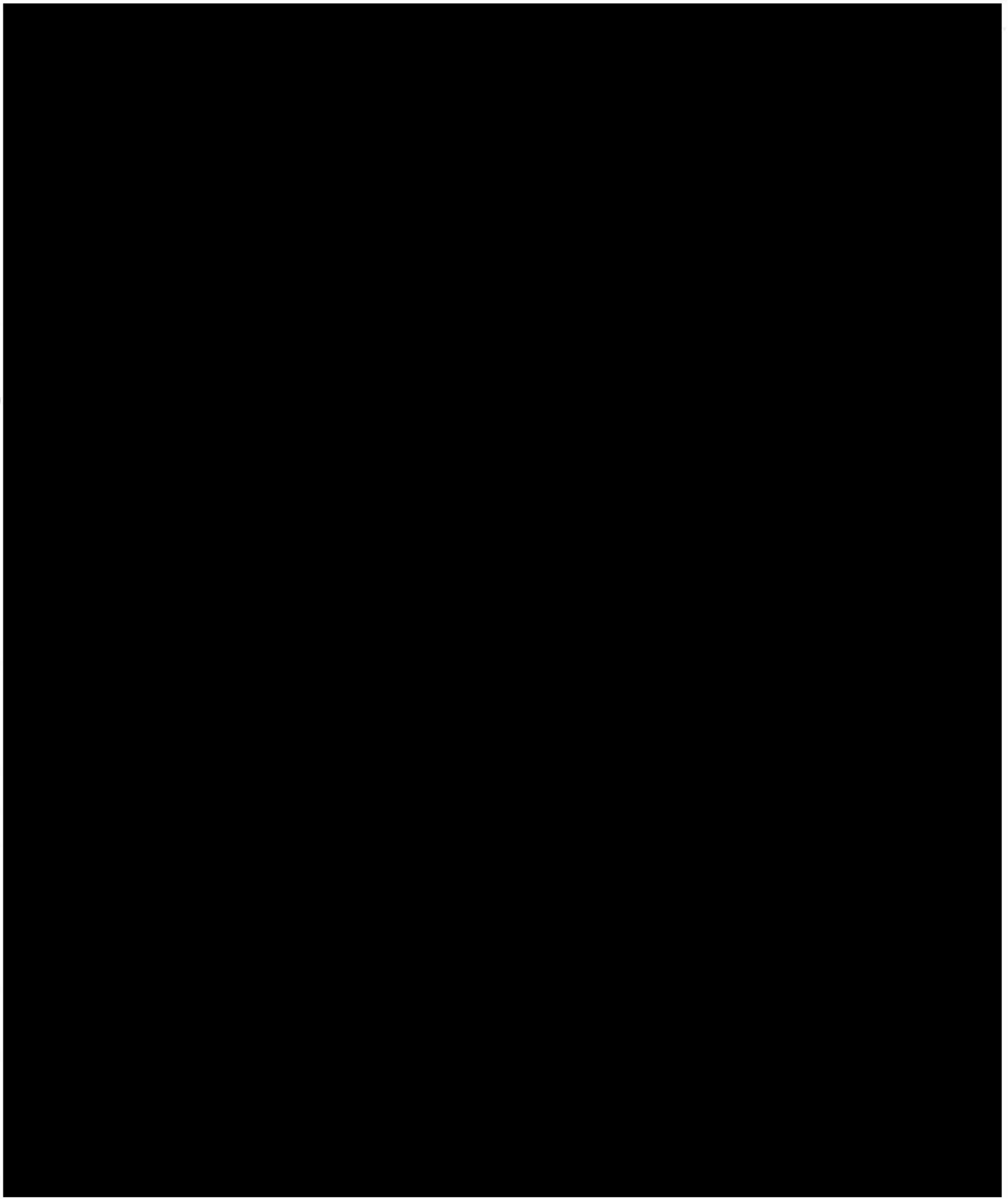
Draft Date 6 March 2018

To: [London Underground Limited] (the "**Addressee**")

**[Central line life extension project with London Underground Limited] - [parent company guarantee]**







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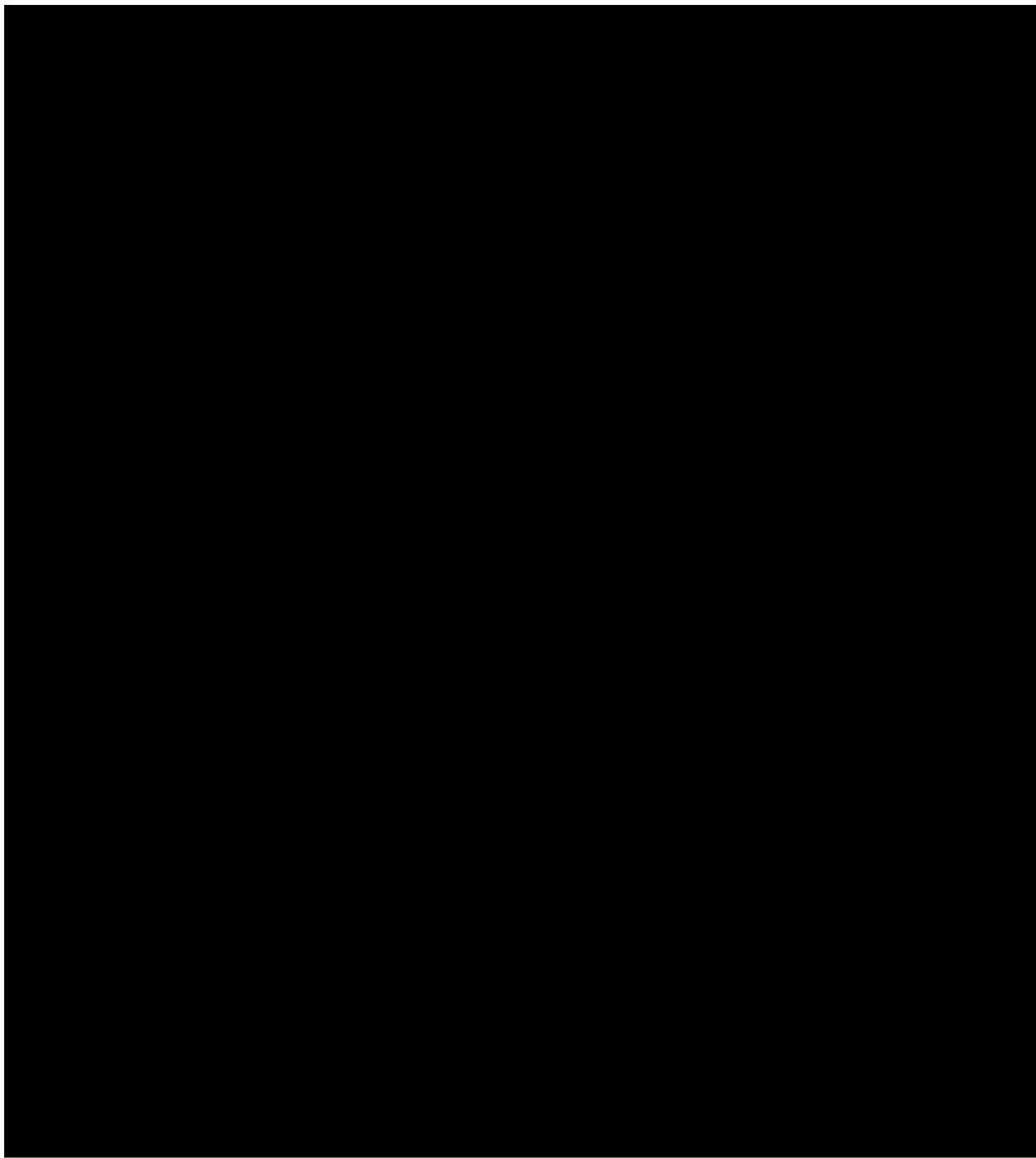
<sup>1</sup> Subject to review of the **Parent Company Guarantee**.

<sup>2</sup> Subject to review of the **Parent Company Guarantee**.

<sup>3</sup> Subject to review of the [Parent Company Guarantee].

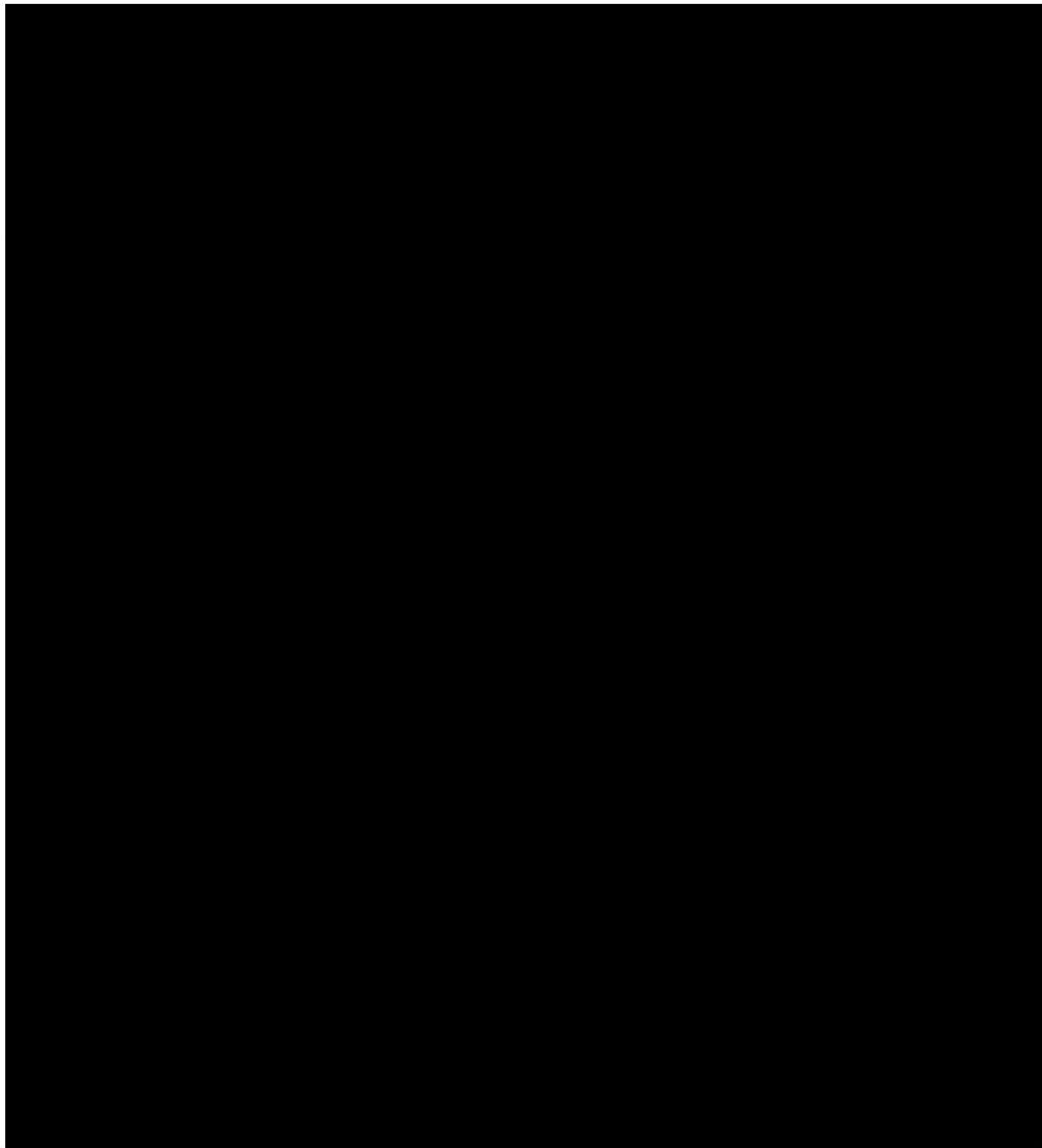
<sup>4</sup> Subject to review of the [Parent Company Guarantee].





<sup>5</sup> Subject to review of the Parent Company Guarantee.

<sup>6</sup> Subject to review of the Parent Company Guarantee.

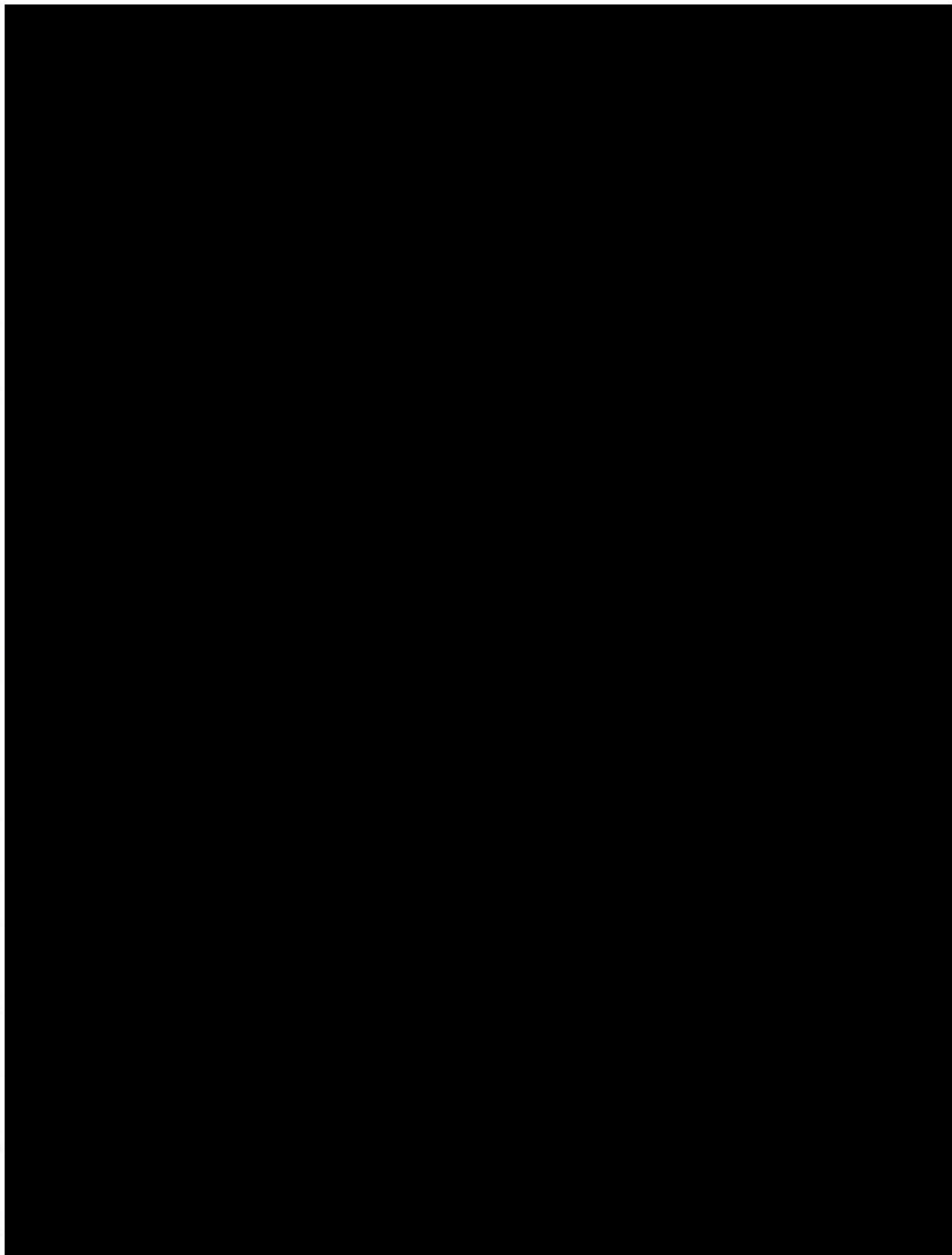


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<sup>7</sup> Subject to review of the Parent Company Guarantee.  
<sup>8</sup> Subject to review of the Parent Company Guarantee.  
<sup>9</sup> Subject to review of the Parent Company Guarantee.

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<sup>10</sup> Subject to review of the **Parent Company Guarantee**.







**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**Appendix C**

**CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION A**

This amended contract is based on the NEC family of contracts (2013 edition), the copyright of which belongs to the Institution of Civil Engineers.

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## CORE CLAUSES

### 1 General

	<b>Actions</b>	<b>10</b>	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	<b>Identified and defined Terms</b>	<b>11</b>	
		11 1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
Z1.1		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none"><li>• done all the work which the Works Information states he is to do by the Completion Date and</li><li>• corrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work.</li></ul> If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract (4) The Contract Date is the date of this contract. (5) A Defect is <ul style="list-style-type: none"><li>• a part of the <i>works</i> which is not in accordance with the Works Information or</li><li>• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law, any applicable Standards or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted</li></ul>
Z1 1.1			
Z1.1.2			
Z1.1.3			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> . (8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.4			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the Adjudicator the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1 1.5			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns), the <i>Contractor</i> , and a member of the Contractor's Group to which the contract has been assigned, transferred or novated with the prior written consent of the <i>Employer</i> , such consent not to be unreasonably withheld or delayed. (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

(20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not-excluding the cost of preparing quotations for compensations events.

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

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

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

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

Z1.2	11.3	Additional defined terms are included in Schedule 1.
<b>Interpretation and the law</b>	<b>12</b>	
Z1.3		
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
Z1.3.1	12.1A	References to "this contract" mean the contract between the <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.

- Z1.3.2 12.1B In this contract, unless the context otherwise requires, references to:
- (a) "including" means "including without limitation", and
  - (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be)
- Z1.3.3 12.2 This contract is governed by and is construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.4 12.3A Words denoting persons or parties includes individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.5 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.6 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.7 12.7 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
  - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- The *Contractor* complies with the applicable law. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.8 12.8 Not used.
- Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

## **Communications 13**

- Z1.4
- Z1.4.1 13.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* comply with the communications requirements in the Works Information. 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*
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.

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

**The Project Manager and the Supervisor**

**14**

Z1.5

- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.

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

- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.

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

Y2.1/Z1.5.1

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

**Adding to the Working Areas**

**15**

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

**Early warning**

**16**

Z1.7

Z1 7.1

- 16 1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
  - delay Completion,
  - delay meeting a Key Date, or
  - impair the performance of the works in use,
  - adversely affect the work of Others, or
  - adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the Project) and/or cause any disruption to the operation of the Underground Network

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

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

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

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

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

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

#### **Ambiguities and Inconsistencies**

17

17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

#### **Illegal and impossible requirements**

18

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

#### **Prevention**

19

19.1 If an event occurs which

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

and which

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

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

2 The Contractor’s main responsibilities

Providing the Works		20	
Z1.8			
Z1.8.1	20.1	The Contractor Provides the Works in accordance with the Works Information.	
	20.2-20.5	Not used (as not option A clauses)	
Z1.8.2	20.6	These conditions of contract and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the Contractor both before and after the Contract Date	
The Contractor’s design		21	
Z1.9			

- Z1.9.1 21.1 The *Contractor* is responsible for the design of all of the *works* which the Works Information states he is to design and for the integration of the works into the Systems but for the avoidance of doubt the *Contractor* is not responsible for a defect in the design of the Systems
- Z1.9.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with the Works Information, applicable Standards or the applicable law.
- The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.
- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

#### Using the *Contractor's* Design

22

- Z1.10 22.1 The *Employer* may use and copy the *Contractor's* design for any purpose specified in clause Z2.7.
- Z1.10.1

#### Design of Equipment

23

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

#### People

24

- Z1.11 24.1 The *Contractor* complies with Option X23 (where applicable) and the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- Z1.11.1
- Z1.11.2 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control who has misconducted himself, been incompetent, negligent or in breach of health and safety requirements. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

**Working with the  
Employer and Others**

**25**

Z1.12

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

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

Z1.12.1

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

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

on the same project the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The *Employer's* right to recover the additional cost is his only right in these circumstances ]<sup>11</sup>

**Subcontracting**

**26**

Z1.13

Z1.13.1

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

26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.

Z1.13.2

26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.

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

- they will not allow the *Contractor* to Provide the Works,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation
- they contain payment terms that do not comply with the Public Contracts Regulations 2015. or
- where required by Z2.2.1 they do not grant suitable third party rights (by way of collateral warranty or pursuant to the Contracts (Rights of Third Parties) Act 1999) in favour of the *Employer* or other members of the TfL Group.

**Other responsibilities**

**27**

Z1.14

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

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

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

<sup>11</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option A  
Consolidated Conditions of Contract



Z1.14.1

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

### 3 Time

<b>Starting, Completion and Key Dates</b>		<b>30</b>
Z1.15	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.15.1	30.1A	The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information. The <i>Supervisor</i> may attend the inspection.
Z1.15.2	30.2	The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
<b>The programme</b>		<b>31</b>
Z1.16	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.16.1	31.2	<p>The <i>Contractor</i> shows on each programme which he submits for acceptance</p> <ul style="list-style-type: none"><li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li><li>• planned Completion,</li><li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li><li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li><li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li><li>• provisions for<ul style="list-style-type: none"><li>• float,</li><li>• time risk allowances,</li><li>• environmental and health and safety requirements and</li></ul></li><li>• the procedures set out in this contract,</li><li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none"><li>• any access in accordance with the access requirements in the Works Information and access to a part of the Site if later than its <i>access date</i>,</li><li>• acceptances,</li><li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li><li>• information from Others,</li></ul></li><li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and</li></ul>

		<ul style="list-style-type: none"> <li>• other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.</li> </ul>
	31.3	<p>Within two weeks of the <i>Contractor</i> submitting a programme to him for acceptance, the <i>Project Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting a programme is that</p> <ul style="list-style-type: none"> <li>• the <i>Contractor's</i> plans which it shows are not practicable,</li> <li>• it does not show the information which this contract requires,</li> <li>• it does not represent the <i>Contractor's</i> plans realistically or</li> <li>• it does not comply with the Works Information.</li> </ul>
	31.4	<b>The <i>Contractor</i> provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.</b>
<b>Revising the programme</b>	<b>32</b>	
	32.1	<p>The <i>Contractor</i> shows on each revised programme</p> <ul style="list-style-type: none"> <li>• the actual progress achieved on each operation and its effect upon the timing of the remaining work,</li> <li>• the effects of implemented compensation events,</li> <li>• how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and</li> <li>• any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.</li> </ul>
	32.2	<p>The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance</p> <ul style="list-style-type: none"> <li>• within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to,</li> <li>• when the <i>Contractor</i> chooses to and, in any case,</li> <li>• at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works.</li> </ul>
<b>Access to and use of the Site</b>	<b>33</b>	
Z1.17 Z1.17.1	33.1	<p>Subject to the provisions of the Works Information regarding access, the <i>Employer</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in this contract. Access and use is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.</p>
Z1.17.2	33.1A	<p>The <i>Employer</i> does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and access is limited in accordance with this contract but shall be sufficient to enable delivery of the <i>works</i> in accordance with the Works Information and the Accepted Programme.</p>
<b>Instructions to stop or not to start work</b>	<b>34</b>	
	34.1	<p>The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.</p>
<b>Take over</b>	<b>35</b>	
Z1.18	35.1	<p>The <i>Employer</i> need not take over the <i>works</i> before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the <i>Employer</i> takes over the <i>works</i> not later than two weeks after Completion.</p>
Z1.18.1	35.2	<p>The <i>Employer</i> may use or permit Others to use any part of the <i>works</i> before Completion has been certified. If he does so, he takes over the part of the <i>works</i></p>

when he (or Others) begins to use it except if the use is

- for a reason stated in the Works Information,
- to suit the Contractor's method of working or
- in accordance with the Accepted Programme.

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

**Acceleration 36**

Z1 19

36 1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.

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

Z1.19.1

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

36 4 Not used (as not an Option A clause).

## 4 Testing and Defects

Tests and inspections	40	
	40.1	This clause only applies to tests and inspections required by the Works Information or the applicable law.
	40.2	The <i>Contractor</i> and the <i>Employer</i> provide materials, facilities and samples for tests and inspections as stated in the Works Information.
	40.3	The <i>Contractor</i> and the <i>Supervisor</i> each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The <i>Contractor</i> notifies the <i>Supervisor</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Supervisor</i> may watch any test done by the <i>Contractor</i> .
	40.4	If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect and the test or inspection is repeated.
	40.5	The <i>Supervisor</i> does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Supervisor's</i> test or inspection being successful becomes due at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> if <ul style="list-style-type: none"><li>the <i>Supervisor</i> has not done the test or inspection and</li><li>the delay to the test or inspection is not the <i>Contractor's</i> fault.</li></ul>
	40.6	The <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.
Testing and inspection before delivery	41	
	41.1	The <i>Contractor</i> does not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the <i>Supervisor</i> has notified the <i>Contractor</i> that they have passed the test or inspection.
Searching for and notifying Defects	42	
	42.1	Until the <i>defects date</i> , the <i>Supervisor</i> may instruct the <i>Contractor</i> to search for a Defect. He gives his reason for the search with his instruction. Searching may include <ul style="list-style-type: none"><li>uncovering, dismantling, re-covering and re-erecting work,</li><li>providing facilities, materials and samples for tests and inspections done by the <i>Supervisor</i> and</li><li>doing tests and inspections which the Works Information does not require.</li></ul>
	42.2	Until the <i>defects date</i> , the <i>Supervisor</i> notifies the <i>Contractor</i> of each Defect as soon as he finds it and the <i>Contractor</i> notifies the <i>Supervisor</i> of each Defect as soon as he finds it
Correcting Defects	43	
	43.1	The <i>Contractor</i> corrects a Defect whether or not the <i>Supervisor</i> notifies him of it.
	43.2	The <i>Contractor</i> corrects a notified Defect before the end of the <i>defect correction period</i> . The <i>defect correction period</i> begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
	43.3	The <i>Supervisor</i> issues the Defects Certificate at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> . The <i>Employer's</i> rights in respect of a Defect which the <i>Supervisor</i> has not found or notified are not affected by the issue of the Defects Certificate.
	43.4	The <i>Project Manager</i> arranges for the <i>Employer</i> to allow the <i>Contractor</i> access to and use of a part of the <i>works</i> which he has taken over if they are needed for correcting a Defect. In this case the <i>defect correction period</i> begins when the necessary access and use have been provided.

**Accepting Defects 44**

- 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

**Uncorrected Defects 45**

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

## 5 Payment

Assessing the amount due	50	
Z1.20	50.1	<p>The <i>Project Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Project Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i>. Later assessment dates occur</p> <ul style="list-style-type: none"><li>• at the end of each <i>assessment interval</i> until four weeks after the <i>Supervisor</i> issues the Defects Certificate and</li><li>• at Completion of the whole of the works</li></ul>
Z1 20.1	50.1A	<p>The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to him at the payment due date and the basis on which that sum is calculated.</p>
	50.2	<p>The amount due is</p> <ul style="list-style-type: none"><li>• the Price for Work Done to Date,</li><li>• plus other amounts to be paid to the <i>Contractor</i>,</li><li>• less amounts to be paid by or retained from the <i>Contractor</i>.</li></ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due</p>
	50.3	<p>If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.</p>
Z1.20.2	50.3A	<p>If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.</p>
Z1 20.3	50.4	<p>In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed</p>
	50.5	<p>The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.</p>
	50.6	<p><b>Not used (as not an Option A clause).</b></p>
	50.7	<p><b>Not used (as not an Option A clause).</b></p>
Z1.20.4	50.8	<p>If any performance bond or parent company guarantee required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such documents have been delivered</p>
Z1.20.5	50.9	<p>If a warranty required under sub-clause Z2.2 is not delivered to the <i>Employer</i> in accordance with the provisions of sub-clause Z2.2 the <i>Employer</i> may withhold the sum stated in the Contract Data which is not payable to the <i>Contractor</i> until such warranty is delivered.</p>
Z1.20.6	50.10	<p>If where the Contract Data states that this clause is to apply a Management Plan is not provided by the times or within the timescales required by this contract, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such Management Plan is</p>

retained in all assessments of the amount due and is not payable to the *Contractor* until such Management Plan is delivered

Z1.20.7

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

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

## Payment 51

Y1.1 1

51.1 The *Project Manager* certifies a payment within seven days of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the currency of this contract unless otherwise stated in this contract. If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

Y1.1 2

Y2.2 The date on which payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.

Y1.1 2A

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

Y1.1.2B

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

Y1.1 3

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

Y1 1.3A

51.2A If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand.

Y1 1.4

Y2 3 If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

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

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

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is



certified and is included in the assessment which includes the correcting amount.

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

**Defined Cost**

**52**

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

**53**

**Not used (as not an Option A clause)**

**The Activity Schedule**

**54**

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

54.2

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

54.3

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

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

**55**

**Not used (as not an Option A clause)**

Z1.21.1

56

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

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

subject to issue of a Pay Less Notice by or on behalf of the *Employer* the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.22.1

57.1

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

## 6 Compensation events

### Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events

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

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

(2) Subject to the requirements of the Works Information regarding access and provided that the *Contractor* has booked and co-ordinated access in accordance with its requirements, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report included in the [Site][Works] Information]<sup>12</sup>
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A *weather measurement* is recorded

<sup>12</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option A  
Consolidated Conditions of Contract

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

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

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

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

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

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

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

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

(19) An event which

- stops the Contractor completing the works or
  - stops the Contractor completing the works by the date shown on the Accepted Programme,
- and which
- neither Party could prevent,
  - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
  - is not one of the other compensation events stated in this contract.

Z1.23.2

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

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

Z1.23.3

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

#### Notifying compensation Events

61

Z1 24

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

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

Z1.24.1

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

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

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware or when he ought reasonably to have become aware of the

event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving a instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

Z1.24.2

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

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

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either

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

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

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

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

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

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

#### Quotations for compensation events

62

Z1.25

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

Z1.25.1

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

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

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or a proposed

changed decision will not be made or

- a notification that he will be making his own assessment.

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

#### Assessing compensation Events

63

Z1.26

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

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

If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

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

Z1.26.1

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the *Contractor* shall not be entitled to an addition to the Prices for any period of delay caused by a concurrent *Contractor's* risk.

Z1.26.2

63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.

63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.

Z1.26.3

63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract. Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event

- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information or
  - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.11 Not used (as not an Option A clause).**
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.**
- 63.13 Not used (as not an Option A clause).**
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.**

#### **The *Project Manager's* Assessments**

Z1.27

Z1.27.1

- 64**
- 64.1 The *Project Manager* assesses a compensation event**
- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
  - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
  - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- 64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if**
- there is no Accepted Programme or
  - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract
- 64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.**
- 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project***

*Manager.*

**Implementing  
compensation events**

**65**

65.1

A compensation event is implemented when

Z1.28

- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or
- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

65.2

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

Z1.28.1

65.3

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

65.4

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

## 7 Title

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



## 8 Risks and insurance

<b>Employer's risks</b>		<b>80</b>	
Z1.30	80.1	The following are <i>Employer's</i> risks.	
		<ul style="list-style-type: none"> <li>Claims, proceedings, compensation and costs payable which are due to               <ul style="list-style-type: none"> <li>use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,</li> <li>negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or</li> <li>a fault of the <i>Employer</i>.</li> </ul> </li> <li>Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.</li> <li>Loss of or damage to the <i>works</i>, Plant and Materials due to               <ul style="list-style-type: none"> <li>war, civil war, rebellion, revolution, insurrection, military or usurped power,</li> <li>strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees or</li> <li>radioactive contamination.</li> </ul> </li> <li>Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to               <ul style="list-style-type: none"> <li>a Defect which existed at take over,</li> <li>an event occurring before take over which was not itself an <i>Employer's</i> risk or</li> <li>the activities of the <i>Contractor</i> on the Site after take over</li> </ul> </li> <li>Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.</li> <li>Additional <i>Employer's</i> risks stated in the Contract Data.</li> </ul>	
Z1.30.1			
<b>The Contractor's risks</b>		<b>81</b>	
	81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .	
<b>Repairs</b>		<b>82</b>	
	82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.	
<b>Indemnity</b>		<b>83</b>	
Z1.31			
Z1.31 1	83.1	Each Party is responsible for and indemnifies the other, its employees and agents (and the <i>Contractor</i> indemnifies the <i>Employer</i> in respect of members of the TfL Group) against claims, proceedings, compensation and costs due to personal injury to or death of any person due to an event at the indemnifying Party's risk.	
Z1 31 2	83.2	The <i>Contractor</i> indemnifies the <i>Employer</i> against all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the <i>works</i> or the project as set out at clause Z2 7 4(b).	

Z1.31.3 83.3 The indemnities under clauses 83.1 and 83.2 remain in force for the duration of this contract and continue to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to them.

## Remedies

Z1.32 83A.1 The Parties acknowledge and agree that the payment or deduction of:

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

## Insurance cover 84

Z1.33 84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.33.1 84.2

Z1.33.2

### Insurance Table

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

### Public liability insurance

All sums for which the insured becomes 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 the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

*Employer*

Not less than [REDACTED] per occurrence or as otherwise stated in the Contract Data.

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

#### **Employer's liability insurance**

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

*Contractor*

Not less than [REDACTED] per occurrence or as otherwise stated in the Contract Data, whichever is the greater

#### **Contractor's Equipment loss insurance**

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

*Contractor*

The replacement cost

#### **Professional Indemnity Insurance**

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

*Contractor*

[REDACTED] each and every claim and the annual aggregate or as otherwise stated in the Contract Data

Z1 33.3

84 3 In respect of the insurances provided by the *Contractor*:

- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
- the *Contractor* bears the cost of all premiums, which is deemed to be

included in the Fee,

- if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.

- |         |      |  |
|---------|------|--|
| Z1.33.4 | 84.4 | The <i>Contractor</i> does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.               |
| Z1.33.5 | 84.5 | The <i>Contractor</i> procures that his Subcontractors (and sub-subcontractors of any tier) maintain employer's liability (and where appropriate) motor liability insurances as required by law. |
| Z1.33.6 | 84.6 | The insurances provided pursuant to this contract do not relieve the <i>Contractor</i> from any of his obligations and liabilities under this contract.  |

## Insurance policies 85

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

## If the *Contractor* does not insure 86

- Z1.35
- Z1.35.1 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

## Insurance by the *Employer* 87

- Z1.36 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.1 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.2 87.5 The *Contractor* complies and ensures that its Subcontractors comply with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.3 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written

consent of the *Employer*.

Z1.36.4

87.7 The insurances provided by the *Employer* are in effect for the duration of the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

Z1 36 5

87.8 The *Contractor* ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the *Employer* while the Subcontractor is engaged in carrying out the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

## 9 Termination

### Termination 90

Z1.37

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

#### TERMINATION TABLE

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

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

Z1.37.2

### Reasons for termination 91

Z1.38

Z1.38.1

- 91.1 Either Party may terminate if the other Party has done one of the following (or its

equivalent in other jurisdictions).

- If the other Party is an individual and has
  - presented his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
  - had a winding-up order made against it (R5),
  - had a provisional liquidator appointed to it (R6),
  - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
  - had an administration order made against it (R8),
  - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
  - made an arrangement with its creditors (R10).
- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

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

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

Z1.38.2

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

- Substantially hindered the *Employer* or Others (R14)
- Substantially broken a health or safety regulation or a health or safety requirement in the Standards (R15)

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).

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

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

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

Z1.38.3

91.7 The *Employer* may terminate if an event occurs which

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



13 weeks,

and which

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

Z1.38.4

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

- a Safety Breach, a Prohibited Act or a breach of the Modern Slavery Act 2015 by the *Contractor*, or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* reasonable satisfaction in accordance with the provisions of Z2.18 (R23),
- any cap on the *Contractor's* liability under this contract has been exceeded (R24),
- the *Employer* not obtaining any necessary funding for the Project and/or the necessary funding is curtailed (R25),
- A Change of Control unless approved in writing by the *Employer* (R25A)

Z1.38.5

91.9 In the event that either

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

then.

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

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

**Procedures on  
termination 92**

Z1.39 92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which he has title (P1)

Z1 39.1 92 2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.

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

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

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

**Payment on termination 93**

Z1.40 93.1 The amount due on termination includes (A1)

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

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

A2 The forecast Defined Cost of removing the Equipment.

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

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

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

## 2. Additional Conditions of Contract

### Contractor's Warranties

Z2.1

Z2.1.1

The *Employer* may at any time before or within 12 years after Completion request that the *Contractor* duly executes and delivers to the *Employer* within 21 days deeds of warranty in the appropriate form attached at Schedule 4 in favour of any member of the TfL Group or the Connect Contractor.

Z2.1.2

Not used.

### Subcontractors' Warranties

Z2.2

Z2.2.1

This clause applies to Subcontractors for subcontract design packages identified in the Contract Data as key subcontractors. The *Contractor* uses his best endeavours to procure that the Subcontractors (identified in the Contract Data as key subcontractors) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in the appropriate form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of any member of the TfL Group,

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

Z2.3

Not used

### Warranties and Undertakings

Z2.4

Z2.4.1

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the works, or any computer product, application or system forming part of the works, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,

- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

## **Accounts and Records**

### **Z2.5**

Z2.5.1 The *Contractor* maintains and retains (and procures that his Subcontractors maintain and retain) the Minimum Records for a minimum of 12 years from Completion of the *works*.

Z2.5.2 The *Contractor* complies with (and ensures his Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and his authorised representatives are entitled to audit the Minimum Records in accordance with the provisions set out in the Works Information.

Z2.5.3 The *Contractor* ensures that any requirements of the Data Protection Legislation are complied with to enable the *Employer* to exercise its rights under or pursuant to this clause Z2.5.

## **Nuisance**

### **Z2.6**

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

Z2.6.2 Not used.

## Intellectual Property Rights

### Z2.7

#### Z2.7.1 Licencing of New IPR

The Parties agree that the IPR in all Documentation and works that is created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or sub-subcontractor of any tier) vests in the *Contractor*. The *Contractor* grants to the *Employer* (and procures the grant of in respect of Subcontractors and suppliers of any tier) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to use IPR newly generated in the *works* for the purpose of understanding, operating, maintaining, modifying and maintaining the *works*.

#### Z2.7.2 Background IPR

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

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

Z2.7.2A The granting of licences at clause Z2.7.1 and Z2.7.2 is with the provisos that:

(i) The *Employer* has no right to decompile any computer software which forms part of the IPR licenced to the *Employer* under this contract nor shall the *Employer* attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub- licensee of that computer software.

(ii) Notwithstanding any of the foregoing provisions of this clause no license shall be granted to the *Employer* under this contract to reproduce or have reproduced the *works* in part or in whole; and neither shall any license be granted to the *Employer* to make or have made components or spare parts which are protected by intellectual property rights vested in the *Contractor* or any of its Subcontractors or suppliers.

Z2.7.3 The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* access as soon as reasonably practicable 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.

#### Z2.7.4 IPR Claims

- (a) The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "Claims") relating to the same) which affects or may affect the provision of the *works*
- (b) Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

- (c) The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such Claim (including but not limited to the right to conduct proceedings or action and to negotiate settlement of Claims) The *Contractor* reimburses the *Employer* for all Losses incurred in doing so and/or the *Contractor* conducts any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* consults with the *Employer* in respect of the conduct of any Claim and keeps the *Employer* regularly and fully informed as to the progress of such Claim.

#### **Z2.7 5 Corporate IPR**

- (a) The *Employer* grants the *Contractor* a non-exclusive, non transferable, royalty-free licence to the *Contractor* to use, and allow his Subcontractors to use, the Corporate IPRs at Schedule 7 for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.
- (b) The *Contractor* uses, and procures that his Subcontractors use, the Corporate IPRs in compliance with any relevant Standards and applicable law.
- (c) The *Contractor* does not use, and procures that his Subcontractors do not use, the Corporate IPRs in combination with any other trade marks without the *Employer's* prior written consent.
- (d) On written request by the *Project Manager*, the *Contractor* supplies to the *Project Manager* copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the *Project Manager* reasonably determines that any use of the Corporate IPRs falls below the Standards, the *Project Manager* gives the *Contractor* written notice of that fact and the *Contractor* corrects the use so as to comply with the Standards taking into account the *Project Manager's* instructions.
- (e) The *Contractor* is not entitled to bring any action against any third party for infringement relating to the Corporate IPRs and the *Employer* is not obliged to bring or extend any proceedings relating to the Corporate IPRs if it decides in his sole discretion not to do so
- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, the *Contractor* and his Subcontractors remove the Corporate IPRs from or (where removal is not reasonably practical) destroy or, if the *Project Manager* so elects, deliver to the *Project Manager* or any other UK company or person designated by the *Project Manager*, all items and documents which the *Project Manager* does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

#### **Assignment**

##### **Z2.8**

- Z2.8 1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it) but may assign, transfer or novate this contract to another member of the *Contractor's* Group with the prior written consent of the *Employer* such consent not be unreasonably withheld or delayed.
- Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to another member of the TfL Group without the prior written consent of the *Contractor*.

#### **Confidentiality**

##### **Z2.9**

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

or documents concerning this contract to any other person.

- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) do not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Connect Contract to any other person.
- Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.
- Z2.9.4 Clauses Z2.9.1 and Z2.9.10 do not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
  - (b) any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision;
  - (c) any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- Z2.9.5 The *Contractor* procures that the Connected Persons comply with the provisions of this clause Z2.9 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- Z2.9.6 The *Contractor* notifies the *Employer* promptly if the *Contractor* becomes aware of any breach of confidence by a Connected Person and gives the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- Z2.9.7 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to any form of equitable relief to enforce the provisions of this Clause.
- Z2.9.8 At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* promptly delivers to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks
- Z2.9.9 Except as provided under deeds of warranty required by the *Employer* under Sub-clause Z2.1, the *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract or the works or the Project.
- Z2.9.10 Without prejudice to the *Employer's* obligations under legislation, including Freedom of Information and to Z2.15 the *Employer* will treat all information belonging to, or relating to the business, systems, products or processes of the *Contractor* or the Contractor's Group (as subcontractors of any tier) which could reasonably be considered as commercially sensitive obtained under, arising from or in connection with this contract and/or the Project as confidential.

#### **Conflict Avoidance Panel**

- Z2.10 The *Employer*, the *Contractor* and the *Project Manager* co-operate with each other in the early identification, notification and avoidance or resolution of any Dispute.
- Z2.10.1
- Z2.10.2 Subject to clause W2.1, any Dispute may in the first instance be referred to a Conflict Avoidance Panel by notice in writing from the referring party to the other

party. The parties to the Dispute endeavour to agree upon (a) the person(s) whom they would consider suitable to act as the member(s) of the Conflict Avoidance Panel and (b) the number of member(s) of the Conflict Avoidance Panel (which as a general principle depends upon the issues in dispute but is always an odd number). In the event of the parties to the Dispute failing to reach such agreement within 14 days of receipt by the responding party of notice pursuant to this clause Z2.10.2, either party to the Dispute may request the Royal Institution of Chartered Surveyors (RICS) to nominate the member(s) of the Conflict Avoidance Panel to do so (including the number of member(s) of the Conflict Avoidance Panel, which as a general principle depends upon the issues in dispute but is always an odd number). Any person selected to act as a member of the Conflict Avoidance Panel (a) is a natural person acting in his personal capacity and (b) 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

Z2.10.3

Within 7 days of the appointment of the member(s) of the Conflict Avoidance Panel in accordance with clause Z2.10.2, the referring party refers the Dispute in writing to the Conflict Avoidance Panel. The referral gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought, including the provisions of the Contract that are relevant to the Dispute. The referral may include copies of, or relevant extracts from, the contract and any other documents on which he relies. The referring party provides the responding party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.

Z2.10.4

Within 7 days of receipt of the referral of the Dispute to the member(s) of the Conflict Avoidance Panel pursuant to clause Z2.10.3, the responding party provides the Conflict Avoidance Panel with a brief written response. The responding party may at the same time provide the Conflict Avoidance Panel with any documents on which he relies. The responding party provides the referring party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.

Z2.10.5

Within 7 days of receipt of the response pursuant to clause Z2.10.4 (or such longer period as may be agreed by the parties to the Dispute), the Conflict Avoidance Panel notifies the parties to the Dispute of its recommendation(s) for avoiding or resolving the Dispute. The notice is in writing and includes a summary of the Conflict Avoidance Panel's findings and a statement of its reasons for the recommendation(s). The recommendation(s) is (are) not binding on the parties to the Dispute.

Z2.10.6

If a party to the Dispute is dissatisfied with the recommendation(s) notified by the Conflict Avoidance Panel pursuant to clause Z2.10.5, it notifies the other party to the Dispute in writing, within 7 days of notification by the Conflict Avoidance Panel pursuant to clause Z2.10.5, of the reasons why it is dissatisfied with the recommendation(s).

Z2.10.7

Each party to the Dispute (a) bears its own costs and expenses in relation to any reference of a Dispute to the Conflict Avoidance Panel and (b) bears in equal shares the remuneration and expenses of the member(s) of the Conflict Avoidance Panel and the fees of the professional body or association requested to propose the member(s) of the Conflict Avoidance Panel

Z2.10.8

Save as required by law, the Parties and the member(s) of the Conflict Avoidance Panel keep confidential all information of whatever nature provided by or on behalf of the parties to the Dispute pursuant to clause Z2.10 and the Conflict Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)). The Parties do not make use of or rely upon any such information or the Conflict Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)), which are without prejudice.

**Dispute Resolution Procedure**

Z2.11

Z2.11.1 The *Employer*, *Contractor* and the *Project Manager* follow the Dispute Resolution



Procedure at Schedule 8 for the avoidance and resolution of Disputes

**Liquidated Damages for  
Disruption (to the  
Underground Network)**

Z2.12

- Z2.12.1 The *Contractor* will pay and/or the *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* hand back possession of a worksite for traffic hour running due to a cause which is a *Contractor* risk.

**Responsible Procurement**

Z2.13

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

**Crime and Disorder**

Z2.14

- Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 to
- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
  - where appropriate, identify actions to reduce levels of crime and disorder,
  - without prejudice to any other obligation imposed on the *Employer*, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

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

**London Living Wage**

Z2.15

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

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

## **Data Transparency**

### **Z2.16**

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1 but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor* including any price breakdown. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z2.17 Not used.

## **Conflict of Interest**

### **Z2.18**

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

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

## **Freedom of Information**

### **Z2.19**

#### **Z2.19.1**

The *Contractor* acknowledges that the *Employer*:

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

but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor*.

#### **Z2.19.2**

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

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the works or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information

Request; and

- in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.

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

Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor* but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor*.

#### **Criminal Record Declarations**

Z2.20

Z2.20.1 The *Contractor* procures from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. A Declaration is procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* confirms to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* procures that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* notifies the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction

Z2.20.2 The *Contractor* is not permitted to engage or allowed to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.

Z2.20.3 The *Employer* may in accordance with the audit rights set out or referred to in Clause Z2.5 audit and check any and all such records as are necessary or referred to in order to monitor compliance with this Clause at any time during performance of this contract

Z2.20.4 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.1 and/or Z2.20.2, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.1

Z2.20.5 A persistent breach of Clause Z2.20.1 and/or Z2.20.2 by the *Contractor* constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.

Z2.20.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* removes or procures the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.

- Z2.20.7 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

#### **Best Value**

- Z2.21  
Z2.21.1 The *Contractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the *Employer* are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this contract in order for the *Employer* (and, where appropriate, TfL) to achieve best value.

#### **Prohibited Acts**

- Z2.22  
Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to his rights under Clause Z2 5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22 4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

#### **Data Protection**

- Z2.23  
Z2.23.1 The parties acknowledge that, for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is a Processor. The only processing that the *Contractor* is authorised to do is that permitted by Data Protection Legislation in order to *Provide the Works* under this contract
- Z2.23.2 The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer's* instructions infringe the Data Protection Legislation.
- Z2.23.3 The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to the commencement of any processing. Such assistance may, at the discretion of the *Employer*, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing

operations in relation to the works;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risk, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z2.23.4 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under this contract:

- (a) process that Personal Data only in accordance with the performance of the works under this contract, unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:
- (c) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the *Contractor's* duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:
  - the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Employer*;
  - the Data Subject has enforceable rights and effective legal remedies;
  - the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Employer* in meeting its obligations); and
  - the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;

- (e) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the contract unless this *Contractor* is required by Law to retain the Personal Data.

Z2.23.5 Subject to clause Z2 23 6, the *Contractor* shall notify the *Employer* immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) becomes aware of a Data Loss Event

Z2.23.6 The *Contractor's* obligation to notify under clause Z2.23.5 shall include the provision of further information to the *Employer* in phases, as details become available

Z2.23.7 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause Z2.23.5 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing

- (a) the *Employer* with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the *Employer* to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation,
- (c) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the *Employer* following any Data Loss Event;
- (e) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

Z2.23.8 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z2 23.8 This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:

- (a) the *Employer* determines that the processing is not occasional;
- (b) the *Employer* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

- (c) the *Employer* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z2.23.9 The *Contractor* shall allow for audits of its data processing activity by the *Employer* or the *Employer's* designated auditor.

Z2.23.10 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.

Z2.23.11 Before allowing any sub-processor to process any Personal Data related to this contract, the *Contractor* must:

- (a) notify the *Employer* in writing of the intended sub-processor and processing;;
- (b) obtain the written consent of the *Employer*;
- (c) enter into a written agreement with the sub-processor which give effect to the terms set out in this clause Z2.23 such that they apply to the sub-processor; and
- (d) provide the *Employer* with such information regarding the sub-processor as the *Employer* may reasonably require.

Z2.23.12 The *Contractor* shall remain fully liable for all acts or omissions of any sub-processor.

Z2.23.13 The *Employer* may, at any time on not less than 30 working days' notice, revised this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when incorporated by attachment to this contract)

Z2.23.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on not less than 30 working days' notice to the *Contractor* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Anti-Slavery and Human Trafficking**

Z2.24

Z.24.1 The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the *Employer's* anti-slavery policy

Z2.24.2 In *Providing the works*, the *Contractor* shall

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



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

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

## DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.10 and Z2.11)

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation

Defined terms	X1	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> . (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due. (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
Price Adjustment Factor	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.  The Price Adjustment Factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating price adjustment after this date.
Compensation events	X1.3	The Defined Cost for compensation events is assessed using the <ul style="list-style-type: none"><li>• Defined Cost current at the time of assessing the compensation event adjusted to <i>base date</i> by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due and</li><li>• Defined Cost at <i>base date</i> levels for amounts calculated from rates stated in the Contract Data for employees and Equipment</li></ul>
Price adjustment Options A and B	X1.4	Each amount due includes an amount for price adjustment which is the sum of <ul style="list-style-type: none"><li>• the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by the Price Adjustment Factor for the date of the current assessment,</li><li>• the amount for price adjustment included in the previous amount due and</li><li>• correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.</li></ul>

## Option X2: Changes in the law

Changes in the law	X2
Z1.40.1	X2.1 A change in the law of the country in which the Site is located or applicable Standards is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law or applicable Standards and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

## Option X3: Multiple currencies

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

## Option X4: Parent company guarantee

Parent company Guarantee	X4
Z1.41.1	X4.1 If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the <i>parent company</i> of the <i>Contractor's</i> performance in the form attached at Schedule 2. Unless a guarantee has already been given which covers this contract, the guarantee is given within four weeks of the Contract Date, unless the <i>Employer</i> (in its sole discretion) gives its prior written consent to the guarantee being given by a later date
Z1.41.2	X4.2 Not used.
Z1.41.3	X4.3 Not used.
Z1.41.4	X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion substantially in the form set out at Schedule 3 on the guarantor's execution of any such guarantee.
Z1.41.5	X4.5 Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

## Option X5: Sectional Completion

Sectional Completion	X5
	X5.1 In these <i>conditions of contract</i> , unless stated as the whole of the <i>works</i> , each reference and clause relevant to <ul style="list-style-type: none"><li>• the <i>works</i>,</li><li>• Completion and</li><li>• Completion Date</li></ul> applies, as the case may be, to either the whole of the <i>works</i> or any <i>section</i> of the <i>works</i> .

## Option X6: Bonus for early Completion

### Bonus for early Completion X6

- X6.1 The *Contractor* is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of
- Completion and
  - the date on which the *Employer* takes over the *works*
- until the Completion Date.

## Option X7: Delay damages

### Delay damages X7

- X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of
- Completion and
  - the date on which the *Employer* takes over the *works*.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- X7.3 If the *Employer* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion

## Option X12: Partnering

### Identified and defined terms X12

- X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
- (2) An Own Contract is a contract between two Partners which includes this Option.
- (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.
- (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.
- (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

### Actions

- X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
- (2) Each Partner nominates a representative to act for it in dealings with other Partners.
- (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information

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

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

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

#### **Working together**

X12.3

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

Z1.42.1

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

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

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

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

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

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

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

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

#### **Incentives**

X12.4

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

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

## Option X13: Performance bond

	<b>Performance bond</b>	<b>X13</b>	
		X13.1	
Z1.43.1		X13.1	Not used.
Z1.43.2		X13.2	Not used.
Z1.43.3		X13.3	Not used.

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

<b>Advanced payment</b>	<b>X14</b>	
	X14.1	Not used.
	X14.2	Not used.
	X14.3	Not used.

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

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

## Option X16: Retention

Retention	<b>X16</b>	
	X16.1	After the Price for Work Done to Date has reached the <i>retention free amount</i> , an amount is retained in each amount due. Until the earlier of <ul style="list-style-type: none"> <li>• Completion of the whole of the <i>works</i> and</li> <li>• the date on which the <i>Employer</i> takes over the whole of the <i>works</i></li> </ul> <p>the amount retained is the <i>retention percentage</i> applied to the excess of the Price for Work Done to Date above the <i>retention free amount</i>.</p>
	X16.2	The amount retained is halved <ul style="list-style-type: none"> <li>• in the assessment made at Completion of the whole of the <i>works</i> or</li> <li>• in the next assessment after the <i>Employer</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i></li> </ul> <p>The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.</p>
Z1.45.1	X16.3	Where under this contract the Employer is entitled to withhold money from the Contractor as a retention, the retention monies are retained by the Employer without obligation to invest and without creating any fiduciary obligation or duty on the part of the Employer to the Contractor or any other person with whom the Contractor has contracted.
Z1.45.2	X16.4	After the Price for Work Done to Date has reached the retention free amount, as an alternative to a cash retention, the Contractor may provide a retention bond in a form acceptable to the <i>Employer</i> from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the Contractor provides to the Employer within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the Project Manager has accepted. Failure by the Contractor to provide to the Employer a replacement bond will constitute default under the contract sufficient to enable the Employer to make a demand under the original bond or terminate the contract.
Z1.45.3	X16.5	The following applies in respect of a retention bond provided pursuant to clause X16.4: <ul style="list-style-type: none"> <li>• until Completion of the whole of the works, the amount of the retention bond is the retention percentage applied to the excess of the Price for Work Done to Date above the retention free amount,</li> <li>• the amount of the retention bond is halved at Completion of the whole of the works and remains at this amount until the Defects Certificate is issued. No amount is retained after the Defects Certificate has been issued.</li> </ul>

## Option X17: Low performance damages

Low performance Damages	<b>X17</b>	
	X17.1	Not used.

## Option X18: Limitation of liability

Limitation of liability	X18
Z1.46.1	X18.1 The Contractor's liability pursuant to this Contract for loss of profit, indirect or consequential loss, any loss of use, downtime costs, disruption to operations or increase in operating costs or any form of financial or economic loss is limited to the amount stated in the Contract Data (provided that this does not exclude or limit the Contractor's liability to pay liquidated damages clause Z2.12 and/or under X7).
Z1.46.1A	X18.1A The Contractor's liability to the Employer for delay damages under X7 is limited to the amount stated in the Contract Data.
Z1.46.1B	X18.1B The Contractor's liability to the Employer for liquidated damages under Z2.12 for disruption is limited to the amount stated in the Contract Data.
	X18.2 For any one event, the liability of the Contractor to the Employer for loss of or damage to the Employer's property (other than the works) arising out of or caused by the carrying out of the works by the Contractor and caused by default of the Contractor or anybody for whom the Contractor is responsible is limited to the amount stated in the Contract Data.
Z1.46.2	X18.3 The Contractor's liability to the Employer for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
Z1.46.3	X18.4 The Contractor's total liability pursuant to this Contract (including any collateral warranty provided by the Contractor pursuant to this Contract) for all matters arising under or in connection with this contract, including the Contractor's liability to pay liquidated damages under clause Z2.12 and/or X7 any losses arising from any nuisance or interference referred to in clause Z2.6, and loss of or damage to property real or personal other than to the works other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort (including but not limited to negligence), for breach of warranty, by way of indemnity (other than the indemnities at clause 83) or delict and otherwise to the extent allowed under the law of the contract.  The excluded matters are amounts payable by the Contractor as stated in this contract for <ul style="list-style-type: none"> <li>• loss of or damage to the Employer's property arising out of or caused by the carrying out of the works by the Contractor and caused by the default of the Contractor or anybody for whom the Contractor is responsible, and</li> <li>• the matters listed in X18.6.</li> </ul>
Z1.46.4	X18.5 The Contractor is not liable to the Employer for a matter unless it is notified to the Contractor before the end of liability date.
Z1.46.5	X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for: <ul style="list-style-type: none"> <li>• Losses caused by fraudulent acts or acts of a criminal nature;</li> <li>• Losses against which the Contractor is entitled to an indemnity under any policy of insurance; or</li> <li>• any other Losses against which the Employer is entitled to an indemnity under clause 83.</li> </ul>
Z1.46.6	X18.7 Notwithstanding any other clause in this contract the Contractor's, and its Subcontractors', liability for damage to existing structures belonging to the Employer which do not form part of the works and which arises during the carrying out of the works at the Site shall be limited to £25,000 per occurrence and the Employer will ensure that its property insurers waive rights of subrogation against the Contractor and its Subcontractors for such losses.
Z1.46.7	X18.8 Clause X18 shall survive termination or expiry of the contract regardless of cause.



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

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

## Option X21: Single Point Design Responsibility

- |   |                   |
|---|-------------------|
| <b>Single Point Design Responsibility</b> | <p><b>X21</b></p> |
|---|-------------------|
- 
- |       |  |
|-------|--|
| Z1.47 | <p>X21.1 In this Option, "<b>Employer's Design Information</b>" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the <i>Employer</i> and included in the Works Information.</p> <p>X21.2 The <i>Contractor</i> is responsible for the design of the <i>works</i> and for the accuracy of such <i>Employer's Design Information</i> listed in the Contract Data as being the responsibility of the <i>Contractor</i> except as stated in clause X21.3 below.</p> <p>X21.3 Subject to X21.2 the <i>Contractor</i> is not responsible for any error, inaccuracy or omission of any kind in the <i>Employer's Design Information</i> as originally included in the contract.</p> <p style="padding-left: 20px;">The <i>Employer</i> is responsible for the correctness of the following elements of the <i>Employer's Design Information</i>:</p> <ul style="list-style-type: none"> <li>(a) data and information stated in the Works Information as being the responsibility of the <i>Employer</i>,</li> <li>(b) definitions of intended purposes of the <i>works</i> or any part thereof, and</li> <li>(c) criteria for the testing and performance of the completed <i>works</i>.</li> </ul> <p>X21.4 Where either party discovers a mistake, inaccuracy or discrepancy in or omission from the <i>Employer's Design Information</i>, it shall inform the other party in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the <i>Project Manager</i> may confirm the proposed amendment or comment in writing on such an amendment provided that the <i>Project Manager</i> does not unreasonably withhold his consent to a proposed amendment. The <i>Contractor</i> takes account of such comments and confirms or resubmits the proposed amendment to the <i>Project Manager</i>. Such process is repeated until the <i>Project Manager</i> accepts the proposed amendment.</p> <p>X21.5 Anything which is the <i>Contractor's</i> responsibility as set out in Option X21.2 does not give rise to a compensation event.</p> |
|-------|--|

Option X23: Key Person Succession Plan

Key Person Succession Plan	X23
Z1.49	<div><div>X23.1</div><div>If a key person succession plan is stated in the Works Information to be applicable to the Project, then the Contractor complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.</div></div> <div><div>X23.2</div><div>The Contractor submits his key person succession plan to the Project Manager for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.</div></div> <div><div>X23.3</div><div>Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the Project Manager considers are outside the Contractor's reasonable control, if a key person:<div><div><div>•</div><div>ceases to be employed to do the job stated in the Contract Data; and/or</div></div><div><div>•</div><div>the Contractor fails to comply with an accepted key person succession plan,</div></div></div><div>the salary and expense costs associated with the replacement key person during the relevant handover period are treated as Disallowed Cost unless the Project Manager decides to reduce or waive this requirement.</div></div></div>

Option X24: Fee Cap

Fee Cap	X24	Not used with Option A
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## Option X25: Escrow Agreement

### Escrow Agreement X25

- Z1.51 X25.1 In this Secondary Option X25:
- "Escrow"** means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;
- "Escrow Agent"** means the NCC Group or such other successor, replacement or substitute agent as may be approved by the *Employer* from time to time;
- "Escrow Agreement"** means the form of escrow agreement substantially in the then current NCC form to be reasonably agreed between the *Employer* and the *Contractor*
- "Software"** means any computer programs or software produced or supplied by the *Contractor* from time to time as part of or in connection with the *works* and all user documentation in respect of such programs or software and any modification which is required by the *Employer*;
- "Source Code Materials"** means the source code of the Software and all technical information and documentation required to enable the *Contractor* to modify and operate the Software;
- "Release Event"** means an event the occurrence of which entitles the *Employer* to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;
- X25.2 Where the Contract Data specifies that this Option is to apply, the *Contractor*, no later than the Contract Date procures that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and thereafter maintains the agreement for a minimum period of 12 years from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) is borne by the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:
- (a) the Source Code Materials constitutes the "Material" referred to in the Escrow Agreement;
  - (b) the licence provided pursuant to clause Z2.7.2 constitutes the "Licence Agreement" referred to in the Escrow Agreement; and
  - (c) the Software constitutes the "Package" referred to in the Escrow Agreement.
- X25.3 The *Contractor* procures that any Subcontractor or supplier providing software for incorporation or operation of the *works* enters into software escrow agreements on the same terms as set out in the Escrow Agreement.

## OPTION Y

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

Not used.

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

### Definitions

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

Z1.54.

### Y(UK)2

Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009

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

Y2.2 Not used

Y2.3 Note used

### Suspension of performance

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

### Payment

Y1

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

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

### Y(UK)3

### Third Party Rights

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

## Option Z: Additional conditions of contract

### Additional conditions of contract

Z1.55.1

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

## SHORTER SCHEDULE OF COST COMPONENTS

Z1.57.1

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

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

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

11 Amounts paid by the *Contractor* including those for meeting the requirements of the law (save for employer's liability insurance) and for pension provision

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

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

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

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

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

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

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

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

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

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

31 Payments for

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

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

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

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

		<ul style="list-style-type: none"> <li>• payments for the provision and use in the Working Areas of water, gas and electricity,</li> <li>• payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and</li> <li>• payments for the provision and use of equipment, supplies and services (excluding accommodation) for catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.</li> </ul>
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i>
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office
	45	Specialist services.
	46	Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
<b>Manufacture and fabrication</b>	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> <li>• wholly or partly designed specifically for the <i>works</i> and</li> <li>• manufactured or fabricated outside the Working Areas.</li> </ul>
	51	Amounts paid by the <i>Contractor</i> .
<b>Design</b>	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
<b>Insurance</b>	7	The following are deducted from cost <ul style="list-style-type: none"> <li>• costs against which this contract required the <i>Contractor</i> to insure</li> <li>• other costs paid to the <i>Contractor</i> by insurers and</li> <li>• the cost of excess payments or deductibles.</li> </ul>

## SUPPLEMENTARY NOTES TO SHORTER SCHEDULE OF COST COMPONENTS

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

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

### Part A Notes

#### Section 7: Insurance

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

### Part B Notes

#### 1 - Reasonably Incurred Costs

Costs are only considered reasonably incurred if they are not included within the Contractor's Fee or overhead percentages.

#### 3 - Cost Verification

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







**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**Appendix D**

**CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION E**

**This amended contract is based on the NEC family of contracts (2013 edition), the copyright of which belongs to the Institution of Civil Engineers.**

CLLE LUL - Siemens - NEC3 ECC Option E  
Consolidated Conditions of Contract



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## CORE CLAUSES

### 1 General

	<b>Actions</b>	<b>10</b>	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	<b>Identified and defined Terms</b>	<b>11</b>	
Z1.1		11.1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none"><li>• done all the work which the Works Information states he is to do by the Completion Date and</li><li>• corrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work.</li></ul> If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.
Z1.1.1			(4) The Contract Date is the date of this contract.
Z1.1.2			(5) A Defect is <ul style="list-style-type: none"><li>• a part of the <i>works</i> which is not in accordance with the Works Information or</li><li>• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law, any applicable Standards or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.</li></ul>
Z1.1.3			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> . (8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.4			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the <i>Adjudicator</i> , the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1.1.5			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns), the <i>Contractor</i> , and a member of the Contractor's Group to which the contract has been assigned, transferred or novated with the prior written consent of the <i>Employer</i> , such consent not to be unreasonably withheld or delayed. (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires.

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

(23) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
  - retention,
  - [payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,]<sup>1</sup>
  - [the correction of Defects after Completion,]<sup>2</sup>
  - payments to Others and
  - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract

and

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

less Disallowed Cost.

Z1.1.6

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

- is not justified by the *Contractor's* accounts and records or has not been reasonably incurred,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
  - follow an acceptance or procurement procedure stated in the Works Information or
  - give an early warning which this contract required him to

<sup>1</sup> To be agreed on a contract by contract basis

<sup>2</sup> To be agreed on a contract by contract basis

give

and the cost of

- [correcting Defects after Completion],<sup>3</sup>
- correcting Defects caused by the *Contractor* not complying with a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and
- a key person not appointed in accordance with this contract,
- preparation for and conduct of an adjudication or proceedings of the tribunal, and
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement.

(29) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

(32) The Prices are the Defined Cost plus the Fee.

Z1.2	11.3	Additional defined terms are included in Schedule 1.
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Z1.3		
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
Z1.3.1	12.1A	References to "this contract" mean the contract between the <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.
Z1.3.2	12.1B	In this contract, unless the context otherwise requires, references to: (c) "including" means "including without limitation", and (d) "fault" of the <i>Employer</i> or the <i>Contractor</i> include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the <i>Employer</i> or the <i>Contractor</i> (as the case may be).
Z1.3.3	12.2	This contract is governed by and is construed in accordance with the <i>law of the contract</i> and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
	12.3	No change to this contract, unless provided for by the <i>conditions of contract</i> , has effect unless it has been agreed, confirmed in writing and signed by the Parties.
Z1.3.4	12.3A	Words denoting persons or parties includes individuals, partnerships, firms and corporations and any organisation having legal capacity.
Z1.3.5	12.4	This contract supersedes any previous agreement, arrangement or understanding between the <i>Employer</i> and the <i>Contractor</i> in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the <i>Employer</i> and the <i>Contractor</i> in relation to such matters. The <i>Employer</i> and <i>Contractor</i> acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
Z1.3.6	12.5	The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the <i>conditions of contract</i> .
Y2.1(2)	12.6	A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

<sup>3</sup> To be agreed on a contract by contract basis  
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- Z1.3.7 12.7 References in this contract to “applicable law” are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
  - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.

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

Z1.3.8 12.8 Not used.

Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

### **Communications 13**

Z1 4

- Z1.4.1 13.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* comply with the communications requirements in the Works Information. 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*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

Z1.5	<b>The Project Manager and the Supervisor 14</b>	
	14.1	The <i>Project Manager's</i> or the <i>Supervisor's</i> acceptance of a communication from the <i>Contractor</i> or of his work does not change the <i>Contractor's</i> responsibility to Provide the Works or his liability for his design.
	14.2	The <i>Project Manager</i> and the <i>Supervisor</i> , after notifying the <i>Contractor</i> , may delegate any of their actions and may cancel any delegation. A reference to an action of the <i>Project Manager</i> or the <i>Supervisor</i> in this contract includes an action by his delegate.
	14.3	The <i>Project Manager</i> may give an instruction to the <i>Contractor</i> which changes the Works Information or a Key Date.
	14.4	The <i>Employer</i> may replace the <i>Project Manager</i> or the <i>Supervisor</i> after he has notified the <i>Contractor</i> of the name of the replacement.
Y2.1/Z1.5.1	14.5	The <i>Project Manager</i> is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.
<b>Adding to the Working Areas 15</b>		
	15.1	The <i>Contractor</i> may submit a proposal for adding an area to the Working Areas to the <i>Project Manager</i> for acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the Works or used for work not in this contract.
Z1.7 Z1.7.1	<b>Early warning 16</b>	
	16.1	<p>The <i>Contractor</i> and the <i>Project Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> <li>• increase the total of the Prices,</li> <li>• delay Completion,</li> <li>• delay meeting a Key Date,</li> <li>• impair the performance of the works in use,</li> <li>• adversely affect the work of Others, or</li> <li>• adversely affect the <i>Employer</i> (including by increasing the monies payable by the <i>Employer</i> to Others engaged on the Project) and/or cause any disruption to the operation of the Underground Network.</li> </ul> <p>In the notification the <i>Contractor</i> and the <i>Project Manager</i> state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.</p> <p>The <i>Contractor</i> may give an early warning by notifying the <i>Project Manager</i> of any other matter which could increase his total cost. The <i>Project Manager</i> enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.</p>
	16.2	Either the <i>Project Manager</i> or the <i>Contractor</i> may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
	16.3	<p>At a risk reduction meeting, those who attend co-operate in</p> <ul style="list-style-type: none"> <li>• making and considering proposals for how the effect of the registered risks can be avoided or reduced,</li> <li>• seeking solutions that will bring advantage to all those who will be affected,</li> <li>• deciding on the actions which will be taken and who, in accordance with this contract, will take them and</li> <li>• deciding which risks have now been avoided or have passed and can be removed from the Risk Register.</li> </ul>
	16.4	The <i>Project Manager</i> revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the <i>Contractor</i> . If a decision needs a change to the Works Information, the <i>Project Manager</i> instructs the change at the same time as he issues the revised Risk Register.



**Ambiguities and Inconsistencies 17**

17.1

The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

**Illegal and impossible requirements 18**

18.1

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

**Prevention 19**

19.1

If an event occurs which

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

and which

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

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

## 2 The Contractor's main responsibilities

<b>Providing the Works 20</b>	
Z1.8	
Z1.8.1	20.1 The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.2 Not used (not an Option E clause)
	<b>20.3 The <i>Contractor</i> advises the <i>Project Manager</i> on the practical implications of the design of the works and on subcontracting arrangements.</b>
Z1.8	<b>20.4 The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the works in consultation with the <i>Project Manager</i> and submits them to the <i>Project Manager</i>. Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works. Each forecast is in a format prescribed in the Works Information. An explanation of the changes made since the previous forecast is submitted with each forecast.</b>
	20.5 Not used (not an Option E clause)
Z1.8.2	20.6 These <i>conditions of contract</i> and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the <i>Contractor</i> both before and after the Contract Date.
<b>The Contractor's design 21</b>	
Z1.9	
Z1.9.1	21.1 The <i>Contractor</i> is responsible for the design of all of the works which the Works Information states he is to design and for the integration of the works into the Systems but for the avoidance of doubt the <i>Contractor</i> is not responsible for a defect in the design of the Systems.
Z1.9.2	21.2 The <i>Contractor</i> submits the particulars of his design as the Works Information requires to the <i>Project Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with the Works Information, applicable Standards or the applicable law.  The <i>Contractor</i> does not proceed with the relevant work until the <i>Project Manager</i> has accepted his design.
	21.3 The <i>Contractor</i> may submit his design for acceptance in parts if the design of each part can be assessed fully.
<b>Using the Contractor's Design 22</b>	
Z1.10	
Z1.10.1	22.1 The <i>Employer</i> may use and copy the <i>Contractor's</i> design for any purpose specified in clause Z2.7.
<b>Design of Equipment 23</b>	
	23.1 The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs him to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with <ul style="list-style-type: none"> <li>the Works Information,</li> <li>the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted or</li> <li>the applicable law.</li> </ul>

## People 24

Z1.11  
Z1.11.1

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

Z1.11.2

- 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control who has misconducted himself, been incompetent, negligent or in breach of health and safety requirements. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

## Working with the Employer and Others 25

Z1.12.1

- 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others and shares the Working Areas with them as stated in the Works Information.
- 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

Z1.12.2

- 25.3 [If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either
- in carrying out work or
  - by paying an additional amount to Others in carrying out work
- on the same project the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The *Employer's* right to recover the additional cost is his only right in these circumstances.]<sup>4</sup>

## Subcontracting 26

Z1.13  
Z1.13.1

- 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted and he complies with the provisions of the Works Information. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.
- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Works.

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

Z1.13.2

- 26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required;

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

<sup>4</sup> To be agreed on a contract by contract basis  
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them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Works,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- they contain payment terms that do not comply with the Public Contracts Regulations 2015 or
- where required by Z2.2.1 they do not grant suitable third party rights (by way of collateral warranty or pursuant to the Contracts (Rights of Third Parties) Act 1999) in favour of the *Employer* or other members of the TfL Group.

**26.4** Not used

**Other responsibilities 27**

Z1.14

- 27.1 The *Contractor* obtains approval of his design from Others where necessary.
- 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for
- the *Project Manager*,
  - the *Supervisor* and
  - Others notified to him by the *Project Manager*.

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

Z1.14.1

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

### 3 Time

Starting, Completion and Key Dates	30	
Z1.15	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.15.1	30.1A	The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information. The <i>Supervisor</i> may attend the inspection.
Z1.15.2	30.2	The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
Z1.16	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.16.1	31.2	<p>The <i>Contractor</i> shows on each programme which he submits for acceptance</p> <ul style="list-style-type: none"> <li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li> <li>• planned Completion,</li> <li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li> <li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li> <li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li> <li>• provisions for <ul style="list-style-type: none"> <li>• float,</li> <li>• time risk allowances,</li> <li>• environmental and health and safety requirements and</li> </ul> </li> <li>• the procedures set out in this contract,</li> <li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> <li>• any access in accordance with the access requirements in the Works Information and access to a part of the Site if later than its <i>access date</i>,</li> <li>• acceptances,</li> <li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li> <li>• information from Others,</li> </ul> </li> <li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and</li> <li>• other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.</li> </ul>

	31.3	Within two weeks of the <i>Contractor</i> submitting a programme to him for acceptance, the <i>Project Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting a programme is that
		<ul style="list-style-type: none"> <li>the <i>Contractor's</i> plans which it shows are not practicable,</li> <li>it does not show the information which this contract requires,</li> <li>it does not represent the <i>Contractor's</i> plans realistically or</li> <li>it does not comply with the Works Information.</li> </ul>
<b>Revising the programme</b>	<b>32</b>	
	32.1	The <i>Contractor</i> shows on each revised programme <ul style="list-style-type: none"> <li>the actual progress achieved on each operation and its effect upon the timing of the remaining work,</li> <li>the effects of implemented compensation events,</li> <li>how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and</li> <li>any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.</li> </ul>
	32.2	The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance <ul style="list-style-type: none"> <li>within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to,</li> <li>when the <i>Contractor</i> chooses to and, in any case,</li> <li>at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i>.</li> </ul>
<b>Access to and use of the site</b>	<b>33</b>	
Z1.17		
Z1.17.1	33.1	Subject to the provisions of the Works Information regarding access, the <i>Employer</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in this contract. Access and use is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.
Z1.17.2	33.1A	The <i>Employer</i> does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and access is limited in accordance with this contract but shall be sufficient to enable delivery of the <i>works</i> in accordance with the Works Information and the Accepted Programme.
<b>Instructions to stop or not to start work</b>	<b>34</b>	
	34.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.
<b>Take over</b>	<b>35</b>	
Z1.18		
	35.1	The <i>Employer</i> need not take over the <i>works</i> before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the <i>Employer</i> takes over the <i>works</i> not later than two weeks after Completion.
Z1.18.1	35.2	The <i>Employer</i> may use or permit Others to use any part of the <i>works</i> before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the <i>works</i> when he (or Others) begins to use it; <ul style="list-style-type: none"> <li>for a reason stated in the Works Information,</li> <li>to suit the <i>Contractor's</i> method of working or</li> </ul>

- in accordance with the Accepted Programme.

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

#### **Acceleration 36**

- Z1.19 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.
- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- 36.3 **Not used (as not an Option E clause).**
- Z1.19.1 36.4 **When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction and the *Project Manager* makes his own assessment of the compensation event.**

## 4 Testing and Defects

### Tests and inspections 40

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

### Testing and inspection before delivery 41

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

### Searching for and notifying Defects 42

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

### Correcting Defects 43

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- 43.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.



- 43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.
- Accepting Defects 44**
- 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.
- Uncorrected Defects 45**
- 45.1 If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.
- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

## 5 Payment

<b>Assessing the amount due</b>		<b>50</b>	
Z1.20	50.1	<p>The <i>Project Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Project Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i>. Later assessment dates occur</p> <ul style="list-style-type: none"> <li>• at the end of each <i>assessment interval</i> until four weeks after the <i>Supervisor</i> issues the Defects Certificate and</li> <li>• at Completion of the whole of the <i>works</i>.</li> </ul>	
Z1.20.1	50.1A	<p>The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to him at the payment due date and the basis on which that sum is calculated.</p>	
	50.2	<p>The amount due is</p> <ul style="list-style-type: none"> <li>• the Price for Work Done to Date,</li> <li>• plus other amounts to be paid to the <i>Contractor</i>,</li> <li>• less amounts to be paid by or retained from the <i>Contractor</i>.</li> </ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due.</p>	
	50.3	<p>If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.</p>	
Z1.20.2	50.3A	<p>If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.</p>	
Z1.20.3	50.4	<p>In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.</p>	
	50.5	<p>The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.</p>	
	50.6	<p><b>Not used (not an Option E clause).</b></p>	
	50.7	<p><b>Payments of Defined Cost made by the <i>Contractor</i> in a currency other than the currency of this contract are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the currency of this contract in order to calculate the Fee using the exchange rates.</b></p>	
Z1.20.4	50.8	<p>If any performance bond or parent company guarantee required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such documents have been delivered.</p>	
Z1.20.5	50.9	<p>If a warranty required under sub-clauses Z2.1.2 and/or Z2.2 is not delivered to the <i>Employer</i> in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 the <i>Employer</i> may withhold the sum stated in the Contract Data which is not payable to the <i>Contractor</i> until such warranty is delivered.</p>	

Z1.20.6	50.10	If where the Contract Data states that this clause is to apply a Management Plan is not provided by the times or within the timescales required by this contract, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such Management Plan is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such Management Plan is delivered.
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Z1.20.7	50.11	If the <i>Contractor's</i> employment is terminated under clause 91.1 because the <i>Contractor</i> has become insolvent within the meaning of section 113 of the Act (R10A), the <i>Employer</i> need not pay any sum due to the <i>Contractor</i> other than any amount due to him under clause 90.4 either:
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- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
- in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

#### Payment 51

Y1.1.1	51.1	The <i>Project Manager</i> certifies a payment within seven days of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the <i>Contractor</i> to the <i>Employer</i> if the change reduces the amount due. Other payments are made by the <i>Employer</i> to the <i>Contractor</i> . Payments are in the <i>currency of this contract</i> unless otherwise stated in this contract. If a certificate is not issued by the <i>Project Manager</i> in accordance with this clause 51.1, the sum to be paid by the <i>Employer</i> is the sum stated as due in the <i>Contractor's</i> application in accordance with clause 50.1A.
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Y1.1.2	Y2.2	The date on which payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.
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Y1.1.2A	51.1B	The <i>Project Manager's</i> certificate is the <i>Employer's</i> notice of payment to the <i>Contractor</i> specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount is calculated.
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Y1.1.2B	51.1C	Not later than five days after receipt of the payment certificate the <i>Contractor</i> delivers to the <i>Employer</i> (copied to the <i>Project Manager</i> ) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The <i>Contractor</i> issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
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Y1.1.3	51.2	Each certified payment is made within twenty-one days of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the <i>Project Manager</i> does not issue a certificate which he should issue, or either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
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Y1.1.3A	51.2A	If the amount to be paid to the <i>Contractor</i> is less than the amount to be paid by or retained from the <i>Contractor</i> , the difference is recoverable from the <i>Contractor</i> as a debt due on demand.
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Y1.1.4	Y2.3	If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Project</i>
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*Manager.*

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

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

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

**Defined Cost 52**

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

**52.2 The Contractor keeps these records**

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

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

53 **Not used (not an Option E clause)**

54 **Not used (not an Option E clause)**

55 **Not used (not an Option E clause)**

Z1.21.1

- 56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
  - any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*

subject to issue of a Pay Less Notice by or on behalf of the *Employer* the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.22.1

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

## 6 Compensation events

### Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events

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

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

(2) Subject to the requirements of the Works Information regarding access and provided that the *Contractor* has booked and co-ordinated access in accordance with its requirements, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report included in the [Site][Works] Information]<sup>5</sup>
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

<sup>5</sup> To be agreed on a contract by contract basis

(13) A *weather measurement* is recorded

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

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

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

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

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

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

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

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

(19) An event which

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

and which

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

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

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

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

#### Notifying compensation Events 61

Z1.24

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

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

Z1.24

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

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

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware or when he ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

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

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

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either

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

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

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

Z1.24.2

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

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

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

## **Quotations for compensation events**

Z1 25

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

Z1.25.1

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

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

weeks of the submission. His reply is

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
- a notification that he will be making his own assessment.

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

### Assessing compensation Events

Z1.26

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

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

If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

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

Z1.26.1

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the *Contractor* shall not be entitled to an addition to the Prices for any period of delay caused by a concurrent *Contractor's* risk.

Z1.26.2

63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.

Z1.26.3

63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.

Z1.26.4

63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time for matters which have a



significant chance of occurring and are at the *Contractor's* risk under this contract. Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event.

- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10- Not used (not Option E clauses).**
- 63.13**
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.**
- 63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.**

#### **The *Project Manager's* Assessments**

Z1.27

Z1.27.1

- 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
  - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
  - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- 64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme or
  - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- 64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.
- 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

<b>Implementing compensation events</b>	<b>65</b>	
Z1.28	65.1	<p>A compensation event is implemented when</p> <ul style="list-style-type: none"> <li>the <i>Project Manager</i> notifies his acceptance of the <i>Contractor's</i> quotation,</li> <li>the <i>Project Manager</i> notifies the <i>Contractor</i> of his own assessment or</li> <li>a <i>Contractor's</i> quotation is treated as having been accepted by the <i>Project Manager</i>.</li> </ul>
	65.2	<p>The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.</p>
	<b>65.3</b>	<p><b>The changes to the forecast amount of the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.</b></p>
	<b>65.4</b>	<p><b>Not used (not an Option E clause)</b></p>
Z1.28.1	65.5	<p>The <i>Contractor</i> notifies the <i>Project Manager</i> if he does not accept the <i>Project Manager's</i> assessment and at the same time of his reasons for not accepting the <i>Project Manager's</i> assessment. If the <i>Contractor</i> does not provide this notification within eight weeks of notification of the <i>Project Manager's</i> assessment, he is treated as having accepted the <i>Project Manager's</i> assessment.</p>

## 7 Title

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

- |                  |      |   |
|------------------|------|---|
| Z1.29<br>Z1.29.1 | 70.1 | Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> has delivered them to site or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> . |
|                  | 70.2 | Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.  |
| Z1.29.2          | 70.3 | If requested by the <i>Project Manager</i> , in advance of the payment assessment, the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.  |

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

#### **71**

- |      |   |
|------|---|
| 71.1 | The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none"> <li>• this contract identifies them for payment and</li> <li>• the <i>Contractor</i> has prepared them for marking as the Works Information requires.</li> </ul> |
|------|---|

### **Removing Equipment**

#### **72**

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| 72.1 | The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works. |
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### **Objects and materials within the site**

#### **73**

- |      |  |
|------|--|
| 73.1 | The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions. |
| 73.2 | The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.   |

## 8 Risks and insurance

### **Employer's risks**

Z1.30

80

80.1 The following are *Employer's risks*.

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

Z1.30.1

### **The Contractor's risks**

81

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

### **Repairs**

82

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

**Indemnity**

Z1.31

Z1.31.1

**83**

83.1 Each Party is responsible for and indemnifies the other, its employees and agents (and the *Contractor* indemnifies the *Employer* in respect of members of the TfL Group) against claims, proceedings, compensation and costs due to personal injury to or death of any person due to an event at the indemnifying Party's risk.

Z1.31.2

83.2 The *Contractor* indemnifies the *Employer* against all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the works or the project as set out at clause Z2.7.4(b).

Z1.31.3

83.3 The indemnities under clauses 83.1 and 83.2 remain in force for the duration of this contract and continue to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to them.

**Remedies**

Z1.32

Z1.32.1

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

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

**Insurance cover**

Z1.33

Z1.33.1

**84**

84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.33.2

84.2

**INSURANCE TABLE****Insurance Against****Party Responsible for ensuring insurance is in place****Minimum amount of cover or minimum limit of indemnity****Construction All Risks insurance**

All risks of loss of or damage (not excluded by the terms and conditions of the policy) to the *works* and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the *works*), equipment, temporary buildings and property owned by or supplied by the *Employer*.

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

The full reinstatement value of the *works*

**Public liability insurance**

All sums for which the insured becomes 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 the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

*Employer*

Not less than [REDACTED] per occurrence or as otherwise stated in the Contract Data.

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

**Employer's liability insurance**

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

*Contractor*

Not less than [REDACTED] per occurrence or as otherwise stated in the Contract Data, whichever is the greater

**Contractor's Equipment loss insurance**

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

*Contractor*

The replacement cost

**Professional Indemnity Insurance**

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

*Contractor*

[REDACTED] for each and every claim and the annual aggregate or as otherwise stated in the Contract Data

Z1.33.3

84 3 In respect of the insurances provided by the *Contractor*:

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

Z1.33.4	84.4	The <i>Contractor</i> does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
Z1.33.5	84.5	The <i>Contractor</i> procures that his Subcontractors (and sub-subcontractors of any tier) maintain employer's liability (and where appropriate) motor liability insurances as required by law.
Z1.33.6	84.6	The insurances provided pursuant to this contract do not relieve the <i>Contractor</i> from any of his obligations and liabilities under this contract
<b>Insurance policies</b>	<b>85</b>	
Z1.34		
Z1.34.1	85.1	Before the <i>starting date</i> and on each renewal of the insurance policy until the <i>defects date</i> , the <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the <i>Contractor's</i> insurer or insurance broker (which may be the <i>Contractor's</i> internal insurance broker). A reason for not accepting the certificates is that: <ul style="list-style-type: none"> <li>• they do not comply with this contract,</li> <li>• the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom, or</li> <li>• the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the <i>works</i>, of sufficient financial strength.</li> </ul>
Z1.34.2	85.2	Not used.
	85.3	The Parties comply with the terms and conditions of the insurance policies.
Z1.34.3	85.4	Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the <i>Employer</i> for events which are at his risk and by the <i>Contractor</i> for events which are at his risk.
Z1.34.4	85.5	In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.
<b>If the <i>Contractor</i> does not insure</b>	<b>86</b>	
Z1.35		
Z1.35.1	86.1	The <i>Employer</i> may insure a risk which this contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the <i>Employer</i> in respect of taking out such insurance) to the <i>Employer</i> is paid by the <i>Contractor</i> . If the <i>Employer</i> insures a risk which this contract requires the <i>Contractor</i> to insure, this is without prejudice to any of the <i>Employer's</i> other rights, powers or remedies under this contract.
<b>Insurance by the <i>Employer</i></b>	<b>87</b>	
Z1.36		
	87.1	The <i>Project Manager</i> submits policies and certificates for insurances provided by the <i>Employer</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the policies and certificates if they comply with this contract.
	87.2	The <i>Contractor's</i> acceptance of an insurance policy or certificate provided by the <i>Employer</i> does not change the responsibility of the <i>Employer</i> to provide the insurances stated in the Contract Data.
	87.3	The <i>Contractor</i> may insure a risk which this contract requires the <i>Employer</i> to insure if the <i>Employer</i> does not submit a required policy or certificate. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Employer</i> .
Z1.36.1	87.4	The <i>Contractor</i> co-operates with the <i>Employer</i> regarding the handling and

settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.

- |         |      |   |
|---------|------|---|
| Z1.36.2 | 87.5 | The <i>Contractor</i> complies, and ensures that its Subcontractors comply, with the requirements of the <i>Employer's</i> claims handling procedures, such procedure to be provided to the <i>Contractor</i> by the <i>Employer</i> .  |
| Z1.36.3 | 87.6 | The <i>Contractor</i> does not compromise, settle or waive any claim which the <i>Contractor</i> may have under the <i>Employer's</i> insurances without the prior written consent of the <i>Employer</i> .   |
| Z1.36.4 | 87.7 | The insurances provided by the <i>Employer</i> are in effect for the duration of the <i>works</i> at the Site and any associated compounds storage and transit locations and other places accepted by the <i>Project Manager</i> and used solely for the purposes of carrying out of the physical works within the United Kingdom.  |
| Z1.36.5 | 87.8 | The <i>Contractor</i> ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the <i>Employer</i> while the Subcontractor is engaged in carrying out the <i>works</i> at the Site and any associated compounds storage and transit locations and other places accepted by the <i>Project Manager</i> and used solely for the purposes of carrying out the physical works within the United Kingdom. |



## 9 Termination

### Termination 90

Z1.37

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

**TERMINATION TABLE**

Z1.37.1

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

Z1.37.2

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

## Reasons for termination 91

Z1.38

Z1.38.1

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

- If the other Party is an individual and has
  - presented his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
  - had a winding-up order made against it (R5),
  - had a provisional liquidator appointed to it (R6),
  - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
  - had an administration order made against it (R8),
  - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
  - made an arrangement with its creditors (R10).
- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

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

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

Z1.38.2

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

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

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).

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

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

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

Z1.38.3

91.7 The *Employer* may terminate if an event occurs which

- stops the *Contractor* completing the works or

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

and which

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

Z1.38.4

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

- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.18 (R23),
- any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
- the *Employer* not obtaining any necessary funding for the Project and/or the necessary funding is curtailed (R25),
- A Change of Control unless approved in writing by the *Employer* (R25A).

Z1.38.5

91.9 In the event that either:

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

then:

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

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

order as aforesaid.

**Procedures on termination 92**

Z1.39

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

Z1.39.1

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

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

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

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

**Payment on termination 93**

Z1.40

93.1 The amount due on termination includes (A1)

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

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

A2 The forecast Defined Cost of removing the Equipment.

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

A4 The *direct fee percentage* applied to any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.

## 2. Additional Conditions of Contract

### Contractor's Warranties

#### Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion request that the *Contractor* duly executes and delivers to the *Employer* within 21 days deeds of warranty in the appropriate form attached at Schedule 4 in favour of any member of the TfL Group or the Connect Contractor.

Z2.1.2 Not used.

### Subcontractors' Warranties

#### Z2.2

Z2.2.1 This clause applies to Subcontractors for subcontract design packages identified in the Contract Data as key subcontractors. The *Contractor* uses his best endeavours to procure that the Subcontractors (identified in the Contract Data as key subcontractors) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in the appropriate form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of any member of the TfL Group.

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

Z2.3 Not used

### Warranties and Undertakings

#### Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including

software) necessary for the operation and maintenance of the works as specified in the Works Information, and

- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the works and for no other purpose.

## **Accounts and Records**

### **Z2.5**

- Z2.5.1 The *Contractor* maintains and retains (and procures that his Subcontractors maintain and retain) the Minimum Records for a minimum of 12 years from Completion of the works.
- Z2.5.2 The *Contractor* complies with (and ensures his Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and his authorised representatives are entitled to audit the Minimum Records in accordance with the provisions set out in the Works Information.
- Z2.5.3 The *Contractor* ensures that any requirements of the Data Protection Act 1988 are complied with to enable the *Employer* to exercise its rights under or pursuant to this clause Z2.5.

## **Nuisance**

### **Z2.6**

- Z2.6.1 The *Contractor* uses all reasonable endeavours to prevent any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the works and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.
- Z2.6.2 Not used.

## Intellectual Property Rights

### Z2.7

#### Z2.7.1 Licensing of New IPR

The Parties agree that the IPR in all Documentation and works that is created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or sub-subcontractor of any tier) vests in the *Contractor*. The *Contractor* grants to the *Employer* (and procures the grant of in respect of Subcontractors and suppliers of any tier) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to use IPR newly generated in the *works* for the purpose of understanding, operating, maintaining, modifying and maintaining the *works*.

#### Z2.7.2 Background IPR

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

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

Z2.7.2A The granting of licences at clause Z2.7.1 and Z2.7.2 is with the provisos that:

(i) The *Employer* has no right to decompile any computer software which forms part of the IPR licenced to the *Employer* under this contract nor shall the *Employer* attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub-licensee of that computer software.

(ii) Notwithstanding any of the foregoing provisions of this clause no license shall be granted to the *Employer* under this contract to reproduce or have reproduced the works in part or in whole; and neither shall any license be granted to the *Employer* to make or have made components or spare parts which are protected by intellectual property rights vested in the *Contractor* or any of its Subcontractors or suppliers.

Z2.7.3 The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* access as soon as reasonably practicable 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.

#### Z2.7.4 IPR Claims

- (a) The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "Claims") relating to the same) which affects or may affect the provision of the *works*
- (b) Subject to the *Employer's* proper observance of its



obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

- (c) The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such Claim. The *Contractor* reimburses the *Employer* for all Losses incurred in doing so and/or the *Contractor* conducts any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* consults with the *Employer* in respect of the conduct of any Claim and keeps the *Employer* regularly and fully informed as to the progress of such Claim.

#### **Z2.7.5 Corporate IPR**

- (a) The *Employer* grants the *Contractor* a non-exclusive, non transferable, royalty-free licence to the *Contractor* to use, and allow his Subcontractors to use, the Corporate IPRs at Schedule 7 for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.
- (b) The *Contractor* uses, and procures that his Subcontractors use, the Corporate IPRs in compliance with any relevant Standards and applicable law.
- (c) The *Contractor* does not use, and procures that his Subcontractors do not use, the Corporate IPRs in combination with any other trade marks without the *Employer's* prior written consent.
- (d) On written request by the *Project Manager*, the *Contractor* supplies to the *Project Manager* copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the *Project Manager* reasonably determines that any use of the Corporate IPRs falls below the Standards, the *Project Manager* gives the *Contractor* written notice of that fact and the *Contractor* corrects the use so as to comply with the Standards taking into account the *Project Manager's* instructions.
- (e) The *Contractor* is not entitled to bring any action against any third party for infringement relating to the Corporate IPRs and the *Employer* is not obliged to bring or extend any proceedings relating to the Corporate IPRs if it decides in his sole discretion not to do so.
- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, the *Contractor* and his Subcontractors remove the Corporate IPRs from or (where removal is not reasonably practical) destroy or, if the *Project Manager* so elects, deliver to the *Project Manager* or any other UK company or person designated by the *Project Manager*, all items and documents which the *Project Manager* does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

#### **Assignment Z2.8**

- Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it) but may assign, transfer or novate this contract to another member of the *Contractor's* Group with the prior written consent of the *Employer* such consent not be

unreasonably withheld or delayed.

Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to another member of the TfL Group without the prior written consent of the Contractor.

## Confidentiality

### Z2.9

- Z2.9.1 The *Contractor* treats, and ensures that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the Project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.
- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) do not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the PFI Connect Contract to any other person.
- Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.
- Z2.9.4 Clause Z2.9.1 and Z2.9.10 do not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
  - (b) any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision,
  - (c) any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- Z2.9.5 The *Contractor* procures that the Connected Persons comply with the provisions of this clause Z2.9 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- Z2.9.6 The *Contractor* notifies the *Employer* promptly if the *Contractor* becomes aware of any breach of confidence by a Connected Person and gives the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- Z2.9.7 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to any form of equitable relief to enforce the provisions of this Clause.
- Z2.9.8 At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* promptly delivers to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks
- Z2.9.9 Except as provided under deeds of warranty required by the *Employer* under Sub-clause Z2.1, the *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract or the *works* or the Project.
- Z2.9.10 Without prejudice to the *Employer's* obligations under legislation, including Freedom of Information and to Z2.15 the *Employer* will treat all information belonging to, or relating to the business, systems, products or processes of the *Contractor* or the *Contractor's* Group (as subcontractors of any tier) which could reasonably be considered as commercially sensitive obtained under, arising from or in connection with this contract and/or the Project as

confidential.

## Conflict Avoidance Panel

- Z2.10
- Z2.10.1 The *Employer*, the *Contractor* and the *Project Manager* co-operate with each other in the early identification, notification and avoidance or resolution of any Dispute.
- Z2.10.2 Subject to clause W2.1, any Dispute may in the first instance be referred to a Conflict Avoidance Panel by notice in writing from the referring party to the other party. The parties to the Dispute endeavour to agree upon (a) the person(s) whom they would consider suitable to act as the member(s) of the Conflict Avoidance Panel and (b) the number of member(s) of the Conflict Avoidance Panel (which as a general principle depends upon the issues in dispute but is always an odd number). In the event of the parties to the Dispute failing to reach such agreement within 14 days of receipt by the responding party of notice pursuant to this clause Z2.10.2, either party to the Dispute may request the Royal Institution of Chartered Surveyors (RICS) to nominate the member(s) of the Conflict Avoidance Panel to do so (including the number of member(s) of the Conflict Avoidance Panel, which as a general principle depends upon the issues in dispute but is always an odd number). Any person selected to act as a member of the Conflict Avoidance Panel (a) is a natural person acting in his personal capacity and (b) 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.
- Z2.10.3 Within 7 days of the appointment of the member(s) of the Conflict Avoidance Panel in accordance with clause Z2.10.2, the referring party refers the Dispute in writing to the Conflict Avoidance Panel. The referral gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought, including the provisions of the Contract that are relevant to the Dispute. The referral may include copies of, or relevant extracts from, the Contract and any other documents on which he relies. The referring party provides the responding party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.
- Z2.10.4 Within 7 days of receipt of the referral of the Dispute to the member(s) of the Conflict Avoidance Panel pursuant to clause Z2.10.3, the responding party provides the Conflict Avoidance Panel with a brief written response. The responding party may at the same time provide the Conflict Avoidance Panel with any documents on which he relies. The responding party provides the referring party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.
- Z2.10.5 Within 7 days of receipt of the response pursuant to clause Z2.10.4 (or such longer period as may be agreed by the parties to the Dispute), the Conflict Avoidance Panel notifies the parties to the Dispute of its recommendation(s) for avoiding or resolving the Dispute. The notice is in writing and includes a summary of the Conflict Avoidance Panel's findings and a statement of its reasons for the recommendation(s). The recommendation(s) is (are) not binding on the parties to the Dispute.
- Z2.10.6 If a party to the Dispute is dissatisfied with the recommendation(s) notified by the Conflict Avoidance Panel pursuant to clause Z2.10.5, it notifies the other party to the Dispute in writing, within 7 days of notification by the Conflict Avoidance Panel pursuant to clause Z2.10.5, of the reasons why it is dissatisfied with the recommendation(s).
- Z2.10.7 Each party to the Dispute (a) bears its own costs and expenses in relation to any reference of a Dispute to the Conflict Avoidance Panel and (b) bears in equal shares the remuneration and expenses of the member(s) of the Conflict Avoidance Panel and the fees of the professional body or association requested to propose the member(s) of the Conflict Avoidance

Panel.

- Z2.10.8 Save as required by law, the Parties and the member(s) of the Conflict Avoidance Panel keep confidential all information of whatever nature provided by or on behalf of the parties to the Dispute pursuant to clause Z2.10 and the Conflict Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)). The Parties do not make use of or rely upon any such information or the Conflict Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)), which are without prejudice.

#### **Dispute Resolution Procedure**

- Z2.11  
Z2.11.1 The *Employer*, *Contractor* and the *Project Manager* follow the Dispute Resolution Procedure at Schedule 8 for the avoidance and resolution of Disputes.

#### **Liquidated Damages for Disruption (to the Underground Network)**

- Z2.12  
Z2.12.1 The *Contractor* will pay and/or the *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* hand back possession of a worksite for traffic hour running due to a cause which is a *Contractor* risk.

#### **Responsible Procurement**

- Z2.13  
Z2.13.1 The *Contractor* has regard to the Responsible Procurement Principles and complies at all times with the obligations with regard to the Responsible Procurement Principles set out in the Works Information. Compliance with such obligations does not constitute a compensation event unless the *Project Manager* issues an instruction and states in his instruction that it constitutes a compensation event.

## Crime and Disorder

### Z2.14

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

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

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

## London Living Wage

### Z2.15

Z2.15.1 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

Z2.15.2 Without prejudice to the generality of Clause Z2.15.1, the *Contractor* and his Subcontractors (if any) :

- (a) ensure that none of his employees engaged in the performance of the works in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
- (b) ensure that none of his employees engaged in the performance of the works is paid less than the amount to which they are entitled in their respective contracts of employment, and
- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

## Data Transparency

### Z2.16

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1 but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor* including any price breakdown. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z2.17 Not used

## Conflict of Interest

### Z2.18

- Z2.18.1 The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.
- Z2.18.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the works from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* is entitled to terminate the contract.

## Freedom of Information

### Z2.19

- Z2.19.1 The *Contractor* acknowledges that the *Employer*:
- is subject to FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with his obligations under the FOI Legislation, and
  - may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*.
- Z2.19.2 Without prejudice to the generality of Clause Z2.19.1, the *Contractor* agrees and procures that his Subcontractors will agree to:
- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the works or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
  - in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.
- Z2.19.3 The *Employer* (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* does not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.
- Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor* but the *Employer* will take reasonable steps to consult with the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor*.



## Criminal Record Declarations

### Z2.20

- Z2.20.1 The *Contractor* procures from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. A Declaration is procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* confirms to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* procures that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* notifies the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.2 The *Contractor* is not permitted to engage or allowed to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.3 The *Employer* may in accordance with the audit rights set out or referred to in Clause Z2.5 audit and check any and all such records as are necessary or referred to in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.4 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.1 and/or Z2.20.2, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.1.
- Z2.20.5 A persistent breach of Clause Z2.20.1 and/or Z2.20.2 by the *Contractor* constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* removes or procures the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z2.20.7 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

## **Best Value**

### **Z2.21**

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

## **Prohibited Acts**

### **Z2.22**

- Z2.22.1** The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2** Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3** If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22.4** If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

## **Data Protection**

### **Z2.23**

- Z2.23.1** The parties acknowledge that, for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is a Processor. The only processing that the *Contractor* is authorised to do is that permitted by Data Protection Legislation in order to *Provide the Works* under this contract.
- Z2.23.2** The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer's* instructions infringe the Data Protection Legislation.
- Z2.23.3** The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to the commencement of any processing. Such assistance may, at the discretion of the *Employer*, include:
- (e) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (f) an assessment of the necessity and proportionality of the processing operations in relation to the works;
  - (g) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (h) the measures envisaged to address the risk, including safeguards,

security measures and mechanisms to ensure the protection of Personal Data.

Z2.23.4 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under this contract:

- (f) process that Personal Data only in accordance with the performance of the works under this contract, unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;
- (g) ensure that it has in place Protective Measures, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:
  - nature of the data to be protected;
  - harm that might result from a Data Loss Event;
  - state of technological development; and
  - cost of implementing any measures;
- (h) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (v) are aware of and comply with the *Contractor's* duties under this clause;
    - (vi) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (vii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and
    - (viii) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (i) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (ix) are aware of and comply with the *Contractor's* duties under this clause;
    - (x) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (xi) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing

to do so by the *Employer* or as otherwise permitted by this contract; and

- (xii) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (j) not transfer Personal Data outside of the EU unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:
  - the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Employer*;
  - the Data Subject has enforceable rights and effective legal remedies;
  - the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Employer* in meeting its obligations); and
  - the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;
- (k) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the contract unless this *Contractor* is required by Law to retain the Personal Data.

Z2.23.5 Subject to clause Z2.23.6, the *Contractor* shall notify the *Employer* immediately if it:

- (g) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (h) receives a request to rectify, block or erase any Personal Data;
- (i) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (j) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- (k) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (l) becomes aware of a Data Loss Event.

Z2.23.6 The *Contractor's* obligation to notify under clause Z2.23.5 shall include the provision of further information to the *Employer* in phases, as details become available.

Z2.23.7 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause Z2.23.5 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:

- (f) the *Employer* with full details and copies of the complaint,

communication or request;

- (g) such assistance as is reasonably requested by the *Employer* to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (h) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- (i) assistance as requested by the *Employer* following any Data Loss Event;
- (j) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

Z2.23.8 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z2.23.8. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:

- (d) the *Employer* determines that the processing is not occasional;
- (e) the *Employer* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (f) the *Employer* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z2.23.9 The *Contractor* shall allow for audits of its data processing activity by the *Employer* or the *Employer's* designated auditor.

Z2.23.10 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.

Z2.23.11 Before allowing any sub-processor to process any Personal Data related to this contract, the *Contractor* must:

- (e) notify the *Employer* in writing of the intended sub-processor and processing;;
- (f) obtain the written consent of the *Employer*;
- (g) enter into a written agreement with the sub-processor which give effect to the terms set out in this clause Z2.23 such that they apply to the sub-processor; and
- (h) provide the *Employer* with such information regarding the sub-processor as the *Employer* may reasonably require.

Z2.23.12 The *Contractor* shall remain fully liable for all acts or omissions of any sub-processor.

Z2.23.13 The *Employer* may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when incorporated by attachment to this contract).

Z2.23.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on not less than 30 working days' notice to the *Contractor* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Anti-Slavery and Human  
Trafficking**

**Z2.24**

**Z.24.1** The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the *Employer's* anti-slavery policy.

**Z2.24.2** In *Providing the works*, the *Contractor* shall:

- (e) comply with all applicable anti-slavery and human trafficking Law from time to time in force including but not limited to the Modern Slavery Act 2015;
- (f) have and maintain throughout the currency of this agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;
- (g) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
- (h) include in its sub-contracts and supply chain contracts anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause Z.24 and shall procure that each Subcontractor and supplier complies with all applicable anti-slavery and human trafficking Law.

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

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

## DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.10 and Z2.11)

## SECONDARY OPTION CLAUSES

Option X2: Changes in the law

Changes in the law	X2
Z1.40A.1	X2.1 A change in the law of the country in which the Site is located or applicable Standards is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law or applicable Standards and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X3: Multiple currencies

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

Option X4: Parent company guarantee

Parent company Guarantee	X4
Z1.41.1	X4.1 If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the <i>parent company</i> of the <i>Contractor's</i> performance in the form attached at Schedule 2. Unless a guarantee has already been given which covers this contract, the guarantee is given within four weeks of the Contract Date, unless the <i>Employer</i> (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
Z1.41.2	X4.2 Not used.
Z1.41.3	X4.3 Not used.
Z1.41.4	X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion substantially in the form set out at Schedule 3 on the guarantor's execution of any such guarantee.
Z1.41.5	X4.5 Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

## Option X5: Sectional Completion

### Sectional Completion X5

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

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

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

## Option X6: Bonus for early Completion

### Bonus for early Completion X6

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

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

until the Completion Date.

## Option X7: Delay damages

### Delay damages X7

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

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

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

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

## Option X12: Partnering

### Identified and defined terms X12

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

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

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

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



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

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

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

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

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

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

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

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

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

Z1.42 1

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

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

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

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

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

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

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

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

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

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

## Option X13: Performance bond

### Performance bond X13

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

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

### Advanced payment X14

X14.1 Not used.
X14.2 Not used.
X14.3 Not used.

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

### The *Contractor's* design X15

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

## Option X16: Retention

### Retention X16

	X16.1 After the Price for Work Done to Date has reached the <i>retention free amount</i> , an amount is retained in each amount due. Until the earlier of <ul style="list-style-type: none"><li>• Completion of the whole of the <i>works</i> and</li><li>• the date on which the <i>Employer</i> takes over the whole of the <i>works</i></li></ul> the amount retained is the <i>retention percentage</i> applied to the excess of the Price for Work Done to Date above the <i>retention free amount</i> .
	X16.2 The amount retained is halved <ul style="list-style-type: none"><li>• in the assessment made at Completion of the whole of the <i>works</i> or</li><li>• in the next assessment after the <i>Employer</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i>.</li></ul> The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.
Z1.45.1	X16.3 Where under this contract the <i>Employer</i> is entitled to withhold money from the <i>Contractor</i> as a retention, the retention monies are retained by the <i>Employer</i> without obligation to invest and without creating any fiduciary obligation or duty on the part of the <i>Employer</i> to the <i>Contractor</i> or any other person with whom the <i>Contractor</i> has contracted.

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

## Option X17: Low performance damages

Low performance X17  
Damages X17.1 Not used.

## Option X18: Limitation of liability

- Limitation of liability X18
- Z1.46.1 X18.1 The *Contractor's* liability pursuant to this Contract for loss of profit, indirect or consequential loss, any loss of use, downtime costs, disruption to operations or increase in operating costs or any form of financial or economic loss is limited to the amount stated in the Contract Data (provided that this does not exclude or limit the *Contractor's* liability to pay liquidated damages clause Z2.12 and/or under X7).
- Z1.46.1A X18.1A The *Contractor's* liability to the *Employer* for delay damages under X7 is limited to the amount stated in the Contract Data.
- Z1.46.1B X18.1B The *Contractor's* liability to the *Employer* for liquidated damages under Z2.12 for disruption is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property (other than the *works*) arising out of or caused by the carrying out of the *works* by the *Contractor* and caused by default of the *Contractor* or anybody for whom the *Contractor* is responsible is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
- Z1.46.3 X18.4 The *Contractor's* total liability pursuant to this Contract (including any collateral warranty provided by the *Contractor* pursuant to this Contract) for all matters arising under or in connection with this contract, including the *Contractor's* liability to pay liquidated damages under clause Z2.12 and/or X7 any losses arising from any nuisance or interference referred to in clause Z2.6, and loss of or damage to property real or personal other than to the *works* other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort including but limited

to negligence), breach of warranty, by way of indemnity (other than the indemnities at clause 83) or delict and otherwise to the extent allowed under the *law of the contract*.

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

- loss of or damage to the *Employer's* property arising out of or caused by the carrying out of the works by the *Contractor* and caused by the default of the *Contractor* or anybody for whom the *Contractor* is responsible,
- and
- the matters listed in X18.6.

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

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

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

## Option X21: Single Point Design Responsibility

### Single Point Design X21

- Z1.47 Responsibility X21.1 In this Option, "**Employer's Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information.
- X21.2 The *Contractor* is responsible for the design of the *works* and for the accuracy of such *Employer's Design Information* listed in the Contract Data as being the responsibility of the *Contractor* except as stated in clause X21.3 below.
- X21.3 Subject to X21.2 the *Contractor* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's Design Information* as originally included in the contract.
- The *Employer* is responsible for the correctness of the following elements of the *Employer's Design Information*:
- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
  - (b) definitions of intended purposes of the *works* or any part thereof, and
  - (c) criteria for the testing and performance of the completed *works*.
- X21.4 Where either party discovers a mistake, inaccuracy or discrepancy in or omission from the *Employer's Design Information*, it shall inform the other party in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the *Project Manager* may confirm the proposed amendment or comment in writing on such an amendment provided that the *Project Manager* does not unreasonably withhold his consent to a proposed amendment. The *Contractor* takes account of such comments and confirms or resubmits the proposed amendment to the *Project Manager*. Such process is repeated until the *Project Manager* accepts the *Contractor's* proposed amendment.
- X21.5 Anything which is the *Contractor's* responsibility as set out in Option X21.2 does not give rise to a compensation event.

## Option X23: Key Person Succession Plan

### Key Person Succession Plan X23

- Z1.49
- X23.1 If a key person succession plan is stated in the Works Information to be applicable to the Project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.
- X23.2 The *Contractor* submits his key person succession plan to the *Project Manager* for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.
- X23.3 Save where a key person is removed pursuant to sub-clause 23.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:
- ceases to be employed to do the job stated in the Contract Data; and/or
  - the *Contractor* fails to comply with an accepted key person succession plan,
- the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* decides to reduce or waive this requirement.

## [Option X24: Fee Cap

### Fee Cap X24

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

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

## Option X25: Escrow Agreement

Escrow Agreement  
Z1.51

### X25

X25.1 In this Secondary Option X25:

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

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

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

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

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

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

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

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

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

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

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

## OPTION Y

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

Not used

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

### Definitions

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

Z1.54

### Y(UK)2

Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

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

Y2.2 Not used

Y2.3 Not used

### Suspension of performance

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

### Payment

Y1

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

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

### Third Party Rights

### Y(UK)3

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

## Option Z: Additional conditions of contract

### Additional conditions of contract

Z1.55.1

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



## SCHEDULE OF COST COMPONENTS

Z1.56.1

In this Schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

### People 1

The following components of the cost of

- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas and
- people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas.

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

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

1.2 Payments to people for

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

1.3 Payments made in relation to people for

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

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

Amounts paid by the *Contractor*.

### Equipment 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.6 Unless included in the hire or rental rates, payments for

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

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

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

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

3.1 Payments for

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

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

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

4.1 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

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

4.3 Payments for

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

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

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

**Manufacture and  
fabrication**

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

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

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

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

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

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

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

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

**Insurance** **7**

The following are deducted from cost

Z1.56.6

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

## SHORTER SCHEDULE OF COST COMPONENTS

Z1.57.1

This schedule is used by agreement for assessing compensation events. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Plant and Materials 3** The following components of the cost of Plant and Materials.
- 3.1 Payments for
- purchasing Plant and Materials,
  - delivery to and removal from the Working Areas,
  - providing and removing packaging and
  - samples and tests.
- 3.2 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
- Charges 4** The following components of the cost of charges paid by the *Contractor*.
- 4.1 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of
- payments for the provision and use in the Working Areas of water, gas and electricity,
  - payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
  - payments for the provision and use of equipment, supplies and services (excluding accommodation) for catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing and hand tools not powered by compressed air.
- 4.2 Payments for cancellation charges arising from a compensation event.
- 4.3 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 4.4 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.
- 4.5 Specialist services.
- 4.6 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
- Manufacture and fabrication 5** The following components of the cost of manufacture and fabrication of Plant and Materials, which are
- wholly or partly designed specifically for the *works* and
  - manufactured or fabricated outside the Working Areas.
- 5.1 Amounts paid by the *Contractor*.
- Design 6** The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 6.1 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 6.2 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 6.3 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance 7** The following are deducted from cost
- costs against which this contract required the *Contractor* to insure,
  - other costs paid to the *Contractor* by insurers and,
  - the cost of excess payments or deductibles.

## **SUPPLEMENTARY NOTES TO THE SCHEDULE OF COST COMPONENTS AND THE SHORTER SCHEDULE OF COST COMPONENTS**

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

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

### **Part A Notes**

#### **Section 1: People**

*Wages, salaries and amounts paid by the Contractor*

*Payments made to people for bonuses and incentives:*

*Payments made to people for overtime:*

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

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

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

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

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

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

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

*Payments made to people for non-productive time*

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

*Payments made to people for training*

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

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

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

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

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

*Payments made for overhead to group companies for Equipment*

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

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

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

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

## **Section 4: Charges**

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

Any costs relating to the provision of a replacement retention bond and/or provision of any replacement performance bond and/or replacement advance payment bond are deemed to be included in the Fee and are not admissible as Defined Cost.

## **Section 5: Manufacture and Fabrication**

### *Payments made for overhead to group companies*

Where not already included in the Plant and Materials charges, hourly rates for categories of employee represent the cost of employment, exclusive of any overheads and the percentage for manufacture and fabrication overhead represent the reasonable cost of local manufacture and fabrication related overheads only on a percentage basis as anticipated from the associated business plan for the facility.

## **Section 6: Design**

### *Payments made for overhead to group companies for design:*

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

### *Design consultants – overhead charge*

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

## **Section 7: Insurance**

### Insurance premiums

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

## **Part B Notes**

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

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

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

- they do not fall within the definition of Disallowed Costs;
- they are not included within the *Contractor's* Fee or overhead percentages;
- they have been captured within systems for the collection of data either accepted by the *Project Manager* or stated in the Works Information.

### **2 - Cost Verification**

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

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









**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**Appendix E**

**Schedules 1 - 9**

## THE SCHEDULES

### Schedule

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

X

## SCHEDULE 1

### (Additional Definitions)

The following defined terms apply to this contract:

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

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

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

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

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

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

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

**Connect Contractor** means Citylink Telecommunications Limited.

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

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

**Construction Industry Scheme** means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005 and amendments to those regulations.

**Contract Information** means, for the purposes of Z2.16 and Z2.19, (i) this contract in its entirety (including from time to time agreed changes to this contract), but excluding to the extent the Employer is able to Commercially Sensitive Information belonging to the Contractor or Group Companies including any price breakdown and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount. The Employer in exercising its discretion referred to in (i) will take reasonable steps to consult the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**London Living Wage** means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*.

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

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

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

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

**Minimum Records** means:

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

(g) test and commissioning results.

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

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

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

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

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

**Prohibited Act** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
  - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
  - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;
- (b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;
- (c) committing any offence:
  - under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
  - under the Part 3 of the Criminal Finances Act 2017,
  - under any law or legislation creating offences in respect of fraudulent acts, or
  - at common law in respect of fraudulent actsin relation to this contract or any other contract with the *Employer*; or
- (d) defrauding or attempting to defraud the *Employer*.

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

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

**Relevant Individual** means, for the purposes of Z2.20, any servant, employee, officer,



consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.

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

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

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

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

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

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

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

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

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

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

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

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

**TfL Group** means Transport for London ("TfL"), a statutory body set up by the Greater

London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.

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

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

**SCHEDULE 2**  
Form of Parent Company Guarantee



**SCHEDULE 3**

Form of Legal Opinion Letter



## Schedule 4

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

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

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

#### **WHEREAS:**

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

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

#### **NOW IT IS AGREED:**

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
2. The *Contractor* warrants and undertakes to the Beneficiary that:
  - (a) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out works of a similar scope, size and complexity to the *works*; and
  - (b) it has complied with and will continue to comply with the terms of the Contract.
3. The *Contractor* warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed, the *Contractor* further warrants and undertakes to the Beneficiary that:
  - (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;

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

- (b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
  - (c) the *works* will on Completion comply with all applicable law and all relevant Standards.
- 5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £10 million in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.
- 6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
- 7. To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the *works* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:
  - (a) understanding the *works*;
  - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
  - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
  - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;



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

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

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

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

8. The *Contractor* agrees:

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

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

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

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

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

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

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]<sup>2</sup>

In the presence of:

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

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

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



## SCHEDULE 5A

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

THIS DEED is made on ● 201 ●  
BETWEEN:

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

#### WHEREAS:

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

#### NOW IT IS AGREED:

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

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

- (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*;
  - (ii) entering into the Subcontract or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
  - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*; or
  - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (e) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *subcontract works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
  - (f) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
  - (g) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

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

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

- (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subcontractor further warrants and undertakes to the *Employer* that:
- (a) [*the subcontract works will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract*<sup>4</sup>];
  - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
  - (c) Not Used;
  - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor;
  - (e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;
  - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
  - (g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract [and that insofar as he is responsible for the design of the *subcontract works*, he has [professional indemnity][product liability]<sup>5</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>6</sup> in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the *subcontract works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available.

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

<sup>5</sup> Delete as appropriate

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

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

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

8. The Subcontractor agrees:



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

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

9. *Not Used.*

10. Not Used.

11. *Not Used.*

12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:

(a) continue to observe and carry out his obligations under the Subcontract and this Deed;

(b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and

(c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.

13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.

13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.

14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and on two further occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following completion of the whole of the *subcontract works*.
19. *Not Used.*
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the *Employer* that:
  - (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;
  - (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the

purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and

- (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.

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

20.3 Clause 20.1 does not apply to the disclosure of:

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

20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.

20.7 Not Used.

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

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

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]

In the presence of:

Authorised Signatory

\_\_\_\_\_

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

was affixed to **THIS DEED**

in the presence of:

Signature of Director

.....

Print name of Director

.....

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

]

**ANNEX**

***(subcontract works)***

## SCHEDULE 5B

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

THIS DEED is made on ● 201 ●

#### BETWEEN:

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

#### WHEREAS:

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

#### NOW IT IS AGREED:

- 27. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
  - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
  - (b) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
  - (c) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

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



28. The Subcontractor warrants and undertakes to the Beneficiary that:
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
  - (b) he has complied with and will continue to comply with the terms of the Subcontract.
29. The Subcontractor warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
30. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed the Subcontractor further warrants and undertakes to the Beneficiary that:
- (a) [the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract<sup>8</sup>];
  - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship; and
  - (c) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards.
31. The Subcontractor warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has [professional indemnity][product liability]<sup>9</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>10</sup> in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the *subcontract works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.

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

<sup>9</sup> Delete as appropriate

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



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

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

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

35. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.
36. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and on two further occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
37. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
38. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 39.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract.
- 39.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
40. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.
41. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
42. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

- 43.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 43.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 43.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
44. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]<sup>11</sup>

In the presence of:

Authorised Signatory

\_\_\_\_\_

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

**THE COMMON SEAL of  
[THE SUB-CONTRACTOR]  
was affixed to THIS DEED  
in the presence of:**

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**THE COMMON/CORPORATE SEAL of**  
**[THE CONTRACTOR]**  
was affixed to **THIS DEED**  
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

*(SUBCONTRACT WORKS)*



## SCHEDULE 6A

### (Form of Warranty from Subconsultant to Employer (where Subconsultant is providing consulting services))

THIS DEED is made on ● 201 ●

#### BETWEEN:

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

#### WHEREAS:

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

#### NOW IT IS AGREED:

45. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

- (a) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
- (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
- (c) "Prohibited Act" means:

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

- (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Contractor*;
  - (ii) entering into the Appointment or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
  - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the *Employer* or the *Contractor*; or
  - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (d) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (e) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
- (f) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

46. The Subconsultant warrants and undertakes to the *Employer* that;

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and



- (b) he has complied with and will continue to comply with the terms of the Appointment.

47. The Subconsultant warrants to the *Employer* that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which is not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

48. The Subconsultant further warrants and undertakes to the *Employer* that:

- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
- (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
- (c) Not Used;
- (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;
- (e) he shall not commit a Prohibited Act and/or Safety Breach.

49. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has [[professional indemnity][product liability]<sup>2</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>3</sup> in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from completion of the whole of the *design works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record].

50. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

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<sup>2</sup> Delete as appropriate

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

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

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

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

52. The Subconsultant agrees:

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

53. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require

including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.

54. The Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.
55. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
56. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:
- (a) continue to observe and carry out his obligations under the Appointment and this Deed;
  - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Appointment shall thereafter be exercisable and performed by the *Employer*; and
  - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.
- 57.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Appointment.
- 57.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.

58. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
59. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.
60. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and on two further occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
61. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
62. The liability of the Subconsultant under this Deed shall cease 12 years following completion of the whole of the *design works*.
- 63.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:
- (d) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the *design works* relate;
  - (e) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and

- (f) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 63.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 63.3 Clause 19.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
  - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
  - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 63.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 63.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 63.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 63.7 Not Used.
- 64.1 The Subconsultant shall owe no greater obligations or liability to the *Employer* than he owes to the *Contractor* under the Appointment.
- 64.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.

65. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
66. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.
67. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 67.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 67.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 67.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
68. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]<sup>4</sup>

In the presence of:

Authorised Signatory

\_\_\_\_\_

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

**THE COMMON SEAL of**  
**[THE SUBCONSULTANT]**  
was affixed to **THIS DEED**  
in the presence of:

Signature of Director

.....

Print name of Director

.....

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

## SCHEDULE 6B

### (Form of Warranty from Subconsultant to Beneficiary (where Subconsultant is providing consulting services))

THIS DEED is made on ● 201 ●

#### BETWEEN:

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

#### WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ●<sup>5</sup> (the "**Employer**") which expression shall include its successors and assigns for the carrying out of certain [Works and/or Services] at ● (the "**works**").
- (B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.
- (C) The Beneficiary is a member of the TfL Group and has an interest in the *works* as [●]

#### NOW IT IS AGREED:

69. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

- (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
- (b)

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<sup>5</sup> Insert details of relevant member of the TfL Group.



- (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
  - (d) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
70. The Subconsultant warrants and undertakes to the Beneficiary that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
  - (b) he has complied with and will continue to comply with the terms of the Appointment.
71. The Subconsultant warrants to the Beneficiary that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
72. Provided that nothing in this clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed the Subconsultant further warrants and undertakes to the Beneficiary that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
  - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
  - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
  - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards.
73. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[2 million]<sup>6</sup> in respect of each and every claim which may be made against

<sup>6</sup> The PI figure should be the same as the figure inserted in the Contract Data.

the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

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

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

76. The Subconsultant agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
  - (b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.
- 77. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
- 78. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and on two further occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
- 79. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
- 80. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *design works*.
- 81. The Subconsultant shall owe no greater obligations and no greater liability to the Beneficiary than he owes to the Contractor under the Appointment.
- 81.1 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
- 82. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
- 83. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.

84. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 84.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 84.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
- 84.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
85. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]<sup>7</sup>

In the presence of:

Authorised Signatory

\_\_\_\_\_

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

**THE COMMON SEAL of  
[THE SUBCONSULTANT]  
was affixed to THIS DEED  
in the presence of:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

<sup>7</sup> Insert name of member of TfL Group

## SCHEDULE 7

### (Corporate IPR)

1. The Roundel (examples of which are given in Annex 1), including the following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1321443	BLANK ROUNDDEL	39
UK	1094664	ROUNDDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDDEL	16
UK	2236110	UNDERGROUND & ROUNDDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDDEL	25
UK	1321442	UNDERGROUND ROUNDDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDDEL	14 16 18 25 32
CTM	299206	ROUNDDEL DEVICE	16 25 28 39
CTM	814004	ROUNDDEL DEVICE & UNDERGROUND	18 25 42

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the *New Johnston Typeface*) (examples of which are attached in Annex 2).
3. The Underground map attached in Annex 3.
4. The following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39

<b>Country</b>	<b>Registration/ Application</b>	<b>Trademark</b>	<b>Class</b>
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30

<b>Country</b>	<b>Registration/ Application</b>	<b>Trademark</b>	<b>Class</b>
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

#### **Annex 1**

##### **Examples of the London Underground Roundels**







## Annex 2

### Examples of the New Johnston Typeface

ABCDEFGHIJKLMNOPQRSTUVWXYZ  
Abcdefghijklmnopqrstuvwxyz  
0123456789!"£\$%^&\*()\_+,.?/@'#

*ABCDEFGHIJKLMNOPQRSTUVWXYZ*  
*Abcdefghijklmnopqrstuvwxyz*  
*0123456789!"£\$%^&\*()\_+,.?/@'#*

**ABCDEFGHIJKLMNOPQRSTUVWXYZ**  
**Abcdefghijklmnopqrstuvwxyz**  
**01 23456789!"£\$%^&\*()\_+,.?/@'#**

***ABCDEFGHIJKLMNOPQRSTUVWXYZ***  
***Abcdefghijklmnopqrstuvwxyz***  
***01 23456789!"£\$%^&\*()\_+,.?/@'#***

**ABCDEFGHIJKLMNOPQRSTUVWXYZ**  
**Abcdefghijklmnopqrstuvwxyz**  
**0123456789!"£\$%^&\*()\_+,.?/@'#**

***ABCDEFGHIJKLMNOPQRSTUVWXYZ***  
***Abcdefghijklmnopqrstuvwxyz***  
***0123456789!"£\$%^&\*()\_+,.?/@'#***

## Annex 3

### London Underground Tube Map

#### Tube map



MAYOR OF LONDON

[tfl.gov.uk](http://tfl.gov.uk)

0843 222 1234

Help points

Transport for London



## SCHEDULE 8

### (Dispute Resolution Procedure)

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

**“Adjudicator”** means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 8.

**“Nominating Authority”** means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

**“Notice of Adjudication”** means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

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

**“Referral Notice”** means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

**“Senior Representative”** means a representative of a Party at senior executive level;

W2.A      The *Employer*, *Contractor* and the *Project Manager* follow the procedure set out in Z2.10 (if used), 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 be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

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

W2.B.3    The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

W2.B.4    If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with

the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.

W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.

W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

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

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

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

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

W2.6 The Referral Notice includes:

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

- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.

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

W2.14 The Adjudicator:

- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- reaches his decision in accordance with the law of the contract;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;

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

- W2.16 The Adjudicator shall 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 any Party to a Dispute is dissatisfied with the Adjudicator's decision, then any party may commence court proceedings for the final determination of the Dispute.

## SCHEDULE 9

### LIQUIDATED DAMAGES FOR DISRUPTION

1. In this Schedule, the following terms have the following meanings:
  - (a) “LCH” or “Lost Customer Hours” means the total additional journey time measured in hours, applying planned or unplanned NACHs as appropriate, experienced by Customers as a result of a planned or unplanned Service Disruption;
  - (b) “NACHs” or “Nominally Accumulated Customer Hours” means the system of weights used to estimate the cumulative additional perceived journey time encountered by Customers as a result of planned or unplanned Service Disruptions, as the case may be, as the same is set out in the NACHs Tables 2016 contained in the Works Information. For the avoidance of doubt the values appearing in the NACHs tables are multiplied by a factor of one hundred (100) to calculate values in “LCH” or “Lost Customer Hours”.
  - (c) “Service Disruption” means any disruption to customer services on the Underground Network comprising an interruption to train services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures (but excluding the cost of acquiring new or additional line suspensions or speed restrictions in order for the *Contractor* to provide the works).
2. In the event of a Service Disruption resulting from a failure by the *Contractor* to hand back possession of a worksite for traffic hour running due to a cause which is a Contractor risk the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 9. The duration of any Service Disruption is measured using a network-based database known as CuPID (Contract Performance Information Database).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by [REDACTED]

where:

(i) [REDACTED] indexed as provided for in paragraph 4; and

(ii) [REDACTED]  
[REDACTED]

4. The value of 'X' (as defined in paragraph 3) is revised as at 1 April in each year according to the following calculation:

$$X_{cy} = \frac{r_n}{r_o} \times X$$

where:

$X_{cy}$  = value of X for the year commencing on the applicable 1 April;

$r_n$  = RPIX published for the month of August immediately preceding the applicable 1 April; and

$r_o$  = RPIX published for February 2018.

5. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.
6. The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under this Schedule 9 is stated in the Contract Data Part One.





**Siemens Mobility Limited**

**FRAMEWORK**

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

**TfL 01042**

**APPENDIX F**

**Form of Agreement**

THIS AGREEMENT is made the [ ] day of [ ] 20 [ ]

**BETWEEN:**

- (1) **LONDON UNDERGROUND LIMITED**, registered number 01900907 whose registered office is at address 55 Broadway, London SW1H 0BD (“the *Employer*” which expression shall include its successors in title and assigns); and
- (2) **SIEMENS MOBILITY LIMITED**, registered number 00016033 whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, GU16 8QD (“the *Contractor*” which expression shall include its successors in title and assigns).

**WHEREAS:**

- (A) The *Employer* wishes to have provided ● as more particularly described in the Works Information (“the *works*”) at ●.
- (B) The *Employer* has accepted a tender by the *Contractor* for the design and construction of the *works* and correction of Defects therein in accordance with the *conditions of contract* (as and amended).

**NOW IT IS AGREED THAT:**

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

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

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

The documents forming the contract are:

    this Form of Agreement duly executed by the Parties as a deed and included in section [...] of this contract;

the NEC Engineering and Construction Contract *conditions of contract* Third Edition April 2013 incorporating 2016 amendments core clauses and main and secondary option clauses as amended by the *additional conditions of contract* (Z1 and Z2 clauses) and as shown in the consolidated conditions of contract included in section [ ] of this contract;

Schedules 1 to [...] inclusive to the *conditions of contract* included in section [...] of this contract;

the completed Contract Data Part 1 included in section [...] of this contract;

the completed Contract Data Part 2 included in section [...] of this contract;

the Works Information; and

the Site Information.

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

- |         |   |   |
|---------|---|---|
| First   | : | This Form of Agreement;   |
| Second  | : | The consolidated <i>conditions of contract</i> appended to this Form of Agreement as amended by the <i>additional conditions of contract</i> designated Z1 or Z2. |
| Third   | : | Schedules 1 to [...] inclusive attached to the <i>conditions of contract</i>  |
| Fourth  | : | Contract Data Part 1  |
| Fifth   | : | The Works Information and any other documents supplied by the <i>Employer</i> included in this contract.  |
| Sixth   | : | Contract Data Part 2 (including the <i>Contractor's</i> Works Information); and   |
| Seventh | : | Site Information  |

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

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

Signature of Director/Secretary .....

Print name of Director/Secretary .....

Signature of Director .....

Print name of Director .....

**EXECUTED AS A DEED**  
by **SIEMENS MOBILITY LIMITED**  
acting by:

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....





**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**APPENDIX G**

## **CONTRACT DATA**

### **PART ONE**

## CONTRACT DATA

### Part One – Data provided by the *Employer*

#### Statements given in all contracts

1. General
  - The *conditions of contract* are the core clauses and the clauses for main Option A and secondary Options clauses X1, X2, X3, X4, X5, X6, X7, X12, X15, X16, X17, X18, X20, X21, X23, X25 and Y(UK)2 and Z clauses of the NEC3 Engineering and Construction Contract April 2013 as amended or inserted in each case in accordance with secondary Option Z.
  - The *works* are [Central Line Signal Life Extension.]
  - The *Employer* is  
Name: London Underground Limited  
Address: 55 Broadway, London, SW1H 0BD
  - The *Project Manager* is  
Name:  
Address: Templar House, 81-87 High Holborn,  
London, WC1V 6NU.
  - The *Supervisor* is  
Name:  
Address:
  - The Works Information is in Section [5]
  - The Site Information is in Section [6]

- The *boundaries of the site* are defined by the limits of the land, property and assets in the ownership and/or control of London Underground Limited forming the Central Line from [ to], plus [ ] Depot, , the interface between the [at] and the Signalling Control Centre at [ ].
  - The *language of this contract* is English
  - The *law of the contract* is the law of England and Wales
  - The *period for reply* is 2 weeks
  - The *tribunal* is the courts of England
  - The following matters will be included in the Risk Register:  
[ ]
3. Time
- The *starting date* is:
  - The *Contractor* submits revised programmes at intervals no longer than 4 weeks.
  - The *access date* is the Contract Date
4. Testing and Defects
- The *defects date* is [78 weeks after Completion.]
  - [The *defect correction period* for Critical Defects is 48-hours]
  - [The *defect correction period* for Non-Critical Defects is 4 weeks or such other longer period as the *Project Manager* reasonably instructs.]
5. Payment
- The *currency of this contract* is GBP sterling
  - The *assessment interval* is 4 weeks (not more than five)
  - The *interest rate* is 2 % per annum above the base rate in force from time to time of the Bank of England.

6. Compensation events
- The place where weather is to be recorded is Central London
  - The *weather measurements* to be recorded for each calendar month are
    - the cumulative rainfall (mm)
    - the number of days with rainfall more than 5 mm
    - 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.
    - and these measurements:
  - The *weather measurements* are supplied by Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB. (Tel: 0370 900 0100 Email: [enquiries@metoffice.gov.uk](mailto:enquiries@metoffice.gov.uk))
  - The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at Central London and which are available from Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB.

8. Risks and insurance

**Insurances taken out by the *Employer***

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

**Insurances taken out by the *Contractor***

- **Employer's liability insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of [REDACTED]
- **Contractor's equipment loss insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Professional indemnity insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of [REDACTED] per claim in the annual aggregate.

#### 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* [ ]

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

- The *Contractor* is to submit a first programme for acceptance within 8 weeks of the Contract Date.

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

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51 of the conditions of contract.

**If there are additional *Employer's* risks**

- Asbestos, (either referred to in Site Information or identified during the course of the *works*).

-

**Cover/deductibles for insurances provided by the *Employer***

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

Cover/indemnity is: the full reinstatement value of the *works*

The deductibles are:

- [ ] per occurrence for loss or damage to the *works* caused by defects in design plan specification materials or workmanship (DE5 1995). Such deductible shall only apply in respect of reinstatement or making good of that part which is itself defective;
- [ ] per occurrence in respect of loss or damage to the works caused by defect in design plan specification materials or workmanship (DE3 1995);
- [ ] per occurrence in respect of loss or damage caused by storm, tempest, water damage, subsidence or collapse;
- [ ] every other occurrence.]

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

Cover/indemnity is [ ]

The deductibles are: [ ] per occurrence ]

**If additional insurances are to be provided**

- The *Contractor* provides the insurances in accordance with the Table in clause 84.2

**If the Employer is to provide Plant and Materials**

- The Plant and Materials to be provided is stated in Appendix 12 to the Works Information

**If Option X5 is used**

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

<i>section</i>	<i>description</i>	<i>completion date</i>
----------------	--------------------	------------------------

1

2

**If Option X6 is used**

<i>Section</i>	<i>Description</i>	<i>Date</i>	<i>Amount per day</i>
1			
2			

**If Option X7 is used**

- Delay damages for the *works* are

	<i>description</i>	<i>Amount per day</i>
1	[ ]	[ ]
2	[ ]	[ ]
3	[ ]	[ ]

**If Option X18 is used**

- The *Contractor's* liability pursuant to this Contract for loss of profit, indirect or consequential loss, any loss of use, downtime costs, disruption to operations or increase in operating costs or any form of financial or economic loss shall not exceed [ ] (provided that this does not exclude or limit the *Contractor's* liability to pay liquidated damages under clause Z2.22 or clause X7).
- The *Contractor's* total liability pursuant to this Contract (including any collateral warranty provided by the *Contractor* pursuant to this Contract) shall not exceed [ ].
- For any one event, the *Contractor's* liability pursuant to this Contract for loss of or damage to the *Employer's* property is limited to the reinstatement value, not to exceed [ ]

- The *Contractor's* total liability pursuant to this Contract for delay damages under clause X7 shall not exceed [     ].
- The *Contractor's* total liability pursuant to this Contract for liquidated damages for disruption under clause Z2.22 shall not exceed [     ]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate shall not exceed [     ]
- The *end of liability date* is [12] years after the Completion of the whole of the *works*.

**If Option X21 is used**

- The *Contractor* is only responsible for the accuracy of the following *Employer's* Design Information  
[                     ]
- The *Employer* is responsible for the design and accuracy of all other *Employer's* Design Information

**Option Z**

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section 2 of the contract documents.





**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**APPENDIX H**

## **CONTRACT DATA**

## **PART TWO**

## CONTRACT DATA

### Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is  
  
Name: Siemens Mobility Limited.  
  
Address: Faraday House, Sir William Siemens Square, Frimley,  
Camberley, GU16 8QD. Registered no: 16033, England
- The *direct fee* percentage is [ ]
- The *subcontracted* percentage is [ ]
- The *working* areas are [ ]
- 
- The key people are
  - 1.
  - 2.
  - 3.

4.

5.

- The following matters will be included in the Risk Register  
[ ]

## **Optional Statements**

### **If a programme is to be identified in the Contract Data**

- The Outline Programme identified in the Contract Data is  
[ ]
- The *activity schedule* is:
- The tendered total of the Prices is [£ ]
- Key Subcontractors are [ ]

## DATA FOR SHORTER SCHEDULE OF COSTS COMPONENTS

- The percentage for people overheads is not applicable as this cost is [ ] to the Contract Data Part 2
- The published list of Equipment is the last edition of the list published by [ ]
- The percentage for adjustment for Equipment in the published list is +[ %] (state plus or minus)
- The rates for other Equipment are [ ]
- The hourly rates for Defined Cost of design outside the Working Areas are [ ]
- The percentage for design overheads is [ ]
- The categories of design employees whose travelling expenses to and from the Working Areas are included in the Defined Cost are [ ]

## ADDITIONAL STATEMENTS

[ ]

## **APPENDICES TO THE CONTRACT DATA PART 2**

**[Appendix 1 – Risk Register**

**Appendix 2 – Labour Rates**

**Appendix 3 – Approved Subcontractors**

**Appendix 4 – Activity Schedule ]**





**Siemens Mobility Limited**

# **FRAMEWORK**

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

**TfL 01042**

**APPENDIX I**

**INITIAL CONSULTATION**

## **APPENDIX I**

### **INITIAL CONSULTATION**

1. The Parties acknowledge that consultation in accordance with this Appendix and the Agreement is a vital part of the development of Requests for Tender and any resultant Project Contracts.
2. Within the Initial Consultation phase the Contractor and Employer shall typically arrange and attend three meetings (or as otherwise deemed appropriate), during which key inputs, and where possible draft documentation required for a Request for Quotation r shall be reviewed.
3. The Parties shall make reasonable endeavours to respond to requests for information in a timely basis acknowledging that it is in both parties best interest to work towards adequately defined requirements.
4. The parties acknowledge that the intent of the Initial Consultation process is to confirm that an RFQ contains sufficient detail and clarity so that the proposed scope of works and requirements are adequately defined from a technical, programme and commercial perspective in accordance with the Framework Agreement.



## TEMPLATE

**Call-Off Contract:** To be inserted

**Date:** To be inserted

### FRAMEWORK AGREEMENT

In accordance with the spirit and intent of clause 7.2 of the Framework Agreement, the Parties agree to review the following elements prior to the issuance of a Request for Tender.

Suggested matters to be reviewed as part of the initial consultation phase prior to the formal issuance of a Request for Tender (RfT) by the Employer to the Contractor.	Consultation held (Yes/No/N/a)		
	Kick off Meeting	Progress Update	Final Review
<b>Request for Tender Template – Review Draft</b> <i>Description of the Proposed Works, Conditions of Tendering, Contractors Tender Submission, RFQ documents:</i>			
<ul style="list-style-type: none"> <li>- <b>Schedule 1 – Call-off Conditions</b> <i>Form of Contract ECC main Option A/E, and Secondary Option X clauses.</i></li> </ul>			
<ul style="list-style-type: none"> <li>- <b>Schedule 2 - Works Information - Part B</b> <i>Technical Requirements, Constraints, Performance Demonstrations, Critical Performance Requirements, Core Scope vs. Options, Design Reviews;</i> <i>Works Information Part A references;</i> <i>Access Arrangements –, closures, Trains; Completion –</i> <i>Add:</i> <ul style="list-style-type: none"> <li>- specify Principle Contractor for the worksite</li> <li>- interface partners for planned works</li> <li>- Acceptance Criteria</li> <li>- Employer Provided/Loaned Equipment</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>- <b>Schedule 3 – Programme Requirements</b> <i>Indicative Start Date, Key Dates, Milestones, Dependencies &amp; Constraints;</i> <i>Scheduled Closures, Third Party Approvals;</i> <i>Programme phases,;</i> <i>Add:</i> <ul style="list-style-type: none"> <li>- Access dates</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>- <b>Schedule 4 – Contract Data</b> <i>Project Contract Data Part 1 – Review draft template;</i> <i>Project Contract Data Part 2 – Contractor to submit with tender submission.</i></li> </ul>			
<ul style="list-style-type: none"> <li>- <b>Schedule 5 – Site Information</b> <i>Bookwirings, Design Drawings, Provisional Railway Plan &amp; Network Map, Permanent Way, Track Layout &amp; Track Access Diagrams,</i> <i>Add:</i> <ul style="list-style-type: none"> <li>Site boundaries</li> <li>Parameters of track forming the site</li> </ul> </li> </ul>			
<ul style="list-style-type: none"> <li>- <b>Tendering Period</b> <i>Tender period, Corporate Governance, Target contract award, timescales.</i></li> </ul>			





**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**APPENDIX J**

**Form of Request for Quotation (Template)**



Our Ref:  
Your Ref:

Transport for London  
Department Name  
Address Line 1  
Address Line 2  
Address Line 3  
Address Line 4  
Phone 020 1234 5678  
Fax 020 1234 5678  
tfl.gov.uk

("Contractor")

Date:

Dear Madame or Sir,

**Proposed Project [insert title]**  
**Request for Quotation (Ref No: \_\_\_\_\_)**

Following the initial consultation and in reference to the framework agreement dated \_\_\_\_\_ between London Underground and the Contractor (the "**Framework Agreement**") the Contractor is hereby requested to submit a quotation, in accordance with Clause 7.1, for providing the following Works:

## 1. Proposed Works

- |      |  |   |
|------|--|---|
| i.   | Description of the Project and Works:              | [Employer to insert brief description of the Project and/or Works] as more particularly described in the Works Information (Schedule 2).  |
| ii.  | Date of commencement of the Works and other dates: | Identified in the Contract Data Part One (Schedule 4).  |
| iii. | Call-Off Conditions:                               | Conditions of contract for ECC main Option A/E included in Appendix [ ] of the Framework Agreement as the same shall be amended or supplemented by the <i>additional conditions of contract</i> set out in Schedule 1 and the Project Contract Data (Schedule 4). |
| iv.  | Contract Data Part One:                            | Included in Schedule 4.   |
| v.   | Contract Data Part Two:                            | Included in Schedule 4; to be completed by the Contractor.  |

## **2. Conditions of Quotation**

The following conditions shall apply to this Request for Quotation:

- i. Words and expressions defined in the Framework Agreement, unless defined otherwise, bear the same meanings.
- ii. Clauses and Appendices refer to Clauses and Appendices in the Framework Agreement.
- iii. All communication and queries shall be made in writing, addressed to the Call-Off Employer, and transmitted via the Call-Off Employer's document control either by letter or by email to [email address].
- iv. The quotation shall be submitted to the Call-Off Employer during normal office hours and by no later than \_\_\_\_\_20\_ (the quotation period), subject to any extension accepted in accordance with Clause 7.6 of the Framework Agreement.
- v. The quotation shall remain open for consideration in accordance with Clause 7.14 of the Framework Agreement for a period of 90 days or such other period agreed by the parties from the date of receipt of the quotation.
- vi. The Contractor shall be responsible for all and any of its own (and its Associated Companies') costs, charges and expenses arising from or associated with the quotation and the Call-Off Employer shall not be liable for any such costs, charges or expenses howsoever incurred and irrespective of whether or not the Contractor enters into a Project Contract with the Call-Off Employer provided the Employer formally notifies the Contractor of their intention to proceed or not with the works within the 90 day quotation consideration period, thereafter the Contractor shall be entitled to recover costs that are deemed reasonable expended against the preparation of the quotation.
- vii. The Call-Off Employer shall not be obliged to enter into a Project Contract with the Contractor for whatever reasons.
- viii. Subject to the outcome of any post-quotation negotiations, if the quotation is accepted then the formation of the Project Contract shall be in accordance with the provisions of the Framework Agreement.

## **3. Contractor's Quotation Submission**

The Contractor's quotation submission shall include, as a minimum, the following:

- i. A detailed delivery strategy describing how the Contractor plans to provide the Works within the particular project constraints.
- ii. Contract Data Part Two (data provided by the Contractor) (Schedule 4).
- iii. [The Project QUENSH menu.]
- iv. A draft programme for providing the Works which is capable of being accepted as the first Accepted Programme or which contains as a minimum the requirements set out in Schedule 3 and which is capable of being developed into the first Accepted Programme within [X] weeks of the Contract Date.
- v. A draft resource profile setting out the resources that it is anticipated will be required for Providing the Works.

- vi. *Contractor's organisation chart* as required to be inserted in Contract Data Part Two showing the reporting structure of the key personnel working on the proposed Project. Details of the applicable experience and qualifications of proposed key personnel in the form of curriculum vitae for each key person.
- vii. Not Used.
- viii. A detailed breakdown of the Contractor's [quotation total of the Prices / first forecast of Defined Cost plus Fee] in accordance with Clause 7 of the Framework Agreement in the form set out in Schedule 6 of this Request for Quotation.
- ix. All necessary information to support the detailed breakdown described in sub-clause 3(viii), including a risk register detailing risks considered and allowances allocated to those risks and included within the [quotation total of the Price / first forecast of Defined Cost plus Fee].
- x. A forecast cashflow based on the Contractor's [quotation total of the Prices / first forecast of Defined Cost plus Fee] and the Contractor's proposed programme provided under sub-clause 3(iv) above.
- xi. Proposed Activity Schedule (when ECC main Option A is being used).
- xii. A preliminary list of Subcontractors proposed for providing any part of the Works comprising the company name, registered address, company registration number and proposed scope for each subcontract. For the avoidance of doubt the Contractor is to confirm he has given full consideration in the Contractor's quotation to the obligation to provide the Subcontractor documents required under clause 26 of the Call-Off Conditions.

Yours faithfully

[name]

For and on behalf of [TfL] ("Call-Off Employer")

Direct Line: [ ]

E-mail: [ ]

**Attachments [as required including]**

1. Call-Off Conditions
2. Works Information
3. Initial Programme Minimum Requirements
4. Contract Data
5. Site Information
6. Form of Quotation

## **1. – Call-Off Conditions**

**[Call-Off Employer to insert Call-Off Conditions for this Project with all proposed amendments, Secondary Options and *additional conditions of contract*]**

## 2. - Works Information



### 3. – Initial Programme Minimum Requirements

- The *starting date*, Key Dates and Completion Date(s);
- **Scheduled Closures**;
- planned Completion;
- the order and timing of:
  - key phases for Providing the Works (including, if applicable, plans for submission of design, procurement, development, installation, testing and commissioning),
  - all milestones as described in the Works Information, and
  - *Employer* and third-party dependencies and constraints as described in the Works Information,
- the dates when the *Contractor* plans to meet each Condition stated for the Key Dates,
- details of key third party approval submissions and related approvals, allowing sufficient time for each stage of the process and also allowance for resubmission;
- other key information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.

Words and expressions used in this Schedule 3 are as defined in the Call-Off Conditions at Schedule 1 of this Request for Quotation.

#### **4. - Contract Data**

**[Call-Off Employer to complete and insert Project Contract Data Part One]**

**[Insert Contract Data Part Two (template) as at Framework Agreement Appendix F]**

## **5. – Site Information**

**[Call-Off Employer to insert Site Information]**

## 6. FORM OF QUOTATION

I confirm and accept that:

1. The information provided in the Quotation document [ref; ] under Framework Agreement in support of Siemens and Predecessor systems on the London Underground Network was prepared by Transport for London ("TfL") in good faith. It does not purport to be comprehensive or to have been independently verified. Neither TfL nor any member of the TfL group company has any liability or responsibility for the adequacy, accuracy, or completeness of, and makes no representation or warranty, express or implied, with respect to, the information contained in the Invitation to Tender document or on which such documents are based or with respect to any written or oral information made or to be made available to any interested Supplier or its professional advisers, and any liability therefore is excluded.
2. Nothing in the Initial Consultation Process or provided subsequently has been relied on as a promise or representation as to the future. TfL has the right, without prior notice, to change the procedure for the competition or to terminate discussions and the delivery of information at any time before the signing of any agreement.
3. TfL reserves the right (on behalf of itself and its group companies) to award the contract for which quotations are being invited in whole, in part or not at all.
4. This quotation shall remain open for acceptance by TfL and will not be withdrawn by us for a period of [insert date, i.e. 3 months] from the date fixed for return.
5. The information provided by us is true and accurate.

Having made due allowances for the full requirement in the ITT documents we hereby offer to provide the Works / Goods / Services [delete as appropriate] to TfL (or any member of the TfL group) in accordance with the terms and conditions stated therein for either:

[amend the below as appropriate]

a) \* The total firm price of:

£ \_\_\_\_\_ in words

\_\_\_\_\_

As detailed in the schedule of Charges, or

b) \* At the rates detailed in the schedule of Charges.

**\*delete as applicable**

Note, by completing box 1 you agree to our terms and conditions of contract. If you do not wish to accept these conditions you should complete box 2. You should submit your quote clearly detailing your reasons for non-acceptance. If we offer a contract in the belief that your quote is compliant and you then attempt to negotiate alternative conditions we WILL withdraw our offer.

1.	I agree to accept the Conditions of Contract attached to the Request for Quotation.	
Name		Date
Signed		

Or

I wish to submit a quote but I am unable to accept your conditions of contract and I have made an alternative proposal based on the revisions noted herewith. In doing so I am aware that it could prejudice the outcome of the quotation award analysis.

2.	I <b>DO NOT</b> agree to accept the Conditions of Contract attached to the Request for Quotation.	
Name		Date
Signed		

**Please complete the following**

Position	For and on behalf of (company name)	
Telephone		E.Mail
TfL Reference No		



**Siemens Mobility Limited**

## **FRAMEWORK**

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

**TfL 01042**

**APPENDIX K**

**Redaction Reference Template**

## REDACTION REFERENCE TEMPLATE

Contract Title	Framework Agreement in support of Siemens and Predecessor systems on the LU Network		
Contract Reference Number	TfL 01042		
Awarded Date	August 2018		
Supplier	Siemens Mobility Limited		
Commercial Contact Name	David Demmer	Telephone	07767 381750

Page / Clause / Section Number		Redaction Parameters						Explanatory Note
		Adverse effect on security for People, Infrastructure or Health & Safety	Personal Information	Adverse effects on TIL Commercial interests	Mutually agreed Trade Secrets / Intellectual Property	Confidential Information provided by the Supplier	Information that increases the risk of fraud / criminal behaviour	
1	Framework Agreement Appendix 1: Patent Company Guarantee					Y	Y	Open publication of PCGs increases the volume and risk of fraudulent claims
2	Framework Agreement Appendix 1: Legal Opinion Template					Y	Y	Confidential legal opinion provided directly to LUL. Waiver of legal privilege
3	Framework Agreement Appendix 1: Clause 3 Contractor's Quotation Submission	Y		Y	Y	Y		The following sections of each response to a Contractor's Quotation Submission 3: detailed delivery strategy (Trade secrets and confidential information) 3 iv. Contractor's Organisation Chart (Security risk and Personal information) 3 vi. Detailed breakdown of price (Anti-competitive, Trade Secrets and Confidential) 3 vi. Information to support detailed breakdown (Anti-competitive, Trade Secrets and Confidential) x. Forecast cashflow (Anti-competitive and Confidential) and 3 vi. preliminary list of Sub-Contractors (Anti-competitive and Confidential)
4	Clause 5 Payment: Any record made available pursuant to payment terms in Options A and E Details of materials and third party quotations made available subject to payment and audit provisions in Options A and E Payment applications and invoices raised by Contractor		Y	Y		Y		Personal Data  Release of commercially sensitive information between Contractor and third parties  Release of Contractor's pricing breakdowns associated with each milestone or activity services and unit rates
5	Contract Data Part One Contractor's Contact for Notification		Y					Personal Data
6	Contract Data Part One Option X7: LO Rates			Y		Y		Changes to standard terms and liability caps would set an unwelcome precedent
7	Contract Data Part Two Option X18: Liability Caps			Y		Y		Changes to standard terms and liability caps would set an unwelcome precedent
8	Contract Data Part Two Fee Percentages			Y	Y	Y		Anti-competitive and highly sensitive pricing information
9	Contract Data Part Two Name of Key People		Y				Y	Personal Data: Increased social engineering/ cyber security risks
10	Contract Data Part Two Data for Shorter Schedule of Cost Components			Y	Y	Y		Anti-competitive and highly sensitive pricing information
11	Appendices to Contract Data Part Two Risk Register and Labour Rates			Y	Y	Y		Anti-competitive and highly sensitive pricing information
12	Key Person Succession Plan - if submitted under X 23		Y		Y			Key Person succession plan would include large elements of personal data and also reveal highly confidential processes and stock-market sensitive information
13	Subcontractor Exclusion Agreements - if required under X25.3	Y			Y	Y	Y	Naming and identifying products of software development partners/ applications would increase cyber security risks. Information also subject to third party confidentiality obligations
14	Schedules to the Contract Conditions Schedule 2: Form of PCG					Y	Y	Open publication of PCGs increases the volume and risk of fraudulent claims
15	Schedules to the Contract Conditions Schedule 3: Legal Opinion					Y	Y	Confidential legal opinion provided directly to LUL. Waiver of legal privilege
16	Schedules to the Contract Conditions Schedule 9: Disruption Damages			Y	Y	Y		Changes to standard terms and liability caps would set an unwelcome precedent
17	Framework and Contract Project Organisation charts: personnel contact details: CVs: medical records and personnel specific welfare information		Y			Y	Y	Personal Data: Increased social engineering/ cyber security risks
18	Notices and Communications relating to claims and Compensation Events *			Y	Y	Y		Notices and related correspondence will contain highly sensitive pricing information and may contain technical or process information containing trade secrets. General description of Compensation Event and finally determined price impact is agreed as not commercially sensitive
19	Outline Programme and the Accepted Programme				Y	Y		Contains confidential information and trade secrets relating to working methodologies. High level programme information (Key Dates and Completion Dates) are agreed as not commercially sensitive
20	Product Lists and Unit Pricing *				Y	Y		Cyber security and theft risk. Trade Secrets (product make-up and component levels)
21	Subcontractor Lists and Names		Y		Y	Y		Confidential information: subject to third party obligations of confidentiality
22	Approval Cycle Diagrams & Timescales				Y	Y		Highly sensitive commercial information and trade secrets regarding assurance processes R&D procedures and development timescales
23	QUENSH Requirements & Information Personnel Contact Details		Y			Y		Personal Data: Increased social engineering/ cyber security risks
24	Works Information Conceptual Design Statement				Y	Y		Contains confidential information and trade secrets relating to working methodologies

On 11/11/2011

Only actual information supplied by Contractor is confidential. Generic template does not need to be redacted.



REDACTION PARAMETERS		
Redaction Parameter Headings	Details	Normal Exemption Justification
<b>Adverse affect on security for People, Infrastructure or Health &amp; Safety</b>	Detailed operational information that would, or would be likely to, adversely affect the security of people and infrastructure (including physical and information assets) or health and safety. Examples of these would be detailed track diagrams or plans, details of infrastructure layout or design, details of the design of CCTV or IT networks and systems, detailed contingency plans (eg for station or building evacuation or business continuity)	This information would ordinarily be exempt from disclosure under sections 24, 31 or 38 of the FOI Act.
<b>Personal Information</b>	For example, signatures, phone numbers, individual's personal and professional qualifications and CVs ( <u>not</u> normally names or job titles)	This would ordinarily be exempt under section 40 of the FOI Act.
<b>Adverse effects on TfL Commercial Interests</b>	Limited information that would, or would be likely to, harm our own commercial interests. Examples of these would be changes to our standard terms which would set an unwelcome precedent if disclosed, for instance in the area of indemnities or liability caps	This would ordinarily be exempt under section 43 of the FOI Act.
<b>Mutually agreed Trade Secrets / Intellectual Property</b>	Information which the supplier identifies (with our agreement) as a trade secret or its intellectual property	This would be exempt under section 43 of the FOI Act.
<b>Confidential Information provided by the Supplier</b>	Information which the supplier identifies as provided to us in confidence, and which would expose us to a risk of legal action for breach of confidence if it was published. There would probably be an overlap with the category above	This would ordinarily be exempt under section 41 of the FOI Act.
<b>Information that increases the risk of fraud / criminal behaviours</b>	Information which would, or would be likely to, increase the risk of TfL or others being a victim of fraud or other criminal behaviour. Examples of this would be detailed information about our payment processes, ticketing systems and fraud prevention measures	This would ordinarily be exempt under section 31 of the FOI Act.

