



An nec3 engineering and construction contract

For

Embedded Track Renewal Framework

LTC-21-415

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SECTION 1



SECTION 1

FORM OF AGREEMENT

LTC-21-415

FORM OF AGREEMENT

THIS CONTRACT AGREEMENT is made the 23rd day of September 2022

BETWEEN

1. **Tramtrack Croydon Ltd (Registered number 3092613) of 5 Endeavour Square, London, United Kingdom E20 1JN** trading as London Trams (hereinafter called "*the Employer*") which expression shall include its successors in title and permitted assignees, and
2. **VolkerRail Specialist Businesses Ltd**, a company incorporated in and in accordance with the laws of **ENGLAND AND WALES** having as its registered number **4197945** and its registered office at **Hertford Road, Hoddesdon, Hertfordshire, EN11 9BX** (hereinafter called "*the Contractor*").

RECITALS

- (A) The *Employer* wishes to appoint the *Term Contractor* to carry out works and services on a call off basis under work packages being the provision of civil and building works as instructed on the tram network for which the *Employer* has submitted to the *Contractor* his invitation to tender.
- (B) The *Contractor* has submitted his tender offer dated **22nd April 2022** in response to the *Employer's* invitation to tender. The *Employer* has examined the *Contractor's* said tender and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *works* in accordance with this contract.

OPERATIVE PROVISIONS

1. In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the nec3 Framework Contract together with and as amended by Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, Y(UK)2 and Z (being the amendments set out in Schedule 1).
3. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract
 - 3.1 the *conditions of contract* (including, for the avoidance of doubt, the Option Z clauses set out in Schedule 1 to this document, Schedule 2 the insurance table, Schedule 3 framework rates, Schedule 4 framework risk register, Schedule 5 payment and liquidated damages and Schedule 6 framework information).
 - 3.2 the Contract Data Part One,
 - 3.3 the Contract Data Part Two,
 - 3.4 the Works Information,
 - 3.5 the Site Information,

4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Contract Agreement.
5. The *Contractor* Provides the Works in accordance with this contract.
6. The *Employer* pays the *Contractor* for complying with his obligations to Provide the Works the amount due in accordance with this contract.

This Contract has been signed by for and on behalf of the parties on the day and year written at the start of this Contract Agreement

Signed:

for and on behalf of the Contractor
VolkerRail Specialist Businesses Ltd

Print Name

Position of Authorised Signatory

Signed:

for and on behalf of the Employer
Tramtrack Croydon Limited

Print Name

Position of Authorised Signatory

SECTION 2



SECTION 2

CONTRACT DATA SHEETS

LTC-21-415

CONTRACT DATA

Part one – Data provided by the *Employer*

The Data which will apply to all work under the Framework Contract is

- The conditions of this contract are the clauses of the NEC3 Framework Contract (June 2005).
- The *Employer* is
Name:
Tramtrack Croydon Limited
Registered Address:
5 Endeavour Square, London E20 1JN
- The Framework Information is in:
Section 6 – Framework Information and Quotation Procedure
- The *scope* is in:
Section 6 – Framework Information and Quotation Procedure
- The *selection procedure* is in:
Section 6 – Framework Information and Quotation Procedure
- The *quotation procedure* is in:
Section 6 – Framework Information and Quotation Procedure
- The *end date* is:
11 August 2025 or as extended by up to 24 months by agreement of both parties.

The Data which will apply to all Time Charge Orders is

Statements given in all contracts

- | | |
|-----------|--|
| 1 General | <ul style="list-style-type: none"> • The <i>conditions of contract</i> are the core clauses and the clauses for main Option E, dispute resolution Option W2 and secondary Options X15, X18 and Z of the NEC3 Engineering and Construction Contract (June 2005 with amendments June 2006) • The <i>works</i> are |
|-----------|--|

As outlined in the call-off contracts

- The *Employer* is

Name **Tram Track Croydon Limited**

Address **5 Endeavour Square, London E20 1JN**

- The *Project Manager*¹ is

Name



Address **Floor 11, Knollys House, 17 Addiscombe Road, Croydon CR0 6SA**

- The *Supervisor* is

Name **London Trams Engineering**

Address **Floor 11, Knollys House, 17 Addiscombe Road, Croydon CR0 6SA**

- The *Principal Contractor* is

Name As stated in the individual call-off contracts

Address

- The *Principal Designer* is

Name As stated in the individual call-off contracts

Address

- The *Adjudicator* is an independent person appointed

to act as an adjudicator in accordance with

clause W2.2²

- The Works Information is in

The Individual call-off contract

- The Site Information is in

The Individual call-off contract

- The *boundaries of the site* are The Individual call-off contract

- The *language of this contract* is **English**

- The *period for reply* is **2** Weeks or **12**
(Twelve) hours
during a site closure
project

- The *Adjudicator nominating body* is the President or
Vice President or other duly authorised officer of the
London Court of International Arbitration

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

- The following matters will be included in the Risk Register

The Individual call-off contract

2 Time

- The *starting date* The Individual call-off contract is

- The *Contractor* submits revised programmes at intervals

no longer than **4** weeks and **not more than 12 hours** during a site closure project.

4 Testing and Defects • The *defects date* is **52** weeks after Completion of the whole of the *works*

• The *defect correction period* is **4** weeks except that

5 Payment • The *currency of this contract* is the **pounds.sterling.(£)**

• The *assessment interval* is **4** weeks

• The *interest rate* is **2%** per annum above the base rate of the Bank of England.

• The *Contractor* submits invoices electronically to [REDACTED] and such invoices contain the following information:

i) Purchase Order

ii) The Contract Number reference

iii) The name of the London Trams contact administering the specific work package.

Clause 50.8A The *Employer* is an End User for the purposes of this contract³

6 Compensation events • The place where weather is to be recorded is⁴

As stated in the individual call-off contract

• The *weather measurements* to be recorded for each calendar month are

• the cumulative rainfall (mm)

• the number of days with rainfall more than 5mm

• the number of days with minimum air temperature less than 0 degrees Celsius

• the number of days with snow lying at hours GMT

• and these measurements

- The *weather measurements* are supplied by:
As stated in the individual call-off contract
 - The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at and which are available from
-

Where no recorded data are available

- Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are

Optional statements

If no programme is identified in part two of the Contract Data

- The *Contractor* is to submit a first programme for acceptance within 2 weeks of the Contract Date

If Option C, D, E or F is used

- The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than 4 weeks.

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to 40% of the total of the Prices
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to £2million
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to the total of the Prices
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to 100% of the total of the Prices
- The end of liability date is 6 years after the

Completion of the whole of the *works*

- **If Option Z is used**

- The *additional conditions of contract* are those set out in Schedule 1 to the Contract Agreement⁵

The Data which will apply to all Package Orders is

CONTRACT DATA

Part one - Data provided by the *Employer*

**Statements given
in all contracts**

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X5, X7, X15, X16, X17, X18, X20 and Z of the NEC3 Engineering and Construction Contract (June 2005 with amendments June 2006)

- The *works* are

As stated in the individual call-off contract

- The *Employer* is

Name **Tramtrack Croydon Limited**

Address **5 Endeavour Square, London E20 1JN**

- The *Project Manager*⁶ is

Name



Address **Floor 11, Knollys House, 17 Addiscombe road, Croydon CRO 6SA**

- The *Supervisor* is

Name **London Trams Engineering**

Address **Floor 11, Knollys House, 17 Addiscombe road, Croydon CRO 6SA**

- The *Principal Contractor* is

Name As stated in the individual call-off contract

Address

- The *Principal Designer* is

Name As stated in the individual call-off contract

Address

- The *Adjudicator* is an independent person appointed
to act as an adjudicator in accordance with
clause W2.2⁷

- The Works Information is in

As stated in the individual call-off contract

- The Site Information is in

As stated in the individual call-off contract

- The *boundaries of the site* are As stated in the individual
call-off contract

- The *language of this contract* is English

- The *period for reply* is **2** weeks or **12**
(Twelve) hours
during a site closure
project

- The *Adjudicator nominating body* is the President or
Vice President or other duly authorised officer of the
London Court of International Arbitration

-
- The *tribunal* is The courts of England and Wales
-
- The following matters will be included in the Risk Register
As stated in the individual call-off contract
-
-
- 2 Time
- The *starting date* is As stated in the individual call-off contract
 - The *access dates* are:
As stated in the individual call-off contract
 - The *Contractor* submits revised programmes at intervals no longer than **4 weeks** or **no more than 12 hours during a site closure project**.
- 4 Testing and Defects
- The *defects date* is **52** weeks after Completion of the whole of the *works*
 - The *defect correction period* is **4** weeks except when agreed otherwise with the Project Manager.
- 5 Payment
- The *currency of this contract* is the **pounds sterling.(£)**
 - The *assessment interval* is **4** weeks
 - The *interest rate* is **2%** per annum above the base rate of the Bank of England.
 - The *Contractor* submits invoices electronically to [REDACTED] and such invoices contain the following information:
 - i) Purchase Order
 - ii) The Contract Number reference
 - iii) The name of the London Trams contact administrating the specific work package
- Clause 50.8A
- The *Employer* is an End User for the purposes of this contract⁸

6 Compensation
events

- The place where weather is to be recorded is⁹

As stated in the individual call-off contract

- The *weather measurements* to be recorded for each calendar month are
 - the cumulative rainfall (mm)
 - the number of days with rainfall more than 5mm
 - the number of days with minimum air temperature less than 0 degrees Celsius
 - the number of days with snow lying at hours GMT
 - and these measurements

As stated in the individual call-off contract

- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at and which are available from

Where no recorded data are available

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are:

As stated in the individual call-off contract

**Optional
statements**

**If no programme is identified in part two of the
Contract Data**

- The *Contractor* is to submit a first programme for acceptance within **2** weeks of the Contract Date

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

- Delay damages for Completion of the whole of the *works* are as detailed in the individual call-off contract. Each specific work package is capped at [REDACTED] of the value of the specific work package.

If Option X16 is used

- The *retention free amount* is [REDACTED]
- The *retention percentage* is [REDACTED]

If Option X17 is used

If Option X17 is used

TfL requires the new asset installed by the contractor to have the expected asset life as stated in the work information. When a defect on the Defects Certificate cannot be rectified without the removal and full reinstatement of the same asset, the contractor notifies the project manager of this event, and only if the Contractor decides not to carry out the replacement.

The assessment of the loss of asset life is undertaken by the project manager and the basis of the assessment will be provided to the Contractor. Any loss of asset life less than 6 months in total is not considered under this provision.

The amounts for low performance damages are

Amount	Performance level
The total of the prices divided by the total number of months of expected asset life multiplied by the number of months	The number of months of asset life lost through the acceptance of the defect in the works compared to the expected asset life as stated in the works information.

lost of asset
life

..... for

...

..... for

...

..... for

...

Low Performance Damages (LPD) Variables (Calculation)

Price per metre installed = Total of the
Contract Prices at Completion.
number of metres in scope Total

Assessed % Life Reduction = Loss of
years of asset life
Total years of
expected asset life

Affected area meterage

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to 40% of the total of the Prices .
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to £2million
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to the total of the Prices of each
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to 100% of the total of the Prices

- The end of liability date is 6 years after the Completion of the whole of the *works*

If Option X20 is used (but not if Option X12 is also used)

- The *incentive schedule* for Key Performance Indicators is in **Each individual call off contract**.
- A report of performance against each Key Performance Indicator is provided at intervals of months

If Option Z is used

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

Part two – Data provided by the *Supplier*

The Data which will apply to all Option E work under the Framework Contract is

- The *Supplier* is

Name

Address

.....

- The *quotation information* is in

The Data which will apply to all Time Charge Orders is

Statements given in contracts

- The *Contractor* is

Name VolkerRail Specialist Businesses Ltd

Address Eagre House, J3 Business Park, Carr Hill, Balby,
Doncaster, DN4 8DE

• •

- The *direct fee percentage* is

- The *subcontracted fee percentage* is

- The *working areas* are the Site and VolkerRail Eagre House Doncaster DN4 8DE, VolkerRail Plant (Storage Area) Scunthorpe DN15 6UW, Trelleborg pre-coating factory and any other areas to be determined on a work package, by work package basis

- The key people are

(1) Name

Job

Responsibilities Overseeing the daily business activities
and the overall project

Qualifications

Experience

(2) Name

Job

Responsibilities To control and supervise, along with the team, all technical and engineering aspects of the works being carried out on site, ensuring compliance with all relevant standards

Qualifications

Experience

-
- Other Key People to be determined on a work package, by work package basis

- The following matters will be included in the Risk Register on a work package, by work package basis
-

- • TBA
-

- •
-

- •
-

- •
-

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

- **If Option E is used**

- The percentage for people overheads is [REDACTED] when used in conjunction with the provided Schedule of Rates

- The published list of Equipment is the last edition of the list published by CECA

- The percentage for adjustment for Equipment in the published list is [REDACTED] (state plus or minus).

Rates for other equipment to be agreed as required

The Data which will apply to all Option A Package Orders is

Statements given in contracts

- The *Contractor* is

Name VolkerRail Specialist Businesses Ltd

Address Eagre House, J3 Business Park, Carr Hill, Balby,
Doncaster, DN4 8DE

- The *direct fee percentage* is [REDACTED]
- The *subcontracted fee percentage* is [REDACTED]
- The *working areas* are the Site and, VolkerRail Eagre House Doncaster DN4 8DE, VolkerRail Plant (Storage Area) Scunthorpe DN15 6UW, Trelleborg pre-coating factory and any other areas to be determined on a work package, by work package basis
- The key people are

(1) Name

Job

Responsibilities Overseeing the daily business activities
and the overall project

Qualifications

Experience

(2) Name

Job

Responsibilities To control and supervise, along with the team, all technical and engineering aspects of the works being carried out on site, ensuring compliance with all relevant standards

Qualifications



Experience



- Other Key People to be determined on a work package, by work package basis

-
- The following matters will be included in the Risk Register on a work package, by work package basis

TBA

Optional statements If the *Contractor* is to provide Works Information for his design

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

TBA

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is in TBA

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

- The completion date for the whole of the works is TBA

If Option A or C is used

- The activity schedule is TBA

If Option A, B, C or D is used

- The tendered total of the Prices is TBA

If Option A or B is used

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

- The percentage for people overheads is [REDACTED] when used in conjunction with the provided Schedule of Rates
- The published list of Equipment is the last edition of the list published by CECA

- The percentage for adjustment for Equipment in the published list is [REDACTED] (state plus or minus)
- The rates for other Equipment are

Equipment	size or capacity	rate
TBA
.....
.....

Rates for other equipment
to be agreed as required

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
TBA
.....
.....

- The percentage for designed overheads is
TBA
- The categories of designed employees whose travelling expenses to and from the Working Areas are included in Defined Cost are
TBA

The Data which will apply to all Contract Package Orders is:

The percentage for overheads and profit added to the Defined Cost for people is



The percentage for overheads and profit added to other Defined Cost is



SECTION 3



SECTION 3

SCHEDULE 1

TfL amendments to nec3 Option A, Option E and additional 'Z'
clauses

LTC-21-415

TRANSPORT FOR LONDON

STANDARD AMENDMENTS TO

NEC 3RD EDITION FORM OF CONTRACT

OPTION A

Version 15: 26 February 2021

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TfL RESTRICTED

SCHEDULE 1 - THE "Z" CLAUSES

Z1 Amendments to Core clauses and Main Option clauses

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

- Clause 11.2(1) At the end insert: "Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Works Information".
- Clause 11.2(4) Delete and substitute:

"The Contract Date is the date of the Contract Agreement."
- Clause 11.2(5) At the end of first bullet point insert: "the *Contractor's* obligations under this contract or".

In the second bullet point after "the applicable law" insert the words "or all applicable licences and approvals".
- Clause 11.2(11) After *Employer* insert "(which expression includes its successors in title and permitted assigns)".
- Clause 11.2(17) In the first sentence, after "organisation" insert "including, without limitation any sub-consultant"

In the first bullet point, after "install" insert "or design".
- Clause 11.2(19) In the first line delete the word "either".

In the first bullet point after *works* delete "or" and insert "and/or".
- Clause 11.2 Insert the following new definitions
- "(34) Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause 22.1.
- (35) CDM Regulations are the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and related code of practice together with any requirements issued from time to time by the Health and Safety Executive.
- (36) Cessation Plan means a plan agreed between the Parties or determined by the *Employer* pursuant to:

- clause 94 to give effect to a Declaration of Ineffectiveness, or
- clause 95 to give effect to a Public Procurement Termination Event.

(37) Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme Regulations 2005/2045.

(38) The Contract Agreement is the document executed by the *Employer* and the *Contractor* under which the *Contractor* has agreed to Provide the Works.

(39) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to this contract) and (ii) data extracted from invoices submitted by the *Contractor* which consists 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.

(40) Data Controller has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Controller.

(41) Data Processor has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Processor".

(42) Data Protection Impact Assessment means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.

(43) 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 but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- from 25 May 2018 only, the General Data Protection Regulation;
- any other legislation in force from time to time in the United

Kingdom relating to privacy and/or the Processing of Personal Data; and

- any statutory codes of practice issued by the Information Commissioner in relation to such legislation.

- (44) Data Subject means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.
- (45) Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a) of the Utilities Contracts Regulations 2016 (as amended).
- (46) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.
- (46A) End User has the meaning given to it in Article 2 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.
- (47) General Data Protection Regulation means the 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.
- (48) Employer Data means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.
- (49) Employer Personal Data means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor and Indirect Subcontractor) on behalf of the *Employer*, pursuant to or in connection with this contract as set out in the Processing Statement.
- (50) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as

defined by Section 1124 of the Corporation Tax Act 2010.

- (51) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works*.
- (52) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an arrangement with his creditor.
- (53) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any 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.
- (54) 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.
- (55) Prevention Event has the meaning ascribed to that term in clause 19.1.
- (56) Personal Data has the meaning given to it in the Data Protection

Legislation.

- (57) Processing has the meaning given to it in the Data Protection Legislation.
- (58) Processing Statement is in the form set out in Appendix 5 of this contract.
- (59) Restricted Countries means any country outside the European Economic Area as may be constituted from time to time or the UK.
- (59A) Reverse Charge Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892.
- (60) Senior Representative means a representative of a Party at senior executive level.
- (61) Sensitive Personal Data means sensitive or special categories of Personal Data including criminal allegations, offences and outcomes data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this contract.
- (61A) Standard on Electronic Invoicing means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- (62) A Statutory Requirement is
- any Act of Parliament
 - any instrument, rule or order made under any Act of Parliament
 - any regulation or bylaw of any local authority or of any Statutory Undertaker which has any 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 on which the *works* are to be provided (including, without limitation, any planning permission).
- (63) Statutory Undertaker means any governmental or local authority or statutory undertaker
- which has any jurisdiction with regard to the *works* including

without limitation any jurisdiction to control development of the site or any part of it

- with whose requirements the *Employer* is required to comply or

with whose systems and/or utilities the *works* will be associated.

(64) Subject Access Request means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

(65) TfL Group means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.

(66) TfL Premises are any premises owned, leased or under the control of any member of the TfL Group.

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

(67A) VATA means the Value Added Tax Act 1994.

(68) The Workplace Policy is the *Employer's* "Workplace Harassment Policy", as updated from time to time, copies of which are available on request from the *Employer*."

(69) Coronavirus Closure has the meaning given to it in clause 60.1(21).

(70) Coronavirus Pandemic means the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) pandemic designated as such by the World Health Organization on 11 March 2020 and which causes the disease known as "COVID-19".

(71) Coronavirus Pandemic Event means any of the events described in clause 60.1(20), 60.1(21) and 60.1(22).

Clause 12.2 Delete the current wording in clause 12.2 and replace with "This contract is governed by English law and the parties submit to the

non-exclusive jurisdiction of the English Courts.”

Clause 12.4

Delete the existing wording and replace with

“12.4

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

Clause 12.5

Insert a new clause:

“12.5

Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled.”

Clause 12.6

Insert a new clause:

“12.6

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

Clause 12.7

Insert a new clause:

“12.7

“If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect. In the event that in the *Employer’s* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the *Employer* and the *Contractor* immediately commence good faith negotiations to remedy such invalidity.”

Clause 12.8

Insert a new clause:

"12.8	The headings to the sections, clauses and sub-clauses of these <i>conditions of contract</i> are for convenience only and do not affect their construction or interpretation."
Clause 12.9	Insert a new clause:
"12.9	<p>A reference in these <i>conditions of contract</i> to any applicable law or Statutory Requirement includes</p> <ul style="list-style-type: none"> • that law or Statutory Requirement as from time to time amended, re-enacted or substituted and • any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement."
Clause 12.10	Insert a new clause
"12.10	Notwithstanding the Contract Date, the conditions of this contract cover all work carried out by the <i>Contractor</i> from the date when he first commenced performance of the <i>works</i> and this contract and the warranties and undertakings in this contract are deemed to apply to all work performed by the <i>Contractor</i> both before and after the Contract Date."
Clause 12.11	Insert a new clause:
"12.11	Failure by the <i>Employer</i> to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the <i>Contractor</i> from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement."
[Clause 13.1	In line 3 after "recorded" insert "or is available for access on a nominated hosted web server and/or nominated file transfer platform as set out in the Works Information (save in the case of the notification of a dispute which shall be notified in hard copy only)".
Clause 13.2	At the end insert: "Alternatively, an electronic communication has effect when it is posted on a nominated hosted web service and/or nominated file transfer platform as set out in the Works Information. Communications relating to the notification of a dispute shall have no effect under this contract unless served in hard copy."]
Clause 13.3	At the end insert:

"Where the *period for reply* includes Christmas Day, Good Friday or a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded for the purpose of calculating the period."

Clause 14.1

Delete and substitute:

"14.1

No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer*, the *Project Manager* or the *Supervisor*, nor any enquiry or inspection which the *Employer*, the *Project Manager* or the *Supervisor* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Contractor's* duties and obligations under this contract unless it is in writing from the *Employer*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified."

Clause 16.2

Delete "Either the *Project Manager* or the *Contractor* may instruct the other" and substitute "*The Project Manager* may instruct the *Contractor* or the *Contractor* may request the *Project Manager* (such request not to be unreasonably refused)"

Clause 16.4

Add at the end of the clause:

"For the avoidance of doubt, revisions to the Risk Register do not give rise to a compensation event and merely reflect the decisions reached at the risk reduction meeting. The *Contractor's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 to 65".

Clause 17.2

Insert a new clause:

"17.2

There is no addition to the Prices, any change to any Key Date or the Completion Date arising from any such ambiguity or inconsistency where the *Project Manager* decides that the ambiguity or inconsistency in question is one arising from a document which the *Contractor* prepared or is responsible for. The *Project Manager* notifies the *Contractor* of this decision."

Clause 17.3

Insert a new clause:

"17.3

Where there is a discrepancy or conflict between or within the documents forming this contract, the provisions of the *conditions of contract* prevail over all other documents and the Z clauses prevail

over all other parts of the *conditions of contract*."

Clause 17.4

Insert a new clause:

"17.4

The *Contractor* accepts entire responsibility for the *Contractor's* design and for any mistake, inaccuracy, discrepancy or omission contained in the same".

Clause 18.1

After "impossible" insert "or to carry out works which if completed in accordance with this contract will result in the *works* not being in accordance with the Statutory Requirements".

Clause 19.1

Insert after "and which" in the second paragraph:

"is not

- a shortage of staff whether caused by local market fluctuations or otherwise
- an event of Insolvency of the *Contractor* or any Subcontractor, Indirect Subcontractor or supplier or
- an event attributable to any negligence, omission or default of the *Contractor* or any of his employees or agents or any Subcontractor or Indirect Subcontractor or any of their employees or agents

and which"

and after the fourth bullet point insert:

"and

- the *Contractor* can demonstrate that he did not allow for it in his tender then this is a "Prevention Event" and"

Clause 20.1

At the end insert: "and the Statutory Requirements, and the *Contractor* ensures that the *works* will, when completed, comply with the Works Information and satisfy any requirement identified in the Works Information and this contract."

Clause 20.6

Insert a new clause:

"20.6

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

- he has examined the Works Information and all other documents forming this contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of his work in accordance with this contract,
- he has all the resources including financial, technical and human resources as are required to carry out and complete his work in accordance with this contract,
- his work and those parts of the *works* for which the *Contractor* is responsible will be designed and specified using the best modern engineering principles and practices at the time of preparing the design and in accordance with good industry practice, and
- the proceeds of a claim made in connection with this contract under insurance taken out by the *Contractor* pursuant to clause 81 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose."

Clause 21.1

Insert at the end of the clause: "The *Contractor* integrates and coordinates his design (if any) with the designs of Others and in accordance with the Works Information and the instructions of the *Project Manager*."

Clause 21.2

Delete the second sentence and replace with "Reasons for not accepting the *Contractor's* design are that

- it does not comply with the Works Information, applicable law or Statutory Requirements,
- it is not integrated and coordinated with the designs of Others where the *Contractor* is required by the Works Information or the instructions of the *Employer* to integrate and/or coordinate his design with the designs of Others or such integration is necessary for the *Contractor* to Provide the Works,
- it does not comply with this contract."

Clause 21.4

Insert new clauses

"21.4

- (1) The *Contractor* warrants to the *Employer* that insofar as it is responsible for the design of the *works*, it has exercised and exercises in the design of the *works* all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the *works*
- (2) The *Contractor* warrants to the *Employer* that it uses the reasonable skill, care and diligence set out in clause 21.4(1) to see that the *works* comply with any performance specification or requirement included or referred to in the Works Information or the *Contractor's* design (including any changes to the Works Information) and comply with all Statutory Requirements. The *Contractor* warrants that any part of the *works* designed by the *Contractor* will interface and integrate fully with any design prepared by, or on behalf, of the *Employer*.

21.5

- (1) Subject to the Works Information and any changes to it the *Contractor* warrants that to the extent the *Contractor* either is obliged to specify or approve products or materials for use in the *works* or does so specify or approve, the *Contractor* does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report,
 - (b) relevant British or European Standards or Codes of Practice, or
 - (c) any publications of the Building Research

Establishment related to the specification of products or materials.

- (2) If in the performance of its duties under this contract, the *Contractor* becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the *Contractor* notifies the *Project Manager* in writing immediately. This clause does not create any additional duty for the *Contractor* to inspect or check the work of others which is not required by this contract."

Clause 21.6 Insert a new clause:

"21.6 [The *Contractor* obtains from and/or gives to Others all licences, consents, notices and approvals necessary or appropriate to enable him to Provide the Works other than those which the Works Information states will be obtained or given by the *Employer* or Others.] The *Contractor* ensures that, prior to Completion and wherever necessary during the course of the *works*, the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that the same are renewed whenever necessary or appropriate."

Clause 22 Delete and replace with:

"22 **Intellectual Property Rights**

22.1 The parties agree that the IPR in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or works created by a Subcontractor or Indirect Subcontractor) vests in the *Employer*. The *Contractor* procures that each Subcontractor and Indirect Subcontractor assigns such IPR to the *Employer*.

22.2 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of

- understanding the *works*,
- completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*,
- extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others, and
- enabling London Underground Limited to carry out the operation, maintenance, repair, renewal and enhancement of the "London Underground" network (where applicable).

- 22.3 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause 22.2.
- 22.4 The *Contractor* indemnifies the *Employer* and members of the TfL Group against all losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 22.2 infringes the intellectual property rights or other rights of any third party.
- 22.5 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer*.
- 22.6 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *works*.
- 22.7 IPR in all items supplied and owned by the TfL Group to the *Contractor* remains the property of the TfL Group.
- 22.8 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the Works. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply

with its obligations under this contract.

22.9 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *works*.

22.10 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

22.11 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim, demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action."

Clause 23.1 Insert an additional bullet point between the first and second bullet points:

"• this contract"

[Clause 24.1 Add at the end of the clause:

"The *Contractor* does not remove any key person from the contract for more than twenty one (21) consecutive days without the prior written consent of the *Project Manager*, save where such key person is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the *Contractor's* employment".]

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

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

Clause 26.3	Insert a further bullet point after the bullet "they do ... co-operation":
	<ul style="list-style-type: none"> • in the opinion of the <i>Project Manager</i> they are not consistent with the terms of this contract".
Clause 26.5	Insert a new clause:
"26.5	Where the <i>Contractor</i> has proposed a Subcontractor in Contract Data Part Two for part of the <i>works</i> , acceptance of Contract Data Part Two by the <i>Employer</i> without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the <i>Project Manager</i> under clause 26.2, provided that the Contractor has complied with clause 26.3. Any such Subcontractor is not removed by the <i>Contractor</i> from the part of the <i>works</i> for which he has been proposed without the prior written consent of the <i>Project Manager</i> ."
Clause 26.6	Insert a new clause:
"26.6	Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the <i>Project Manager</i> relieves the <i>Contractor</i> of any liability or obligation under this contract."
Clause 26.7	Insert a new clause:
"26.7	On or before the <i>starting date</i> the <i>Contractor</i> notifies the <i>Employer</i> of the name, contact details and details of the legal representatives of each Subcontractor and Indirect Subcontractor, to the extent that such information has not already been provided by the <i>Contractor</i> to the <i>Employer</i> under this contract."
Clause 26.8	Insert a new clause
"26.8	The <i>Contractor</i> promptly notifies the <i>Employer</i> of any change to the information notified under clause 26.7 and provides the name, contact details and details of the legal representatives of any Subcontractor or Indirect Subcontractor who is engaged after the <i>starting date</i> ."
Clause 26.9	Insert a new clause
"26.9	The Contractor shall ensure that each subcontract with a Subcontractor or between a Subcontractor and an Indirect Subcontractor complies with regulation 113 of the Public Contracts Regulations 2015."

- Clause 27.5 Insert a new clause:
- "27.5 The terms and conditions of this contract and the warranties and undertakings which it contains apply to all *works* performed and to be performed by the *Contractor* in relation to the project to which the *works* relate both before and after the Contract Date."
- Clause 27.6 Insert a new clause:
- "27.6 "The *Employer* may assign the benefit of and its rights under this contract without the consent of the *Contractor* being required. The *Contractor* shall not assign the benefit of and its rights under this contract without the prior written consent of the *Employer*".
- Clause 27.7 Insert a new clause:
- "27.7 (1) The *Contractor* takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations.
- (2) The Contractor warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations.
- (3) The *Contractor* throughout the progress of the *works* and while the *Contractor* has access to the Site in accordance with this contract has full regard for the safety of all persons entitled to be upon the Site and keeps the Site (so far as the same is under his control) and the *works* (so far as the same have not been handed over to or occupied by the *Employer*) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the *works*, provides and maintains at his own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the *works* or for the safety and convenience of the public or Others.
- (4) Where the *Contractor* is the *Principal Contractor* and/or the *Principal Designer*, the *Contractor* performs all the functions and duties of and exercises the powers of the "principal contractor" and/or the "principal designer" as defined in the CDM Regulations.

- (5) Where the *Contractor* is not the *Principal Contractor* and/or the *Principal Designer*, the *Contractor* performs all the functions and duties of a "contractor" and (where the *Contractor* is responsible for design) a "designer" as defined in the CDM Regulations.
- (6) The *Contractor* warrants to the Employer that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "principal contractor", "principal designer", "contractor" and "designer" (as applicable) as defined in the CDM Regulations.
- (7) The *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site, including the *Principal Contractor* and the *Principal Designer* (where these roles are not being performed by the *Contractor*) for the effective discharge of those responsibilities.
- (8) The *Contractor* shall procure that each Subcontractor and Indirect Subcontractor complies fully with the requirements of the CDM Regulations.
- (9) Before the commencement of work on Site the *Contractor* provides the *Project Manager* with a copy of his Statement of Health and Safety Policy, and that of any Subcontractor prior to such Subcontractor commencing work on the Site.
- (10) The *Contractor* to the extent that he is in control of the Site or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Site, its access and egress, safe and without risk to the health of persons using it."

Clause 27.8

Insert a new clause:

"27.8

The *Contractor* acknowledges that the *Employer* is under a duty under 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 and

- without prejudice to any other obligation imposed on the *Employer*, exercise its 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 this contract, the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty."

Clause 27.11

Insert a new clause:

"27.11

If requested by the *Employer*, the *Contractor* enters into a novation agreement within the period for reply in the form of the novation agreement in the form attached or in such other format as the *Employer* may reasonably require in order to novate the benefit and burden of this contract to another member of the TfL Group."

Clause 27.12

Insert a new clause:

"27.12

The *Contractor* gives notice to the *Employer* within 10 days where

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

Clause 30.4

Insert a new clause:

"30.4

The *Contractor* proceeds regularly and diligently to Provide the Works in accordance with this contract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the works."

Clause 31.2 In the sixth bullet point add “environmental and” before “health and safety requirements”.

[Clause 35 Take Over

Optional amendments are provided at Appendix 2 for use where it is envisaged that the Employer may take possession of part of the works during the progress of the works but where such possession is not to be treated as Completion - for instance, where part of a road is to be used by the Employer during the works.]

[Clause 36.5 Insert new clause:

“36.5 If the *Contractor* does not submit a quotation within the *period for reply* or if the *Project Manager* decides that the *Contractor* has not assessed the quotation for an acceleration correctly then the *Project Manager* may instruct the *Contractor* to achieve Completion before the Completion Date. If the *Project Manager* instructs the *Contractor* to achieve Completion before the Completion Date the *Project Manager* assesses the change to the Prices, the Completion Date and the Key Dates and informs the *Contractor* of any changes.”]

Clause 45.3 Insert a new clause:

“45.3 For the avoidance of doubt, the *Contractor* continues to be liable for Defects (including Defects listed in the Defects Certificate and latent or inherent Defects) after

- the issue of the Defects Certificate
- the operation of this section 4 and
- the termination of this contract for any reason (including breach by the *Employer*)

in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract”.

Clause 50.1A Insert a new clause:

“50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form approved by the *Project Manager* not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the

payment due date and the basis on which that sum is calculated."

Clause 50.4 In line two delete "on or before the assessment date" and substitute "in accordance with clause 50.1A".

Clause 50.8 Insert a new clause:

"50.8 The consideration for any supply made pursuant to or in connection with the terms of this contract, and all sums payable under this contract, are exclusive of value added tax ("VAT"). Where, under the terms of this contract, a supply is made that is subject to VAT, the person receiving the supply must pay a sum equal to the amount of VAT which is or becomes chargeable on that supply to the person making the supply in addition to, and at the same time as paying, any other consideration for that supply and a valid VAT invoice must be issued by the person making the supply.

If any VAT invoice delivered by the *Contractor* under this contract is an electronic invoice, the *Employer* accepts and processes the electronic invoice submitted by the *Contractor* where the invoice is undisputed and where it complies with the Standard on Electronic Invoicing."

Clause 50.8A Insert a new clause:

"50.8A Where the *Employer* is an End User for the purposes of this contract, the parties acknowledge that:

- services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract are expected to include "specified services" (within the meaning of article 4 of the Reverse Charge Order) and will be "excepted supplies" (within the meaning of article 8 of the Reverse Charge Order) on the basis that the *Employer* is an End User in respect of such specified services and
- accordingly the Reverse Charge Order will not apply and the *Employer* will not be required to account for VAT to HM Revenue & Customs in respect of such supplies under section 55A of VATA.

Where the *Employer* is not an End User for the purposes of this contract:

- the parties acknowledge that services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract will include "specified services" (within the meaning of article 4 of the Reverse Charge

Order) and are expected to be subject to the Reverse Charge Order on the basis that the *Employer* is not an End User,

- accordingly, the parties acknowledge that the *Employer* will be required to account for VAT to HM Revenue & Customs in respect of such supplies from the *Contractor* under section 55A of VATA and
- the *Contractor* will deliver an invoice to the *Employer* in accordance with clause 51.1A stating that the Reverse Charge Order applies or any other appropriate language as suggested by HM Revenue & Customs in their relevant guidance

In any event the *Contractor* indemnifies the *Employer* on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the *Employer* at any time in respect of the *Contractor's* failure to account for or to pay any VAT relating to payments made to the *Contractor* under this contract. Any amounts due under this clause 50.8A are paid in cleared funds by the *Contractor* to the *Employer* not less than five (5) days before the date upon which the tax or other liability is payable by the *Employer*.

Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount includes any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

If the Reverse Charge Order is incorrectly applied and the *Employer* pays an amount in respect of VAT to the *Contractor* in error, then the *Contractor* will pay to the *Employer* on demand an amount equal to such VAT plus any interest, penalties or surcharges charged or imposed on the *Employer* by HM Revenue & Customs arising from the late payment of any VAT.

If the *Employer's* status as an End User changes during the term of this contract, the *Employer* uses its reasonable endeavours to notify the *Contractor* and the *Contractor* applies the Reverse Charge accordingly.

Clause 50.9

Insert a new clause:

"50.9

(1) If a parent company guarantee has been required from the *Contractor* by the inclusion of optional clause X4 (parent company guarantee) then one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has provided the relevant guarantee in accordance with optional clause

X4, and

(2) In addition or in the alternative if a performance bond has been required from the *Contractor* by the inclusion of optional clause X13 (performance bond) then one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has provided the relevant performance bond in accordance with optional clause X13, and

(3) the *Employer* shall pay any amount retained pursuant to clause 50.9 (1) and/or 50.9 (2) to the *Contractor* within 10 days of the provision to the *Employer* of the relevant guarantee or performance bond. The total amount retained by the *Employer* pursuant to this clause 50.9 shall not exceed half of the Price for Work Done to Date."

Clause 50.10

Insert a new clause:

"50.10

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 damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer* or where any member of the TfL Group is the *Employer* only, any member of the TfL Group arising out of or attributable to this contract or any other contract between the *Employer* and the *Contractor*

then the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the *Contractor* under this contract."

Clause 51.1

Delete the first sentence and replace it with:

"The *Project Manager* certifies a payment within one week of each assessment date and issues a copy of the certificate to the *Contractor*."

Clause 51.1A

Insert a new clause:

"51.1A

As soon as reasonably practicable and in any event not later than five days after receipt of a certificate in accordance with clause 51.1

the *Contractor* issues a valid VAT invoice for the amount stated on the certificate. The *Contractor* issues invoices in the manner and format required by the Contract Data and/or the Works Information."

Clause 51.4

At the end of the clause add:

"The parties agree that the provisions in this contract for the payment of interest constitute a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998."

Clause 60.1

Amend as set out below:

[60.1(18)

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

[60.1(19)

Delete the existing wording and substitute:

"(19)

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

(20)

Any of the following events where such event is directly caused by the Coronavirus Pandemic:

- the implementation of revised methods of working which is mandated by a change in the law of the country in which the Site is located after the Contract Date, or
- the implementation of revised methods of working which is instructed by the *Project Manager* following guidance relating to the Coronavirus Pandemic,

but only to the extent that the *Contractor* was not aware and an experienced and prudent *Contractor* would not reasonably have been aware that such law or guidance would come into force after the Contract Date.

(21)

Any of the following events where such event is directly caused by the Coronavirus Pandemic:

- the closure of the Site or cessation of the *works* which is mandated by a change in the law of the country in which the Site is located after the Contract Date, or
- the closure of the Site or cessation of the *works* which is

instructed by the *Project Manager* following guidance relating to the Coronavirus Pandemic, (a "Coronavirus Closure").

(22) Disruption to the supply of Plant and Materials where such disruption is directly caused by the Coronavirus Pandemic, provided that the *Contractor* is not entitled under this clause 60.1(22) to any change to the Prices.

[Clause 60.2 Delete.]

[Clause 60.3 Delete.]

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

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

Clause 61.4 After "fault of the *Contractor*" insert in the first bullet point:

- "including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any Subcontractor Indirect Subcontractor or supplier or any of their employees or agents".

After "to submit quotations" at end of second sentence insert "including sufficient supporting information".

In the first bullet point in the third sentence replace "one week" with "two weeks".

Clause 61.7 At the end insert:

"No change in Prices is made in respect of any compensation event notified after the *defects date*".

Clause 62.2 After "details of his assessment" in the second sentence include "including a detailed breakdown of any changes to the Prices and the measures to be taken in respect of Subcontractors and Indirect Subcontractors (where relevant) with regards to the *works* and any

planned *works* by Others”.

At the end of clause 62.2 include the following words:

“If the quotations comprise or include delays, the details of the *Contractor’s* assessment include sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

Clause 63.1

Insert the following new clauses:

63.1A

Notwithstanding any other provision of this contract, the change to the Prices in respect of a compensation event under clause 60.1(21) is assessed as the effect of the compensation event on the Demobilisation Costs and Remobilisation Costs only and there is no change to the Prices other than in respect of the Demobilisation Costs and Remobilisation Costs.

For the purpose of this clause:

“Demobilisation Costs” means the following cost components in respect of demobilisation:

- Cost of off-hiring Equipment (including any penalty fees),
- Cost of removing Plant and Materials from Site (if required),
- Cost of making the Site safe (e.g. covering up, signage), including incidental works, and maintaining for the duration of the closure of the Site,
- Cost of making safe third party and stakeholder works (e.g. utilities),
- Cost of making the Site secure (e.g. fencing, CCTV), including incidental works, and maintaining for the duration of the closure of the Site,
- Cost of implementing traffic management and maintaining for the duration of the closure of the Site,
- Cost of site infrastructure which it is not practicable to off-hire or remove for the duration of the closure of the Site (e.g. site cabins and offices, utility connections, etc.),
- Cost of people for planning, managing and delivering demobilisation, and
- Cost of people required to maintain a safe and secure Site for the duration of the closure of the Site (e.g. security guards, traffic management agents, etc.),

“Remobilisation Costs” means the following cost components in respect of remobilisation:

- Cost of mobilising Equipment which was off-hired as part of demobilisation,

- Cost of delivering to Site any Plant and Materials which were removed as part of demobilisation,
 - Cost of remobilising people and Subcontractors,
 - Cost of reinstating the Site to its pre-demobilisation state,
- Cost of people for planning, managing and delivering remobilisation.

63.1B The *Contractor's* only entitlement to a change in the Prices, the Completion Date or any Key Date in respect of a Coronavirus Pandemic Event is under clause 60.1(20), 60.1(21) or 60.1(22) (as applicable), and no other compensation event in this contract applies to events which are Coronavirus Pandemic Events.

Clause 63.3 At the end of the second sentence insert:

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

- that the compensation event is the sole or principal cause of the delay, and
- there is sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date

For the avoidance of any doubt, the *Employer* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date."

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

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

Clause 63.4 Insert a new clause as follows:

63.4A Notwithstanding any other provision of this contract there is no increase to the Prices in respect of a compensation event under clauses 60.1(19) and 60.1(22)

Clause 63.6 After "event includes" insert the words "reasonable and proportionate".

Clause 63.7 At the end insert:

"Where the *Employer* decides that the *Contractor* has failed to act in accordance with the assumptions in this clause the failure is taken into

account when making the assessment”.

Clause 63.8 Insert after “ambiguity or inconsistency” the words “which (in accordance with sub-clauses 17.1 and 17.2) is a compensation event.”

Clause 64.1 Insert at the end of the first bullet point “including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subcontractor and Indirect Subcontractor and with regard to the *works* and planned works by Others.”

Clause 70.1 Delete and substitute:

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

Clause 70.2 At the end insert:

“Notwithstanding the first sentence of clause 70.2, title passes to the *Employer* on payment being made by the *Employer* to the *Contractor* for Plant and Materials outside the Working Area.”

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

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

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

“83.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever (“Losses”) incurred in respect of

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

expense including but not limited to that incurred or suffered by the *Employer* due to losses arising under its contracts with Others which may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part performance of this contract

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

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

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

Clause 83.3 Add new clause 83.3 as follows:

"83.3 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents."

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

At the end of the clause insert:

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

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

Clause 84.3 Insert a new clause as follows:

"84.3 The insurance requirements under this contract do not relieve the

Contractor from any of his other obligations and liabilities under this contract”.

Clause 84.4

Insert a new clause:

“84.4

- (1) The *Contractor*, at his own cost, takes out and maintains professional indemnity insurance with a limit of indemnity of not less than the sum stated in **Schedule 2** for any one occurrence or series of occurrences arising out of any one event, in relation to the *works* provided always that
- such insurance is in place from the Contract Date until no less than twelve (12) years after Completion of the *works*
 - the insurance premiums in respect of the insurance are at all times the responsibility of the *Contractor* and
 - if such insurance ceases to be available to the *Contractor* (and/or design and build contractors engaged in services of a similar size, nature and complexity as the *Contractor*) at commercially reasonable rates and terms (such non availability to be confirmed by an independent insurance agent operating in the UK market), excluding any increase in premiums attributable to the actions, omissions, claims record, error or defaults of the *Contractor*, the *Contractor* immediately notifies the *Employer* and the *Contractor* and the *Employer* then meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not reasonably acceptable to the *Employer*, the parties shall agree an alternative method of managing such risk.
- (2) The *Contractor* carries out his obligations under this contract and ensures that his servants or agents carry out their respective obligations in such manner that all requirements, terms, conditions, stipulations and provisos of the insurance required by clause 84.4 (1) are at all times fully complied with”.

Clause 84.5

Insert a new clause:

“84.5

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

replacement cost in respect of loss or damage and the amount required by the applicable law in respect of third party liability."

Clause 84.6

Insert a new clause:

"84.6

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

Clause 85.5

Insert a new clause:

"85.5

In relation to all claims made under insurances obtained by the *Employer* (as set out in the Contract Data Part One) the following provisions apply.

- (1) Unless the *Employer* otherwise decides, the *Contractor* authorises the *Employer* to submit all claims and the *Employer* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* must provide such information, documents and records in connection with such claims as the *Employer* requires forthwith on demand, regardless of whether the *Employer* is submitting or administering the claim.
- (3) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* authorises insurers to pay monies under the insurances to the *Employer*.
- (4) The *Employer*, after receipt of monies paid under the insurances, allocates and pays to each party insured that portion of the monies received for the purpose of rectifying the loss that each party insured has suffered. [The deductible is borne pro rata by each such party.] [The *Contractor* bears the cost of all deductibles].
- (5) [If the premiums payable by the *Employer* increase due to or as a result of claims caused by the *Contractor* arising from events within the control of the *Contractor* (including claims attributable to its Subcontractors and/or Indirect Subcontractors) then the *Contractor* shall pay to the *Employer* the increase in premium]."

Clause 85.6	Insert a new clause:
"85.6	The <i>Contractor</i> effects any insurances which it is required to provide under this contract promptly with a reputable insurer or insurers accepted by the <i>Project Manager</i> and authorised to underwrite such risks in the United Kingdom."
Clause 85.7	Insert a new clause:
"85.7	The <i>Contractor</i> promptly notifies the <i>Project Manager</i> in writing of any claim, event, fact, matter or circumstance which may give rise to the right to make any claim on any insurance."
Clause 85.8	Insert a new clause:
"85.8	The <i>Contractor</i> does not compromise, surrender, release, settle or waive any claim or potential claim which the <i>Contractor</i> has or may have the right to bring, or has brought, under any insurance without the prior consent of the <i>Project Manager</i> whose consent shall not be unreasonably withheld."
Clause 85.9	Insert a new clause:
"85.9	The <i>Contractor</i> does not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the <i>Contractor's</i> and/or the <i>Employer's</i> rights to make or proceed with a claim against any insurer."
Clause 85.10	Insert a new clause:
"85.10	If the <i>Contractor</i> is informed that any insurer providing insurance required by this contract intends to cancel or change any term of any insurance required by this contract, the <i>Contractor</i> promptly notifies the <i>Project Manager</i> of such intention."
Clause 85.11	Insert a new clause:
"85.11	The <i>Contractor</i> promptly notifies the <i>Project Manager</i> in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this contract lapsing or being terminated or the cover under it being reduced or modified."
Clause 85.12	Insert a new clause:
"85.12	To the extent that the <i>Contractor</i> is entitled to bring any claim or claims under any insurance relating to this contract then the <i>Contractor</i> deals with all such claims promptly and diligently and

(subject to the requirements of this contract) in accordance with all insurer requirements and recommendations."

Clause 85.13

Insert a new clause:

"85.13

The *Contractor* acknowledges that the *Employer* has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this contract."

Clause 85.14

Insert a new clause:

"85.14

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

Clause 90.2

In the "Termination Table" in the *Employer's* "Reason" column, after the words "A reason other than" delete "R1-R21" and substitute "the reasons listed in this Termination Table".

In the "Termination Table" in the *Employer's* "Reason" column, after "R1-R15 or R18" add "or R22 or R24 or R26 - 27".

In the "Termination Table" in the *Employer's* "Reason" column, after "R17 or R20" add "or R23 or R25 or R28".

Clause 91.1

In R7 add after "amalgamate or reconstruct" the words "without insolvency".

Clause 91.2

Add a new paragraph at the end of the clause:

"The *Employer* may also terminate if the *Project Manager* notifies that the *Contractor* has defaulted in one of the ways listed at R11-R13 on [two] occasions within a period of [eight (8) weeks] whether or not the *Contractor* has remedied the default within four (4) weeks of the [second] notification by the *Project Manager*."

Clause 91.4

Add at the start of the clause: "Save when the *Employer* has complied with Option Y (UK) 2 clause Y2.3,"

Add at the end of the clause: "provided always that the *Contractor* has given written notification to the *Employer* of such intention to terminate at least five (5) weeks prior to any such termination and the *Employer* has not paid the amount due within that period."

- Clause 91.6 Add at the start of the second bullet point: "providing the *Contractor* has given written notification to the *Employer* of an intention to terminate at least five (5) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period."
- Add at the start of the third bullet point: "providing written notification of an intention to terminate is given to the other Party at least four (4) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period."
- Add in the first bullet point after the word "*Contractor*": "or a Coronavirus Pandemic Event"
- Add at the end of the third bullet point after the word "*Contractor*": "except for a Coronavirus Pandemic Event"
- Clause 91.7 In the fourth bullet point after "experienced" insert "and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a"
- Clause 91.8 Add a new clause:
- "91.8 The *Employer* may terminate the contract if the *Contractor* is in breach of clauses Z5.1 to Z5.14 (inclusive) (Data Protection) and/or clause Z8 (Conflict of Interest) and/or clause Z11 (Corrupt Gifts and Payments) and/or clauses Z19 (Equality and Diversity compliance) [and/or clause Z24 (Equality and Diversity)] [and/or clause Z25 (SLNT)] [and/or clause Z28 (Environmental, Social and Labour Law Compliance)], or if any of the events referred to at clause 27.12 occur (regardless of whether or not the notice required by clause 27.12 is given by the *Contractor*) (R22)".
- Clause 91.9 Add a new clause:
- "91.9 The *Employer* may terminate this contract in the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union (R23).
- Notwithstanding the declaration or order, the provisions of clauses 90-93 shall continue in full force and effect along with any other provisions of this contract necessary to give effect to them. In addition, any provisions of the contract which by their nature or

implication are required to regulate, determine or limit the Parties' rights and liabilities that have accrued at the date the contract became ineffective or shortened shall survive the declaration or order as aforesaid."

Clause 91.10

Add a new clause:

"91.10

Without prejudice to the *Employer's* rights of termination implied into this contract by regulation 73(3) of the Public Contracts Regulations 2015 or regulation 89(3) of the Utilities Contracts Regulations 2016, the *Employer* may terminate this contract if

- this contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72 of the Public Contracts Regulations 2015 or regulation 88 of the Utilities Contracts Regulations 2016 where the modification is due to a default by the *Contractor* (R24) or where the modification is due to any other reason (R25),
- at the Contract Date the *Contractor* has been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure (R26), or
- in a procedure under Article 258 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union declares that this contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive or Utilities Contracts Directive where the infringement is due to a default by the *Contractor* (R27) or where the infringement is due to any other reason (R28)."

Clause 92.1

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

Clause 92.2

In procedure P2 after "assign the benefit of" insert "and/or enter into a novation of (in such format as the *Employer* may reasonably require)".

Clause 94	Insert a new clause:
"94	Ineffectiveness and cessation
94.1	Without prejudice to the <i>Employer's</i> right to terminate the <i>Contractor's</i> obligation to Provide the Works under clauses 90 to 93 or at common law, the <i>Employer</i> may terminate the <i>Contractor's</i> obligations to Provide the Works at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 94.
94.2	In the event that a court makes a Declaration of Ineffectiveness, the <i>Employer</i> promptly notifies the <i>Contractor</i> . The Parties agree that the provisions of clause 94 shall apply as from the date of receipt by the <i>Contractor</i> of the notification of Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 94 or the Cessation Plan, the provisions of this clause 94 and the Cessation Plan prevail.
94.3	The Declaration of Ineffectiveness does not prejudice or affect any right, liability or remedy which has accrued or accrues to either Party prior to or after such Declaration of Ineffectiveness.
94.4	<p>As from the date of receipt by the <i>Contractor</i> of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) agree or, in the absence of such agreement, the <i>Employer</i> reasonably determines an appropriate Cessation Plan with the object of achieving</p> <ul style="list-style-type: none"> • an orderly and efficient cessation of the <i>works</i> or (at the <i>Employer's</i> request) a transition of the <i>works</i> to the <i>Employer</i> or such other entity as the <i>Employer</i> may specify, and • minimal disruption or inconvenience to the <i>Employer</i> or to public passenger transport services or facilities, in accordance with the provisions of this clause 94 and to give effect to the terms of the Declaration of Ineffectiveness.
94.5	Upon agreement, or determination by the <i>Employer</i> , of the Cessation Plan, the Parties comply with their respective obligations under the Cessation Plan.
94.6	The <i>Employer</i> pays the <i>Contractor's</i> reasonable costs in assisting the <i>Employer</i> in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined

by the *Employer*. Provided that the *Employer* is not liable to the *Contractor* for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the Works pursuant to this clause 94."

Clause 95

Insert a new clause 95

"95

For the purpose of this clause 95, Public Procurement Termination Event shall mean if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 has occurred.

95.1

Without prejudice to the *Employer's* right to terminate the *Contractor's* obligation to Provide the Works under clauses 90 to 94 or at common law and the *Employer's* rights of termination implied into this contract by regulation 73(3) of the Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, the *Employer* shall promptly notify the *Contractor* and the Parties agree that the provisions of clauses 90 to 93 and this clause 95 shall apply as from the date of receipt by the *Contractor* of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 95 or the Cessation Plan, the provisions of this clause 95 and the Cessation Plan shall prevail.

95.2

The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.

95.3

As from the date of receipt by the *Contractor* of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the *Employer* shall reasonably determine, an appropriate Cessation Plan with the object of achieving:

- an orderly and efficient cessation or (at the *Employer's* election) a transition to the *Employer* or such other entity as the *Employer* may specify of: (i) the *works*; or (at *Employer's* election), (ii) the part of the *works* which are affected by the Public Procurement Termination Event; and
- minimal disruption or inconvenience to the *Employer* or to public passenger transport services or facilities,

in accordance with the provisions of this clause 95 and to give effect to the terms of the Public Procurement Termination Event.

- 95.4 Upon agreement, or determination by the *Employer*, of the Cessation Plan, the Parties comply with their respective obligations under the Cessation Plan.
- 95.5 The *Employer* pays the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the *Employer*, provided that the *Employer* is not liable to the *Contractor* for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the Works pursuant to this clause 95."

Dispute Resolution

Option W2 Delete option W2 and replace with:

- "W2.1
- The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this contract.
 - In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
 - A Party may refer a Dispute to the *Adjudicator* at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
 - Within fourteen (14) days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
 - Within a further fourteen (14) days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior

Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

W2.2

- The Parties appoint the *Adjudicator*.
- The *Adjudicator* acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the *Adjudicator nominating body* to choose an adjudicator. Such joint appointment or referral to the *Adjudicator nominating body* shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of *Adjudicator* falling vacant.
- The *Adjudicator nominating body* chooses an adjudicator within four (4) days of the request. The chosen adjudicator becomes the *Adjudicator*.
- A replacement *Adjudicator* has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.
- The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

W2.3

- Before a Party refers a Dispute to the *Adjudicator*, he gives a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the *Adjudicator* to make. Following the appointment of the *Adjudicator*, the Party immediately sends a copy of the Notice of Adjudication to the *Adjudicator*. Within three (3) days of the receipt of the Notice of Adjudication, the *Adjudicator* notifies the Parties
 - that he is able to decide the Dispute in accordance with the contract or

- that he is unable to decide the Dispute and has resigned.

If the *Adjudicator* does not so notify within three (3) days of the issue of the Notice of Adjudication, either Party may act as if he has resigned.

- Within seven (7) days of a Party giving a Notice of Adjudication he
 - refers the Dispute to the Adjudicator,
 - provides the *Adjudicator* with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
 - provides a copy of the information and supporting documents he has provided to the *Adjudicator* to the other Party.

Upon receipt of the Referral Notice, the *Adjudicator* must inform every Party to the Dispute of the date that it was received. Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, provides the *Adjudicator* with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

These periods may be extended if the *Adjudicator* and Parties agree.

- 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 Subcontractor and *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 comply with any reasonable request by the *Adjudicator* for more time to decide the disputes referred to him.

If this contract is a subcontract and the main contract provides for joint adjudication of disputes, the following

procedure applies.

Within two (2) weeks of the notification of the dispute by the *Contractor* to the *Employer*, the *Employer* notifies the *Contractor* if the matter disputed is a matter disputed under or in connection with the main contract.

The *Employer* may then

- submit the subcontract dispute to the main contract adjudicator at the same time as the main contract submission and
- instruct the *Contractor* to provide any information which the *Employer* may require.

The main contract adjudicator then gives his decision on the disputes together.

- The *Adjudicator* may
 - make directions for the conduct of the Dispute
 - review and revise any action or inaction of the *Employer* related to the Dispute and alter a quotation which has been treated as having been accepted
 - take the initiative in ascertaining the facts and the law related to the Dispute
 - instruct a Party to provide further information related to the Dispute within a stated time and
 - instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make his decision based upon the information and evidence he has received.
- The *Adjudicator* shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in

reaching a decision.

- A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- Save as required by law, the Parties and the *Adjudicator* keep information relating to the Dispute confidential.
- If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.
- The *Adjudicator* decides the Dispute and notifies the Parties of his decision and his reasons within twenty-eight (28) days of the Dispute being referred to him. This period may be extended by up to fourteen (14) days with the consent of the Parties or by any other period agreed by the Parties.
- After the giving of a Notice of Adjudication, the Parties may seek to agree how the *Adjudicator* allocates the costs and expenses of the adjudication, excluding the *Adjudicator's* own remuneration and expenses, as between the Parties.
- Subject to any agreement of the Parties, the *Adjudicator* allocates payment of his own remuneration and expenses as between the Parties.
- Unless and until the *Adjudicator* has notified the Parties of his decision the Parties proceed as if the matter disputed was not disputed.
- If the *Adjudicator* does not make his decision and notify it to the Parties within the time provided by this contract the Parties and the *Adjudicator* may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.
- The *Adjudicator's* decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the time required by this contract that he is dissatisfied with a matter decided by the

Adjudicator and intends to refer the matter to the courts.

- 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
- 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.

W2.4

- Unless the Parties agree otherwise, a Party does not refer any Dispute under or in connection with this contract to the courts unless it has first been decided by the *Adjudicator* in accordance with this contract.
- If, after the *Adjudicator* notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the *Adjudicator's* decision.
- The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the *Adjudicator*.
- A Party does not call the *Adjudicator* as a witness in court proceedings."

**Option Y(UK)2 the Housing Grants, Construction and Regeneration Act 1996
(with amendments dated September 2011)**

Clause Y(UK) 2.1

Insert new paragraph (3) in Y2.1:

"(3) Pay Less Notice means the notice referred to in clause Y2.3."

Insert the following clauses Y2.1.1-Y2.1.4:

Assessing the amount due

Y2.1.1 Insert new clause 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

Y2.1.2 Delete the first sentence of clause 51.1 and substitute:

"The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor*."

Y2.1.3 Insert at the end of clause 51.1A:

"The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of any Pay Less Notice."

Y2.1.4 Insert new clause 51.1B:

"If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause Y2.3, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A."

Dates for payment

Y2.2 Delete the text of Y2.2 and substitute:

"The date on which a payment becomes due is the later of:

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

The final date for payment is twenty eight days or a different period for payment if stated in the Contract Data after the date on which payment becomes due."

Y2.3 Delete "seven days" in line two of Y2.3 and substitute: "one day"

Insert at the end of Y2.3: "In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*."

Suspension of Performance

Y2.4 Insert at the end of Y2.4: "whether or not the event has been notified by the *Contractor* within the period specified in clause 61.3."

Insert new clauses Y2.5 and Y2.6:

The *Project Manager* and the *Supervisor*

Y2.5 Insert new clause 14.5:

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

Termination

Y2.6.1 In the Termination Table in clause 90.2:

Insert 'or R10A' after 'R1-R15'

Insert 'R10A,' after 'R1-R10'

Y2.6.2 Insert a new main bullet at the end of clause 91.1:

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

SECONDARY OPTION CLAUSES

Option X4 (Parent Company Guarantee) Delete "If the guarantee ... within four weeks of the Contract Date" and replace with "If the guarantee was not given before the Contract Date, it is given to the *Employer* upon the execution by the *Contractor* of the Contract Agreement"

Option X13 (Performance Bond) Delete "If the bond ... within four weeks of the Contract Date" and replace with "If the bond was not given before the Contract Date, it is given to the *Employer* upon the execution by the *Contractor* of the Contract Agreement".

Option X16 (Retention) Insert a new clause:

"X16.3 X16.3 The *Employer* has the full beneficial interest in the amount retained, without any fiduciary obligation, and the relationship of the *Employer* and *Contractor* with regard to the amount retained is solely that of debtor and unsecured creditor, subject to the terms of this contract".

[X16.4 Insert a new clause:

"Retention Bond

If after the *Project Manager* certifies Completion for the whole of the *works* the *Contractor* wishes to be paid the balance of the retention monies then he submits to the *Project Manager* a retention bond in substantially the same form as appearing in the Works Information for the amount of such retention monies and issued by a surety acceptable to the *Employer*. Upon receipt of the retention bond the *Employer* releases the balance of the retention monies to the *Contractor*. The retention bond is returned by the *Employer* to the *Contractor* upon the later of the issue of the Defects Certificate and the date in which the *Contractor* makes payment in respect of any uncorrected Defects in accordance with clause 45.1 and/or clause 45.2.]"

Option X18 (Limitation of Liability) At the start of each of clauses X18.1, X18.2, X18.3 and X18.4 insert "Subject always to clause X18.6".

In clause X18.3 insert at the end of the clause:

"For the avoidance of doubt, the amount stated in the Contract Data is in respect of each and every claim made against the *Contractor* that arises from any one occurrence or series of occurrences arising

out of any one event and not a total limit on the *Contractor's* liability for all claims for Defects due to his design".

In clause X18.4 insert after the last bullet point, a new bullet point:

"any costs incurred by the *Employer* arising from or in connection with the correction of a Defect, including any cost of additional management resources and/or provision of traffic management"

In clause X18.4 insert after the last bullet point, a new bullet point:

"the cost associated with any requirement placed on the *Employer* to provide a replacement bus service arising from or in connection with the *Contractor* correcting a Defect"

In clause X18.4 insert at the end of the clause:

"For the avoidance of doubt the amount stated in the Contract Data is in respect of each and every claim made against the *Contractor* that arises from any one occurrence or series of occurrences arising out of any one event, and not a total limit on the *Contractor's* liability for all matters arising under or in connection with this contract".

Option X18.6 Insert new clause X18.6:

"X18.6 Nothing in this clause X18 shall exclude or limit the *Contractor's* liability for personal injury or death or any matter which it would be illegal for the *Contractor* to exclude or attempt to exclude its liability or for fraud or the *Contractor's* liability for breach of clauses Z5.1 to Z5.14 (inclusive)".

Z2 Warranties

Z2.1 The *Contractor*, within fourteen (14) days of the *Project Manager's* request, provides to the *Employer* collateral warranties executed as deeds in the forms attached in favour of

- any member of the TfL Group notified to the *Contractor*

- **[OTHER BENEFICIARIES]**

Z2.2 The *Contractor*, within fourteen (14) days of the *Project Manager's* request, procures that the "Principal Subcontractors" enter into collateral warranties executed as deeds in the forms attached in favour of

- the *Employer*, and

- any member of the TfL Group notified to the *Contractor* by the *Employer*
- **[OTHER BENEFICIARIES]**

and “the Principal Subcontractors” means all Subcontractors with a design responsibility (including those responsible for the selection of goods and materials and the supply of proprietary products and systems) and such other Subcontractors as the *Employer* may from time to time by notice in writing to the *Contractor* specify as being Principal Subcontractors.

Z2.3 The *Employer* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Employer*, then as between the *Contractor* and the *Employer*, upon such recipient of the collateral warranty serving the requisite notice, the *Contractor* treats the said recipient as standing in substitution for the *Employer* and the *Employer* raises no objection to such substitution. Without prejudice to the obligations of the *Contractor* to the *Employer* and to the rights of the *Employer*, the *Employer* is not obliged to make any payment to the *Contractor* if (and for so long as) the *Contractor* fails within the time limit specified above to deliver such warranties duly executed provided always that the *Employer* notifies the *Contractor* of the identity of the relevant beneficiaries.

Z3 *Employer’s business*

The *Contractor* acknowledges that it

- has sufficient information about the *Employer* and the *works*, and
- is aware of the *Employer’s* processes and business, and
- has made all appropriate and necessary enquiries to enable it to Provide the Works in accordance with this contract, and
- is aware of the purposes for which the *works* are required, and
- shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *works*.

Z4 *Best value*

The *Contractor* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises

its functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the *works* reasonably requested by the *Employer* from time to time. The *Contractor* negotiates in good faith (acting reasonably) any changes to this contract in order for the *Employer* to achieve best value.

Z5 Data Protection, Freedom of Information and Data Transparency

Z5.1 The *Contractor* complies with all of its obligations under Data Protection Legislation and, if Processing Personal Data on behalf of the *Employer*, only carries out such Processing to Provide the Works and in accordance with this contract. With respect to the Parties' rights and obligations under this contract, the Parties acknowledge that the *Employer* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor.

Z5.2 Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place.

Z5.3 The *Contractor*:

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

- any recipients of the Personal Data,
 - the location(s) of any overseas Processing of Employer Personal Data,
 - retention periods for different types of Employer Personal Data, and
 - where possible a general description of the security measures in place to protect Employer Personal Data;
- (e) where requested to do so by the *Employer*, or where Processing Employer Personal Data presents a specific risk to privacy, carries out or assists the *Employer* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Employer*;
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, takes appropriate technical and organisational security measures that are satisfactory to the *Employer* from time to time, against unauthorised or unlawful Processing of Employer Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data;
- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provides the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor and Indirect Subcontractor) with clauses Z5.3(f) and Z5.3(h), including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer*;
- (h) notifies the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause Z5, including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;
- (i) having notified the *Employer* of a breach in accordance with clause Z5.3(h), keeps the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer*;
- (j) fully cooperates as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information

Commissioner, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);

(k) notifies the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor or Indirect Subcontractor), receives:

- from a Data Subject (or third party on their behalf):
 - a Subject Access Request (or purported Subject Access Request),
 - a request to rectify, block or erase any Employer Personal Data or
 - any other request, complaint or communication relating to the Employer's obligations under Data Protection Legislation;
- any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or
- a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;

(l) provides the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer*) in relation to any complaint, communication or request made as referred to in clause Z5.3(k), including by promptly providing:

- the *Employer* with full details and copies of the complaint, communication or request;
- where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
- where applicable, such assistance as is reasonably required by the *Employer* to enable it to comply with a request from a Data Subject to rectify, block or erase any Employer Personal Data.

(m) when notified in writing by the *Employer*, supplies a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;

(n) prepares and securely maintains a record of all categories of Processing activities carried out on behalf of the *Employer* in relation to the Employer Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if

appointed) or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Employer*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in this clause Z5; and (v) the same information in relation to any Subcontractor and Indirect Subcontractor, together with its name and contact details and when notified in writing by the *Employer*, complies with any agreement between the *Employer* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;

- (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer; and
- (p) makes available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in this clause Z5.

Z5.4 The *Contractor* does not share Employer Personal Data with any Subcontractor or Indirect Subcontractor without prior written consent from the *Employer* and only where there is a written contract in place between the *Contractor* and the Subcontractor or Indirect Subcontractor (as applicable) which requires the Subcontractor or Indirect Subcontractor (as applicable) to:

- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and
- (b) comply with the same obligations which the *Contractor* is required to comply with under this clause Z5 (and clauses Z7 and Z10).

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

Z5.5 The *Contractor* itself, and procures that any Subcontractor and Indirect Subcontractor:

- (a) only Processes Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and as reasonably necessary to perform this contract in accordance with its terms;
- (b) does not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer*;
- (c) does not Process Employer Personal Data in such a way as to:
 - place the *Employer* in breach of Data Protection Legislation,
 - expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects,

- expose the *Employer* to reputational damage including adverse publicity;
- (d) the *Contractor* does not allow its personnel to access Employer Personal Data unless such access is necessary to Provide the Works;
- (e) the *Contractor* takes all reasonable steps to ensure the reliability and integrity of the *Contractor's* employees, directors, contractors, agents, Subcontractors, Indirect Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters who can access Employer Personal Data;
- (f) the *Contractor* ensures that all Connected Persons who can access Employer Personal Data:
- are informed of its confidential nature,
 - are made subject to an explicit duty of confidence,
 - understand and comply with any relevant obligations created by either this contract or Data Protection Legislation, and
 - receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;
- (g) does not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
- (h) without prejudice to clause Z5.3, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensures that each such device encrypts Employer Personal Data; and
- (i) complies during the course of this contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time.

Z5.6 The *Contractor* does not, and procures that any Subcontractor or Indirect Subcontractor does not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*).

Z5.7 If, after the Contract Date, the *Contractor* (including any Subcontractor and Indirect Subcontractor) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:

- (a) the *Contractor* submits a written request to the *Employer* setting out details of the following:
- the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,

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

25.8 The *Contractor* and any Subcontractor and Indirect Subcontractor (if any), acknowledges:

- (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer's* instructions and this contract;
- (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this contract or negligence in relation to Employer Personal Data;
- (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non- performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with his obligations;

(d) notwithstanding clause 91.2, if the *Contractor* has committed a material breach under clause Z5.8(c) on two or more separate occasions, the *Employer* may at its option:

- withdraw authorisation for Processing by a specific Subcontractor or Indirect Subcontractor by immediate written notice; or
- terminate the *Contractor's* obligation to Provide the Works in whole or part with immediate written notice to the *Contractor*.

Z5.9 Compliance by the *Contractor* with this clause Z5 is without additional charge to the *Employer* and compliance with this clause is not a compensation event.

Z5.10 Following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works, in each case howsoever arising, the *Contractor*:

(a) may Process the Employer Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with clause Z5.10(b));

(b) subject to clause Z5.10(a)

- on written instructions from the *Employer* either securely destroys or securely and promptly returns to the *Employer* or a recipient nominated by the *Employer* (in such usable format as and to the extent the *Employer* may reasonably require) the Employer Personal Data or
- in the absence of instructions from the *Employer* after 12 months from the expiry or termination of this contract or termination of the *Contractor's* obligation to Provide the Works securely destroys the Employer Personal Data.

Z5.11 Employer Personal Data may not be Processed following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works save as permitted by clause Z5.10.

Z5.12 For the avoidance of doubt, and without prejudice to clause Z5.10, the obligations in this clause Z5 apply following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works to the extent the Party concerned retains or Processes Employer Personal Data.

Z5.13 The *Contractor* takes reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.

Z5.14 The *Contractor* is responsible for and indemnifies the *Employer* and members of the TfL Group from and against any and all fines, court awards, settlements, legal costs, expenses, liabilities, losses, claims and proceedings whatsoever resulting from any breach by the *Contractor* or any Subcontractor or any Indirect Subcontractor of the Data Protection Legislation or clauses Z5.1 to Z5.14 (inclusive). Without prejudice to clause X18.6, the *Contractor's* liability in respect of any breach of clauses Z5.1 to Z5.14 (inclusive) insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

Z5.15 The *Contractor* acknowledges that the *Employer* is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under such legislation including providing to the *Employer* such information as the *Employer* may reasonably request concerning this contract within two (2) days of a request from the *Employer*. The *Contractor* further acknowledges that the *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Contractor*. Without prejudice to the generality of the foregoing the *Contractor* shall transfer to the *Employer* any request for information under the Act that it receives as soon as reasonably practicable. The *Contractor* shall not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the *Employer*. This clause shall survive the expiry or termination of this contract.

Z5.16 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Notwithstanding clause Z5.15 and clause Z7, the *Contractor* gives its consent for the *Employer* to publish the Contract Information to the general public.

Z5.17 The *Employer* may in its absolute discretion redact all or part of the Contract Information prior to its publication. In doing so 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 Freedom of Information Act 2000 and all subordinate legislation made under it, the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z5.16. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z6 Access to Premises

Z6.1 Any TfL Premises made available to the *Contractor* in connection with this contract shall be free of charge and shall be used by the *Contractor* solely so the *Contractor* can Provide the Works provided, for the avoidance of doubt, that the *Contractor* is responsible for its own costs or travel including any congestion charging and/or low emission charging. The *Contractor* shall

- have the use of such TfL Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL Premises,
- vacate such TfL Premises upon the termination or expiry of the contract or at such earlier date as the *Employer* may determine,
- not exercise or purport to exercise any rights in respect of any TfL Premises in excess of those granted under this clause Z6.1,
- ensure that the *Contractor's* employees, Subcontractors and Indirect Subcontractors and persons connected to them carry any identity passes issued to them by the *Employer* at all relevant times and comply with the *Employer's* security procedures as may be notified by the *Employer* from time to time, and
- not damage the TfL Premises or any assets on the TfL Premises.

Z6.2 Nothing in this clause Z6 shall create or be deemed to create the relationship of landlord and tenant in respect of any TfL Premises between the *Contractor* and any member of the TfL Group.

Z6.3 The *Employer* shall be under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to the *Contractor* except as may be specified in the Works Information.

Z6.4 The *Employer* is responsible for maintaining the security of TfL Premises in accordance with its standard security requirements. The *Contractor* shall comply with all of the *Employer's* security requirements while on TfL Premises, and shall ensure that all of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them comply with such requirements. Upon request, the *Employer* shall provide the *Contractor* with details of the *Employer's* security procedures.

Z6.5 The *Employer* reserves the right under this contract to refuse to admit to any TfL Premises any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them who fail to comply with any of the *Employer's* policies and standards referred to in this contract.

Z6.6 The *Employer* reserves the right under this contract to instruct any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them personnel to leave any TfL Premises at any time for any reason and such personnel shall comply with such instructions immediately.

Z6.7 Where the *Contractor* is required to access (with appropriate permission and approval of the *Employer*) any areas under the control of any of the *Employer's*

PPP or PFI contractors, the *Contractor* must comply (and ensure that any Subcontractor's and Indirect Subcontractors comply) with all of their rules, regulations and standards as appropriate.

Z7 Confidentiality and Publicity

Z7.1 The *Contractor* acknowledges that during the course of this contract it may receive, obtain, prepare or create confidential information. The *Contractor*

Z7.1(1) receives and/or maintains the confidential information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature,

Z7.1(2) does not use the confidential information for any purposes whatsoever (and in particular does not use the confidential information to the detriment of the *Employer*) other than to Provide the Works,

Z7.1(3) does not disclose the confidential information to any third party without the prior written consent of the *Project Manager* except that the *Contractor* is entitled to the extent strictly necessary to disclose the confidential information

Z7.1(3)(a) to such of the *Contractor's* Subcontractors, Indirect Subcontractors and personnel who need to know the confidential information in order to Provide the Works provided that the *Contractor* is responsible for any breach of its obligations occasioned by any act or omission of such Subcontractors, Indirect Subcontractors or personnel, or

Z7.1(3)(b) to the *Contractor's* auditors and any other person or body having a legal right or duty to know the confidential information in connection with the *Contractor's* business provided that prior to such disclosure the *Contractor* consults with the *Project Manager* as to the proposed form of such disclosure,

Z7.1(4) informs each of the persons referred to in clauses Z7.1(3)(a) and Z7.1(3)(b) to whom confidential information is disclosed of the restrictions as to use and disclosure of the confidential information and uses its best endeavours to ensure that each of them observe such restrictions,

Z7.1(5) at the *Employer's* request and in any event upon the termination or expiry of the contract, promptly delivers to the *Employer* or destroys as the *Employer* directs all documents and other materials in its possession, custody or control (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 *Project Manager* in writing, removes all electronically held confidential information, including (without limitation) the purging of all disk-based confidential information and the reformatting of all disks, and

Z7.1(6) does not, except where provided in clause Z7.1(3), or without the prior written consent of the *Project Manager*, disclose to any third party the nature or content of any discussions or negotiations relating to the confidential information.

Z7.2 The obligations set out in clause Z7.1 do not apply to any confidential information which

Z7.2(1) the *Contractor* shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Contractor* by the *Employer*, or

Z7.2(2) is lawfully disclosed to the *Contractor* without any obligations of confidence, by a third party who has not derived it directly or indirectly from the *Employer*, or

Z7.2(3) is or has come into the public domain through no fault of the *Contractor* or its personnel, or

Z7.2(4) is required by law or by order of a court of competent jurisdiction to be disclosed.

Z7.3 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of clause Z7.1 and that (without prejudice to all other remedies which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages is necessary for the enforcement of the provisions of this clause.

Z7.4 The *Contractor* does not advertise or announce this contract or that it is to Provide the Works without the prior written consent of the *Project Manager* and the *Project Manager* on behalf of the *Employer* has the right to approve any advertisement or announcement before it is made.

Z7.5 Neither the *Contractor* nor anyone employed by him or acting on his behalf shall give information concerning the *works* for publication in the press or on radio, television, screen or any other media without the prior written consent of the *Project Manager* and, if such consent is given, shall provide to the *Project Manager* a full copy of the information to be released and shall not release any such information until the *Contractor* has received the *Project Manager's* prior written consent as to the content of the information to be released. The *Contractor* shall not, without the prior written approval of the *Project Manager*,

take or permit to be taken any photographs of the *works* for use in any publicity or advertising.

Z8 Conflict of Interest

Z8.1 The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the *works* or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.

Z8.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this 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 the provision of the *works* under this contract or any member of the TfL Group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working on, and data relating to, the *work* from the matter in question) to manage such conflict to the *Employer's* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

Z9 Compliance with Policies

Z9.1 The *Contractor* notifies its personnel Subcontractors and Indirect Subcontractors and the *Employer* of any health and safety hazards that exist or that may arise in connection with the provision of the *works* of which the *Contractor* is aware or ought reasonably to be aware.

Z9.2 The *Contractor* undertakes that all its personnel and those of its Subcontractors and Indirect Subcontractors comply with all of the *Employer's* policies and standards that are relevant to the provision of the *works*, including those relating to safety, security, business ethics, responsible procurement, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Employer* for personnel working at TfL Premises or accessing the *Employer's* computer systems. The *Employer* provides the *Contractor* with copies of such policies on request.

Z9.3 The *Contractor* shall as he Provides the Works (while taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Contractor's* activities may impact on the environment) to the need to

- preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
- enhance the environment and have regard to the desirability of

achieving sustainable development,

- conserve and safeguard flora, fauna and geological or physiological features of special interest, and
- sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Z10 Records, Audit and Inspection

Z10.1 In this clause Z10

"Records" means

- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subcontractors and/or Indirect Subcontractors,
- management accounts, information from management information systems and any other management records,
- accounting records (in hard copy as well as computer readable data),
- sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
- original estimates,
- estimating worksheets,
- correspondence,
- compensation event files (including documentation covering negotiated settlements),
- schedules including capital works costs, timetable and progress towards Completion,
- general ledger entries detailing cash and trade discounts and rebates,
- commitments (agreements and leases) greater than £5,000 (five thousand pounds),
- detailed inspection records,
- such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*, and

- accounts and records of the Price for Works Done to Date and all other amounts to be paid to the *Contractor* under this contract.

Z10.2 The *Contractor* maintains and procures in each subcontract that each of his Subcontractors, maintains and retains the Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Contractor* and his Subcontractors and Indirect Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the Employer and any novated *Employer* and their authorised representatives.

Z10.3 The *Contractor* undertakes and procures that his Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of Personal Data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or his Subcontractors and Indirect Subcontractors including, without limitation, the Records.

Z10.4 The *Contractor* promptly provides (and procures that his Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by

- granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* own premises or otherwise,
- granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
- making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,

- providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* and/or any novated *Employer's* auditor and/or granting copying facilities to the *Employer's* and/or any novated *Employer's* auditor for the purposes of making such copies, and
- complying with the *Employer's* and/or any novated *Employer's* reasonable requests for access to senior personnel engaged by the Contractor in the performance of this contract and/or the *works*.

Z11 Corrupt Gifts, Fraud and the Payment of Commission

Z11.1 The *Contractor* does not, and ensures that its employees, agents Subcontractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the *Employer* or any member of the TfL Group nor favour any employee, officer or agent of the *Employer* or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the *Employer* or any member of the TfL Group other than as a representative of the *Employer*, without the *Employer's* prior written approval.

Z11.2 If any fraudulent activity comes to the attention of the *Contractor* in relation to this contract the *Contractor* notifies the *Employer* by the most expeditious means available. The *Contractor* cooperates with the *Employer* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Contractor* ensures that no fraudulent activity is committed by the *Contractor*, its agents, employees, Subcontractors or Indirect Subcontractors.

Z11.3 The *Employer* has the right to audit any and all such records necessary to confirm compliance with clause Z11.1 and Z11.2 at any time during the duration of this contract and during the 6 year period following expiry or termination of this contract. Breach of clause Z11.1 and/or Z11.2 shall entitle the *Employer* to terminate this contract and any other contracts between the *Contractor* and the TfL Group immediately.

Z11.4 In the event of any breach of this clause Z11 by the *Contractor* the *Employer* recovers any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Contractor*.

Z12 Quality Statement

Z12.1 The quality statement sets out the *Contractor's* proposals for the management and resourcing of the *works*.

Z12.2 The *Contractor* warrants that the representations contained in the quality statement section of his tender are accurate in every respect and may be fully relied upon by the *Employer*, including where the standards represented exceed the minimum originally specified by the *Employer*.

Z12.3 Should any discrepancy arise between the quality statement and other contract documents the Works Information takes precedence except where the quality statement includes a standard which exceeds that specified in the other contract documents, in which case the quality statement shall take precedence over those other documents.

Z13 Quality Management System

The *Contractor* operates a quality management system complying with BS EN ISO 9002 for his performance of the contract. The management, organisation, responsibilities, procedures, processes, resources and programme for the quality management system from design (where applicable) to procurement, construction, completion, testing and commissioning of the *works* until the *defects date* is contained in a quality plan which is submitted to the *Employer* in accordance with the Works Information. Any Subcontractor appointed by the *Contractor* operates a quality system enabling him to comply with the *Contractor's* quality management system.

Z14 Responsibility for Statutory Undertakers

[Z14.1] The *Contractor* on behalf of the *Employer*

- identifies those measures which need to be taken as a consequence of or in order to facilitate the *works* with any Statutory Undertaker,
- agrees a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Undertaker,
- co-ordinates the taking of those measures and the execution of the *works* with the Statutory Undertaker,

and the *Employer* as the *Contractor's* principal pays the Statutory Undertaker's allowable costs in respect of these measures.

The *Contractor*

- is responsible (at no cost to the *Employer*) for ensuring the Statutory Undertaker's compliance with any agreement or arrangement entered into under clause Z14
- indemnifies and keeps indemnified the *Employer* against

- all claims demands actions and proceedings
- costs charges and expenses arising therefrom
- loss or damage to any property
- increased costs of working or
- business interruption

which may be brought or made by any Statutory Undertaker in connection with such an agreement including but not limited to the negligence or default of the *Contractor*.

Z14.2 The *Contractor* allows in any programme required under this contract, any notice period required by a Statutory Undertaker in relation to any matter which is the subject of clause Z14.1 and for all periods required in the taking of measures which are the subject of clause Z14.1.]

Z15 Nuisance

Z15.1 The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under clause 43 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

Z15.2 Without prejudice to the *Contractor's* obligations under clause Z15.1, the *Contractor* ensures that there is no trespass on or over any adjoining or neighbouring property arising out of the *works* or of any obligation under clause 43. If the carrying out of the *works* or of any obligation under clause 43 is likely to necessitate any interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Employer*, obtains the prior written agreement of such owners and/or occupiers to the work, and such agreement will be subject to the approval of the *Employer* before execution. The *Contractor* complies in every respect with any conditions in any such agreement.

Z16 Construction Industry Scheme

Z16.1 Where the Construction Industry Scheme applies to any payment to be made by the *Employer* to the *Contractor* under this contract, the obligations of the *Employer* to make such payment will be subject to the provisions of the Construction Industry Scheme. Unless and until HM Revenue and Customs confirms to the *Employer* that the *Employer* can make any payment to the *Contractor* without any tax deduction, the *Employer* deducts any tax from payments due to the *Contractor* under this contract at the rate specified by HM Revenue and Customs pursuant to the Construction Industry Scheme before paying the balance to the *Contractor*. The *Employer* accounts to HM Revenue and Customs for any tax so deducted.

Z17 Use of Existing Services

[The *Employer* does not warrant the suitability or availability of installations and services for the *Contractor's* use and the *Contractor* shall take measures to supplement them as necessary.]

Z18 2012 London Games

The *Contractor* shall not (without the prior written approval of the London Organising Committee of the Olympic Games Limited ("LOCOG") in each case) represent that any products or services provided under this contract have been endorsed or approved by the *Employer*, the British Olympic Association, the British Paralympics Association, LOCOG or any other official Olympic or Paralympic body, or that the *Contractor* (including any of its products or services) are in any way associated with those organisations, the Olympic Games and/or Paralympic Games, or London 2012, including by publishing or issuing any statement (factual or otherwise) about the *Contractor's* provision of the works for the *Employer*.

Z19 Equality & Diversity Compliance

Z19.1 Without limiting the generality of any other provision of the contract, the *Contractor* has due regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 in the exercise of its functions and additionally:

- does not unlawfully discriminate,
- procures that its personnel do not unlawfully discriminate, and
- uses reasonable endeavours to procure that its Subcontractors and any Indirect Subcontractors do not unlawfully discriminate when providing the works

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in

employment.

Z19.2 The *Employer's* Workplace Policy requires the *Employer's* own staff and those of its Subcontractors and Indirect Subcontractors to comply fully with the Workplace Policy to eradicate harassment in the workplace. The *Contractor*

- ensures that its staff, and those of its Subcontractors and Indirect Subcontractors who are engaged in the performance of the contract are fully conversant with the requirements of the Workplace Policy,
- fully investigate allegations of workplace harassment in accordance with the Workplace Policy, and
- ensures that appropriate effective action is taken where harassment is found to have occurred.

Z19.3 The *Contractor* assists and co-operates with the *Employer* and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate where possible with the *Employer's* compliance with its duties under section 1 of the Equality Act 2010 as and when section 1 comes into force, including any amendment or re-enactment of section 1, and any guidance, enactment, order, regulation or instrument made pursuant to this section.

Z19.4 In performing his obligations under this contract, the *Contractor* complies, and ensures that his Subcontractors and Indirect Subcontractors comply, with the Modern Slavery Act 2015 and complies with the Anti-Slavery Policy. For the purpose of this clause Z19.4, Anti-Slavery Policy means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.

Z20 Considerate Constructor Scheme

The *Contractor*

- registers the Site under the Considerate Constructor Scheme
- complies with the Considerate Constructor Scheme's Code of Considerate Practice when he Provides the Works.

Z21 Design Check Certificate

[All design prepared by the *Contractor* and submitted to the *Project Manager* is supported by a design check certificate in the form attached to the Works Information signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor*, he is a Subcontractor.]

Z22 Goods vehicles operator's licence

[Each goods vehicle used by the *Contractor* or his Subcontractors in connection with this contract displays the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle carries documentation giving the operator's licence number, name and address.]

Z23 Computer Equipment

[Any software, electronic or magnetic media, hardware or computer system used or supplied by the *Contractor* in connection with this contract

- is Euro compliant, and
- is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk, and
- does not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system, and
- does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the *Employer* and/or any other member of the TfL Group on which it is used or with which it interfaces or comes into contact, and
- any variations, enhancements or actions undertaken by the *Contractor* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Contractor's* compliance with this warranty.]

Z24 Equality & Diversity

[Each TfL Contract needs to address Equality & Diversity Requirements where relevant and proportionate. Project Teams need to discuss this with the TfL Responsible Procurement Team in Group Procurement at the outset and appropriate drafting can be agreed. Also refer to Source at http://source.tfl/our_company/5089.aspx for the Guidance and Toolkit. Sample clauses are located at Appendix 1 at the end of this document.]

Z25 Strategic Labour Needs and Training

[Where relevant and proportionate to the contract, TfL requires the inclusion of training and employment opportunities so that TfL and its supply chain can continue to have the skilled work force needed to deliver its transport objectives.

A pointer to the relevance of this requirement to a contract is for example where the duration and/or nature of the project are such that there is a need to ensure the supply chain workforce is equipped to deliver the project to the required quality and programme. Guidance as to the application of this clause and appropriate drafting should be sought from TfL Group Procurement.

Sample drafting is included in Appendix 1.]

Z26 Sustainable Timber

[You should consider whether the responsible procurement of timber is appropriate to your project. Please consult with TfL Group Procurement and/or visit http://source.tfl/pdfs/sustainable_timber_guidance_notes_260707.pdf.

Sample drafting is included in Appendix 1.]

Z27 London Living Wage

For the purposes of this clause Z27:

“**CCSL**” means the Centre for Civil Society Limited or any relevant replacement organisation as notified by the *Employer* from time to time; and

“**London Living Wage**” means the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website (www.livingwage.org.uk).

Z27.1 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act, has directed the *Employer* to ensure that the London Living Wage is paid to anyone engaged by the *Employer* who is required to discharge contractual obligations (whether as a direct contractor or a subcontractor (of any tier) of that direct contractor) on the *Employer's* estate in the circumstances set out in sub-clause Z27.2(a).

Z27.2 Without prejudice to any other provision of this contract, the *Contractor*:

(a) ensures that his employees and procures that the employees of his Subcontractors and Indirect Subcontractors engaged in the

performance of the *works*:

- for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year and
- on the *Employer's* estate including (without limitation) the Site and premises and land owned or occupied by the *Employer*,

is paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage,

(b) ensures that none of:

- his employees nor
- the employees of his Subcontractors or Indirect Subcontractors,

engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment,

(c) provides to the *Employer* such information concerning the London Living Wage as the *Employer* or his nominees may reasonably require from time to time, including (without limitation):

- all information necessary for the *Employer* to confirm that the *Contractor* is complying with his obligations under this clause Z27 and
- reasonable evidence that sub-clause Z27.2(a) is implemented,

(d) in connection with sub-clause Z27.2(c),

- acknowledges and agrees that CCSL may contact and meet with any trade unions representing the *Contractor's* employees and the employees of his Subcontractors and Indirect Subcontractors in order to establish that the obligations in sub-clause Z27.2(a) have been complied with and
- liaises and cooperates with the *Employer* and the CCSL in order to establish that the obligations in sub-clause Z27.2(a) have been complied with,

(e) disseminates on behalf of the *Employer* to:

- his employees and
- the employees of his Subcontractors and Indirect Subcontractors,

engaged in the performance of the *works* such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the *Employer* responses to such questionnaires, and

(f) co-operates and provides all reasonable assistance in monitoring the effect of the London Living Wage.

Z27.3

For the avoidance of doubt the *Contractor*:

(a) implements the annual increase in the rate of the London Living Wage and

(b) procures that his Subcontractors and Indirect Subcontractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

Z27.4

The *Employer* reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Contractor's employees and the employees of his Subcontractors and Indirect Subcontractors.

Z27.5

Any breach by the *Contractor* of the provisions of this clause Z27 is treated as the *Contractor* having substantially failed to comply with his obligations for the purpose of Clause 91.2 of this contract.

