



An nec3 engineering and construction contract

Option A: Priced Contract with Activity Schedule

For

London's building retrofit (RE:FIT) Programme

**Palestra House, Oxford Circus House and
Victoria Station House Decarbonisation
Works (Contract No: GLA 82580 Task 2 –
Phase 2)**

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SECTION 1

FORM OF AGREEMENT

FORM OF AGREEMENT

Amendments to NEC Third Edition: Option A

THIS CONTRACT AGREEMENT is made the day of

BETWEEN

1. **Transport for London of Endeavour Square, 5 Endeavour Square LONDON E20 1JN** (hereinafter called "*the Employer*") which expression shall include its successors in title and permitted assignees, and
2. **Vital Energi Utilities Ltd**, a company incorporated in and in accordance with the laws of **ENGLAND AND WALES** having as its registered number **04050190** and its registered office at **Century House, Roman Road, Blackburn, Lancashire BB1 2LD** (hereinafter called "*the Contractor*").

RECITALS

- (A) The *Employer* wishes to appoint the *Contractor* to carry out *works* being **London's building retrofit (RE:FIT) Programme Palestra House Decarbonisation Works** for which the *Employer* has submitted to the *Contractor* his invitation to tender.
- (B) The *Contractor* has submitted his tender offer dated **28 November 2024** in response to the *Employer's* invitation to tender. The *Employer* has examined the *Contractor's* said tender and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *works* in accordance with this contract.

OPERATIVE PROVISIONS

1. In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Engineering and Construction Contract Option A: Priced Contract with Activity Schedule (Third edition June 2005 with amendments June 2006) 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 (with amendments dated September 2011) 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),
 - 3.2 the Contract Data Part One,
 - 3.3 the Contract Data Part Two,
 - 3.4 the Works Information,

3.5 the Site Information,

3.6 the *Employer's* letter of acceptance

[3.7 **INSERT DETAILS OF ANY OTHER CONTRACT DOCUMENTS**].

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

Signed:

**For and on behalf of the Contractor
Vital Energi Utilities Ltd**

Print Name

Position of Authorised Signatory

Date

Signed

**for and on behalf of the Employer
Transport for London**

Print Name

Position of Authorised Signatory

Date



SECTION 2

CONTRACT DATA SHEETS

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, X18, and Z of the NEC3 Engineering and Construction Contract (June 2005 with amendments June 2006)

- The *works* are **REFIT works at Palestra House, Oxford Circus House and Victoria Station House**

-
- The *Employer* is

Name **Transport for London**

Address **Endeavour Square**

5 Endeavour Square LONDON E20 1JN

-
- The *Project Manager* is

Name **Ashil Juddoo**

Address REDACTED

-
- The *Supervisor* is

Name **Facilities and Operations Team**

Address REDACTED

-
- The *Principal Contractor* is

Name **Vital Energi Utilities Ltd**

Address **Century House, Roman Road**

Blackburn, Lancashire, BB1 2LD

- The *Principal Designer* is

Name **Vital Energi Utilities Ltd**

Address **Century House, Roman Road**

Blackburn, Lancashire, BB1 2LD

- The *Adjudicator* is an independent person appointed
to act as an adjudicator in accordance with
clause W2.2

- The Works Information is in

Schedule 3

- The Site Information is in

Schedule 3

- The *boundaries of the sites* are

Palestra - 197 Blackfriars Road LONDON SE1 8NJ

Oxford Circus House – 245 Oxford Street, London W1D 2LD

Victoria Station House – Victoria Arcade, London SW1E 5ND

- The *language of this contract* is English

- The *period for reply* is 2 weeks

- The *Adjudicator nominating body* is the President or

Vice President or other duly authorised officer of the

London Court of International Arbitration

- The following matters will be included in the Risk Register

2 Time • The *starting date* is The Contract Date
06/01/25

- The *access dates* are

Part of the Site	Date
All sites	06/01/25

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

4 Testing and Defects

- The *defects date* is 52 weeks after Completion of the whole of the *works*

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

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

- The *assessment interval* is 4 weeks (not more than five)

- The *interest rate* is 2% per annum (not less than 2) above the base rate of the Bank of England

- The *Contractor* submits invoices to REDACTED and such invoices contain the following information.

REDACTED

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

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

events

Met Office Area

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

Met Office Area

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 the *Employer* has identified work which is to meet a

stated condition by a key date

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

<i>condition</i> to be met	<i>key date</i>
1 Completion Date	31/03/26
2	
3	

If Option X5 is used

- They *completion date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Palestra	31/03/26
2	Oxford Circus House	28/06/25
3	Victoria Station House	28/06/25
4		

If Option X7 is used

- As per Schedule 5 Delay damages for Completion of the whole of the *works* will be REDACTED...

If Option X15 is used

- The Contractor is not liable for Defects in the works due to his design so far as he proves that he used reasonable skill and care to ensure that his design complied with the Works Information
- If the Contractor corrects a Defect for which he is not liable under this contract it is a compensation event

If Option X16 is used

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

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is REDACTED...
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is REDACTED
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is REDACTED...
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is REDACTED....
- 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)
Not used**

- The *incentive schedule* for Key Performance Indicators is in
- 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 *Contractor*

Statement s given in contracts

- The *Contractor* is

Name Vital Energi Utilities Ltd

Address Century House, Roman Road, Blackburn

Lancashire, BB1 2LD

- The *direct fee percentage* is
REDACTED

- The *subcontracted fee percentage* is REDACTED

- The *working areas* are the Sites stated above

- The key people are

(1) Name Paul Smith (REDACTED)

Job Commercial Director

Responsibilities REDACTED

Qualifications

Experience

(2) Name James Asterley

Job Operations Manager

Responsibilities REDACTED

Qualifications

Experience

- The following matters will be included in the Risk Register

TfL Phase 2- Palestra Investment Grade Proposal- Risk Register
Appendix 7

PAL-CDL-XX-XX-T-Z-95751 Stage 3 CDM Risk Register From
Cundall to be included at final design stage

Oxford Circus House and Victoria Station House IGP Risk Register
to be added at final design stage

**Optional
statements**

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

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

TfL Phase 2- Palestra Investment Grade Proposal

and

TfL Phase 2- OCH & VSH Investment Grade Proposal

Including Appendixes 1 to 10:

- Appendix 1 - ECM Model
 - Appendix 2 - M&V Plan
 - Appendix 3 – Drawings
 - Appendix 4 - Equipment Schedules
 - Appendix 5 – Technical Submittals and Data Sheets
 - Appendix 6 - Outline Project Programmes
 - Appendix 7 - Risk Register
 - Appendix 8 – Scope Document and Specifications
 - Appendix 9 – Structural Report
 - Appendix 10 – Acoustic Report
-

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is
Section 6, Schedule 4: Programme

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 31/03/2026

If Option A or C is used

- The *activity schedule* is referenced in Section 8, Schedule 6

If Option A, B, C or D is used

- The tendered total of the Prices is **£8,726,910 excluding VAT**

If Option A or B is used

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

- The percentage for people overheads is
REDACTED
- The published list of Equipment is the last edition of the list published by
REDACTED
- The percentage for adjustment for Equipment in the published list is REDACTED
- The rates for other Equipment are
REDACTED
- The hourly rates for Defined Cost of design outside the Working Areas are
REDACTED
- The percentage for designed overheads is

REDACTED

- The categories of designed employees whose travelling expenses to and from the Working Areas are REDACTED



SECTION 3

SCHEDULE 1

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

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 <i>Contractor's</i> 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 <i>Employer</i> 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 <i>works</i> delete "or" and insert "and/or". |
| Clause 11.2 | Insert the following new definitions |
| "(34) | Background IPR means IPR owned by the <i>Contractor</i> or a Subcontractor or other third party and which is not assigned to the <i>Employer</i> 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 has the meaning given to it in Data Protection Legislation.
- (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*."
- 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 *conditions of contract* are for convenience only and do not affect their construction or interpretation."

Clause 12.9

Insert a new clause:

"12.9

A reference in these *conditions of contract* to any applicable law or Statutory Requirement includes

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

Clause 12.10

Insert a new clause:

"12.10

Notwithstanding the Contract Date, the conditions of this contract cover all work carried out by the *Contractor* from the date when he first commenced performance of the *works* and this contract and the warranties and undertakings in this contract are deemed to apply to all work performed by the *Contractor* both before and after the Contract Date."

Clause 12.11

Insert a new clause:

"12.11

Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any

other right, condition or requirement.”

[Clause 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 17.5

Insert a new clause:

"17.5

Subject to Clause 27.9 The *Contractor* shall be deemed to have verified the accuracy of any information provided by the *Employer*, the *Project Manager* and/or the *Supervisor*]."

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

- subject to clause 27.9 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":

- “ • in the opinion of the *Project Manager* they are not consistent with the terms of this contract”.

Clause 26.5

Insert a new clause:

“26.5

Where the *Contractor* has proposed a Subcontractor in Contract Data Part Two for part of the *works*, acceptance of Contract Data Part Two by the *Employer* without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the *Project Manager* under clause 26.2, provided that the Contractor has complied with clause 26.3. Any such Subcontractor is not removed by the *Contractor* from the part of the *works* for which he has been proposed without the prior written consent of the *Project Manager*.”

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 *Project Manager* relieves the *Contractor* of any liability or obligation under this contract.”

Clause 26.7

Insert a new clause:

“26.7

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

Clause 26.8

Insert a new clause

“26.8

The *Contractor* promptly notifies the *Employer* 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 *starting date*.”

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 27.9

Insert a new clause:

"27.9

REDACTED

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

NOT USED. X4 & X13 not selected.

"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."]

[Clause 60.2

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 63.3

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 63.6 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."

Notwithstanding this clause 83.1, where permissible by law, the *Contractor's* liability is limited in the Contract Data at X18.

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].

Clause 85.6

Insert a new clause:

"85.6

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

Clause 85.7

Insert a new clause:

"85.7

The *Contractor* promptly notifies the *Project Manager* in writing of any claim, event, fact, matter or circumstance

which may give rise to the right to make any claim on any insurance."

Clause 85.8

Insert a new clause:

"85.8

The *Contractor* does not compromise, surrender, release, settle or waive any claim or potential claim which the *Contractor* has or may have the right to bring, or has brought, under any insurance without the prior consent of the *Project Manager*."

Clause 85.9

Insert a new clause:

"85.9

The *Contractor* does not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the *Contractor's* and/or the *Employer's* rights to make or proceed with a claim against any insurer."

Clause 85.10

Insert a new clause:

"85.10

If the *Contractor* is informed that any insurer providing insurance required by this contract intends to cancel or change any term of any insurance required by this contract, the *Contractor* promptly notifies the *Project Manager* of such intention."

Clause 85.11

Insert a new clause:

"85.11

The *Contractor* promptly notifies the *Project Manager* in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this contract lapsing or being terminated or the cover under it being reduced or modified."

Clause 85.12

Insert a new clause:

"85.12

To the extent that the *Contractor* is entitled to bring any claim or claims under any insurance relating to this contract then the *Contractor* deals with all such claims promptly and diligently and (subject to the requirements of this contract) in accordance with all insurer requirements and recommendations."

Clause 85.13

Insert a new clause:

"85.13

The *Contractor* acknowledges that the *Employer* has the right to control and to supervise all dealings with the press,

television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this contract."

Clause 85.14

Insert a new clause:

"85.14

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

Clause 90.2

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

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

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 *Employer’s* right to terminate the *Contractor’s* obligation to Provide the Works under clauses 90 to 93 or at common law, the *Employer* may terminate the *Contractor’s* 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 *Employer* promptly notifies the *Contractor*. The Parties agree that the provisions of clause 94 shall apply as from the date of receipt by the *Contractor* 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

As from the date of receipt by the *Contractor* 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 *Employer* reasonably determines an appropriate Cessation Plan with the object of achieving

- an orderly and efficient cessation of the *works* or (at the *Employer’s* request) a transition of the *works* to the *Employer* or such other entity as the *Employer* may specify, and
- minimal disruption or inconvenience to the *Employer* 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 *Employer*, of the Cessation Plan, the Parties comply with their respective

obligations under the Cessation Plan.

94.6 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 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

W2.4

- 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.
- 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 CLAUSES¹

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 <i>Employer</i> upon
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¹ These clauses apply depending upon which Secondary Option clauses are selected for particular contracts.

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”.

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 form attached (Section 10) 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 form attached (Section 10) 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. REDACTED

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.

Z5.8 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 Z.7.1 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 or, 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 Policies²

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

²

Standard clause that TfL require to promote compliance with TfL's policies throughout the supply chain.

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 REDACTED.

Z10.3(1) REDACTED.

Z10.3(2) REDACTED.

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.



SECTION 4

SCHEDULE 2

**TfL INSURANCE TABLE AND CONTRACTOR
INSURANCE CERTIFICATES**

SCHEDULE 2 - INSURANCE TABLE

<i>INSURANCE AGAINST</i>	<i>WHICH PARTY PROVIDES</i>	<i>MINIMUM AMOUNT OF COVER OR MINIMUM LEVEL OF INDEMNITY</i>
All risks of loss or damage (not excluded by the terms and conditions of the policy) to the permanent <i>works</i> and materials or equipment for incorporation therein, the temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of the permanent <i>works</i>) constructional plant and equipment temporary buildings and other property owned by or supplied by the <i>Employer</i> .	<i>Contractor</i>	The total cost of the specific Works Package plus architect and other professional fees plus debris removal cost
All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property obstruction loss of amenities trespass nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract	<i>Contractor</i>	REDACTED any one occurrence and unlimited in the period of insurance
Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with this contract	<i>Contractor</i>	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event
Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the <i>Contractor</i>	<i>Contractor</i>	The replacement cost

Professional Indemnity Insurance Negligence omission or default in respect of design of the <i>works</i> for which the <i>Contractor</i> is responsible	<i>Contractor</i>	REDACTED
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SECTION 5

SCHEDULE 3

WORKS INFORMATION AND SITE INFORMATION



SECTION 5

SCHEDULE 3

WORKS INFORMATION AND SITE INFORMATION

Programme

Project

Document reference

Works Information for Palestra House, Oxford Circus House and Victoria Station House Decarbonisation Project

		Signature	Date
Prepared by	Ashil Juddoo	REDACTED	18/12/24
	Lead Project Manager	_____	_____
Reviewed by	Endorsement statement		
	Quinten Babcock	REDACTED	18/12/24
	Environmental Manager	_____	_____
Approved by	I confirm that this deliverable meets the requirements of the relevant IPPM Product Description and that all consultation comments have been addressed to the satisfaction of consultees.		
	Briyan Ranganathan		
	Programme Manager	_____	_____
Distributed to	Stephen Morrow & Jason Swallow		

Document History

Revision	Date	Summary of changes
V0.0	03/12/24	REDACTED
V0.3	11/12/24	REDACTED
V0.4	18/12/24	REDACTED

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1 Introduction

1.1 Background

Palestra House was constructed in 2006 and is a notable commercial building located in central London south of Blackfriars Bridge at 197 Blackfriars Road, SE1 8NJ. It is large building over 11 floors with a basement. It has a double-glazed façade and spandrel panels over a steel and RC frame.

It has a gross internal area of 37,500 m² and was built as a mixed-use development by the London Development Agency but is now used by Transport for London (TfL) as one of their main Head Quarter buildings.

Palestra House contains LU and TfL control and incident rooms. These are critical to the operation of LU and TfL and can't be stopped from operating. It also accommodates office for the Metropolitan Police and Arriva. The building is occupied 24hrs, 365 days per year. Although most of the occupancy is over normal office hours.

The mixed usage of the building comprises a basement area (comprising of M&E service plant and bike parking), ground floor (locating the restaurant, reception, and entrance foyer) and 11 floors of flexible office space. The roof space is where most of the M&E service plant is located. There is very limited external space surrounding the footprint of the building.

Additionally, two smaller sites, Oxford Circus House and Victoria Station House located directly above their local London Underground stations have a requirement to replace end of life domestic hot water gas boilers for electric heat pump technology as part of linked grant funding works.

TfL has planned to use RE:FIT framework to improve all of their building stock, and have looked for a long-term partner who will help them to meet Mayoral net zero carbon ambitions by 2030. This will lead to a large multi-year & multi-phase project to reduce their emissions by adopting a fabric first approach (albeit at some operational sites it may not be possible to fully overhaul all fabric), followed by correct application of suitable building services to condition spaces and renewable installations (where relevant).

The Re:fit programme is a national scheme that provides the opportunity to reduce carbon emissions, achieve substantial guaranteed energy savings, and cut costs through energy efficiency and energy generation measures. Following a competitive tendering process, Transport for London (TfL) selected Vital Energi (VE) as their Service Provider to identify and deliver effective energy conservation and decarbonisation measures throughout their estate.

This framework underpins TfL's commitment to reaching net zero-carbon emissions across all operations and head office buildings by 2030. To achieve this ambitious goal, a hierarchical approach to reducing energy consumption and carbon emissions will be adopted.

1.2 Objectives

An Investment Grade Proposal (IGP) for each of the 3 sites (TfL Phase 2) was developed by VE namely:

1. Palestra House
2. Victoria Station House
3. Oxford Circus House

The IGP is in support of the successful Public Sector Decarbonisation Scheme (PSDS) 3C application, which Vital Energi supported in applying for a change request that allowed for an increase in scope and ECM technologies. The IGP is aimed at minimising site energy demands through selected Energy Conservation Measures (ECMs).

VE have conducted a thorough and robust technical assessment of the proposed ECMs and their associated costs. VE have considered the initial scope, the technical and compliance requirements of the ECMs as identified during site surveys. Workshops with the TfL project Team and VE have been conducted throughout the IGP process.

1.2.1 Palestra House

An IGP was developed and submitted by VE on 28 November 2024. The IGP for Palestra House is made up of 3 distinct energy conservation measures (ECMs)

1. ECM 12- Ventilation controls (FCUs)
2. ECM 14- LED Lighting Replacements
3. ECM 15- Heat pump technology

The Heat pump technology has been formed from the Cundall's Stage 3 report and associated design drawings, schedules and further documents.

The lighting and ventilation controls has been formed from in- depth discussions between TfL's Environmental management team, TfL's onsite management team and VitalEnergi.

REDACTED

1.2.2 Oxford Circus House and Victoria Station House

A combined IGP for Oxford Circus House and Victoria Station House was developed and submitted by VE on 10 December 2024. The IGP for each site is made up of 1 distinct energy conservation measure (ECMs) as follows:

1. ECM 15.1 - Heat Pump technology- Oxford Circus House
2. ECM 15.2 - Heat Pump technology- Victoria Station House

REDACTED

No maintenance and operating expenditure costs have been included in the IGP costs.

2 Preambles to the Works Information

2.1 Ambiguities and inconsistencies

The contractor is required to raise RFI's or queries where there appears to be ambiguities in the requirements.

3 Scope of Works

3.1 Aim and Project scope of works

The aim of the project is to enhance the energy efficiency of TfL's Building while replacing outdated plant systems to better align with Net Zero targets.

3.1.1 Palestra House

With regards to Palestra the main objectives are to ensure the building minimum **EPC rating is B** by 2030.

This project focuses on:

- Replacing outdated plant machinery with state-of-the-art, energy-efficient systems. The need to achieve a minimum rating EPC of B by 2030.
- Upgrading to environmentally friendly and sustainable alternatives wherever possible.
- Ensuring optimal space utilization during installation.
- Enhancing the overall operational performance and reliability of the building's systems.
- Ensure the building always remains operational.
- Supply & installation of replacement dimmable LED: 600x600; 300x1200; circular downlights; corridor & kitchen pelmet lights; service risers bulkhead lights; kitchenette manifestation wall washers; meeting room pendant fittings; and all emergency lights & battery packs for following floors: Ground floor, 1st, 2nd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and the 11th,
- Installation of sensors on each floor to detect occupancy of the building and provide input into the BMS to modulate the volume of air coming from the AHUs to each open plan zone

VCD/VAV box and switch on/off FCU's operation based on occupancy (%) levels (and CO2 levels as a secondary measure) in open plan areas.

The following ECMs are proposed under the IGP submitted by VE and same will form the deliverables within this Works and Optimisation Service (WOS) agreement.

Full schedules for the ECMs at Palestra House are shown in Appendix 1 ECM Model of the IGP. These ECMs were selected based on achieving requirements set out in the project brief and through regular progress discussions with TfL.

The following tables present a summary of the measures identified:

ECM No.	Location	Description
ECM 12	Palestra House	Ventilation Improvements
ECM 14	Palestra House	LED Lighting and Controls
ECM 15	Palestra House	Heat Pump Technology

REDACTED

3.1.2 Oxford Circus House and Victoria Station House

With regards to Oxford Circus House and Victoria Station House the main scope of works are:

- Remove all fossil fuel systems from the site.
- TfL uses an internal project governance process titled “Pathway” which includes a stage gate sign off process that can lead to change as VE step through the programme.
- Deliver the project to the programme dates and energy efficiency requirements as per the relevant PSDS application per site or phase.

The following ECMs are proposed under the IGP submitted by VE and same will form the deliverables within this Works and Optimisation Service (WOS) agreement.

Full schedules for the ECMs at Oxford Circus House and Victoria Station House are shown in Appendix 1 of the report- ECM Model of the IGP. These ECMs were selected based on achieving requirements set out in the project brief and through regular progress discussions with TfL.

ECM No.	Location	Description
ECM 15.1	Oxford Circus House - Roof/Plant Room	Heat Pump Technology System
ECM 15.2	Victoria Station House - External/Plant Room	Heat Pump Technology System

REDACTED

3.2 Site Information

Project Addresses:

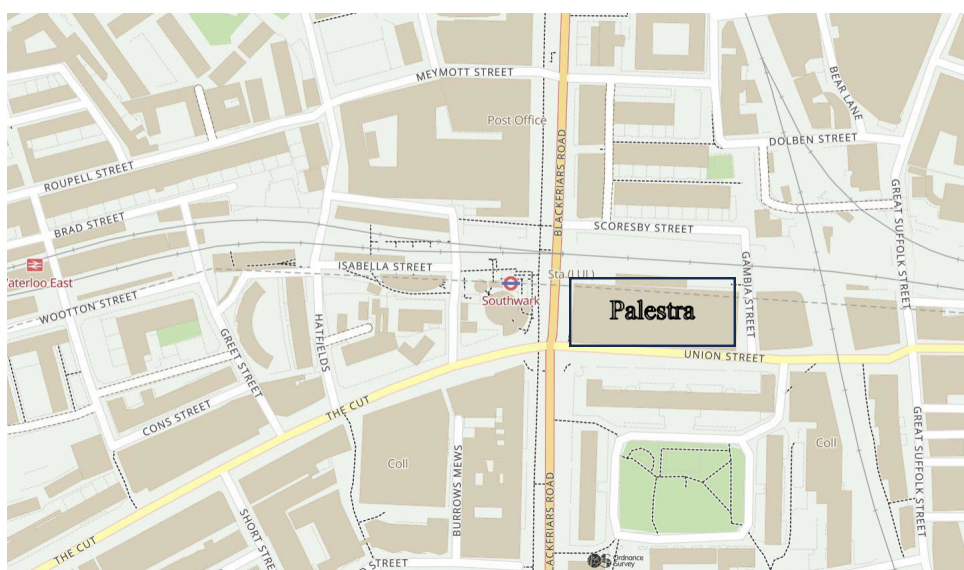
Palestra, 197 Blackfriars Rd, London, SE1 8JZ

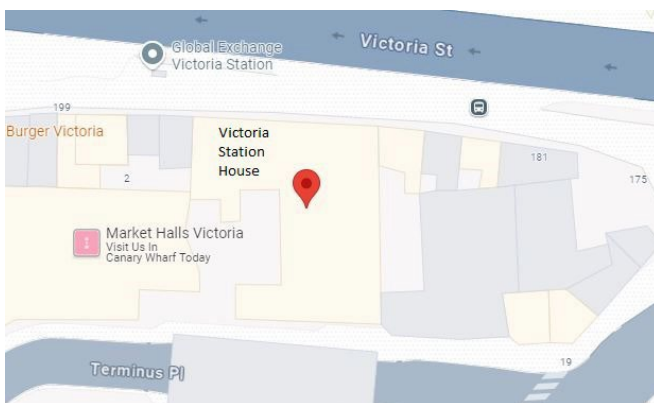
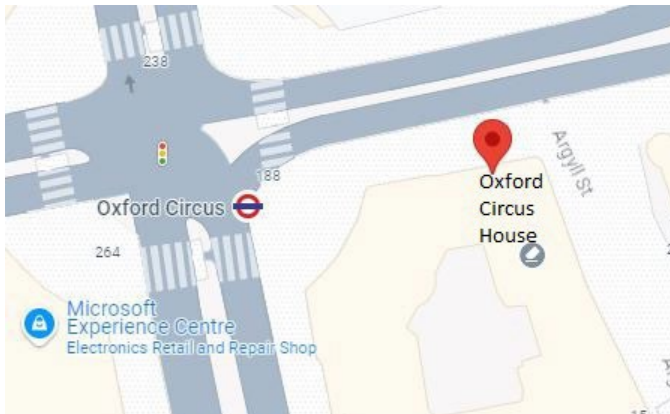
Oxford Circus House, 245 Oxford St, London W1D 2LR

Victoria Station House, 191 Victoria Street, London SW1E 2NE

Description of Buildings

An aerial image of the sites can be seen below:





4 Management of the Works

4.1 Contractor's Team

The Contractor shall act as the **Principal Designer** and **Principal Contractor** for all 3 projects.

The Contractor shall provide a management team to supervise the works.

The Contractor employs and makes available competent resources to Provide the Works.

The Contractor provides and maintains an up-to-date organigram showing the resources employed Providing each of tthe Works individually.

The Contractor does not remove or replace any member of the Contractor's team, other than with the express permission of the Employer.

The Contractor's team is composed of the Contractor resources and any declared subcontractors.

4.2 Progress Meetings

Progress meetings shall happen Weekly between the Contractor and the Employer.

The Contractor shall take minutes from all project meetings. The Employer is to review the minutes and agree within 3 working days unless specified otherwise. The Contractor will circulate meeting notes via email with 24 hours of the minutes being agreed.

The Contractor is to attend meetings convened by the Employer. The location of the meetings will alternate between on site, TfL office and MS teams. The Contractor's procurement process must include the requirement for their subcontractors to attend these meetings as required by the Employer.

4.3 Reporting

4.3.1 Shift Report

The Contractor maintains a daily log to be provided to the Employer by 10:00 hours the next day, inclusive of all weekends if works are carried out with agreement Employer during weekends.

The format of the daily log will be specified by the Employer, and the log(s) are made available by electronic data transfer.

4.3.2 Cost Reporting

The Contractor shall submit a 4 weekly Cost Report to the Employer every Wednesday of week 2, in a format as agreed with the Employer.

4.4 Risk Management

4.4.1 Contractor's Responsibility for Risk Management

The Contractor is responsible for identifying and managing risk.

The Contractor identifies to the Employer any risks associated with carrying out the works and produce a risk management plan. The focus of the Risk Management Plan should be reduction of risk exposure. It should be results-oriented and not place undue weighting on analysis at the expense of action. It is in the interests of the Employer and the Contractor to share relevant risk information and work together to prevent the realisation of risks where possible.

The Contractor identifies to the Employer any risks which have been realised and become issues.

The Contractor reports risks and provides risk related information in accordance with the requirements of the contract and his risk management plan.

The Contractor submits an updated version of their Risks and Issues registers, as separate documents as required by the Employer.

4.4.2 Risk Reduction Meetings

The Contractor meets with the Employer as soon as possible to review any new or emerging risk identified by either party to agree mitigation plans and not less than once in each four-week period to review the Risk Register. The Contractor provides the appropriate level of representation at the meetings to review and action the risk mitigation plan.

4.5 Communications

Communication is a key element of any successful project. The principal contractor shall ensure that all those working on this project are advised of the contents of this pre-construction information document, the construction phase plan, site rules and all other health and safety procedures that apply.

The contract shall be awarded under NEC standard form of contract. All formal communications, instructions, technical queries, etc are to be routed to the Project Manager.

Designers, including those working for the principal contractor, have a duty to ensure the design is co-ordinated for health and safety.

Design development details, changes, instructions, etc are to be copied to the principal designer for review and when necessary comment. To facilitate this, the principal contractor shall identify appointed designers, provide designers with all necessary information and thereafter issue in good time design information, e.g. drawings, to the principal designer.

All parties to the project are to co-operate and co-ordinate on matters relating to health and safety throughout the project. Future progress and technical meetings shall be agreed at the pre-start meeting.

The principal contractor shall manage, monitor and review on an ongoing basis health and safety implementation and performance and copy reports, etc to the Project Manager and the principal designer.

Health and safety is to be an agenda item on all primary construction co-ordination meetings.

5 Constraints

5.1 General Constraints

5.1.1 General Constraints and Assumptions

There is a strict client permit to work procedure (Contractor Tracker: <https://tfl.ctracker.co.uk/>) that the principal contractor shall abide by.

The Principal contractor shall be in constant liaison with the Building Management team for each building and ensure that proper detailed communications of the works happening on site are provided on a regular basis.

It is highlighted that Palestra House, Oxford Circus House and Victoria Station House will all be operating during the duration of the works and the Principal Contractor will have to ensure that any works carried out do not adversely affect the functioning of the buildings.

The principal contractor shall address the permit to work requirements of the relevant supply authorities.

5.1.2 Construction

The Contractor Provides the works in accordance with the assured design and with all applicable law, the Standards, and the contract requirements.

The Contractor is responsible for producing and maintaining the Construction Phase Plan (CPP).

The Safe System of Works (SSOW) or Task briefing shall be submitted to the Employer for review with a minimum of 20 working days in advance of the planned works commencement.

The Contractor is responsible for updating and maintaining the Pre-Construction Information.

5.1.3 Site Compound

The Contractor is to investigate and make its own arrangements for a suitable site office to deliver the scope of works. Office & storage space may be allowed on an Ad-hoc principle and will have to be agreed with Building Management. The Contractor is to notify the Employer of the proposed area and any changes to the proposal are to be communicated.

The Contractor shall seek approval from TfL for any installation on TfL premises. Dilapidation reports are required prior to any installation.

5.1.4 Welfare

The Contractor is responsible for providing and maintaining site welfare facilities for their own operatives & work by others. However, Contractors will be provided access to onsite facilities available at TfL's offices.

The Contractor shall ensure facilities are proportionate to the number of operatives on site and shall comply with both CDM regulations and HSE IND G293.

5.1.5 Car Parking

The Contractor makes its own arrangements and informs the Employer accordingly.

The Contractor is responsible for any associated parking costs including penalty charge notices.

The Contractor shall minimise the number of cars being parked on residential roads close to the site as Car parking is not available at the TfL sites for contractor staff. However, at Palestra House only, parking spaces may be allowed on an Ad-hoc principle and will have to be agreed with Building Management and documented on Contractor Tracker.

5.1.6 Deliveries

All deliveries and collections are to be arranged and managed by the Contractor.

The Contractor identifies the appropriate access and delivery routes to any site area, working within the constraints, any applicable standard or legislation, and ensuring safe access is maintained to the site at all times for staff, customers, and the emergency services. There is storage space but this must be discussed as there is limited space available.

The Contractor makes good any damage to the road surface, or other road or pavement assets and buildings (outside the scope of works), damaged in the course of a delivery or usage of the area. Any damage thus caused is notified to the Employer and treated as a Defect in accordance with the conditions of contract.

The Contractor shall aim to minimise the number of vehicles accessing the site and must comply with the rules and the access procedure put in place by TfL.

5.1.7 Traffic Management

The principal contractor shall prepare a traffic management plan that shall address the following:

Details of any transport requirements and local traffic restrictions, eg one-way systems parking restrictions, etc.

A marked-up site plan showing vehicle movement routes to and from the site, including to and from any storage areas.

All delivery of materials, etc shall be planned to avoid busy periods, eg start and finish times.

Where practicable the principal contractor shall segregate pedestrian and vehicular traffic, on and off site.

ALL reversing vehicles, when on site or adjacent thereto, MUST be attended by a banksman.

Adequate warning signs, traffic management systems and temporary barriers, etc shall be in place prior to construction commencing.

Safe routes for distribution of materials around the site.

All highway systems to be kept clear, clean and safe to the full satisfaction of the client, the police and highway authority. The principal contractor shall ascertain and comply with any requirements or restrictions concerning access to the site, local road traffic, standing vehicles and any restricted times or places for loading, unloading of materials, plant, equipment, etc imposed by the local council, highway authority, the police and other relevant bodies and liaise with neighbours.

Significant traffic safety hazards and restrictions include:

- Adjacent retail units.
- High rise office buildings.
- Parking restrictions at adjacent roads
- One-way streets
- Significant amount of foot traffic
- Public transport (Southwark station)

No parking provision on site.

5.1.8 Materials, Plant, Equipment and Storage

The Contractor is responsible for identifying and managing storage facilities in co-ordination with the TfL Project Manager and Building Management team.

The Contractor will take into account the location of storage facilities with the view to minimise noise and disruption to the end users and local residents around the site

The Contractor maintains records of all plant and equipment stored on site and record is made available to the Employer upon request.

5.1.9 Security

The Contractor shall ensure security for the construction Site and will be responsible for ensuring that there is no unauthorised access to the Site.

The Contractor must not hinder or prevent authorised access to the Site or adjacent areas by authorised users.

The Contractor provides a Site Security Plan for acceptance by the Employer outlining the measures proposed by the Contractor for the design and management of Site Security.

In the event that a crime or security related (e.g. trespass) incident occurs the Contractor promptly follows the procedure described in SI 1115.5 – Incident Reporting and Investigation .

The Contractor shall liaise with TfL onsite security team to ensure the smooth running of all operations. Any issues are to be raised with the project manager immediately.

5.1.10 Utility Connections

The Contractor is responsible for managing and paying for the relevant disconnection, and any damages of all required utility services from the time of the acceptance of the Site through to Completion. **Note that Palestra House and Oxford Circus House will require final termination of the gas supplies, but Victoria Station House will not at this stage due to ongoing use of roof boiler plant**

Coordinate with occupants to make sure works are carried out at a time that either does not affect the continuity of existing services or that minimises the duration of the inconvenience to occupants.

For areas that in are in normal operation throughout the works, no interruption is allowed. Should interruption be required, please see below:

Interruption to continuity of existing services: If work must affect or interrupt the continuity of existing services, make sure of the following:

- Obtain full written consent and approval of the affected parties, including relevant authorities and building management team.
- Provide fully approved method statements.
- Conduct at the least interruptive time as agreed by involved parties.
- Conduct so that interruption is minimised.

5.2 Access

5.2.1 Access Arrangements through TfL Contractor Tracker

The Contractor's operatives are required to carry out the building familiarisation and obtain the correct Contractor Tracker access certification.

The Employer does not guarantee uninterrupted or exclusive access for the Contractor to provide the works. The contractor must coordinate works with Others where required.

5.2.2 Booking and arranging Access

The Contractor books and co-ordinates access to the TfL's office buildings through the contractor tracker online platform and liaison with Building managers.

5.2.3 Engineering Hours

Where the Contractor requires access during engineering hours, normal TfL procedures will be followed.

After working hours will have to be arranged and coordinated with the TfL project manager and Building Management team

5.2.4 Interrupted or delayed access

Access may be interrupted or delayed should the Employer's operational needs dictate this.

As stipulated TfL operations in the offices cannot be interrupted.

The Contractor interrupted or delayed access are Employer's risks, the Contractor is expected to react, redeploy operatives and re-sequence the works to mitigate the effects in such circumstances where interrupted or delayed access may occur. The Contractor's programme, where possible, allows for and highlights such contingency work operations that can be rescheduled in the event that interrupted or delayed access occurs.

5.2.5 Access Control

The Contractor is required to plan and manage booking and utilisation of all access to working areas. If Access has not been correctly booked, the Contractor will have no claim whatsoever for frustrated Access and it will not be considered a Compensation Event.

When booking in and out of the Site the Contractor's staff and personnel report in, record entry and exit.

5.3 Training

5.3.1 Training, certificates, identity cards and entry permits Site Compound

The Contractor is responsible for ensuring that all staff and personnel are suitably trained, competent and carry the appropriate and requisite certification for performing the roles required of them in carrying out the works.

The Contractor is responsible for arranging, booking, and paying for all requisite medicals, training, and certification of its staff and/or personnel.

The Contractor allows a minimum of four (4) weeks for all Employer provided training and certification courses. This must be included on the Programme for Acceptance. Any time period less than this cannot be guaranteed, and although efforts may be made to facilitate wherever possible, the Contractor does not rely on such reduced time periods being accommodated.

The Contractor must produce a competency matrix no later than four (4) weeks after the starting date of this Contract, for all Contractor's staff or personnel involved in Providing the Works detailing the training, certification and other competency information held on record. The Contractor updates the matrix throughout the duration of this Contract maintaining current records and makes the matrix and current records available on request of the Employer.

5.4 Protection of existing structures and services

5.4.1 Utility Suppliers

The Contractor is responsible for the protection of existing utilities on or adjacent to the Site in connection with providing the works. Should the Contractor become aware of any damage to utilities during the works, the Contractor must notify the Employer as soon as practicable.

Should the Contractor require existing utilities to be enabled, disabled, or relocated then it is the Contractor's responsibility to make the arrangements directly with the utility company.

The coordination of utility providers and any associated utility works is the responsibility of the Contractor.

5.4.2 Damage to works and protection of adjoining structures

The Contractor does not carry out any works liable to damage the stability of the works and adjoining buildings.

The Contractor protects from damage the adjoining buildings and premises and is responsible for making good, as soon as practicable, any damage done through the carrying out of the works.

The Contractor is responsible for bearing the cost of any making good required following damage to the structures, services, or finishes of the Employer's or Other's premises.

5.5 Surveys

5.5.1 Condition survey

The Contractor undertakes a condition survey of the areas affected by the works and agrees it with the Employer. The Contractor is to reinstate all areas disturbed by the works or any of his activities back to the condition recorded in the survey and agreed with the Employer and in accordance with all relevant statutes and Local Authority / Employer requirements.

5.5.2 Intrusive survey

The Contractor carries out comprehensive and intrusive surveys to validate asset location, make up and condition information to support and inform their design.

The Contractor reinstates and makes good to original state any asset disturbance resulting from these surveys.

The Employer does not accept Contractor designs that are deficient due to lack of survey information.

The Contractor prepares and submits to the Employer a detailed report of any existing services, asset location or obstructions identified by the survey but not identified in the Site Information.

The Contractor submits a Notification to the Employer if the survey reveals the presence of unexpected services which if not protected or diverted could affect the progress of the works or the works of Others.

Where surveys necessitate the disturbance of an asset the Contractor leaves the asset in a safe and operable condition until such a time as it is affected by the permanent works. If the asset disturbed is not affected by the permanent works the Contractor makes it good leaving it safe, operable and with its appearance commensurate with its immediate surroundings.

5.6 **Cleaning**

5.6.1 Site Cleanliness

The Contractor ensures that high standards of cleanliness and hygiene are maintained in all areas of the site, in line with good industry practice. If the Employer notifies the Contractor that he has failed to comply with the required levels of cleanliness and hygiene, the Contractor resolves the problem within the agreed timescales to the acceptance of the Employer. Failure to rectify and maintain, may result in the Employer arranging additional cleaning to be carried out for which the Contractor will be liable for the cost thereof.

5.6.2 Site Clearance and Cleaning

On completion of the works the Contractor clears the working areas made available to him of all surplus materials, stores, equipment, spoil, and rubbish and reinstates the areas to their condition existing prior to the Contractor's occupation of those areas.

Delivery and removal of materials to and from the site by road are subject to the restrictions as detailed elsewhere within the works information. Should the Contractor require delivery or removal of materials at times other than those detailed in the Access Plan he submits proposals to, and obtains acceptance of, the Employer prior to carrying out works

5.6.3 Waste

The Contractor is responsible for the removal of waste materials from the Site.

(i) Waste Electrical and Electronic Equipment Regulations 2013

For the purposes of this section, unless the context indicates otherwise, the following expressions shall have the following meanings:

- "WEE Equipment" means any Equipment which falls within the scope of the WEEE Regulations; and
- "WEEE Regulations" means Waste Electrical and Electronic Equipment Regulations 2013 (as amended by the Waste Electrical and Electronic Equipment and Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2014 and the Waste Electrical and Electronic Equipment (Amendment) Regulations 2015.

When disposing any redundant WEE equipment or procuring any WEE Equipment for use in accordance with the Works whether by direct purchase by the Contractor, purchase on behalf of TfL, lease or otherwise the Contractor will ensure that in accordance with the WEEE Regulations that the producer of the WEE Equipment (whether that be the Contractor or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery, and environmentally sound disposal of:

- (a) all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and
- (b) all Waste Electrical and Electronic Equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEEE

Equipment and the WEEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.

The Contractor shall indemnify and keep indemnified TfL as a result of any Losses which it incurs as a result of any failure on the part of TfL or the relevant producer to comply with the terms of the section above.

6 Programme

The Contractor submits the first programme for acceptance within 3 weeks of the Contract start date.

The Contractor shall allow a minimum of 4 weeks for the review and acceptance of all documentation to be submitted to the Employer.

Where a second round of review is required, the Contractor shall allow a minimum of 2 weeks for review and acceptance by the Employer.

The Contractor shall allow in their programme an activity “Stage Gate 4” which is a minimum of 6 weeks. This activity starts after the “Acceptance of Detailed Design” and needs to be completed prior to the contractor starting on site.”

7 Requirements

7.1 The Contractor’s Design Requirements

General: The works to be performed by the Contractor include development and finalisation of the design beyond that documented as required to complete the works.

Design by Contractor: The Contractor is required to complete the design using only appropriately qualified persons and conform to all statutory requirements. Finalise the design of the works including the design of all associated ancillary systems such as equipment support systems and seismic restraints. Undertake detailed design calculations based on the final equipment selections in accordance with the relevant technical work sections.

Conflict with the documents: If it is believed that a conflict exists between statutory requirements and the documents, notify the contract administrator immediately and provide a recommendation to resolve the conflict.

Design certification

Provide certification necessary to obtain building permits including any required registration details to the relevant authorities.

Design and build and Contractor design portions.

Development of design: Develop the design from the level of detail shown in this specification and drawings. The level of detail shown is considered suitable for tender.

Required development level: To be suitable for construction to Stage 5 in accordance with BSRIA BG6/2018.

Engineer qualifications: Chartered Engineers who are members of professional bodies such as CIBSE, IET, or IMechE.

Submissions: Before commencing design, submit:

- Names, appropriate qualifications, experience and registration details of persons responsible for design and certification.

- Schedule of all drawings to be produced.
- Design and installation programme.

The Contractor shall revise the accepted designs to “Approved For Construction” status before starting works on site.

The material and assets to be provided shall be compliant with TfL’s targets for sustainability.

The material and assets to be provided shall be shown on the layouts as part of the detailed design.

The material and assets to be provided shall be submitted for acceptance by TfL.

All works shall comply with all Building Regulations Approved Documents.

The Contractor shall survey the buildings to ensure the designs take all constraints into account.

The Contractor shall phase the project in a way that maintains the full operation of the building.

The Contractor shall ensure that the works do not restrict access, or circulation in the building.

The Contractor shall ensure that the works do not affect the activities of TfL.

The Contractor shall assess the existing structures and finishes being modified to ensure they are not negatively affected.

The Contractor shall ensure that any modifications do not negatively affect the stability of the existing structures and finishes.

The Contractor shall ensure that no existing structure or system is overloaded as a result of the works.

Where the safety, capacity, stability and / or integrity of the existing structures and systems cannot be demonstrated by inspection the Contractor shall produce numerical assessments and submit them for approval by TfL as evidence.

The Contractor shall assess the changes to the fire systems required by the works and include them in their designs after agreement with the Fire Maintainer.

The Contractor shall numerically assess the changes required to the water distribution, and drainage systems, and include the changes and supporting calculations in their designs..

The Contractor shall ensure that any work complies with the requirements of the fire strategy for the building.

The Contractor shall liaise with the Project Manager to agree on the phasing of the implementation of the works.

The works shall not affect any emergency egress routes.

The finished works shall not create an impediment to the maintenance and inspection of any structure or equipment in the building.

All redundant assets and assets made redundant by the works shall be removed and disposed of in a responsible way and in accordance with TfL sustainability policies.

The Contractor shall issue the as-built drawings and Health and Safety File to TfL, including in electronic format that can be updated and maintained in the future.

The Contractor shall provide the required update to the maintenance strategy for the buildings.

The Contractor shall provide the Operation and Maintenance manuals for all the equipment, structures, furniture and systems provided.

The Contractor shall provide an asset list as per TfL requirement.

7.2 Employer's Acceptance

The Contractor constructs the works in accordance with the detailed design which has been accepted by the Project Manager and TfL Environmental Manager.

a) Accepted without comment

The Contractor adheres to the design which the Project Manager has accepted and construction proceeds.

b) Accepted with comments

The Contractor reviews and incorporates the Project Manager's comments in his design and construction proceeds.

If the Contractor does not incorporate the Project Manager's comments, the Contractor justifies the reasons for not agreeing, in detail, to the Project Manager. The Contractor then resubmits the design to the Project Manager for acceptance. Construction does not proceed unless the submission has been accepted by the Project Manager in accordance with clause 20.3 of the conditions of contract.

c) Rejected

The Project Manager gives reasons for rejecting the design submitted.

Construction does not proceed.

The design is revised by the Contractor and resubmitted.

7.3 Testing

1. The Contractor shall issue Inspection and Test Plans (ITP) for the works.
2. The Contractor shall issue the ITPs for acceptance by TfL before start of the related works on site.
3. The Contractor shall issue TfL with a minimum of two weeks notification prior to tests that require attendance.
4. The Contractor shall issue the completed ITPs to TfL during the Close phase of the project.
5. The Contractor shall keep photographic evidence of the physical activities being verified through the ITPs. The photos shall be made available to TfL on request and be included in the Health and Safety file.

7.3.1 Handover and Completion

1. The Contractor shall produce a full Handover document as agreed with the TfL team, including relevant documents, As-built drawings (in both pdf and dwg formats), specifications, maintenance plans, BMS description of operations etc.
2. The Contractor shall prepare an asset list (including both removed and new assets clearly identified) as per the format provided by TfL
3. The Contractor shall provide “train the trainer” training sessions for an operative(s) to be nominated by TfL for all the new systems and systems with modified functionality included in the works.

7.4 The Contractor’s Construction Requirements

1. The Contractor shall allow for coordination of all the disciplines throughout the build phase.
2. The Contractor shall allow for making good of the surface on site where storage of materials and compounds will be located.
3. The Contractor shall allow for traffic management, pedestrian management and the creation and maintenance of safe routes around the works, and making good after removal.
4. The Contractor shall allow for the security of the accesses created on site and for the security of any material storage location.
5. The Contractor shall allow for making good all areas interfacing with the works.
6. The Contractor shall protect the areas surrounding the works to avoid damage.
7. All redundant assets and assets made redundant by the works shall be removed and disposed of in a responsible way and comply with the WEEE regulations where applicable.
8. The Contractor works shall not affect the safety, security, access, comfort, use, power supply, water supply of areas of the building that are not directly affected by the works.
9. The Contractor works shall not affect the accessibility of the building for all users and visitors.
10. The Contractor shall carry out photographic dilapidation surveys of the areas of the building outside of the scope of the works but potentially affected by the works.
11. The dilapidation surveys shall be issued to TfL for agreement on the condition of the building outside of the scope of the works but potentially affected by the works.

12. The Contractor shall invite TfL design team to a defects search visit prior to offering the works as completed.
13. The Contractor shall resolve all the issues identified during the defects search visit.
14. The Contractor shall record the noise levels prior to the works and after completion of the works.

8 Deliverables

The below lists all deliverables to be provided by the Contractor. The Contractor shall allow a minimum of 4 weeks for the review and acceptance of each of the below generic deliverables.

8.1 Generic Deliverables

- Safe System of work / Method Statement
- Access Plan.
- Traffic Management Plan
- Site Security Plan
- Risk Management Plan
- Delivery Programme.
- Proposed plans, elevations, and detail drawings
- Progress Report.
- All Licenses and Permits as applicable
- Waste transfer notes
- Waste Management Plan (IEE)
- Construction Phase Plan
- Emergency Preparedness Plan
- HSE Pre-Construction Information

8.2 Assurance Deliverables

The Contractor shall allow a minimum of 4 weeks for the first round of review and acceptance of each of the below assurance deliverables.

Where a second round of review is required for the below assurance deliverables, the Contractor shall allow a minimum of 2 weeks for review and acceptance by the Employer.

- Detail Design drawings
- Detail design specifications
- Crane lift plans
- Cable Schedules
- Detail design calculation and supporting evidence
- Approved for Construction drawings
- Approved for Construction specifications
- As-built drawings
- As-built specifications
- Proposed Fire strategy
- Maintenance strategy
- Design Management plan
- Design check certificates
- Inspection and Test Plans (prior to start of works on site)
- Testing and Commissioning plan
- Supplier Quality assurance (to include completed inspection and test plans)
- Operation and Maintenance Manuals
- Health & Safety File Information (to include as-built fence plans, elevations and detail drawings with correct foundations indicated for each post)

9 Health Safety and Environmental

Compliance: Take all steps to ensure that the obligations imposed by all Health and Safety Legislation, Acts, Regulations and Codes of Practice are complied with at all times including:

Being familiar with the requirements of those Acts, Regulations and Codes of Practice as applicable to the works.

Ensuring that the specified works provides for the safety of all personnel during construction, inspection, testing and subsequent operation of the system/s.

Providing for the identification of hazards, assessment of risks, implementation of necessary risk control measures and devices and provision of information to ensure the safety of all personnel during construction, inspection, testing and subsequent operation of the system/s.

Advising of all potential hazards not adequately protected to the requirements of the Health and Safety Legislation, Acts, Regulations and Codes of Practice.

Providing all temporary or permanent screens, guarding, access facilities, safety notices, identification labels and safety clothing, footwear and equipment required for the execution, testing and maintenance of the works.

Where hazardous materials are present or encountered, immediately notify the party responsible for site safety of the location and details.

Where the Contractor is required to undertake the handling or removal of hazardous materials, the methods used shall be in accordance with accepted best industry practice and guidelines of local Authorities.

Even where the above obligations are not imposed on the Contractor by Health and Safety Legislation, the Contractor will take all steps to ensure that the obligations are complied with at all times.

Coordination: In performing its Health and Safety obligations the Contractor will coordinate with other services to ensure that notwithstanding the activities of other services, its Health and Safety Obligations are met.

9.1 The health and safety file

It is the responsibility of the principal contractor to provide sufficient information for the health and safety file as required by the Construction (Design and Management) Regulations 2015.

The health and safety file shall be prepared by the principal contractor for review by the principal designer based upon the following. .

Key health and safety file information shall include the following:

- A brief description of the work carried out
- Any hazards that have not been eliminated through the design and construction process, and how they have been addressed (eg surveys or other information concerning asbestos or contaminated land)
- Key structural principles (eg bracing, sources of substantial stored energy – including pre- or post-tensioned members) and safe working loads for floors and roofs
- Hazardous materials used (eg lead paints and special coatings)
- Information regarding removal or dismantling of plant and equipment (eg any special arrangements for lifting such equipment)

- Health and safety information about equipment provided for cleaning or maintaining the structure
- The nature, location and markings of significant services, including underground cables; gas supply equipment; fire-fighting services, etc
- Fire strategy
- Information and as-built drawings of the building, its plant and equipment (eg the means of safe access to and from service voids and fire doors)
- Cleaning access and maintenance strategy
- Plant maintenance strategy Health and safety file information shall be provided by the principal contractor independently/ separately to completion handover documentation.

All the information provided by the principal contractor for the health and safety file or associated manuals shall be contained in a series of A4 size, loose leaf, four ring binders with plastic sleeved hard covers, each indexed, divided and appropriately titled on the front cover and spine. Selected drawings needed to illustrate or locate items mentioned in the file or associated manuals, where larger than A4, are to be folded and accommodated neatly and securely in the binders. All information is to be provided in hard copy and electronically. In addition please refer to the detailed requirements of the contract preliminaries.

10 Appendix

10.1 Appendix A – Project Requirements- Cundalls Stage 3 Report for Palestra only

10.2 Appendix B- VitalEnergi Investment Grade Proposal for Palestra House including all appendices

10.3 Appendix C- VitalEnergi Investment Grade Proposal for Oxford Circus House and Victoria Station House including all appendices

10.4 Appendix D- Planning Permission for Palestra House

10.5 Appendix E- Permitted Development position for Oxford Circus House and Victoria Station House



SECTION 6
SCHEDULE 4
PROGRAMME

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme

REDACTED

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme

TfL Re:Fit - Phase 2 - Oxford Circus, Victoria House & Palestra

IGP Delivery Programme



SECTION 7

SCHEDULE 5

PAYMENT AND LIQUIDATED DAMAGES

Schedule 5

CONTRACT PRICING AND PAYMENT

5.1 PRICING

The Contractor will submit an Activity Schedule for pricing and payment purposes only. This document will comprise a list of activities, with an amount entered against each activity.

This amount is the sum due to the Contractor on Completion of each activity unless it is included in a group. If group activities are to be included on the schedule payment for each group only becomes due when all activities within the group are complete.

Activity descriptions must be clear and complete so that the work included in each can be identified and the Completion of each activity easily identified. Note also the requirements of contract clause 31.4 about the relationship between the Activity Schedule and the Accepted programme.

5.2 PAYMENT

The assessment interval is as per the contract data with the first assessment date as indicated in the Contract Data. The Employer uses the Railway four week Period system.

An Application for Payment should be made to the Employer for agreement prior to the agreed invoice amount being raised by the Contractor. All invoices should have the appropriate TfL Purchase Order Number included on the invoice.

The invoice submitted must be clear, concise, accurate and descriptive in order to avoid delays in processing and subsequent payment. VAT must be shown separately.

Any loss or additional expenses incurred by the Contractor in the correction or re-submission of an Invoice will be at the Contractor's own cost.

Once the invoice has been approved, formal copy should be submitted either by email (attached as a pdf document by E-mail to: REDACTED or post (but not both) to the following:

Facilities and Operations Team

REDACTED

If the Employer considers that Charges claimed by the Contractor in the invoice have been correctly calculated, payment will be made within 28 days of receipt of Invoice.

Payments shall be made by Bank Transfer (Bank Automated Clearance System – BACS) or such other method that TfL may choose from time to time.

5.2.1 Submission and Assessment Dates

The Contractor is to submit an application for payment at the end of Week 3 of the four week TfL accounting periods. A schedule of period end dates will be provided to the Contractor.

5.3 Liquidated Damages

Total Contractor liability for liquidated damages is REDACTED

In the event of the actual completion date being later than the agreed Accepted Programme completion date, late Completion damages of REDACTED



SECTION 8

SCHEDULE 6

ACTIVITY SCHEDULE

REDACTED

REDACTED

REDACTED

REDACTED



SECTION 9

CONDITIONS OF CONTRACT

STANDARD NEC3 OPTION A CLAUSES



Engineering and Construction Contract

This contract should be used for the appointment of a contractor for engineering and construction work, including any level of design responsibility

Option A: Priced contract with activity schedule

An NEC document

June 2005

OGC endorsement of NEC3

OGC advises public sector procurers that the form of contract used has to be selected according to the objectives of the project, aiming to satisfy the *Achieving Excellence in Construction* (AEC) principles.

This edition of the NEC (NEC3) complies fully with the AEC principles. OGC recommends the use of NEC3 by public sector construction procurers on their construction projects.

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a family of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC3 Engineering and Construction Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Engineering and Construction Contract Guidance Notes, Flow Charts and Options A, B, C, D, E and F.

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SCHEDULE OF OPTIONS

	One of the following dispute resolution Options must be selected to complete the chosen main Option.
Option W1	Dispute resolution procedure (used unless the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies).
Option W2	Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies).
	The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.
Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X3	Multiple currencies
Option X4	Parent company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X12	Partnering
Option X13	Performance bond
Option X14	Advanced payment to the <i>Contractor</i>
Option X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill and care
Option X16	Retention
Option X17	Low performance damages
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)
	The following Options dealing with national legislation should be included if required.
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option Y(UK)3	The Contracts (Rights of Third Parties) Act 1999
Option Z	<i>Additional conditions of contract</i>
Note	Options X8 to X11, X19 and Y(UK)1 are not used.

CORE CLAUSES

1 General

Actions 10

- 10.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and defined terms 11

- 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

- 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

(2) Completion is when the *Contractor* has

- done all the work which the Works Information states he is to do by the Completion Date and
- corrected notified Defects which would have prevented the *Employer* from using the *works* and Others from doing their work.

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

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

(4) The Contract Date is the date when this contract came into existence.

(5) A Defect is

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

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

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

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

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

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

(11) The Parties are the *Employer* and the *Contractor*.

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

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

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

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

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

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

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

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

**Interpretation and
the law 12**

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.2 This contract is governed by the *law of the contract*.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract is the entire agreement between the Parties.

Communications 13

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

**The Project Manager
and the Supervisor 14**

- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.

**Adding to the
Working Areas 15**

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

Early warning 16

- 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date or
- impair the performance of the *works* in use.

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

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

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

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

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

**Ambiguities and
inconsistencies 17**

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

**Illegal and impossible
requirements 18**

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

Prevention 19

- 19.1 If an event occurs which

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

and which

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

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

2 The *Contractor's* main responsibilities

Providing the Works 20

- 20.1 The *Contractor* Provides the Works in accordance with the Works Information.

The *Contractor's* design 21

- 21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design.
- 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Works Information or the applicable law.
- The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.
- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the *Contractor's* design 22

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

Design of Equipment 23

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

People 24

- 24.1 The *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove an employee. The *Contractor* then arranges that, after one day, the employee has no further connection with the work included in this contract.

Working with the Employer and Others 25

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

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

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

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

Subcontracting 26

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

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

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

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

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

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

Other responsibilities 27

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

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

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

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

27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information.

3 Time

Starting, Completion and Key Dates 30

- 30.1 The *Contractor* does not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Project Manager* decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion.
- 30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

- 31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.
- 31.2 The *Contractor* shows on each programme which he submits for acceptance
- the *starting date*, *access dates*, Key Dates and Completion Date,
 - planned Completion,
 - the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
 - the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
 - provisions for
 - float,
 - time risk allowances,
 - health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - access to a part of the Site if later than its *access date*,
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer* and
 - information from Others,
 - for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and
 - other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.
- 31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Works Information.

The programme 31

- 31.4 The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.

**Revising the
programme 32**

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

**Access to and use
of the Site 33**

- 33.1 The *Employer* allows access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Accepted Programme.

**Instructions to stop or
not to start work 34**

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

Take over 35

- 35.1 The *Employer* need not take over the *works* before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the *Employer* takes over the *works* not later than two weeks after Completion.
- 35.2 The *Employer* may use any part of the *works* before Completion has been certified. If he does so, he takes over the part of the *works* when he begins to use it except if the use is
- for a reason stated in the Works Information or
 - to suit the *Contractor's* method of working.
- 35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

Acceleration 36

- 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.
- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- 36.3 When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme.**

4 Testing and Defects

Tests and inspections 40

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

Testing and inspection before delivery 41

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

Searching for and notifying Defects 42

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

Correcting Defects 43

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

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

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

Accepting Defects 44

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

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

Uncorrected Defects 45

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

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

5 Payment

Assessing the amount due 50

- 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur
- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
 - at Completion of the whole of the *works*.
- 50.2 The amount due is
- the Price for Work Done to Date,
 - plus other amounts to be paid to the *Contractor*,
 - less amounts to be paid by or retained from the *Contractor*.
- Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.
- 50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.
- 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted on or before the assessment date. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.

Payment 51

- 51.1 The *Project Manager* certifies a payment within one week of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract.
- 51.2 Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- 51.3 If an amount due is corrected in a later certificate either
- by the *Project Manager* in relation to a mistake or a compensation event or
 - following a decision of the *Adjudicator* or the *tribunal*,
- interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.
- 51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Defined Cost 52

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

The Activity Schedule 54

- 54.1 Information in the Activity Schedule is not Works Information or Site Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Activity Schedule is that
- it does not comply with the Accepted Programme,
 - any changed Prices are not reasonably distributed between the activities or
 - the total of the Prices is changed.

6 Compensation events

Compensation events 60

60.1 The following are compensation events.

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

- a change made in order to accept a Defect or
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer*.

(2) The *Employer* does not allow access to and use of a part of the Site by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A *weather measurement* is recorded

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

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

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

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

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

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

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

(18) A breach of contract by the *Employer* which is not one of the other compensation events in this contract.

(19) An event which

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

and which

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

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

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

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

**Notifying 61
compensation events**

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

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

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

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

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

- 61.4 If the *Project Manager* decides that an event notified by the *Contractor*
- arises from a fault of the *Contractor*,
 - has not happened and is not expected to happen,
 - has no effect upon Defined Cost, Completion or meeting a Key Date or
 - is not one of the compensation events stated in this contract

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

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

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

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

the *Contractor* may notify the *Project Manager* to this effect. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

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

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

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

Quotations for compensation events 62

- 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. His reply is
- an instruction to submit a revised quotation,
 - an acceptance of a quotation,
 - a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
 - a notification that he will be making his own assessment.
- 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Project Manager* extends the time allowed for

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

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

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

**Assessing 63
compensation events**

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

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

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

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

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme.

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

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

63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract.

63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.

63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.

63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.

- 63.10** If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Works Information or
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event,
- the Prices are reduced.
- 63.12** Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.
- 63.14** If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.

The *Project Manager's* assessments

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

Implementing compensation events

- 65**
- 65.1** A compensation event is implemented when
- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
 - the *Project Manager* notifies the *Contractor* of his own assessment or
 - a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.
- 65.2** The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
- 65.4** The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.

7 Title

The <i>Employer's</i> title to Plant and Materials	70	
	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> if the <i>Supervisor</i> has marked it as for this contract.
	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the <i>works</i> .
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

Employer's risks 80

80.1 The following are *Employer's* risks.

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

The Contractor's risks 81

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

Repairs 82

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

Indemnity 83

83.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

83.2 The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

Insurance cover 84

- 84.1 The *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data.
- 84.2 The insurances are in the joint names of the Parties and provide cover for events which are at the *Contractor's* risk from the *starting date* until the Defects Certificate or a termination certificate has been issued.

INSURANCE TABLE

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

Insurance policies 85

- 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.
- 85.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- 85.4 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

If the Contractor does not insure 86

- 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Employer* is paid by the *Contractor*.

Insurance by the Employer 87

- 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.

- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

9 Termination

Termination 90

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

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21	P1 and P2	A1, A2 and A4
		P1, P2 and P3	A1 and A3
	R1–R15 or R18	P1 and P3	A1 and A2
	R17 or R20	P1 and P4	A1 and A2
	R21		
The <i>Contractor</i>	R1–R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

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

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).

- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
 - Not provided a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
 - Substantially broken a health or safety regulation (R15).
- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
 - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
 - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
 - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,
- and which
- neither Party could prevent and
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

**Procedures on
termination 92**

- 92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which he has title (P1).
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Employer* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*.
- P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the *works*. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* notifies him that the *Employer* no longer requires it to complete the *works*.
- P4 The *Contractor* leaves the Working Areas and removes the Equipment.

**Payment on
termination** 93

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials
 - within the Working Areas or
 - to which the *Employer* has title and of which the *Contractor* has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
 - any amounts retained by the *Employer* and
 - a deduction of any un-repaid balance of an advanced payment.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing the Equipment.
- A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works*.
- A4 The *direct fee percentage* applied to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date.
- 93.3 The amount due on termination is assessed without taking grouping of activities into account.

DISPUTE RESOLUTION

Option W1

Dispute resolution procedure (used unless the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies).

Dispute resolution W1

W1.1 A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*.

The *Adjudicator* W1.2

(1) The Parties appoint the *Adjudicator* under the NEC Adjudicator's Contract current at the *starting date*.

(2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(4) A replacement *Adjudicator* has the power to decide a dispute referred to his predecessor but not decided at the time when the 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.

(5) 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.

The adjudication W1.3

(1) Disputes are notified and referred to the *Adjudicator* in accordance with the Adjudication Table.

ADJUDICATION TABLE

Dispute about	Which Party may refer it to the <i>Adjudicator</i> ?	When may it be referred to the <i>Adjudicator</i> ?
An action of the <i>Project Manager</i> or the <i>Supervisor</i>	The <i>Contractor</i>	Between two and four weeks after the <i>Contractor</i> 's notification of the dispute to the <i>Employer</i> and the <i>Project Manager</i> , the notification itself being made not more than four weeks after the <i>Contractor</i> becomes aware of the action
The <i>Project Manager</i> or <i>Supervisor</i> not having taken an action	The <i>Contractor</i>	Between two and four weeks after the <i>Contractor</i> 's notification of the dispute to the <i>Employer</i> and the <i>Project Manager</i> , the notification itself being made not more than four weeks after the <i>Contractor</i> becomes aware that the action was not taken
A quotation for a compensation event which is treated as having been accepted	The <i>Employer</i>	Between two and four weeks after the <i>Project Manager</i> 's notification of the dispute to the <i>Employer</i> and the <i>Contractor</i> , the notification itself being made not more than four weeks after the quotation was treated as accepted
Any other matter	Either Party	Between two and four weeks after notification of the dispute to the other Party and the <i>Project Manager</i>

(2) The times for notifying and referring a dispute may be extended by the *Project Manager* if the *Contractor* and the *Project Manager* agree to the extension before the notice or referral is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*. If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.

(3) The Party referring the dispute to the *Adjudicator* includes with his referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within four weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(4) 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 and if the subcontract allows, the *Contractor* may 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.

(5) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Supervisor* 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.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) 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.

(8) The *Adjudicator* decides the dispute and notifies the Parties and the *Project Manager* of his decision and his reasons within four weeks of the end of the period for receiving information. This four week period may be extended if the Parties agree.

(9) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(10) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* 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 times required by this contract that he is dissatisfied with a decision of the *Adjudicator* and intends to refer the matter to the *tribunal*.

(11) The *Adjudicator* may, within two weeks of giving his decision to the Parties, correct any clerical mistake or ambiguity.

Review by the *tribunal* W1.4

(1) A Party does not refer any dispute under or in connection with this contract to the *tribunal* unless it has first been referred to the *Adjudicator* in accordance with this contract.

(2) If, after the *Adjudicator* notifies his decision a Party is dissatisfied, he may notify the other Party that he intends to refer it to the *tribunal*. A Party may not refer a dispute to the *tribunal* unless this notification is given within four weeks of notification of the *Adjudicator's* decision.

(3) If the *Adjudicator* does not notify his decision within the time provided by this contract, a Party may notify the other Party that he intends to refer the dispute to the *tribunal*. A Party may not refer a dispute to the *tribunal* unless this notification is given within four weeks of the date by which the *Adjudicator* should have notified his decision.

(4) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in the *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.

(5) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(6) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

Option W2

Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies).

Dispute resolution W2

W2.1 (1) A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time.

(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

The *Adjudicator* W2.2

(1) The Parties appoint the *Adjudicator* under the NEC Adjudicator's Contract current at the *starting date*.

(2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(4) 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.

(5) 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.

The adjudication W2.3

(1) 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 and the decision which he wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three 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 days of the issue of the notice of adjudication, either Party may act as if he has resigned.

(2) Within seven 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 any supporting documents and
- provides a copy of the information and supporting documents he has provided to the *Adjudicator* to the other Party.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) 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, 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.

(4) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Supervisor* 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.

(5) 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.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) 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.

(8) The *Adjudicator* decides the dispute and notifies the Parties and the *Project Manager* of his decision and his reasons within twenty-eight days of the dispute being referred to him. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties.

(9) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(10) 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.

(11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* 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 times required by this contract that he is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(12) The *Adjudicator* may, within fourteen days of giving his decision to the Parties, correct a clerical mistake or ambiguity.

Review by the *tribunal* W2.4

(1) A Party does not refer any dispute under or in connection with this contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with this contract.

(2) 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 *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of the notification of the *Adjudicator's* decision.

(3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in *tribunal* proceedings to the information or evidence put to the *Adjudicator*.

(4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Defined terms X1

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

Price Adjustment Factor X1.2

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

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

Compensation events X1.3

The Defined Cost for compensation events is assessed using the

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

Price adjustment X1.4

Each amount due includes an amount for price adjustment which is the sum of

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

Option X2: Changes in the law

Changes in the law X2

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

Option X3: Multiple currencies

Multiple currencies X3

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

Option X4: Parent company guarantee

Parent company guarantee X4

- X4.1 If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor's* performance in the form set out in the Works Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option X5: Sectional Completion

Sectional Completion X5

- X5.1 In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to
- the *works*,
 - Completion and
 - Completion Date
- applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.

Option X6: Bonus for early Completion

Bonus for early Completion X6

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

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

until the Completion Date.

Option X7: Delay damages

Delay damages X7

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

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

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

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

Option X12: Partnering

Identified and defined X12

terms X12.1

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

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

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

(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.

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

- Actions** X12.2
- (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
 - (2) Each Partner nominates a representative to act for it in dealings with other Partners.
 - (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.
 - (4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.
 - (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.
 - (6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

- Working together** X12.3
- (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.
 - (2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it.
 - (3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.
 - (4) The Partners use common information systems as set out in the Partnering Information.
 - (5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.
 - (6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.
 - (7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Contractor* changes his programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.
 - (8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.
 - (9) A Partner notifies the Core Group before subcontracting any work.

- Incentives** X12.4
- (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.
 - (2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

Option X13: Performance bond

Performance bond X13

- X13.1 The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in the Works Information. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option X14: Advanced payment to the *Contractor*

Advanced payment X14

- X14.1 The *Employer* makes an advanced payment to the *Contractor* of the amount stated in the Contract Data.

- X14.2 The advanced payment is made either within four weeks of the Contract Date or, if an advanced payment bond is required, within four weeks of the later of

- the Contract Date and
- the date when the *Employer* receives the advanced payment bond.

The advanced payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the *Contractor* has not repaid and is in the form set out in the Works Information. Delay in making the advanced payment is a compensation event.

- X14.3 The advanced payment is repaid to the *Employer* by the *Contractor* in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

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

The *Contractor's* design X15

- X15.1 The *Contractor* is not liable for Defects in the *works* due to his design so far as he proves that he used reasonable skill and care to ensure that his design complied with the Works Information.
- X15.2 If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X16: Retention

Retention X16

- X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of
- Completion of the whole of the *works* and
 - the date on which the *Employer* takes over the whole of the *works*
- the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.
- X16.2 The amount retained is halved
- in the assessment made at Completion of the whole of the *works* or
 - in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.
- The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

Option X17: Low performance damages

Low performance damages X17

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

Option X18: Limitation of liability

Limitation of liability X18

- X18.1 The *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
- X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
 - delay damages if Option X7 applies and
 - low performance damages if Option X17 applies.
- X18.5 The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.

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

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

OPTION Y

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

Definitions	Y(UK)2	
	Y2.1	(1) The Act is The Housing Grants, Construction and Regeneration Act 1996. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
Dates for payment	Y2.2	The date on which a payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due. The <i>Project Manager's</i> certificate is the notice of payment from the <i>Employer</i> to the <i>Contractor</i> specifying the amount of the payment made or proposed to be made and stating how the amount was calculated.
Notice of intention to withhold payment	Y2.3	If either Party intends to withhold payment of an amount due under this contract, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount proposed to be withheld and the reason for withholding payment. If there is more than one reason, the amount for each reason is stated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to withhold payment as required by this contract.
Suspension of performance	Y2.4	If the <i>Contractor</i> exercises his right under the Act to suspend performance, it is a compensation event.

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

Third party rights	Y(UK)3	
	Y3.1	A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation are stated in the Contract Data.

Option Z: *Additional conditions of contract*

Additional conditions of contract	Z1	
	Z1.1	The <i>additional conditions of contract</i> stated in the Contract Data are part of this contract.

SHORTER SCHEDULE OF COST COMPONENTS

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

People 1	<p>The following components of the cost of</p> <ul style="list-style-type: none"> • people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Working Areas, • people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Working Areas but who are working in the Working Areas and • people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas.
11	Amounts paid by the <i>Contractor</i> including those for meeting the requirements of the law and for pension provision.
Equipment 2	<p>The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).</p>
21	Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
22	Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
23	The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
24	<p>Unless the item is in the published list and the rate includes the cost component, payments for</p> <ul style="list-style-type: none"> • transporting Equipment to and from the Working Areas other than for repair and maintenance, • erecting and dismantling Equipment and • constructing, fabricating or modifying Equipment as a result of a compensation event.
25	Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
26	Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
27	Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for purchasing Plant and Materials, delivery to and removal from the Working Areas, providing and removing packaging and samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office.
	45	Specialist services.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7	The following are deducted from cost <ul style="list-style-type: none"> • costs against which this contract required the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers.



SECTION 10

WARRANTY FORMS

TRANSPORT FOR LONDON

STANDARD AMENDMENTS TO

NEC 3RD EDITION FORM OF CONTRACT

ATTACHMENTS FOR USE WITH

OPTIONS A-E

Version 1: 16 December 2009

Note: *These attachments are for use with the TfL standard amendments to the NEC 3rd Edition Form of Contract Options A to E. In compiling the contract thought should be given as to whether all of the attachments are required if the relevant operative clauses have been amended.*

**FORM OF WARRANTY FROM CONTRACTOR TO
FINANCIER OR OTHER BENEFICIARY**

Contractor Warranty

between

[CONTRACTOR]

and

[BENEFICIARY]

and

[EMPLOYER]

relating to [PROJECT]

THIS DEED is made on

200[]

BETWEEN:

- (1) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns); and
- (3) [EMPLOYER] of [Address] ("the Employer").

BACKGROUND:

- (A) By a contract dated [date] ("the Contract") [the Employer] [EMPLOYER NAME] has appointed the Contractor for the provision of works as defined in the Contract ("the Works").
- (B) [The Beneficiary is [the/a] [purchaser][tenant][provider of finance in connection with the [purchase][lease]] of [description of part of the site] [member of the TfL Group (as defined in the Contract)]].
- (C) The Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor receipt of which the Contractor acknowledges.

2. CONTRACTOR'S WARRANTIES

- 2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Contract in accordance with the Contract.
- 2.2 The Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Contractor is responsible for them):

2.2.1 the design of the Works;

2.2.2 the selection of goods, materials, equipment or plant for the Works;
and

2.2.3 the satisfaction of any performance requirement or specification of or for the Works.

3. **INTELLECTUAL PROPERTY RIGHTS**

- 3.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Contractor in the course of performing its obligations under the Contract ("the Documents") will remain vested in the Employer. For the purposes of this clause 3, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 3.2 To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence¹ to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the Documents.

4. **PROFESSIONAL INDEMNITY INSURANCE**

- 4.1 The Contractor by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £[10] ([Ten] million pounds) in the annual aggregate, in relation to the Works provided always that:

¹ The Intellectual Property licence will need to be considered if the drafting of clause 22 (Intellectual Property) of the building contract is amended. The current drafting assumes that Intellectual Property rights are vested in the Employer.

- 4.1.1 such insurance shall be in place from the date of commencement of the Works until no less than 12 years after the completion of the Works; and
- 4.1.2 if such insurance is not available to the Contractor (and/or design and build contractors engaged in works of a similar, size nature and complexity as the Works) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Beneficiary will meet and the Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

- 4.2 The Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only. The Beneficiary will give the Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

8. **NO APPROVAL**

The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY ONLY

9. **STEP-IN RIGHTS**

9.1 Subject to clause 9.7, the Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Contractor's grounds for terminating or treating as terminated or repudiated the Contract or its employment under it or discontinuing or suspending its performance of the Contract and stating the amount (if any) of monies outstanding under the Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the employer under the Contract to the exclusion of the Employer and, upon giving such notice, that will be the case and the Contract will be and remain in full force and effect notwithstanding any of the grounds in the Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Employer; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Contractor under the Contract and for the observance and performance of all of the other duties and obligations on the part of the employer to be observed and performed under the Contract accruing due after the service of such Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Employer under the Contract.

- 9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Contractor the Beneficiary will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Contractor under either clause 9.1.1 or clause 9.3.
- 9.3 The Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Contract. The Beneficiary shall then become the employer under the Contract to the exclusion of the Employer and the Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Contract.
- 9.4 [Where the Contractor has given rights in relation to the Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Employer acknowledges that the Contractor will be entitled to rely on a notice given to the Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.

- 9.7 Notwithstanding the other provisions of this clause 9, if the Contract has for any reason been terminated prior to receipt by the Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Contractor shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Contract to continue the Works in all respects as if the Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. LIMITATION

- 10.1 The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Contract as joint employer provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary any sums due or claimed as due by the Contractor from the Employer.
- 10.2 The Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the Works.
- 10.4 The Contractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

11. GOVERNING LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

TRANSPORT FOR LONDON

STANDARD AMENDMENTS TO

NEC 3RD EDITION FORM OF CONTRACT

ATTACHMENTS FOR USE WITH

OPTIONS A-E

Version 1: 16 December 2009

Note: *These attachments are for use with the TfL standard amendments to the NEC 3rd Edition Form of Contract Options A to E. In compiling the contract thought should be given as to whether all of the attachments are required if the relevant operative clauses have been amended.*

SUBCONTACTOR WARRANTY

Sub-Contractor Warranty
between

[SUB-CONTRACTOR]
and
[EMPLOYER/FINANCIER OR OTHER BENEFICIARY]
and
[CONTRACTOR]

relating to [PROJECT]

BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Sub-Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");¹ and
- (4) [EMPLOYER] [(registered number [no.]) whose registered office is] [of] [Address]².

BACKGROUND:

- (A) By a contract dated [date] ("the Main Contract") [EMPLOYER] ("the Employer") has appointed the Contractor for the provision of works as defined in the Main Contract (the "Main Works").
- (B) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] ("the Sub-Contract") to carry out and complete the part of the Main Works specified in the Sub-Contract ("the Sub-Contract Works").
- (C) [The Beneficiary is [the/a] [Employer] [Identify Other Beneficiary] [provider of finance in connection with the [Insert] of [description of part of the site] [purchaser][tenant]].
- (D) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

¹ Only required where step-in rights are given.

² The Employer should be a party to this deed for the purposes of clause 3 (Intellectual Property Rights). Include this paragraph (4) where the Employer is not the Beneficiary under this warranty.

1. **CONSIDERATION**

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. **SUB-CONTRACTOR'S WARRANTIES**

2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.

2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 the design of the Sub-Contract Works;

2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Works; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

3. **INTELLECTUAL PROPERTY RIGHTS**

- 3.1 The parties acknowledge that all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Employer. For the purposes of this clause 3, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 3.2 [To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence³ to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.]⁴
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 3.2.

4. **INSURANCE**

- 4.1 The Sub-Contractor by this Deed covenants with the Beneficiary that it has effected [professional indemnity] insurance with

³ The Intellectual Property licence will need to be considered if the drafting of clause 22 (Intellectual Property) of the building contract is amended. The current drafting assumes that Intellectual Property rights are vested in the Employer.

⁴ This clause is only required where the Beneficiary is not the Employer.

reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £[10] ([Ten] million pounds) in the annual aggregate , in relation to the Sub-Contract Works provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Works until no less than 12 years after expiry of the Term or (if later) Completion of the last Scheme to be completed (in each case as defined in the Contract); and

4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors specialising in the fields in which the Sub-Contractor specialises) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Beneficiary will meet and the Sub-Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

4.2 The Sub-Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. NOTICES

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub- Contractor on two occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. **NO APPROVAL**

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN EMPLOYER/FINANCIER WARRANTY ONLY

9. **STEP-IN RIGHTS**

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-

Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the employer under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice,

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor the Beneficiary will not be

under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.

- 9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the employer under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.
- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Beneficiary enter into a new sub-contract

with the Beneficiary on the same terms as the Sub-Contract to continue the Sub-Contract Works in all respects as if the Sub-Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. LIMITATION

10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Contract as joint employer provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Employer.

10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.

10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the Works.

10.4 The Sub-Contractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

11. PARTNERSHIP

Where the Sub-Contractor is a partnership references in this Deed to "the Sub- Contractor" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

12. GOVERNING LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

13. THIRD PARTY RIGHTS

13.1 Save that any member of the TfL Group (as defined in the Main Contract) has the right to enforce the terms of this Deed, the parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13.2 Notwithstanding clause 13.1, the parties to this Deed are entitled to vary or rescind this Deed without the consent of any or all members of the TfL Group.

THIS DOCUMENT is executed as a Deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE AS A DEED]