

- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than [REDACTED] [REDACTED] [REDACTED] [REDACTED];
- (l) detailed inspection records;
- (m) 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*;
- (n) accounts and records of and information necessary to validate the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

Z2.5.2 The *Contractor* maintains and procures in each subcontract that each of his Subcontractors (and sub-sub-contractors of any tier) maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Contractor* and his Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the *Employer* and his authorised representatives.

Z2.5.3 The *Contractor* undertakes and procures that his Subcontractors (and sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and his authorised representatives may, from time to time during the performance of this contract and for 12 years following Completion, audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including any aspect of the *Contractor's* or any Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* rights pursuant to this sub-clause Z2.5.3 include the right to audit and check and to take copies of and extracts from any document or record of the *Contractor* or his Subcontractors including Minimum Records and the *Contractor* ensures that any requirements of the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) are complied with to enable the *Employer* to exercise its rights under this sub-clause Z2.5.3.

Z2.5.4 The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:

- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
- (b) 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,
- (c) 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,
- (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
- (e) complying with the *Employer's* reasonable requests for access to senior

personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance

Z2.6

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

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

Intellectual Property Rights

Z2.7

Z2.7.1 Vesting of IPR

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

Z2.7.2 Background IPR

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

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

In this clause Z2.7.2 and Z2.7.2A, "**Infrastructure Manager**" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway.

Z2.7.2A Lifts Subcontract IPRs

In respect of IPRs which are subject to the Lifts Subcontract, the *Contractor* procures the grant to the *Employer* of a non-exclusive, perpetual, irrevocable and royalty free licence to copy and use any IPRs and Documentation owned,

controlled or used by the *Contractor* and/or the Lifts Subcontractor for the following purposes:

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

In the event that:

- (i) an act of insolvency occurs in relation to the *Contractor* and/or the Lifts Subcontractor; or
- (ii) the *Contractor* fails, within 14 days of a written request by the *Employer*, to correct a failure to provide the works which are the subject of the Lifts Subcontract or supply the Documentation or to develop, enhance, supplement, modify, interface, integrate and/or maintain the Documentation where required by the Lifts Subcontract,

the licence procured by the *Contractor* under this clause Z2.7.2A in addition includes the right for the *Employer* to copy, use, develop, enhance, supplement, modify, interface, integrate and/or maintain the IPRs and Documentation for the purposes listed in paragraphs (a) to (f) of this clause Z2.7.2A and in addition for the purposes of designing, testing, commissioning, executing and completing the *works*.

Z2.7.2B The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* immediate access to all Documentation in whatever form requested by the *Project Manager* at any time but at the latest on termination or expiry of this contract.

Z2.7.2C IPR Claims

- (a) The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "Claims") relating to the same) which affects or may affect the provision of the *works*
- (b) Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR resulting from the failure of the *Contractor* to comply with any of its obligations under clauses Z2.7.1, Z2.7.2 and / or Z2.7.2A.
- (c) The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such Claim. The *Contractor* reimburses the *Employer* for all Losses incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* consults with the *Employer* in respect of the conduct of any Claim and keeps the *Employer* regularly and fully informed as to the progress of such Claim.

Z2.7.3 Corporate IPR

- (a) The *Employer* grants the *Contractor* a non-exclusive, non transferable, royalty-free licence to the *Contractor* to use, and

allow his Subcontractors to use, the Corporate IPRs for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.

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

Assignment

Z2.8

- Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).
- Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

- Z2.9.1 The *Contractor* shall, and shall ensure that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.
- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or PFI Contractors to any other person.
- Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.

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

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

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

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

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

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

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

Z2.10 **Not Used.**

Dispute Resolution Procedure

Z2.11

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

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

Z2.12.1 The *Contractor* will pay and/or *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* to Provide the Works or a breach of his obligations under this contract.

Obligations relating to the TWAO,
Third Party Agreements etc

Z2.12A

The *Contractor* is deemed to have full knowledge of the provisions of the Draft TWAO, Draft Planning Conditions, Montford Place Planning Application, Montford Place Planning Permission, Applications for Conservation Area Consent, Applications for Listed Buildings Consent, Third Party Agreements (save only for those parts shown as redacted or omitted from the copies included in the Works Information), Draft CoCP – Part A, and Environmental Statement and Environmental Statement Addendum and Provides the Works in order not to:

- place the *Employer* or TfL in breach of any of the duties, commitments and/or obligations in the:
 - TWAO;
 - Planning Conditions;
 - Montford Place Planning Permission;
 - Conservation Area Consents;
 - Listed Buildings Consents;
 - Third Party Obligations;
 - CoCP;
 - Environmental Statement and Environmental Statement Addendum; or
- otherwise cause the *Employer* or TfL to suffer Losses under or arising out of the:
 - TWAO;
 - Planning Conditions;
 - Montford Place Planning Permission;
 - Conservation Area Consents;
 - Listed Buildings Consents;
 - Third Party Obligations;
 - CoCP; or
 - Environmental Statement and Environmental Statement Addendum,

in each case as a result of any negligence, breach of contract, breach of statutory duty, error, omission or default by the *Contractor* in Providing the Works.

Z2.12B.1 Without prejudice to the generality of clause Z2.12A.1, in Providing the Works the *Contractor*, on behalf of the *Employer*, performs, complies, discharges and is responsible for all the duties, commitments and/or obligations of TfL or the *Employer* or both in the:

- Transferred TWAO Functions;
- Planning Conditions;
- Montford Place Planning Permission;
- Conservation Area Consents;
- Listed Buildings Consents;
- Specific Obligations;
- CoCP; and
- Environmental Statement and Environmental Statement Addendum.

Z2.12C.1 The *Contractor* indemnifies and keeps indemnified the *Employer* from and against all Losses arising from any breach of clause Z2.12A and / or Z2.12B.

TfL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

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

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

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

London Living Wage

Z2.15

- Z2.15.1 In this clause:

- | | |
|----------------------|--|
| "GLA Act" | means the Greater London Authority Act 1999; |
| "Greater London" | means that term as it is used in the GLA Act; |
| "London Living Wage" | means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the <i>Employer</i> , |
| "Mayor" | means the person from time to time holding the office of Mayor of London as established by the GLA Act; |

- Z2.15.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

- Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:
- (a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,

- (b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and
- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Transparency

Z2.16

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

Z2.16.3 In this clause

“Contract Information”

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

“Transparency Commitment”

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

Data Protection

Z2.17

Z2.17.1 Without prejudice to sub-clause Z2.5, the *Contractor* at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the *Employer* from time to time in relation to the processing of data and does not by any act or fault cause the *Employer* to be in breach of these requirements.

Z2.17.2 The *Contractor*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data,
- provides the *Employer* and *Project Manager* with such information as they may reasonably require to satisfy themselves of compliance by the *Contractor* with the requirements of this clause Z2.17, and
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest
Z2.18

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

Freedom of Information
Z2.19

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

Criminal Record Declarations
Z2.20

Z2.20.1 In this section:

“Relevant Individual” means any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.

“Relevant Conviction” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

- Z2.20.2 The *Contractor* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* shall procure that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.3 The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.4 The *Employer* may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.5 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.2 and/or Z2.20.3, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.2) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.2.
- Z2.20.6 A persistent breach of Clause Z2.20.2 and/or Z2.20.3 by the *Contractor* shall constitute a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.7 In either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z2.20.8 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

Best Value

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

Prohibited Acts

- Z2.22
Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and

check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

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

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

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Defined terms

X1

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

Price Adjustment Factor

X1.2

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

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

Compensation events

X1.3

The Defined Cost for compensation events is assessed using the

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

Price adjustment Options C and D

X1.5

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

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

Option X2: Changes in the law

Changes in the law	X2	
Z1.40.1	X2.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the <i>works</i> and exercising the foresight appropriate to such a contractor ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law 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 X4: Parent company guarantee

Parent company Guarantee	X4	
Z1.41.1	X4.1	At or prior to the Contract Date the <i>parent company</i> of each party comprising the <i>Contractor</i> gives the <i>Employer</i> a guarantee of the <i>Contractor's</i> performance in the form attached at Schedule 3 and if the <i>parent company</i> is not registered in England and Wales a legal opinion (in a form acceptable to the <i>Employer</i>) in respect of the validity and enforceability of the guarantee being given by the <i>parent company</i> .

Option X5: Sectional Completion

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

Option X6: Bonus for early Completion

Bonus for early	X6	Not Used
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Option X7: Delay damages

Delay damages	X7	
	X7.1	The <i>Contractor</i> pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of <ul style="list-style-type: none">• Completion and• the date on which the <i>Employer</i> takes over the <i>works</i>.
	X7.2	If the Completion Date is changed to a later date after delay damages have been paid, the <i>Employer</i> repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
	X7.3	If the <i>Employer</i> takes over a part of the <i>works</i> before Completion, the delay damages are reduced from the date on which the part is taken over. The <i>Project</i>

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 X12 Not Used

Option X13: Performance bond
Performance bond X13 Not Used

Option X14: Advanced payment to the Contractor
Advanced payment X14 Not used

Option X15: Limitation of the Contractor's liability for his design to reasonable skill and care
The Contractor's design X15 Not used

Option X16: Retention

Retention X16

X16.1 The Contractor provides two retention bonds in the form attached at Schedule 2 which are in equal amounts and which together are equal to [redacted] of the Prices at the Contract Date. If the retention bonds were not provided by the Contract Date, they are provided to the Employer within four weeks of the Contract Date.

X16.2 The Contractor provides two replacement retention bonds if at any time the Prices increase by [redacted] relative to the Prices at the time at which retention bonds were provided to the Employer under clause X16.1 or this clause X16.2 (as applicable). Any such replacement retention bonds are in the form attached at Schedule 2 and are in equal amounts which together are equal to [redacted] of the then Prices.

Z1.45.1 X16.3 On Completion of the whole of the works or after the Employer has taken over the whole of the works, the amount of the retention bonds is halved in accordance with their terms.

Z1.45.1A X16.4 On the date of issue of the Defects Certificate the retention bonds expire in accordance with their terms.

Z1.45.1B X16.5 Any retention bond provided in accordance with this Clause X16 is from an issuer with a minimum credit rating of A1 (Moody's) or A+ (Standard & Poors) provided that if the credit rating of the issuer falls below A2 (Moody's) or A (Standard & Poors) the Contractor provides a replacement retention bond in an equivalent amount from an issuer with a minimum credit rating of A1 (Moody's) or A+ (Standard & Poors).

Option X17: Low performance damages

Low performance Damages X17 Not Used

Option X18: Limitation of liability

Limitation of liability X18

Z1.46.1 X18.1 The *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss arising out of any breach of the *Contractor's* obligations under this contract is limited to the amount stated in the Contract Data save insofar as the same arises out of any excluded matter listed in this Option X18.

X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.

Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate (except the cost of such Defects which the *Contractor* is not given access to correct and are corrected by Others), is not limited and is in addition to any damages stated in this contract for disruption (Z2.12) or delay (Option X7).

Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, (which, for the purposes of this X18.4, include amounts payable by the *Contractor* in respect of its liability to beneficiaries under deeds of warranty delivered under clause Z2.1.2 unless the *Contractor's* liability for such amounts arises out of a matter which were it to have arisen under this contract would be an excluded matter), 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,
- liquidated damages for disruption (Z2.12),
- death or bodily injury,
- Losses caused by fraudulent acts or acts of a criminal nature,
- Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance,
- Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under:
 - clause 70.1;
 - the fourth and fifth bullet points of clause 83.1; or
 - clause Z2.7.2C,
- Defects under clause X18.3; *(except for Defects for which the Contractor is not given access to correct and are corrected by Others)*
- Safety Breaches, or
- liability to beneficiaries under deeds of warranty delivered under clause Z2.1.2 where the liability arises out of a matter which were it to have arisen under this contract would be one of the above excluded matters.

EXECUTED VERSION

Z1.46.4

X18.5 Not used.

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.

Z1.47.1

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. The *Contractor* acknowledges that the *Employer* may provide copies of such reports to members of the TfL Group.

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 Not used.

X20.5 The *Employer* may review and revise the KPIs on an annual basis.

Single Point Design

X21

Responsibility

Z1.48

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

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

X21.3 The *Employer* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's Design Information* as originally included in the contract. The *Employer* does not give any representation or warranty as to the accuracy, status or completeness of the *Employer's Design Information*, except as stated below.

The *Employer* is responsible for the correctness of the following elements of the *Employer's Design Information*:

(a) data and information stated in the Works Information as being the responsibility of the *Employer*,

(b) definitions of intended purposes of the *works* or any part thereof, and

(c) criteria for the testing and performance of the completed *works*.

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

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

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

Novation of Associated Contracts X22 Not Used

Key Person Succession Plan X23

- Z1.50 X23.1 If a key person succession plan is stated in the Works Information to be applicable to the project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.
- X23.2 The *Contractor* submits his key person succession plan to the *Project Manager* for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.

Fee Cap X24 Not Used

Escrow Agreement X25 Not Used

OPTION Y

Option Y(UK)1: Project Bank Account

Definitions

- Y1.1 (1) The Authorisation is a document authorising the *project bank* to make payments to the *Contractor* and Named Suppliers.
- (2) Named Suppliers are *named suppliers* and others who have signed the Joining Deed.
- (3) Project Bank Account is the account used to receive payments from the *Employer* and the *Contractor* and make payments to the *Contractor* and Named Suppliers.
- (4) A Supplier is a person or organisation who has a contract to
- construct or install part of the *works*
 - provide a service necessary to Provide the Works
 - supply Plant and Materials for the *works*.
- Z1.50B (5) Trust Deed is an agreement which contains provisions for administering the Project Bank Account and is in the form set out in Schedule 12 (Part A).
- Z1.50C (6) Joining Deed is an agreement under which the Supplier joins the Trust Deed and is in the form set out in Schedule 12 (Part B).

Project Bank Account

- Y1.2 The *Contractor* establishes the Project Bank Account with the *project bank* within three weeks of the Contract Date.
- Y1.3 Unless stated otherwise in the Contract Data, the *Contractor* pays any charges made and is paid any interest paid by the *project bank*. The charges and interest by the *project bank* are not included in the Defined Cost.
- Z1.50D Y1.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account including each bank mandate, and does not change the bank mandate without the *Project Manager's* consent. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the *project bank* in connection with the Project Bank Account.

Named Suppliers

- Y1.5 The *Contractor* includes in his arrangements with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payments of amounts due under their contracts.
- Y1.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the *Project Manager* for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The *Employer*, *Contractor* and the Supplier sign the Joining Deed after acceptance.

Payments Z1.50E

- Y1.7 The *Contractor* submits to the *Project Manager* an application for payment in accordance with clause 50.1A and shows in the application the amount due to Named Suppliers in accordance with their contracts.
- Y1.8 Within the time set out in the banking arrangements to allow the *project bank* to make payment to the *Contractor* and Named Suppliers in accordance with the contract
- the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid under the contract and
 - the *Contractor* makes payment to the Project Bank Account of any amount which the *Employer* has notified the *Contractor* he intends to withhold from

the certified amount and which is required to make payment to Named Suppliers.

Y1.9 The *Contractor* prepares the Authorisation, setting out the sums due to the Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of payment due under the contract. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* no later than four days before the final date for payment. The *Employer* signs the Authorisation and submits it to the *project bank* no later than one day before the final date for payment.

Y1.10 The *Contractor* and the Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.

Y1.11 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.

Effect of Payment
Z1.50F

Y1.12 Payments made from the Project Bank Account are treated as payments made from the *Employer* to the *Contractor* in accordance with this contract or from the *Contractor* to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure by the *Contractor* to comply with the requirements of this clause or a failure by the *project bank* is not treated as late payment under this contract.

Trust Deed

Y1.13 The *Employer*, the *Contractor* and *named suppliers* sign the Trust Deed before the first assessment date.

Y1.14 If the *Project Manager* issues a termination certificate, no further payment is made into the Project Bank Account.

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

Definitions

Note: incorporated in Schedule 1 and 12.6.

Y(UK)2

- Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
(2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

Suspension of performance Payment

Z1.51.1

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

Y1

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

Option Z: Additional conditions of contract

Additional conditions of contract

Z1.52.1

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

SCHEDULE OF COST COMPONENTS

Z1.53.1

In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

- People 1** The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas and
 - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas
- 11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Working Areas.
- 12 Payments to people for
- (a) bonuses and incentives (contract specific)
 - (b) overtime
 - (c) working in special circumstances
 - (d) special allowances
 - (e) absence due to sickness and holidays
 - (f) severance related to work on this contract where such cost arises from a compensation event and has been authorised in writing by the *Project Manager*
- 13 Payments made in relation to people for
- (a) Travel
 - (b) subsistence and lodging where such costs are incurred wholly and necessarily in connection with the *works* and are agreed in advance by the *Project Manager*
 - (c) relocation
 - (d) medical examinations
 - (e) passports and visas
 - (f) travel insurance
 - (g) items (a) to (f) for dependants
 - (h) protective clothing
 - (i) meeting the requirements of the law
 - (j) pensions and life assurance
 - (k) death benefit
 - (l) occupational accident benefits
 - (m) medical aid
 - (n) a vehicle
 - (o) safety training.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.
Amounts paid by the *Contractor*.
- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for Working Areas overheads).
- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
 - his parent company or
 - by a company with the same parent company
- at the hire or rental rate multiplied by the time for which the Equipment is required.

- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
 - purchased by the *Contractor* under a hire purchase or lease agreement or
 - hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

at open market rates, multiplied by the time for which the Equipment is required.

- 23 Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

- 25 Payments for the purchase price of Equipment which is consumed.

- 26 Unless included in the hire or rental rates, payments for

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

- 27 Payments for purchase of materials used to construct or fabricate Equipment.

- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

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

- 31 Payments for

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

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

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

- 41 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

- 42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.

- 43 Payments for

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land
- (c) compensation for loss of crops or buildings

- (d) royalties
 - (e) inspection certificates
 - (f) charges for access to the Working Areas
 - (g) facilities for visits to the Working Areas by Others
 - (h) specialist services
 - (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 44 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for
- (a) catering
 - (b) medical facilities and first aid
 - (c) recreation
 - (d) sanitation
 - (e) security
 - (f) copying
 - (g) telephone, telex, fax, radio and CCTV
 - (h) surveying and setting out
 - (i) computing
 - (j) hand tools not powered by compressed air.
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials which are
- wholly or partly designed specifically for the *works* and
 - manufactured or fabricated outside the Working Areas.
- 51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.
- Design** 6 The following components of the cost of design of the *works* 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
- the cost of events for which this contract requires the *Contractor* to insure,
 - other costs paid to the *Contractor* by insurers and
 - the cost of excess payments.

SHORTER SCHEDULE OF COST COMPONENTS

This schedule is used by agreement for assessing compensation events. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

People	1	The following components of the cost of <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. • 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	The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
	21	Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
	22	Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
	23	The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
	24	Unless the item is in the published list and the rate includes the cost component, payments for <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 <ul style="list-style-type: none"> • 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

- payments for the provision and use in the Working Areas of water, gas and electricity,
- payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
- payments for the provision and use of equipment, supplies and services, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying, 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 *works*.

44 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.

45 Specialist services.

Manufacture and fabrication

5 The following components of the cost of manufacture and fabrication of Plant and Materials, which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

51 Amounts paid by the *Contractor*.

Design

6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.

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

- costs against which this contract required the *Contractor* to insure
- other costs paid to the *Contractor* by insurers and
- the cost of excess payments or deductibles.

SUPPLEMENTARY NOTES TO THE SCHEDULE OF COST COMPONENTS AND THE SHORTER SCHEDULE OF COST COMPONENTS

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

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

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

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

Payments made to people for overtime:

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

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

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

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

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

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

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

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14 (or in the case of the Shorter Schedule of Cost Components, item 11). The charge includes provision and use of equipment, supplies and services for items 44 (a through (j)) (or in the case of the Shorter Schedule of Cost Components, item 41).

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

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

- they are in accordance with the applicable Main Option;
- they have been accepted by the *Project Manager* pursuant to the terms of this contract;

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

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

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

2 - Reasonably Incurred Costs

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

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

3 - Cost Verification

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

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

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

TLL7917

**NORTHERN LINE EXTENSION PROJECT
MAIN DESIGN AND BUILD CONTRACT**



SECTION THREE

**SCHEDULES TO
CONDITIONS OF CONTRACT
(1-13)**

THE SCHEDULES

Schedule

- | | |
|----|---|
| 1 | Additional definitions |
| 2 | Form of Retention Bond |
| 3 | Form of Parent Company Guarantee |
| 4 | Form of Warranty from <i>Contractor</i> |
| 5 | Form of Warranty from Subcontractor |
| 6 | Form of Warranty from Sub-consultant |
| 7 | Corporate IPR |
| 8 | Dispute Resolution Procedure |
| 9 | Disruption Damages |
| 10 | Not Used |
| 11 | Not Used |
| 12 | Project Bank Account |
| 13 | Key Performance Indicators |

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

Adjudicator means any adjudicator appointed from time to time in accordance with the Dispute Resolution Procedure;

Applications for Conservation Area Consent means the applications, or any one of them, made under the Planning (Listed Buildings and Conservation Areas) Act 1990 for consent for demolition in a conservation area, copies of which are included in the Works Information (section WI 2200, 22-04);

Applications for Listed Buildings Consent means the applications, or any one of them, made under the Planning (Listed Buildings and Conservation Areas) Act 1990 for listed buildings consent for alterations, extension or demolition of a listed building, copies of which are included in the Works Information (section WI 2200, Appendix 22-04);

Available means:

- the *works* are safe and fit for their intended purpose,
- there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and
- the *works* are readily accessible and operable by the *Employer*;

Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause 22.7.1;



BPS Agreement means the Third Party Agreement dated 04 April 2014 between (1) The Landowners (being the parties listed as such in Schedule 6 to the agreement), (2) Battersea Project Holding Company Limited, and (3) Transport for London;

British Standards means those standards produced by the British Standards Institution of 389 Chiswick High Road, London, United Kingdom;

CAMS means the web-based contract administration management system for the project as more particularly described in the Works Information (section WI 800);

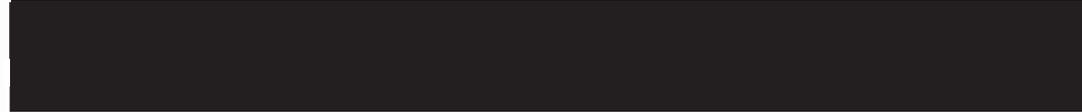
CAMS Communications means those communications that are to be made exclusively through CAMS;



Change of Control means a change of ownership of the *Contractor*, any company forming part of the *Contractor* or a *parent company* where such change relates to fifty percent or more of the issued share capital of the *Contractor*, the company forming part of the *Contractor* or the *parent company* (as the case may be), save in circumstances where:

EXECUTED VERSION

- there is no change in the ultimate beneficial owner(s) or controller(s) of the *Contractor*, the company forming part of the *Contractor* or *the parent company* (as the case may be),
- such change of control arises solely as a result of the listing of any shares on a recognised investment exchange, or
- the *Contractor*, the company forming part of the *Contractor* or the *parent company* (as the case may be) has obtained the prior written consent of the *Employer*;



CoCP means the CoCP – Part A and each CoCP - Part B in respect of the *works*;

CoCP – Part A – means the final Code of Construction Practice - Part A approved by the relevant local planning authority as may from time to time be amended or superseded and as notified by the *Employer* to the *Project Manager* and the *Contractor*;

CoCP – Part B means a Code of Construction Practice - Part B prepared by the *Contractor* for the *works* to be undertaken at each part of the Site as required by the Planning Conditions and as agreed by the *Project Manager* and approved by the relevant local planning authority and as may from time to time be amended or superseded;

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

Conservation Area Consents means any and all of the consents granted by the Secretary of State for Communities and Local Government in respect of the Applications for Conservation Area Consent and as notified by the *Employer* to the *Project Manager* and the *Contractor*;

Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005;

Corporate IPRs are those trade marks, trade names and other IPRs listed in Schedule 7 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards;



Critical Defect means a Defect which appears on or before the *defects date* and which is:

- critical to the operation and/or safety of the Underground Network;
- within a category of Defects identified in the Works Information as Critical Defects; or
- deemed by the *Project Manager* to be critical to the carrying out and completion of the *works* and/or the work of Others;

Customer means a customer on the Underground Network;



Dispute means any dispute, controversy or claim arising out of or in connection with this contract;

Dispute Resolution Procedure means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 8;

Draft CoCP - Part A means the draft Code of Construction Practice – Part A in respect of the *works*, a copy of which is included in the Works Information (section WI 2200, Appendix 22-07);

EXECUTED VERSION

Draft Planning Conditions means the draft planning conditions in respect of the proposed extension to the Northern line, a copy of which is included in the Works Information (section WI 2200, Appendix 22-03);

Draft TWAO means the draft version of the TWAO a copy of which is included in the Works Information (section WI 2200, Appendix 22-01);

Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, PIM, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract;

Environmental Statement and Environmental Statement Addendum means the environmental statement submitted with the application for the TWAO, the Environmental Statement Addendum submitted on 27 August 2013 and all other environmental information submitted to the Public Inquiry including: Environmental Statement Volume I (Chapters 1-18) [NLE/A19/1], Environmental Statement Volume 2a (Appendices A B D E F G H) [NLE/A19/2], Environmental Statement Volume 2b (Appendix C) [NLE/A19/3], Environmental Statement Volume 2c (Appendix I) [NLE/A19/4], Environmental Statement Volume 2d (Appendices J,K, L, N, O) [NLE/A19/5], Environmental Statement Volume 2e (Appendix M) Design and Access Statement [NLE/A19/6], Environmental Statement Non-technical Summary [NLE/A19/7], Environmental Statement Addendum (including Non-technical Summary) (27/08/13) [NLE/A19/8], Environmental Statement Addendum Appendices (including Preliminary Navigation Risk Assessment, Additional Transport Information and Design and Access Statement Addendum) (27/08/13) [NLE/A19/9], Addendum to Preliminary Navigation Risk Assessment (11/11/13), a copy of which is included in the Works Information (section WI 2200, Appendix 22-08);

Escalators Subcontractor means the Subcontractor for the design, supply, installation, testing and / or commissioning of escalators specified in the Works Information (section WI 1200);

European Standards means those standards ratified by the European Committee for Standardization (CEN) of Avenue Marnix 17, B-1000 Brussels, Belgium;

FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

Form of Agreement means the form of agreement to which these *conditions of contract* are attached;

Full Commencement Notice means a notice issued by the *Employer* pursuant to clause 20A.2;

GBR means the Geotechnical Baseline Report specified in the Works Information (section WI 2500);

Information means information recorded in any form held by or on behalf of the *Employer*;

Information Model comprises the following constituent parts:

- graphical data,
- non-graphical data, and
- documentation

Information Request means a request for any Information under the FOI Legislation;

International Standards means those standards produced by the International Standards Organisation (IS) 1, ch. De la Voie-Creuse, CP 56, CH-1211 Geneva 20 Switzerland;

IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases including PIM), moral rights, rights in know-how, rights in domain names and other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;





Lifts Subcontract means the subcontract for the design, supply, installation, testing and / or commissioning of lifts entered into by the *Contractor* and the Lifts Subcontractor in accordance with clause 26A.1;

Lifts Subcontractor means the Subcontractor for the design, supply, installation, testing and / or commissioning of lifts specified in the Works Information (section WI 1200);

Listed Buildings Consents means any and all of the consents granted by the Secretary of State for Communities and Local Government in respect of the Applications for Listed Buildings Consent and as notified by the *Employer* to the *Project Manager* and the *Contractor*;

Losses means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising;

LUL means London Underground Limited (No. 1900907) or its successor in title or assignee;

LUL Standards means the documents listed in the Works Information (WI 100, Appendix 01-02);

Management Plans mean any management plans (including any plans relating to key person succession (if Option X23 applies), the Subcontractor Procurement Plan, the Risk Management Plan and the Quality Plan) identified as such in the Works Information;

Montford Place Planning Application means the application for full planning permission for the temporary use of land east of Montford Place, a copy of which is included in the Works Information (section WI 2200, Appendix 22-09);

Montford Place Planning Permission means the permission granted by the London Borough of Lambeth in respect of the Montford Place Planning Application, a copy of which is included in the Works Information (section WI 2200, Appendix 22-10);



Non-Commencement Notice means a notice issued by the *Employer* pursuant to clause 20A.4;



Pay Less Notice means the notice referred to in clause 51.2B;

PFI Contract means, in each case, the main project contract entered into or to be entered into by the *Employer* and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);

PFI Contractors means those contractors who have entered into or will enter into PFI Contracts and as further referred to in the Works Information;

EXECUTED VERSION

[REDACTED]

Planning Conditions means the final planning conditions in respect of the proposed extension to the Northern line as are attached to the direction for deemed planning permission granted by the Secretary of State for Transport and as notified by the *Employer* to the *Project Manager* and the *Contractor*;

Prevention Event has the meaning ascribed to that term in clause 19.1;

Prohibited Act means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
- for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
 - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;
- (b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;
- (c) committing any offence:
- under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - under any law or legislation creating offences in respect of fraudulent acts, or
 - at common law in respect of fraudulent acts
- in relation to this contract or any other contract with the *Employer*; or
- (d) defrauding or attempting to defraud the *Employer*.

The Project Information Model (PIM) is the Information Model developed by the *Contractor* in accordance with the Works Information during the design and construction of the *works*, which represents the physical and functional characteristics of the *works*;

Public Inquiry means the public inquiry called for by the Secretaries of State for Transport and Communities and Local Government in respect of the application by TfL for a TWAO for the proposed extension to the Northern line and in respect of the Applications for Conservation Area Consent and the Applications for Listed Buildings Consent held between 19 November 2013 and 20 December 2013;

Responsible Procurement Principles mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;

[REDACTED]

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network and/or the safety of the *Employer's* Customers, staff or any other person.

[REDACTED]

Specific Obligations means (without prejudice to clause Z2.12A) any or all of the specific obligations owed by the *Contractor* in relation to the Third Party Agreements and as set out in the Works Information (section WI 2200, Appendix 22-06);

Standards means the LUL Standards and any and all British Standards, European Standards, International Standards and associated codes of practice;

Station means a building, equipment or facilities designed to be used by Customers to access or leave a train;

Statutory Requirement means any act of parliament, any instrument, rule or order made under any act of parliament and any regulation or by-law of any local authority or of any Statutory Undertaker which has jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the site in connection with which the *works* are to be provided;

Statutory Undertaker means any governmental or local authority or statutory undertaker:

- which has any jurisdiction with regard to the *works* and/or the project including any jurisdiction to control development of the Site or any part of it;
- with whose requirements the *Employer* is accustomed to comply; or
- with whose systems and/or utilities the project and/or the *works* will be connected.

Subcontractor Procurement Plan means a plan for the procurement and appointment of Subcontractors by the *Contractor* containing the information stated in the Works Information and which is submitted and accepted in accordance with the provisions of the Works Information;

Supplementary Notes means the notes entitled "Schedule of Cost Components/Shorter Schedule of Cost Components Supplementary Notes" included in this contract;

Third Party Agreements means any or all of the agreements entered into by the *Employer* and / or TfL with third parties copies of which are included (with parts redacted or omitted where appropriate) in the Works Information (section WI2200, Appendix 22-05);

Third Party Obligations means any and all of the *Employer's* and / or TfL's obligations to third parties under the Third Party Agreements;

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

TLL means Tube Lines Limited (No. 03923425) (or its successor in title or assignee);

Transferred TWAO Functions means (without prejudice to Z2.12A) the provisions of the TWAO listed in Appendix 22-02);

Tunnel Boring Machine means a tunnel boring machine together with its trailing back-up system and all ancillary plant, equipment, machinery and the like necessary to enable its operation and as set out in the tunnel boring machine specification included in, or accepted by the *Project Manager* in accordance with, the Works Information;

TWAO means an order made by the Secretary of State for Transport under the Transport and Works Act 1992 authorising the construction, operation and maintenance of the proposed extension to the Northern line and as

EXECUTED VERSION

notified to the *Contractor* by the *Employer*;

Underground Network means the Stations and depots (wherever situate), assets, systems, track, and other buildings, which are used in the maintenance and provision of the underground service known as "the "London Underground".

SCHEDULE 2

FORM OF RETENTION BOND

DATED []201[●]

[]

AND

LONDON UNDERGROUND LIMITED

**ON DEMAND RETENTION BOND
RELATING TO A CONTRACT FOR THE
NORTHERN LINE EXTENSION PROJECT**

EXECUTED VERSION

THIS BOND dated [] day of [] 201[●]

BETWEEN:

- (1) [] whose principal office is situate at [] (the "Surety")
- (2) London Underground Limited (Company Number 01900907) whose registered office is at Windsor House, 42 – 50 Victoria Street, London SW1H 0TL (the "Company")

WHEREAS:

- (A) Pursuant to a contract (the "Contract") dated [] entered into between (1) the Company and (2) [] (the "Contractor"), it has been agreed that the Contractor will perform the works for the Northern Line Extension (as more particularly described in the Contract).
- (B) The Company and Contractor have agreed to allow the Company to retain sums under the Contract however the Company has agreed not to deduct a retention percentage, provided the Contractor provides or continues to provide in favour of the Company an on-demand retention bond in the form of this Bond.
- (C) The Surety has agreed, at the request of the Contractor, to enter into this Bond with the Company.

NOW THIS DEED WITNESSETH as follows:-

1. In this Bond words and expressions, if not otherwise defined, shall have the meanings (if any) given to them in the Contract and:

"Bond Amount" means the amount specified in Appendix 1;

"Business Day" means a day (other than Saturday or Sunday) when banks in London are open for business;

"Expiry Date" means the date specified in Appendix 1.

2. The Surety hereby irrevocably and unconditionally undertakes to pay to the Company within five Business Days immediately following that on which it receives a written demand from the Company in accordance with Clause 4 below an amount equal to the lesser of:
 - 2.1. the amount specified in such demand; or
 - 2.2. the Bond Amount less the aggregate of all previous payments made under this Bond.
3. The Surety's obligation to make payments under this Bond shall arise on receipt of a demand made in accordance with the provisions of this Bond, and the Surety shall not be required or permitted to make any other investigation or enquiry.
4. The Company may make one or more demands hereunder. Each demand shall be substantially in the form set out in Appendix 2 (and shall be accompanied by the statement referred to therein) and shall be delivered to the Surety on a Business Day and during banking hours at its

EXECUTED VERSION

offices at [•] (or such other office of the Surety as the Surety may from time to time notify in writing to the Company).

5. The maximum aggregate liability of the Surety under this Bond shall not exceed the Bond Amount.
6. The Surety's obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between the Company and the Contractor including any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Contract or any novation of the Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding set-off or other deduction available to the Contractor under the Contract or otherwise; or
 - (c) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor whether express or by conduct or any other thing done, omitted or neglected to be done under the Contract; or
 - (d) any other bond, security or guarantee now or subsequently held by the Company for all or any part of the obligations of the Contractor under the Contract; or
 - (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 6(d) above; or
 - (f) any amalgamation, reconstruction or dissolution including winding-up of the Contractor; or
 - (g) the termination of the Contract for any reason; or
 - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish the Surety's liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the construction, name or style of the Contractor or any other person relating to the Contractor (whether or not known to the Company); or
 - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor.
7. This Bond is irrevocable. It will take effect on the date hereof and (unless previously cancelled by the written agreement of the Surety and the Company) will expire on the Expiry Date.

EXECUTED VERSION

8. The expiry of the Bond under Clause 7 above shall not affect or discharge the liability of the Surety to make payment of any demand made in accordance with the provisions of Clauses 2 and 4 received by the Surety on or before the Expiry Date.
9. All payments to be made under this Bond shall be made in pounds sterling to the account specified in the relevant demand.
10. This Bond shall be capable of assignment or transfer, without the consent of the Surety, to any permitted assignee or transferee of the Contract but otherwise shall not be capable of assignment or transfer without the consent of the Surety, such consent not to be unreasonably withheld or delayed.
11. Any notices or communication to be made by the Surety or the Company to the other under or in connection with this Bond (other than demands made under Clauses 2 and 4) shall be in writing and made to the other at the following addresses:

The Surety: [•]

The Company: Windsor House, 42 – 50 Victoria Street, London SW1H 0TL

12. All payments under this Bond shall be made free of any withholding, deduction, restriction or condition.
13. This Bond shall be governed by and construed in accordance with the law of England. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that the Company has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Surety is incorporated or in which any of the Surety's assets may be situated. The parties agree to submit to that jurisdiction.
14. Nothing in this Bond is intended to confer on any person any right to enforce any provision of this Bond which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
15. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.

EXECUTED VERSION

IN WITNESS whereof this Bond has been executed by the Parties as a deed and is intended to be delivered and is hereby delivered on the date first above written.

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED
was affixed to **THIS DEED**
in the presence of :

Signature of Authorised Signatory:

EXECUTED AND DELIVERED)
as a deed for and on behalf)
of [])
)
Director)
in the presence of:)

Witness:

Name:

Address:

.....

.....

Occupation:

Appendix 1

BOND PARTICULARS

The Bond Amount:	£[insert amount that is █████ of the then Prices reducing to £[insert amount that is █████ of the bond amount] on Completion of the whole of the works or the date on which the Employer takes over the whole of the works.
The Expiry Date:	The date of issue of the Defects Certificate in accordance with the Contract.

Appendix 2
FORM OF DEMAND

Dear Sirs

The Retention Bond dated [] issued by [] in favour of

London Underground Limited (the "Company") (the "Bond")

The Company confirms that the Contractor is in default of his obligations under a Contract dated [...] and demands the sum of [£].

Payment should be made to Account Number [], designated [].

Yours faithfully

For and on behalf of

London Underground Limited

EXECUTED VERSION

SCHEDULE 3

(Form of Parent Company Guarantee)

THIS DEED OF GUARANTEE is effective as of the ____ day of _____ 201[●]

BETWEEN:

- (1) [●], a company incorporated in [●] with registered number [●] and having its registered office at [●] (the “**Guarantor**”); and
- (2) [LONDON UNDERGROUND LIMITED, a company incorporated in England with registered number 01900907 and having its registered office at Windsor House, 42 – 50 Victoria Street, London SW1H 0TL (the “**Company**”).

WHEREAS:

- (A) Pursuant to an agreement (the “**Contract**”) dated on or about the date hereof between the Company and [] (the “**Contractor**”), the Contractor has agreed to carry out the services as described therein.
- (B) It is a condition of the entering into of the Contract that the Guarantor enters into and delivers this Guarantee in favour of the Company to guarantee the due performance of the Contract by the Contractor, in the manner hereinafter described.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Guarantee:

- 1.1.1 “**Contractor’s Obligations**”: shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;
- 1.1.2 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;
- 1.1.3 references to “**Contractor**”, “**Guarantor**” and/or “**Company**” shall include their respective transferees, successors and assigns whether immediate or derivative;
- 1.1.4 the headings to Clauses are for convenience only and have no legal effect;

EXECUTED VERSION

- 1.1.5 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;
- 1.1.6 the expression “**person**” shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and
- 1.1.7 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.

1.2 The parties to this Guarantee intend it to be a deed.

2. **Guarantee and Indemnity**

2.1 The Guarantor irrevocably and unconditionally:

2.1.1 guarantees to the Company the prompt performance or discharge by the Contractor of the Contractor’s Obligations;

2.1.2 undertakes with the Company that whenever the Contractor:

(a) does not pay any amount in respect of the Contractor’s Obligations when due, it shall forthwith on written demand by the Company stating that the Contractor has failed to pay such amount pay the relevant amount; and

(b) does not perform or discharge any obligation in respect of the Contractor’s Obligations when due, it shall within five (5) business days of written demand by the Company stating that the Contractor has failed to perform the Contractor’s Obligations perform or cause to have performed or discharge such obligation,

in each case as if it, instead of the Contractor, were expressed to be the principal obligor; and

2.1.3 as principal obligor agrees to indemnify the Company on written demand against any loss or liability suffered by it if any Contractor’s Obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.

2.2 The Guarantor’s liability under this Guarantee shall be no greater than the liability of the Contractor under or pursuant to the Contract or what would have been the liability of the Contractor under or pursuant to the Contract were it not for the unenforceability, invalidity or illegality of the Contract and, accordingly, the Guarantor shall be entitled to raise the same defences as those which the Contractor is entitled to raise (save as to the unenforceability, invalidity or illegality of the Contract) or would have been entitled to raise were it not for the unenforceability, invalidity or illegality of the Contract (but so that the same defence shall not be raised more than once).

3. **Continuing Guarantee**

This Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and

EXECUTED VERSION

liabilities guaranteed hereunder by the Contractor, the Guarantor or any other person) until all obligations (whether actual or contingent), warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor and the Company under the Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full and will extend to the ultimate balance of all sums payable by the Contractor in respect of the Contractor's Obligations, regardless of any intermediate payment or discharge thereof in whole or in part.

4. Reinstatement

- 4.1 Where any discharge (whether in respect of the Contractor's Obligations or any security for such obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.
- 4.2 The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

5. Waiver of Defences

- 5.1 The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):
- 5.1.1 any time or waiver granted to, or composition with, the Contractor or any other person;
 - 5.1.2 any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;
 - 5.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - 5.1.4 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;
 - 5.1.5 any variation (however fundamental) or replacement of the Contract or any other document or security so that references to such documents in this Guarantee shall include each variation or replacement;
 - 5.1.6 any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity; or

5.1.7 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

6. Immediate Recourse

6.1 The Guarantor:

6.1.1 gives the guarantee contained in this Guarantee as principal obligor and not merely as surety; and

6.1.2 waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

7. Appropriations

Until all amounts which may be or become payable in respect of the Contractor's Obligations have been irrevocably paid in full, the Company may:

7.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

7.2 hold in a suspense account any moneys received from the Contractor on account of the Contractor's Obligations or on account of the Guarantor's liability under this Guarantee.

8. Non-Competition

8.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Contractor's Obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

8.1.1 be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;

8.1.2 claim, rank, prove or vote as a creditor of the Contractor or its estate in competition with the Company unless the Company so directs in which case it shall; or

8.1.3 receive, claim or have the benefit of any payment, distribution or security from or on account of the Contractor, or exercise any right of set-off as against the Contractor unless the Company so directs in which case it shall.

EXECUTED VERSION

8.2 The Guarantor shall hold in trust for and forthwith pay or transfer to the Company any payment or distribution or benefit of security received by it either contrary to this Clause 8 (Non-Competition) or as a result of a direction of the Company under Clause 8.1.2 or 8.1.3.

9. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Company.

10. Assignment

The Company may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor, provided that the Company shall give a written notice to the Guarantor to that effect.

11. Notices

Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery) or facsimile (in the case of facsimile to be confirmed in writing within 24 hours of being sent by such notice being delivered or sent by first class recorded delivery as aforesaid). The address for service of each party shall be as follows:

Guarantor:

Address:

Attention:

Company:

Address: London Underground Limited, Windsor House, 42 – 50 Victoria Street,
London SW1H 0TL

Attention: The Company Secretary

with a copy to

Address: Transport for London, Windsor House, 42-50 Victoria Street, London SW1H
0TL

12. Miscellaneous

12.1 The Company is entitled to make any number of demands under this Guarantee.

12.2 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

12.3 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

EXECUTED VERSION