
Capital Projects

Beckton Depot Shed Extension

Contract Agreement

THIS CONTRACT AGREEMENT is made

BETWEEN

1. **Docklands Light Railway Limited**, whose address is **PO Box 154, Castor Lane, Poplar, London, E14 0DX** (hereinafter called "**the Employer**") which expression shall include its successors in title and permitted assignees, and
2. [REDACTED], a company incorporated in and in accordance with the laws of **ENGLAND AND WALES** having as its registered number [REDACTED] and its registered office at [REDACTED] (hereinafter called "**the Contractor**").

RECITALS

- (A) The *Employer* wishes to appoint the *Contractor* to carry out works being the construction of an extension to the Beckton Depot Maintenance Shed in order to enable maintenance to be carried out to a 3 car train configuration instead of the current 2-car capability, for which the *Employer* has submitted to the *Contractor* his invitation to tender on the [REDACTED].
- (B) The *Contractor* has submitted his tender offer on the [REDACTED] in response to the *Employer's* invitation to tender. The *Employer* has examined the *Contractor's* said tender and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *works* in accordance with this contract.

OPERATIVE PROVISIONS

1. In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Engineering and Construction Contract Option A: Priced Contract with Activity Schedule (Third edition June 2005 with amendments June 2006 and April 2013) together with Schedule 1 Amendments to Conditions of Contract.
3. This contract shall mean this Contract Agreement and the following documents which are hereby incorporated into and shall comprise this contract
 - 3.1 the Contract Agreement,
 - 3.2 the *conditions of contract* (including, for the avoidance of doubt, the Amendments to the *conditions of contract*, as set out in Schedule 1 hereto),
 - 3.3 the Contract Data,
 - 3.4 the *Works* Information,
 - 3.5 the Site Information,

3.6 the Activity Schedule

4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity but subject to clause 60.1.(1), they shall be construed in the order set out in Clause 3 of this Contract Agreement.
5. The *Contractor* Provides the *Works* in accordance with this contract.
6. The *Employer* pays the *Contractor* for complying with his obligations to Provide the *Works* the amount due in accordance with this contract.

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

Executed as a Deed by Docklands Light Railway Limited

Acting by two Directors or a Director and its Company Secretary

Director

Director / Company Secretary

Executed as a Deed by Cleshar Contract Services Limited

Acting by two Directors or a Director and its Company Secretary

Director

Director / Company Secretary

CONTRACT DATA

Part one - Data provided by the *Employer*

Statements given in all contracts

1. General

- The *conditions of contract* are the NEC3 Engineering and Construction Contract (Third edition June 2005 with amendments June 2006 and April 2013) core clauses together with the clauses for main Option A, dispute resolution Option W2, secondary Options X2, X4, X5, X7, X16, X18 Y(UK)2, Y(UK)3 and Amendments to Conditions of Contract in Schedule 1 hereto.

- The *works* are:

The construction of an extension to the Beckton Depot Maintenance Shed all as more fully described in the Works Information

- The *Employer* is:

Name: Docklands Light Railway Limited

Address: PO Box 154, Castor Lane, Poplar, London, E14 0DX

- The *Project Manager* is:

Name: [REDACTED]

Address: Docklands Light Railway, PO Box 154, Castor Lane, Poplar, London, E14 0DX

- The *Supervisor* is

Name: As notified to the *Contractor* by the *Project Manager* from time to time

Address

- The *Adjudicator* is: as appointed by the President or Vice President of the Institution of Civil Engineers.
2. Works Information
- The *Works Information* is in the document entitled “Beckton Depot Shed Extension - Works Information” appended hereto
3. Site Information
- The *Site Information* is in the document entitled “Beckton Depot Shed Extension - Site Information” appended hereto
 - The *boundaries of the site* are: As described and / or as shown the *Site Information*
.....
 - The *Site Information* also details access and possession constraints / requirements and these are read and construed with access and possession as set out in this Contract Data.
4. Language
- The *language of this contract* is: English
.....
5. Period for Reply
- The *period for reply* is: [REDACTED] [REDACTED]
.....
6. Tribunal
- The *tribunal* is The courts of England and Wales
.....
7. Time
- The *starting date* is [REDACTED]
.....
 - The *access date* to the *site* area marked A on Site Plan 001 v2.0 is [REDACTED]
 - The *access date* to the *site* area marked B on Site Plan 001 v2.0 is [REDACTED]
 - The *access date* to the *site* area within the existing maintenance shed for the *Contractor* to construct the curtain wall is [REDACTED]. The area provided for the curtain wall is as is reasonably required by the Contractor to install the curtain wall.
 - The *access date* to each of the *site* areas marked D, E, F, G, H (Grid Line 3-6) and H (Grid Line 6-10) within the existing maintenance shed, marked on Site Plan 002 v1.0, is subject to;

- (i) [REDACTED] written notice from the *Contractor* to the *Project Manager* for each area, and
- (ii) the *Project Manager's* approval of the *Contractor's* method statement in respect of each area, and
- (iii) access to site area H (Gridline 6-10) is [REDACTED] days following the access date for area H (Grid Line 3-6).
- (iv) any and all other requirements relating to access and possession as are set out in the Site Information.

- The *key dates* and *conditions* to be met are:

condition to be met *key date*

8. Sectional Completion

- The *completion date* for each *section* of the *works* is as following. The areas referred to in the description are as shown on drawing Site Plan: Site 2.0 v1.0

<i>Section</i>	<i>description</i>	<i>completion date</i>
1	All works to be carried out in the <i>site</i> area D	Within [REDACTED] days from access being provided to area D
2	All works to be carried out in the <i>site</i> area E	Within [REDACTED] days from access being provided to area E
3	All works to be carried out in the <i>site</i> area F	Within [REDACTED] days from access being provided to area F
4	All works to be carried out in the <i>site</i> area G	Within [REDACTED] days from access being provided to area G
5	All works to be carried out in the <i>site</i> area H	
	Grid Lines 3-6	Within [REDACTED] days of access being provided to area H, Grid Lines 3-6

Grid Lines 6-10

Within [REDACTED] days of
access being provided to
area H, Grid Lines 6-10

- The *completion date* for the remainder of the *works* on site and hand over to the *Employer* is:

[REDACTED]

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

[REDACTED]

9. Testing and Defects

- The *defects date* is [REDACTED] weeks after Completion of the whole of the *works*.
- The *defect correction period* is [REDACTED] weeks except that
 - The *defect correction period* for defects is within a period stated by the Project Manager where their correction is, in the opinion of the Project Manager, required for safety or for DLR operational reasons.

10. Payment

- The *currency of this contract* is **Sterling**
- The *assessment interval* is [REDACTED] weeks (not more than five)
- Payment is made in accordance with the Payment Schedule in the Activity Schedule
- The *retention percentage* is [REDACTED]
- The *interest rate* is [REDACTED] per annum above the base lending rate of the Bank of England
- The *Contractor* submits invoices on the basis of certification and such invoices contain the Contractor's Vendor Number and the contract Purchase Order Number. The *Contractor* also submits a copy of the relevant Payment Certificate signed by the *Project Manager* with his invoice.

- The period for payment is [REDACTED]

11. Additional
Employer's
Risks

- There are no additional *Employer's* risks:

12. Delay
Damages

- Delay damages for each *section* of the *works* are: There are no delay damages for each *section of the works*

- Delay damages for the remainder of the *works on site* are:

[REDACTED] per day

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

[REDACTED] per day

13. Performance
Bond

- The Contractor does not provide a Performance Bond.

14. Parent
Company
Guarantee

- The *Contractor* provides a Parent Company Guarantee the wording of which is at at Schedule 3.

15. Programme

- The *Contractor* submits a first programme for acceptance within [REDACTED] of the Contract Date. The *Contractor's* programme complies with all dates and timescales set out in the Contract Data.

16. Contractors
Liability

- The *Contractor's* liabilities are limited as follows:

For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to 300% of the contract Price

The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to 300% of the contract Price

The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to 300% of the contract Price

The end of liability date [REDACTED] after the Completion of the whole of the *works*

17. Insurance

- The *Employer* provides the insurances as stated in Schedule 2 hereto to be provided by the *Employer*. The insurances being provided by the *Employer* are subject to the following deductables:

Construction All Risks

[REDACTED] each occurrence in respect of loss or damage caused to the works by defects in design, plan, specification, materials or workmanship.

[REDACTED] each occurrence in respect of loss or damage caused by storm tempest, water damage, subsidence or collapse.

[REDACTED] each occurrence in respect of loss or damage caused by defect in design, plan, specification, materials or workmanship.

[REDACTED] each occurrence all other losses

Public Liability

[REDACTED] each and every occurrence

18. Additional
Conditions

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

Part two - Data provided by the Contractor

[REDACTED]

██████████

████████████████████

[REDACTED]

[REDACTED] [REDACTED]

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© 2006 The Authors

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SCHEDULE 1

AMENDMENTS TO CONDITIONS OF CONTRACT

The Core clauses, Main Option A clauses and the Secondary Option clauses are amended as follows:

- | | |
|-----------------|---|
| Clause 11.2(1) | At the end insert: "Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the <i>Works Information</i> ". |
| Clause 11.2(4) | Delete and substitute: "The Contract Date is the date of the Contract Agreement." |
| Clause 11.2(5) | <p>At the end of first bullet point insert: "the <i>Contractor's</i> obligations under this contract or".</p> <p>In the second bullet point after "the applicable law" insert the words "or all applicable licences and approvals".</p> |
| Clause 11.2(11) | After <i>Employer</i> insert "(which expression includes its successors in title and permitted assigns)". |
| Clause 11.2(17) | <p>In the first sentence, after "organisation" insert "including, without limitation any sub-consultant"</p> <p>In the first bullet point, after "install" insert "or design".</p> |
| Clause 11.2(19) | <p>In the first line delete the word "either".</p> <p>In the first bullet point after <i>works</i> delete "or" and insert "and/or".</p> |
| Clause 11.2 | Insert the following new definitions |
| “(34) | Background IPR means IPR owned by the <i>Contractor</i> or a Subcontractor or other third party and which is not vested in or not assigned to the <i>Employer</i> pursuant to clause 22.1. |
| (35) | Not Used. |
| (36) | Cessation Plan means a plan agreed between the Parties or |

determined by the *Employer* pursuant to clause 94 to give effect to a Declaration of Ineffectiveness.

- (37) Not Used
- (38) The Contract Agreement is the document executed by the *Employer* and the *Contractor* under which the *Contractor* has agreed to Provide the *Works*.
- (39) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to this contract) and (ii) data extracted from invoices submitted by the *Contractor* which consists of the *Contractor's* name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.
- (40) Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this contract made by a Court of competent jurisdiction pursuant to Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended) .
- (41) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.
- (42) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as defined by Section 1124 of the Corporation Tax Act 2010.
- (43) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works*.
- (44) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an

arrangement with his creditor.

- (45) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- (46) Notice of Adjudication means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the *Adjudicator* in accordance with clause W2.1. The Notice of Adjudication includes
- the nature and a brief description of the Dispute,
details of where and when the Dispute arose, and
the nature of the redress which is sought.
- (47) Prevention Event has the meaning ascribed to that term in clause 19.1.
- (48) Senior Representative means a representative of a Party at senior executive level.
- (49) A Statutory Requirement is
- any Act of Parliament
- any instrument, rule or order made under any Act of Parliament
- any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and
- any decisions of a relevant authority under the statutory provisions which control the right to develop the site on which the *works* are to be provided (including, without limitation, any planning permission).
- (50) Statutory Undertaker means any governmental or local authority or

statutory undertaker

which has any jurisdiction with regard to the *works*

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

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

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

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

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

(54) The Workplace Policy is the *Employer’s* “Workplace Harassment Policy”, as updated from time to time, copies of which are available on request from the *Employer*.=

Clause 12.2 Delete the current wording in clause 12.2 and replace with “This contract is governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts.”

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

Clause 12.5 Insert a new clause: Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled.

Clause 12.6 Insert a new clause: Save that any member of the TfL Group has the

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

- Clause 12.7 Insert a new clause: If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the *Employer* and the *Contractor* immediately commence good faith negotiations to remedy such invalidity.
- Clause 12.8 Insert a new clause: The headings to the sections, clauses and sub-clauses of these *conditions of contract* are for convenience only and do not affect their construction or interpretation.
- Clause 12.9 Insert a new clause: A reference in these *conditions of contract* to any applicable law or Statutory Requirement includes
- that law or Statutory Requirement as from time to time amended, re-enacted or substituted and
- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement.
- Clause 12.10 Insert a new clause: Notwithstanding the Contract Date, the conditions of this contract cover all work carried out by the *Contractor* from the date when he first commenced performance of the *works* and this contract and the warranties and undertakings in this contract are deemed to apply to all work performed by the *Contractor* both before and after the Contract Date.
- Clause 12.11 Insert a new clause: Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of

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

Clause 13.3 At the end insert: Where the *period for reply* includes Christmas Day, Good Friday or a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded for the purpose of calculating the period.

Clause 14.1 Delete and substitute: No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer*, the *Project Manager* or the *Supervisor*, nor any enquiry or inspection which the *Employer*, the *Project Manager* or the *Supervisor* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Contractor's* duties and obligations under this contract unless it is in writing from the *Employer*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.

Clause 16.2 Delete “Either the *Project Manager* or the *Contractor* may instruct the other” and substitute “*The Project Manager* may instruct the *Contractor* or the *Contractor* may request the *Project Manager* (such request not to be unreasonably refused)”.

Clause 16.4 Add at the end of the clause: For the avoidance of doubt, revisions to the Risk Register do not give rise to a compensation event and merely reflect the decisions reached at the risk reduction meeting. The *Contractor's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 to 65

Clause 17.2 Insert a new clause: There is no addition to the Prices, any change to any Key Date or the Completion Date arising from any such ambiguity or inconsistency where the *Project Manager* decides that the ambiguity or inconsistency in question is one arising from a document which the *Contractor* prepared or is responsible for. The *Project Manager* notifies the *Contractor* of this decision.

Clause 17.3 Insert a new clause: Where there is a discrepancy or conflict between or within the documents forming this contract, the provisions of the *conditions of contract* prevail over all other documents and the

Amendments to Conditions of Contract clauses prevail over all other parts of the *conditions of contract*.

- Clause 17.4 Insert a new clause: the *Contractor* accepts entire responsibility for the *Contractor's* design and for any mistake, inaccuracy, discrepancy or omission contained in the same
- Clause 17.5 Insert a new clause: The *Contractor* is deemed to have verified the accuracy of any information provided by the *Employer*, the *Project Manager* and/or the *Supervisor*
- Clause 18.1 After "impossible" insert "or to carry out *works* which if completed in accordance with this contract will result in the *works* not being in accordance with the Statutory Requirements".
- Clause 19.1 Insert after "and which" in the second paragraph:

"is not a shortage of staff whether caused by local market fluctuations or otherwise an event of Insolvency of the *Contractor* or any Subcontractor, Indirect Subcontractor or supplier or an event attributable to any negligence, omission or default of the *Contractor* or any of his employees or agents or any Subcontractor or Indirect Subcontractor or any of their employees or agents and which"

and after the fourth bullet point insert:

"and the *Contractor* can demonstrate that he did not allow for it in his tender then this is a "Prevention Event" and"
- Clause 20.1 At the end insert: "and the Statutory Requirements, and the *Contractor* ensures that the *works* will, when completed, comply with the *Works* Information and satisfy any requirement identified in the *Works* Information and this contract."
- Clause 20.6 Insert new clause: The *Contractor* warrants and undertakes to the *Employer* as a condition of this contract that

he has examined the *Works* Information and all other documents forming this contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of his work in accordance with this contract,

he has all the resources including financial, technical and human resources as are required to carry out and complete his work in accordance with this contract,

his work and those parts of the *works* for which the *Contractor* is responsible will be designed and specified using the best modern

engineering principles and practices at the time of preparing the design and in accordance with good industry practice, and

the proceeds of a claim made in connection with this contract under insurance taken out by the *Contractor* pursuant to clause 81 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.”

Clause 21.1 Insert at the end of the clause: “The *Contractor* integrates and coordinates his design (if any) with the designs of Others and in accordance with the *Works* Information and the instructions of the *Project Manager*.”

Clause 21.2 Delete the second sentence and replace with “Reasons for not accepting the *Contractor’s* design are that

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

Clause 21.4 Insert new clause

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

fully with any design prepared by, or on behalf, of the *Employer*.

Clause 21.5

Insert new clause

- (1) Subject to the *Works* Information and any changes to it the *Contractor* warrants that to the extent the *Contractor* either is obliged to specify or approve products or materials for use in the *works* or does so specify or approve, the *Contractor* does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with
 - (a) the report entitled “Good Practice in the Selection of Construction Materials” (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report,
 - (b) relevant British or European Standards or Codes of Practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
- (2) If in the performance of its duties under this contract, the *Contractor* becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the *Contractor* notifies the *Project Manager* in writing immediately. This clause does not create any additional duty for the *Contractor* to inspect or check the work of others which is not required by this contract.”

Clause 22 Delete and replace with

Intellectual Property Rights

- Clause 22.1 The parties agree that the Intellectual Property Rights (IPR) in all documents, drawings, materials, computer software, any other material or *works* prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or *works* created by a Subcontractor or Indirect Subcontractor) vests in the *Employer*. The *Contractor* procures that each Subcontractor and Indirect SubContractor assigns such IPR to the *Employer*.
- Clause 22.2 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of
- understanding the *works*, completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*, extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the *works* of Others, and enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the "Docklands Light Railway" network (where applicable).
- Clause 22.3 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause 22.2.
- Clause 22.4 The *Contractor* indemnifies the *Employer* and members of the TfL Group against all losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 22.2 infringes the intellectual property rights or other rights of any third party.
- Clause 22.5 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer*.

- Clause 22.6 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or *works* prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *works*.
- Clause 22.7 IPR in all items supplied and owned by the TfL Group to the *Contractor* remains the property of the TfL Group.
- Clause 22.8 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the *Works*. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.
- Clause 22.9 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *works*.
- Clause 22.10 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.
- Clause 22.11 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim, demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action.”
- Clause 23.1 Insert an additional bullet point between the first and second bullet points:
- “• this contract”

Clause 24.2	<p>In the first sentence delete “an employee” and replace with “any person under the control of the <i>Contractor</i>.”</p> <p>In the second sentence delete “the employee” and replace with “such person”.</p>
Clause 26.3	<p>Insert a further bullet point after the bullet “they do ... co-operation”:</p> <p>“ • in the opinion of the <i>Project Manager</i> they are not consistent with the terms of this contract”.</p>
Clause 26.5	<p>Insert new clause: “Where the <i>Contractor</i> has proposed a Subcontractor in Contract Data Part Two for part of the <i>works</i>, acceptance of Contract Data Part Two by the <i>Employer</i> without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the <i>Project Manager</i> under clause 26.2. Any such Subcontractor is not removed by the <i>Contractor</i> from the part of the <i>works</i> for which he has been proposed without the prior written consent of the <i>Project Manager</i>.”</p>
Clause 26.6	<p>Insert new clause: Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the <i>Project Manager</i> relieves the <i>Contractor</i> of any liability or obligation under this contract.”</p>
Clause 27.5	<p>Insert new clause: The terms and conditions of this contract and the warranties and undertakings which it contains apply to all <i>works</i> performed and to be performed by the <i>Contractor</i> in relation to the project to which the <i>works</i> relate both before and after the Contract Date.”</p>
Clause 27.6	<p>Insert new clause: “The <i>Employer</i> may assign the benefit of and its rights under this contract without the consent of the <i>Contractor</i> being required. The <i>Contractor</i> shall not assign the benefit of and its rights under this contract without the prior written consent of the <i>Employer</i>”.</p>
Clause 27.7	<p>Insert new clause</p> <ol style="list-style-type: none"> (1) The <i>Contractor</i> takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations. (2) The <i>Contractor</i> throughout the progress of the <i>works</i> and while the <i>Contractor</i> has access to the Site in accordance with this contract has full regard for the safety of all persons entitled to be upon the Site and keeps the Site (so far as the same is

under his control) and the *works* (so far as the same have not been handed over to or occupied by the *Employer*) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the *works*, provides and maintains at his own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the *works* or for the safety and convenience of the public or Others.

- (3) The *Contractor* performs all the functions and duties of and exercises the powers of the “principal *Contractor*” and, where the *Contractor* is responsible for design, a “designer” as defined in the CDM Regulations. The *Contractor* warrants that it is fully conversant with the Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations.
- (4) Where applicable to the *works*, the *Contractor* warrants to the *Employer* that to the extent it is responsible for design it is fully aware of the provisions of Regulation 11 (“Duties of designers”) of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 11.
- (5) Before the commencement of work on Site the *Contractor* provides the *Project Manager* with a copy of his Statement of Health and Safety Policy, and that of any Subcontractor prior to such Subcontractor commencing work on the Site.
- (6) The *Contractor* to the extent that he is in control of the Site or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Site, its access and egress, safe and without risk to the health of persons using it.
- (7) The *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site for the effective discharge of those responsibilities.”

Clause 27.8

Insert new clause “The *Contractor* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer’s* duties, where appropriate, identify

actions to reduce levels of crime and disorder and without prejudice to any other obligation imposed on the *Employer*, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area and in the performance of this contract, the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty.”

Clause 27.9 Insert new clause “The *Contractor* performs all the functions and duties of the “principal *Contractor*” under the Site Waste Management Plans Regulations 2008 and any amendment, consolidation, revision and/or replacement thereto.”

Clause 27.10 Insert new clause “The *Contractor* shall be deemed to be fully acquainted with the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Site of the *works* before the Contract Date and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the *works*. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to a compensation event and/or any additional payment (whether by way of an addition to the Prices or otherwise) or to any change to the Completion Date and/or Key Dates. As between the *Contractor* and the *Employer*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Employer* regarding any such matter as is referred to in this clause or as set out in the *Works Information* and/or *Site Information* and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.”

Clause 27.11 Insert new clause “If requested by the *Employer*, the *Contractor* enters into a novation agreement within the period for reply in the form of the novation agreement in the form attached or in such other format as the *Employer* may reasonably require in order to novate the benefit and burden of this contract to another member of the TfL Group.”

Clause 27.12	<p>Insert new clause: The <i>Contractor</i> gives notice to the <i>Employer</i> within 10 days where</p> <ul style="list-style-type: none"> • there is any change in ownership of the <i>Contractor</i> where such change relates to fifty percent (50%) or more of the issued share capital of the <i>Contractor</i>; and • there is any change in ownership of the Holding Company where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company; and • (in the case of an unincorporated <i>Contractor</i>) there is any change in the management personnel of the <i>Contractor</i>, which alone or taken with any other change in management personnel not previously notified to the <i>Employer</i>, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the <i>Contractor</i>.”
Clause 30.4	<p>Insert new clause: The <i>Contractor</i> proceeds regularly and diligently to Provide the <i>Works</i> in accordance with this contract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the <i>works</i>.”</p>
Clause 45.3	<p>For the avoidance of doubt, the <i>Contractor</i> continues to be liable for Defects (including Defects listed in the Defects Certificate and latent or inherent Defects) after the issue of the Defects Certificate, the operation of this section 4 and the termination of this contract for any reason (including breach by the <i>Employer</i>) in accordance with the <i>law of the contract</i>, subject to any time limit on claims and limitation on liability expressly provided by this contract”.</p>
Clause 50.1A	<p>Insert new clause: The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form approved by the <i>Project Manager</i> not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to him at the payment due date and the basis on which that sum is calculated.”</p>
Clause 50.4	<p>In line two delete "on or before the assessment date" and substitute "in accordance with clause 50.1A".</p>
Clause 50.8	<p>Insert new clause “All sums payable by or to the <i>Employer</i> or the <i>Contractor</i> are exclusive of Value Added Tax (“VAT”). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.”</p>
Clause 50.9	<p>Insert new clause</p>

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

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

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

Clause 50.10 Insert new clause “In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever

under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or

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

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

Clause 51.1 Delete the first sentence and replace it with:

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

Clause 51.1A Insert new clause: As soon as reasonably practicable and in any event not later than five days of receipt of a certificate in accordance with

clause 51.1 the *Contractor* issues a valid VAT invoice for the amount stated on the certificate. The *Contractor* issues invoices in the manner and format required by the Contract Data and/or the Works Information.”

- Clause 51.4 At the end of the clause add: The parties agree that the provisions in this *contract* for the payment of interest constitute a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998
- Clause 60.1(12) Delete clause
- Clause 60.1(13) Delete clause
- Clause 60.1(18) After “of contract by” insert “or act of prevention on the part of”. After “*Employer*” insert “(except to the extent that it is caused or contributed to by the *Contractor* any Subcontractor or Indirect Subcontractor or any person for whom those parties are responsible)”.
- Clause 60.1(19) Delete and replace with: An event which is a Prevention Event and is not a breach of contract by the *Contractor* and is not one of the other compensation events stated in this contract provided that the *Contractor* is not entitled under this sub-clause 60.1(19) to any change to the Prices.”
- Clause 61.7 At the end insert: No change in Prices is made in respect of any compensation event notified after the *defects date*
- Clause 63.3 At the end of the second sentence insert: provided always that any delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent that the compensation event is the sole or principal cause of the delay, and there is sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date
- For the avoidance of any doubt, the *Employer* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.”
- Clause 63.4 At the end of the clause delete the full stop and insert: “and the *Employer* has no financial liability to the *Contractor* other than amounts claimable and recoverable under this contract.”

Clause 63.6	After “event includes” insert the words “reasonable and proportionate”.
Clause 70.1	Delete and substitute No payment is made to the <i>Contractor</i> on account of Plant and Materials which are outside the Working Areas unless immediately on payment and without any further act being necessary title passes to the <i>Employer</i> and the <i>Contractor</i> ensures that the Plant and Materials are clearly tagged, identified as the <i>Employer’s</i> and set aside for the <i>Employer</i> . Risk in such Plant and Materials does not pass on payment.”
Clause 70.2	At the end insert: Notwithstanding the first sentence of clause 70.2, title passes to the <i>Employer</i> on payment being made by the <i>Employer</i> to the <i>Contractor</i> for Plant and Materials outside the Working Area
Clause 83.1	Delete clause 83.1 and replace with the following new clause: The <i>Contractor</i> is responsible for and indemnifies the <i>Employer</i> , his employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever (“Losses”) incurred in respect of death or injury to any person, loss or damage to property (including property belonging to the <i>Employer</i> or for which he is responsible) and any other loss damage (other than the <i>works</i>) cost or expense including but not limited to that incurred or suffered by the <i>Employer</i> due to losses arising under its contracts with Others which may arise out of or in the course of or by reason of the <i>Contractor’s</i> performance, non-performance or part performance of this contract to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission, or default by the <i>Contractor</i> , his employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are at the <i>Contractor’s</i> risk.”
Clause 83.2	Delete clause 83.2 and replace with the following new clause: The <i>Contractor’s</i> indemnity under sub-clause 83.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the <i>Contractor’s</i> appointment under this contract and/or the expiry or termination of this contract. Without prejudice to the survival of any other clauses or schedules, the clauses or schedules of this contract necessary to give effect to the <i>Contractor’s</i> indemnity under clause 83.1 also survive expiry or termination of the <i>Contractor’s</i> appointment under this contract and/or the expiry or termination of this contract.
Clause 83.3	Add new clause 83.3 as follows: The <i>Contractor</i> is not responsible for

and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents.”

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

At the end of the clause insert:

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

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

Clause 84.3 Insert a new clause as follows: The insurance requirements under this contract do not relieve the *Contractor* from any of his other obligations and liabilities under this contract”.

Clause 84.4 Insert a new clause:

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

alternative method of managing such risk.

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

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

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

Clause 85.5 Insert a new clause: In relation to all claims made under insurances obtained by the *Employer* (as set out in the Contract Data Part One) the following provisions apply.

- (1) Unless the *Employer* otherwise decides, the *Contractor* authorises the *Employer* to submit all claims and the *Employer* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* must provide such information, documents and records in connection with such claims as the *Employer* requires forthwith on demand, regardless of whether the *Employer* is submitting or administering the claim.
- (3) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* authorises insurers to pay monies under the insurances to the *Employer*.
- (4) The *Employer*, after receipt of monies paid under the insurances, allocates and pays to each party insured that portion of the monies received for the purpose of rectifying the loss that each party insured has suffered. The *Contractor*

bears the cost of all deductibles.

- (5) If the premiums payable by the *Employer* increase due to or as a result of claims caused by the *Contractor* arising from events within the control of the *Contractor* (including claims attributable to its Subcontractors and/or Indirect Subcontractors) then the *Contractor* shall pay to the *Employer* the increase in premium.”

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

insurer requirements and recommendations.”

- Clause 85.13 Insert a new clause: The *Contractor* acknowledges that the *Employer* has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this contract.”
- Clause 85.14 Insert a new clause: If and to the extent that the *Contractor* receives payment in respect of any damage or destruction following an insurance claim in respect of damage or destruction of the *works* the *Contractor* shall apply the same to remedy the damage or destruction.”
- Clause 91.1 In R7 add after “amalgamate or reconstruct” the words “without insolvency”.
- Clause 91.2 Add a new paragraph at the end of the clause: “The *Employer* may also terminate if the *Project Manager* notifies that the *Contractor* has defaulted in one of the ways listed at R11-R13 on two occasions within a period of eight (8) weeks whether or not the *Contractor* has remedied the default within four (4) weeks of the second notification by the *Project Manager*.”
- Clause 91.4 Add at the start of the clause: “Save when the *Employer* has complied with Option Y (UK) 2 clause Y2.3,”
- Add at the end of the clause: “provided always that the *Contractor* has given written notification to the *Employer* of such intention to terminate at least five (5) weeks prior to any such termination and the *Employer* has not paid the amount due within that period.”
- Clause 91.6 Add at the start of the second bullet point: “providing the *Contractor* has given written notification to the *Employer* of an intention to terminate at least five (5) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period.”
- Add at the start of the third bullet point: “providing written notification of an intention to terminate is given to the other Party at least four (4) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period.”
- Clause 91.7 In the fourth bullet point after “experienced” insert “and prudent *Contractor* familiar with *works* similar to the *works* and exercising the foresight appropriate to such a”

Clause 91.8 Insert a new clause: The *Employer* may terminate the contract if the *Contractor* is in breach of clause Z8 (Conflict of Interest) and/or clause Z11 (Corrupt Gifts and Payments), or if any of the events referred to at clause 27.12 occur (regardless of whether or not the notice required by clause 27.12 is given by the *Contractor*) (R22)".

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

Clause 92.2 In procedure P2 after "assign the benefit of" insert "and/or enter into a novation of (in such format as the *Employer* may reasonably require)".

Clause 94 Insert a new clause:

Ineffectiveness and cessation

94.1 Without prejudice to the *Employer's* right to terminate the *Contractor's* obligation to Provide the *Works* under clauses 90 to 93 or at common law, the *Employer* may terminate the *Contractor's* obligations to Provide the *Works* at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 94.

94.2 In the event that a court makes a Declaration of Ineffectiveness, the *Employer* promptly notifies the *Contractor*. The Parties agree that the provisions of clause 94 shall apply as from the date of receipt by the *Contractor* of the notification of Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 94 or the Cessation Plan, the provisions of this clause 94 and the Cessation Plan prevail.

94.3 The Declaration of Ineffectiveness does not prejudice or affect any right, liability or remedy which has accrued or accrues to either Party prior to or after such Declaration of Ineffectiveness.

94.4 As from the date of receipt by the *Contractor* of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) agree or, in the absence of such agreement, the *Employer* reasonably determines an appropriate Cessation Plan with the object of achieving an orderly and efficient cessation of the *works* or (at the *Employer's* request) a transition of the *works* to the *Employer* or such other entity as the *Employer* may specify, and minimal disruption or

inconvenience to the *Employer* or to public passenger transport services or facilities, in accordance with the provisions of this clause 94 and to give effect to the terms of the Declaration of Ineffectiveness.

94.5 Upon agreement, or determination by the *Employer*, of the Cessation Plan the Parties comply with their respective obligations under the Cessation Plan.

94.6 The *Employer* pays the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the *Employer*. Provided that the *Employer* is not liable to the *Contractor* for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the *Works* pursuant to this clause 94."

Dispute Resolution

Option W2 Delete option W2 and replace with:

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

Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

W2.2

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

W2.3

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

Adjudication, the *Adjudicator* notifies the Parties

- that he is able to decide the Dispute in accordance with the contract or
- that he is unable to decide the Dispute and has resigned.

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

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

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

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

- If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract the *Contractor* may, with the consent of the Subcontractor and *Employer*, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor. The Parties comply with any reasonable request by the *Adjudicator* for more time to decide the disputes referred to him.

If this contract is a subcontract and the main contract provides

for joint adjudication of disputes, the following procedure applies.

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

The *Employer* may then

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

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

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

decision.

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

dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the courts.

- The *Adjudicator* may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the *Adjudicator* must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision
- If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- Unless the Parties agree otherwise, a Party does not refer any Dispute under or in connection with this contract to the courts unless it has first been decided by the *Adjudicator* in accordance with this contract.
- If, after the *Adjudicator* notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the *Adjudicator's* decision.
- The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the *Adjudicator*.
- A Party does not call the *Adjudicator* as a witness in court proceedings."

W2.4

Assessing the amount due

Y2.1.1 Insert new clause 50.11:

"If the *Contractor's* employment is terminated under clause 91.1

because the *Contractor* has become insolvent within the meaning of Section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:

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

Payment

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

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

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

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

Y2.1.4 Insert new clause 51.1B:

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

Dates for payment

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

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

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

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

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

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

Suspension of Performance

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

Termination

Y2.6.1 In the Termination Table in clause 90.2:

Insert 'or R10A' after 'R1-R15'

Insert 'R10A,' after 'R1-R10'

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

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

Z CLAUSES

The following Z Clauses are incorporated into the *conditions of contract*.

Z2 Warranties

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

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

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

-the *Employer*, and

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

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

Z3 Employer's business

The *Contractor* acknowledges that it

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

Z4 Best value

The *Contractor* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness.

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

Z5 Data Protection, Freedom of Information and Data Transparency

- Z5.1** The *Contractor* complies with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the *Employer* ("TfL Personal Data"), the *Contractor* only carries out such processing in order to Provide the *Works* and in accordance with instructions from the *Employer*.
- Z5.2** When the *Contractor* receives a written request from the *Employer* for information about, or a copy of, TfL Personal Data, the *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within fourteen (14) days from the date of the request.
- Z5.3** The *Employer* remains solely responsible for determining the purposes and manner in which TfL Personal Data is to be processed. The *Contractor* does not share any TfL Personal Data with any Subcontractor, Indirect Subcontractor or third party unless there is a written agreement in place which requires the SubContractor, Indirect Subcontractor or third party to only process TfL Personal Data in accordance with the *Employer's* instructions to the *Contractor*, and comply with the same data protection requirements that the *Contractor* is required to comply with under this contract.
- Z5.4** The *Contractor* acknowledges that the *Employer* is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under such legislation including providing to the *Employer* such information as the *Employer* may reasonably request concerning this contract within two (2) days of a request from the *Employer*. The *Contractor* further acknowledges that the *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Contractor*. Without prejudice to the generality of the foregoing the *Contractor* shall transfer to the *Employer* any request for information under the Act that it receives as soon as reasonably practicable. The *Contractor* shall not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to

do so by the *Employer*. This clause shall survive the expiry or termination of this contract.

Z5.5 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Notwithstanding clause Z5.4 and clause Z7, the *Contractor* gives its consent for the *Employer* to publish the Contract Information to the general public.

Z5.6 The *Employer* may in its absolute discretion redact all or part of the Contract Information prior to its publication. In doing so and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Act 2000 and all subordinate legislation made under it, the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z5.5. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z6 Access to Premises

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

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

- not damage the TfL Premises or any assets on the TfL Premises.

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

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

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

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

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

Z6.7 Where the *Contractor* is required to access (with appropriate permission and approval of the *Employer*) any areas under the control of any of the *Employer's* PPP or PFI *Contractors*, the *Contractor* must comply (and ensure that any Subcontractor's and Indirect Subcontractors comply) with all of their rules, regulations and standards as appropriate.

Z7 **Not Used**

Z8 **Conflict of Interest**

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

Z8.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every

six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the *works* under this contract or any member of the TfL Group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working on, and data relating to, the *work* from the matter in question) to manage such conflict to the *Employer's* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

Z9 Compliance with Policies

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

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

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

Z10 Records, Audit and Inspection

Z10.1 In this clause Z10

“Records” means

- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subcontractors and/or Indirect Subcontractors,
- management accounts, information from management information systems and any other management records,
- accounting records (in hard copy as well as computer readable data),
- sub-contract files (including proposals of successful and unsuccessful

bidders, bids, rebids, etc.),

- original estimates,
- estimating worksheets,
- correspondence,
- compensation event files (including documentation covering negotiated settlements),
- schedules including capital *works* costs, timetable and progress towards Completion,
- general ledger entries detailing cash and trade discounts and rebates,
- commitments (agreements and leases) greater than [REDACTED] (five thousand pounds),
- detailed inspection records,
- such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*, and
- accounts and records of the Price for *Works Done* to Date and all other amounts to be paid to the *Contractor* under this contract.

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

Z10.3 The *Contractor* undertakes and procures that his Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of personal data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation

events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or his Subcontractors and Indirect Subcontractors including, without limitation, the Records.

Z10.4 The *Contractor* promptly provides (and procures that his Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* own premises or otherwise, granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise, making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection, providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* and/or any novated *Employer's* auditor and/or granting copying facilities to the *Employer's* and/or any novated *Employer's* auditor for the purposes of making such copies, and complying with the *Employer's* and/or any novated *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract and/or the *works*.

Z11 Corrupt Gifts, Fraud and the Payment of Commission

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

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

employees, Subcontractors or Indirect Subcontractors.

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

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

Z12 Quality Statement

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

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

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

Z13 The *Contractor* operates a quality management system complying with BS EN ISO 9002 for his performance of the contract. The management, organisation, responsibilities, procedures, processes, resources and programme for the quality management system from design (where applicable) to procurement, construction, completion, testing and commissioning of the *works* until the defects date is contained in a quality plan which is submitted to the *Employer* in accordance with the *Works Information*. Any Subcontractor appointed by the *Contractor* operates a quality system enabling him to comply with the *Contractor's* quality management system.

Z14 Not Used

Z15 Nuisance

Z15.1 The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working

operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under clause 43 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

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

Z16 Construction Industry Scheme

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

Z17 Use of Existing Services

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

Z18 Not Used

Z19 Not Used

Z20 Not Used

Z21 Design Check Certificate

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

SCHEDULE 2
INSURANCE TABLE

SCHEDULE 3
PARENT COMPANY GUARANTEE

THIS DEED OF GUARANTEE is made the _____ day of _____ 2014

between **PARENT COMPANY**, whose registered office is at []

(hereinafter called "the Guarantor") of the one part

and

DOCKLANDS LIGHT RAILWAY LIMITED, whose registered office is at **Operations and Maintenance Centre, P.O. Box 154, Castor Lane, Poplar, London, E14 0DX** (hereinafter called "the Employer") of the other part.

WHEREAS :

- (1) Cleashar Contract Services Limited ("the Contractor") is a wholly owned subsidiary of the Guarantor has been appointed by the Employer pursuant to an agreement dated(hereinafter called "the Contract") for the carrying out of certain works as more particularly described therein and which are briefly described as the construction of an extension to the Beckton Depot Shed ("the Works")

And

- (4) the Guarantor guarantees inter alia the due performance by the Contractor of the Contract in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH as follows:-

- 1
- .1 In consideration of the Employer entering into the Contract with the Contractor the Guarantor by way of primary obligation guarantees to the Employer the due and proper observance and performance by the Contractor of the Contract in accordance with its terms and conditions according to their true purport intent and meaning.
- .2 In the event of any breach of the obligations of the Contractor or in the event of the Contractor becoming insolvent then, upon being required to do so by the Employer by notice in writing, the Guarantor shall at its own expense perform or take whatever steps may be necessary to procure performance of the obligations of the Contractor under the Contract and shall from the date of such notice assume jointly and severally with the Contractor all the rights and obligations of the Contractor under the Contract in every way as if the Guarantor were a party thereto.
- .3 The Guarantor, as a separate, additional and primary liability, unconditionally and irrevocably will indemnify the Employer, and keep it indemnified, against all claims, losses, damages, costs and expenses which may be suffered or incurred by the Employer by reason or in consequence of:
- (a) any default on the part of the Contractor in the observance and performance of the terms and conditions of the Contract;
 - (b) the Employer attempting to enforce any of the Contractor's obligations under the Contract; or
 - (c) the Employer attempting to enforce or preserve any of its rights under this Deed of Guarantee,
- including, without limitation, any claims, losses, damages, costs and expenses suffered or incurred by the Employer arising out of or in connection with the Contractor or Guarantor failing to complete the Contract Works provided always that the extent of the Guarantor's liability under this Deed of Guarantee shall be no greater than the amount which would have been recoverable against the Contractor by the Employer under the Contract and the same limitation periods fixed by statute which apply to the Contract shall equally apply to this Deed of Guarantee.

2. The Guarantor shall not be discharged or released from this Deed of Guarantee by any alteration in the terms of the Contract or in the extent or nature of the work to be performed under the Contract or by any extension of time granted under the Contract or by any forbearance, forgiveness or concession in respect of any matter or thing concerning the Contract or by anything which the Employer and/or the Contractor may do or omit or neglect to do which but for this provision might exonerate the Guarantor, or by any other act, omission or thing concerning the Contract.
3. In the event of Clause 1.2 hereof being invoked, then any notice, direction or other instruction given by the Employer to either the Guarantor or the Contractor shall be deemed to have been given to both of them and any payment made by the Employer whether to the Guarantor or the Contractor shall be deemed to be under and in accordance with the Contract.
4. This Deed of Guarantee shall be an irrevocable continuing guarantee which shall be and continue in full force and effect notwithstanding the dissolution of the Contractor or any change in its status function control or ownership.
5. This Deed of Guarantee shall be in addition to and not in substitution for any rights and remedies that the Employer may have against the Contractor or arising under or in connection with the Contract or otherwise.
6. This Deed of Guarantee shall be governed and construed in accordance with English Law and the parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of England and Wales over any claim arising out of this Deed of Guarantee.
7. Nothing in this Deed confers or purports to confer on any third party any benefits of any right to enforce any terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999
8. Notwithstanding any other provision of this Deed of Guarantee, it shall expire and finally determine after a period of 12 years as from the date of Practical Completion of the Contract Works.

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

Executed as a Deed by Guarantor

Director

Secretary/Director*

Executed as a Deed by the Cleshar Contract Services Limited

Director

Secretary/Director*

Executed as a Deed by Docklands Light Railway Limited
was hereunto

Director

Secretary