



Contract No: 4600005874

Contract Reference No: SCP152

**Civils and Tunnelling Works
Framework Agreement**

Between

London Underground Limited

and

**Morgan Sindall and BeMo Tunnelling
Joint Venture**

Volume 1 of 2

DATED

15 FEBRUARY 2017

(1) **LONDON UNDERGROUND LIMITED**

and

(2) **MORGAN SINDALL CONSTRUCTION &
INFRASTRUCTURE LTD AND (3) BEMO TUNNELLING**

FRAMEWORK AGREEMENT

relating to Civils and Tunnelling Works

CONTRACT NUMBER: 4600005874

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9. Example Work Package

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales under number 01900907 whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Employer"); and
- (2) **MORGAN SINDALL AND BEMO TUNNELLING JOINT VENTURE**, comprised of a joint venture arrangement between **MORGAN SINDALL CONSTRUCTION & INFRASTRUCTURE LTD**, a company registered in England and Wales (Company Registration Number 04273754) whose registered office is at Kent House, 14-17 Market Place, London, W1W 8AJ, United Kingdom and **BEMO TUNNELLING GMBH**, a company incorporated in Austria under FN 46175f whose registered office is Bernhard-Hoefel-Str, 6020 Innsbruck and with UK branch registration (Establishment Number BR004767) (jointly and severally, the "Contractor").

BACKGROUND:

- (A) The Parties wish to enter into a framework agreement which enables the Employer, from time to time, to enter into a Work Package Contract or a series of Work Package Contracts with the Contractor for some or all of the Works of the type described in the Framework Scope.
- (B) A Work Package Contract issued in accordance with this Framework Agreement incorporates those Conditions of Contract identified in the Work Package Contract Data. The Conditions of Contract are amended versions of the following:
 - (i) NEC3 Engineering and Construction Contract Main Option A (June 2005 with amendments June 2006 and September 2011) for use in relation to Lots 1 (Civil works), 2 (Tunnelling Works) and/or 3 (Combined Civils and Tunnelling Works);
 - (ii) NEC3 Engineering and Construction Contract Main Option C (June 2005 with amendments June 2006 and September 2011) for use in relation to Lots 1 (Civil works), 2 (Tunnelling Works), and/or 3 (Combined Civils and Tunnelling Works); and
 - (iii) NEC3 Engineering and Construction Contract Main Option E (June 2005 with amendments June 2006 and September 2011) for use in relation to Lots 1 (Civil works), 2 (Tunnelling Works) and/or 3 (Combined Civils and Tunnelling Works).

each as set out in Appendix 8.

THE PARTIES AGREE THAT:

In consideration of payment of £1.00 (one pound) by each Party to the other (receipt and sufficiency of which is acknowledged by the Parties) and the mutual promises and covenants set out in this Framework Agreement, the Parties agree as follows:

1. Definitions and Interpretation

- 1.1 In this Framework Agreement unless the context indicates otherwise terms have the meanings given in the Conditions of Contract and the following expressions have the following meanings:

“Business Day”	any day other than a Saturday or Sunday or a public bank holiday in England;
“Conditions of Contract”	the terms and conditions set out at Appendix 8;
“Connected Persons”	all and any of the Contractor's employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
“Contractor Manager”	██████████ REDACTED
“Direct Request”	a request by the Employer, without conducting a Mini-Competition, for a Framework Contractor to submit a Proposal in accordance with clause 6.8;
“Direct Request Form”	a document issued by the Employer pursuant to clause 6.8, setting out its request for a Proposal, in the form set out in Appendix 4 or in such other form as may be notified to the Contractor from time to time;
“Dispute”	any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
“Existing Work Package Contracts”	any Work Package Contracts subsisting on the date of termination or expiry of this Framework Agreement;
“Expiry Date”	the date falling eight (8) years after the Framework Agreement Commencement Date;
“FOI Legislation”	the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
“Framework”	the framework of agreements (including this Framework Agreement) that the Employer has entered into with the Framework Contractors in relation to the Framework Scope;
“Framework Agreement”	this agreement, including the Appendices and all other documents referred to in this Framework Agreement;
“Framework Agreement Commencement Date”	the date of this Framework Agreement;
“Framework Contractors”	the contractors referred to in clause 6;
“Framework Manager”	Is ██████████ or such other person notified to the Contractor by the Employer from time to time; REDACTED

“Framework Prices”	the rates and prices set out in Appendix 1;
“Framework Scope”	the document at Appendix 2;
“Holding Company”	any company which is the holding company of the Contractor where holding company is defined by reference to the definition of ‘subsidiary’ in section 1159 of the Companies Act 2006;
“Information”	information recorded in any form held by or on behalf of the Employer;
“Information Request”	a request for any Information under the FOI Legislation;
“Insolvency”	as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;
“Losses”	any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising;
“Mini-Competition”	a competitive process pursuant to clauses 6.3 to 6.7 (inclusive) which the Employer may from time to time utilise to select a Framework Contractor to carry out Works;
“Mini-Competition Request Form”	a document issued by the Employer pursuant to clause 6.3, setting out its request for a Proposal, in the form set out in Appendix 5 or in such other form as may be notified to the Contractor from time to time;
“Overriding Objective”	has the meaning set out in clause 3.4;
“Overriding Principle”	is the agreement of the Employer and the Contractor to work together in a collaborative manner acting in good faith and in a spirit of mutual trust and co-operation to achieve the Overriding Objective as detailed in clause 3.4;
“Parties”	the Employer (including its successors and permitted assigns) and the Contractor and “Party” shall mean either of them as the case may be;
“PFI Contract”	in each case, the main project contract entered into or to be entered into by the Employer and/or Transport For London and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of capital assets which is similar in nature);
“PFI Contractors”	those contractors who have entered into or will enter into PFI Contracts;
“Price”	the price payable by the Employer in consideration of the due performance of the Works under a Work Package Contract;
“Prohibited Act”	(a) offering or agreeing to give to any servant, employee, officer or agent of the Employer or the TfL Group any grant, gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having

done) any act in relation to the obtaining or performance of this contract or any other contract with the Employer; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the Employer;
- (b) entering into this contract or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Contractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Employer;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - (ii) under any law or legislation creating offences in respect of fraudulent acts, or
 - (iii) at common law in respect of fraudulent actsin relation to this contract or any other contract with the Employer; or
- (d) defrauding or attempting to defraud the Employer;

“Project Manager”	the Project Manager identified in the applicable Work Package Contract Data;
“Proposal”	the Contractor’s offer to provide Works in response to a Request Form;
“Relevant Lot”	the lot (as set out in Appendix 2) into which the relevant Work Package falls;
“Request Form”	a Direct Request Form and/or a Mini-Competition Request Form, as the context requires;
“Responsible Procurement Principles”	mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;
“Safety Breach”	a material breach of this Framework Agreement or any Work Package Contract caused by the gross incompetence, wilful default or reckless disregard to safety of the Contractor or any Subcontractor (or anyone employed or acting on behalf of the Contractor or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the Works, the safe operation of the Underground Network and/or the safety of the Employer’s customers, staff or any other person;
“Subcontractor”	a person or organisation who has a contract with the Contractor to:

- (a) construct or install part of the Works;
 - (b) provide a service necessary to provide the Works; or
 - (c) supply plant and materials which the person or organisation has wholly or partly designed specifically for the Works;
- “Term” is the period commencing on the Framework Agreement Commencement Date and ending on the Expiry Date;
- “TfL Group” means Transport for London and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time;
- “Underground Network” the stations and depots (wherever situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as the “London Underground”;
- “Work Package” a package of works falling within the Framework Scope that the Employer awards (or intends to award) to a Framework Contractor through the Framework;
- “Work Package Contract” a Work Package contract incorporating the relevant form of agreement, Conditions of Contract, Work Package Contract Data (each as set out in Appendix 8), works information and site information which is issued by the Employer under clause 6 and including any attachments and any documents expressly referred to in that Work Package Contract;
- “Work Package Contract Data” the Contract Data included in the Conditions of Contract in relation to the relevant Work Package Contract;
- “Works” any works to be provided by the Contractor pursuant to a Work Package Contract.
- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument is construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and includes all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Framework Agreement;
- 1.4 a reference to any document other than as specified in clause 1.3 and save as expressed otherwise is construed as a reference to the document as at the date of execution of this Framework Agreement;
- 1.5 headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement;
- 1.6 except as otherwise expressly provided in any Work Package Contract, if there is any inconsistency between any of these clauses, the Appendices, any Work Package Contract or any other document referred to in or incorporated into this Framework Agreement or any Work Package Contract, the order of priority for the purposes of construction is:

- 1.6.1 each Work Package Contract (including any documents referred to or incorporated into each Work Package Contract);
- 1.6.2 these clauses;
- 1.6.3 the Appendices; and
- 1.6.4 any other document referred to in or incorporated by reference into this Framework Agreement;
- 1.7 the Appendices form part of this Framework Agreement and have the same force and effect as if expressly set out in the body of this Framework Agreement;
- 1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.9 the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context;
- 1.10 any periods of time referred to in this Framework Agreement and expressed in days shall refer to calendar days;
- 1.11 where an act is required to be done within a specified period after or from a specified date the period shall begin immediately after that date. Where the specified period would include a day which is a public holiday that day shall be excluded;
- 1.12 the terms of this Framework Agreement shall be interpreted according to their natural meaning but in the event of any ambiguity in their natural meaning they shall be interpreted so as to give best effect to the Overriding Principle.

2. Framework Agreement

- 2.1 The purpose of this Framework Agreement is to:
 - 2.1.1 provide a mechanism whereby the Employer and the Contractor may enter into Work Package Contracts; and
 - 2.1.2 provide the framework to administer each Work Package Contract.
- 2.2 The Works that may be requested by the Employer and provided by the Contractor are of the type described in the Framework Scope or as more particularly described in each Work Package Contract. The Employer’s requirements may vary and this Framework Agreement does not place the Employer under any obligation to procure any Works from the Contractor at a particular time or at all. This Framework Agreement is not an exclusive arrangement and nothing in this Framework Agreement operates to prevent the Employer from engaging any other organisation or person to provide works similar to or the same as the Works.
- 2.3 Clause 6 sets out the procedure by which the Parties may enter into a Work Package Contract. Each Work Package Contract is a binding agreement on the Parties.
- 2.4 Following award of a Work Package Contract in accordance with clause 6, the Contractor shall perform the relevant Work Package in accordance with the Work Package Contract. The Contractor shall not commence any Works without an agreed Work Package Contract.

2.5 The Contractor has been awarded this Framework Agreement in relation to the following lots:

2.5.1 Lot 1 (Civil Works)

2.5.2 Lot 2 (Tunnelling Works)

2.5.3 Lot 3 (Combined Civil and Tunnelling Works)

3. Behaviour

3.1 In order to work together in a co-operative and collaborative manner, the Employer and the Contractor shall encourage integrated team working and give to each other, and welcome from the other, feedback on performance.

3.2 The Employer and the Contractor shall share information openly and highlight any difficulties at the earliest practicable time.

3.3 The Contractor shall not enter into any contractual agreements or arrangements that conflict with the principles of this Framework Agreement.

3.4 The Overriding Objective of this Framework Agreement is that by working together in accordance with the Overriding Principle the Employer and the Contractor will achieve the successful delivery of the Works:

3.4.1 to the standard and functionality that meets or exceeds the requirements defined in, or reasonably to be inferred from, the applicable Work Package Contract;

3.4.2 consistent with an economic and efficient whole-life cost approach and in a way which offers best value for money to the Employer;

3.4.3 to a timescale agreed between the Employer and the Contractor without compromising health, safety or quality; and

3.4.4 with risks allocated under the applicable Work Package Contract to the party best able to manage them.

4. Term of Framework Agreement, Work Package Contracts and Extension of Framework Agreement

4.1 This Framework Agreement (but not a Work Package Contract) shall commence on the Framework Agreement Commencement Date and continue in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement.

4.2 NOT USED

4.3 Without prejudice to clause 23, the provisions of this Framework Agreement shall survive expiry or termination to the extent that such provisions are relevant to any Work Package Contract the term of which extends beyond expiry of the Term.

4.4 Expiry or termination of a Work Package Contract in accordance with its terms shall not, in and of itself, give rise to an expiry or termination of any other Work Package Contract or this Framework Agreement.

5. Warranties, Change in Control and Obligations

5.1 Without prejudice to any other warranties expressed elsewhere in this Framework Agreement or implied by law, the Contractor warrants, represents and undertakes that:

5.1.1 the Contractor:

5.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Framework Agreement and any relevant Work Package Contract; and

5.1.1.2 is entering into this Framework Agreement and any relevant Work Package Contract as principal and not as agent for any other person and that it acts as an independent contractor in carrying out its obligations under this Framework Agreement; and

5.1.2 this Framework Agreement is and each Work Package Contract shall be duly executed by the Contractor.

5.2 Each warranty and obligation in clause 5.1 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement.

5.3 Where the Contractor is a limited company the Contractor:

5.3.1 shall not, without the prior written consent of the Employer, undergo any change in the ownership of the Contractor where such change relates to 50% or more of the issued share capital of the Contractor; and

5.3.2 shall give notice to the Employer in the event that there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company, such notice to be given within 10 Business Days of the date on which such change takes effect.

5.4 Where the Contractor is a partnership the rights, obligations and liabilities of the partners in the partnership under this Framework Agreement shall be joint and several. This Framework Agreement and the liabilities of the partners under this Framework Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of an additional partner or partners. The partners in the partnership shall procure that any additional partner or partners enter into an agreement with the Employer confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under this Framework Agreement.

5.5 Where the Contractor comprises two or more parties in joint venture the rights, obligations and liabilities of each such party under this Framework Agreement and each Work Package Contract shall be joint and several.

6. Work Package Procedure

6.1 At any time during the Term, the Employer may follow the process set out in this clause 6 (which the Employer reserves the right, at its discretion, to amend from time to time to reflect best practice and

applicable law) in order to award a Work Package Contract for the carrying out of any works within the Framework Scope.

- 6.2 Any decision by the Employer to award a Work Package Contract under the terms of this Framework Agreement shall be preceded by a Mini-Competition save where the Employer having considered the applicable law including the relevant procurement regulations (as applicable the Utilities Contracts Regulations 2006 and/or the Public Contracts Regulations 2006 both as amended) considers it appropriate to issue a Direct Request Form to one or more Framework Contractors without holding a Mini-Competition.
- 6.3 Where the Employer undertakes a Mini-Competition it issues to Framework Contractors a Mini-Competition Request Form, specifying the Works to be provided and incorporating the Work Package Contract documentation referred to in the Mini-Competition Request Form.
- 6.4 Where the Employer intends to undertake a Mini-Competition it may (but is not obliged to) issue a pre-qualification questionnaire to Framework Contractors within the Relevant Lot with a specified deadline for a response before determining the appropriate contractor(s) to be included in the Mini-Competition.
- 6.5 The Employer and Project Manager agree the appropriate tenderer(s) from all the Framework Contractors to be included in the Mini-Competition having regard to:
- 6.5.1 their capacity to carry out the type of works required assessed on the basis of the information provided in the original tender for the Framework Agreement; and
 - 6.5.2 their response to any pre-qualification questionnaire issued in accordance with clause 6.4.
- 6.6 In the event that the Contractor receives a Mini-Competition Request Form:
- 6.6.1 the Contractor shall, within two (2) Business Days of receipt of the Request Form, confirm receipt of the Mini-Competition Request Form; and
 - 6.6.2 the Contractor shall complete and issue to the Employer a Proposal (which shall include any documents required to be submitted by the Request Form) as an offer capable of acceptance or shall notify the Employer that it does not intend to submit a Proposal. The Contractor shall respond to the Employer by the date specified in the Mini-Competition Request Form or, if no such date is specified, within ten (10) Business Days of the date of the Mini-Competition Request Form, or by such other date as may be specified by the Framework. A Proposal shall remain valid for at least six (6) months (or such longer period as may be specified in the Mini-Competition Request Form) from the date it is submitted to the Employer.
- 6.7 Subject to clause 6.15, the Employer will evaluate tendered Proposals to determine which is the most economically advantageous with reference to the assessment criteria set out in the Mini-Competition Request Form as they relate to the Works in question. The Employer shall notify each of the Contractors to whom the Request Form was sent as to whether or not they have been successful, and clause 10 shall apply.
- 6.8 Where the Employer wishes to award a Work Package Contract without conducting a Mini-Competition, it may offer Work Packages direct to Framework Contractors by issuing a Direct Request Form .

- 6.9 If the Contractor wants to propose a cap on liability pursuant to any proposed Work Package Contract, the Contractor completes and submits with its Proposal its justification for the proposed cap, in the form of a completed risk assessment in a form reasonably required or approved by the Employer. The Employer is under no obligation to agree to any such proposed cap; however, the parties will negotiate in good faith and attempt to agree a reasonable amount to be stated in the Works Package Contract Data.
- 6.10 The Parties will negotiate in good faith and agree reasonable levels of liability for liquidated damages under each Work Package Contract as well as any appropriate limitation of such liability in line with generally accepted industry norms having regard to the scope, nature and complexity of the particular works. The levels and limitations shall be in respect of each of the following heads of damage:
- 6.10.1 damages for delay under Secondary Option X7; and/or
- 6.10.2 damages for low performance under Secondary Option X17.

Work Package Contracts

- 6.11 After the Employer awards a Work Package Contract pursuant to clause 6.7 or 6.8, the Employer shall forward to the Contractor two copies of the Work Package Contract. The Contractor shall execute both copies and return them to the Employer within 10 Business Days of receipt. The Framework Manager shall arrange for both copies of the Work Package Contracts to be executed by the Employer and send a completed executed Work Package Contract to the Contractor.
- 6.12 Each Work Package Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions set out in:
- 6.12.1 the completed form of agreement;
- 6.12.2 the Conditions of Contract identified as applicable in the Work Package Contract Data; and
- 6.12.3 the Work Package Contract Data and each document referred to in it,
- and such documentation together shall form a separate agreement between the Parties.
- 6.13 The Contractor shall submit with each Proposal full details of the basis on which the Prices have been calculated in accordance with the pricing and commercial information contained in Appendix 1 and this clause 6.13. The Prices (and any quotation prepared by the Contractor under any Work Package Contract in the event that the Employer proposes a change to the Works Information forming part of the Work Package Contract) shall be calculated on the basis that any percentages, rates and prices do not exceed the Framework Prices (but, for the avoidance of doubt, the Contractor shall be entitled to offer percentages, rates and prices lower than the Framework Prices)
- 6.14 A Request Form and anything prepared or discussed by the Employer constitutes an invitation to treat and shall not constitute an offer capable of acceptance by the Contractor. The Employer is not obliged to consider or accept any Proposal submitted by the Contractor.
- 6.15 This Framework Agreement shall not oblige the Employer to enter into any Work Package Contract with the Contractor.
- 6.16 Unless otherwise expressly agreed in writing with the Employer the Contractor may not charge under this Framework Agreement for any work involved in receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this clause 6.

- 6.17 The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the process in this clause 6 and the Employer shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Work Package Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.
- 6.18 The Work Package included in Appendix 9 is an example of a Work Package which could be awarded under this Framework Agreement.

7. Contractual Management

- 7.1 The Employer authorises the Framework Manager to act as its representative for all purposes of this Framework Agreement and the Contractor deals with the Framework Manager (or his or her nominated representative) in respect of all matters arising under this Framework Agreement, unless notified otherwise. The Employer may replace the Framework Manager by written notice to the Contractor, including the name of the replacement.
- 7.2 The Contractor Manager shall act as the Contractor's representative for all purposes of this Framework Agreement. The Contractor Manager shall:
- 7.2.1 diligently supervise the performance of any Works instructed under a Work Package Contract;
 - 7.2.2 attend, where requested, quarterly review meetings with the Employer to enable a general status review of work being carried out under this Framework Agreement and to allow any specific issues to be reviewed and discussed;
 - 7.2.3 attend all contract meetings with the Employer (the location, frequency and time of which will be specified by the Framework Manager or the relevant Project Manager from time to time); and
 - 7.2.4 be available to the Employer on reasonable notice (or as specified in any Work Package Contract) to resolve any issues arising in connection with this Framework Agreement or any Work Package Contract.
- 7.3 The Contractor may only make any changes to the Contractor Manager (except in the event of sickness, incapacity or resignation) with the prior written consent of the Employer (which may not be unreasonably withheld).
- 7.4 No act of or omission by or approval from either the Employer, the Framework Manager, or any Project Manager in performing any of their respective duties under or in connection with this Framework Agreement or relevant Work Package Contract shall relieve the Contractor of any its duties, responsibilities, obligations or liabilities under this Framework Agreement or any Work Package Contract.

8. Payment

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

9. Conflict of Interest

- 9.1 The Contractor acknowledges and agrees that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Employer.
- 9.2 The Contractor shall undertake ongoing and regular conflict of interest checks throughout the duration of this Framework Agreement and in any event not less than once in every six months, and shall notify the Employer in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the Works or any member of the TfL Group and work with the Employer to do whatever is necessary (including the separation of staff working on, and data relating to, the Works 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 this Framework Agreement, and all Work Package Contracts in existence, in accordance with clause 20.1.5.

10. Corrupt Gifts and Payment of Commission

- 10.1 The Contractor shall not, and shall ensure that its employees, agents and Subcontractors (and sub-subcontractors of any tier) shall not commit any Prohibited Act.
- 10.2 Without prejudice to its rights under clause 22, the Employer may audit and check any and all such records as are necessary in order to monitor compliance with this clause 10 at any time during performance of this Framework Agreement and during the 12 years thereafter.
- 10.3 If any fraudulent activity comes to the attention of the Contractor in relation to this Framework Agreement the Contractor shall notify the Employer by the most expeditious means available. The Contractor shall cooperate with the Employer in the investigation of any fraudulent activity and implement any changes in the procedures or working practices employed under this Framework Agreement as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The Contractor shall ensure that no fraudulent activity is committed by the Contractor, its agents, employees or Subcontractors.
- 10.4 If the Contractor, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of the Contractor or any of his agents commits any Prohibited Act, this shall constitute a material breach of this Framework Agreement and entitle the Employer to terminate this Framework Agreement and all Work Package Contracts in existence, in whole or in part, in accordance with clause 20.1.4.
- 10.5 If a Prohibited Act is committed by an employee of the Contractor or by any Subcontractor (or employee or agent of such Subcontractor) then the Employer may (at his sole discretion) choose to serve a warning notice upon the Contractor instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Contractor removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the site and (if necessary) procures the provision of the affected Works by another person or Subcontractor this shall constitute a material breach of this Framework Agreement and entitle the Employer to terminate this Framework Agreement in whole or in part with immediate effect in accordance with clause 20.1.4.
- 10.6 In the event of any breach of this clause 10 by the Contractor the Employer shall be entitled to recover from the Contractor any loss, liability or damage incurred or suffered as a result of the breach of this clause by the Contractor.

11. Quality and Best Value

- 11.1 The Contractor acknowledges that Transport for London is a best value authority for the purposes of the Local Government Act 1999 and as such Transport for London and the Employer are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor shall assist the Employer (and, where appropriate, Transport for London) to discharge this duty where possible and agrees to negotiate in good faith any changes to this Framework Agreement in order for the Employer (and, where appropriate, Transport for London) to achieve best value.
- 11.2 The Contractor shall provide a quality policy statement within 30 days of the Framework Agreement Commencement Date.

12. IT Requirements

Any software, electronic or magnetic media, hardware or computer system used or supplied by the Contractor in connection with this Framework Agreement:

- 12.1 shall be Euro compliant; and
- 12.2 shall be compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk; and
- 12.3 shall not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Employer on which it is used or with which it interfaces or comes into contact;

and any variation, enhancement or action undertaken by the Contractor in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Contractor's compliance with this warranty.

13. Set-Off

- 13.1 In addition to any other rights of the Employer whether at law or equity under this Framework Agreement or any Work Package Contract, whenever:
- 13.1.1 under this Framework Agreement, any Work Package Contract or any other contract between the Employer and the Contractor any sum of money is recoverable from or payable by the Contractor; or
- 13.1.2 any Losses are reasonably and properly owed to, or incurred by, the Employer or any member of the TfL Group under or arising out of this Framework Agreement, any Work Package Contract or any other contract between the Employer and the Contractor,

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Framework Agreement or any Work Package Contract.

14. Confidentiality and Announcements

- 14.1 The Contractor shall, and shall ensure that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this Framework Agreement as

confidential. Other than for the purpose of providing the Works the Contractor shall not disclose any information or documents concerning this Framework Agreement to any other person.

- 14.2 The Contractor and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the Employer disclose any information obtained by the Contractor concerning the Employer, the TfL Group or PFI Contractors to any other person.
- 14.3 The Employer may require, as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.
- 14.4 Clause 14.1 does not apply to the disclosure of:
- 14.4.1 any information which is already in the public domain at the time of its disclosure other than by breach of these provisions;
 - 14.4.2 any information disclosed by the Contractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision;
 - 14.4.3 any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 14.5 The Contractor shall procure that the Connected Persons comply with the provisions of this clause 14 and shall be responsible to the Employer for any act or omission of any Connected Person in breach of such obligations.
- 14.6 The Contractor shall notify the Employer promptly if the Contractor becomes aware of any breach of confidence by a Connected Person and shall give the Employer all assistance the Employer may reasonably require in connection with any proceedings the Employer may bring or other steps the Employer may take against that Connected Person or any other person for such breach of confidence.
- 14.7 The Contractor acknowledges that damages would not be an adequate remedy for any breach of this clause 14 by the Contractor and that (without prejudice to all other remedies to which the Employer may be entitled to as a matter of law) the Employer shall be entitled to any form of equitable relief to enforce the provisions of this clause 14.
- 14.8 At the Employer's request, and in any event upon the termination or expiry of this Framework Agreement, the Contractor shall promptly deliver to the Employer or destroy as the Employer may direct all documents and other materials in the possession, custody or control of the Contractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and, if instructed by the Employer in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 14.9 Except as provided under deeds of warranty required by the Employer under the relevant Work Package Contract, the Contractor shall not (and procures that the Connected Persons shall not) without the prior written approval of the Employer at any time for any reason disclose to any person or publish or make any statement concerning this Framework Agreement or the Works.

15. Data Protection

15.1 The Contractor shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Employer from time to time in relation to the processing of data and shall not by any act or fault cause the Employer to be in breach of these requirements.

15.2 The Contractor shall:

15.2.1 take appropriate technical and organisational security measures satisfactory to the Employer against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;

15.2.2 provide the Employer with such information as he may reasonably require to satisfy himself of compliance by the Contractor with the requirements of this clause 15; and

15.2.3 cooperate with the Employer in complying with requests or enquiries made pursuant to the Data Protection Act.

16. Freedom of Information

16.1 The Contractor acknowledges that the Employer:

16.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Employer to enable the Employer to comply with its obligations under the FOI Legislation; and

16.1.2 may be obliged under the FOI Legislation to disclose information without consulting and/or obtaining consent from the Contractor.

16.2 Without prejudice to the generality of clause 16.1, the Contractor shall, and shall procure that its Subcontractors shall:

16.2.1 transfer to the Employer or such other persons as may be notified by the Employer to the Contractor each Information Request relevant to this Framework Agreement or any member of the TfL Group that the Contractor or his Subcontractor receives as soon as practicable and in any event within 3 days of receiving such Information Request; and

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

16.3 The Employer is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the Employer.

16.4 The Contractor acknowledges that the Employer may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

17. Responsible Procurement

17.1 The Contractor shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles or as instructed by the Framework Manager from time to time.

18. Contractor Performance

18.1 The Employer shall, when required to do so under Appendix 6, score the Contractor's performance under this Framework Agreement and each Work Package Contract in accordance with Appendix 6.

18.2 If the Contractor scores below 3 in respect of any such scoring exercise the Contractor at its own cost shall resolve poor performance in accordance with Appendix 6.

19. Data Transparency

19.1 The Contractor acknowledges that the Employer is subject to the Transparency Commitment. Accordingly, notwithstanding clauses 14 and 16, the Contractor hereby gives his consent for the Employer to publish the Contract Information to the general public.

19.2 The Employer may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the Employer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Employer may in his absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to clause 19.1. The Employer shall make the final decision regarding publication and/or redaction of the Contract Information.

19.3 In this clause:

19.3.1 "Contract Information" means this Framework Agreement in its entirety (including from time to time agreed changes to this Framework Agreement).

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

20. Breach and Termination of Framework Agreement

20.1 Without prejudice to the Employer's right to terminate at common law, the Employer may terminate this Framework Agreement immediately upon giving notice to the Contractor if:

20.1.1 except as provided in and without prejudice to clauses 20.1.3, 20.1.4 and 20.1.5, the Contractor has committed any material or persistent breach of this Framework Agreement or any Work Package Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Employer) from the date of written notice to the Contractor giving details of the breach and requiring it to be remedied; or

20.1.2 the Contractor or the Holding Company is subject to Insolvency; or

20.1.3 there is a Safety Breach; or

20.1.4 the Contractor is in breach of clause 5.3.1, 5.3.2 or 10; or

- 20.1.5 a conflict of interest has not been resolved to the Employer's satisfaction in accordance with clause 9; or
- 20.1.6 the Contractor commits any of the offences listed in regulation 23 of the Public Contracts Regulations 2006 or regulation 26 of the Utilities Contracts Regulations 2006.
- 20.2 Without prejudice to the Employer's right to terminate this Framework Agreement or to terminate at common law, the Employer may terminate this Framework Agreement at any time without cause subject to giving the Contractor 90 days written notice.
- 20.3 To the extent that the Employer has a right to terminate this Framework Agreement under this clause 20 then, as an alternative to termination, the Employer may by giving notice to the Contractor require the Contractor to provide part only of the Works with effect from the date specified in the Employer's notice whereupon the provision of the remainder of the Works ceases and the definition of "the Works" shall be construed accordingly.
- 20.4 Existing Work Package Contracts will be unaffected by termination of this Framework Agreement. Existing Work Package Contracts may only be terminated in accordance with and subject to the terms and conditions of those contracts.

21. Consequences of Termination or Expiry

- 21.1 Notwithstanding the provisions of clause 14, wherever the Employer chooses to put out to tender for a replacement works provider for some or all of the Works, the Contractor shall disclose to tenderers such information concerning the Works as the Employer requires for the purposes of such tender. The Contractor may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 21.2 The termination or expiry of this Framework Agreement shall not prejudice or affect any right, power or remedy which has accrued or accrues to either Party prior to or after such termination or expiry.
- 21.3 Upon expiry or termination of this Framework Agreement or relevant Work Package Contract (howsoever caused) the Contractor (at no further cost to the Employer) on receipt of the Employer's written instructions to do so (but not otherwise), shall arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 21.4 On termination of this Framework Agreement under clause 20.1 or a cessation of any Works under clause 20.3 (but in the case of the latter only insofar as the right to cease any Works arises as a result of a right for the Employer to terminate under clause 20.1), the Employer may enter into any agreement with any third party or parties as the Employer thinks fit to provide any or all of the Works and the Contractor shall be liable for all additional expenditure reasonably incurred by the Employer in having such works carried out and all other costs and damages reasonably incurred by the Employer in consequence of such termination. The Employer may deduct such costs from sums due to the Contractor or otherwise recover such costs from the Contractor as a debt.

22. Audit

- 22.1 The Contractor shall, and shall procure that his Subcontractors (and sub-subcontractors of any tier) shall, undertake their obligations and exercise any rights which relate to the performance of this Framework Agreement and any Work Package Contract on an open-book basis. The Employer and its 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 Framework

Agreement and any Work Package Contract, including 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 rights pursuant to this clause 22 include the right to audit and check and to take extracts from any document or record of the Contractor and/or his Subcontractors.

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

22.2.1 granting or procuring the grant of access to any premises used in the Contractor's performance of this Framework Agreement or any Work Package Contract, whether the Contractor's or Subcontractor's own premises or otherwise;

22.2.2 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 Framework Agreement, wherever situated and whether the Contractor's own equipment or otherwise;

22.2.3 making any contracts and other documents and records required to be maintained under this Framework Agreement (whether exclusively or non-exclusively) available for audit and inspection;

22.2.4 providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the Employer's auditor and/or granting copying facilities to the Employer's auditor for the purposes of making such copies; and

22.2.5 complying with the Employer's reasonable requests for access to senior personnel engaged by the Contractor in the performance of this Framework Agreement.

23. Survival

The provisions of clauses 1, 5, 7.4, 8, 9, 10, 13, 14, 15, 16, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 and any other clauses or Appendices that are necessary to give effect to those clauses shall survive termination or expiry of this Framework Agreement. In addition, any other provision of this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement or relevant Work Package Contract shall do so.

24. Rights of Third Parties

24.1 Save that any member of the TfL Group has the right to enforce the terms of this Framework Agreement or any relevant Work Package Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Framework Agreement or any relevant Work Package Contract shall be enforceable by virtue of the Third Party Act by any person not a party to it.

24.2 Notwithstanding clause 24.1, the Parties are entitled to vary or rescind this Framework Agreement or any relevant Work Package Contract without the consent of any or all members of the TfL Group.

25. Contract Variation

Save where the Employer may require an amendment to the Works, this Framework Agreement or any Work Package Contract may only be varied or amended with the written agreement of the Parties.

26. Novation and Assignment

26.1 The Employer may assign, novate or otherwise transfer this Framework Agreement (in whole or in part).

26.2 Within 10 Business Days of a written request from the Employer, the Contractor at its expense shall execute such agreements as the Employer may reasonably require (including a deed of novation in the form set out in Appendix 7) to give effect to any such transfer of all or part of its rights and obligations under this Framework Agreement to one or more persons nominated by the Employer.

26.3 This Framework Agreement is personal to the Contractor who may not assign, transfer, novate, charge or otherwise deal with this Framework Agreement (or any of his rights or obligations under it) without the prior written consent of the Employer.

27. Indemnity

27.1 The Contractor shall indemnify and keep indemnified the Employer against all Losses in respect of, or in any way arising out of, any breach of this Framework Agreement or from any negligent act or omission of the Contractor (save to the extent that such Losses may have been caused by the Employer).

28. Non-Waiver of Rights

No waiver of any of the provisions of this Framework Agreement or any relevant Work Package Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing. The single or partial exercise of any right, power or remedy under this Framework Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

29. Illegality and Severability

If any clause or part of this Framework Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall be, to the extent required, severed from this Framework Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Framework Agreement and the remainder of the affected provisions shall continue to be valid. 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 Framework Agreement, the Employer and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

30. Entire Agreement

30.1 Subject to clause 30.2:

30.1.1 this Framework Agreement and any relevant Work Package Contract, and all documents referred to in this Framework Agreement and any relevant Work Package Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Framework Agreement and such documents and supersede and extinguish any prior

drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Works. Neither Party has been induced to enter into this Framework Agreement by a statement which it does not contain; and

30.1.2 without prejudice to the Contractor's obligations under this Framework Agreement, the Contractor is responsible for and shall make no claim against the Employer in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of this Framework Agreement or any incorrect or incomplete information howsoever obtained.

30.2 Nothing in this clause 30 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

31. Relationship of the Parties

Nothing in this Framework Agreement or any Work Package Contract constitutes, or is deemed to constitute, a partnership between the Parties. Except as expressly provided in this Framework Agreement and any Work Package Contract, neither Party is deemed to be the agent of the other, and neither Party shall hold itself out as the agent of the other.

32. Discrimination

The Contractor shall not, and shall procure that its employees and Subcontractors do not, discriminate within the meaning and scope of the provisions of the Equality Act 2010.

33. Notices

Any notice, demand or communication in connection with this Framework Agreement shall be in writing and may be delivered by hand, post or facsimile addressed to the recipient at the address set out in this clause 33 or any other address (including a facsimile number) notified to the other Party in writing as an address to which notices, invoices and other documents may be sent. The notice, demand or communication shall be deemed to have been duly served:

33.1 if delivered by hand, at the time of delivery;

33.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 Business Days after being posted; or

33.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

The relevant details as at the date of this Framework Agreement are:

For the Employer:

Name: Director of Legal

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

For the Contractor:

Name: Head of Legal Services (Infrastructure)

Address: Corporation Street, Rugby, Warwickshire, CV21 2DW

34. Further Assurance

Each Party shall do or procure the doing of all acts and things, and execute or procure the execution of all such documents, as the other Party reasonably considers necessary to give full effect to the provisions of this Framework Agreement and any relevant Work Package Contract.

35. Disputes

35.1 The Parties shall notify each other of any anticipated Dispute arising under or in connection with this Framework Agreement so that in accordance with the Overriding Principle the Dispute can be avoided by negotiation between the Parties.

35.2 If the Parties are unable to rectify any Dispute arising under or in connection with this Framework Agreement acting in accordance with clause 35.1 then the Parties shall follow the dispute resolution procedure as set out in the NEC3 Engineering and Construction Contract, Main Option A, as set out in Appendix 8.

36. Governing Law

This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to clause 35, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Framework Agreement provided that the Employer shall have the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

37. Agency

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

38. Counterparts

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

THE FRAMEWORK AGREEMENT has been executed as a Deed and delivered by the Parties the day and year written above.

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

Signature of Authorised Signatory

.....**REDACTED**.....

Print name of Authorised Signatory

EXECUTED AND DELIVERED AS A DEED
by **MORGAN SINDALL CONSTRUCTION & INFRASTRUCTURE LTD**
acting by:

Signature of Director

.....**REDACTED**.....

Print name of Director

Signature of Director/Secretary

.....**REDACTED**.....

Print name of Director/Secretary

EXECUTED AND DELIVERED AS A DEED
by **BEMO TUNNELLING GMBH**
acting by:

Signature of Director

.....**REDACTED**.....

Print name of Director

Signature of Director/Secretary

.....**REDACTED**.....

Print name of Director/Secretary

Appendix 1

Pricing and Commercial Information

REDACTED

Appendix 2

Framework Scope

For this Framework Agreement, known as the "Civils and Tunnelling Works Framework Agreement", the Employer is seeking to procure Civils and/or Tunnelling activities.

The Framework Agreement is structured into the following three lots of works which shall allow the Employer to procure works for the duration of the Framework Agreement:

- 1) Lot 1 (Civil works): Civils Works with no Tunnelling or with limited Tunnelling Works;
- 2) Lot 2 (Tunnelling Works) Tunnelling Works with associated Tunnel lining and preparation for next stage activities with either limited Civils or minor Civils Works;
- 3) Lot 3 (Combined Civils and Tunnelling Works) (i.e. a combination of lots (1) and (2)).

In this Appendix 2 (Framework Scope), the terms below have the following meaning:

Civils Works may include, but are not be limited to:- upgrade or modification works to a station comprising changes to any part of the station or station assets; enabling works such as demolition, site clearance or facilitating access for others; minor tunnelling; and construction of a new or modified station box whether at surface level, above surface level or underground;

Tunnelling Works may include, but are not be limited to:- construction or modification of sub-surface passageways, rooms, concourses or running tunnels together with works or activities required to facilitate such construction; and minor Civils Works.

Various works including but are not limited to:- sub surface room construction; shaft excavation; escalator barrel construction; diaphragm wall construction; or provision of instrumentation and monitoring services, may be categorised as either Civils or Tunnelling Works at the Employer's discretion.

Lot (1): Civils Works:

The scope of work is to cover those activities required by London Underground Limited under the category of Civils Works. Works include (but are not limited to):

- Support and advice to design and design assurance of civils construction and associated requirements including:- entrance and ticket hall areas; platforms; roofs; structures; buildings; walls and ceilings; passageways; rooms; shafts; drainage; settlement management; maintenance facilities; piling; and elements of fit out, proposed to be defined at the design stage;
- Construction of civils works and associated requirements including:- entrance and ticket hall areas; platforms; roofs; structures; buildings; walls and ceilings; passageways; rooms; shafts; drainage; settlement management solutions; waste management; maintenance facilities; piling; and elements of fit out proposed to be constructed in association with the civils construction activities;
- Instrumentation and monitoring;
- Civils construction:- plant provision; logistics; methodology; and management;
- Civils construction techniques and construction strategy development;
- Project Management (management of associated planning and delivery, programme, cost & commercial management, risk management, value management, traffic management, logistics, stakeholder management, resource management);
- Utility diversions, protection and enabling works;
- Temporary works;
- Principal contractor for the purposes of the CDM Regulations 2015;
- Over site or adjoining development:- interfacing; enabling; and future proofing;
- Support to associated planning and heritage consents;
- Support to associated land assembly and property advice; and
- Support to Transport and Works Act Order application advice and compliance.

Lot (2): Tunnelling Works:

The scope of work is to cover those activities required by London Underground Limited under the category of tunnelling. Works includes (but are not limited to):

- Support and advice to design and design assurance of tunnel construction and associated requirements including:- rooms; shafts; platforms; drainage; settlement management; and elements of fit out, proposed to be defined at the design stage;
- Construction of tunnels and associated requirements including:- lining; rooms; shafts; platforms; drainage; settlement management solutions; waste management; and elements of fit out proposed to be constructed in association with the tunnel construction activities;
- Instrumentation and monitoring;
- Tunnelling construction:- plant provision; logistics; methodology; and management;
- Tunnelling construction techniques and construction strategy development;
- Project management (management of associated planning and delivery, programme, cost & commercial management, risk management, value management, traffic management, logistics, stakeholder management, resource management);
- Utility diversions, protection and enabling works;
- Temporary works;
- Principal contractor for the purposes of the CDM Regulations 2015;
- Associated over site development; interfacing, enabling and future proofing;
- Support to associated planning and heritage consents;
- Support to associated land assembly and property advice; and
- Support to Transport and Works Act Order application advice and compliance.

Lot (3): Combined Civils & Tunnelling Works:

The scope of work is to cover those activities required by London Underground Limited under the combined category of Civils Works and Tunnelling Works. Works includes (but are not limited to):

- Providing any and/or all of the requirements associated with both Civils and Tunnelling categories (Lot 1 and Lot 2).

All Lots

The scope of works for each Work Package may also encompass other related civils or tunnelling activities as programme or project requirements develop

Appendix 3

Not used

Appendix 4

Direct Request Form

Direct Request Form

Framework Number:
Request Form Number:

To:
Address:

From:
Date:

This is a Direct Request Form for the provision of Works in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Employer; however such acceptance will not occur unless and until the Employer posts notice of acceptance to you.

Attached to this Direct Request Form is a draft Work Package Contract.

In your Proposal, you must respond by completing the Work Package Contract Data Part Two

If you intend to propose a cap on liability you must complete and submit with your Proposal justification for the proposed cap, in the form of a completed risk assessment in a form reasonably required or approved by the Employer. The Employer is not under any obligation to agree to any such proposed cap.

The Employer is under no obligation to award any Work Package Contract as a result of this Direct Request Form. The Employer shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Work Package Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

You must complete and return your Proposal by []. Please e-mail your Proposal, and send a paper copy to:

Name:
e-mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Direct Request Form should be directed to the above. Any queries regarding the Framework Agreement should be directed to the Framework Manager named in the Framework Agreement.

Signed: _____
for and on behalf of London Underground Limited

Attachments to Direct Request Form

Form of Agreement

Work Package Conditions of Contract

Work Package Contract Data Part One

Work Package Contract Data Part Two

Schedules

Works Information and Site Information

Any other relevant information:

[]

Appendix 5

Mini Competition Request Form

Mini-Competition Request Form

Framework Number:

Request Form Number:

To:

Address:

From:

Date:

This is a Mini-Competition Request Form for the provision of Works in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Employer; however such acceptance will not occur unless and until the Employer posts notice of acceptance to you.

Attached to this Mini-Competition Request Form at Attachment 1 is a draft Work Package Contract.

In your Proposal, you must respond by completing the Work Package Contract Data Part Two

If you intend to propose a cap on liability you must complete and submit with your Proposal justification for the proposed cap, in the form of a completed risk assessment in a form reasonably required or approved by the Employer. The Employer is not under any obligation to agree to any such proposed cap.

The Employer is under no obligation to award any Work Package Contract as a result of this Mini-Competition Request Form. The Employer shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Work Package Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

Your Proposal will be assessed against those submitted by other consultants as part of a Mini-Competition process. Subject to the Employer not having any obligation to award a Work Package Contract the Employer will evaluate the tendered Proposals to determine which is the most economically advantageous with reference to the assessment criteria set out in Attachment 2.

You must complete and return your Proposal by []. Please e-mail your Proposal, and send a paper copy to:

Name:

e-mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Mini-Competition Request Form should be directed to the above. Any queries regarding the Framework Agreement should be directed to the Framework Manager named in the Framework Agreement.

Signed: _____
for and on behalf of London Underground Limited

Attachments to Mini-Competition Request Form

Attachment 1:

Form of Agreement

Work Package Conditions of Contract

Work Package Contract Data Part One

Work Package Contract Data Part Two

Schedules

Works Information and Site Information

Any other relevant information:

[]

Attachment 2:

Assessment criteria:

Note 1: the assessment criteria for the Work Package in question will be derived from those set out below. Indicative weightings and scoring methodology (both of which are subject to variation) are also shown.

Note 2: with regard to the evaluation of pricing, if there is a difference between the Cost Feedback Structure and the Activity Schedule for the Work Package in question, the higher value will be used for evaluation purposes.

Criterion	Scoring	Weighting
Health, Safety and Environment	Pass/Fail	N/A
Technical - Scope; - Programme; - Risk	Scored with minimum to Pass	75%
Commercial - Pricing - Contract Terms	Scored with minimum to Pass/scored and weighted Discretionary Pass/Fail	25% N/A

Method of Evaluation	Meaning
For Information	Information that is required to support the tender
Pass/Fail	Rejection of tender if criterion not met
Discretionary Pass/Fail	The Employer reserves the right to reject if criterion not met
Scored with minimum to Pass	Evaluated using question specific characteristics with a minimum requirement to Pass
Scored	Evaluated using question specific characteristics

Appendix 6

Contractor Performance

Civils and Tunnelling Framework

Measuring the performance of its contractors is important to the Employer.

Following award of this Framework Agreement, a set of Key Performance Indicators (KPI's) will be prepared by the Employer and included within each Work Package Contract.

The KPI's will be developed from the indicative measures contained in Appendix 6A which relate to performance including cost, earned value, programme, health, safety and environmental and quality measures and updated for each Work Package Contract so that they are aligned with the Employer's project measures that are current at the date of award of a Work Package Contract.

The Employer will collect data on the Contractor's performance against KPI measures for a Work Package Contract every quarter as a minimum. Each Work Package Contract will be scored from 1 to 5 using the scoring definition as indicated within Table 1 below;

Table 1

Score	Scoring Definition
N/A	This activity is not applicable for this Contractor
1	The Contractor does not display any examples of good practice
2	The Contractor displays some good practice but is generally poor in this area
3	The Contractor is average/acceptable in this area
4	The Contractor demonstrates good practice
5	The Contractor excels in this element

Escalation route for poor performance

If the Contractor has a poor score (1 or 2) on any Work Package Contract, it is important that a speedy resolution is in place to remedy and address the poor performance.

The Contractor must prepare and provide a Supplier Action Plan in which it proposes to resolve levels of poor performance. The Supplier Action Plan should be developed in consultation with the Employer and provided to the Framework Manager within 5 days of the poor performance being identified.

If the next quarterly survey identifies the Work Package is still underperforming this will be escalated to Directors to agree next steps and period performance reporting will be established.

If the mitigation plan is unsuccessful, evidenced by 2 periods of continued poor performance, the Employer's Managing Director and the Contractor's Managing Director will intervene and meet with the Framework Manager to discuss and agree how to resolve the poor performance.

As a last resort, the Contractor may be asked not to bid for future work under this Framework Agreement until their performance issue is resolved, (the Contractor would need to agree to this course of action in writing) or in extreme cases they may be removed from this Framework.

APPENDIX 6A

No.	Measure Linked to Incentive? (Y/N)	Category	Zone Area	Proposed KPI	EXAMPLE RED	EXAMPLE AMBER	EXAMPLE GREEN	Frequency (Weekly / Periodically / Quarterly / Annually)	Main Data Source	TIL Four Pillars	Process of obtaining data by source	Additional cost of obtaining measure (Zero/L/M/H)	Benefit of KPI for LUL (the why)
1	N	Health & Safety	Safety	AFR [Insert period years/week etc.] to date - The accident frequency rate - no. of Accidents/no. of Hours worked. REDDORIS	>0.15	>0.05	<0.05	Periodically	Supplier	Delivery	As per records on site	Zero	Compliance with H&S
2	N	Health & Safety	Safety	REDDORIS reportable events in period	>0	No Amber	0	Periodically	Supplier	Delivery	As per records on site	Zero	Compliance with H&S
3	N	Health & Safety	Safety	Lost Time Frequency Rate to date - The Lost Time Frequency rate given by: No of LTIs x Lost Time Injuries / No of Hours worked.	>0.2	>0.1	<0.1	Periodically	Supplier	Delivery	As per records on site	Zero	Compliance with H&S
4	N	Health & Safety	Safety	Audit/Inspections / assurance exercises / quality plans (delete as applicable) due in the period / quarter / year (delete as applicable) passed threshold / target score [insert threshold score / target] flexitime	Inspection score < 90 [insert threshold / target score as applicable]	Inspection score 90-95 [insert threshold / target score as applicable]	Inspection score >95 [insert threshold / target score as applicable]	Periodically	Supplier	Value and Delivery	As per records on site	Zero	Compliance with H&S
5	Y	Quality	Performance & Reliability	After Completion - record the No. of Non Conformance Reports/defects/faults/failures raised in the Defect Period. Measure is number of defects raised per £100k, note this KPI should be a stretch target to drive performance during delivery	> 10 per £100k	5-10 per £100k	<5 per £100k	Annually	Supplier	Delivery	As per suppliers records, as well as Client audit on contractor obligations.	Low	Customer (and therefore customer service) is one of the TIL 4 pillars. This KPI will push suppliers to comply with our focus on minimising customer and network impact.
6	Y	Customer	Performance & Reliability	Oversun into Traffic Hours - record level of LCH as a rolling statistic (cost of oversun in fixed period and/or total minutes of oversun in fixed period)	Cost - Greater than £15k period Time - Greater than 3hr delay in period	Cost - £15k to £25k / period Time - 3-3hr delay in period	Cost - £0-£15k / period Time - 0-3hr delay in period	Periodically	Supplier	Delivery	Cost reports on site	Low	Tracking the level of LCH to aim to reduce impact on customers. The LCH can be an issue in themselves, but they are not tracked and recorded for reporting purposes.
7	N	Delivery	Efficiency	Accuracy of contractor VOMD forecasts (forecast vs actual)	Variance >15%	Variance >5% and <14%	Variance <5%	Quarterly	Supplier	Delivery	As per commercial / forecast updates	Medium	Without a clear reporting strategy and system in place, it is difficult to make effective and informed decisions in a timely manner.
8	N	Quality	Efficiency	All technical and contractual documentation (e.g. plans, programmes, procedures, notices, invoices) are submitted complete, correct and on time.	<5% complete, correct and on-time communications	No Amber	>5% complete, correct and on-time communications	Periodically	Supplier/TIL	Value and Delivery	Supplier / Client auditing of conformance	Low	LUL will have purchased a supplier that complies with the contract, this is important as it measures suppliers performance and also informs LUL of the status of the contract / commercials.
9	N	Delivery	Efficiency	SPI / CPI performance across project/work contracts	SPI / CPI <0.90	SPI / CPI 0.91 to 0.97	SPI / CPI 0.98-1.00	Periodically	Supplier/TIL	Value and Delivery	Supplier / Client auditing of conformance	Low	This allows governance of the financial performance of the project / programme against targets set.
10	N	Financial Performance	Efficiency	Estimated Final Cost (FC) compared to contract award (adjusted for inflation and client led change)	Variance >10%	Variance between 4% & 9%	Variance <3%	Periodically	Supplier	Value	As per standard commercial updates	Low	This will allow LUL to understand the impact of change on the overall commercial performance of the project / programme.
11	Y	Risk and Value Management	Efficiency	Cost Efficiencies Savings / Continuous Improvement - contractor to demonstrate the value of any efficiencies / opportunities that have created savings e.g. VE, Innovation, process improvement, collaboration	Less than 5% of contract value	5-15% of contract sum	Greater than 15% of contract sum.	Periodically	Supplier	Value	As per commercial updates (note additional measure)	Low	As a business we need to demonstrate to the market and wider stakeholders that we are driving innovation forward into projects and programmes. Once the contract is let it is important that suppliers still look to improve and drive efficiencies.
12	N	Efficiency	Delivery	Work delivered to programme - Contractor to demonstrate how their people / waste / material delivery forecasts have been aligned to the programme (measure: forecast to actual) [Select measure as appropriate depending on level of assurance loaded programme]	<80% accuracy	80-90% accuracy	>90% accuracy	Periodically	Supplier	Delivery / Value	Sourced by the suppliers create records, note - additional measure	High	The benefit of the KPI is that it will allow LUL to measure performance against original targets, the data will also act as governance to inform any change / mitigation that may be required to improve performance.

No.	Measure Linked to Incentive? (Y/N)	Category	Zone Area	Proposed KPI	EXAMPLE RED	EXAMPLE AMBER	EXAMPLE GREEN	Frequency Weekly/Periodically/Quarterly/Annually	Main Data Source	TR: Four Pillars	Process of obtaining data by source	Additional cost of obtaining measure (Zero/UM/H)	Benefit of KPI for LUL (the why)
13	N	Responsible Procurement	Delivery	No. of / % of tender events schedule posted and awarded on Compeet or	<5% of supply chain value is new entrants or SME	Between 6% and 20% of supply chain value is new entrants or SME	Greater than 20% of supply chain value is new entrants or SME	Quarterly	Supplier	Delivery	Sourced by the supplier	Low	As a responsible business we need to demonstrate the effective use of Compeet or, through the measurement of this KPI we can show the level of work awarded to smaller suppliers / businesses.
14	N	Quality	Delivery	Level of inspections / test plans delivered to date based on agreed reporting format for assurance of quality. These can be client or contractor led inspections	<75% complete	80-89% complete	90-100% of inspections / test plans complete	Periodically	Supplier/TRL	Delivery	Sourced by the supplier	Low	Focus on self assuring the quality of works completed. This should reduce defects / NCRs.
15	Y	Quality	Delivery	During Delivery - record the No. of Non Conformance Reports/defects/faults/failures/initial reject notices. Measure is number of defects raised per £100k (note: this KPI should be a stretch target to drive performance during delivery)	> 10 per £100k	5-10 per £100k	<5 per £100k	Quarterly	Supplier	Delivery	As per suppliers records, as-went tasks. Client audit on contractor obligations.	Low	Customers (and therefore customer service) is one of the ILL 4 pillars. This KPI will push suppliers to comply with our focus on minimising customer and network impact.
16	N	Behaviours	Delivery	Effective communication and engagement with (integrated project team/ client/ sub-contractor/ internal and external stakeholders). Measure scoring the relationship out of 10 and taking an average to the results. Survey issued to key ILL and contractor project staff.	Relationship Score 1-3	Relationship Score 4-7	Relationship Score 8-10	Quarterly	Supplier / ILL	People	Client (ILL) Project Manager	Medium	From a reputational point of view it is important that our projects and programmes have a robust stakeholder plan, alongside this the KPI will allow measurement to ensure the plan is complied with.
17	N	Responsible Procurement	Delivery	Sustainability: % of waste to landfill in (report period) (note: this KPI should be stated bi-annually/semi-annual to drive improving performance)	<5% waste produced to landfill	Between 10% and 25% waste produced goes to landfill	Less than 10% of waste produced goes to landfill	Periodically	Supplier	Delivery / value	Sourced by the suppliers onsite records note - additional measure	High	We have a responsibility as a client to operate in a sustainable way, this is linked to our funding position / requirements and reputation.
18	N	Behaviours	Delivery	Level of disputes - quantity of outstanding change events not agreed. Target is zero, includes all events that have exceeded original contractual timescales for agreement	>10 Change events not agreed	1-10 Change events not agreed	0 Change events not agreed	Periodically	Supplier	Delivery / value	Sourced by the supplier (cost reports)	Low	The level of disputed change is a powerful indicator of performance and behaviours of a project. If it is tracked over time it can evidence larger issues with the project, break down of relationships etc.
19	N	Responsible Procurement	Delivery	Number of apprentices created as per contractual requirement (aligned to government target)	Variance >15%	Variance >5% and <14%	Variance <5%	Quarterly	Supplier	People	Records kept by supplier in accordance with contractual requirement	Low	This will help demonstrate ILL's commitment to RP and legislative targets for apprentices
20	N	Responsible Procurement	Delivery	Carbon reduction (a) % reduction in construction energy tonnes of carbon (applicable for construction based projects in the main)	0-5% reduction in carbon	5-15% reduction	15%+ reduction in carbon	Quarterly	Supplier	Delivery	Records kept by supplier in accordance with contractual requirement	Medium	This will help demonstrate ILL's commitment to sustainability and legislative targets for carbon reduction
21	N	Responsible Procurement	Delivery	Payment to lower tier contracts - %age of payments to supply chain within payment terms (e.g. 28 days)	10%+ of payments not with payment terms	1-10% of payments not with payment terms	All payments within payment terms	Periodically	Supplier	Delivery	Records kept by supplier in accordance with contractual requirement	Medium	Demonstrates commitment to prompt and fair payment to all levels of the supply chain
22	Y	Closures	Closures	No. of actual (insert service provision / asset) closures / disruptions versus planned closures / disruptions (delete as applicable and define what a 'closure' or 'disruption' is to your service / asset in the metric) in the period due to supplier fault/omission	Greater than planned	No Amber	Less than planned	Periodically	Supplier / IRL	Closures	Commission Manager (TRL)	High	This will allow LUL to assess the customer impact of the project / programme.
23	N	Quality	Closures	Tracking the level of customer complaints as a result of the contract. Stakeholder impact and wider customer liaison	31+ Complaints	31-50 Complaints	0-30 Complaints	Quarterly	ILL	Delivery	ILL records	Medium	Demonstrates the impact of the contract on stakeholders and customers

Appendix 7

Form of Deed of Novation

THIS AGREEMENT is made ● day of ● 201●

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales under number 01900907 whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Employer**") which expression includes its successors in title and assigns);
- (2) **[INSERT NAME OF REPLACEMENT EMPLOYER]** whose registered office is situated at **[INSERT REGISTERED ADDRESS OF REPLACEMENT EMPLOYER]** (the "**Replacement Employer**"); and
- (3) **[INSERT NAME OF CONTRACTOR]** a company registered in England and Wales under number **[INSERT COMPANY NUMBER OF CONTRACTOR]** whose registered office is at **[INSERT REGISTERED ADDRESS OF CONTRACTOR]** (the "**Contractor**").

WHEREAS:

- (A) The Employer has appointed the Contractor under a framework agreement (the "**Contract**") to carry out certain works and/or services pursuant to work package contracts let under the terms of the Contract (the "**Works**").
- (B) The Parties have agreed to novate the Contract from the Employer and the Contractor to the Replacement Employer and the Contractor on the terms of this deed.

NOW IT IS HEREBY AGREED as follows:

1 NOVATION

- 1.1 The Employer as beneficial owner hereby novates to the Replacement Employer its entire rights, benefits, liabilities and obligations under and pursuant to the Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.
- 1.2 The Contractor releases and discharges the Employer from any and all obligations and liabilities owed to the Contractor under the Contract and accepts the liability of the Replacement Employer under the Contract in lieu of the liability of the Employer.
- 1.3 The Contractor undertakes to perform the Contract and to be bound by its terms in every way as if the Replacement Employer were, and had been from the inception, a party to the Contract in lieu of the Employer.
- 1.4 The Replacement Employer undertakes to perform the Contract and to be bound by its terms in every way as if the Replacement Employer were, and had been from the inception, a party to the Contract in lieu of the Employer.

- 1.5 The Replacement Employer shall not be prevented from recovering any loss, damage, cost or expense (including legal costs) ("Losses") incurred by the Replacement Employer that result from any breach of clause 1.3 because:
- (a) the acts or omissions causing that breach occurred before this deed took effect; or
 - (b) the Employer will not incur, has not or would not have incurred those Losses.
- 1.6 All rights of action and remedies vested in the Employer against the Contractor in respect of the Contract shall vest in the Replacement Employer from the date of this deed. All rights and remedies vested in the Contractor against the Employer in respect of the Contract shall lie against the Replacement Employer from the date of this deed.
- 1.7 The Contractor acknowledges that all fees and expenses properly due to the Contractor under the Contract up to the date of this Agreement have been paid by the Employer.

2 PROPER LAW AND JURISDICTION

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

3 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any third person (save the Employer's successors in title or permitted assignees) any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

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

Signature of Authorised Signatory

Print name of Authorised Signatory

**EXECUTED AND DELIVERED AS
A DEED by
[THE REPLACEMENT EMPLOYER]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

Appendix 8

Conditions of Contract

Works Package Conditions of Contract

To include:

1Engineering and Construction Contract – Option A (for use in relation to Lots 1,2 and/or 3)

- 1.1 Work Package - Form of Agreement
- 1.2 Contract Data Part One
- 1.3 Contract Data Part Two
- 1.4 Contract Clauses – with Z clauses consolidation

2Engineering and Construction Contract – Option C (for use in relation to Lots 1,2, and/or 3)

- 2.1 Work Package - Form of Agreement
- 2.2 Contract Data Part One
- 2.3 Contract Data Part Two
- 2.4 Contract Clauses – with Z clauses consolidation

3Engineering and Construction Contract – Option E(for use in relation to Lots 1,2 and/or 3)

- 3.1 Work Package - Form of Agreement
- 3.2 Contract Data Part One
- 3.3 Contract Data Part Two
- 3.4 Contract Clauses – with Z clauses consolidation

4LUL Generic Schedules to NEC applicable to all NEC ECC Works Contracts

FORM OF AGREEMENT

THIS AGREEMENT is made the ● day of ● 201●

BETWEEN:

- (1) **London Underground Limited** whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL (“the *Employer*” which expression shall include its successors in title and assigns); and
- (2) ● whose registered office is at ● [and ● whose registered office is at ● (jointly and severally, “the *Contractor*”)].¹

WHEREAS:

- (A) This Agreement is made pursuant to a framework agreement between the *Employer* and the *Contractor* relating to the provision of civils and tunnelling works dated ●.
- (B) The *Employer* wishes to have provided ●, as more particularly described in the Works Information (“the *works*”) at ●.
- [(C) The *works* are divided into 2 stages:
 - Stage 1 Works (as defined in Schedule 1 to the *conditions of contract*); and
 - Stage 2 Works (as defined in Schedule 1 to the *conditions of contract*).]²
- (D) The *Employer* has accepted a tender by the *Contractor* for the construction of the *works* and correction of Defects therein in accordance with the *conditions of contract* (as and amended).

NOW IT IS AGREED THAT:

1. Terms and expressions defined in the *conditions of contract* (as amended) have the same meanings herein.
2. The *Contractor* Provides the Works in accordance with the *conditions of contract* (as amended).
3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract* (as amended).

¹ Delete these words if the *Contractor* is not a joint venture

² Insert, if applicable.

4. The documents forming the contract are:
- (a) this Form of Agreement duly executed by the Parties as a deed;
 - (b) the NEC Engineering and Construction Contract *conditions of contract* Third Edition June 2005 (with amendments dated June 2006 and September 2011) as amended by the *additional conditions of contract* (Z1 and Z2 clauses);
 - (c) the Contract Data Part 1;
 - (d) the Contract Data Part 2;
 - (e) the Works Information;
 - (f) the Site Information; and
 - (g) Schedules 1 to 13 inclusive contained in section • of this contract.
5. Where there is any discrepancy or conflict within or between the documents forming the contract the order of priority shall be as follows:
- | | | |
|---------|---|--|
| First | : | This Form of Agreement; |
| Second | : | The consolidated conditions of contract appended to this Form of Agreement as amended by the <i>additional conditions of contract</i> designated Z1 or Z2; |
| Third | : | Schedules 1 to 13 inclusive attached to the <i>conditions of contract</i> ; |
| Fourth | : | Contract Data Part 1; |
| Fifth | : | The Works Information and any other documents included in this contract; |
| Sixth | : | Contract Data Part 2; and |
| Seventh | : | Site Information. |
6. [The liability of each party comprising the *Contractor* is joint and several and each such party shall be responsible for any failure of the other party to meet its liabilities and obligations under this contract. Any such failure shall not relieve the remaining party comprising the *Contractor* of any of the liabilities and obligations of the *Contractor* under this contract.]³

³ Delete if the *Contractor* is not a joint venture

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

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

LONDON UNDERGROUND LIMITED

in the presence of:

Authorised signatory

EXECUTED AND DELIVERED AS A DEED

by **[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

[EXECUTED AND DELIVERED AS A DEED

by **[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]⁴

⁴ Delete if the *Contractor* is not a joint venture

MAIN OPTION A
CONTRACT DATA
PART 1

CONTRACT DATA

Part One – Data provided by the *Employer*

Statements given in all contracts

1. • General • The *conditions of contract* are the core clauses and the clauses for main Option A and secondary Options clauses [X1, X2, X3, X4, X5, X6, X7, X12, X13, X14, X15, X16, X17, X18, X20, X21, X22, X23, X25] ¹and Y(UK)² and Z clauses of the NEC3 Engineering and Construction Contract June 2005 (incorporating amendments June 2006 and September 2011) as amended or inserted in each case in accordance with secondary Option Z.
 - The *works* are []
 - The *Employer* is
Name: []
Address: []
 - The *Project Manager* is
Name: []
Address: []
 - The *Supervisor* is
Name: []
Address: []

¹ Delete Secondary Options which are not used in the contract.

- The Works Information is in []
- The Site Information is in []
- The *boundaries of the site* are []
- The *language of this contract* is []
- The *law of the contract* is the law of England and Wales²
- The *period for reply* is [] weeks
- The following matters will be included in the Risk Register:
[]

3. Time

- The *starting date* is: []
- The *access dates* are:

Part of the Site	Date
1. []	[]
2. []	[]
3. []	[]
- The *Contractor* submits revised programmes at intervals no longer than [] weeks.

4. Testing and Defects

- The *defects date* is [] weeks after Completion of the whole of the *works*.
- The *defect correction period* is [] weeks except that

² The *law of the contract* is always to be the law of England and Wales. This entry must not be changed.

- The *defect correction period* for [] is [] weeks
- The *defect correction period* for [] is [] weeks

5. Payment •

The *currency of this contract* is []

- The *assessment interval* is [] weeks (not more than five)
- The *interest rate* is [] % per annum (not less than two) above the [] rate of the [] bank.

6. Compensation •
events

The place where weather is to be recorded is []

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

- The *weather measurements* are supplied by []

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

Where no recorded data are available

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

8. Risks and insurance

Insurances taken out by the *Employer*

- **Construction All Risks Insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Public liability insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
-

Insurances taken out by the *Contractor*

- ***Employer's liability insurance*** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £10million per occurrence.
- ***Contractor's equipment loss insurance*** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- ***Professional indemnity insurance*** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £25million for each and every claim.

Optional statements

If the *Employer* has decided the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is
[]

If the *Employer* is not willing to take over the works before the Completion Date

- The *Employer* is not willing to take over the works before the Completion Date.³

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

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

If the *Employer* has identified work which is to meet a stated condition by a key date

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

<i>condition</i> to be met	<i>key date</i>
1. []	[]
2. []	[]
3. []	[]

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract.⁴

If there are additional *Employer's* risks

³ Delete this entry if the *Employer* is willing to take over the works before the Completion Date

⁴ This entry must not be changed.

- These are the additional *Employer's* risks

1. []

2. []

3. []

Cover/deductibles for insurances provided by the *Employer*

⁵

1 Construction All Risks Insurance (as stated in the Insurance Table)

Cover/indemnity is: the full reinstatement value of the *works*

The excess:

- [£250,000] each and every occurrence in respect of
 - (i) loss or damage caused to the permanent *works* by defects in design plan specification materials or workmanship .
 - (ii) Tunnelling Works

- [£100,000] each and every occurrence in respect of Underground Civil Works other than Tunnelling Works
- [£50,000] each and every occurrence in respect of storm tempest flood water damage frost subsidence & collapse
- [£25,000] each and every occurrence in respect of every other loss

or such other amount specified by the insurer

-

2 **Public liability insurance** (as stated in the Insurance Table)

Cover/indemnity is not less than £25million per occurrence.

The deductibles are: [£50,000 per occurrence] or such other amount specified by the insurer.

⁵ The deductibles must not be changed.

If there are *additional termination events*:

- These are the *additional termination events*

[1. If a Stage 2 Works Non-Commencement Notice is issued by the *Project Manager* in accordance with clause 20A.4.]⁶

If the *Contractor's liability for liquidated damages under Z2.12 (Schedule 9)* is capped:

The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under Z2.12 (Schedule 9) is [limited to[] / unlimited]

If Option X1 is used

- The proportions used to calculate the Price Adjustment Factor are:

0.[] linked to the index for []

0.[] linked to the index for []

0.[] linked to the index for []

0.[] linked to the index for []

0.[] Non-adjustable element []

Total 1.00

- The *base date* for indices is []

⁶ Insert, if applicable.

- The indices are those prepared by []

If Option X3 is used

- The *Employer* will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total maximum payment in the currency
1. []	[]	[]
2. []	[]	[]

- The *exchange rates* are those published in [] on [] (date)

If Option X5 is used

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

section	description	completion date
1	[]	[]
2	[]	[]

If Options X5 and X6 are used together

- The bonus for each *section* of the *works* is

section	description	amount per day
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Options X5 and X7 are used together

- Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Option X6 is used (but not if Option X5 is also used)

- The bonus for the whole of the *works* is [] per day

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

- Delay damages for Completion of the whole of the *works* are [] per day

If Option X12 is used

- The *Client* is

Name []

Address []

- The *Client's objective* is []
- The Partnering information is in []

If Option X13 is used

- The amount of the performance bond is []

If Option X14 is used

- The amount of the advanced payment is []
- The *Contractor* repays the instalments in assessments

starting not less than [] weeks after the Contract Date.

- The instalments are [] (either an amount or a percentage of the payment otherwise due)
- An advance payment bond [is/is not] required

If Option X16 is used

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

If Option X17 is used

- The amounts for low performance damages are

amount	performance level
[]	for []
[]	for []

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to []
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is [limited to[] / unlimited]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is [limited to[] / unlimited]
- 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[] / unlimited]

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

- The *incentive schedule* for Key Performance Indicators is in []
- A report of performance against each Key Performance Indicator is provided at intervals of [] months

Option Z

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section [] of the contract documents.

MAIN OPTION A
CONTRACT DATA
PART 2

CONTRACT DATA

Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is
Name: []
Address: []
- The *direct fee* percentage is []
The *subcontracted fee percentage* is []
- The *working areas*¹ are the Site and []
- The *Contractor's Representative* is
Name: []
Address: []
Telephone Number []
- The key people are
 1. Name []
Job []
handover period []
Responsibilities []
Qualifications []
Experience []
 2. Name []

¹ The *working areas* should not include the *contractor's* head or satellite offices

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

3. Name []

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

- The following matters will be included in the Risk Register

[]

Optional

Statements

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

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

[]

If a programme is to be identified in the Contract Data

- The Programme identified in the Contract Data is

[]

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

- The completion date for the whole of the works is

[]

- The activity schedule is: []

- The tendered total of the Prices is []

If Option X13 is used and states that the need for a performance bond is dependant on a Dun & Bradstreet credit rating

- The parent company² of the Contractor is

[]

DATA FOR SCHEDULE OF COSTS COMPONENTS

- The percentage for people overheads is [] %
- The published list of Equipment is the last edition of the list published by []
- The percentage for adjustment for Equipment in the published list is [] % (state plus or minus)
- The rates for other Equipment are

	Equipment	size or capacity	rate
1.	[]	[]	[]
2.	[]	[]	[]

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

² If the Contractor is a joint venture, insert the parent company of each jv member

category of employee hourly rate

1. [] []

2. [] []

- The percentage for design overheads is [] %
- The categories of design employees whose travelling expenses to and from the Working Areas are included in the Defined Cost are []

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION A

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006 and 2011 amendments to the NEC3 suite of contracts)

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CORE CLAUSES

1 General

	Actions	10	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	Identified and defined Terms	11	
Z1.1		11.1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none">• done all the work which the Works Information states he is to do by the Completion Date• done all the work necessary for the <i>works</i> to be Available and• corrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work. If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.
Z1.1.1			
Z1.1.2			(4) The Contract Date is the date of this contract.
Z1.1.3			(5) A Defect is <ul style="list-style-type: none">• a part of the <i>works</i> which is not in accordance with the Works Information or the requirements of this contract, or• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.
Z1.1.4			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> .
Z1.1.5			(8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.5A			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the Adjudicator the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1.1.6			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns) and the <i>Contractor</i> . (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires.

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

(22) Defined Cost is

- **the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for**
 - **retention,**
 - **payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,**
 - **the correction of Defects after Completion, and**
 - **payment to Others**

and

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

and excluding the cost of preparing quotations for compensations events

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

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

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

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

Z1.39A.1

Z1.2

11.3 Additional defined terms are included in Schedule 1.

Interpretation and the law 12

- Z1.3
- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- Z1.3.1 12.1A References to "this contract" mean the contract between the *Employer* and the *Contractor* including the documents listed as forming the contract in the Form of Agreement.
- Z1.3.1A 12.1B In this contract, unless the context otherwise requires, references to:
- (a) "including" means "including without limitation", and
 - (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).
- Z1.3.2 12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.3 12.3A Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.4 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.5 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.6 12.7 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- In performing his obligations under this contract, the *Contractor* complies with the *law of the contract*, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.7 12.8 (a) Subject to sub-clause 12.8(b), 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 who is not a Party to this contract.
- (b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the *Contractor* where such provision confers any benefit or purports to confer a benefit on such member.

- Z1.3.8 12.9 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.
- Z1.3.9 12.10 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

Contract Administration Management System 12A

- Z1.3A 12A.1 Notwithstanding clauses 13.1 – 13.2:
- the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information (“CAMS”);
 - all communications provided for in the contract are to be made exclusively through the CAMS (“CAMS Communications”) except for any categories of communications which the *Project Manager* notifies the *Contractor* from time to time are not to be made exclusively through CAMS; and
 - unless the *Project Manager* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the parties following any procedure necessary to give effect to the CAMS.

Where a CAMS Communication refers to an attachment that cannot be included with that communication, the attachment is sent via a method complying with clause 13.1.

Communications 13

- Z1.4
- Z1.4.1 13.1 If and to the extent that clause 12A is not applicable to the contract, eEach instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.

13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The Project Manager and 14
Z1.5

the Supervisor

Z1.5.1

14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work changes the *Contractor's* responsibility to Provide the Works or his liability for his design.

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

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

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

Y2.1/Z1.5.2

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

The Contractor's Representative

Z1.5A.1

14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor's Representative*. The *Contractor's Representative* acts on behalf of the *Contractor* under this contract. The *Contractor's Representative* may, after notifying the *Employer* and the *Project Manager*, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor's Representative* in this contract includes an action by his delegate. The *Contractor's Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor's Representative* in accordance that clause.

Adding to the Working 15

Areas

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

Early warning 16

Z1.6

Z1.6.1

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

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date, or
- impair the performance of the works in use
- change the Accepted Programme,
- adversely affect the work of Others,
- constitute a Defect,
- adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
- result in a breach of this contract or any subcontract,
- lead to the *Contractor* terminating or suspending any subcontract,
- cause a change to the Subcontractor Procurement Plan, or
- cause a breach of any applicable law.

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

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

- 16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.

Ambiguities and 17

Z1.7

Inconsistencies

17.1 The *Contractor* examines the Works Information and all other documents forming this contract and warrants to the *Employer* that he is not aware, as at the Contract Date, of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the *works* for the tendered Prices in accordance with the *conditions of contract*.

Z1.7.1

Z1.7.2

17.2 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Such instruction is not a compensation event where the *Project Manager* assesses:

- that the ambiguity or inconsistency in question is one for which the *Contractor* is responsible under this contract; or
- that a prudent and experienced contractor familiar with works similar to the *works* would have identified such an ambiguity or inconsistency at the Contract Date from the information then available to him.

Illegal and impossible 18 requirements

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

Prevention 19

Z1.8

Z1.8.1

19.1 If an event occurs which

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

and which is not

- an event of insolvency identified in clause 91.1 of the *Contractor* or any Subcontractor or supplier;
- a shortage of labour, Plant, Materials or Equipment; or
- an event attributable to any fault of the *Contractor* or any of his employees or agents or any Subcontractor or supplier or any of their employees or agents

and which

- neither Party could prevent and
- a prudent and experienced contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- the *Contractor* can demonstrate that he did not allow for it in his tender;

then this is a "Prevention Event" and the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works 20

- Z1.9
Z1.9.1 20.1 The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information.
- 20.2- Not used (as not option A clauses)
20.5
- Z1.9.2 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.

[Instruction of Stage 2 Works 20A

- 20A.1 The *Employer* may instruct the *Project Manager* to issue a notice (a "Stage 2 Works Commencement Notice") to the *Contractor* instructing him to proceed with the Stage 2 Works. The *Contractor* does not proceed with the Stage 2 Works (or any part thereof) until a Stage 2 Works Commencement Notice has been issued by the *Project Manager*.
- 20A.2 The *Employer's* decision to instruct the *Project Manager* to issue a Stage 2 Works Commencement Notice is entirely at the *Employer's* discretion. The *Employer* makes no representation or warranty and does not provide any commitment of any kind that a Stage 2 Works Commencement Notice will be issued by the *Employer*.
- 20A.3 If the *Employer* decides to issue a Stage 2 Works Non-Commencement Notice pursuant to Clause 20A.4, the *Employer* shall not be responsible or liable to the *Contractor* or any other party for any and all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and taxes (including (but not limited to) loss of profit, loss of use, loss of production, loss of business opportunity, loss of contracts, and any indirect or consequential losses or damages), whatsoever suffered or incurred by the *Contractor* in relation to such instruction.
- 20A.4 The *Employer* may issue a notice (a "Stage 2 Works Non-Commencement Notice") to the *Contractor* instructing him not to proceed with the Stage 2 Works. If a Stage 2 Works Non-Commencement Notice is issued in accordance with this clause 20A.4, this contract will terminate in accordance with clause 90.2 for R27.
- 20A.5 If a Stage 2 Works Commencement Notice is issued by the *Project Manager*, the *Contractor* remains responsible for completion of the Stage 1 Works and for the avoidance of doubt, there is no deemed Completion of the Stage 1 Works by virtue of the issue of the Stage 2 Works Commencement Notice¹.]

The Contractor's design 21

- Z1.10
Z1.10.1 21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design².
- Z1.10.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. Reasons for not accepting the *Contractor's* design are that it does not comply with either the Works Information, this contract or the applicable law- or that

¹ Insert, if applicable.

² Where Option X21 (Single Point Design Responsibility) is selected delete the text of clause 21.1 and replace with "The *Contractor* is responsible for the design of all of the *works*".

- it is such that it will not allow the *works* to be constructed,
- it is such that if constructed the *works* will not be capable of being used for their intended purpose.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.

21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the *Contractor's* Design 22

Z1.11

Design

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

Z1.11.1

Design of Equipment 23

23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with

- the Works Information,
- the *Contractor's* design which the *Project Manager* has accepted or
- the applicable law.

People 24

Z1.12

Z1.12.1

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

Z1.2.2

24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:

- ceases to be employed to do the job stated in the Contract Data; and/or
- (where Option X23 applies), the *Contractor* fails to comply with an accepted key person succession plan,

then, subject to clause 24.1B, the salary and expense costs associated with the replacement key person during the relevant *handover period* are not recoverable from or payable by the *Employer* unless the *Project Manager* agrees otherwise.

Z1.12.3

24.1B If the key person who ceases to be employed has not remained available for the duration of the *handover period* and/or has failed to properly instruct his replacement so as to avoid any repeated or sub-standard work being performed by the replacement key person (either during or after the *handover period*) and/or failed to comply with the handover requirements of the key person succession plan (if applicable), then the amount not recoverable from or payable by the *Employer* for the purposes of clause 24.1A is multiplied (subject to the *Project Manager's* discretion to reduce or waive the increase) by a factor of 2. The *Project Manager's* assessment of the amount of not recoverable from or payable by the *Employer* pursuant to clauses 24.1A and 24.1B is without prejudice to any other rights and remedies the *Employer* may have arising from the replacement of a key person.

Z1.12.4

24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

Working with the *Contractor* 25

Z1.13

Z1.13.1	Employer and Others	25.1	The <i>Contractor</i> co-operates with the <i>Project Manager</i> and Others in obtaining and providing information which they need in connection with their work and the <i>works</i> . He co-operates with Others, coordinates his activities with them and shares the Working Areas with them as stated in the Works Information.
		25.2	The <i>Employer</i> and the <i>Contractor</i> provide services and other things as stated in the Works Information. Any cost incurred by the <i>Employer</i> as a result of the <i>Contractor</i> not providing the services and other things which he is to provide is assessed by the <i>Project Manager</i> and paid by the <i>Contractor</i> .
Z1.13.2		25.3	If the <i>Project Manager</i> decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the <i>Employer</i> incurs additional cost either <ul style="list-style-type: none"> • in carrying out work or • by paying an additional amount to Others in carrying out work <p>on the same project, the additional cost which the <i>Employer</i> has paid or will incur is paid by the <i>Contractor</i>. The <i>Project Manager</i> assesses the additional cost as soon as practicable after the date when the Condition for the Key Date is met. The <i>Project Manager's</i> assessment is without prejudice to any other rights and remedies the <i>Employer</i> may have arising from the <i>Contractor's</i> failure to meet a Key Date.</p>
Z1.13.3		25.4	Unless provided for in the Works Information or authorised by written instruction by the <i>Project Manager</i> , the <i>Contractor</i> Provides the Works and corrects Defects in such a way as not to cause delay or disruption to the <i>Employer</i> and/or Others.
Z1.13.4		25.5	In the event that the <i>works</i> cause delay or disruption to the <i>Employer</i> and/or Others, the <i>Contractor</i> takes all reasonable steps to mitigate and minimise such delay or disruption.
Z1.14	Subcontracting	26	
Z1.14		26.1	If the <i>Contractor</i> subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the <i>Contractor's</i> .
Z1.14.1		26.2	The <i>Contractor</i> submits the name of each proposed Subcontractor to the <i>Project Manager</i> for acceptance. Reasons for not accepting the Subcontractor include: <ul style="list-style-type: none"> • that his appointment will not allow the <i>Contractor</i> to Provide the Works, • the <i>Contractor</i> has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors, • the proposed Subcontractor does not have an acceptable health and safety track-record on other projects. <p>The <i>Contractor</i> does not appoint a proposed Subcontractor until the <i>Project Manager</i> has accepted him.</p>
Z1.14.2		26.3	The <i>Contractor</i> submits the proposed contract for each subcontract to the <i>Project Manager</i> for acceptance unless the <i>Project Manager</i> has agreed that no submission is required. <p>The <i>Contractor</i> does not appoint a Subcontractor on the proposed subcontract conditions submitted until the <i>Project Manager</i> has accepted them. Reasons for not accepting them include:</p> <ul style="list-style-type: none"> • they will not allow the <i>Contractor</i> to Provide the Works,

- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract;
- the proposed subcontract works represent too large a proportion of the total works,
- the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Works Information,
- the proposed subcontract does not oblige the Subcontractor to provide a Form of Warranty in favour of the *Employer* or other stated beneficiaries within 21 days of their appointment on the terms set out in Schedule 5 or 6 (as appropriate).

Other responsibilities 27

Z1.15

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

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

Z1.15.1

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

3 Time

Starting, Completion and 30

Z1.16

Key Dates 30.1 The *Contractor* does not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.

Z1.16.1

30.1A The *Contractor* notifies the *Project Manager* when in his opinion the *works* will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* may attend the inspection.

Z1.16.2

30.2 The *Contractor* provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the *works* have been so completed. If the *Project Manager* is satisfied that the *works* have been so completed, he decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion. If the *Project Manager* is not so satisfied, he notifies the *Contractor* of his reasons for not accepting that the *works* have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.

30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

Z1.17

31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.

Z1.17.1

31.2 The *Contractor* shows on each programme which he submits for acceptance

- the *starting date*, *access dates*, Key Dates and Completion Date,
- planned Completion,
- the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
- the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
- the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
- provisions for
 - float,
 - time risk allowances,
 - environmental and health and safety requirements and
- the procedures set out in this contract,
- the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - access to a part of the Site if later than its *access date*,
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer* and
 - information from Others,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use,
- for each operation, a cost-loaded programme showing the forecast resources required for that operation,
- its access requirements in accordance with the Works Information, and

		<ul style="list-style-type: none"> • other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.
Z1.18	31.3	<p>Within two weeks of the <i>Contractor</i> submitting a programme to him for acceptance, the <i>Project Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting a programme is that</p> <ul style="list-style-type: none"> • the <i>Contractor's</i> plans which it shows are not practicable, • it does not show the information which this contract requires, • it does not represent the <i>Contractor's</i> plans realistically or • it does not comply with the Works Information.
Z1.18.1	31.4	<p>The <i>Contractor</i> provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.</p>
	Revising the programme	32
Z1.18.1	32.1	<p>The <i>Contractor</i> shows on each revised programme</p> <ul style="list-style-type: none"> • the actual progress achieved on each operation and its effect upon the timing of the remaining work, • the effects of implemented compensation events, • the effects of decisions reached and approved by the <i>Project Manager</i> at risk reduction meetings, • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.
	32.2	<p>The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance</p> <ul style="list-style-type: none"> • within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to, • when the <i>Contractor</i> chooses to and, in any case, • at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i>.
	Access to and use of	33
Z1.19	the Site	33.1
Z1.19.1		<p>Subject to the provisions of the Works Information regarding access, the <i>Employer</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in this contract. Access and use is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.</p>
Z1.19.2		33.1A
		<p>The <i>Contractor</i> acknowledges that the <i>Employer</i> does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.</p>
	Instructions to stop or	34
	not to start work	34.1
		<p>The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.</p>
	Take over	35
Z1.20		35.1
		<p>The <i>Employer</i> need not take over the <i>works</i> before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the <i>Employer</i> takes over the <i>works</i> not later than two weeks after Completion.</p>

- Z1.20.1
- 35.2 The *Employer* may use or permit Others to use any part of the *works* before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the *works* when he (or Others) begins to use it and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3, provided that the *Employer* is liable for any damage caused to the *works* by the *Employer* and/or Others permitted to use such part of the *works*.
- 35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

Acceleration 36

- 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.
- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- Z1.39.A.3
- 36.3 When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, then the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction.**
- 36.4 **Not used (as not an Option A clause).**

4 Testing and Defects

Tests and inspections 40

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

Testing and inspection before delivery 41

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

Searching for and notifying Defects 42

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

- Z1.21.1 42.2 Subject to sub-clause 46, until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects 43

- Z1.22 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- Z1.22.1 43.2 Subject to sub-clause 46, the *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.
- 43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.

Accepting Defects 44

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

Uncorrected Defects 45

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

Critical Defects 46

Z1.23

The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

5 Payment

Assessing the amount 50

Z1.24

- due** 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur
- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
 - at Completion of the whole of the *works*.

Z1.24.1

- 50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

- 50.2 The amount due is

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

- 50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.

- Z1.24.2 50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information in the form and in the times reflected in clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.
- Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Not used (as not an Option A clause).**
- 50.7 Not used (as not an Option A clause).**
- Z1.24.4 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such documents have been delivered.
- Z1.24.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.24.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.24.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor*. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.
- Y1.1.2 51.1A The date on which 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 after the date on which payment becomes due.

Y1.1.2A	51.1B	The <i>Project Manager's</i> certificate is the <i>Employer's</i> notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.
Y1.1.2B	51.1C	Not later than five days after receipt of the payment certificate the <i>Contractor</i> delivers to the <i>Employer</i> (copied to the <i>Project Manager</i>) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The <i>Contractor</i> issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
Y1.1.3	51.2	Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
Y1.1.3A	51.2A	If a certificate is not issued by the <i>Project Manager</i> in accordance with clause 51.1, the sum to be paid by the <i>Employer</i> is, subject to clause 51.2B, the sum stated as due in the <i>Contractor's</i> application in accordance with clause 50.1A.
Y1.1.4	51.2B	If either Party intends to pay less than the notified sum, he notifies the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Project Manager</i> .
Z1.25.1	51.3	If an amount due is corrected in a later certificate either <ul style="list-style-type: none"> • by the <i>Project Manager</i> in relation to a mistake or a compensation event or • following a decision of the <i>Adjudicator</i> or the courts, <p>interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.</p>
Z1.25.2	51.4	Interest is calculated on a daily basis at the <i>interest rate</i> and is simple interest.
	52	Defined Cost
	52.1	All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
	53	Not used (not an Option A clause)
The Activity Schedule	54	
	54.1	Information in the Activity Schedule is not Works Information or Site Information.
	54.2	If the <i>Contractor</i> changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the <i>Project Manager</i> for acceptance.
	54.3	A reason for not accepting a revision of the Activity Schedule is that <ul style="list-style-type: none"> • it does not comply with the Accepted Programme, • any changed Prices are not reasonably distributed between the activities or • the total of the Prices is changed
	55	Not used (not an Option A clause)

- Z1.26.1 56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
 - any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*
- then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.
- Z1.27.1 57.1 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the *Contractor* complies with the provisions of the Works Information regarding the Construction Industry Scheme.

6 Compensation events

Compensation events 60

Z1.28

Z1.28.1

60.1 The following are compensation events, but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event

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

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

(2) Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others (not being Statutory Undertakers)

- do not work within the times shown on the Accepted Programme, or
- do not work within the conditions stated in the Works Information

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report,]³
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A *weather measurement* is recorded

³To be inserted, if applicable.

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

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

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

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

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

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

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

(18) A breach of contract or act of prevention on the part of the *Employer*-(except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.

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

Z1.28.2 60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

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

Z1.28.3 60.3 Subject to clause 17, if there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

Notifying compensation 61

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

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

Z1.28A.1 61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which he expects to happen as a compensation event if

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

If the *Contractor* does not notify a compensation event within eight weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not. The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.

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

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,

- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

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

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

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

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

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

Z1.28A.2

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

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

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

**Quotations for
compensation events 62**

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

Z1.28B.1

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

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

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

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

Assessing compensation 63

Z1.29

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

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

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

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

Z1.29.1

- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the 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 principal cause of the delay; and
- the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

The *Project Manager* 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.

Z1.29.2

- 63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

Z1.29.3

- 63.5 If the *Contractor*:
- did not give an early warning of a compensation event which an experienced contractor could have given, or
 - did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,
- the event is assessed as if the *Contractor* had given early warning at the appropriate time.

Z1.29.4

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

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

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

- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information or
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.11 Not used (as not an Option A clause).**
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.**
- 63.13 Not used (as not an Option A clause).**
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.**

The *Project Manager's* 64

Z1.29A

Assessments 64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

Z1.29A.2

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within four weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

Z1.29A.3

64.5 The *Project Manager* may extend the time allowed for the following actions:

- notification of a decision and/or instruction (cl. 61.4);
- reply to a quotation (cl. 62.3); or
- assessment of a compensation event (cl. 64.3 and cl. 64.4)

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

**Implementing
compensation events 65**

65.1 A compensation event is implemented when

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

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

65.3 Not used (as not an Option A clause).

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

7 Title

The Employer's title to	70	
Z1.30		
Plant and Materials	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> .
Z1.30.1		
Z1.30.2	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. Subject to clause 70.1 the title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.30.3	70.3	If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.
Marking Equipment, Plant	71	
and Materials outside the Working Areas	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

	Employer's risks	80	
Z1.31		80.1	The following are <i>Employer's</i> risks. <ul style="list-style-type: none">• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none">• use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,• negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or• a fault of the <i>Employer</i> [or a fault in his design] [other than a fault in his design]⁴.• Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none">• war, civil war, rebellion, revolution, insurrection, military or usurped power,• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees and/or any Subcontractor's employees or• radioactive contamination.• Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to<ul style="list-style-type: none">• a Defect which existed at take over,• an event occurring before take over which was not itself an <i>Employer's</i> risk or• the activities of the <i>Contractor</i> on the Site after take over.• Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.• Additional <i>Employer's</i> risks stated in the Contract Data.
	The Contractor's risks	81	
		81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .
	Repairs	82	
		82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.
	Indemnity	83	
Z1.32		83.1	The <i>Contractor</i> is responsible for and indemnifies the <i>Employer</i> , his employees and agents and members of the TfL Group against all Losses in respect of events or matters which are at his risk including [subject to any applicable limitation of liability under Secondary Option X18] ⁵ : <ul style="list-style-type: none">• personal injury to or death of any person;• loss of or damage to property real or personal other than to the <i>works</i>; and

⁴ If Option X21 is not used delete "other than a fault in his design". If Secondary Option X21 is selected delete "or a fault in his design".

- any other Losses arising under his contracts with Others.

Without prejudice to the foregoing, the *Contractor* provides this indemnity against:

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the *works* or the project, and
- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the *Contractor* using all reasonable and practical means.

- Z1.32.2 83.2 The *Contractor's* liability to indemnify the *Employer*, his employees and agents and members of the TfL Group is reduced if events at the *Employer's* risk contributed to the Losses. The reduction is in proportion to the extent that events which were at the *Employer's* risk contributed, taking into account each Party's responsibilities under this contract. The *Contractor's* indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.
- Z1.32.3 83.3 Notwithstanding any other clause in this contract the *Contractor's* and its Subcontractors' liability for damage to existing structures belonging to the *Employer* which do not form part of the *works* and which arises during the carrying out of the *works* on the Site shall be limited to £25,000 per occurrence and the *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* and its Subcontractors for such Losses.

Remedies

- Z1.33 83A.1 The Parties acknowledge and agree that the payment or deduction of:
- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7 and/or low performance damages pursuant to Option X17; and
 - (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

Insurance cover 84

- Z1.34 84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.
- Z1.34.1 84.1
- Z1.34.2 84.2

Insurance Table

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

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

Employer

The full reinstatement value of the *works*

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site.

Public liability insurance

All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

Employer

Not less than £25,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is greater.

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site.

Employer's liability insurance

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

Contractor

Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

Contractor's Equipment loss insurance

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

Contractor

The replacement cost

Professional Indemnity Insurance

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

Contractor

Not less than £25,000,000 for each and every claim or as otherwise stated in the Contract Data

- Z1.34.3 84.3 In respect of the insurances provided by the *Contractor*:
- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
 - the *Contractor* bears the cost of all premiums which are deemed to be included in the Fee;
 - if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.
- Z1.34.4 84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.34.5 84.5 The *Contractor* procures that his Subcontractors (and sub-subcontractors of any tier) maintain
- employer's liability (and where appropriate) motor liability insurances as required by law; and
 - professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- Z1.34.6 84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.

Insurance policies 85

- Z1.35
Z1.35.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. Reasons for not accepting the certificates include:
- that they do not comply with this contract,
 - the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;
 - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.
- Z1.35.2 85.2 Not used.
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- Z1.35.3 85.4 Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- Z1.35.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

If the *Contractor* does 86

- Z1.36
not insure 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

Insurance by the 87

- Employer** 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.2 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.3 87.5 The *Contractor* shall comply, and shall ensure that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.4 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

9 Termination

Termination 90

Z1.37

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

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
Z1.37.1 The <i>Employer</i>	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, R18, R25A	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	[R27] ⁶	[P1,P2 and P4]	[A5]
The <i>Contractor</i>	R1–R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

Z1.37.2

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

Reasons for termination 91

⁶ Only used if additional termination events are to be stated in the Contract Data. If not then delete the wording in square brackets

Z1.38
Z1.38.1

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

- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
 - Not provided a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).

Z1.38.2

- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
 - Substantially broken a health or safety regulation or requirement of this contract (R15).

- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).

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

- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
 - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
 - either Party may terminate if the instruction was due to any other reason (R20).

Z1.38.3

- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or

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

and which

- neither Party could prevent and
- an experienced and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

- Z1.38.4 91.8 The *Employer* may terminate the *Contractor's* appointment in the event of:
- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
 - a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.12 (R23),
 - any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
 - the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
 - A Change of Control (R25A).

- Z1.38.5 91.9 In the event that either:
- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union; or
 - this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016

then:

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

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

- Z1.38.6 91.10 [The *Employer* may terminate the *Contractor's* appointment if an event occurs which is an *additional termination event* (R27).]⁷

Procedures on 92

- Z1.39 **termination** 92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which he has title (P1).
- Z1.39.1 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.

⁷ Only used if *additional termination events* are stated in the Contract Data.

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

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

P4 The *Contractor* leaves the Site and removes the Equipment from the Working Areas unless otherwise instructed by the *Project Manager*.

Payment on termination 93

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials
 - within the Working Areas or
 - to which the *Employer* has title and of which the *Contractor* has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
 - any amounts retained by the *Employer* and
 - a deduction of any un-repaid balance of an advanced payment.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing the Equipment.
- A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works*.
- A4 The *direct fee percentage* applied to
- for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or
 - for Options E and F, any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.
- [A5 Any amounts assessed as due for Stage 1 Works less a deduction of any un-repaid balance of an advanced payment.]⁸
- 93.3 The amount due on termination is assessed without taking grouping of activities into account.**

Z1.39.2

⁸Insert, if applicable.

2. Additional Conditions of Contract

Contractor's Warranties

Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:

- PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*,
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request duly executes and delivers to the *Employer* deeds of warranty in substantially the form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in substantially the form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of

- any member of the TfL Group,
- the PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in the whole or any part of the *works*;
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer.

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

Z2.3 Not used

Warranties and Undertakings

Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

Accounts and Records

Z2.5

Z2.5.1 In this section:

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-subcontractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*;
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

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

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

- Z2.5.4 The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:
- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
 - (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
 - (c) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
 - (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
 - (e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance

Z2.6

- Z2.6.1 The *Contractor* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.
- Z2.6.2 Without prejudice to the *Contractor's* obligations under clause Z2.6.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

Intellectual Property Rights

Z2.7

Z2.7.1 **Vesting of IPR**

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

Z2.7.2 Background IPR

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

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

In this section, "**Infrastructure Manager**" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

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

Z2.7.2B IPR Claims

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

Z2.7.3 Corporate IPR

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

Assignment

Z2.8

Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).

Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

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

Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.

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

Cost saving proposals

- Z2.10
- Z2.10.1 The *Contractor* may submit a proposal to change the Works Information provided by the *Employer* ("**Cost Saving Proposal**") to the *Project Manager* for acceptance. Such proposal is submitted in accordance with the Works Information.
- Z2.10.2 The *Project Manager* may reject a Cost Saving Proposal for any reason. If he accepts a Cost Saving Proposal, the *Project Manager* assesses the effect of the Cost Saving Proposal on forecast Defined Cost and the resulting Fee and the Prices are reduced by 50% of the amount of the assessed saving. The costs of preparing and submitting a Cost Saving Proposal (including the reasonable costs of exploring and establishing the merits and feasibility of the same) are borne by the *Contractor*.

Dispute Resolution Procedure

- Z2.11

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

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

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

TfL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

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

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

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

London Living Wage

Z2.15

Z2.15.1 In this clause:

"GLA Act" means the Greater London Authority Act 1999;

"Greater London" means that term as it is used in the GLA Act;

"London Living Wage" means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*;

- “Mayor”** means the person from time to time holding the office of Mayor of London as established by the GLA Act;
- “RPIX”** means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree;

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

Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:

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

Data Transparency

Z2.16

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

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

Z2.16.3 In this clause

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

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

Data Protection

Z2.17

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

Z2.17.2 The *Contractor*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
- provides the *Employer* and *Project Manager* with such information as they may reasonably require to satisfy themselves of compliance by the *Contractor* with the requirements of this clause Z2.11;
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest

Z2.18

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

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

Freedom of Information

Z2.19

Z2.19.1 The *Contractor* acknowledges that the *Employer*:

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

Z2.19.2 Without prejudice to the generality of Clause Z2.19.1, the *Contractor* agrees and procures that his Subcontractors will agree to:

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the works or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
- in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.

- Z2.19.3 The *Employer* (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.
- Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor*.

Criminal Record Declarations

- Z2.20 Z2.20.1 In this section:
- “**Relevant Individual**” means any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.
- “**Relevant Conviction**” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.
- Z2.20.2 The *Contractor* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* shall procure that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.3 The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.4 The *Employer* may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.5 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.2 and/or Z2.20.3, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.2) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.2.
- Z2.20.6 A persistent breach of Clause Z2.20.2 and/or Z2.20.3 by the *Contractor* shall constitute a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.

- Z2.20.8 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remains in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

Best Value

Z2.21

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

Prohibited Acts

Z2.22

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

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

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

Option X2: Changes in the law

	Changes in the law	X2	
Z1.40.1		X2.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the <i>works</i> and exercising the foresight appropriate to such a contractor ought reasonably to have anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X3: Multiple currencies

Multiple currencies X3

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

Option X4: Parent company guarantee

Parent company Guarantee X4

Z1.41.1		X4.1	If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the parent company of the <i>Contractor's</i> performance in the form attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the <i>Employer</i> within -one week of the Contract Date.
Z1.41.2		X4.2	If the <i>Contractor</i> is an incorporated joint venture, the <i>parent company</i> of each shareholder in the <i>Contractor</i> gives to the <i>Employer</i> a guarantee of the <i>Contractor's</i> performance in the form set out in Schedule 3.
Z1.41.3		X4.3	If the <i>Contractor</i> comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the <i>Employer</i> a guarantee by its <i>parent company</i> of such company's performance in the form set out in Schedule 3.
Z1.41.4		X4.4	If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion in the form set out in Schedule 12 on the guarantor's execution of any such guarantee.
Z1.41.5		X4.5	Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

Option X5: Sectional Completion

Sectional Completion X5

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

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

Option X6: Bonus for early Completion

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

Option X7: Delay damages

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

Option X12: Partnering

- Identified and defined terms** X12
- X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
- (2) An Own Contract is a contract between two Partners which includes this Option.
- (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.
- (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.
- (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.
- Actions** X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
- (2) Each Partner nominates a representative to act for it in dealings with other Partners.
- (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

- Z1.42.1 (4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group and has the casting vote unless stated otherwise in the Partnering Information.
- (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.
- (6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.
- Working together** X12.3 (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.
- Z1.42.2 (2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it, subject to any obligations of confidentiality owed by that Partner under his Own Contract.
- (3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.
- (4) The Partners use common information systems as set out in the Partnering Information.
- (5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.
- (6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.
- (7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Contractor* changes his programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.
- (8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.
- (9) A Partner notifies the Core Group before subcontracting any work.
- Incentives** X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.
- (2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

Option X13: Performance bond

Performance bond	X13	
Z1.43.1	X13.1	<p>[Where a performance bond is required regardless of the <i>Contractor's</i> D&B rating, insert:</p> <p>The <i>Contractor</i> gives the <i>Employer</i> a performance bond, provided by a bank or insurer which the <i>Project Manager</i> has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the <i>Contractor</i> on the Contract Date, it is given to the <i>Employer</i> within 1 week of the Contract Date.]</p> <p>[Where a performance bond is required if the <i>Contractor's</i> credit rating falls below the prescribed level of risk, insert:</p> <p>If the Dun & Bradstreet "Risk Indicator" score for [either]/[the]⁹ <i>parent company</i> falls to 3 (slightly greater than average risk) or 4 (significant level of risk), when instructed to do so by the <i>Project Manager</i>, the <i>Contractor</i> gives the <i>Employer</i> a performance bond, provided by a bank or insurer which the <i>Project Manager</i> has accepted, for the amount stated in the Contract Data and in the form set out Schedule 2.¹⁰ A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is given to the <i>Employer</i> within 1 week of the instruction of the <i>Project Manager</i> to do so, and such instruction is a compensation event]</p>

Option X14: Advanced payment to the Contractor

Advanced payment	X14	
	X14.1	The <i>Employer</i> makes an advanced payment to the <i>Contractor</i> of the amount stated in the Contract Data.
	X14.2	<p>The advanced payment is made either within four weeks of the Contract Date or, if an advanced payment bond is required, within four weeks of the later of</p> <ul style="list-style-type: none">• the Contract Date and• the date when the <i>Employer</i> receives the advanced payment bond. <p>The advanced payment bond is issued by a bank or insurer which the <i>Project Manager</i> has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the <i>Contractor</i> has not repaid and is in the form set out in the Works Information. Delay in making the advanced payment is a compensation event.</p>
	X14.3	The advanced payment is repaid to the <i>Employer</i> by the <i>Contractor</i> in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

⁹ In the event the Contractor is a joint venture, select "either" (and ensure the Contract Data entry records the parent company of both parent companies). Note that although X13.1 refers to the Dunn & Bradstreet ratings, consideration should be given on a project-by-project basis to whether Standard & Poor's or Moody's ratings are more suitable.

¹⁰ Where the Contractor is a joint venture, Option X13 may need to be amended to require more than one performance bond to be provided.

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

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

Option X16: Retention

- Retention X16**
- Z1.45.1 X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of
- Completion of the whole of the *works* and
 - the date on which the *Employer* takes over the whole of the *works*
- the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.
- X16.2 The amount retained is halved
- in the assessment made at Completion of the whole of the *works* or
 - in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.
- The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.
- Z1.45.1 X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.
- Z1.45.2 X16.4 After the Price for Work Done to Date has reached the *retention free amount*, as an alternative to a cash retention, the *Contractor* may provide a retention bond in the form attached at Schedule 13 from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted. Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.

Option X17: Low performance damages

Low performance X17

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

Option X18: Limitation of liability

- Limitation of liability** X18
- Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages pursuant to Z2.12, the *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.
- Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
 - liquidated damages for disruption (Z2.12),
 - delay damages if Option X7 applies,
 - low performance damages if Option X17 applies and
 - the matters listed in X18.6.
- Z1.46.4 X18.5 Not used.
- Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:
- death or bodily injury;
 - Losses caused by fraudulent acts or acts of a criminal nature;
 - Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
 - the *Contractor's* liability referred to in X18.3 (if applicable); or
 - any other Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under clause 83.

Option X20: Key Performance Indicators (not used with Option X12)¹¹

- Incentives** X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with this contract.
- Z1.47.1 X20.2 From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator. The *Contractor* acknowledges that the *Employer* may provide copies of such reports to

¹¹ If Key Performance Indicators are not intended to have any financial consequences then delete X20.4 and, in X20.5, the words from "but" until the end of the clause.

members of the TfL Group.

- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Project Manager* his proposals for improving performance.
- X20.4 [The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.]
- X20.5 The *Employer* may add a Key Performance Indicator and associated payment to the Incentive Schedule [but may not delete or reduce a payment stated in the Incentive Schedule].

Single Point Design X21

Responsibility

Z1.48

- X21.1 In this Option, "**Employer's Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information.
- X21.2 The *Contractor* is deemed to have scrutinized, prior to the Contract Date, the *Employer's* Design Information. The *Contractor* is responsible for the design of the *works* and for the accuracy of such *Employer's* Design Information except as stated in clause X21.3 below.
- X21.3 The *Employer* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's* Design Information as originally included in the contract and is not deemed to have given any representation of accuracy or completeness of any data or information, except as stated below.
- The *Employer* is responsible for the correctness of the following elements of the *Employer's* Design Information:
- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
 - (b) definitions of intended purposes of the *works* or any part thereof, and
 - (c) criteria for the testing and performance of the completed *works*.
- X21.4 Where there is a mistake, inaccuracy or discrepancy in or omission from the *Employer's* Design Information, the *Contractor* informs the *Project Manager* in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the *Project Manager* may consent to the *Contractor's* proposed amendment or comment in writing on such an amendment provided that the *Project Manager* does not unreasonably withhold his consent to a proposed amendment. The *Contractor* takes account of such comments and resubmits his proposed amendment to the *Project Manager*. Such process is repeated until the *Project Manager* accepts the *Contractor's* proposed amendment.
- X21.5 The following shall not give rise to a compensation event:
- anything which is the *Contractor's* responsibility as set out in this Option X21;
 - any comment, failure to comment or delay in commenting by the *Project Manager* in connection with this Option X21 (which shall also not be treated as an act of prevention or breach of contract by the *Employer*); or
 - any discrepancy, mistake, inaccuracy in, or omission from, the *Contractor's* design and/or the *Employer's* Design Information.

Novation of Associated X22 Contracts

Z1.49

X22.1 In this Option:

“**Associated Works or Services**” means any preliminary or ancillary works or services which the *Employer* wishes to be carried out with a view to the same being integrated with this contract;

“**Associated Contract**” means a contract for the performance of Associated Works or Services; and

“**Associated Contractor**” means a contractor who has entered into an Associated Contract.

X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 10 hereto within 14 days of request from the *Employer* to do so.

X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 5 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2.

X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer*. Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold his consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).

X22.5 The *Contractor* warrants to the *Employer* that he will promptly pay in accordance with the terms of the Associated Contract any monies due and owing to the Associated Contractor in respect of the works or services novated to the *Contractor*.

Key Person Succession Plan X23

Z1.50

X23.1 If a key person succession plan is stated in the Works Information to be applicable to the project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.

X23.2 The *Contractor* submits his key person succession plan to the *Project Manager* for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.

X24 Not used with Option A

Escrow Agreement X25

X25.1 In this Secondary Option X25:

"Escrow" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means the NCC Group or such other successor, replacement or substitute agent as may be approved by the *Employer* from time to time;

"Escrow Agreement" means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 11 provided that the Release Events referred to in clause 6 thereof shall be amended to include:

- a failure by the *Contractor* to maintain the Escrow Agreement; and
- termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement or the contract howsoever arising including failure by the *Contractor* to pay any of the Escrow Agent's fees.

"Software" means any computer programs or software produced or supplied by the *Contractor* from time to time as part of or in connection with the *works* and all user documentation in respect of such programs or software and any modification which is required by the *Employer* before the *defects date*;

"Source Code Materials" means the source code of the Software and all technical information and documentation required to enable the *Contractor* to modify and operate the Software;

"Release Event" means an event the occurrence of which shall entitle the *Employer* to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

X25.2 The *Contractor* shall no later than the Contract Date procure that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and shall thereafter maintain the agreement for a minimum period of [12 years¹²] from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) shall be borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement 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 same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

(a) the Source Code Materials shall constitute the "Material" referred to in the Escrow Agreement;

(b) the licence provided pursuant to clause Z2.7.2 shall constitute the "Licence Agreement" referred to in the Escrow Agreement; and

(c) the Software shall constitute the "Package" referred to in the Escrow Agreement.

X25.3 The *Contractor* procures that any Subcontractor or supplier providing software for incorporation or operation of the *works* enters into software escrow agreements on the same terms as set out in the Escrow Agreement.

¹²Insert required period

OPTION Y

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

Definitions	Y(UK)2
Note: incorporated in Schedule 1 and 12.6.	Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
Suspension of performance	Y2.4 If the <i>Contractor</i> exercises his right under the Act to suspend performance, it is a compensation event.
Payment	Y1
Z1.51.1	Y1.1 NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.

Option Z: Additional conditions of contract

Additional conditions of contract	The <i>additional conditions of contract</i> stated in the Contract Data are incorporated into these consolidated conditions of contract.
Z1.52.1	

SHORTER SCHEDULE OF COST COMPONENTS

Z1.53.1

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

People 1 The following components of the cost of

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

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

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

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

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

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

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

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

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

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

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

Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office.
	45	Specialist services.
	46	Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7	The following are deducted from cost <ul style="list-style-type: none"> • costs against which this contract required the <i>Contractor</i> to insure • other costs paid to the <i>Contractor</i> by insurers and • the cost of excess payments or deductibles.

SUPPLEMENTARY NOTES TO SHORTER SCHEDULE OF COST COMPONENTS

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

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

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

- bonus or incentive payment which is not linked to Providing the Works
- any bonus or incentive payment which exceeds 10% of the base salary cost.

Payments made to people for overtime:

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

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

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

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

Any payments made to people in respect of sickness or holidays will only be considered Defined Cost if the people have worked continually within the Working Areas in excess of a three month time period. Payments to people in respect of absence arising from sickness or holidays lasting for a continuous period in excess of 3 weeks are not included in Defined Cost.

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

Only payments made to people representing a genuine pro-rata of time spent on the project against total time spent within the employ of the company will be considered Defined Cost. An example of what is considered an acceptable severance payment cost for a person employed on the project for one year but employed by the *Contractor* for ten years would be 10% of total severance payment cost.

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for people overheads stated in the Contract Data to people item 11. The charge includes provision and use of equipment, supplies and services for item 41.

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

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

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

Where the *Contractor* is unable to demonstrate that costs have been reasonably and properly incurred by either himself or his

Subcontractors such costs shall not be allocated to Defined Cost.

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

2 - Reasonably Incurred Costs

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

- their expenditure was an unavoidable consequence of Providing the Works;
- the *Contractor* can demonstrate that they represented current competitive market rates at the Contract Date;

- they are not included within the *Contractor's* Fee or overhead percentages;
- they have been captured within systems for the collection of data either accepted by the *Project Manager* or stated in the Works Information.

3 - Cost Verification

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

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

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

MAIN OPTION C
CONTRACT DATA
PART 1

- The Works Information is in []
- The Site Information is in []
- The *boundaries of the site* are []
- The *language of this contract* is []
- The *law of the contract* is the law of England and Wales²
- The *period for reply* is [] weeks
- The following matters will be included in the Risk Register:
[]

3. Time

- The *starting date* is: []
- The *access dates* are:

Part of the Site	Date
1. []	[]
2. []	[]
3. []	[]
- The *Contractor* submits revised programmes at intervals no longer than [] weeks.

4. Testing and Defects

- The *defects date* is [] weeks after Completion of the whole of the *works*.
- The *defect correction period* is [] weeks except that

² The *law of the contract* is always to be the law of England and Wales. This entry must not be changed.

- the *defect correction period* for [] is [] weeks
- the *defect correction period* for [] is [] weeks

5. Payment •

The *currency of this contract* is []

- The *assessment interval* is [] weeks (not more than five)
- The *interest rate* is [] % per annum (not less than two) above the [] rate of the [] bank.

6. Compensation •
events

The place where weather is to be recorded is []

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

- The *weather measurements* are supplied by []

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

Where no recorded data are available

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

8. Risks and insurance

Insurances taken out by the *Employer*

- **Construction All Risks Insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Public liability insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
-

Insurances taken out by the *Contractor*

- ***Employer's liability insurance*** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £10million per occurrence.
- ***Contractor's equipment loss insurance*** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- ***Professional indemnity insurance*** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £25million for each and every claim.

Optional statements

If the *Employer* has decided the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is []

If the *Employer* is not willing to take over the works before the Completion Date

- The *Employer* is not willing to take over the works before the Completion Date.³

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

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

If the *Employer* has identified work which is to meet a stated condition by a key date

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

<i>condition</i> to be met	<i>key date</i>
1. []	[]
2. []	[]
3. []	[]

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract.⁴

If there are additional *Employer's* risks

³ Delete this entry if the *Employer* is willing to take over the works before the Completion Date

⁴ This entry must not be changed.

- These are the additional *Employer's* risks

1. []

2. []

3. []

Cover/deductibles for insurances provided by the *Employer*

⁵

1 **Construction All Risks Insurance** (as stated in the Insurance Table)

Cover/indemnity is: the full reinstatement value of the *works*

The excess:

- [£250,000] each and every occurrence in respect of
 - (i) loss or damage caused to the permanent *works* by defects in design plan specification materials or workmanship .
 - (ii) Tunnelling Works

- [£100,000] each and every occurrence in respect of Underground Civil Works other than Tunnelling Works
- [£50,000] each and every occurrence in respect of storm tempest flood water damage frost subsidence & collapse
- [£25,000] each and every occurrence in respect of every other loss

or such other amount specified by the insurer

-

2 **Public liability insurance** (as stated in the Insurance Table)

Cover/indemnity is not less than £25million per occurrence.

The deductibles are: [£50,000 per occurrence] or such other amount specified by the insurer.

⁵ The deductibles must not be changed.

If there are *additional termination events*:

- These are the *additional termination events*

[1. If a Stage 2 Works Non-Commencement Notice is issued by the *Project Manager* in accordance with clause 20A.4.]⁶

If the *Contractor's liability for liquidated damages under Z2.12 (Schedule 9)* is capped:

The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under Z2.12 (Schedule 9) is [limited to [] / unlimited]

- The *Contractor's share percentages* and the *share ranges* are

<i>share range percentage</i>	<i>Contractor's share</i>
less than []%	[]%
from []% to []%	[]%
from []% to []%	[]%
greater than []%	[]%

- The *share termination threshold* is []
- The *Contractor* prepares forecasts of *Defined Cost* for the *works* at intervals no longer than [] weeks.
- The *exchange rates* are those published in

⁶ Insert, if applicable.

[] on [] (date)

If Option X1 is used

- The proportions used to calculate the Price Adjustment Factor are:

0.[] linked to the index for []

0.[] linked to the index for []

0.[] linked to the index for []

0.[] linked to the index for []

0.[] Non-adjustable element []

Total 1.00

- The *base date* for indices is []
- The indices are those prepared by []

If Option X5 is used

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

section	description	completion date
1	[]	[]
2	[]	[]

If Options X5 and X6 are used together

- The bonus for each *section* of the *works* is

section	description	amount per day
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Options X5 and X7 are used together

- Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Option X6 is used (but not if Option X5 is also used)

- The bonus for the whole of the *works* is [] per day

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

- Delay damages for Completion of the whole of the *works* are [] per day

If Option X12 is used

- The *Client* is

Name []

Address []

- The *Client's objective* is []
- The Partnering information is in []

If Option X13 is used

- The amount of the performance bond is []

If Option X14 is used

- The amount of the advanced payment is []
- The *Contractor* repays the instalments in assessments starting not less than [] weeks after the Contract Date.
- The instalments are [] (either an amount or a percentage of the payment otherwise due)
- An advance payment bond [is/is not] required

If Option X16 is used

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

If Option X17 is used

- The amounts for low performance damages are

amount	performance level
[]	for []
[]	for []

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to []
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is [limited to [] / unlimited]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is [limited to [] / unlimited]

- 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[] / unlimited]

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

- The *incentive schedule* for Key Performance Indicators is in []
- A report of performance against each Key Performance Indicator is provided at intervals of [] months

If Option X24 is used

- The *fee cap* is []

Option Z

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section [] of the contract documents.

MAIN OPTION C
CONTRACT DATA
PART 2

CONTRACT DATA

Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is
Name: []
Address: []
- The *direct fee percentage* is []
The *subcontracted fee percentage* is []
- The *working areas*¹ are the Site and []
- The *Contractor's Representative* is
Name: []
Address: []
Telephone Number []
- The key people are
 1. Name []
Job []
handover period []
Responsibilities []
Qualifications []
Experience []
 2. Name []

¹ The *working areas* should not include the *contractor's* head or satellite offices

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

3. Name []

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

- The following matters will be included in the Risk Register
[]

Optional

Statements

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

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

If a programme is to be identified in the Contract Data

- The Programme identified in the Contract Data is
[]

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

- The completion date for the whole of the works is

[]

- The activity schedule is: []

- The tendered total of the Prices is []

If Option X13 is used and states that the need for a performance bond is dependant on a Dun & Bradstreet credit rating

- The parent company² of the Contractor is

[]

Data for Schedule of Cost Components

- The listed items of Equipment purchased to work on this contract, with an on cost charge, are

Equipment	time-related charge	per time period
[]	[]	per []
[]	[]	per []
[]	[]	per []
[]	[]	per []

- The rates for special Equipment are

Equipment	size or capacity	rate
[]	[]	[]

² If the Contractor is a joint venture, insert the parent company of each jv member

[] [] []

[] [] []

[] [] []

- The percentage for Working Areas overheads is [] %
- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee hourly rate

[] []

[] []

[] []

[] []

- The percentage for manufacture and fabrication overheads is [] %

Data for both schedules of cost components

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

category of employee hourly rate

[] []

[] []

[] []

[] []

- The percentage for design overheads is [] %

The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside the Working Areas are

[]

[]

[]

[]

Data for the Shorter Schedule of Costs Components

- The percentage for people overheads is [] %
- The published list of Equipment is the last edition of the list published by []
- The percentage for adjustment for Equipment in the published list is [] % (state plus or minus)
- The rates for other Equipment are

	Equipment	size or capacity	rate
1.	[]	[]	[]
2.	[]	[]	[]

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION C

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006 and 2011 amendments to the NEC3 suite of contracts)

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CORE CLAUSES

1 General

	Actions	10	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	Identified and defined Terms	11	
Z1.1		11.1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none">• done all the work which the Works Information states he is to do by the Completion Date• done all the work necessary for the <i>works</i> to be Available and• corrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work. If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.
Z1.1.1			
Z1.1.2			(4) The Contract Date is the date of this contract.
Z1.1.3			(5) A Defect is <ul style="list-style-type: none">• a part of the <i>works</i> which is not in accordance with the Works Information or the requirements of this contract, or• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.
Z1.1.4			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> .
Z1.1.5			(8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.5A			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the Adjudicator, the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1.1.6			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns) and the <i>Contractor</i> . (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires.

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

(23) Defined Cost is

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

and

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

less Disallowed Cost.

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

- is not justified by the *Contractor's* accounts and records,

Z1.41.1

- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - comply with the requirements of the Works Information or
 - give an early warning which this contract required him to give
- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2).

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with Standards or a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested
- costs incurred by the *Contractor* through providing a replacement person as described in clauses 24.1A and 24.1B,
- preparation for and conduct of an adjudication or proceedings of the courts,
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,
- strikes, riots and civil commotion confined to the *Contractor's* employees and/or any Subcontractor's employees, and
- profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor, [and
- profit payable between each party comprising the *Contractor*.]¹

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

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

Z1.2	11.3	Additional defined terms are included in Schedule 1.
Interpretation and the law	12	
Z1.3		
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
Z1.3.1	12.1A	References to "this contract" mean the contract between the <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.
Z1.3.1A	12.1B	In this contract, unless the context otherwise requires, references to: <ul style="list-style-type: none"> (a) "including" means "including without limitation", and (b) "fault" of the <i>Employer</i> or the <i>Contractor</i> include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this

¹ Delete wording in square brackets if the *Contractor* is a joint venture

contract of the *Employer* or the *Contractor* (as the case may be).

- Z1.3.2 12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.3 12.3A Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.4 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.5 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.6 12.7 References in this contract to “applicable law” are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- In performing his obligations under this contract, the *Contractor* complies with the *law of the contract*, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.7 12.8 (a) Subject to sub-clause 12.8(b), 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 who is not a Party to this contract.
- (b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the *Contractor* where such provision confers any benefit or purports to confer a benefit on such member.
- Z1.3.8 12.9 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.
- Z1.3.9 12.10 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

Contract Administration Management System 12A

- Z1.3A 12A.1 Notwithstanding clauses 13.1 – 13.2:

- the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information (“CAMS”);
- all communications provided for in the contract are to be made exclusively through the CAMS (“CAMS Communications”) except for any categories of communications which the *Project Manager* notifies the *Contractor* from time to time are not to be made exclusively through CAMS; and
- unless the *Project Manager* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the parties following any procedure necessary to give effect to the CAMS.

Where a CAMS Communication refers to an attachment that cannot be included with that communication, the attachment is sent via a method complying with clause 13.1.

Communications 13

Z1.4

Z1.4.1

- 13.1 If and to the extent that clause 12A is not applicable to the contract, each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The Project Manager and 14

Z1.5

the Supervisor

Z1.5.1

- 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work changes the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.

- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.
- Y2.1/Z1.5.2 14.5 The *Project Manager* is for relevant purposes the “specified person” as defined in section 110A(6) of the Act.

The Contractor’s Representative

- Z1.5A.1 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor’s Representative*. The *Contractor’s Representative* acts on behalf of the *Contractor* under this contract. The *Contractor’s Representative* may, after notifying the *Employer* and the *Project Manager*, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor’s Representative* in this contract includes an action by his delegate. The *Contractor’s Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor’s Representative* in accordance that clause.

Adding to the Working 15

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

Early warning 16

- Z1.6
Z1.6.1 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - delay meeting a Key Date,
 - impair the performance of the *works* in use
 - change the Accepted Programme,
 - adversely affect the work of Others,
 - constitute a Defect,
 - adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
 - result in a breach of this contract or any subcontract,
 - lead to the *Contractor* terminating or suspending any subcontract,
 - cause a change to the Subcontractor Procurement Plan, or
 - cause a breach of any applicable law.

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

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

- 16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

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

Ambiguities and 17

Z1.7

Inconsistencies

17.1 The *Contractor* examines the Works Information and all other documents forming this contract and warrants to the *Employer* that he is not aware, as at the Contract Date, of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the works for the tendered Prices in accordance with the *conditions of contract*.

Z1.7.1

Z1.7.2

17.2 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Such instruction is not a compensation event where the *Project Manager* assesses:

- that the ambiguity or inconsistency in question is one for which the *Contractor* is responsible under this contract; or
- that a prudent and experienced contractor familiar with works similar to the works would have identified such an ambiguity or inconsistency at the Contract Date from the information then available to him.

**Illegal and impossible 18
requirements**

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

Prevention 19

Z1.8

Z1.8.1

19.1 If an event occurs which

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

and which is not

- an event of insolvency identified in clause 91.1 of the *Contractor* or any Subcontractor or supplier;
- a shortage of labour, Plant, Materials or Equipment; or
- an event attributable to any fault of the *Contractor* or any of his employees or agents or any Subcontractor or supplier or any of their employees or agents

and which

- neither Party could prevent and
- a prudent and experienced contractor familiar with works similar to the works and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- the *Contractor* can demonstrate that he did not allow for it in his tender;

then this is a "Prevention Event" and the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works 20

- Z1.9
Z1.9.1
- 20.1 The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information.
- 20.2 Not used (as not an Option C clause)
- 20.3 The Contractor advises the Project Manager on the practical implications of the design of the works and on subcontracting arrangements.**
- Z1.41.1A
- 20.4 The Contractor prepares forecasts of the total Defined Cost for the whole of the works in consultation with the Project Manager and submits them to the Project Manager. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until Completion of the whole of the works (or, if no interval is stated in the Contract Data, at 4 weekly intervals). Each forecast is in a format prescribed in the Works Information and contains an explanation of the changes made since the previous forecast is submitted with each forecast.**
- 20.5 Not used (as not an Option C clause)
- Z1.9.2
- 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.

[Instruction of Stage 2 Works 20A

- 20A.1 The *Employer* may instruct the *Project Manager* to issue a notice (a "Stage 2 Works Commencement Notice") to the *Contractor* instructing him to proceed with the Stage 2 Works. The *Contractor* does not proceed with the Stage 2 Works (or any part thereof) until a Stage 2 Works Commencement Notice has been issued by the *Project Manager*.
- 20A.2 The *Employer's* decision to instruct the *Project Manager* to issue a Stage 2 Works Commencement Notice is entirely at the *Employer's* discretion. The *Employer* makes no representation or warranty and does not provide any commitment of any kind that a Stage 2 Works Commencement Notice will be issued by the *Employer*.
- 20A.3 If the *Employer* decides to issue a Stage 2 Works Non-Commencement Notice pursuant to Clause 20A.4, the *Employer* shall not be responsible or liable to the *Contractor* or any other party for any and all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and taxes (including (but not limited to) loss of profit, loss of use, loss of production, loss of business opportunity, loss of contracts, and any indirect or consequential losses or damages), whatsoever suffered or incurred by the *Contractor* in relation to such instruction.
- 20A.4 The *Employer* may issue a notice (a "Stage 2 Works Non-Commencement Notice") to the *Contractor* instructing him not to proceed with the Stage 2 Works. If a Stage 2 Works Non-Commencement Notice is issued in accordance with this clause 20A.4, this contract will terminate in accordance with clause 90.2 for R27.
- 20A.5 If a Stage 2 Works Commencement Notice is issued by the *Project Manager*, the *Contractor* remains responsible for Completion of the Stage 1 Works and for the avoidance of doubt, there is no deemed Completion of the Stage 1 Works by virtue of the issue of the Stage 2 Works Commencement Notice².]

² Insert, if applicable.

The Contractor's design 21

- Z1.10
Z1.10.1 21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design³.
- Z1.10.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. Reasons for not accepting the *Contractor's* design is that it does not comply with either the Works Information, this contract or the applicable law or that
- it is such that it will not allow the *works* to be constructed,
 - it is such that if constructed the *works* will not be capable of being used for their intended purpose.
- The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.
- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the Contractor's 22

- Z1.11
Z1.11.1 **Design** 22.1 The *Employer* may use and copy the *Contractor's* design for any purpose specified in clause Z2.7.

Design of Equipment 23

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

People 24

- Z1.12
Z1.12.1 24.1 Subject to the provisions of Option X23 (if applicable), the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- Z1.12.2 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:
- ceases to be employed to do the job stated in the Contract Data; and/or
 - (where Option X23 applies), the *Contractor* fails to comply with an accepted key person succession plan,
- then, subject to clause 24.1B, the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* agrees to reduce or waive this requirement.
- Z1.12.3 24.1B If the key person who ceases to be employed has not remained available for the duration of the *handover period* and/or has failed to properly instruct his replacement so as to avoid any repeated or sub-standard work being performed by the replacement key person (either during or after the *handover period*) and/or failed to comply with the handover requirements of the key person succession plan

³ Where Option X21 (Single Point Design Responsibility) is selected delete the text of clause 21.1 and replace with "The *Contractor* is responsible for the design of all of the *works*".

(if applicable), then the amount treated as Disallowed Cost for the purposes of clause 24.1A is multiplied (subject to the *Project Manager's* discretion to reduce or waive the increase) by a factor of 2. The *Project Manager's* assessment of the amount of Disallowed Cost pursuant to clauses 24.1A and 24.1B is without prejudice to any other rights and remedies the *Employer* may have arising from the replacement of a key person.

Z1.12.4 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

Working with the 25

Z1.13 **Employer and Others** 25.1 The *Contractor* co-operates with the *Project Manager* and Others in obtaining and providing information which they need in connection with their work and the *works*. He co-operates with Others, co-ordinates his activities with them and shares the Working Areas with them as stated in the Works Information.

Z1.13.1 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

Z1.13.2 25.3 If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either

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

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost as soon as practicable after the date when the Condition for the Key Date is met. The *Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

Z1.13.3 25.4 Unless provided for in the Works Information or authorised by written instruction by the *Project Manager*, the *Contractor* Provides the Works and corrects Defects in such a way as not to cause delay or disruption to the *Employer* and/or Others.

Z1.13.4 25.5 In the event that the *works* cause delay or disruption to the *Employer* and/or Others, the *Contractor* takes all reasonable steps to mitigate and minimise such delay or disruption.

Subcontracting 26

Z1.14 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

Z1.14.1 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. Reasons for not accepting the Subcontractor include:

- that his appointment will not allow the *Contractor* to Provide the Works,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the proposed Subcontractor does not have an acceptable health and safety track-record on other projects.

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

Z1.14.2 26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. Reasons for not accepting them include:

- they will not allow the *Contractor* to Provide the Works,

- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation-
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract;
- the proposed subcontract works represent too large a proportion of the total *works*,
- the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Works Information,
- the proposed subcontract does not oblige the Subcontractor to provide a Form of Warranty in favour of the *Employer* or other stated beneficiaries within 21 days of their appointment on the terms set out in Schedule 5 or 6 (as appropriate).

26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if

- an NEC contract is proposed and
- the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.

Other responsibilities 27

Z1.15

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

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

Z1.15.1

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

3 Time

	Starting, Completion and	30	
Z1.16	Key Dates	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.16.1		30.1A	The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The <i>Supervisor</i> may attend the inspection.
Z1.16.2		30.2	The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
		30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
	The programme	31	
Z1.17		31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.17.1		31.2	The <i>Contractor</i> shows on each programme which he submits for acceptance <ul style="list-style-type: none">• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,• planned Completion,• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,• provisions for<ul style="list-style-type: none">• float,• time risk allowances,• environmental and health and safety requirements and• the procedures set out in this contract,• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none">• access to a part of the Site if later than its <i>access date</i>,• acceptances,• Plant and Materials and other things to be provided by the <i>Employer</i> and• information from Others,• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use,• for each operation, a cost-loaded programme showing the forecast resources required for that operation,• its access requirements in accordance with the Works Information, and

- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.
- 31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Works Information.
- 31.4 **The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.**

Revising the programme 32

Z1.18

Z1.18.1

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

Access to and use of 33

Z1.19

the Site

Z1.19.1

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

Z1.19.2

- 33.1A The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Instructions to stop or 34

not to start work

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

Take over 35

Z1.20

- 35.1 The *Employer* need not take over the *works* before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the *Employer* takes over the *works* not later than two weeks after Completion.

- Z1.20.1
- 35.2 The *Employer* may use or permit Others to use any part of the *works* before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the *works* when he (or Others) begins to use it and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3, provided that the *Employer* is liable for any damage caused to the *works* by the *Employer* and/or Others permitted to use such part of the *works*.
- 35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

Acceleration 36

- 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.
- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- Z1.41.1B 36.3 **When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, then the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction.**
- 36.4 **Not used (as not an Option C clause).**

4 Testing and Defects

Tests and inspections 40

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

Testing and inspection before delivery 41

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

Searching for and notifying Defects 42

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

- Z1.21.1 42.2 Subject to sub-clause 46, until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects 43

- Z1.22 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- Z1.22.1 43.2 Subject to sub-clause 46, the *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

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

Accepting Defects 44

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

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

Uncorrected Defects 45

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

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

Critical Defects 46

Z1.23

The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

5 Payment

Assessing the amount due 50

Z1.24

due 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur

- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
- at Completion of the whole of the *works*.

Z1.24.1

50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

50.2 The amount due is

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

- 50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.
- Z1.24.2 50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information in the form and in the times reflected in clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.
- Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Payments of Defined Cost made by the Contractor in a currency other than the currency of this contract are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the currency of this contract in order to calculate the Fee and any Contractor's share using the exchange rates.**
- 50.7 Not used (as not an Option C clause).**
- Z1.24.4 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such documents have been delivered.
- Z1.24.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.24.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.24.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor*. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.

Y1.1.2	51.1A	<p>The date on which payment becomes due is the later of:</p> <ul style="list-style-type: none"> • the assessment date; and • fourteen days after the date of receipt by the <i>Project Manager</i> of the <i>Contractor's</i> application for payment in accordance with clause 50.1A. <p>The final date for payment is twenty eight days after the date on which payment becomes due.</p>
Y1.1.2A	51.1B	The <i>Project Manager's</i> certificate is the <i>Employer's</i> notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.
Y1.1.2B	51.1C	Not later than five days after receipt of the payment certificate the <i>Contractor</i> delivers to the <i>Employer</i> (copied to the <i>Project Manager</i>) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The <i>Contractor</i> issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
Y1.1.3	51.2	Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
Y1.1.3A	51.2A	If a certificate is not issued by the <i>Project Manager</i> in accordance with clause 51.1, the sum to be paid by the <i>Employer</i> is, subject to clause 51.2B, the sum stated as due in the <i>Contractor's</i> application in accordance with clause 50.1A.
Y1.1.4	51.2B	If either Party intends to pay less than the notified sum, he notifies the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Project Manager</i> .
Z1.25.1	51.3	<p>If an amount due is corrected in a later certificate either</p> <ul style="list-style-type: none"> • by the <i>Project Manager</i> in relation to a mistake or a compensation event or • following a decision of the <i>Adjudicator</i> or the courts, <p>interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.</p>
Z1.25.2	51.4	Interest is calculated on a daily basis at the <i>interest rate</i> and is simple interest.
	Defined Cost 52	
	52.1	All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
Z1.41.2	52.2	<p>The <i>Contractor</i> keeps these records</p> <ul style="list-style-type: none"> • accounts of payments of Defined Cost, • proof that the payments have been made, • communications about and assessments of compensation events for Subcontractors and • other records as stated in the Works Information and • information used to compile forecasts of Defined Cost. <p>52.3 The <i>Contractor</i> allows the <i>Project Manager</i> to inspect at any time within working hours the accounts and records which he is required to keep.</p>

The *Contractor's* share 53

- 53.1 The *Project Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.
- 53.2 If the Price for Work Done to Date is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the *Contractor* pays his share of the excess.
- 53.3 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the whole of the *works* using his forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the *works*.
- 53.4 The *Project Manager* makes a final assessment of the *Contractor's* share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
- Z1.41.3 53.5 Without limiting sub-clauses 53.1 to 53.4 and 93, if at any time prior to Completion:
- the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from compensation events which have not yet been implemented); and
 - the *Project Manager* assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices
- then the *Project Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* reasonable assessment of the likely *Contractor's* share of the excess. Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4, or if applicable, 93.
- The Activity Schedule 54
- 54.1 Information in the Activity Schedule is not Works Information or Site Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Activity Schedule is that
- it does not comply with the Accepted Programme,
 - any changed Prices are not reasonably distributed between the activities or
 - the total of the Prices is changed.
- 55 Not used (as not an Option C clause).
- Z1.26.1 56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
 - any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*
- then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.27.1

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

6 Compensation events

Compensation events 60

Z1.28

Z1.28.1

60.1 The following are compensation events, but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event

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

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

(2) Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others (not being Statutory Undertakers)

- do not work within the times shown on the Accepted Programme, or
- do not work within the conditions stated in the Works Information

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report]⁴,
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A *weather measurement* is recorded

- within a calendar month,

⁴Insert, if applicable.

- before the Completion Date for the whole of the *works* and
- at the place stated in the Contract Data

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

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

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

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

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

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

(18) A breach of contract or act of prevention on the part of the *Employer* (except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.

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

Z1.28.2 60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

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

Z1.28.3 60.3 Subject to clause 17, if there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

Notifying compensation 61

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

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

Z1.28A.1 61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which he expects to happen as a compensation event if

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

If the *Contractor* does not notify a compensation event within eight weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not. The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.

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

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

- is not one of the compensation events stated in this contract

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

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

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

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

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

Z1.28A.2

- 61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he may notify this decision to the *Contractor* when he instructs him to submit quotations.
- 61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.
- 61.7 A compensation event is not notified after the *defects date*.

Quotations for compensation events 62

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

Z1.28B.1

- 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment in accordance with the requirements of the Works Information with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. His reply is
- an instruction to submit a revised quotation,
 - an acceptance of a quotation,
 - a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
 - a notification that he will be making his own assessment.
- 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
- 62.5 The *Project Manager* extends the time allowed for
- the *Contractor* to submit quotations for a compensation event and
 - the *Project Manager* to reply to a quotation
- if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

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

Assessing compensation 63

Z1.29

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

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

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

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

Z1.29.1

- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the 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 principal cause of the delay; and
- the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

The *Project Manager* 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.

Z1.29.2

- 63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

Z1.29.3

- 63.5 If the *Contractor*:
- did not give an early warning of a compensation event which an experienced contractor could have given, or
 - did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,
- the event is assessed as if the *Contractor* had given early warning at the appropriate time.

Z1.29.4

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

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

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

- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 Not used (as not an Option C clause).**
- 63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted or
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event,
- the Prices are reduced.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.**
- 63.13 Not used (as not an Option C clause).**
- 63.14 Not used (as not an Option C clause).**
- 63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.**

The *Project Manager's* Assessments 64

Z1.29A

Assessments 64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

Z1.29A.2

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within four weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

Z1.29A.3

64.5 The *Project Manager* may extend the time allowed for the following actions:

- notification of a decision and/or instruction (cl. 61.4);
- reply to a quotation (cl. 62.3); or
- assessment of a compensation event (cl. 64.3 and cl. 64.4)

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

**Implementing
compensation events 65**

65.1 A compensation event is implemented when

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

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

65.3 Not used (as not an Option C clause).

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

7 Title

The Employer's title to	70	
Z1.30		
Plant and Materials	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> .
Z1.30.1		
Z1.30.2	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. Subject to clause 70.1, the title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.30.3	70.3	If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.
Marking Equipment, Plant	71	
and Materials outside the Working Areas	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

	Employer's risks	80	
Z1.31		80.1	The following are <i>Employer's</i> risks. <ul style="list-style-type: none">• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none">• use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,• negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or• a fault of the <i>Employer</i> [or a fault in his design] [other than a fault in his design]⁵.• Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none">• war, civil war, rebellion, revolution, insurrection, military or usurped power,• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees and/or any Subcontractor's employees or• radioactive contamination.• Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to<ul style="list-style-type: none">• a Defect which existed at take over,• an event occurring before take over which was not itself an <i>Employer's</i> risk or• the activities of the <i>Contractor</i> on the Site after take over.• Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.• Additional <i>Employer's</i> risks stated in the Contract Data.
	The Contractor's risks	81	
		81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .
	Repairs	82	
		82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.
	Indemnity	83	
Z1.32		83.1	The <i>Contractor</i> is responsible for and indemnifies the <i>Employer</i> , his employees and agents and members of the TfL Group against all Losses in respect of events or matters which are at his risk including [subject to any applicable limitation of liability under Secondary Option X18] ⁶ : <ul style="list-style-type: none">• personal injury to or death of any person;• loss of or damage to property real or personal other than to the <i>works</i>; and

⁵ If Secondary Option X21 is not used delete "other than a fault in his design". If Secondary Option X21 is selected delete "or a fault in his design"

- any other Losses arising under his contracts with Others.

Without prejudice to the foregoing, the *Contractor* provides this indemnity against:

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the *works* or the project, and
- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the *Contractor* using all reasonable and practical means.

- Z1.32.2 83.2 The *Contractor's* liability to indemnify the *Employer*, his employees and agents and members of the TfL Group is reduced if events at the ~~*Employer's*~~ risk contributed to the Losses. The reduction is in proportion to the extent that events which were at the *Employer's* risk contributed, taking into account each Party's responsibilities under this contract. The *Contractor's* indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.
- Z1.32.3 83.3 Notwithstanding any other clause in this contract the *Contractor's* and its Subcontractors' liability for damage to existing structures belonging to the *Employer* which do not form part of the *works* and which arises during the carrying out of the *works* on the Site shall be limited to £25,000 per occurrence and the *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* and its Subcontractors for such Losses.

Remedies

- Z1.33 83A.1 The Parties acknowledge and agree that the payment or deduction of:
- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7 and/or low performance damages pursuant to Option X17; and
 - (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

Insurance cover 84

- Z1.34 84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.
- Z1.34.1 84.2
- Z1.34.2

Insurance Table

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

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

Employer

The full reinstatement value of the *works*

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site.

Public liability insurance

All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

Employer

Not less than £25,000,000 per occurrence or as otherwise stated in the Contract Data whichever is the greater

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site.

Employer's liability insurance

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

Contractor

Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

Contractor's Equipment loss insurance

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

Contractor

The replacement cost

Professional Indemnity Insurance

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

Contractor

Not less than £25,000,000 for each and every claim or as otherwise stated in the Contract Data

- Z1.34.3 84.3 In respect of the insurances provided by the *Contractor*:
- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
 - the *Contractor* bears the cost of all premiums which are deemed to be included in the Fee;
 - if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.
- Z1.34.4 84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.34.5 84.5 The *Contractor* procures that his Subcontractors (and sub-subcontractors of any tier) maintain:
- employer's liability (and where appropriate) motor liability insurances as required by law; and
 - professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- Z1.34.6 84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.

Insurance policies 85

- Z1.35
Z1.35.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. Reasons for not accepting the certificates include:
- that they do not comply with this contract,
 - the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;
 - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.
- Z1.35.2 85.2 Not used.
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- Z1.35.3 85.4 Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- Z1.35.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

If the *Contractor* does 86

- Z1.36
not insure 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

Insurance by the 87

- Employer** 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.2 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.3 87.5 The *Contractor* shall comply, and shall ensure that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.4 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

9 Termination

Termination 90

Z1.37

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

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
Z1.37.1 The <i>Employer</i>	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, R18, R25A	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	R26A	P1, P2 and P3	A1 and A3
	[R27] ⁷	[P1,P2 and P4]	[A5]
The <i>Contractor</i>	R1–R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

Z1.37.2

- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.

⁷ Only used if *additional termination events* are to be stated in the Contract Data. If not then delete the wording in square brackets.

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90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

Reasons for termination 91

Z1.38

Z1.38.1

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

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

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

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

Z1.38.2

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

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

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).

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

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

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

Z1.38.3

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

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

and which

- neither Party could prevent and
- an experienced and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.4

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

- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.12 (R23),
- any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
- the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
- A Change of Control (R25A).

Z1.38.5

91.9 In the event that either:

- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union; or
- this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016

then:

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

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

Z1.38.6

91.10 [The *Employer* may terminate the *Contractor's* appointment if an event occurs which is an *additional termination event* (R27).]⁸

Z1.41.4

91.11 **Without limiting sub-clauses 53.1 to 53.5 and 93, the *Employer* may terminate if the *Project Manager* assesses at any time that (having regard to the Price for Work Done to Date and the total of the Prices at the relevant time):**

- **the final Price for Work Done to Date is likely to exceed the final total of the Prices; and**
- **the resulting forecast of the *Contractor's* share of the excess is likely to exceed the *share termination threshold* (R26A).**

⁸Only used if *additional termination events* are stated in the Contract Data.

Procedures on 92

- Z1.39 **termination** 92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which he has title (P1).
- Z1.39.1 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.
- P2 The *Employer* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of and/or enter into a novation of any subcontract or other contract related to performance of this contract to the *Employer*.
- P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the *works*. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* notifies him that the *Employer* no longer requires it to complete the *works*.
- P4 The *Contractor* leaves the Site and removes the Equipment from the Working Areas unless otherwise instructed by the *Project Manager*.

Payment on termination 93

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials
 - within the Working Areas or
 - to which the *Employer* has title and of which the *Contractor* has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
 - any amounts retained by the *Employer* and
 - a deduction of any un-repaid balance of an advanced payment.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing the Equipment.
- A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works*.
- Z1.39.2 A4 The *direct fee percentage* applied to
- for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or
 - for Options E and F, any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.
- [A5 Any amounts assessed as due for Stage 1 Works less a deduction of any un-repaid balance of an advanced payment.]⁹
- 93.3 **Not used (as not an Option C clause).**
- Z1.41.9 93.4 **If there is a termination, the *Project Manager* assesses the *Contractor's* share after he has certified termination. His assessment uses, as the Price for Work Done to Date, the total of the Defined Cost which the *Contractor* has paid and which he is committed to pay for work done before termination and the resulting Fee. The assessment uses as the total of the Prices**
- **the lump sum price for each activity which has been completed and**
 - **a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been**

⁹ Insert, if applicable.

completed.

93.5 Not used (as not an Option C clause).

93.6 The *Project Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess.

2. Additional Conditions of Contract

Contractor's Warranties

Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:

- PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*,
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request duly executes and delivers to the *Employer* deeds of warranty in substantially the form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in substantially the form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of

- any member of the TfL Group,
- the PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in the whole or any part of the *works*,
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer..

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

Z2.3 Not used

Warranties and Undertakings

Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

Accounts and Records

Z2.5

Z2.5.1 In this section:

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-subcontractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*;
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

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

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

- Z2.5.4 The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:
- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
 - (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
 - (c) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
 - (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
 - (e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance

Z2.6

- Z2.6.1 The *Contractor* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.
- Z2.6.2 Without prejudice to the *Contractor's* obligations under clause Z2.6.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

Intellectual Property Rights

Z2.7

Z2.7.1 **Vesting of IPR**

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

Z2.7.2 Background IPR

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

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

In this section, "**Infrastructure Manager**" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

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

Z2.7.2B IPR Claims

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

Z2.7.3 Corporate IPR

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

Assignment

Z2.8

Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).

Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

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

Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.

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

Z2.10 **Not Used.**

Dispute Resolution Procedure

Z2.11

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

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

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

TfL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

- Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 to
- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
 - where appropriate, identify actions to reduce levels of crime and disorder,
 - without prejudice to any other obligation imposed on the *Employer*, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,
- and in the performance of the contract the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that his Subcontractors (and sub-sub-contractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy his duty.

London Living Wage

Z2.15

- Z2.15.1 In this clause:
- | | |
|----------------------|--|
| "GLA Act" | means the Greater London Authority Act 1999; |
| "Greater London" | means that term as it is used in the GLA Act; |
| "London Living Wage" | means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the <i>Employer</i> ; |
| "Mayor" | means the person from time to time holding the office of Mayor of London as established by the GLA Act; |
| "RPIX" | means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree; |
- Z2.15.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.
- Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:

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

Data Transparency

Z2.16

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

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

Z2.16.3 In this clause

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

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

Data Protection

Z2.17

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

Z2.17.2 The *Contractor*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data,
- provides the *Employer* and *Project Manager* with such information as they may reasonably require to satisfy themselves of compliance by the *Contractor* with the requirements of this clause Z2.11, and
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest

Z2.18

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

Freedom of Information

Z2.19

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

Criminal Record Declarations

Z2.20

Z2.20.1 In this section:

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

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

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

Best Value

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

Prohibited Acts

- Z2.22
- Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.

- Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22.4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected *works* by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Defined terms	X1	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> . (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due. (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
Price Adjustment Factor	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due. The Price Adjustment Factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating price adjustment after this date.
Compensation events	X1.3	The Defined Cost for compensation events is assessed using the <ul style="list-style-type: none">• Defined Cost current at the time of assessing the compensation event adjusted to <i>base date</i> by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due and• Defined Cost at <i>base date</i> levels for amounts calculated from rates stated in the Contract Data for employees and Equipment.
Price adjustment Options C and D	X1.5	Each time the amount due is assessed, an amount for price adjustment is added to or deducted from the total of the Prices (as the case may be) which is the sum of <ul style="list-style-type: none">• the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1 + PAF))$ where PAF is the Price Adjustment Factor for the date of the current assessment and• correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.

Option X2: Changes in the law

Changes in the law	X2
Z1.40.1	X2.1 A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the <i>works</i> and exercising the foresight appropriate to such a contractor ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X4: Parent company guarantee

Parent company Guarantee	X4
Z1.41.1	X4.1 If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the parent company of the <i>Contractor's</i> performance in the form attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the <i>Employer</i> within -one week of the Contract Date.
Z1.41.2	X4.2 If the <i>Contractor</i> is an incorporated joint venture, the <i>parent company</i> of each shareholder in the <i>Contractor</i> gives to the <i>Employer</i> a guarantee of the <i>Contractor's</i> performance in the form set out in Schedule 3.
Z1.41.3	X4.3 If the <i>Contractor</i> comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the <i>Employer</i> a guarantee by its <i>parent company</i> of such company's performance in the form set out in Schedule 3.
Z1.41.4	X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion in the form set out in Schedule 12 on the guarantor's execution of any such guarantee.
Z1.41.5	X4.5 Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

Option X5: Sectional Completion

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

Option X6: Bonus for early Completion

Bonus for early Completion	X6
	X6.1 The <i>Contractor</i> is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of <ul style="list-style-type: none">• Completion and• the date on which the <i>Employer</i> takes over the <i>works</i>

until the Completion Date.

Option X7: Delay damages

Delay damages	X7
X7.1	The <i>Contractor</i> pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of <ul style="list-style-type: none">• Completion and• the date on which the <i>Employer</i> takes over the <i>works</i>.
X7.2	If the Completion Date is changed to a later date after delay damages have been paid, the <i>Employer</i> repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
X7.3	If the <i>Employer</i> takes over a part of the <i>works</i> before Completion, the delay damages are reduced from the date on which the part is taken over. The <i>Project Manager</i> assesses the benefit to the <i>Employer</i> of taking over the part of the <i>works</i> as a proportion of the benefit to the <i>Employer</i> of taking over the whole of the <i>works</i> not previously taken over. The delay damages are reduced in this proportion.

Option X12: Partnering

Identified and defined terms	X12
X12.1	(1) The Partners are those named in the Schedule of Partners. The <i>Client</i> is a Partner. (2) An Own Contract is a contract between two Partners which includes this Option. (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members. (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract. (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.
Actions	X12.2 (1) Each Partner works with the other Partners to achieve the <i>Client's objective</i> stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners. (2) Each Partner nominates a representative to act for it in dealings with other Partners. (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.
Z1.42.1	(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The <i>Client's</i> representative leads the Core Group and has the casting vote unless stated otherwise in the Partnering Information. (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised. (6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

Working together

Z1.42.2

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

Incentives

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

Option X13: Performance bond

Performance bond

X13

Z1.43.1

X13.1 [Where a performance bond is required regardless of the *Contractor's* D&B rating, insert:

The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within 1 week of the Contract Date.]

[Where a performance bond is required if the *Contractor's* credit rating falls below the prescribed level of risk, insert:

If the Dun & Bradstreet "Risk Indicator" score for [either]/[the]¹⁰ *parent company* falls to 3 (slightly greater than average risk) or 4 (significant level of risk), when instructed to do so by the *Project Manager*, the *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2.¹¹ A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is given to the *Employer* within 1 week of the instruction of the *Project Manager* to do so, and such instruction is a compensation event].

Option X14: Advanced payment to the *Contractor*

Advanced payment X14

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

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

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

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

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

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

The *Contractor's* design X15

Z1.44.1

X15.1 The *Contractor* is not liable for Defects in the *works* due to his design so far as he proves that he used all the reasonable skill care and diligence normally used by an appropriate and competent professional designer experienced in carrying out

¹⁰ In the event the *Contractor* is a joint venture, select "either" (and ensure the Contract Data entry records the parent company of both parent companies. Note that although X13.1 refers to the Dunn & Bradstreet ratings, consideration should be given on a project-by-project basis to whether Standard & Poor's or Moody's ratings are more suitable.

¹¹ Where the *Contractor* is a joint venture, Option X13 may need to be amended to require more than one performance bond to be provided.

design works similar to those included in the *works* in connection with projects of a similar size, scope and complexity to the project to ensure that his design complied with the Works Information.

X15.2 If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X16: Retention

Retention

X16

X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of

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

the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or
- in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

Z1.45.1

X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.

Z1.45.2

X16.4 After the Price for Work Done to Date has reached the *retention free amount*, as an alternative to a cash retention, the *Contractor* may provide a retention bond in the form attached at Schedule 13 from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted. Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.

Option X17: Low performance damages

Low performance Damages

X17

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

Option X18: Limitation of liability

Limitation of liability **X18**

- Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages pursuant to Z2.12, the *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.
- Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
 - liquidated damages for disruption (Z2.12),
 - delay damages if Option X7 applies,
 - low performance damages if Option X17 applies
 - *Contractor's* share, and
 - the matters listed in X18.6.
- Z1.46.4 X18.5 Not used.
- Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:
- death or bodily injury;
 - Losses caused by fraudulent acts or acts of a criminal nature;
 - Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
 - the *Contractor's* liability referred to in X18.3 (if applicable); or
 - any other Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under clause 83.

Option X20: Key Performance Indicators (not used with Option X12)¹²

- Incentives** X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with this contract.
- Z1.47.1 X20.2 From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator. The *Contractor* acknowledges that the *Employer* may provide copies of such reports to members of the TfL Group.

¹² If Key Performance Indicators are not intended to have any financial consequences then delete X20.4 and, in X20.5, the words from "but" until the end of the clause.

- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Project Manager* his proposals for improving performance.
- X20.4 [The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.]
- X20.5 The *Employer* may add a Key Performance Indicator and associated payment to the Incentive Schedule [but may not delete or reduce a payment stated in the Incentive Schedule].

Single Point Design

Responsibility Z1.48

X21

- X21.1 In this Option, "**Employer's Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information.
- X21.2 The *Contractor* is deemed to have scrutinized, prior to the Contract Date, the *Employer's* Design Information. The *Contractor* is responsible for the design of the *works* and for the accuracy of such *Employer's* Design Information except as stated in clause X21.3 below.
- X21.3 The *Employer* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's* Design Information as originally included in the contract and is not deemed to have given any representation of accuracy or completeness of any data or information, except as stated below.

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

- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
 - (b) definitions of intended purposes of the *works* or any part thereof, and
 - (c) criteria for the testing and performance of the completed *works*.
- X21.4 Where there is a mistake, inaccuracy or discrepancy in or omission from the *Employer's* Design Information, the *Contractor* informs the *Project Manager* in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the *Project Manager* may consent to the *Contractor's* proposed amendment or comment in writing on such an amendment provided that the *Project Manager* does not unreasonably withhold his consent to a proposed amendment. The *Contractor* takes account of such comments and resubmits his proposed amendment to the *Project Manager*. Such process is repeated until the *Project Manager* accepts the *Contractor's* proposed amendment.
- X21.5 The following shall not give rise to a compensation event:
- anything which is the *Contractor's* responsibility as set out in this Option X21;
 - any comment, failure to comment or delay in commenting by the *Project Manager* in connection with this Option X21 (which shall also not be treated as an act of prevention or breach of contract by the *Employer*); or
 - any discrepancy, mistake, inaccuracy in, or omission from, the *Contractor's* design and/or the *Employer's* Design Information.

Novation of Associated Contracts X22

- Z1.49
- X22.1 In this Option:
“Associated Works or Services” means any preliminary or ancillary works or services which the *Employer* wishes to be carried out with a view to the same being integrated with this contract;
“Associated Contract” means a contract for the performance of Associated Works or Services; and
“Associated Contractor” means a contractor who has entered into an Associated Contract.
- X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 10 hereto within 14 days of request from the *Employer* to do so.
- X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 5 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2.
- X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer*. Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold his consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).
- X22.5 The *Contractor* warrants to the *Employer* that he will promptly pay in accordance with the terms of the Associated Contract any monies due and owing to the Associated Contractor in respect of the works or services novated to the *Contractor*.

Key Person Succession Plan X23

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

Fee Cap X24

- Z1.50A
- X.24.1 The Parties acknowledge and agree that the Fee is capped at, and shall in no event exceed the *fee cap* stated in the Contract Data.

Escrow Agreement X25

X25.1 In this Secondary Option X25:

"Escrow" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means the NCC Group or such other successor, replacement or substitute agent as may be approved by the *Employer* from time to time;

"Escrow Agreement" means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 11 provided that the Release Events referred to in clause 6 thereof shall be amended to include:

- a failure by the *Contractor* to maintain the Escrow Agreement; and
- termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement or the Contract howsoever arising including failure by the *Contractor* to pay any of the Escrow Agent's fees.

"Software" means any computer programs or software produced or supplied by the *Contractor* from time to time as part of or in connection with the *works* and all user documentation in respect of such programs or software and any modification which is required by the *Employer*;

"Source Code Materials" means the source code of the Software and all technical information and documentation required to enable the *Contractor* to modify and operate the Software;

"Release Event" means an event the occurrence of which shall entitle the *Employer* to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

X25.2 The *Contractor* shall no later than the Contract Date procure that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and shall thereafter maintain the agreement for a minimum period of [12 years¹³] from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) shall be borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement 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 same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

(a) the Source Code Materials shall constitute the "Material" referred to in the Escrow Agreement;

(b) the licence provided pursuant to clause Z2.7.2 shall constitute the "Licence Agreement" referred to in the Escrow Agreement; and

(c) the Software shall constitute the "Package" referred to in the Escrow Agreement.

X25.3 The *Contractor* procures that any Subcontractor or supplier providing software for incorporation or operation of the *works* enters into software escrow agreements on the same terms as set out in the Escrow Agreement.

¹³Insert required period

OPTION Y

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

Definitions

Note: incorporated in Schedule 1 and 12.6.

Y(UK)2

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

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

Suspension of performance

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

Payment

Y1

Z1.51.1

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

Option Z: Additional conditions of contract

Additional conditions of contract

Z1.52.1

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

SCHEDULE OF COST COMPONENTS

Z1.53.1

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

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

- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Payments for

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

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

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

41 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

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

43 Payments for

- cancellation charges arising from a compensation event
- buying or leasing land
- compensation for loss of crops or buildings
- royalties
- inspection certificates
- charges for access to the Working Areas

- (g) facilities for visits to the Working Areas by Others
 - (h) specialist services
 - (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 44 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for
- (a) catering
 - (b) medical facilities and first aid
 - (c) recreation
 - (d) sanitation
 - (e) security
 - (f) copying
 - (g) telephone, telex, fax, radio and CCTV
 - (h) surveying and setting out
 - (i) computing
 - (j) hand tools not powered by compressed air.
- 45 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials which are
- wholly or partly designed specifically for the *works* and
 - manufactured or fabricated outside the Working Areas.
- 51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.
- Design** 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance** 7 The following are deducted from cost
- the cost of events for which this contract requires the *Contractor* to insure
 - other costs paid to the *Contractor* by insurers and
 - the cost of excess payments.

SHORTER SCHEDULE OF COST COMPONENTS

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

- People 1** The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas,
 - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
 - people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.
- 11 Amounts paid by the *Contractor* including those for meeting the requirements of the law (save for employer's liability insurance) and for pension provision.
- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
- 21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
- 22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- 23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
- 24 Unless the item is in the published list and the rate includes the cost component, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
 - erecting and dismantling Equipment and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
- 26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
- 27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.
- Plant and Materials 3** The following components of the cost of Plant and Materials.
- 31 Payments for
- purchasing Plant and Materials,
 - delivery to and removal from the Working Areas,
 - providing and removing packaging and
 - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
- Charges 4** The following components of the cost of charges paid by the *Contractor*.
- 41 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of

- payments for the provision and use in the Working Areas of water, gas and electricity,
 - payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
 - payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
- 42 Payments for cancellation charges arising from a compensation event.
- 43 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 44 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.
- 45 Specialist services.
- 46 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials, which are
- wholly or partly designed specifically for the *works* and
 - manufactured or fabricated outside the Working Areas.
- 51 Amounts paid by the *Contractor*.
- Design** 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance** 7 The following are deducted from cost
- costs against which this contract required the *Contractor* to insure
 - other costs paid to the *Contractor* by insurers and
 - the cost of excess payments or deductibles.

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

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

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

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

- bonus or incentive payment which is not linked to Providing the Works
- any bonus or incentive payment which exceeds 10% of the base salary cost.

Payments made to people for overtime:

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

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

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

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

Any payments made to people in respect of sickness or holidays will only be considered Defined Cost if the people have worked continually within the Working Areas in excess of a three month time period. Payments to people in respect of absence arising from sickness or holidays lasting for a continuous period in excess of 3 weeks are not included in Defined Cost.

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

Only payments made to people representing a genuine pro-rata of time spent on the project against total time spent within the employ of the company will be considered Defined Cost. An example of what is considered an acceptable severance payment cost for a person employed on the project for one year but employed by the *Contractor* for ten years would be 10% of total severance payment cost.

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

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

Any costs relating to the provision by the *Contractor* of a parent company guarantee are deemed to be included in the Fee and are not admissible as Defined Cost. Any costs relating to the provision of a replacement retention bond and/or provision of any replacement performance bond and/or replacement advance payment bond are deemed to be included in the Fee and are not admissible as Defined Cost.

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

- they are in accordance with the applicable Main Option;
- they have been accepted by the *Project Manager* pursuant to the terms of this contract;
- they are in accordance with the Schedule of Cost Components (as amended) or Shorter Schedule of Cost Components (as amended) and these Supplementary Notes;
- (in relation to any time-based charges) they comply with any agreed procedure or system for capturing or allocating time;
- authorisation of overtime will be subject to compliance with a project-specific overtime policy accepted by the *Project Manager*.

No overtime will be considered Defined Cost in the absence of such an agreed policy. Overtime costs charged to this contract will not attract the Working Area overheads percentage or design overheads percentage;

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

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

2 - Reasonably Incurred Costs

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

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

3 - Cost Verification

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

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

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

MAIN OPTION E
CONTRACT DATA
PART 1

Address: []

- The Works Information is in []
- The Site Information is in []
- The *boundaries of the site* are []
- The *language of this contract* is []
- The *law of the contract* is the law of England and Wales³
- The *period for reply* is [] weeks
- The following matters will be included in the Risk Register:
[]

3. Time

- The *starting date* is: []
- The *access dates* are:

Part of the Site	Date
1. []	[]
2. []	[]
3. []	[]

- The *Contractor* submits revised programmes at intervals no longer than [] weeks.

4. Testing and Defects

- The *defects date* is [] weeks after Completion of the whole of the *works*.
- The *defect correction period* is [] weeks except that
 - The *defect correction period* for [] is [] weeks

³ The *law of the contract* is always to be the law of England and Wales. This entry must not be changed.

- The *defect correction period* for [] is [] weeks

5. Payment •

The *currency of this contract* is []

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

- The *interest rate* is [] % per annum (not less than two) above the [] rate of the [] bank.

6. Compensation events •

The place where weather is to be recorded is []

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

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at [] hours GMT.
- and these measurements: []

- The *weather measurements* are supplied by []

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

Where no recorded data are available

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

8. Risks and insurance

Insurances taken out by the *Employer*

- **Construction All Risks Insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Public liability insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.

Insurances taken out by the *Contractor*

- **Employer's liability insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £10million per occurrence.
- **Contractor's equipment loss insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Professional indemnity insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £25million for each and every claim.

**Optional
statements**

If the *Employer* has decided the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is
[]

If the *Employer* is not willing to take over the *works* before the **Completion Date**

- The *Employer* is not willing to take over the *works* before the **Completion Date**.⁴

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

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

If the *Employer* has identified work which is to meet a stated *condition* by a *key date*

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

<i>condition</i> to be met	<i>key date</i>
1. []	[]
2. []	[]
3. []	[]

⁴ Delete this entry if the *Employer* is willing to take over the *works* before the **Completion Date**

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract.⁵

If there are additional *Employer's* risks

- These are the additional *Employer's* risks

1. []
2. []
3. []

Cover/deductibles for insurances provided by the *Employer*

⁶

1 **Works Insurance** (as stated in the Insurance Table)

Cover/indemnity is: the full reinstatement value of the *works*

The excess:

- [£250,000] each and every occurrence in respect of
 - (i) loss or damage caused to the permanent *works* by defects in design plan specification materials or workmanship .
 - (ii) Tunnelling Works
- [£100,000] each and every occurrence in respect of Underground Civil Works other than Tunnelling Works
- [£50,000] each and every occurrence in respect of storm tempest flood water damage frost subsidence & collapse
- [£25,000] each and every occurrence in respect of every

⁵ This entry must not be changed.

⁶ The deductibles must not be changed.

other loss
or such other amount specified by the insurer

2 **Public and product liability insurance** (as stated in the Insurance Table)

Cover/indemnity is not less than £25million per occurrence.

The deductibles are: [£50,000 per occurrence] or such other amount specified by the insurer.

If there are *additional termination events*:

- These are the *additional termination events*
 1. [If a Stage 2 Works Non-Commencement Notice is issued by the *Project Manager* in accordance with clause 20A.4.]⁷
 2. []
 3. []

If the *Contractor's* liability for liquidated damages under Z2.12 (Schedule 9) is capped:

The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under Z2.12 (Schedule 9) is [limited to[] / unlimited]

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

The *exchange rates* are those published in [] on [](date)

⁷ Insert, if applicable.

If Option X5 is used

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

<i>section</i>	<i>description</i>	<i>completion date</i>
1	[]	[]
2	[]	[]

If Options X5 and X6 are used together

- The bonus for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Options X5 and X7 are used together

- Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1	[]	[]
2	[]	[]

Remainder of the *works* []

If Option X6 is used (but not if Option X5 is also used)

- The bonus for the whole of the *works* is [] per day

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

- Delay damages for Completion of the whole of the *works* are [] per day

If Option X12 is used

- The *Client* is

Name []

Address []

- The *Client's objective* is []
- The Partnering information is in []

If Option X13 is used

- The amount of the performance bond is []

If Option X14 is used

- The amount of the advanced payment is []
- The *Contractor* repays the instalments in assessments starting not less than [] weeks after the Contract Date.
- The instalments are [] (either an amount or a percentage of the payment otherwise due)
- An advance payment bond [is/is not] required

If Option X16 is used

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

If Option X17 is used

- The amounts for low performance damages are

amount performance level

[] for []

[] for []

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to []
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is [limited to [] / unlimited]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is [limited to [] / unlimited]
- 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 [] / unlimited]

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

- The *incentive schedule* for Key Performance Indicators is in []
- A report of performance against each Key Performance Indicator is provided at intervals of [] months

If Option X24 is used

- The *fee cap* is means [120]% of the Estimated Total of the Prices

Option Z

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section [] of the contract documents.

MAIN OPTION E
CONTRACT DATA
PART 2

CONTRACT DATA

Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is
Name: []
Address: []
- The direct *fee* percentage is []
The *subcontracted fee* percentage is []
- The *working areas*¹ are the Site and []
- The *Contractor's Representative* is
Name: []
Address: []
Telephone Number []
- The key people are
 1. Name []
Job []
handover period []
Responsibilities []
Qualifications []
Experience []

¹ The *working areas* should not include the *contractor's* head or satellite offices

2. Name []

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

3. Name []

Job []

handover period []

Responsibilities []

Qualifications []

Experience []

- The following matters will be included in the Risk Register

[]

Optional

Statements

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

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

[]

If a programme is to be identified in the Contract Data

- The Programme identified in the Contract Data is

[]

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

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

[]

The estimated total of the Prices as at the Contract Date is []

If Option X13 is used and states that the need for a performance bond is dependant on a Dun & Bradstreet credit rating

- The *parent company*² of the Contractor is

[]

- **Data for Schedule of Cost Components**

- The listed items of Equipment purchased to work on this contract, with an on cost charge, are

Equipment	time-related charge	per time period
[]	[]	per []
[]	[]	per []
[]	[]	per []
[]	[]	per []

- The rates for special Equipment are

Equipment	size or capacity	rate
[]	[]	[]

² If the Contractor is a joint venture, insert the parent company of each jv member

[] [] []

[] [] []

[] [] []

- The percentage for Working Areas overheads is [] %
- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee hourly rate

[] []

[] []

[] []

[] []

- The percentage for manufacture and fabrication overheads is [] %

- **Data for both schedules of cost components**

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

category of employee hourly rate

[] []

[] []

[] []

[] []

- The percentage for design overheads is [] %
- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside of the Working Areas are []

[]

[]

[]

Data for the Shorter Schedule of Cost Components

- The percentage for people overheads is [] %
- The published list of Equipment is the last edition of the list published by []
- The percentage for adjustment for Equipment in the published list is [] % (state plus or minus)
- The rates for other Equipment are

	Equipment	size or capacity	rate
1.	[]	[]	[]
2.	[]	[]	[]

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION E

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006 and 2011 amendments to the NEC3 suite of contracts)

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CORE CLAUSES

1 General

Actions 10

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

Identified and defined Terms 11

Z1.1

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

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

(2) Completion is when the *Contractor* has

Z1.1.1

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

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

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

Z1.1.2

(4) The Contract Date is the date of this contract.

Z1.1.3

(5) A Defect is

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

Z1.1.4

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

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

Z1.1.5

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

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

Z1.1.5A

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

Z1.1.6

(11) The Parties are the *Employer* (which expression includes his successors in title and assigns) and the *Contractor*.

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

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

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

(23) Defined Cost is

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

and

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

less Disallowed Cost.

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

- **is not justified by the *Contractor's* accounts and records,**

Z1.43.1

- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - comply with the requirements of the Works Information or
 - give an early warning which this contract required him to give
- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2).

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with Standards or a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested
- costs incurred by the *Contractor* through providing a replacement person as described in clauses 24.1A and 24.1B,
- preparation for and conduct of an adjudication or proceedings of the courts,
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,
- strikes, riots and civil commotion confined to the *Contractor's* employees and/or any Subcontractor's employees,
- profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor, [and
- profit payable between each party comprising the *Contractor*.]¹

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

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

Z1.2	11.3	Additional defined terms are included in Schedule 1.
Interpretation and the law 12		
Z1.3		
	12.1	In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
Z1.3.1	12.1A	References to "this contract" mean the contract between the <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.
Z1.3.1A	12.1B	In this contract, unless the context otherwise requires, references to: <ul style="list-style-type: none"> (a) "including" means "including without limitation", and

¹ Delete the wording in square brackets if *Contractor* is not a joint venture.

- (b) “fault” of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).
- Z1.3.2 12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.3 12.3A Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.4 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.5 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.6 12.7 References in this contract to “applicable law” are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- In performing his obligations under this contract, the *Contractor* complies with the *law of the contract*, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.7 12.8 (a) Subject to sub-clause 12.8(b), 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 who is not a Party to this contract.
- (b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the *Contractor* where such provision confers any benefit or purports to confer a benefit on such member.
- Z1.3.8 12.9 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.
- Z1.3.9 12.10 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

Contract Administration Management System 12A

- Z1.3A 12A.1 Notwithstanding clauses 13.1 – 13.2:

- the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information (“CAMS”);
- all communications provided for in the contract are to be made exclusively through the CAMS (“CAMS Communications”) except for any categories of communications which the *Project Manager* notifies the *Contractor* from time to time are not to be made exclusively through CAMS; and
- unless the *Project Manager* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the parties following any procedure necessary to give effect to the CAMS.

Where a CAMS Communication refers to an attachment that cannot be included with that communication, the attachment is sent via a method complying with clause 13.1.

Communications 13

Z1.4

Z1.4.1

- 13.1 If and to the extent that clause 12A is not applicable to the contract, each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The Project Manager and 14

Z1.5

the Supervisor

Z1.5.1

- 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work changes the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.

- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.
- 14.5 The *Project Manager* is for relevant purposes the “specified person” as defined in section 110A(6) of the Act.

Y2.1/Z1.5.2

The Contractor’s Representative

Z1.5A.1

- 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor’s Representative*. The *Contractor’s Representative* acts on behalf of the *Contractor* under this contract. The *Contractor’s Representative* may, after notifying the *Employer* and the *Project Manager*, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor’s Representative* in this contract includes an action by his delegate. The *Contractor’s Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor’s Representative* in accordance that clause.

Adding to the Working 15

Areas

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

Early warning 16

Z1.6
Z1.6.1

- 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - delay meeting a Key Date,
 - impair the performance of the *works* in use
 - change the Accepted Programme,
 - adversely affect the work of Others,
 - constitute a Defect,
 - adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
 - result in a breach of this contract or any subcontract,
 - lead to the *Contractor* terminating or suspending any subcontract,
 - cause a change to the Subcontractor Procurement Plan, or
 - cause a breach of any applicable law.

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

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

- 16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

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

Ambiguities and 17

Z1.7

Inconsistencies

17.1 The *Contractor* examines the Works Information and all other documents forming this contract and warrants to the *Employer* that he is not aware, as at the Contract Date, of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the works for the tendered Prices in accordance with the *conditions of contract*.

Z1.7.1

Z1.7.2

17.2 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Such instruction is not a compensation event where the *Project Manager* assesses:

- that the ambiguity or inconsistency in question is one for which the *Contractor* is responsible under this contract; or
- that a prudent and experienced contractor familiar with works similar to the works would have identified such an ambiguity or inconsistency at the Contract Date from the information then available to him.

**Illegal and impossible 18
requirements**

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

Prevention 19

Z1.8

Z1.8.1

19.1 If an event occurs which

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

and which is not

- an event of insolvency identified in clause 91.1 of the *Contractor* or any Subcontractor or supplier;
- a shortage of labour, Plant, Materials or Equipment; or
- an event attributable to any fault of the *Contractor* or any of his employees or agents or any Subcontractor or supplier or any of their employees or agents

and which

- neither Party could prevent and
- a prudent and experienced contractor familiar with works similar to the works and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- the *Contractor* can demonstrate that he did not allow for it in his tender;

then this is a "Prevention Event" and the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The *Contractor's* main responsibilities

Providing the Works 20

- Z1.9
Z1.9.1
- 20.1 The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information.
- 20.2-
20.5 Not used (as not option E clauses)
- 20.3 **The *Contractor* advises the *Project Manager* on the practical implications of the design of the works and on subcontracting arrangements.**
- Z1.43.2
- 20.4 **The *Contractor* prepares forecasts of the total Defined Cost for the whole of the works in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the works (or, if no interval is stated in the Contract Data, at 4 weekly intervals). Each such forecast is in a format accepted by the *Project Manager* and contains an explanation of the changes made since the previous forecast**
- Z1.9.2
- 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.

[Instruction of Stage 2 Works 20A

- 20A.1 The *Employer* may instruct the *Project Manager* to issue a notice (a "Stage 2 Works Commencement Notice") to the *Contractor* instructing him to proceed with the Stage 2 Works. The *Contractor* does not proceed with the Stage 2 Works (or any part thereof) until a Stage 2 Works Commencement Notice has been issued by the *Project Manager*.
- 20A.2 The *Employer's* decision to instruct the *Project Manager* to issue a Stage 2 Works Commencement Notice is entirely at the *Employer's* discretion. The *Employer* makes no representation or warranty and does not provide any commitment of any kind that a Stage 2 Works Commencement Notice will be issued by the *Employer*.
- 20A.3 If the *Employer* decides to issue a Stage 2 Works Non-Commencement Notice pursuant to Clause 20A.4, the *Employer* shall not be responsible or liable to the *Contractor* or any other party for any and all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and taxes (including (but not limited to) loss of profit, loss of use, loss of production, loss of business opportunity, loss of contracts, and any indirect or consequential losses or damages), whatsoever suffered or incurred by the *Contractor* in relation to such instruction.
- 20A.4 The *Employer* may issue a notice (a "Stage 2 Works Non-Commencement Notice") to the *Contractor* instructing him not to proceed with the Stage 2 Works. If a Stage 2 Works Non-Commencement Notice is issued in accordance with this clause 20A.4, this contract will terminate in accordance with clause 90.2 for R27.
- 20A.5 If a Stage 2 Works Commencement Notice is issued by the *Project Manager*, the *Contractor* remains responsible for Completion of the Stage 1 Works and for the avoidance of doubt, there is no deemed Completion of the Stage 1 Works by virtue of the issue of the Stage 2 Works Commencement Notice².]

² Insert, if applicable.

The Contractor's design 21

Z1.10

Z1.10.1 21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design³.

Z1.10.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. Reasons for not accepting the *Contractor's* design is that it does not comply with either the Works Information, this contract or the applicable law- or that

- it is such that it will not allow the *works* to be constructed,
- it is such that if constructed the *works* will not be capable of being used for their intended purpose.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.

21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the Contractor's 22

Z1.11

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

Z1.11.1

Design of Equipment 23

23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with

- the Works Information,
- the *Contractor's* design which the *Project Manager* has accepted or
- the applicable law.

People 24

Z1.12

Z1.12.1 24.1 Subject to the provisions of Option X23 (if applicable), the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

Z1.2.2 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:

- ceases to be employed to do the job stated in the Contract Data; and/or
- (where Option X23 applies), the *Contractor* fails to comply with an accepted key person succession plan,

then, subject to clause 24.1B, the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* agrees to reduce or waive this requirement.

Z1.12.3 24.1B If the key person who ceases to be employed has not remained available for the duration of the *handover period* and/or has failed to properly instruct his replacement so as to avoid any repeated or sub-standard work being performed by the replacement key person (either during or after the *handover period*) and/or failed to comply with the handover requirements of the key person succession plan

³ Where Option X21 (Single Point Design Responsibility) is selected delete the text of clause 21.1 and replace with “The *Contractor* is responsible for the design of all of the *works*”.

(if applicable), then the amount treated as Disallowed Cost for the purposes of clause 24.1A is multiplied (subject to the *Project Manager's* discretion to reduce or waive the increase) by a factor of 2. The *Project Manager's* assessment of the amount of Disallowed Cost pursuant to clauses 24.1A and 24.1B is without prejudice to any other rights and remedies the *Employer* may have arising from the replacement of a key person.

Z1.12.4 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

Working with the 25

Z1.13 **Employer and Others** 25.1 The *Contractor* co-operates with the *Project Manager* and Others in obtaining and providing information which they need in connection with their work and the works. He co-operates with Others, coordinates his activities with them and shares the Working Areas with them as stated in the Works Information.

Z1.13.1 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

Z1.13.2 25.3 If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either

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

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost as soon as practicable after the date when the Condition for the Key Date is met. The *Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

Z1.13.3 25.4 Unless provided for in the Works Information or authorised by written instruction by the *Project Manager*, the *Contractor* Provides the Works and corrects Defects in such a way as not to cause delay or disruption to the *Employer* and/or Others.

Z1.13.4 25.5 In the event that the works cause delay or disruption to the *Employer* and/or Others, the *Contractor* takes all reasonable steps to mitigate and minimise such delay or disruption.

Subcontracting 26

Z1.14 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

Z1.14.1 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. Reasons for not accepting the Subcontractor include:

- that his appointment will not allow the *Contractor* to Provide the Works,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the proposed Subcontractor does not have an acceptable health and safety track-record on other projects.

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

Z1.14.2 26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. Reasons for not accepting them include:

- they will not allow the *Contractor* to Provide the Works, or

- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation-
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract;
- the proposed subcontract works represent too large a proportion of the total works,
- the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Works Information,
- the proposed subcontract does not oblige the Subcontractor to provide a Form of Warranty in favour of the *Employer* or other stated beneficiaries within 21 days of their appointment on the terms set out in Schedule 5 or 6 (as appropriate).

26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if

- an NEC contract is proposed and
- the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.

Other responsibilities 27

Z1.15

- 27.1 The *Contractor* obtains approval of his design from Others where necessary.
- 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for
- the *Project Manager*,
 - the *Supervisor* and
 - Others notified to him by the *Project Manager*.
- 27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* or the *Supervisor*.

Z1.15.1

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

3 Time

Starting, Completion and 30

- Z1.16 **Key Dates**
- 30.1 The *Contractor* does not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.
- Z1.16.1 30.1A The *Contractor* notifies the *Project Manager* when in his opinion the *works* will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* may attend the inspection.
- Z1.16.2 30.2 The *Contractor* provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the *works* have been so completed. If the *Project Manager* is satisfied that the *works* have been so completed, he decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion. If the *Project Manager* is not so satisfied, he notifies the *Contractor* of his reasons for not accepting that the *works* have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.
- 30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

- Z1.17
- 31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.
- Z1.17.1 31.2 The *Contractor* shows on each programme which he submits for acceptance
- the *starting date*, *access dates*, Key Dates and Completion Date,
 - planned Completion,
 - the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
 - the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
 - provisions for
 - float,
 - time risk allowances,
 - environmental and health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - access to a part of the Site if later than its *access date*,
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer* and
 - information from Others,
 - for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use,
 - for each operation, a cost-loaded programme showing the forecast resources required for that operation,
 - its access requirements in accordance with the Works Information, and

- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.
- 31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Works Information.

Revising the programme 32

- Z1.18
Z1.18.1
- 32.1 The *Contractor* shows on each revised programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
 - the effects of implemented compensation events,
 - the effects of decisions reached and approved by the *Project Manager* at risk reduction meetings,
 - how the *Contractor* plans to deal with any delays and to correct notified Defects and
 - any other changes which the *Contractor* proposes to make to the Accepted Programme.
- 32.2 The *Contractor* submits a revised programme to the *Project Manager* for acceptance
- within the *period for reply* after the *Project Manager* has instructed him to,
 - when the *Contractor* chooses to and, in any case,
 - at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *works*.

Access to and use of 33

- Z1.19
Z1.19.1
- the Site** 33.1 Subject to the provisions of the Works Information regarding access, the *Employer* allows access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Accepted Programme.
- Z1.19.2 33.1A The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Instructions to stop or 34

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

Take over 35

- Z1.20
Z1.20.1
- 35.1 The *Employer* need not take over the *works* before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the *Employer* takes over the *works* not later than two weeks after Completion.
- 35.2 The *Employer* may use or permit Others to use any part of the *works* before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the *works* when he (or Others) begins to use it and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3, provided that the *Employer* is liable for any damage caused to the *works* by the *Employer* and/or Others permitted to use such part of the *works*.
- 35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

Acceleration 36

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

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

36.3 Not used (as not an Option E clause).

Z1.43.3

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

4 Testing and Defects

Tests and inspections 40

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

Testing and inspection before delivery 41

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

Searching for and notifying Defects 42

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

- Z1.21.1 42.2 Subject to sub-clause 46, until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects 43

- Z1.22 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- Z1.22.1 43.2 Subject to sub-clause 46, the *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

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

Accepting Defects 44

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

Uncorrected Defects 45

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

Critical Defects 46

Z1.23

The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

5 Payment

Assessing the amount 50

Z1.24

- due** 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur
- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
 - at Completion of the whole of the *works*.

Z1.24.1

- 50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.
- 50.2 The amount due is
- the Price for Work Done to Date,
 - plus other amounts to be paid to the *Contractor*,
 - less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

- 50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.
- Z1.24.2 50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information in the form and in the times reflected in clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.
- Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Not used (as not an Option E clause).**
- 50.7 Payments of Defined Cost made by the *Contractor* in a currency other than the currency of this contract are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the currency of this contract in order to calculate the Fee using the exchange rates.**
- Z1.24.4 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such documents have been delivered.
- Z1.24.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.24.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.24.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor*. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.

Y1.1.2	51.1A	<p>The date on which payment becomes due the later of:</p> <ul style="list-style-type: none"> • the assessment date; and • fourteen days after the date of receipt by the <i>Project Manager</i> of the <i>Contractor's</i> application for payment in accordance with clause 50.1A. <p>The final date for payment is twenty eight days after the date on which payment becomes due.</p>
Y1.1.2A	51.1B	The <i>Project Manager's</i> certificate is the <i>Employer's</i> notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.
Y1.1.2B	51.1C	Not later than five days after receipt of the payment certificate the <i>Contractor</i> delivers to the <i>Employer</i> (copied to the <i>Project Manager</i>) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The <i>Contractor</i> issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
Y1.1.3	51.2	Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
Y1.1.3A	51.2A	If a certificate is not issued by the <i>Project Manager</i> in accordance with clause 51.1, the sum to be paid by the <i>Employer</i> is, subject to clause 51.2B, the sum stated as due in the <i>Contractor's</i> application in accordance with clause 50.1A.
Y1.1.4	51.2B	If either Party intends to pay less than the notified sum, he notifies the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Project Manager</i> .
Z1.25.1	51.3	<p>If an amount due is corrected in a later certificate either</p> <ul style="list-style-type: none"> • by the <i>Project Manager</i> in relation to a mistake or a compensation event or • following a decision of the <i>Adjudicator</i> or the courts, <p>interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.</p>
Z1.25.2	51.4	Interest is calculated on a daily basis at the <i>interest rate</i> and is simple interest.
	Defined Cost 52	
	52.1	All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
	52.2	The <i>Contractor</i> keeps these records
		<ul style="list-style-type: none"> • accounts of payments of Defined Cost, • proof that the payments have been made, • communications about and assessments of compensation events for Subcontractors and • other records as stated in the Works Information.
	52.3	The <i>Contractor</i> allows the <i>Project Manager</i> to inspect at any time within working hours the accounts and records which he is required to keep.
	53	Not used (not an Option E clause)
The Activity Schedule	54	
	54.1	Information in the Activity Schedule is not Works Information or Site Information.

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

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

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

55 Not used (not an Option E clause)

Z1.26.1

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

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

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.27.1

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

6 Compensation events

Compensation events 60

Z1.28

Z1.28.1

60.1 The following are compensation events, but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event

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

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

(2) Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others (not being Statutory Undertakers)

- do not work within the times shown on the Accepted Programme, or
- do not work within the conditions stated in the Works Information

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report⁴],
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A *weather measurement* is recorded

- within a calendar month,

⁴Insert, if applicable.

- before the Completion Date for the whole of the *works* and
- at the place stated in the Contract Data

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

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

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

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

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

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

(18) A breach of contract or act of prevention on the part of the *Employer*-(except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.

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

Z1.28.2 60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

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

Z1.28.3 60.3 Subject to clause 17, if there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

Notifying compensation 61

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

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

Z1.28A.1 61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which he expects to happen as a compensation event if

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

If the *Contractor* does not notify a compensation event within eight weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not. The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.

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

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

- is not one of the compensation events stated in this contract

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

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

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

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

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

Z1.28A.2

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

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

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

**Quotations for
compensation events 62**

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

Z1.28B.1

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

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

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

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

Assessing compensation 63

Z1.29

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

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

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

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

Z1.29.1

- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the 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 principal cause of the delay; and
- the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

The *Project Manager* 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.

Z1.29.2

- 63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

Z1.29.3

- 63.5 If the *Contractor*:
- did not give an early warning of a compensation event which an experienced contractor could have given, or
 - did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,
- the event is assessed as if the *Contractor* had given early warning at the appropriate time.

Z1.29.4

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

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

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

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

63.10- Not used (as not Option E clauses).

63.14

63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.

The *Project Manager*'s 64

Z1.29A

Assessments

64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor*'s latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor*'s submission of his quotation for the same event. This period starts when the need for the *Project Manager*'s assessment becomes apparent.

Z1.29A.2

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within four weeks of this notification the notification is treated as acceptance of the *Contractor*'s quotation by the *Project Manager*.

Z1.29A.3

64.5 The *Project Manager* may extend the time allowed for the following actions:

- notification of a decision and/or instruction (cl. 61.4);
- reply to a quotation (cl. 62.3); or
- assessment of a compensation event (cl. 64.3 and cl. 64.4)

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

**Implementing 65
compensation events**

65.1 A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor*'s quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or

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

7 Title

The Employer's title to	70	
Z1.30		
Plant and Materials	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> .
Z1.30.1		
Z1.30.2	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. Subject to clause 70.1 the title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.30.3	70.3	If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.
Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the <i>works</i> .
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

Employer's risks

80

Z1.31

80.1 The following are *Employer's* risks.

- Claims, proceedings, compensation and costs payable which are due to
 - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
 - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or

Z1.31.1

a fault of the *Employer* [or a fault in his design] [other than a fault in his design]⁵.

- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,

Z1.31.2

- strikes, riots and civil commotion not confined to the *Contractor's* employees and/or any Subcontractor's employees or
- radioactive contamination.
- Loss of or wear or damage to the parts of the *works* taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
- a Defect which existed at take over,
 - an event occurring before take over which was not itself an *Employer's* risk or
 - the activities of the *Contractor* on the Site after take over.
- Loss of or wear or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination.
- Additional *Employer's* risks stated in the Contract Data.

The Contractor's risks

81

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

Repairs

82

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

Indemnity

83

Z1.32

Z1.32.1

83.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents and members of the TfL Group against all Losses in respect of events or

⁵ If Option X21 is not used delete "other than a fault in his design". If Secondary Option X21 is selected delete "or a fault in his design".

matters which are at his risk including [subject to any applicable limitation of liability under Secondary Option X18]⁶:

- personal injury to or death of any person;
- loss of or damage to property real or personal other than to the *works*; and
- any other Losses arising under his contracts with Others.

Without prejudice to the foregoing, the *Contractor* provides this indemnity against:

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the *works* or the project, and

any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the *Contractor* using all reasonable and practical means.

- Z1.32.2 83.2 The *Contractor's* liability-to indemnify the *Employer*, his employees and agents and members of the TfL Group is reduced if events at the-*Employer's* risk contributed to the Losses. The reduction is in proportion to the extent that events which were at the *Employer's* risk contributed, taking into account each Party's responsibilities under this contract. The *Contractor's* indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.
- Z1.32.3 83.3 Notwithstanding any other clause in this contract the *Contractor's* and its Subcontractors' liability for damage to existing structures belonging to the *Employer* which do not form part of the *works* and which arises during the carrying out of the *works* on the Site shall be limited to £25,000 per occurrence and the *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* and its Subcontractors for such Losses.

Remedies

- Z1.33 83A.1 The Parties acknowledge and agree that the payment or deduction of:
- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7 and/or low performance damages pursuant to Option X17; and
- (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

Insurance cover 84

- Z1.34 84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data
- Z1.34.2 84.2

Insurance Table

Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
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⁶ If Secondary Option X18 is not selected, delete “,subject to any applicable limitation of liability under Secondary Option X18”.

Construction All Risks insurance

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

*Employer*The full reinstatement value of the *works*

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site

Public liability insurance

All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

Employer

Not less than £25,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is greater

in the joint names of the Parties and Subcontractors of any tier engaged in carrying out the *works* on the Site

Employer's liability insurance

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

Contractor

Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

Contractor's Equipment loss insurance

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

Contractor

The replacement cost

Professional Indemnity Insurance

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

Contractor

Not less than £25,000,000 for each and every claim or as otherwise stated in the Contract Data

Z1.34.3

84.3 In respect of the insurances provided by the *Contractor*:

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

Z1.34.4	84.4	The <i>Contractor</i> does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
Z1.34.5	84.5	The <i>Contractor</i> procures that his Subcontractors (and sub-subcontractors of any tier) maintain <ul style="list-style-type: none"> • employer's liability (and where appropriate) motor liability insurances as required by law; and • professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
Z1.34.6	84.6	The insurances provided pursuant to this contract do not relieve the <i>Contractor</i> from any of his obligations and liabilities under this contract.
Insurance policies	85	
Z1.35		
Z1.35.1	85.1	Before the <i>starting date</i> and on each renewal of the insurance policy until the <i>defects date</i> , the <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the <i>Contractor's</i> insurer or insurance broker. Reasons for not accepting the certificates include: <ul style="list-style-type: none"> • that they do not comply with this contract, • the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom; • the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the <i>works</i>, of sufficient financial strength.
Z1.35.2	85.2	Not used.
	85.3	The Parties comply with the terms and conditions of the insurance policies.
Z1.35.3	85.4	Any amount not recovered from an insurer (including,excesses or deductibles) is borne by the <i>Employer</i> for events which are at his risk and by the <i>Contractor</i> for events which are at his risk.
Z1.35.4	85.5	In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.
If the <i>Contractor</i> does not insure	86	
Z1.36		
Z1.36.1	86.1	The <i>Employer</i> may insure a risk which this contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the <i>Employer</i> in respect of taking out such insurance) to the <i>Employer</i> is paid by the <i>Contractor</i> . If the <i>Employer</i> insures a risk which this contract requires the <i>Contractor</i> to insure, this is without prejudice to any of the <i>Employer's</i> other rights, powers or remedies under this contract.
Insurance by the <i>Employer</i>	87	
	87.1	The <i>Project Manager</i> submits policies and certificates for insurances provided by the <i>Employer</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the policies and certificates if they comply with this contract.
	87.2	The <i>Contractor's</i> acceptance of an insurance policy or certificate provided by the <i>Employer</i> does not change the responsibility of the <i>Employer</i> to provide the insurances stated in the Contract Data.
	87.3	The <i>Contractor</i> may insure a risk which this contract requires the <i>Employer</i> to insure if the <i>Employer</i> does not submit a required policy or certificate. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Employer</i> .

- Z1.36.2 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.3 87.5 The *Contractor* shall comply, and shall ensure that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.4 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

9 Termination

Termination 90

- Z1.37 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
Z1.37.1 The <i>Employer</i>	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, R18, R25A	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	[R27] ⁷	[P1,P2 and P4]	[A5]
The <i>Contractor</i>	R1–R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

⁷ Only used if *additional termination events* are to be stated in the Contract Data. If not then delete the wording in square brackets

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- Z1.37.2 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.
- Reasons for termination 91**
- Z1.38
- Z1.38.1 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent in other jurisdictions.
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
 - If the other Party has become insolvent as defined in section 113 of the Act (R10A).
- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
 - Not provided a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- Z1.38.2 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
 - Substantially broken a health or safety regulation or requirement of this contract (R15).
- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).

- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
 - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
 - either Party may terminate if the instruction was due to any other reason (R20).

Z1.38.3

- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
 - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,
- and which
- neither Party could prevent and
 - an experienced and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.4

- 91.8 The *Employer* may terminate the *Contractor's* appointment in the event of:
- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
 - a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.12 (R23),
 - any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
 - the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
 - A Change of Control (R25A).

Z1.38.5

- 91.9 In the event that either:
- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union: or
 - this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016
- then:
- the *Employer* notifies the *Project Manager* and the *Contractor* in writing as soon as reasonably practicable of the declaration or order;
 - the *Project Manager* issues a termination certificate to both Parties certifying the date the contract became or is to become ineffective or shortened; and
 - the contract is deemed for all purposes to have been terminated by the *Employer* on the date named in the termination certificate (R26).

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

Z1.38.6	91.10	[The <i>Employer</i> may terminate the <i>Contractor's</i> appointment if an event occurs which is an <i>additional termination event</i> (R27).] ⁸
	Procedures on	92
Z1.39	termination	
	92.1	On termination, the <i>Employer</i> may complete the <i>works</i> and may use any Plant and Materials to which he has title (P1).
Z1.39.1	92.2	The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the <i>Project Manager</i> .
	P2	The <i>Employer</i> may instruct the <i>Contractor</i> to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of and/or enter into a novation of any subcontract or other contract related to performance of this contract to the <i>Employer</i> .
	P3	The <i>Employer</i> may use any Equipment to which the <i>Contractor</i> has title to complete the <i>works</i> . The <i>Contractor</i> promptly removes the Equipment from Site when the <i>Project Manager</i> notifies him that the <i>Employer</i> no longer requires it to complete the <i>works</i> .
	P4	The <i>Contractor</i> leaves the Site and removes the Equipment from the Working Areas unless otherwise instructed by the <i>Project Manager</i> .
	Payment on termination	93
	93.1	The amount due on termination includes (A1) <ul style="list-style-type: none"> • an amount due assessed as for normal payments, • the Defined Cost for Plant and Materials <ul style="list-style-type: none"> • within the Working Areas or • to which the <i>Employer</i> has title and of which the <i>Contractor</i> has to accept delivery, • other Defined Cost reasonably incurred in expectation of completing the whole of the <i>works</i>, • any amounts retained by the <i>Employer</i> and • a deduction of any un-repaid balance of an advanced payment.
	93.2	The amount due on termination also includes one or more of the following as set out in the Termination Table. <p>A2 The forecast Defined Cost of removing the Equipment.</p> <p>A3 A deduction of the forecast of the additional cost to the <i>Employer</i> of completing the whole of the <i>works</i>.</p>
Z1.39.2	A4	The <i>direct fee percentage</i> applied to <ul style="list-style-type: none"> • for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or • for Options E and F, any excess of the first forecast of the Defined Cost for the <i>works</i> over the Price for Work Done to Date less the Fee. <p>[A5 Any amounts assessed as due for Stage 1 Works less a deduction of any un-repaid balance of an advanced payment.]⁹</p>
	93.3	The amount due on termination is assessed without taking grouping of activities into account.

⁸ Only used if *additional termination events* are stated in the Contract Data.

⁹ Insert, if applicable.

2. Additional Conditions of Contract

Contractor's Warranties

Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:

- PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*,
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request duly executes and delivers to the *Employer* deeds of warranty in substantially the form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in substantially the form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of

- any member of the TfL Group,
- the PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in the whole or any part of the *works*
- any Oversight Developer,
- any person providing finance in connection with an Oversight Development,
- any tenant of the whole or any part of an Oversight Development,
- any purchaser of an Oversight Development or from an Oversight Developer.

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

Z2.3 Not used

Warranties and Undertakings

Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

Accounts and Records

Z2.5

Z2.5.1 In this section:

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-subcontractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*;
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

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

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

- Z2.5.4 The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:
- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
 - (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
 - (c) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
 - (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
 - (e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance

Z2.6

- Z2.6.1 The *Contractor* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.
- Z2.6.2 Without prejudice to the *Contractor's* obligations under clause Z2.6.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

Intellectual Property Rights

Z2.7

Z2.7.1 **Vesting of IPR**

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

Z2.7.2 Background IPR

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

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

In this section, "**Infrastructure Manager**" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

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

Z2.7.2B IPR Claims

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

Z2.7.3 Corporate IPR

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

Assignment

Z2.8

Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).

Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

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

Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.

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

Z2.10 **Not used.**

Dispute Resolution Procedure

Z2.11

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

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

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

TfL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

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

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

London Living Wage

Z2.15

- Z2.15.1 In this clause:

"GLA Act"	means the Greater London Authority Act 1999;
"Greater London"	means that term as it is used in the GLA Act;
"London Living Wage"	means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the <i>Employer</i> ;
"Mayor"	means the person from time to time holding the office of Mayor of London as established by the GLA Act;
"RPIX"	means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree;

- Z2.15.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.
- Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:
- (a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
 - (b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and
 - (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Transparency

Z2.16

- Z2.16.1 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clauses Z2.19 and Z2.9, the *Contractor* hereby gives his consent for the *Employer* to publish the Contract Information to the general public.
- Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

- Z2.16.3 In this clause

“Contract Information”

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

“Transparency Commitment”

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

Data Protection

Z2.17

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

Z2.17.2 The *Contractor*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
- provides the *Employer* and *Project Manager* with such information as they may reasonably require to satisfy themselves of compliance by the *Contractor* with the requirements of this clause Z2.11;
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest

Z2.18

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

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

Freedom of Information

Z2.19

Z2.19.1 The *Contractor* acknowledges that the *Employer*:

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

Z2.19.2 Without prejudice to the generality of Clause Z2.19.1, the *Contractor* agrees and procures that his Subcontractors will agree to:

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the *works* or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
- in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.

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

- Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor*.

Criminal Record Declarations

- Z2.20 Z2.20.1 In this section:

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

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

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

Best Value

- Z2.21

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

Prohibited Acts

Z2.22

Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.

Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

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

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

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation (used only with Options A, B, C and D)

Defined terms X1

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

Price Adjustment Factor X1.2 If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.

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

Compensation events X1.3 The Defined Cost for compensation events is assessed using the

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

Option X2: Changes in the law

	Changes in the law	X2	
Z1.40.1		X2.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the <i>works</i> and exercising the foresight appropriate to such a contractor ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X4: Parent company guarantee

	Parent company Guarantee	X4	
Z1.41.1		X4.1	If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the parent company of the <i>Contractor's</i> performance in the form attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the <i>Employer</i> within -one week of the Contract Date.
Z1.41.2		X4.2	If the <i>Contractor</i> is an incorporated joint venture, the <i>parent company</i> of each shareholder in the <i>Contractor</i> gives to the <i>Employer</i> a guarantee of the <i>Contractor's</i> performance in the form set out in Schedule 3.
Z1.41.3		X4.3	If the <i>Contractor</i> comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the <i>Employer</i> a guarantee by its <i>parent company</i> of such company's performance in the form set out in Schedule 3.
Z1.41.4		X4.4	If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion in the form set out in Schedule 12 on the guarantor's execution of any such guarantee.
Z1.41.5		X4.5	Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

Option X5: Sectional Completion

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

Option X6: Bonus for early Completion

	Bonus for early Completion	X6	
		X6.1	The <i>Contractor</i> is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of <ul style="list-style-type: none">• Completion and

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

Option X7: Delay damages

Delay damages X7

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

Option X12: Partnering

Identified and defined X12

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

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

Z1.42.1

- (4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group and has the casting vote unless stated otherwise in the Partnering Information.
- (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.
- (6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

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

Z1.42.2

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

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

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

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

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

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

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

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

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

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

Option X13: Performance bond

Performance bond X13
Z1.43.1

X13.1 [Where a performance bond is required regardless of the *Contractor's* D&B rating, insert:

The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the *Contractor* on the Contract Date, it is given to the *Employer* within 1 week of the Contract Date.]

[Where a performance bond is required if the *Contractor's* credit rating falls below the prescribed level of risk, insert:

If the Dun & Bradstreet "Risk Indicator" score for [either]/[the]¹⁰ *parent company* falls to 3 (slightly greater than average risk) or 4 (significant level of risk), when instructed to do so by the *Project Manager*, the *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2.¹¹ A

¹⁰ In the event the *Contractor* is a joint venture, select "either" (and ensure the Contract Data entry records the parent company of both parent companies). Note that although X13.1 refers to the Dunn & Bradstreet ratings, consideration should be given on a project-by-project basis to whether Standard & Poor's or Moody's ratings are more suitable.

¹¹ Where the *Contractor* is a joint venture, Option X13 may need to be amended to require more than one performance bond to be provided.

reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is given to the *Employer* within 1 week of the instruction of the *Project Manager* to do so, and such instruction is a compensation event]

Option X14: Advanced payment to the *Contractor*

Advanced payment X14

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

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

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

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

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

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

The *Contractor's* design X15

Z1.44.1

X15.1 The *Contractor* is not liable for Defects in the *works* due to his design so far as he proves that he used all the reasonable skill care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the *works* in connection with projects of a similar size, scope and complexity to the project to ensure that his design complied with the Works Information.

X15.2 If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X16: Retention

Retention X16

X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of

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

the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or
- in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

- Z1.45.1 X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.
- Z1.45.2 X16.4 After the Price for Work Done to Date has reached the *retention free amount*, as an alternative to a cash retention, the *Contractor* may provide a retention bond in the form attached at Schedule 13 from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted. Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.

Option X17: Low performance damages

Low performance Damages X17

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

Option X18: Limitation of liability

Limitation of liability X18

- Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages pursuant to Z2.12, the *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.
- Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
 - liquidated damages for disruption (Z2.12),
 - delay damages if Option X7 applies,
 - low performance damages if Option X17 applies and
 - the matters listed in X18.6.

- Z1.46.4 X18.5 Not used.
- Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:
- death or bodily injury;
 - Losses caused by fraudulent acts or acts of a criminal nature;
 - Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
 - the *Contractor's* liability referred to in X18.3 (if applicable); or
 - any other Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under clause 83.

Option X20: Key Performance Indicators (not used with Option X12)¹²

- Incentives**
- Z1.47.1 X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with this contract.
- X20.2 From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator. The *Contractor* acknowledges that the *Employer* may provide copies of such reports to members of the TfL Group.
- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Project Manager* his proposals for improving performance.
- X20.4 [The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.]
- X20.5 The *Employer* may add a Key Performance Indicator and associated payment to the Incentive Schedule [but may not delete or reduce a payment stated in the Incentive Schedule].

Single Point Design X21

- Responsibility**
- Z1.48 X21.1 In this Option, "**Employer's Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information.
- X21.2 The *Contractor* is deemed to have scrutinized, prior to the Contract Date, the *Employer's* Design Information. The *Contractor* is responsible for the design of the *works* and for the accuracy of such *Employer's* Design Information except as stated in clause X21.3 below.
- X21.3 The *Employer* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's* Design Information as originally included in the contract and is not deemed to have given any representation of accuracy or completeness of any data or information, except as stated below.
- The *Employer* is responsible for the correctness of the following elements of the *Employer's* Design Information:
- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
 - (b) definitions of intended purposes of the *works* or any part thereof, and
 - (c) criteria for the testing and performance of the completed *works*.

¹² If Key Performance Indicators are not intended to have any financial consequences then delete X20.4 and, in X20.5, the words from "but" until the end of the clause.

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

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

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

Novation of Associated Contracts X22

Z1.49

X22.1 In this Option:

“Associated Works or Services” means any preliminary or ancillary works or services which the *Employer* wishes to be carried out with a view to the same being integrated with this contract;

“Associated Contract” means a contract for the performance of Associated Works or Services; and

“Associated Contractor” means a contractor who has entered into an Associated Contract.

X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 10 hereto within 14 days of request from the *Employer* to do so.

X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 5 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2.

X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer*. Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold his consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).

X22.5 The *Contractor* warrants to the *Employer* that he will promptly pay in accordance with the terms of the Associated Contract any monies due and owing to the Associated Contractor in respect of the works or services novated to the *Contractor*.

Key Person Succession Plan X23

Z1.50

X23.1 If a key person succession plan is stated in the Works Information to be applicable to the project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.

X23.2 The *Contractor* submits his key person succession plan to the *Project Manager* for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.

Fee Cap

X24

Z1.50A

X.24.1 In this Secondary Option X24, "**Estimated Total of the Prices**" means an amount which is equal to the *estimated total of the Prices* as at the Contract Date stated in the Contract Data as changed by compensation events implemented in accordance with this contract.

X24.2 The Parties acknowledge and agree that, if the Price for Work Done to Date exceeds the *fee cap* stated in the Contract Data, then no further Fee is due to the *Contractor* and/or payable by the *Employer* to the *Contractor*.

Escrow Agreement

X25

X25.1 In this Secondary Option X25:

"**Escrow**" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"**Escrow Agent**" means the NCC Group or such other successor, replacement or substitute agent as may be approved by the *Employer* from time to time;

"**Escrow Agreement**" means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 11 provided that the Release Events referred to in clause 6 thereof shall be amended to include:

- a failure by the *Contractor* to maintain the Escrow Agreement; and
- termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement or the Contract howsoever arising including failure by the *Contractor* to pay any of the Escrow Agent's fees.

"**Software**" means any computer programs or software produced or supplied by the *Contractor* from time to time as part of or in connection with the *works* and all user documentation in respect of such programs or software and any modification which is required by the *Employer*;

"**Source Code Materials**" means the source code of the Software and all technical information and documentation required to enable the *Contractor* to modify and operate the Software;

"**Release Event**" means an event the occurrence of which shall entitle the *Employer* to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

X25.2 The *Contractor* shall no later than the Contract Date procure that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and shall thereafter maintain the agreement for a minimum period of [12 years¹³] from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) shall be borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement 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 same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

(a) the Source Code Materials shall constitute the "Material" referred to in the Escrow Agreement;

(b) the licence provided pursuant to clause Z2.7.2 shall constitute the "Licence Agreement" referred to in the Escrow Agreement; and

(c) the Software shall constitute the "Package" referred to in the Escrow Agreement.

X25.3 The *Contractor* procures that any Subcontractor or supplier providing software for incorporation or operation of the *works* enters into software escrow agreements on the same terms as set out in the Escrow Agreement.

OPTION Y

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

Definitions	Y(UK)2
Note: incorporated in Schedule 1 and 12.6.	Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
Suspension of performance	Y2.4 If the <i>Contractor</i> exercises his right under the Act to suspend performance, it is a compensation event.
Payment	Y1
Z1.51.1	Y1.1 NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.

Option Z: Additional conditions of contract

Additional conditions of contract	The <i>additional conditions of contract</i> stated in the Contract Data are incorporated into these consolidated conditions of contract.
Z1.52.1	

SCHEDULE OF COST COMPONENTS

Z1.56.1		In this Schedule the <i>Contractor</i> means the <i>Contractor</i> and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.
	People 1	The following components of the cost of
Z1.56.7		<ul style="list-style-type: none"> • people who are directly employed by the <i>Contractor</i>, and whose normal place of working is within the Working Areas and • people who are directly employed by the <i>Contractor</i>, and whose normal place of working is not within the Working Areas but who are working in the Working Areas.
		11 Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked while they are within the Working Areas.
		12 Payments to people for
Z1.56.2		<ul style="list-style-type: none"> (a) bonuses and incentives (contract specific) (b) overtime (c) working in special circumstances (d) special allowances (e) absence due to sickness and holidays
Z1.56.3		(f) severance related to work on this contract where such cost arises from a compensation event and has been authorised in writing by the <i>Project Manager</i>
		13 Payments made in relation to people for
Z1.56.4		<ul style="list-style-type: none"> (a) travel (b) subsistence and lodging where such costs are incurred wholly and necessarily in connection with the <i>works</i> and are agreed in advance by the <i>Project Manager</i> (c) relocation (d) medical examinations (e) passports and visas (f) travel insurance (g) items (a) to (f) for dependants (h) protective clothing (i) meeting the requirements of the law (save for employer's liability insurance) (j) pensions and life assurance (k) death benefit (l) occupational accident benefits (m) medical aid (n) a vehicle (o) safety training.
Z1.56.8		14 The following components of the cost of people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas. Amounts paid by the <i>Contractor</i> .
	Equipment 2	The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for Working Areas overheads).
		21 Payments for the hire or rent of Equipment not owned by <ul style="list-style-type: none"> • the <i>Contractor</i>, • his parent company or • by a company with the same parent company at the hire or rental rate multiplied by the time for which the Equipment is required.
		22 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Payments for

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

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

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

41 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

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

43 Payments for

- cancellation charges arising from a compensation event
- buying or leasing land
- compensation for loss of crops or buildings
- royalties

- (e) inspection certificates
 - (f) charges for access to the Working Areas
 - (g) facilities for visits to the Working Areas by Others
 - (h) specialist services
 - (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 44 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for
- (a) catering
 - (b) medical facilities and first aid
 - (c) recreation
 - (d) sanitation
 - (e) security
 - (f) copying
 - (g) telephone, telex, fax, radio and CCTV
 - (h) surveying and setting out
 - (i) computing
 - (j) hand tools not powered by compressed air.
- Z1.56.5 45 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used..
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials which are
- wholly or partly designed specifically for the *works* and
 - manufactured or fabricated outside the Working Areas.
- 51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.
- Design** 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance** 7 The following are deducted from cost
- the cost of events for which this contract requires the *Contractor* to insure
 - other costs paid to the *Contractor* by insurers and
 - the cost of excess payments or deductibles.
- Z1.56.6

SHORTER SCHEDULE OF COST COMPONENTS

Z1.53.1

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

- People 1** The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas,
 - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
 - people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.
- 11 Amounts paid by the *Contractor* including those for meeting the requirements of the law (save for employer's liability insurance) and for pension provision.
- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
- 21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
- 22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- 23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
- 24 Unless the item is in the published list and the rate includes the cost component, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
 - erecting and dismantling Equipment and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
- 26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
- 27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office.
	45	Specialist services.
	46	Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7	The following are deducted from cost <ul style="list-style-type: none"> • costs against which this contract required the <i>Contractor</i> to insure • other costs paid to the <i>Contractor</i> by insurers and • the cost of excess payments.

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

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

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

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

- bonus or incentive payment which is not linked to Providing the Works
- any bonus or incentive payment which exceeds 10% of the base salary cost.

Payments made to people for overtime:

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

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

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

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

Any payments made to people in respect of sickness or holidays will only be considered Defined Cost if the people have worked continually within the Working Areas in excess of a three month time period. Payments to people in respect of absence arising from sickness or holidays lasting for a continuous period in excess of 3 weeks are not included in Defined Cost.

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

Only payments made to people representing a genuine pro-rata of time spent on the project against total time spent within the employ of the company will be considered Defined Cost. An example of what is considered an acceptable severance payment cost for a person employed on the project for one year but employed by the *Contractor* for ten years would be 10% of total severance payment cost.

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

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

Any costs relating to the provision by the *Contractor* of a parent company guarantee are deemed to be included in the Fee and are not admissible as Defined Cost. Any costs relating to the provision of a replacement retention bond and/or provision of any replacement performance bond and/or replacement advance payment bond are deemed to be included in the Fee and are not admissible as Defined Cost

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

- they are in accordance with the applicable Main Option;
- they have been accepted by the *Project Manager* pursuant to the terms of this contract;
- they are in accordance with the Schedule of Cost Components (as amended) or Shorter Schedule of Cost Components (as amended) and these Supplementary Notes;
- (in relation to any time-based charges) they comply with any agreed procedure or system for capturing or allocating time;
- authorisation of overtime will be subject to compliance with a project-specific overtime policy accepted by the *Project Manager*.

No overtime will be considered Defined Cost in the absence of such an agreed policy. Overtime costs charged to this contract will not attract the Working Area overheads percentage or design overheads percentage;

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

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

2 - Reasonably Incurred Costs

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

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

3 - Cost Verification

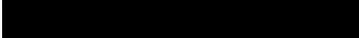
An audit of the *Contractor's* financial controls and compliance procedures specified in this contract will be carried out by the *Employer* or his representatives to ensure the controls are operating effectively.

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

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

THE SCHEDULES

Schedule

- 1 Additional definitions
- 2  REDACTED
- 3  REDACTED
- 4 Form of Warranty from *Contractor*
- 5 Form of Warranty from Subcontractor
- 6 Form of Warranty from Subconsultant
- 7 Corporate IPR
- 8 Dispute Resolution Procedure
- 9 Disruption Damages
- 10 Form of Deed of Novation
- 11 Escrow Agreement
- 12 Legal Opinion
- 13 Retention Bond

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

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

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

Available means:

the *works* are safe [and fit for their intended purpose]¹, there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and the *works* are readily accessible and operable by the *Employer*.

Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause Z2.7.1;

BCV Contract means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms;

Change of Control means a change of ownership of the *Contractor* (or *parent company* if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or *parent company* as the case may be).

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

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

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

Critical Defect means a Defect which appears on or before the *defects date* and which is: critical to the operation and/or safety of the Underground Network; within a category of Defects identified in the Works Information as Critical Defects; or deemed by the *Project Manager* to be critical to the carrying out and completion of the *works* and/or the work of Others;

Customer means a customer on the Underground Network;

¹ Delete if Option X15 applies.

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

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

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

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

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

[Ground Baseline Report means the ground baseline report included in the [Site][Works] Information]².

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

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

Infraco means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns;

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

JNP Contract means the contract between Tube Lines Limited and the *Employer* for the provision of infrastructure maintenance services dated 31 December 2002 as amended from time to time in accordance with its terms;

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

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

LUL Nominee BCV means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee;

LUL Nominee SSL means LUL Nominee SSL Limited (No. 06242508) or its successor in title or assignee;

² Insert, if applicable.

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

Oversite Developer means a developer who has an interest in, over or above the whole or part of the *works*.

Oversite Development means an overstated development above the *works*.

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

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

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

PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract and **PPP Contract** means any one of them or, as the context requires, a particular one of them;

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

Prohibited Act means:

(a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:

for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;

(b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;

(c) committing any offence:
under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
under any law or legislation creating offences in respect of fraudulent acts, or
at common law in respect of fraudulent acts
in relation to this contract or any other contract with the *Employer*; or

(d) defrauding or attempting to defraud the *Employer*

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

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone

employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network and/or the safety of the *Employer's* Customers, staff or any other person.

SSL Contract means the contract between Metronet Rail SSL Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee SSL on 27 May 2008 and as amended from time to time in accordance with its terms;

[Stage 1 Works means the stage 1 works as more particularly described in the Works Information.]³

[Stage 2 Works means, if instructed, the stage 1 works as more particularly described in the Works Information.]⁴

[Stage 2 Works Commencement Notice means a notice issued pursuant to clause 20A.1 of the *conditions of contract*.]⁵

[Stage 2 Works Non-Commencement Notice means a notice issued pursuant to clause 20A.4 of the *conditions of contract*.]⁶

Standards means the various standards documents and associated codes of practice identified in the Works Information as applicable to the project;

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

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

Statutory Undertaker means any governmental or local authority or statutory undertaker: which has any jurisdiction with regard to the *works* and/or the project including any jurisdiction to control development of the Site or any part of it; with whose requirements the *Employer* is accustomed to comply; or with whose systems and/or utilities the project and/or the *works* will be connected.

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

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

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

³ Insert, if applicable.

⁴ Insert, if applicable.

⁵ Insert, if applicable.

⁶ Insert, if applicable.

member of the TfL Group;

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

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

SCHEDULE 4

(Form of Warranty from *Contractor*)

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**"); and
- (2) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

- (A) By a contract dated ● (the "**Contract**") [● (whose registered office is at ●)]¹ ("the *Employer*", which expression shall include its successors in title and assigns) appointed the *Contractor* to design, carry out and complete certain [**Works and/or Services**] at ● (the "**works**").
- B) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] [has entered into] an agreement to provide finance for the carrying out and completion of the *works* and/or an Oversight Development.] [The Beneficiary [intends to enter into] [has entered into] an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] [take a lease of] the whole or part of the *works* and/or an Oversight Development.] [The Beneficiary has an interest in, over or above the whole or part of the *works* as a developer and [intends to enter into] [has entered into] an agreement with the *Employer* in respect of [].]/[the Beneficiary is a member of the TfL Group and has an interest in the works as ●.]/[It is a term of the Contract or has otherwise been agreed that the *Contractor* enters into this Deed with the Beneficiary in relation to the *works*]²

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
2. The *Contractor* warrants and undertakes to the Beneficiary that:

¹ Insert the details of the relevant member of the TfL Group.

² Select appropriate recital depending on whether the Beneficiary is (i) a PFI Contractor; (ii) funder; (iii) purchaser/tenant; (iv) developer (v) member of the TfL Group or (vi) other.

- (a) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out works of a similar scope, size and complexity to the *works*; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
- 3. The *Contractor* warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
- 4. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed, [the]³ [The] *Contractor* further warrants and undertakes to the Beneficiary that:
 - (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) the *works* are integrated with the designs of Others as specified in the Contract;
 - (d) *works* will on Completion be Available,⁴;
 - (e) the *works* will on Completion comply with all applicable law and all relevant Standards; and
 - (f) the *works* will be carried out and completed timeously in accordance with the Accepted Programme.
- 5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[25 million]⁵ in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at

³ Use shaded text on all forms of warranty where Beneficiary is not a PFI contractor or a member of the TfL Group.

⁴ Use shaded text if X15 is selected.

⁵ The PI figure should be the same as the figure inserted in the Contract Data.

commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.

6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the *works* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the *Contractor*.

8. The *Contractor* agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the *Contractor's* expense to provide the Beneficiary with a set of all such material on Completion of the *works*.
- 9. If called upon to do so by the Beneficiary, the *Contractor* shall provide the Beneficiary with such information relating to the *works* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Contractor* for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Contractor* under the Contract or relieve the *Contractor* from any liability which it has in relation to the *works*.
- 10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (B), or]⁶ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Contractor* being required and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.
- 11. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
- 12. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.

⁶ Use shaded text if a PFI Contractor is the Beneficiary.

14. [The *Contractor* shall not be liable to the Beneficiary under this Deed for any delay to Completion of the works.]⁷
- 15.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer*.
- 15.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

⁷ Consider for use on PFI Contractor form of warranty. On other forms insert "Not Used".

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

**[EXECUTED AND DELIVERED AS
A DEED for and on behalf of
[THE BENEFICIARY] BY**

●
being duly authorised in the presence of:

Signature of Director
Print name of Director
Signature of Director/Secretary
Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director	
Print name of Director	
Signature of Director/Secretary	
Print name of Director/Secretary]

SCHEDULE 5A

(Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is ●¹ (the "**Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with the *Employer* for the design and carrying out of certain [**Works and/ or Services**] at ● (the "**works**").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the *Contractor* for the [design and] carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in *Annex* ● hereto².

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);

¹ Insert details of the relevant member of the TfL Group.

² A description of the works should be provided in the Annex.

- (c) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.
- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (e) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Subcontract or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*; or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *subcontract works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.

- (g) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
- (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

2. The Subcontractor warrants and undertakes to the *Employer* that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

4. The Subcontractor further warrants and undertakes to the *Employer* that:

- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
- (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
- (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
- (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor;
- (e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;

- (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[10 million]³ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the *Employer* an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;

³ The PI figure should be the same as the figure inserted in the Contract Data.

- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

- (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the *Employer* with a set of all such material on Completion of the *subcontract works*.

9. If called upon to do so by the *Employer*, the Subcontractor shall provide the *Employer* with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* nor the approval by the *Employer* of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.

10. The Subcontractor warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the *Employer* that the Subcontract contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without

limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the 12 years thereafter.

11. The Subcontractor shall provide such assistance to the *Employer* as it may reasonably require in connection with the *subcontract works*.
12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.
- 13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Subcontract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.

14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
19. The Subcontractor hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *subcontract works* and/or the PFI Contractor(s). Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*.
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the [*Employer*] that:

- (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;
- (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and
- (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.

20.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.

20.3 Clause 20.1 does not apply to the disclosure of:

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

20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
- 20.7 At the *Employer's* request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
22. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subcontractor including without limitation any remedies in negligence.
23. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subcontractor to the *Contractor* under the Subcontract.
24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.

25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.

26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

By affixing the **COMMONSEAL** of

[THE EMPLOYER]

in the presence of:

Authorised Signatory

THE COMMON SEAL of

[THE SUB-CONTRACTOR]

was affixed to **THIS DEED**

in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

[EXECUTED AND DELIVERED AS

A DEED by

[THE CONTRACTOR]

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX

(subcontract works)

SCHEDULE 5B

(Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**")
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ● whose registered office is situate at ● (the "**Employer**") which expression shall include its successors and assigns for the [design and] carrying out of certain [**Works and/ or Services**] at ● (the "**works**").

(B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the *Contractor* for the [design and] carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in Annex ● hereto⁴.

(C) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works* and/or an Oversight Development]. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works* and/or an Oversight Development.] [The Beneficiary has an interest in, over or above the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●] It is a term of the Subcontract or has otherwise been agreed that the Subcontractor enters into this Deed with the Beneficiary in relation to the *subcontract works*]⁵

NOW IT IS AGREED:

⁴ A description of the works should be provided in the Annex.

⁵ Select appropriate description.

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
 - (b) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
 - (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (d) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Subcontractor warrants and undertakes to the Beneficiary that:
 - (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
 - (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. [Provided that nothing in this Clause 4 shall impose a greater duty on the Contractor than that owed under Clause 2(a) of this Deed [the]]⁶ [The] Subcontractor further warrants and undertakes to the Beneficiary that:

⁶ Use shaded text on all forms of warranty where Beneficiary is not a PFI Contractor.

- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[10 million]⁷ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the Beneficiary an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:

⁷ The PI figure should be the same as the figure inserted in the Contract Data.

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

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the Beneficiary with a set of all such material on Completion of the *subcontract works*.

9. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.

10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (C), or]⁸ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
11. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 13.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract.
- 13.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

⁸ Only use shaded text if Beneficiary is a PFI Contractor.

- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of
[THE BENEFICIARY]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUB-CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON/CORPORATE SEAL of
[THE CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

(subcontract works)

SCHEDULE 6A

(Form of Warranty from Subcontractor to Employer (where Subcontractor is providing consulting services))

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is at ●¹ ("the **Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with the *Employer* for the carrying out of certain [**Works and/or Services**] at ● (the "**works**").
- (B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);

¹ Insert details of relevant member of the TfL Group.

- (c) "Minimum Records" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.
- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (e) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Appointment or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the *Employer* or the *Contractor*, or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.

- (g) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Subconsultant warrants and undertakes to the *Employer* that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
3. The Subconsultant warrants to the *Employer* that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subconsultant further warrants and undertakes to the *Employer* that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;
 - (e) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[10 million]² in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

² The PI figure should be the same as the figure inserted in the Contract Data.

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the *Employer* with a set of all such material on Completion of the *design works*.
9. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
10. The Subconsultant warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the *Employer* that the Appointment contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.

11. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Appointment and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Appointment shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.
- 13.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Appointment and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Appointment.
- 13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the

Subconsultant from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.

15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:
 - (a) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the *design works* relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and
 - (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.

- 19.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 19.3 Clause 19.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 19.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 19.7 At the *Employer's* request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 20.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment.

- 20.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
21. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
22. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.
23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

By affixing the **COMMON SEAL** of

[THE EMPLOYER]

in the presence of:

Authorised Signatory

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director
Print name of Director
Signature of Director/Secretary
Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director
Print name of Director
Signature of Director/Secretary
Print name of Director/Secretary

SCHEDULE 6B

(Form of Warranty from Subcontractor to Beneficiary (where Subcontractor is providing consulting services))

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**");
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ●³ (the "**Employer**") which expression shall include its successors and assigns for the carrying out of certain [**Works and/or Services**] at ● (the "**works**").

(B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.

(C) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works* and/or an Oversight Development]. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works* and/or an Oversight Development.] [The Beneficiary has an interest in, over or above the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●][It is a term of the Appointment or has otherwise been agreed that the *Consultant* enters into this Deed with the Beneficiary in relation to the *design works*]⁴

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

³ Insert details of relevant member of the TfL Group.

⁴ Select appropriate description.

- (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
 - (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (d) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Subconsultant warrants and undertakes to the Beneficiary that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
3. The Subconsultant warrants to the Beneficiary that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. [Provided that nothing in this clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed [the]]⁵ [The] Subconsultant further warrants and undertakes to the Beneficiary that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;

⁵ Use shaded text on all forms of warranty where Beneficiary is not a PFI Contractor.

- (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
5. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[10 million]⁶ in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;

⁶ The PI figure should be the same as the figure inserted in the Contract Data.

- (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.
9. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (C), or]⁷ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

⁷ Only use shaded text if Beneficiary is a PFI Contractor.

11. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.
13. The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment.
- 13.1 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
- 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of

[THE BENEFICIARY]

was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 7

(Corporate IPR)

1. The Roundel (examples of which are given in Annex 1), including the following registered trade marks:

Country	Registration / Application	Trademark	Class
UK	1321443	BLANK ROUNDDEL	39
UK	1094664	ROUNDDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDDEL	16
UK	2236110	UNDERGROUND & ROUNDDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDDEL	25
UK	1321442	UNDERGROUND ROUNDDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDDEL	14 16 18 25 32
CTM	299206	ROUNDDEL DEVICE	16 25 28 39
CTM	814004	ROUNDDEL DEVICE & UNDERGROUND	18 25 42

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the *New Johnston Typeface*) (examples of which are attached in Annex 2).
3. The Underground map attached in Annex 3.
4. The following registered trade marks:

Country	Registration / Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39

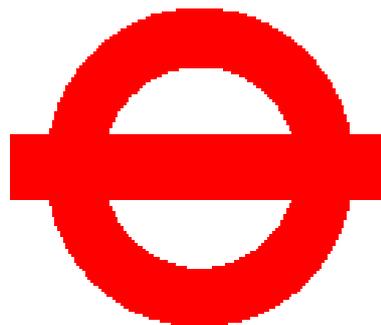
Country	Registration / Application	Trademark	Class
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

Annex 1

Examples of the London Underground Roundels



Annex 2

Examples of the New Johnston Typeface

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'#

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'#*

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'#

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'#*

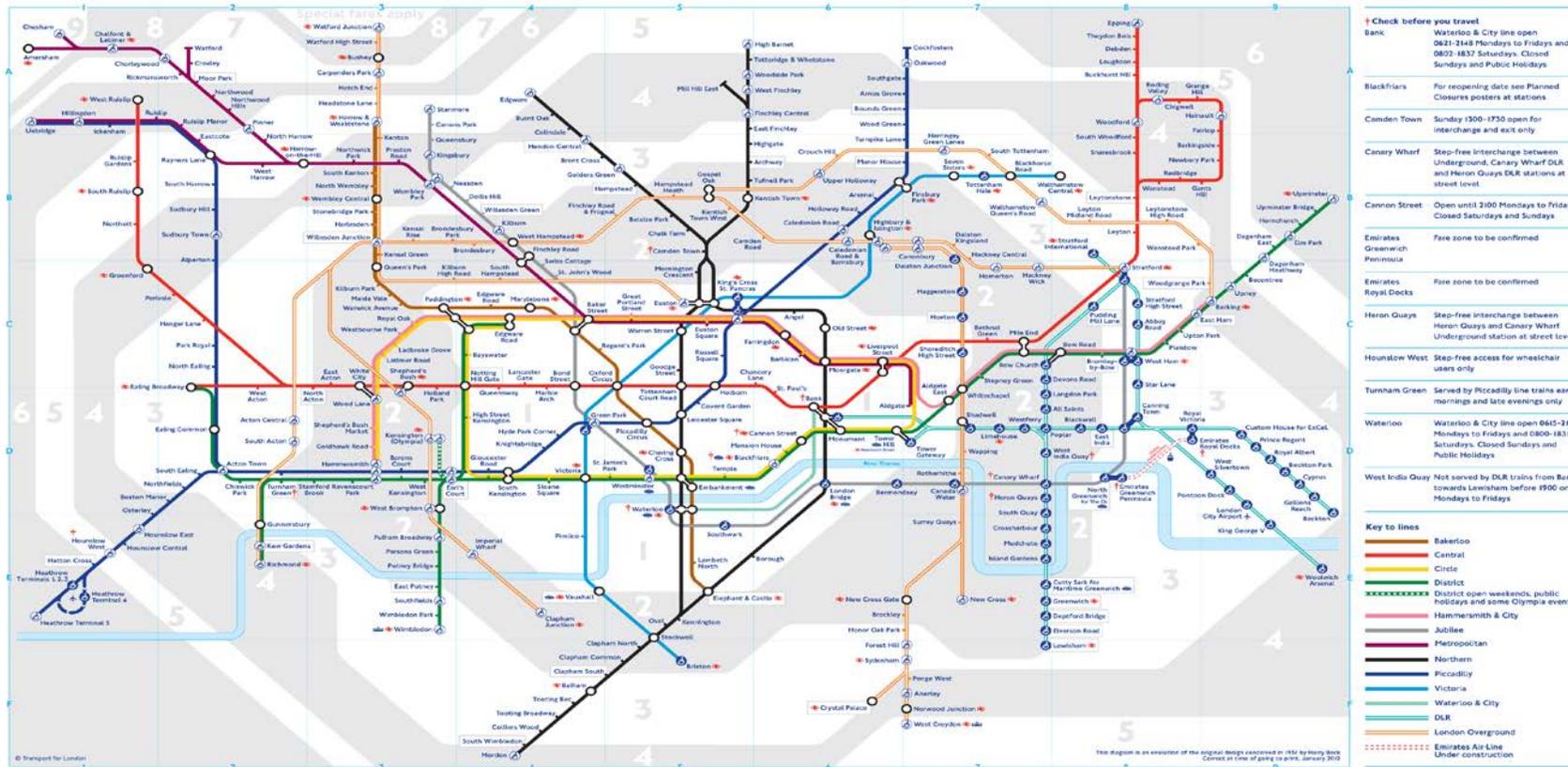
ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'#

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'#*

Annex 3

London Underground Tube Map

Tube map



SCHEDULE 8

(Dispute Resolution Procedure)

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

“Adjudicator” means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 8.

“Conflict Avoidance Panel” means an independent person or persons appointed from time to time in accordance with clause W2.A.

“Nominating Authority” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“Notice of Adjudication” means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- details of where and when the Dispute arose; and
- the nature of the redress which is sought.

“Referral Notice” means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

“RICS” means the Royal Institution of Chartered Surveyors.

“Senior Representative” means a representative of a Party at senior executive level;

W2.A.1 The *Employer, Contractor and the Project Manager* follow the procedure set out in W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.A.2 Subject to clause W2.1, any Dispute may in the first instance be referred to a Conflict Avoidance Panel by notice in writing from the referring party to the other party. The parties to the Dispute endeavour to agree upon (a) the person(s) whom they would consider suitable to act as the member(s) of the Conflict Avoidance Panel and (b) the number of member(s) of the Conflict Avoidance Panel (which as a general principle depends upon the issues in dispute but is always an odd number). In the event of the parties to the Dispute failing to reach such agreement within 14 days of receipt by the responding party of notice pursuant to this clause W2.A.2, either party to the

Dispute may request the RICS to nominate the member(s) of the Conflict Avoidance Panel to do so (including the number of member(s) of the Conflict Avoidance Panel, which as a general principle depends upon the issues in dispute but is always an odd number). Any person selected to act as a member of the Conflict Avoidance Panel (a) is a natural person acting in his personal capacity and (b) is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.”

- W2.A.3 Within 7 days of the appointment of the member(s) of the Conflict Avoidance Panel in accordance with clause W2.A.2, the referring party refers the Dispute in writing to the Conflict Avoidance Panel. The referral gives brief written particulars of the dispute, the relief sought and the basis for claiming the relief sought, including the provisions of the Contract that are relevant to the Dispute. The referral may include copies of, or relevant extracts from, the Contract and any other documents on which he relies. The referring party provides the responding party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.”
- W2.A.4 Within 7 days of receipt of the referral of the Dispute to the member(s) of the Conflict Avoidance Panel pursuant to clause W2.A.3, the responding party provides the Conflict Avoidance Panel with a brief written response. The responding party may at the same time provide the Conflict Avoidance Panel with any documents on which he relies. The responding party provides the referring party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.”
- W2.A.5 Within 7 days of receipt of the response pursuant to clause W2.A.4 (or such longer period as may be agreed by the parties to the Dispute), the Conflict Avoidance Panel notifies the parties to the Dispute of its recommendation(s) for avoiding or resolving the Dispute. The notice is in writing and includes a summary of the Conflict Avoidance Panel’s findings and a statement of its reasons for the recommendation(s). The recommendation(s) is (are) not binding on the parties to the Dispute.”
- W2.A.6 If a party to the Dispute is dissatisfied with the recommendation(s) notified by the Conflict Avoidance Panel pursuant to clause W2.A.5, it notifies the other party to the Dispute in writing, within 7 days of notification by the Conflict Avoidance Panel pursuant to clause W2.A.5, of the reasons why it is dissatisfied with the recommendation(s).”
- W2.A.7 Each party to the Dispute (a) bears its own costs and expenses in relation to any reference of a Dispute to the Conflict Avoidance Panel and (b) bears in equal shares the remuneration and expenses of the member(s) of the Conflict Avoidance Panel and the fees of the professional body or association requested to propose the member(s) of the Conflict Avoidance Panel.”
- W2.A.8 Save as required by law, the Parties and the member(s) of the Conflict Avoidance Panel keep confidential all information of whatever nature provided by or on behalf of the parties to the Dispute pursuant to clause W2.A and the Conflict Avoidance Panel’s recommendation(s) (including its findings and its reasons for the recommendation(s)). The Parties do not make use of or rely upon any such information or the Conflict Avoidance Panel’s recommendation(s) (including its findings and its reasons for the recommendation(s)), which are without prejudice.”

- W2.B.1 Subject to clause W2.1, any Dispute may be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.
- W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.
- W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.
- W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.
- W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.
- W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.
- W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.
- In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.
- The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.
- W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:
- is a natural person acting in his personal capacity; and
 - is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the

Dispute

- W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.
- W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.
- W2.6 The Referral Notice includes:
- the facts relied upon by the referring party in support of its claim(s);
 - a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
 - a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
 - is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.
- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance

with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.

- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.14 The Adjudicator:
- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information

to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;

- reaches his decision in accordance with the law of the contract;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- inspect any part of the Underground Network.

W2.16 The Adjudicator is not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.

W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a

statement of the reasons for his decision.

- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.

- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.

SCHEDULE 9

(Liquidated Damages for Disruption)

1. In this Schedule, the following terms have the following meanings:
 - (a) **“LCH” or “Lost Customer Hours”** means the total additional journey time measured in hours, applying planned or unplanned NACHs as appropriate, experienced by Customers as a result of a planned or unplanned Service Disruption;
 - (b) **“NACHs” or “Nominally Accumulated Customer Hours”** means the system of weights used to estimate the cumulative additional perceived journey time encountered by Customers as a result of planned or unplanned Service Disruptions, as the case may be, as the same is set out in the NACHs Tables 2014 contained in the Works Information.
 - (c) **“Service Disruption”** means any disruption to customer services on the Underground Network comprising an interruption to train services or station services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures, escalator failures (either partial or total failures, that add to each passengers’ overall journey time) and lift downtimes.
2. In the event of a Service Disruption resulting from a failure on the part of the *Contractor* to comply with its obligations under this contract the *Contractor* shall pay on demand and/or the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 9. The duration of any Service Disruption is measured using a network-based database known as CuPID (Contract Performance Information Database).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by multiplying (a) the relevant Lost Customer Hours attributable to the applicable Service Disruption by (b) X
where:
 - (i) “X” equals [£3.55]¹ (three pounds fifty-five pence sterling) indexed as provided for in paragraph 4; and
 - (ii) the applicable NACHs table is the unplanned NACHs Tables 2014 for the first seven (7) days of such Service Disruption and the planned NACHS Tables 2014 for any subsequent days of the same Service Disruption.
4. The value of ‘X’ (as defined in paragraph 3) is revised as at 1 April in each year according to the following calculation:

$$X_{cy} = \frac{r_n}{r_o} \times X$$

¹ Amount to be included must be confirmed and updated as stated in the Guidance Manual.

where:

- X_{cy} = value of X for the year commencing on the applicable 1 April;
- r_n = RPIX published for the month of August immediately preceding the applicable 1 April; and
- r_o = RPIX published for February [2012].

5. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.
6. The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under this Schedule 9 is stated in the Contract Data Part One (and if no maximum is stated the aggregate liability of the *Contractor* for liquidated damages under this Schedule 9 is unlimited).

SCHEDULE 10

(Form of Deed of Novation for use with Option X22)

THIS AGREEMENT is made ● day of ● 201●

BETWEEN:

- (1) [● of ●]¹ (the "**Employer**" which expression includes its successors in title and assigns);
- (2) [INSERT NAME OF CONTRACTOR] whose registered office is situated at [INSERT REGISTERED ADDRESS OF CONTRACTOR] (the "**Contractor**"); and
- (3) [INSERT NAME OF ASSOCIATED CONTRACTOR] whose registered office is at [INSERT REGISTERED ADDRESS OF ASSOCIATED CONTRACTOR] (the "**Associated Contractor**").

WHEREAS:

- (A) The Employer has appointed the Associated Contractor to [INSERT DESCRIPTION OF THE WORKS AND/OR THE SERVICES] (the "**Services**") by an agreement dated ● (the "**Associated Contract** ").
- (B) The Employer has appointed the Contractor under a contract (the "**Contract**") to design and construct certain works as therein described (the "**Works**").
- (C) The Parties novate the Associated Contract from the Employer and the Associated Contractor to the Contractor and the Associated Contractor on the terms of this deed.

NOW IT IS HEREBY AGREED as follows:

1. NOVATION

- 1.1 The Employer as beneficial owner hereby novates to the Contractor its entire rights, benefits, liabilities and obligations under and pursuant to the Associated Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.

¹ Insert the details of the relevant member of the TfL Group.

- 1.2 The Associated Contractor releases and discharges the Employer from any and all obligations and liabilities owed to the Associated Contractor under the Associated Contract and accepts the liability of the Contractor under the Associated Contract in lieu of the liability of the Employer.
- 1.3 The Associated Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer. The Contractor agrees that it will not hereafter terminate the Associated Contractor's engagement under the Associated Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.
- 1.4 The Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer.
- 1.5 The Contractor shall not be prevented from recovering any loss, damage, cost or expense (including legal costs) ("Losses") incurred by the Contractor that result from any breach of clause 1.3 because:
- (a) the acts or omissions causing that breach occurred before this deed took effect; or
 - (b) the Employer will not incur, has not or would not have incurred those Losses.
- 1.6 All rights of action and remedies vested in the Employer against the Associated Contractor in respect of the Associated Contract shall vest in the Contractor from the date of this deed. All rights and remedies vested in the Associated Contractor against the Employer in respect of the Associated Contract shall lie against the Contractor from the date of this deed.
- 1.7 The Associated Contractor acknowledges that all fees and expenses properly due to the Associated Contractor under the Associated Contract up to the date of this Agreement have been paid by the Employer.

2. SERVICES FOR THE EMPLOYER

- 2.1 The Associated Contractor agrees that, notwithstanding the novation of the Associated Contract pursuant to this Agreement, it will perform the services

("Further Services") set out in Annex 2 to this Agreement for the Employer for the remuneration referred to in Annex 3 hereof².

2.2 The Associated Contractor warrants to the Employer that:

- (a) it will perform the Further Services using the reasonable skill, care and diligence to be expected of an appropriately qualified [insert profession]³ holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms set out in the Associated Contract as if they were set out in this Agreement; and
- (b) it will have in place professional indemnity insurance on the terms set out in the Associated Contract in respect of such Further Services.

3. PROPER LAW AND JURISDICTION

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

4. CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999)

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any third person (save the Employer's successors in title or permitted assignees) any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

² Annexures 2 and 3 should be completed when the *Employer* requires the Associated Contractor to perform services for it after novation. Annex 2 lists the services to be performed while Annex 3 sets out the level of remuneration that will be paid for these services (e.g. a lump sum figure or hourly rate of specified staff).

³ [To be completed prior to signing deed of novation]

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

EXECUTED AND DELIVERED AS A DEED

By affixing t**HE COMMON SEAL** of
[LONDON UNDERGROUND LIMITED]

in the presence of:

Authorised Signatory

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**[EXECUTED AND DELIVERED AS
A DEED by
[THE ASSOCIATED CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX 1

Not used.

ANNEX 2⁴

(FURTHER SERVICES)

⁴ If further services are to be provided by the Associated Contractor to the *Employer* the relevant services should be inserted. If no further services are to be provided leave blank.

ANNEX 3⁵

(FURTHER SERVICES REMUNERATION)

⁵ If further services are to be provided by the Associated Contractor to the *Employer* and Annex 2 is completed, the level of remuneration for these further services should be inserted into Annex 3. If no further services are to be provided leave blank.

SCHEDULE 11⁶

(Escrow Agreement)

<https://www.nccgroup.trust/uk/our-research/premium-content-gateway/?url=%252fglobalassets%252fresources%252fuk%252fpremium-downloads%252fescrow-licencee-agreements%252fsingle-licensee-software-escrow-agreement-uk.pdf%253f>

⁶ Not used if Option X24 is selected.

SCHEDULE 12

LEGAL OPINION

TO: [insert recipient details]

Dear Sirs

I am the legal adviser to [] and I am giving this legal opinion in connection with the making by [] of the Document (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the “**Document**”) dated [] made between the [] (the “**Guarantor**”), [] (the “**Contractor**”) and [insert recipient name] (the “**Company**”). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of [] I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in [] on [] for an indefinite period as [*a limited company*] and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in [] has been taken to enable the Guarantor to:
 - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder;
 - (ii) guarantee the Company in respect of the obligations to the Guarantor under the Documents;

and implementation by the Guarantor of the foregoing will not cause:

- (iii) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
 - (iv) any law or order to be contravened;
 - (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Guarantor is a party or by which it or any of its assets is bound;
- (c) the Document has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Guarantor under the laws of [] and in the courts of [];
- (e) it is not necessary or advisable under the laws of [] in order to ensure the validity, enforceability and priority of the obligations of the Guarantor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
- (f) the obligations of the Guarantor under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Guarantor;
- (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Guarantor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in [];
- (h) there are no registration, stamp or other taxes or duties of any kind payable in [] in connection with the signature, performance or enforcement by legal proceedings of the Document;

- (i) the Company will not violate any law or regulation in [] nor become liable to tax in [] by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in [] in order to enforce any provisions of the Document;
 - (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the [] Courts;
 - (k) the consent to the jurisdiction by the Guarantor contained in the Document is valid and binding on the Guarantor and not subject to revocation;
 - (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Guarantor would be recognised and accepted by the [] Courts without re-trial or examination of the merits of the case.
3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of [] and accordingly express no legal opinion herein based upon any law other than the laws of [].

Signed []

.....

Name and position

SCHEDULE 13

(Form of Retention Bond)

Retention Bond No []

To: [....] (the "**Beneficiary**")

1. We have been informed that our customer, [] of [] (the "**Contractor**"), and you, the Beneficiary have entered into a contract dated [...] for the [...] ("**Contract**").
2. The terms of the Contract require that the obligations of the Contractor under the Contract are supported by this Retention Bond in your favour.
3. In consideration of the aforesaid, we, [...], hereby irrevocably undertake as a primary obligation to pay to you any amount you may claim from us upon receipt of your first demand in writing and substantially in the form set out in Annex 1 ("**Demand**") but not exceeding £ [...] (the "**Retention Amount**") and provided that:
 - (a) our liability under this Retention Bond is limited to an amount or amounts in aggregate not exceeding the Retention Amount;
 - (b) any claim hereunder shall be accompanied by your statement that the amount claimed is due by reason of any breach by the Contractor of the terms of the Contract, or any event of insolvency of the Contractor (as defined in clause 91.1 of the Contract), the termination or expiry of the Contract or any non-payment by the Contractor of sums due to the Beneficiary under the terms of the Contract;
4. This Retention Bond shall be valid for Demands received in accordance with this Retention Bond until the issue of the Defects Certificate under the Contract (the "**Expiry Date**") whereupon you shall return this Retention Bond to the Contractor. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this Retention Bond is returned to us.
5. We shall make payment to you within 5 banking days upon service of your Demand:
 - (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand which, as between ourselves and you, shall be conclusive; and
 - (b) notwithstanding any dispute between the Contractor and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of your Demand without any rights on our part to raise any objections, irrespective of the validity and/or the effectiveness of the Contract and the obligations arising there under and irrespective of the underlying facts or their significance under the Contract.
6. All sums payable under this Retention Bond shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or

withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.

7. This Retention Bond shall not be affected by:
 - (i) any change in the constitution of the Contractor and/or you and/or ourselves; and/or
 - (ii) the granting of any time by you to the Contractor and/or any forbearance or
 - (iii) indulgence on any account shown by you to the Contractor; and/or
 - (iv) any change in the terms and conditions of the Contract; and/or
 - (v) any other circumstances which might operate to release a guarantor at law or in equity.
8. This Retention Bond may be assigned or charged without our consent to any member of TfL Group. Any other assignment of this Retention Bond shall require our consent, which consent not to be unreasonably withheld or delayed.
9. Until the full Retention Amount and all amounts which may be or become due and payable in respect of the Retention Amount have been unconditionally and irrevocably paid in full and unless the Beneficiary otherwise directs, we shall not exercise any rights which we may have by reason of performance by us of this Retention Bond or by reason of any amount being payable, or liability arising, under this Retention Bond to:
 - (a) be indemnified by the Contractor;
 - (b) claim any contribution from any other guarantor of the Contractor's obligations;
 - (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary or of any other guarantee or security taken by the Beneficiary; and/or
 - (d) claim, rank, prove or vote as a creditor of the Contractor or in its estate in competition with the Beneficiaryand if we receive any benefit, payment or distribution in relation to such rights, we shall hold that benefit, payment or distribution to the extent necessary to enable all the Retention Amount to be paid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct for application.
10. Words and phrases defined in the Contract shall have the same meanings in this Retention Bond unless inconsistent with the context.

11. This Retention Bond shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Retention Bond and any matter arising from it.

Executed as a deed by the parties and delivered on the date of this Retention Bond.

**EXECUTED AND DELIVERED AS
A DEED for and on behalf of
[THE GUARANTOR]**

acting by:

Signature of Authorised Signatory

Print name of Authorised Signatory

Signature of Authorised Signatory

Print name of Authorised Signatory

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

[.....]¹

In the presence of:

Authorised Signatory

.

¹ Insert name of member of TfL Group

Annex 1

Form of Demand from the Employer to *[insert name of Guarantor]*

Dear Sirs

[Contract No *[insert contract number]*] or [Contract dated *[insert contract date]*] with *[insert name of Contractor]* in respect of *[insert brief description of Works]*

We refer to the Retention Bond given by you to us dated *[insert Retention Bond date]*.

We hereby demand from you the sum of £*[insert demand amount – up to maximum amount of the Retention Bond]* under your Retention Bond. The amount claimed is due by reason of *[insert details]*.

Please make payment by transferring funds in sterling to *[insert name of Employer]* at the following account:

[●] Bank plc

Address:

Account Number:

Sort Code:

Account Name:

Yours faithfully

On behalf of *[insert name of Employer]*

Appendix 9 – see Volume 2 of 2

Example Work Package (Camden Town Station) REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]