



Agreement Reference Number: 460005871

Date: 1 March 2017

**SCP154
Framework Agreement
for
Programme Wide Project Integrator**

between

London Underground Limited

and

**(1) Mace Limited
(2) Arcadis UK LLP**

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THIS FRAMEWORK AGREEMENT is made the 1 day of March 2017

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales and whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("the Framework Employer"); and
- (2) **Mace Arcadis JV** comprised of a joint venture arrangement between **Mace Limited** a company registered in England and Wales (Company Registration Number 241626) whose registered office is at 155 Moorgate, London EC2M 6XB and **Arcadis UK LLP**, a company registered in England and Wales (Company Registration Number OC368843) whose registered office is at Arcadis House, 34 York Way, London N1 9AB (jointly and severally "the Consultant").

BACKGROUND:

- (A) The Parties wish to enter into a framework agreement which enables any *Employer*, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the *Consultant* for some or all of the Services of the type described in Schedule 3 the Framework Scope.
- (B) A Call-Off Contract issued in accordance with this Framework Agreement incorporates those of the Conditions of Contract identified in Schedule 2. The Conditions of Contract are an amended version of the NEC Professional Services Contract (3rd Edition).
- (C) The terms and conditions of this Framework Agreement shall apply to the Services to be provided by the *Consultant* under any Call-Off Contract.

THE PARTIES AGREE THAT:

In consideration of payment of £5.00 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:

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:

“Additional Priced Elements”	the additional priced elements set out in Schedule 1 to this Framework Agreement as adjusted pursuant to the terms of this Framework Agreement.
“Adjudicator”	an independent person appointed to act as an adjudicator in accordance with Clause 41;
“Business Day”	any day other than a Saturday or Sunday or a public bank holiday in England;
“Background Intellectual Property Rights”	Intellectual Property Rights owned by the <i>Consultant</i> or a Consultant’s Personnel or other third party and which is not assigned to the <i>Employer</i> ;
“Call-Off Contract”	a call-off contract (incorporating the Form of Agreement set out in Schedule 6A) issued by the <i>Employer</i> in accordance with Clause 7 and including any attachments and any documents expressly referred to in that Call-Off Contract;
Call-Off Contract Data”	the Call-Off Contract Data included in each Schedule 6A Call-Off Contract;
“Commencement Date”	is the Framework Agreement date;
“Conditions of Contract”	the terms and conditions set out at Schedule 2 ;

“Confidential Information”	all information (whether written or oral) that by its nature may reasonably be regarded as confidential to the <i>Employer</i> (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the <i>Employer</i> ;
“Consultant Equipment”	the equipment and materials of whatsoever nature used by the <i>Consultant</i> in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the <i>Employer</i> under any Call-Off Contract;
“Consultant Manager”	is REDACTED REDACTED ;
“Consultant’s Personnel”	all such employees, officers, suppliers, sub-consultants, sub-contractors and agents of the <i>Consultant</i> as are engaged in the performance of any of the Services;
“Direct Request Form”	a document produced by the <i>Employer</i> pursuant to clause 7, setting out its request for a Proposal, in the form set out in Schedule 4 or in such other form as may be notified to the <i>Consultant</i> by the Framework Employer from time to time;
“Dispute”	any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
“Employer”	the Framework Employer;
“Employer’s Agent”	the <i>Employer’s Agent</i> identified in the Call-Off Contract Data;
“Employer Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of the <i>Employer</i> or any member of the TfL Group;
“Financial Year”	a calendar year ending 31 March;

“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“Affected Party”) to perform its obligations in accordance with the terms of this Framework Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
“Framework Agreement”	this Framework Agreement, including the Schedules and all other documents referred to in this Framework Agreement;
“Framework Scope”	the document at Schedule 3;
“Holding Company”	any company which is the holding company of the <i>Consultant</i> where holding company is defined by reference to the definition of ‘subsidiary’ in section 1159 of the Companies Act 2006;
“Index”	the UK Office of National Statistics Average Wage Earnings Titled NSA AWE Construction (K55L) or such replacement index as the parties may agrees;
“Index Figure”	quarterly figure given by the Index;
“Intellectual Property Rights”	any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, 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 in each case in the United Kingdom and anywhere else in the world;

“Key Person”	the <i>Consultant’s</i> key persons named as such in any relevant Call-Off Contract;
“Losses”	all costs (including legal costs and costs of enforcement) whatsoever or howsoever arising, expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, compensation, proceedings and judgments;
“Maximum Charge Out Rates”	the maximum daily charge out rates (minimum 8 hrs) set out in Schedule 1 to this Framework Agreement as adjusted pursuant to the terms of this Framework Agreement;
“Mini-Competition”	a competitive process which the <i>Employer</i> may from time to time utilise to select a consultant to carry out the Services;
“Mini-Competition Request Form”	a document produced by the <i>Employer</i> pursuant to clause 7, setting out its request for a Proposal, in the form set out in Schedule 5 or in such other form as may be notified to the <i>Consultant</i> by the Framework Employer from time to time;
“Notice of Adjudication”	any notice given by a party to the Dispute to the other party requiring reference of a Dispute to the Adjudicator in accordance with Clause 41. 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;
“Out Of Hours Working Percentage Mark-Up”	the out of hours working percentage mark-up set out in Schedule 1 to this Framework Agreement;

“Parties”	the Framework Employer (including its successors and permitted assigns) and the <i>Consultant</i> and “Party” shall mean either of them as the case may be;
“Procurement Manager”	such person notified to the <i>Consultant</i> by the Framework Employer from time to time;
“Proposal”	the <i>Consultant’s</i> offer to provide Services in response to a Request Form;
“Relevant Date”	in the case of the first review the Framework Agreement Commencement Date and for each subsequent review the date of the previous review;
“Request Form”	a Direct Request Form or a Mini-Competition Request Form;
“Responsible Procurement Policy”	the GLA’s Responsible Procurement Policy as amended from time to time a copy of the current version of which is on the Framework Employer’s website https://www.london.gov.uk/priorities/business-economy/vision-and-strategy/focus-areas/responsible-procurement/responsible-procurement-policy
“Scope”	is information which specifies and describes the <i>services</i> and/or • states any constraints on how the <i>Consultant</i> Provides the Services and is either, • in the documents which the Call-Off Contract Data states it is in; or • in an instruction given in accordance with a Call-Off Contract or more particularly described within a Call-Off Contract;
“Senior Representative”	a representative of a Party at senior executive level;

“Services”	the services to be provided by the <i>Consultant</i> pursuant to this Framework Agreement and any Call-Off Contract;
“Sub-Consultant”	Sub-consultant means any subconsultant, subcontractor person or organisation engaged by the <i>Consultant</i> pursuant to this Framework Agreement and any Call-Off Contract;
“Specialist Consultant”	a consultant who is a specialist/expert in his field within his industry. Maximum Charge Out Rates shall not apply to the Specialist Consultants at the <i>Employer’s</i> sole discretion;
“Term”	8 years from the Framework Agreement Commencement Date;
“TfL”	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
“TfL Group”	TfL and all its subsidiaries from time to time together with Crossrail Limited and any reference to any member of the TfL Group shall refer to TfL or any such subsidiary;
“Transparency Commitment”	the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Employer committed to publishing its contracts, tender documents and data from invoices received.
“Typical Charge Out Rates”	the typical daily charge out rates (minimum 8 hours) set out in Schedule 1 to this Framework Agreement as adjusted pursuant to the terms of this Framework Agreement which reflects the usual charge out rate for a <i>Consultant</i> as calculated in accordance with Schedule 1.

- 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 the Framework Agreement for ease of reference only and do not affect the interpretation or construction of the Framework Agreement;
- 1.6 except as otherwise expressly provided in any Call-Off Contract, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Framework Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
 - 1.6.1 each Call-Off Contract;
 - 1.6.2 these Clauses;
 - 1.6.3 the Schedules;
 - 1.6.4 any other document referred to in or incorporated by reference into this Framework Agreement or any Call-Off Contract;
- 1.7 the Schedules form part of the Framework Agreement and have the same force and effect as if expressly set out in the body of the 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; and
- 1.9 the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context.

2. Framework Agreement

- 2.1 The purpose of this Framework Agreement is to:
 - 2.1.1 provide a mechanism whereby the *Employer* and the *Consultant* may enter into Call-Off Contracts; and
 - 2.1.2 provide the framework to administer each Call-Off Contract.
- 2.2 The Services that may be requested by the *Employer* and provided by the *Consultant* are of the type described in the Framework Scope or as

more particularly described in each Call-Off Contract. The *Employers'* requirements may vary and this Framework Agreement does not place any *Employer* under any obligation to procure the Services from the *Consultant* 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 services similar to or the same as the Services.

- 2.3 Clause 7 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract is a binding agreement on the Parties and shall incorporate the terms and conditions of this Framework Agreement.
- 2.4 The *Consultant* commences provision of the services in accordance with the Call-Off Contract. The *Consultant* shall not commence any Services without an agreed Call-Off Contract.
- 2.5 All rates in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the Maximum Charge Out Rates set out in Schedule 1 of this Framework Agreement.

3. **Behaviour**

- 3.1 In order to work together in a co-operative and collaborative manner, the Framework Employer and the *Consultant* encourage integrated team working and give to each other and welcome from the other, feedback on performance.
- 3.2 The *Employer* and the *Consultant* share information openly and highlight any difficulties at the earliest practicable time.
- 3.3 The Parties support collaborative behaviour and confront behaviour that does not comply with the provisions of this Framework Agreement. The *Consultant* shall not enter into any contractual agreements or arrangements that conflict with the principles of this Framework Agreement.

4. **Term of Framework Agreement and Call-Off Contracts**

- 4.1 This Framework Agreement (but not a Call-Off Contract) commences on the Framework Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement.

- 4.2 Each Call-Off Contract term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Contract term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Framework Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 4.3 Expiry or termination of a Call-Off Contract in accordance with its terms does not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Framework Agreement.

5. **The Services**

5.1 The *Consultant*:

- 5.1.1 shall provide the Services specified in a Call-Off Contract to the *Employer* in accordance with this Framework Agreement and the terms of the relevant Call-Off Contract;
- 5.1.2 acknowledges that it has sufficient information about the *Employer*, the Services and the scope of services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;
- 5.1.3 shall comply with all lawful and reasonable directions of the *Employer* relating to its performance of the Services under any Call-Off Contract.

5.2 The *Consultant* shall provide the Services under each Call-Off Contract:

- 5.2.1 using the skill, care and diligence normally used by professionals providing services similar to the Services, including in respect of design, all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Services;
- 5.2.2 not used;

- 5.2.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
 - 5.2.4 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the *Consultant* shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the requirements specified in the relevant Call-Off Contract; and
 - 5.2.5 all documents, drawings, computer software and any other work prepared or developed by the *Consultant* or supplied to the *Employer* under the relevant Call-Off Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 5.3 Each warranty and obligation in this Clause 5 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.
- 5.4 Notwithstanding anything to the contrary in this Framework Agreement, the *Employer's* discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Framework Agreement or relevant Call-Off Contract.

6. **Warranties and Obligations**

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

6.1.1 the *Consultant*:

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 the Framework Agreement and any relevant Call-Off Contract; and

is entering into this Framework Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it acts as an independent contractor in carrying out its obligations

under this Framework Agreement; and

6.1.2 the Framework Agreement is and each Call-Off Contract will be duly executed by the *Consultant*.

6.2 Each warranty and obligation in Clause 6.1 is construed as a separate warranty or obligation (as the case may be) and is not 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.

6.3 Where the *Consultant* is a limited company the *Consultant*:

6.3.1 does not without notifying the Framework Employer prior to a change in the ownership of the *Consultant* undergo any change in the ownership (save for intra group companies change in ownership) of the *Consultant* where such change relates to 50% or more of the issued share capital of the *Consultant*.

6.3.2 if the *Consultant* does not notify the Framework Employer in accordance with 6.3.1, the Framework Employer may terminate this Framework Agreement if it determines (acting reasonably) that there is a material impact upon the Services due to any change in ownership;

6.3.3 gives notice to the Framework 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.

6.4 Where the *Consultant* is a partnership (non statutory) the rights, obligations and liabilities of the partners in the partnership under this Framework Agreement are joint and several. This Framework Agreement and the liabilities of the partners under this Framework Agreement do 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 use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Framework Employer confirming his/her acceptance of the rights, obligations and liabilities of the *Consultant* under this Framework Agreement.

6.5 Where the *Consultant* is comprised of two or more parties in joint venture or other alliance the rights, obligations and liabilities of each such party under

this Framework Agreement and each Call-Off Contract are joint and several.

7. Call-Off Procedure

- 7.1 At any time during the Term, the *Employer* may identify those of the Services which at its sole discretion it wishes to let under the terms of this Framework Agreement in which event the Parties follow the procurement process set out below which the Framework Employer reserves the right, at its discretion, to amend from time to time to reflect best practice and applicable law.
- 7.2 Where the *Employer* undertakes a Mini-Competition it issues to those consultants on the Framework a Mini-Competition Request Form and its schedules, specifying the Services to be provided.
- 7.3 The *Employer* may (but is not obliged to) issue a request to express an interest, and/or a pre-qualification questionnaire to Consultants on the Framework Agreement with a specified deadline for a response before determining appropriate consultant(s) to be included in the Mini-Competition.
- 7.4 Not Used.
- 7.5 Where the *Employer* having considered applicable law including the relevant procurement regulations (Utilities Contracts Regulations 2006 (as amended)) elects to instruct the *Consultant* direct without the need for a Mini- Competition, it issues to the *Consultant* a Direct Request Form and its schedules specifying the Services to be provided.

In the event that the *Consultant* receives a Request Form:

- 7.5.1 the *Consultant* within 2 Business Days confirms receipt of the Request Form.
- 7.5.2 The contents of the Request Form and its schedules are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.
- 7.5.3 Any contact relating to the Services with the *Employer's* personnel other than the procurement lead identified in the Request Form may invalidate the *Consultant's* Proposal submission.

- 7.5.4 The *starting date* and Completion dates should be deemed material to the Call-Off Contract. If the *Consultant* is unable to meet the dates specified in the Request Form, the *Consultant* should propose alternatives within the clarification process.
- 7.5.5 In the Proposal submission the commercial Proposal must be separated from the technical Proposal. Prices must not be included in the technical Proposal. The documents must be clearly titled 'Commercial Proposal' and 'Technical Proposal'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents.
- 7.5.6 During the course of our evaluation of Proposal submissions, the *Consultant* may be asked to answer questions about his submission and other matters related to the Services. The *Consultant* must respond to such questions as quickly as possible but, in any event, within 2 (two) Business Days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the *Employer* rejecting the Proposal submission. Any amendments to the Proposal submission arising from these discussions with the *Consultant* will be taken into account in the final evaluation.
- 7.5.7 To enable moderation of the Proposal evaluation process, the Employer may request a meeting from all, some or one of the Consultants. Failure to attend may result in the Employer rejecting the Proposal submission.
- 7.5.8 Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If the Consultant wishes the Employer to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting the Proposal submission.
- 7.5.9 Failure to disclose all material information (facts that the Employer regards as likely to affect the evaluation process), or disclosure of false information at any stage of the procurement process may result in ineligibility for award. The Consultant must provide all information requested and not assume that the Employer has prior knowledge of any of the Consultant's information.
- 7.5.10 If the Consultant wants to propose a cap on its liability pursuant to any proposed Call-Off Contract the Consultant 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 not under any obligation to agree to any such proposed cap. Any proposed amendments relating to insurance liabilities must be submitted within the clarification process and shall be agreed at the Employer's sole discretion.

- 7.5.11 The Consultant completes and issues to the Employer a Proposal incorporating the completed Request Form schedules as an offer capable of acceptance or notifies the Employer that it does not intend to submit a Proposal. The Consultant responds to the Employer by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Procurement Manager. A Proposal remains valid for at least 6 months (or such longer period as may be specified in the Request Form) from the date it is submitted to the Employer.

7.6 If the *Employer* accepts a Proposal issued in response to a Direct Request Form it notifies the *Consultant* that the Call-Off Contract is awarded.

7.7 Subject to Clause 7.12, in relation to a Proposal issued in response to a Mini-Competition Request Form 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 Services in question. Each of the consultants to whom the Mini-Competition Request Form was sent is notified as to whether or not it has been successful.

7.8 After the *Employer* awards a Call-Off Contract pursuant to Clause 7.6 or 7.7, the *Employer* forwards to the *Consultant* two copies of the Call-Off Contract. The *Consultant* executes both copies and returns them to the *Employer* within 10 Business Days of receipt. The Procurement Manager arranges for both copies of the Call-Off Contracts to be executed by the *Employer* and sends a completed executed Call-Off Contract to the *Consultant*.

7.9 Each Call-Off Contract is a binding agreement on the *Employer* and the *Consultant* and incorporates the terms and conditions set out in:

7.9.1 the completed form of agreement (if applicable);

7.9.2 the Conditions of Contract identified as applicable in the Call-Off Contract; and

7.9.3 the Call-Off Contract and each document referred to in it;

and such documentation together forms a separate agreement between the *Employer* and the *Consultant*.

- 7.10 The *Consultant* submits with each Proposal full details of the basis on which the Prices have been calculated. The Prices are calculated on the following basis:
- 7.10.1 Subject to Clause 7.10.2., and in respect of Specialist Consultants at the *Employer's* sole discretion, the rates used by the *Consultant* in preparing a Proposal and the *staff rates* included in the Call-Off Contract do not exceed the Maximum Charge Out Rates.
 - 7.10.2 If the Request Form identifies that all or part of the *services* are to be provided on a Saturday, Sunday or Bank Holiday or between the hours of 8pm and 8am the *Consultant's* maximum increase to the rates used by the *Consultant* in preparing a Proposal and the *staff rates* included in the Call-Off Contract for such services shall not exceed the relevant Out Of Hours Working Percentage Mark-Up.
 - 7.10.3 Not used
- 7.11 A Request Form and anything prepared or discussed by the *Employer* constitutes an invitation to treat and does not constitute an offer capable of acceptance by the *Consultant*. The *Employer* is not obliged to consider or accept any Proposal submitted by the *Consultant*.
- 7.12 This Framework Agreement does not oblige the *Employer* to enter into any Call-Off Contract with the *Consultant*.
- 7.13 Unless otherwise expressly agreed in writing with the Framework Employer the *Consultant* does 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 7.
- 7.14 The *Consultant* is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 7 and the *Employer* shall not be liable for any costs, charges or expenses borne by or on behalf of the *Consultant* whether or not the *Consultant* is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

8. Contractual Management

- 8.1 The Framework Employer authorises the Procurement Manager to act as the Framework Employer's representative for all purposes of this Framework Agreement and the *Consultant* deals with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Framework Agreement, unless notified otherwise. The Framework Employer may replace the Procurement Manager after he has notified the *Consultant* of the name of the replacement. The *Employer* appoints an *Employer's Agent* in respect of each Call-Off Contract and the *Consultant* deals with the *Employer's Agent* in relation to matters arising under a Call-Off Contract, unless otherwise notified by the *Employer*.
- 8.2 The Consultant Manager acts as the *Consultant's* representative for all purposes of this Framework Agreement. The Consultant Manager:
- 8.2.1 diligently supervises the performance of any Services instructed under a Call-Off Contract;
 - 8.2.2 attends all contract meetings with the *Employer* (the location, frequency and time of which are specified by the Procurement Manager or the *Employer's Agent* from time to time); and
 - 8.2.3 is available to t h e *Employer* on reasonable notice (or as specified in any Call-Off Contract) to resolve any issues arising in connection with this Framework Agreement or any Call-Off Contract.
- 8.3 The *Consultant* may only make any changes to the Consultant Manager (except in the event of sickness, incapacity or resignation) with the prior written consent of the Framework Employer (which is not to be unreasonably withheld or delayed).
- 8.4 No act of or omission by or approval from either the *Employer*, the Procurement Manager, or any *Employer's Agent* in performing any of their respective duties under or in connection with this Framework Agreement or relevant Call-Off Contract relieves the *Consultant* of any its duties, responsibilities, obligations or liabilities under this Framework Agreement or any Call-Off Contract.

9. **Adjustment of Maximum Charge Out Rates, Typical Charge Out Rates and Additional Priced Elements**

- 9.1 The Maximum Charge Out Rates, Typical Charge Out Rates and Additional Priced Elements are reviewed on the first anniversary of the Framework Agreement Commencement Date and each subsequent anniversary during the Term. On each such review, and at the discretion of the Framework Employer, the Maximum Charge Out Rates, Typical Charge Out Rates and Additional Priced Elements are increased by the parties to reflect the increase in the salaries of the *Consultant's* staff and the other costs of the *Consultant* through increase equivalent to the percentage increase between the Index Figure last published before the date of the review and the Index Figure last published before the Relevant Date. In the absence of both parties agreement, the *Consultant* shall have the right to propose alternative Consultant Personnel for the *Employer's* approval.
- 9.2 The *Consultant* will submit to the *Employer* on a 6 monthly basis an open book spreadsheet identifying for each member of staff engaged in relation to the Services their grade and employment cost.

10. **Consultant's Personnel**

- 10.1 Nothing in this Framework Agreement or any Call-Off Contract will render the Consultant's Personnel, an employee, agent or partner of the *Employer* by virtue of the provision of the Services by the *Consultant* under this Framework Agreement or Call-Off Contract and the *Consultant* shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Consultant's Personnel.
- 10.2 The *Consultant* shall provide the Consultant's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract.
- 10.3 The *Employer* is not under an obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the *Consultant* except as may be specified in any Call-Off Contract.
- 10.4 Without prejudice to any of the *Employer's* other rights, powers or remedies, the *Employer* may (without liability to the *Consultant*) deny access to such Consultant's Personnel to the Employer Premises, if such Consultant's

Personnel in the *Employer's* view have not been properly trained in any way required by a relevant Call-Off Contract and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the *Consultant* of such denial in writing; the *Consultant* shall immediately remove such *Consultant's* Personnel from performing the Services and provide a suitable replacement (with the Call-Off co-ordinator's prior consent in the case of Key Persons).

- 10.5 The *Consultant* shall indemnify, keep indemnified and hold harmless the *Employer* from and against all liabilities, costs, expenses, injuries, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Employer* incurs or suffers whenever arising or brought by the *Consultant's* Personnel or any person who may allege to be the same.
- 10.6 The *Consultant* shall pay to the *Consultant's* Personnel not less than the amounts to which the *Consultant's* Personnel are contractually entitled.
- 10.7 If the *Employer* requires Specialist Consultant services, he will notify the *Consultant* within the Request Form.

11. **Sub-Contracting**

- 11.1 The *Consultant* shall not assign or sub-contract all or any part of the Services without the prior written consent of the *Employer* identifying the relevant sub-contractor which may be refused or granted subject to such conditions as the *Employer* sees fit.
- 11.2 Where the *Consultant* sub-contracts all or any part of the Services to any person, the *Consultant* shall:
 - 11.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the *Consultant* under the relevant Call-Off Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - 11.2.2 be responsible for payments to that person; and
 - 11.2.3 remain solely responsible and liable to the *Employer* for any breach of the relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of

the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the *Consultant*.

12. **Equipment**

12.1 Risk in:

12.1.1 all Consultant Equipment shall be with the *Consultant* at all times;

12.1.2 all other equipment and materials forming part of the Services (title to which will pass to the *Employer*) ("**Materials**") shall be with the *Consultant* at all times until completion of the Services in accordance with the relevant Call-Off Contract.

12.2 Regardless of whether or not the Consultant's Equipment and Materials are located at Employer Premises, the *Consultant* shall ensure that all Consultant's Equipment and all Materials meet all minimum safety standards required from time to time by law.

13. **Conflict of Interest**

13.1 The *Consultant* 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 Services or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Framework Employer.

13.2 The *Consultant* undertakes 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 notifies the Framework Employer in writing immediately on becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and works with the Framework Employer to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Framework Employer's satisfaction, provided that where the Framework Employer is not so satisfied (in its absolute discretion) it is entitled to terminate this Framework Agreement, and all Call-Off Contracts in existence, in accordance with Clause 27.1.5.

14. **Compliance with Policies and Law**

14.1 The *Consultant*, at no additional cost to the *Employer*:

- 14.1.1 undertakes to procure that all the *Consultant's* Personnel comply with all of the *Employer's* policies and standards that are relevant to the performance of the Services, and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the *Employer* for personnel working at Employer Premises or accessing the *Employer's* computer systems. The Framework Employer shall provide the *Consultant* with copies of such policies and standards on request;
- 14.1.2 shall provide the Services in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the *Consultant's* business and/or the *Employer's* business, from time to time in force which are or may become applicable to the Services. The *Consultant* shall promptly notify the *Employer* if the *Consultant* is required to make any change to the Services for the purposes of complying with its obligations under this Clause 14.1.2;
- 14.1.3 without limiting the generality of Clause 14.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 14.1.4 acknowledges that the *Employer* is under a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the *Consultant* shall assist and co-operate with the *Employer* where possible in satisfying this duty;
- 14.1.5 without prejudice to any other provision of this Clause 14.1 or the Schedules, shall comply with any provisions set out in the

Schedules that relate to traffic management and shall comply with the reasonable instructions of TfL's Traffic Manager as may be made available to the *Consultant* from time to time. For the purposes of this Clause "Traffic Manager" means TfL's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and

- 14.1.6 shall promptly notify the Consultant's Personnel and the *Employer* of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this Clause 14.1 shall be borne by the *Consultant*.

- 14.2 Without prejudice to Clause 14.1, the *Consultant* shall comply with TfL Bullying and Harassment policy as updated from time to time (copies of which are available on request from TfL) and with the TfL Corporate Governance which is available on the TfL website, <https://www.tfl.gov.uk/corporate/about-tfl/how-we-work/corporate-governance/code-of-corporate-governance>
- 14.3 In providing the Services, the *Consultant* shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Consultant's* activities may impact on the environment) to the need to:
 - 14.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 14.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 14.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

- 14.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

15. **Corrupt Gifts and Payment of Commission**

- 15.1 The *Consultant* does not, and ensures that its, employees, agents, sub-contractors and Consultant's Personnel do not:

- 15.1.1 pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of the *Employer*;

- 15.1.2 favour any employee, servant, officer or agent of the *Employer* with gifts or entertainment of significant cost or value;

- 15.1.3 enter into any business arrangement with employees, servants, officers or agents of the *Employer* other than as a representative of the *Employer*, without the Framework Employer's prior written approval:

- 15.1.4 offer or agree to give to any servant, employee, officer or agent of the *Employer* any grant, gift or consideration of any kind as an inducement or reward,

- 15.1.4.1 showing or not showing favour or disfavour to any person in relation to this Framework Agreement and all Call-Off Contracts or any other contract with the *Employer*;

- 15.1.4.2 commit any offence:

- (a) under the Bribery Act 2010;

- (b) under any law or legislation creating offences in respect of fraudulent acts; or

- (c) at common law in respect of fraudulent acts in relation to this Framework Agreement and all Call-Off Contracts or any other contract with the *Employer*;

- 15.1.5 defraud or attempt to defraud the *Employer*.

- 15.2 Without prejudice to its rights under Clause 29, the Framework Employer may audit and check any and all such records as are necessary in order to monitor compliance with this Clause 15 at any time during performance of this Framework Agreement and during the 12 years thereafter.
- 15.3 If any fraudulent activity comes to the attention of the *Consultant* in relation to this Framework Agreement the *Consultant* notifies the Framework Employer by the most expeditious means available. The *Consultant* cooperates with the Framework Employer in the investigation of any fraudulent activity and implements 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 *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Consultant's Personnel.
- 15.4 If the *Consultant*, any of its shareholders or any Consultant's Personnel or anyone employed by or acting on behalf of the *Consultant* or any of his agents commits any breach of this Clause 15, this constitutes a material breach of this Framework Agreement and entitles the *Employer* to terminate the Framework Agreement and all Call-Off Contracts, in existence, in accordance with Clause 27.1.4.
- 15.5 If a breach of this Clause 15 is committed by an employee of the *Consultant* or by any Consultant's Personnel (or employee or agent of such Consultant's Personnel) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Consultant* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Consultant* terminates, or procures the termination of, the employee's employment or Consultant's Personnel's appointment (as the case may be) and (if necessary) procures the provision of the affected Services by another person, this constitutes a material breach of this Framework Agreement and entitles the Framework Employer to terminate the Framework Agreement and all Call-Off Contracts in existence, with immediate effect in accordance with Clause 27.1.4.
- 15.6 In the event of any breach of this Clause 15 by the *Consultant* the Framework Employer recovers from the *Consultant* any loss, liability or damage incurred or suffered as a result of the breach of this Clause by the *Consultant*.

16. Quality and Best Value

- 16.1 The *Consultant* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The *Consultant* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the Services reasonably requested by the Framework Employer from time to time.
- 16.2 The *Consultant* provides a quality policy statement within 30 days of the Framework Agreement Commencement Date.

17. Employer Data

- 17.1 The *Consultant* acknowledges the *Employer's* ownership of Intellectual Property Rights which may subsist in the *Employer's* data. The *Consultant* shall not delete or remove any copyright notices contained within or relating to the *Employer's* data.
- 17.2 The *Consultant* and the *Employer* shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Framework Agreement) to preserve the integrity of the *Employer's* data and to prevent any corruption or loss of the *Employer's* data.

18. Access to Premises

- 18.1 Any access to the Employer Premises made available to the *Consultant* in connection with the proper performance of the Call-Off Contract shall be free of charge and shall be used by the *Consultant* solely for the purpose of performing the Services during the Call-Off Contract Term, for the avoidance of doubt, the *Consultant* shall be responsible for its own costs or travel including any congestion charging. The *Consultant* shall:

- 18.1.1 have the use of such Employer Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such premises;

- 18.1.2 vacate such Employer Premises upon the termination or expiry of the relevant Call-Off Contract or at such earlier date as the *Employer* may determine;
 - 18.1.3 not exercise or purport to exercise any rights in respect of the Employer Premises in excess of those granted under this Clause 18.1;
 - 18.1.4 ensure that the Consultant's Personnel carry any identity passes issued to them by the *Employer* at all relevant times and comply with the *Employer's* security procedures as may be notified by the *Employer* from time to time; and
 - 18.1.5 not damage the premises or any assets on the Employer Premises.
- 18.2 Nothing in this Clause 18 shall create or be deemed to create the relationship of landlord and tenant in respect of the Employer Premises

19. **Intellectual Property Rights**

19.1 Vesting of Intellectual Property Rights

The Parties agree that the Intellectual Property Rights in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Consultant* in the performance of the Framework Agreement or any Call-off Contract (including Intellectual Property Rights in materials or works created by a Consultant's Personnel) vests in the *Employer*. The *Consultant* procures that each Consultant's Personnel assigns such Intellectual Property Rights to the *Employer*.

19.2 Background Intellectual Property Rights

In respect of Background Intellectual Property Rights, the *Consultant* grants (in respect of his own Background Intellectual Property Rights) and procures the grant of (in respect of a Consultant's Personnel's or other third party's Background Intellectual Property Rights) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes of:

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

19.3 The *Consultant* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Consultant's* Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes listed in Clause 19.2.

19.4 The *Consultant* indemnifies the *Employer* and members of the TfL Group against all Losses arising out of any use by the *Employer* of the Background Intellectual Property Rights, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under Clause 19.2 infringes the Intellectual Property Rights rights or other rights of any third party.

19.5 Corporate Intellectual Property Rights

The *Consultant* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights rights of the *Employer*.

19.6 Moral rights

The *Consultant* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Services.

20. IT Requirements

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

20.1.1 is Euro compliant;

20.1.2 is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website; and

20.1.3 does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any *Employer* on which it is used or with which it interfaces or comes into contact; and

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

21. Set-Off

When under this Framework Agreement or any Call-Off Contract any sum of money is recoverable from or payable by the *Consultant* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Consultant* under any Call-Off Contract or any other contract with the *Employer*. Any sum due from the *Consultant*, whether under this Framework Agreement or any other contract with the *Employer*, shall be payable as a debt to the *Employer*.

22. Confidentiality, Announcements and Transparency

22.1 The *Consultant* shall keep confidential:

22.1.1 the terms of this Framework Agreement and all Call-Off Contracts;
and

- 22.1.2 any and all Confidential Information that it may acquire in relation to the *Employer*.
- 22.2 The *Consultant* will not use the Framework Employer or any *Employer's* Confidential Information for any purpose other than to perform its obligations under this Framework Agreement and any Call-Off Contract. The *Consultant* will ensure that its officers and employees comply with the provisions of Clause 22.
- 22.3 The obligations on the *Consultant* set out in this Clause 22 will not apply to any Confidential Information which:
- 22.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 22); or
- 22.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
- 22.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and subcontractors.
- 22.4 The *Consultant* shall keep secure all materials containing any information in relation to this Framework Agreement or to any Call-Off Contract and its performance.
- 22.5 The *Consultant* shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Framework Agreement or any Call-Off Contract or that it is providing the Services to the *Employer* or in relation to any matter under or arising from the Framework Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the *Employer*. The *Employer* shall have the right to approve any announcement before it is made.
- 22.6 The *Consultant* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 22.1 and Clause 24, the *Consultant* hereby gives its consent for the *Employer* to publish the contract information to the general public.

22.7 The *Employer* may in its absolute discretion redact all or part of the contract information prior to its publication. In so doing and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in Clause 24.1.1 below). The *Employer* may in its absolute discretion consult with the *Consultant* regarding any redactions to the contract information to be published pursuant to Clause 22.6. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

22.8 The provisions of this Clause 22 will survive any termination of this Framework Agreement or Call-Off Contract for a period of 6 years from termination.

23. **Data Protection**

23.1 The *Consultant* complies with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the *Employer* ("Employer Personal Data"), the *Consultant* only carries out such processing for the purpose of the Services and in accordance with instructions from the *Employer*.

23.2 When the *Consultant* receives a written request from the *Employer* for information about, or a copy of, Employer Personal Data, the *Consultant* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within 14 days from the date of the request.

23.3 The *Employer* remains solely responsible for determining the purposes and manner in which Employer Personal Data is to be processed. The *Consultant* does not share the Employer Personal Data with any Consultant's Personnel or third party unless there is a written agreement in place which requires the Consultant's Personnel or third party to:

23.3.1 only process Employer Personal Data in accordance with the *Employer's* instructions to the *Consultant*; and

23.3.2 comply with the same data protection requirements that the *Consultant* is required to comply with under this Framework Agreement.

23.4 The *Consultant*:

- 23.4.1 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;
- 23.4.2 provides the *Employer* with such information as he may reasonably require to satisfy himself of compliance by the *Consultant* with the requirements of this Clause 23;
- 23.4.3 cooperates with the *Employer* in complying with requests or enquiries made pursuant to the Data Protection Act.

24. **Freedom of Information**

24.1 For the purposes of this Clause 24:

- 24.1.1 **“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 for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 24.1.2 **“Information”** means information recorded in any form held by the *Employer* or by the *Consultant* on behalf of the *Employer* ; and
- 24.1.3 **“Information Request”** means a request for any Information under the FOI Legislation.

24.2 The *Consultant* acknowledges that the *Employer*:

- 24.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the *Employer* to enable it to comply with its obligations under the FOI Legislation; and
- 24.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the *Consultant*.

24.3 Without prejudice to the generality of Clause 24.2, the *Consultant* shall and shall procure that Consultant's Personnel (if any) shall:

24.3.1 transfer to the Procurement Manager (or such other person as may be notified by the *Employer* to the *Consultant* each Information Request relevant to this Framework Agreement or a Call-Off Contract, the Services that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and

24.3.2 in relation to Information held by the *Consultant* 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 5 Business Days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as an *Employer* may reasonably specify.

24.4 The *Employer* shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Consultant* shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the *Employer*.

25. **Responsible Procurement**

25.1 The *Consultant* acknowledges the requirements of the Responsible Procurement Policy in the performance of its obligations under this Framework Agreement and each Call-Off Contract.

25.2 The *Consultant* provides such cooperation and assistance as may be reasonably requested by the *Employer* in relation to the Responsible Procurement Policy.

26. **Supplier Performance**

- 26.1 The Framework Employer shall score the *Consultant's* performance in accordance with Schedule 11.
- 26.2 If the *Consultant* scores below 3 in respect of any such scoring exercise the *Consultant* at its own cost shall resolve poor performance in accordance with Schedule 11.

27. **Breach and Termination of Framework Agreement**

- 27.1 Without prejudice to the Framework Employer's right to terminate at common law, the Framework Employer may terminate this Framework Agreement immediately upon giving notice to the *Consultant* if:

27.1.1 except as provided in and without prejudice to Clauses 27.1.3 and 27.1.4, the *Consultant* has committed any material or persistent breach of this Framework Agreement or any Call-Off 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 Framework Employer) from the date of written notice to the *Consultant* giving details of the breach and requiring it to be remedied; or

27.1.2 the *Consultant* or the Holding Company is subject to Insolvency (as defined in Schedule 2); or

27.1.3 there is a Safety Breach (as defined in Schedule 2); or

27.1.4 the *Consultant* is in breach of Clause 6.3 or 15; or

27.1.5 the Framework Employer is not satisfied on the issue of any conflict of interest in accordance with Clause 13; or

27.1.6 the *Consultant* commits any of the money laundering related offences listed in the Public Agreement Regulations 2006.

- 27.2 Without prejudice to any of the Framework Employer's other rights, powers or remedies (whether under this Framework Agreement or otherwise) if the *Consultant* is in breach of any of its warranties and/or obligations under

Clause 5 and/or any of its other obligations in respect of the Services under this Framework Agreement or any Call-Off Contract, the *Consultant*, if required to do so by the Framework Employer, promptly remedies and/or re-performs the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 27.2 prevents the Framework Employer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative Consultant and, where the Framework Employer so procures any Services or any remedial action, the Framework Employer is entitled to recover from the *Consultant* all additional cost, loss and expense incurred by the Framework Employer and attributable to any *Employer* procuring such Services or remedial action from such alternative consultant.

- 27.3 Without prejudice to the Framework Employer's right to terminate this Framework Agreement or to terminate at common law, the Framework Employer may terminate this Framework Agreement at any time without cause subject to giving the *Consultant* 30 days written notice. For the avoidance of doubt, the *Consultant* shall not be entitled to claim any losses from the Framework Employer whatsoever and howsoever arising including direct losses, indirect losses, loss of profit, economic loss, loss of goodwill or consequential loss in the event the Framework Employer terminates this Framework Agreement without cause.
- 27.4 To the extent that the Framework Employer has a right to terminate this Framework Agreement under this Clause 27 then, as an alternative to termination, the Framework Employer may by giving notice to the *Consultant* require the *Consultant* to provide part only of the Services with effect from the date specified in the Framework Employer's notice whereupon the provision of the remainder of the Services ceases and the definition of "the Services" is construed accordingly.
- 27.5 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose, then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Unaffected Party**") may terminate the Call-Off Contract immediately upon giving notice to the Affected Party. If

the Call-Off Contract is terminated in accordance with this Clause 27.5 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Unaffected Party by reason of such termination.

28. Consequences of Termination or Expiry

- 28.1 Notwithstanding the provisions of Clause 22, wherever the Framework Employer chooses to put out to tender for a replacement consultant some or all of the Services, the *Consultant* discloses to tenderers such information concerning the Services as the Framework Employer requires for the purposes of such tender. The *Consultant* may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 28.2 The termination or expiry of this Framework Agreement does 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.
- 28.3 Upon expiry or termination of this Framework Agreement or relevant Call-Off Contract (howsoever caused) the *Consultant*, at no further cost to the Framework Employer on receipt of the Framework Employer's written instructions to do so (but not otherwise), arranges 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.
- 28.4 On termination of this Framework Agreement under Clause 27.1 or a cessation of any Services under Clause 27.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Framework Employer to terminate under Clause 27.1), the Framework Employer may enter into any agreement with any third party or parties as the Framework Employer thinks fit to provide any or all of the Services and the *Consultant* is liable for all additional expenditure reasonably incurred by the Framework Employer in having such services carried out and all other costs and damages reasonably incurred by the Framework Employer in consequence of such termination. The Framework Employer may deduct such costs from sums due to the *Consultant* or otherwise recover such costs from the *Consultant* as a debt.

29. Audit

The *Consultant* undertakes and procures that its Consultant's Personnel undertake their obligations and exercise any rights which relate to the performance of this Framework Agreement and any Call-Off Contract on an open-book basis. The Framework 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 Call-Off Contract, including inspection of the *Consultant's* technical and organisational security measures for the protection of personal data, any aspect of the *Consultant'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 Framework Employer's rights pursuant to this Clause include the right to audit and check and to take extracts from any document or record of the *Consultant* and/or his Consultant's Personnel.

30. Survival

Any 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 Call-Off Contract does so.

31. Rights of Third Parties

- 31.1 Save that any member of the TfL Group has the right to enforce the terms of this Framework Agreement or any relevant Call-Off 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 Call-Off Contract is enforceable by virtue of the Third Party Act by any person not a party to it.
- 31.2 Notwithstanding Clause 31.1, the Parties are entitled to vary or rescind this Framework Agreement or any relevant Call-Off Contract without the consent of any or all members of the TfL Group (other than the *Employer*).

32. Contract Variation

Save where the *Employer* may require an amendment to the Services, this Framework Agreement or any Call-Off Contract may only be varied or amended with the written agreement of both Parties.

33. Novation and Assignment

33.1 The *Employer* may novate or otherwise transfer this Framework Agreement (in whole or in part).

33.2 Within 10 Business Days of a written request from the *Employer*, the *Consultant* at its expense executes such agreement as the *Employer* may reasonably require 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*.

33.3 This Framework Agreement is personal to the *Consultant* who does not assign the benefit or delegate the burden of this Framework Agreement or otherwise transfer any right or obligation under this Framework Agreement without the prior written consent of the *Employer*.

34. Indemnity and Insurance

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

34.2 The *Consultant* provides the insurances stated in the Call-Off Contract.

35. Non-Waiver of Rights

No waiver of any of the provisions of this Framework Agreement or any relevant Call-Off Contract is 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 does not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

36. 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 is, to the extent required, severed from this Framework Agreement and is ineffective without, as far as is possible, modifying any other Clause or part of this Framework Agreement and this does not affect any other provisions of this Framework Agreement which remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the *Employer* and the *Consultant* immediately commence good faith negotiations to remedy such invalidity.

37. Entire Agreement

37.1 Subject to Clause 37.2:

37.1.1 this Framework Agreement and any relevant Call-Off Contract and all documents referred to in this Framework Agreement and any relevant Call-Off 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 Services. Neither Party has been induced to enter into this Framework Agreement by a statement which it does not contain; and

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

37.2 Nothing in this Clause 37 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

38. Relationship of the Parties

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

39. Notices

Any notice, demand or communication in connection with this Framework Agreement is in writing and may be delivered by hand, post addressed to the recipient at its registered office or any other address notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication is deemed to have been duly served:

- 39.1 if delivered by hand, at the time of delivery;
- 39.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 Business Days after being posted.

40. Further Assurance

Each Party does or procures the doing of all acts and things and executes or procures 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 Call-Off Contract.

41. Disputes

- 41.1 The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this Framework Agreement.
- 41.2 In this Clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- 41.3 A Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representatives and, gives brief written particulars of the Dispute, including the provisions of this Framework

Agreement that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.

- 41.4 Within 14 days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- 41.5 Within a further 14 days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.
- 41.6 If a Dispute is to be referred to the Adjudicator the Parties appoint the Adjudicator.
- 41.7 The Adjudicator acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 41.8 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.
- 41.9 The Nominating Authority chooses an adjudicator within 4 days of the request. The chosen adjudicator becomes the Adjudicator.
- 41.10 A replacement Adjudicator has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.
- 41.11 The Adjudicator, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 41.12 Before a Party refers a Dispute to the Adjudicator, he gives a Notice of Adjudication to the other Party with a brief description of the Dispute,

including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Party immediately sends a copy of the Notice of Adjudication to the Adjudicator. Within 3 days of the receipt of the Notice of Adjudication, the Adjudicator notifies the Parties:

41.12.1 that he is able to decide the Dispute in accordance with this Framework Agreement; or

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

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

41.13 Within 7 days of a Party giving a Notice of Adjudication he:

41.13.1 refers the Dispute to the Adjudicator;

41.13.2 provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents; and

41.13.3 provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Party.

41.14 Within 14 days from the referral, any Party, who is not the Party giving a Notice of Adjudication, provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

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

41.15 The Adjudicator may:

41.15.1 make directions for the conduct of the Dispute;

41.15.2 review and revise any action or inaction of the *Employer* related to the Dispute;

41.15.3 take the initiative in ascertaining the facts and the law related to the Dispute;

- 41.15.4 instruct a Party to provide further information related to the Dispute within a stated time; and
- 41.15.5 instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- 41.16 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.
- 41.17 The Adjudicator shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 41.18 A communication between a Party and the Adjudicator is communicated to the other Party at the same time.
- 41.19 Save as required by law, the Parties and the Adjudicator keep information relating to the Dispute confidential.
- 41.20 The Adjudicator decides the Dispute and notifies the Parties of his decision and his reasons within 28 days of the Dispute being referred to him. This period may be extended by up to 14 days with the consent of the Parties or by any other period agreed by the Parties.
- 41.21 If the Adjudicator's decision includes assessment of additional cost or delay caused to the *Consultant*, he makes his assessment in the same way as a compensation event is assessed. If the Adjudicator's decision changes an amount notified as due, payment or repayment (as the case may be) of the sum decided by the Adjudicator is due not later than seven days from the date of the adjudicator's decision or final date for payment of the notified amount, whichever is the later.
- 41.22 The Adjudicator may allocate the costs and expenses of the adjudication, including the fees and expenses of the Adjudicator, as between the Parties.
- 41.23 Unless and until the Adjudicator has notified the Parties of his decision the Parties proceed as if the matter disputed was not disputed.
- 41.24 If the Adjudicator does not make his decision and notify it to the Parties within the time provided by this Framework Agreement the Parties and the Adjudicator may agree to extend the period for making his decision. If they

do not agree to an extension, either Party may act as if the Adjudicator has resigned.

- 41.25 The Adjudicator's decision is binding on the Parties unless and until revised by the courts and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by this Framework Agreement that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts.
- 41.26 The Adjudicator may, within 5 days of giving his decision to the Parties, correct a clerical or typographical error arising by accident or omission.
- 41.27 Unless the Parties agree otherwise or in the case of injunctive relief,, a Party does not refer any Dispute under or in connection with this Framework Agreement to the courts unless it has first been decided by the Adjudicator in accordance with this Framework Agreement.
- 41.28 If, after the Adjudicator notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within 6 weeks of the notification of the Adjudicator's decision.
- 41.29 The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the Adjudicator.
- 41.30 A Party does not call the Adjudicator as a witness in court proceedings.

42. **Governing Law**

The Framework Agreement is governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 41, 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* has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the *Consultant* is

incorporated or in which any assets of the *Consultant* may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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

EXECUTED as a **DEED** by the
Consultant
acting by a Director and its
Company Secretary or two
Directors

)
)
)
)
)

[REDACTED]

REDACTED

Director

Director/Secretary

EXECUTED as a **DEED** by the
Consultant
acting by a Director and its
Company Secretary or two
Directors

)
)
)
)
)

[REDACTED]

REDACTED

Director

Director/Secretary

The Common Seal/Corporate Seal of **LONDON UNDERGROUND LIMITED** was affixed to this **DEED** in the presence of:

[REDACTED]

REDACTED

Name and description of authorised signatory

SCHEDULE 1
Pricing and Commercial Information

REDACTED

Schedule 2 – Call-off Contract

CONDITIONS OF CONTRACT

This amended contract is based on the NEC family of contract, the copyright of which belongs to the Institute of Civil Engineers.

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Note	Options X4, X8, X9, X13 to X17, X19 and Y are not used.	

SCHEDULE OF OPTIONS

The Call Off Contract is an Option E, Time based contract

The following secondary Options should be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X3	Multiple currencies
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X10	Employer's Agent
Option X11	Termination by the <i>Employer</i>
Option X12	Partnering
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)
Option X21	Single point design responsibility
Note	Options X4, X13 to X17, X19 and Y are not used

CORE CLAUSES

1 GENERAL

Actions

- 10
- 10.1 The *Employer* and the *Consultant* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and defined terms

- 11
- 11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.1A No alteration or amendments for which this contract does not otherwise make provision may be made to this contract except where expressly recorded in writing by a document expressed to be supplemental to this contract and signed by the Parties.
- 11.2
- (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Employer*. The latest programme accepted by the *Employer* supersedes previous Accepted Programmes. Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Scope.
- (2) Not Used.
- (3) Completion is when the *Consultant* has
- done all the work which the Scope states he is to do by the Completion Date; and
 - corrected Defects which would have prevented the *Employer* from using the *services* and Others from doing their work.
- If the work which the *Consultant* is to do by the Completion Date is not stated in the Scope, Completion is when the *Consultant* has done all the work necessary for the *Employer* to use the *services* and for Others to do their work.
- (4) The Completion Date is the *completion date* unless later changed in accordance with this contract.
- (5) The Contract Date is the date of the Call-Off Contract unless stated otherwise in the Contract Data.
- (6) A Defect is:
- a failure by the *Consultant* to Provide the Services or any part of the *services* in accordance with the Scope and the requirements of this contract; or
 - a part of the *services* which is not in accordance with:
 - the applicable law; or
 - all applicable licences and approvals; or
 - the design accepted by the *Employer*.
- (7) Not Used.
- (8) Not Used.
- (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.
- (10) Others are people or organisations who are not the *Employer*, the *Consultant*, the Adjudicator or any employee, Subconsultant or supplier of the *Consultant*. Others includes Infracos and PFI Contractors.
- (11) The Parties are the *Employer* (which expression includes his

successors in title and assigns) and the *Consultant*.

- (12) To Provide the Services means to do the work necessary to complete the *services* in accordance with this contract and all incidental work, services and actions which this contract requires.
- (13) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Employer* or the *Consultant* 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.
- (14) The Scope is information which
- specifies and describes the *services*; and/or
 - states any constraints on how the *Consultant* Provides the Services,
- and is either:
- in the documents which the Contract Data states it is in; or
 - in an instruction given in accordance with this contract.
- (15) Subconsultant means any subconsultant, subcontractor person or organisation engaged by the *Consultant* in connection with this contract.
- (16) The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract less Disallowed Time Charge.
- (16A) Access Arrangements means the requirements as attached at Schedule 15 of the Framework Agreement governing rights of access to Underground Network in force (as the same may be varied, amended or supplemented) from time to time.
- (16B) Assurance Plans means the plans as required by Standard 1-538 (Assurance) which:
- (a) define the *Consultant's* organisational arrangements, role and responsibilities in respect of provision of assurance regarding the services;
 - (b) define the *Consultant's* assurance milestones; and
 - (c) define the *Consultant's* proposals for providing evidence of assurance to the *Employer* at each assurance milestone by way of tests, demonstrations or otherwise.
- (16C) Assurance Regime means the assurance regime agreed between the Parties and as set out in the Scope (and as amended from time to time).
- (17) Background Intellectual Property Rights means Intellectual Property Rights owned by the *Consultant* or a Subconsultant or other third party and which is not assigned to the *Employer*.
- (17A)BCV Contract means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms.
- (18) British Standards means those standards produced by the British Standards Institution (or any successor body) of 389 Chiswick High Road, London, United Kingdom.
- (19) Call Off Contract means the Call Off Contract issued pursuant to the Framework Agreement under which the *Consultant* has agreed to Provide the Services.

- (19A) CAMS has the meaning given to it in Clause 13.1A.
- (19B) CAMS Communications has the meaning given to it in Clause 13.1A.
- (20) CDM Regulations are the Construction (Design and Management) Regulations 2015 and any related guidance or code of practice together with any requirements issued from time to time by the Health and Safety Executive.
- (20A) Change of Control means a change of ownership of the *Consultant* (or parent company if applicable) where such change relates to fifty percent or more of the issued share capital of the *Consultant* (or parent company as the case may be).
- (21) Connected Persons means all and any of the *Consultant's* employees, directors, contractors, agents, Subconsultant's suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.
- (22) Contractor means a person(s), firm(s) or company(s) employed by the *Employer* to carry out and complete certain works and/or services or part(s) thereof in relation to the Works.
- (23) Disallowed Time Charge means any item which:
- the *Consultant* is unable to demonstrate has been reasonably and properly incurred by the *Consultant* for the purposes of this contract,
 - is attributable to a compensation event under a subcontract which is not also a compensation event under this contract,
 - is a result of strikes, riots and civil commotion confined to the *Consultant's* staff,
 - and any item which is based upon staff time which is not justified by the *Consultant's* accounts and records,
 - is incurred under a subcontract entered into in breach of sub clause 24.2,
 - was incurred only because the *Consultant* did not follow an acceptance or procurement procedure stated in the Scope; or
 - is incurred only because the *Contractor* give an early warning which this contract required him to give; and
 - is incurred in preparation for and/or conduct of an adjudication, arbitration or legal proceedings in connection with a Dispute.
- (24) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.
- (24A) EBS means the estimating breakdown structure maintained by the Employer for recording cost benchmarking data as more fully described in sub clause 104A.
- (25) European Standards means those standards ratified by the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) or the European Telecommunications Standards Institute (ETSI)
- (26) Framework Agreement means the contract between London Underground Limited and the *Consultant* in respect of integrator services.
- (27) Not Used.

- (28) Good Industry Practice means, in respect of any aspect of the work being undertaken by the *Consultant* and subject always to its statutory safety obligations, whilst always ensuring that risks are reduced to a level which is as low as is reasonably practicable (ALARP), the exercise of the degree of skill, competence, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and experienced person engaged in
- carrying out the same type of obligations as the *Consultant* under this contract with respect to such aspect of his work; or
 - carrying out obligations, whether individually or as a package of obligations, which could reasonably be regarded as being comparable to the responsibilities of the *Consultant* under this contract with respect to such aspect of his work,
- in each case, performing his obligations under the same, reasonably comparable or similar circumstances and utilising all the information available at the relevant time.
- (29) Indirect Subconsultant means any Subconsultant of whatever tier appointed in relation to the *services*.
- (29A) Infraco means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns.
- (30) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an arrangement with his creditor.
- (31) International Standards means those standards produced by the International Standards Organisation or the International Electrotechnical Commission of 3 Rue de Varembe, CH1211, Geneva 20, Switzerland.
- (32) Intellectual Property Rights means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- (32A) 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.

- (33) Losses means all costs (including legal costs and costs of enforcement) whatsoever or howsoever arising, expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, compensation, proceedings and judgments.
- (33A) LUL means London Underground Limited (No. 1900907) or its successors in title and assigns.
- (33B) LUL Nominee BCV means LUL Nominee BCV Limited (No. 06221959) or its successors in title or assigns.
- (33C) LUL Nominee SSL means LUL Nominee SSL Limited (No. 06242508) or its successors in title or assigns.
- (34) Main Contracts means a contract or contracts (if any) agreed or to be agreed between the *Employer* and the Contractor (including all Appendices Schedules and Annexures and amendments thereto and any documents or data referred to therein) for the provision of certain works in relation to the Works.
- (35) Main Contracts Works means all and any works carried out or to be carried out under the Main Contracts.
- (35A) Master Projects Database means the database which the *Employer* develops, maintains, updates and provides access to for the purpose of facilitating the co-ordination of works, project and programmes between the *Employer*, Infraco(s), PFI Contractors and other third parties carrying out work on the Underground Network.
- (35B) Oversight Developer means a development in, over and above the whole or part of the Main Contracts Works and/or the Works.
- (35C) Oversight Development means a development in, over or above the whole or any part of the Main Contracts Works and/or the Works.
- (35D) 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 capital assets which is similar in nature.
- (35E) PFI Contractors means those contractors who have entered into or will enter into PFI Contracts.
- (35F) PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract. PPP Contract means any one of them or, as the context requires, a particular one of them; and applicable PPP Contract means that PPP Contract applicable to a particular Infraco by virtue of such Infraco being a party thereto.
- (36) Prevention Event has the meaning ascribed to that term in clause 18.1.
- (36A) QUENSH means LUL's Quality, Environmental, Safety and Health conditions (updated and amended from time to time) attached at Schedule [19] to the Framework Agreement and the associated QUENSH Conditions Menu included in the Scope.
- (37) Safety Breach means a material breach of the contract caused by

the gross incompetence or wilful default of the *Consultant* or any Subconsultant (or anyone employed or acting on behalf of the *Consultant* or any Subconsultant) or any of his agents which has materially affected the safe operation of the Underground Network, TfL Premises, the safety of the *Employer's* customers, staff or any other person.

(37A) 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.

(38) Stage 1 Services means the stage 1 services as more particularly described in the Scope.

(39) Stage 2 Services means, if instructed, the stage 2 services as more particularly described in the Scope.

(40) Stage 2 Services Commencement Notice means a notice issued pursuant to clause 21A.1 of the *conditions of contract*.

(41) Stage 2 Services Non-Commencement Notice means a notice issued pursuant to clause 21A.4 of the *conditions of contract*.

(42) Standards means the individual requirements contained within standards documents issued to the *Consultant* by the *Employer* and/or specified in the Scope.

(43) A Statutory Requirement is

- any Act of Parliament,
- any instrument, rule or order made under any Act of Parliament,
- any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the services 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 of the Works in connection with which the services are to be provided (including, without limitation, any planning permission).

(44) Statutory Undertaker means any governmental or local authority or statutory undertaker:

- which has any jurisdiction with regard to the *services* and/or the Works including without limitation 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 Works and/or the *services* will be associated.

(44A) TLL means Tube Lines Limited (No. 03923425) (or its successors in title or assigns).

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

- (46) TfL Premises are any premises owned, leased or under the control of any member of the TfL Group.
- (47) The Price for Services Provided to Date is the Time Charge for the work which has been completed.
- (48) The Prices are the Time Charge.
- (49) The Workplace Policy is the *Employer's* "Workplace Harassment Policy", as updated from time to time, copies of which are available on request from the *Employer*.
- (50) Works are the works to which the services relate, as more particularly shown, described or referred to in the Scope, including any changes made to those works.
- (51) 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".

Interpretation and the law

12

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.1A References to "this contract" mean the Call Off Contract.
- 12.2 This contract is governed by and construed in accordance with the law of England and Wales. Without prejudice to the right to adjudicate the courts of England have exclusive jurisdiction to settle any Dispute which may arise out of or in connection with this contract provided that the *Employer* has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the *Consultant* is incorporated or in which any assets of the *Consultant* may be situated. The Parties agree irrevocably to submit to that jurisdiction.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Consultant* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Consultant* in relation to such matters. The *Employer* and *Consultant* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- 12.5 Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled.
- 12.6 The headings to the sections, clauses and sub-clauses of these *conditions of contract* are for convenience only and do not affect their construction or interpretation.
- 12.7 Subject to the following provisions of this clause, the Parties 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.
Any member of the TfL Group has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999.
Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all members of the TfL Group (other than the *Employer*).
- 12.8 A reference in these *conditions of contract* to any applicable law or

Statutory Requirement includes

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

12.9 In performing its obligations under this contract, the *Consultant* complies with the *law of the contract*, the applicable law and Statutory Requirements to the extent that they impose duties, obligations or restrictions on the *Consultant*.

Laws are also regarded as applicable to the *Consultant* where they impose duties, obligations or restrictions upon LUL or TfL in relation to the Underground Network and/or its operation (where applicable to the services). The *Consultant* performs its obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Consultant*.

In the event that the *Consultant* does not fulfil its obligations under this contract due to the infringement of any applicable law or Statutory Requirement and the *Employer* thereby incurs costs to which it would not otherwise be liable, the amount of such costs shall be reimbursed by the *Consultant* to the *Employer* as a debt due on demand.

12.10 The *Consultant* acknowledges that where he is a partnership his rights, obligations and liabilities under this contract are joint and several and that the term "*Consultant*" is deemed to include any additional partner or partners who may be admitted into the partnership of the *Consultant* during the life of this contract. This contract does not automatically terminate upon the death, retirement or resignation of any one or more members of such a partnership.

12.11 Notwithstanding the Contract Date, the *Consultant's* appointment takes effect from the date when he first commenced performance of the services and these *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Consultant* both before and after the Contract Date.

12.12 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 *Consultant* 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.

Communications

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13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded or is available for access on a nominated hosted web server (save in the case of the notification of a Dispute or termination which shall be notified in hard copy only). 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 mail transmission ('for information' copies of notifications may however be issued electronically). For the avoidance of doubt any notification of Dispute or termination under this contract is only effective if delivered in hard copy and electronic mail transmission of any kind is not effective for this purpose.

13.1A Notwithstanding Clauses 13.1 and 13.2

- The Parties will utilise a web-based contract administration management system as more particularly described in the Scope ("**CAMS**");

- The *Employer* notifies the *Consultant* from time to time of those categories of communications provided for in this contract that are to be made exclusively through the CAMS (“**CAMS Communications**”); and
- Unless the *Employer* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the Parties may follow any procedure necessary to give effect to the CAMS.

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

- 13.2 With the exception of CAMS Communications, 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. Any communication sent by hand is deemed to be received upon delivery at such address. Alternatively, an electronic communication has effect when it is posted on a nominated hosted web service.
- 13.3 If this contract requires the *Employer* or the *Consultant* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*. Where the *period for reply* includes Christmas Day, Good Friday or a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded for the purpose of calculating the period.
- 13.4 The *Employer* replies to a communication submitted or resubmitted to him by the *Consultant* for acceptance. If his reply is not acceptance, the *Employer* states his reasons and the *Consultant* 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 *Consultant's* submission fully.
- 13.5 The *Employer* may extend the *period for reply* to a communication if the *Employer* and the *Consultant* agree to the extension before the reply is due. The *Employer* notifies the *Consultant* of the extension which has been agreed.
- 13.6 The *Consultant* retains copies of drawings, specifications, computer data files, reports and other documents which record the *services* for the *period for retention*. The copies are retained in the form stated in the Scope. The *Consultant* provides the *Employer* with explanations of the documents as reasonably required.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Employer* may withhold acceptance of a submission by the *Consultant*. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.9 Any communication required under this contract from the *Consultant* to Others is copied simultaneously to the *Employer*.

Acceptance

14

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

Early Warning

15

- 15.1 The *Employer* and the *Consultant* 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,
- change the Accepted Programme,
- delay meeting a Key Date,
- impair the usefulness of the *services* or the Works to the *Employer*;
- affect the work of the *Employer*, an *Employer's* Contractor; or another consultant,
- adversely affect the work of Others;
- constitute a Defect;
- adversely affect the *Employer* (including without limitation 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 *Consultant* terminating or suspending any subcontract; or
- cause a breach of any applicable law or Statutory Requirement.

In the notification the *Employer* or the *Consultant*, as the case may be, states whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.

The *Consultant* may give an early warning by notifying the *Employer* of any other matter which could increase his total cost. The *Employer* 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.

15.2 Either the *Employer* or the *Consultant* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other Party agrees.

15.3 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.

15.4 The *Employer* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Consultant*. If a decision needs a change to the Scope, the *Employer* instructs the change at the same time as he issues the revised Risk Register. For the avoidance of doubt, the *Consultant's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 to 65.

Ambiguities and inconsistencies

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16.1 The *Employer* or the *Consultant* 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 *Employer* gives an

		instruction resolving the ambiguity or inconsistency.
	16.2	There is no addition to the Prices, any change to any Key Date or the Completion Date arising from any such ambiguity or inconsistency where the <i>Employer</i> decides that the ambiguity or inconsistency in question is one arising from a document which the <i>Consultant</i> prepared or is responsible for. The <i>Employer</i> notifies the <i>Consultant</i> of this decision.
Illegal and impossible requirements	17	
	17.1	The <i>Consultant</i> notifies the <i>Employer</i> as soon as he considers that the Scope requires him to do anything which is illegal or impossible. If the <i>Employer</i> agrees, he gives an instruction to change the Scope appropriately.
Prevention	18	
	18.1	If an event occurs which stops the <i>Consultant</i> Providing the Services or stops the <i>Consultant</i> Providing the Services by the date shown on the Accepted Programme which is not • a shortage of staff whether caused by local market fluctuations or otherwise, • an event of Insolvency of the <i>Consultant</i> or any Subconsultant or supplier; or • an event attributable to any negligence, omission or default of the <i>Consultant</i> or any of his employees or agents or any Subconsultant or supplier or any of their employees or agents and which: • neither Party could prevent; and • a prudent and experienced consultant familiar with services similar to the <i>services</i> and exercising the foresight appropriate to such a <i>Consultant</i> 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 <i>Consultant</i> can demonstrate that he did not allow for it in his tender, then this is a "Prevention Event" and the <i>Employer</i> gives an instruction to the <i>Consultant</i> stating how he is to deal with the event.

2 The Parties' main responsibilities

The Employer's obligations	20	
	20.1	The <i>Employer</i> provides information and things which this contract requires him to provide in accordance with the Accepted Programme.
	20.2	The <i>Employer</i> may give an instruction to the <i>Consultant</i> which changes the Scope or a Key Date, or requires him to accelerate the <i>services</i> or part of them. After Completion, an instruction is given only if it is necessary to Provide the Services or to enable the <i>Employer</i> to use the Works.
	20.3	The <i>Employer</i> does not give an instruction to the <i>Consultant</i> which would require him to act in a way that was outside his professional code of conduct.
The Consultant's obligations	21	
	21.1	The <i>Consultant</i> Provides the Services in a regular and diligent manner

and in accordance with and so that the *services* will be in accordance with the Scope, the Accepted Programme, Good Industry Practice, the Standards (if the Standards are applicable to the *services*), all applicable law, Statutory Requirements and the instructions of the *Employer*. Any work relating to or reasonably to be inferred from the Scope which is not specified in the Scope as the responsibility of the *Consultant* or Others is deemed to be the responsibility of the *Consultant*. The *Consultant* uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the *services*.

21.2 The *Consultant's* obligation is to use the skill, care and diligence normally used by professionals providing *services* similar to the *services*.

21.3 Subject to the Scope and any changes to it the *Consultant* warrants to the *Employer* that to the extent the *Consultant* either is obliged to specify or approve products or materials for use in the Works or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with

- the report entitled "Good Practice in the Selection of Construction Materials" 2011 (published by the British Council for Offices),
- relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice; or
- any publications of the Building Research Establishment related to the specification of products or materials.

If in the performance of his duties under this contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the *Employer* in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by this contract.

21.4 The *Consultant* ensure the integration and coordination of design with the designs of Others and in particular (where applicable) the Contractor, the Infracos and the PFI Contractors in accordance with the Scope and instructions of the *Employer*, and where necessary to Provide the Services.

21.5 The *Consultant* keeps the *Employer* informed of all material aspects of the *services* and provides the *Employer* with such information and comments as he may from time to time require with regard to the Works promptly and in good time so as not to delay or disrupt the progress of the Works or cause the *Employer* to be in breach of any obligation to a third party, any applicable law or Statutory Requirement.

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

21.7 The *Consultant* in Providing the Services warrants, undertakes and represents to the *Employer* as a condition of this contract that the *services* (including any design and/or specification prepared as part of the *services*) will:

- comply with all Statutory Requirements,

- comply with all applicable law,
- comply with all relevant Standards,
- ensure the integration and co-ordination of designs of Others and in particular the design of the Infracos and PFI Contractors, and

the *Consultant* further warrants, undertakes and represents 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 *services* in accordance with this contract.

21.8 The *Consultant* prepares forecasts of the total Time Charge and expenses for the whole of the *services* and submits them to the *Employer*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *services*. An explanation of the changes made since the previous forecast is submitted with each forecast.

Instruction of Stage 2 Services 21A

21A.1 The *Employer* may issue a notice (a "Stage 2 Services Commencement Notice") to the *Consultant* instructing him to proceed with the Stage 2 Services. The *Consultant* does not proceed with the Stage 2 Services (or any part thereof) until a Stage 2 Services Commencement Notice has been issued by the *Employer*.

21A.2 The *Employer's* decision to issue a Stage 2 Services 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 Services Commencement Notice will be issued by the *Employer*.

21A.3 If the *Employer* decides to issue a Stage 2 Services Non-Commencement Notice pursuant to Clause 21A.4, the *Employer* shall not be responsible or liable to the *Consultant* 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 *Consultant* in relation to such instruction.

21A.4 The *Employer* may issue a notice (a "Stage 2 Services Non-Commencement Notice") to the *Consultant* instructing him not to proceed with the Stage 2 Services. If a Stage 2 Services Non-Commencement Notice is issued in accordance with this clause 21A.4, this contract will terminate in accordance with clause 90.5A.

21A.5 If a Stage 2 Services Commencement Notice is issued by the *Employer*, the *Consultant* remains responsible for completion of the Stage 1 Services and for the avoidance of doubt, there is no deemed Completion of the Stage 1 Services by virtue of the issue of the Stage 2 Services Commencement Notice.

People

22

22.1 The *Consultant* shall provide the *key persons* and shall procure that they:

- diligently supervise the performance of the Services,
- attend all contract meetings with the *Employer*, (the location, frequency and time of which shall be specified by the *Employer* from time to time).

- 22.2 The *Consultant* either employs each *key person* named to do the job for him stated in the Contract Data or employs a replacement person who has been accepted by the *Employer*. The *Consultant* submits the name, relevant qualifications, training and experience of a proposed replacement person to the *Employer* for acceptance no later than four (4) weeks in advance of the date on which it intends to replace a *key person*. 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.
- 22.3 If a replacement person is accepted by the *Employer*, the *Consultant* arranges at no cost to the *Employer* for there to be a minimum handover period of four (4) weeks during which both the original *key person* and his replacement perform the job stated in the Contract Data.
- 22.4 The *Consultant* may only make any changes to the *key persons* (except in the event of sickness, incapacity or resignation) with the prior consent of the *Employer* (which shall not be unreasonably withheld).
- 22.5 Save where a *key person* is removed pursuant to clause 22.6, if a *key person* (or his replacement) ceases to be employed to do the job stated in the Contract Data without prior approval of the *Employer*, the *Consultant* pays to the *Employer* *key person* compensation of five (5) days Price for Services, being the Price for Services of the removed *key person*.
- 22.6 The *Employer* may, having stated his reasons, instruct the *Consultant* to remove any person under the control of the *Consultant*. The *Consultant* then arranges that, after one day, such person has no further connection with the work included in this contract.
- 22.7 The *Consultant* undertakes that all the *Consultant's* personnel possess the appropriate skills, qualifications, work permits and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract.
- 22.8 The *Consultant* shall (at its expense) provide or procure the provision of training for the *Consultant's* personnel in respect of all aspects of its performance of the Contract and, as the *Employer* may require, for any employees, agents and contractors of the *Employer* in relation to the operation or use of any equipment supplied under the Contract.
- 22.9 Without prejudice to the *Consultant's* other obligations under the Contract, where training of any or all of the *Consultant's* personnel is required for the purposes of performance of the Contract, the *Consultant* shall not assign any *Consultant's* personnel to the performance of the Contract unless and until such *Consultant's* personnel have satisfactorily completed such training.

Working with the Employer and others

23

- 23.1 The *Consultant* co-ordinates his activities with those of Others as required by the Scope and in accordance with the instructions of the *Employer*. The *Consultant* cooperates with the *Employer* and Others in obtaining and providing information which they need in connection with their works and the services.
- 23.2 Where necessary to Provide the Services, the *Consultant* holds or attends meetings with Others. The *Consultant* informs the *Employer* of these meetings beforehand and the *Employer* may attend them.
- 23.3 If the *Employer* 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 Works, the additional cost the *Employer* has paid or will incur is paid by the *Consultant*. The *Employer* assesses the additional cost as soon as reasonably practicable and in any event within six (6) weeks of the date when the Condition stated for that Key Date is met. The *Employer's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Consultant's* failure to meet a Key Date.

- 23.4 The *Consultant* Provides the Services and corrects Defects in such a way as not to cause delay or disruption to the *Employer* and/or Others. In the event that Providing the Services or correcting Defects causes delay or disruption to the *Employer* and/or Others, the *Consultant* takes all reasonable steps to mitigate and minimise such delay or disruption.

Subcontracting

24

- 24.1 If the *Consultant* subcontracts work, he is responsible for Providing the Services as if he had not subcontracted. This contract applies as if a Subconsultant's employees were the *Consultant's*. The *Consultant* does not remove any *key person* from the contract for more than twenty one (21) consecutive days without the prior written consent of the *Employer*, save where such *key person* is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the *Consultant's* employment in which case the *Consultant* provides a suitable replacement, who is to be approved by the *Employer*.

- 24.2 The *Consultant* submits to the *Employer* for acceptance, the name of each proposed Subconsultant together with a copy of the proposed sub-contract documentation and such other information as the *Employer* may require. The *Consultant* does not appoint the Subconsultant until the *Employer* accepts him.

- 24.3 Reasons for not accepting a proposed Subconsultant and/or a proposed sub-contract include, but are not limited to

- the *Consultant* has not complied with the requirements of clause 24.2 and obtained the *Employer's* approval,
- the terms of the proposed subcontract are not on NEC terms or do not otherwise, in the *Employer's* opinion, adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
- the appointment of the proposed Subconsultant and/or the proposed sub-contract will not allow the *Consultant* to Provide the Services,
- the proposed sub-contract conditions and/or the proposed subcontract works do not represent best value,
- the proposed Subconsultant is unable to meet, in the *Employer's* opinion, the criteria set out in the Scope,
- the proposed subcontract work represents, in the *Employer's* opinion, too large a proportion of the total Scope,
- the proposed subcontract conditions do not include a provision,
 - requiring the proposed Subconsultant's to meet the Conditions stated for a Key Date on or before such Key Date and to achieve Completion on or before the Completion Date and to minimise the level of the Prices,
 - requiring the proposed Subconsultant to maintain accounts and records and to grant audit rights to the *Employer* and its authorised representatives of an equivalent extent and nature to those required by this contract,
 - requiring the proposed Subconsultant to assign to the *Employer* the Intellectual Property Rights in all documents,

drawings, materials, computer software and any other material or works prepared or developed by or on behalf of the proposed Subconsultant in the performance of the subcontract,

- requiring the proposed Subconsultant to grant a non-exclusive, perpetual, irrevocable, royalty-free licence to the *Employer* to use Background Intellectual Property Rights (including the right to grant sub-licences) of an equivalent extent and nature to those required by this contract,
- imposing equivalent obligations of confidentiality on the proposed Subconsultant to those required by this contract,
- imposing equivalent obligations regarding clause 110 and health and safety (including Safety Breaches) as required by this contract,
- in equivalent terms to clause 121.8 of this contract together with an obligation to procure that equivalent provisions are included in sub-contracts of any tier,
- the proposed subcontract does not oblige the Subconsultant to provide a collateral warranty in favour of the *Employer* or the beneficiaries identified in clause 101.1 within fourteen (14) days of the *Consultant's* request on the terms set out in Schedule 11A, 11B or 16 (as the case may be) of the Framework Agreement; or
- the proposed sub-contract does not include a statement that the parties to the subcontract must act in a spirit of mutual trust and co-operation.

- 24.4 The *Consultant* obtains the prior written approval of the *Employer* to the appointment of a replacement Subconsultant in the event of any first Subconsultant's appointment being determined.
- 24.5 Neither the objection to nor any failure to raise an objection to a proposed Subconsultant by the *Employer* relieves the *Consultant* of any liability or obligation under this contract.
- 24.6 It is the *Employer's* policy to utilise, where it considers it appropriate and on a non-exclusive basis, CompeteFor as a fair and economical method of sourcing suppliers to provide goods, works and services. Where the *Consultant* intends to subcontract work with a value above £50,000 the *Consultant* uses, on a non-exclusive basis, CompeteFor (<https://www.competefor.com>) for the purpose of advertising sub-contracts and short listing suppliers.
- 24.7 The *Consultant* submits the proposed contract data for each subcontract for acceptance to the *Employer* if:
- an NEC contract is proposed and
 - the *Employer* instructs the *Consultant* to make the submission.
- A reason for not accepting the proposed contract data is that its use will not allow the *Consultant* to Provide the Services.

Other responsibilities

25

- 25.1 The *Consultant* obtains approval from Others where necessary to Provide the Services.
- 25.2 The *Employer* provides access to a person, place or thing to the *Consultant* as stated in the Contract Data on or before the later of its *access date* and the access date for it shown on the Accepted Programme.
- 25.3 The *Consultant* obeys an instruction which is in accordance with this contract and is given to him by the *Employer*.
- 25.4 The *Consultant* acts in accordance with the health and safety requirements stated in the Scope.

- 25.5 The *Consultant* complies with the CDM Regulations and (to the extent applicable) to the requirements of QUENSH as amended from time to time and notified to the Contractor. The *Consultant* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the site and/or in respect of the Works for the effective discharge of those responsibilities.
- 25.6 The *Employer* appoints the *Consultant* as [Principal Designer] [and/or] [Principal Contractor] pursuant to Regulation 5(1) of the CDM Regulations. The *Consultant* accepts such appointment and agrees to carry out all associated obligations imposed by the CDM Regulations.
- 25.7 (a) The *Consultant* complies with the Access Arrangements, including the provisions for booking access to the Underground Network, in Providing the Services.
 (b) Subject to the provisions of the Access Arrangements, the *Employer* allows access to the Underground Network in accordance with the dates for access shown on the Accepted Programme provided where access to the Underground Network is needed, the *Consultant* complies with subclause 25.7(a)
 (c) The *Consultant* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to the Underground Network and that access is limited in accordance with this contract.

3 Starting, Completion and Key Dates

Time
30

- 30.1 The *Consultant* does not start work until the *starting date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Consultant* notifies the *Employer* when in his opinion the *services* have achieved Completion. The *Consultant* provides all information and evidence listed or identified in the Scope as being required and all other information and evidence which the *Employer* may reasonably request to satisfy the *Employer* that the *services* have been so completed. If the *Employer* is so satisfied, the *Employer* decides the date of Completion and certifies it within four (4) weeks of the date.
- 30.3 The *Consultant* does the work so that the Condition stated for each Key Date is met by the Key Date.

The Programme

31

- 31.1 If a programme is not identified in the Contract Data, the *Consultant* submits a first programme to the *Employer* for acceptance within the period stated in the Contract Data.
- 31.2 The *Consultant* 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 *Consultant* plans to do in order to Provide the Services,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope,
 - the dates when the *Consultant* 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 Services in accordance with his programme, the *Consultant* will need,
 - access to a person, place or thing if later than its *access date*,
 - information and things to be provided by the *Employer*, and
 - information and approval from Others,
- for each operation, a statement of how the Consultant plans to do the work identifying the resources which he plans to use;
- other information which the Scope requires the *Consultant* to show on a programme submitted for acceptance,
- for each operation, a cost/loaded programme showing the forecast resources require for that operation, and
- his access requirements in accordance with Access Requirements.

31.3 Within two (2) weeks of the *Consultant* submitting a programme to him for acceptance, the *Employer* either accepts the programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting a programme is that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which this contract requires,
- it does not represent the *Consultant's* plans realistically,
- it does not comply with the Scope,
- it does not allow the *Employer* and/or any novated *Employer* and/or Others to start or carry out and complete their work as planned and subsequently to maintain any assets or facilities delivered as a result of such work,
- it is not in a format which is accepted for use by the *Employer*.

Revising the programme

32

- 32.1 The *Consultant* 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 *Employer* at risk reduction meetings,
 - how the *Consultant* plans to deal with any delays and to correct notified Defects; and
 - any other changes which the Consultant proposes to make to the Accepted Programme.
- 32.2 The *Consultant* submits a revised programme to the *Employer* for acceptance
- within the *period for reply* after the *Employer* has instructed him to,
 - when the *Consultant* 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

services; and

- following the implementation of a compensation event which has an impact on Completion or a Key Date.

Instructions to stop or not to start work 33

- 33.1 The *Employer* may instruct the *Consultant* to stop or not to start any work and may later instruct him that he may re-start or start it.

Acceleration 34

- 34.1 The *Employer* may instruct the *Consultant* to submit a quotation for acceleration to achieve Completion before the Completion Date. The *Employer* states changes to the Key Dates to be included in the quotation. A quotation for acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Consultant* submits details of his assessment with each quotation.

- 34.2 The *Consultant* submits a quotation or gives his reasons for not doing so within the *period for reply*.

- 34.3 If the *Employer*
- accepts a quotation for an acceleration, or
 - does not accept a quotation for acceleration; or
 - does not accept the *Consultant's* reasons for not submitting a quotation,

then the *Employer* may issue an instruction to the *Consultant* to accelerate and the *Consultant* proceeds to accelerate in accordance with that instruction. The *Employer* decides and notifies any earlier Key Dates or Completion Date and the *Consultant* submits a revised programme to the *Employer* for acceptance which reflects the changes. The *Employer* assesses the instruction as a compensation event.

4 Quality management system

Quality management system 40

- 40.1 The *Consultant* operates a quality management system for Providing the Services as stated in the Scope. The quality management system complies with the requirements stated in the Scope and where applicable QUENSH.

- 40.2 The *Consultant* provides the *Employer*, within the period stated in the Contract Data, with a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope and where applicable QUENSH.

- 40.3 The *Employer* may at any time monitor and audit the *Consultant's* quality management system as set out in the quality plan. The *Consultant* complies with an instruction from the *Employer* to the *Consultant* to correct a failure to comply with the quality plan.

Correcting defects 41

- 41.1 Until the *defects date*, the *Employer* notifies the *Consultant* of each Defect as soon as he finds it and the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. At Completion the *Consultant* notifies the *Employer* of the Defects which have not been corrected. After Completion and until the *defects date*, the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. The *Employer's* rights in respect of a Defect which the *Employer* has not found or notified by the *defects date* are not affected.

- 41.2 The *Consultant* corrects a Defect whether or not the *Employer* notifies

him of it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. If the *Consultant* does not correct a Defect within the time required by this contract, the *Employer* assesses the cost to him of having the Defect corrected by other people and the *Consultant* pays this amount.

41.3 For the avoidance of doubt, the *Consultant* continues to be liable for Defects (including latent or inherent Defects) after

- the operation of this section; and
- the termination of this contract for any reason (including breach by the *Employer*),

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

41.4 The Parties may each propose to the other that the Scope is changed so that a Defect does not have to be corrected. If the Parties are prepared to consider the change the *Consultant* submits a quotation for reduced Prices and, where applicable, an earlier Completion Date to the *Employer* for acceptance. If the *Employer* accepts the quotation he gives an instruction to change the Scope, the Prices and, where applicable, the Completion Date.

41.5 The *Consultant* carries out such re-design and re-testing at his own cost as may be necessary as a result of a Defect being identified to correct the Defect and prevent a recurrence.

5 Payment Assessing the amount due

50

50.1 The *Consultant* assesses the amount due and submits his assessment to the *Employer* in a form approved by the *Employer* not less than fourteen (14) days prior to each assessment date. The assessment states the sum that the *Consultant* considers is due to him and the payment due date and the basis on which that sum is calculated. The *Consultant* maintains and submits with his assessment all timesheets, invoices, and all other relevant supporting documents and information as may be reasonably required by the *Employer*. The first assessment date is decided by the *Consultant* 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 eight (8) weeks after the *defects date*; and
- at Completion of the whole of the *services*.

50.2 Invoices submitted by the *Consultant* include all supporting documents, records and receipts reasonably necessary for checking each invoice and any additional information stated in the Scope. The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.

50.3 The amount due is

- the Price for Services provided to Date,
- the amount of the reasonable *expenses* properly spent by the *Consultant* in Providing the Services; and
- other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.

Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due. If the amount to be paid to the *Consultant* is less than the amount to be paid by or retained from the *Consultant*, the *Employer* may recover the difference from the *Consultant* as a debt due on demand.

50.4 All sums payable by or to the *Employer* or the *Consultant* are

exclusive of Value Added Tax ("VAT"). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.

50.5 The *Consultant* acknowledges that the nature of the services are such as may require an element of abortive work, reworking, renegotiation and repetition the extent of which cannot be accurately forecast at the Contract Date. The *Consultant* agrees that no such abortive work, reworking, renegotiation or repetition which is caused by an error, omission, negligence, default, breach of contract or breach of statutory duty of the *Consultant* entitles him to any additional payment unless the *Employer* expressly agrees in writing that an additional payment is justified.

50.6 Not used.

50.7 If a novation agreement is requested under clause 102 but not executed and delivered to the *Employer* in accordance with clause 102, then one quarter of the Price for Services Provided to Date is retained in assessments of the amount due and is not payable to the *Consultant* until such documents have been delivered.

50.8 Without prejudice to the obligations of the *Consultant* to the *Employer* and to the rights of the *Employer*, the *Employer* is not obliged to make any payment to the *Consultant* if (and for so long as) the *Consultant* fails within the time limit specified to deliver collateral warranties duly executed in accordance with clause 100 provided always that the *Employer* notifies the *Consultant* of the identity of the relevant beneficiaries.

50.9 If any of the Subconsultants' collateral warranties are not procured by the *Consultant* and then delivered to the *Employer* in accordance with clause 101, the Price for Services Provided to Date relating to work being undertaken by those Subconsultant's is retained in assessments of the amount due and is not payable to the *Consultant* until such collateral warranties have been delivered.

50.10 If any of the warranties required under clause 100 are not delivered by the *Employer* in accordance with clause 100, one-quarter of the Price for Services Provided to Date is retained in assessments of amount due and is not payable to the *Consultant* until such warranties have been delivered.

50.11 Payments for staff whose *staff rate* is stated in the Contract Data in a currency other than the *currency of this contract* are included in the amount due as payment to be made to the *Consultant* in the same currency.

Payment

51

51.1 The date payment becomes due is the later of

- the assessment date; and
- fourteen (14) days after the date of receipt by the *Employer* of the *Consultant's* assessment referred to in clause 50.1.

51.2 The final date for payment is twenty eight (28) days after the date on which payment becomes due.

51.3 Payments are in the *currency of this contract* unless otherwise stated in this contract.

51.4 The *Employer* certifies a payment not later than five (5) days after each payment due date and issues a copy of the payment certificate to the *Consultant*.

51.5 Not later than five (5) days after receipt of the payment certificate the *Consultant* delivers to the *Employer* a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Consultant* issues a corrected VAT invoice, where required, within five days of receipt of any Pay Less Notice.

51.6 Subject to clause 121.4 if a payment of an amount due is not paid by the final date for payment interest is paid. Interest is assessed from

the final date for payment until the date when the late payment is made, and is included in the first assessment after the late payment is made.

51.7 Interest is calculated on a daily basis at the *interest rate* and is simple interest.

51.8 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 *Consultant* any sum of money is recoverable from or payable by the *Consultant* or any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer*, or where any member of the TfL Group is the *Employer* only, any member of the TfL Group, arising out of or attributable to this contract or any other contract between the *Employer* and the *Consultant* then the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the *Consultant* under this contract.

Accounts and Records

52

52.1 Not Used.

52.2 Without prejudice to his obligations under Clause 105, the *Consultant* keeps accounts and records of his Time Charge and expenses and allows the *Employer* to inspect them at any time within working hours.

6 Compensation events Compensation events

60

60.1 The following are compensation events (but only to the extent that they are not due to any breach, unlawful act or omission, negligence, default and/or failure to comply with this contract on the part of the *Consultant* and provided that the *Consultant* has taken all reasonable steps to mitigate the actual or potential effect of the event).

(1) The *Employer* gives an instruction changing the Scope except:

- an agreed change made in order to accept a Defect; or
- an instruction which is stated in this contract not to give rise to a compensation event.

(2) Subject to requirements of the Access Arrangements and to the giving of proper and timely notice and proper coordination by the *Consultant*, the *Employer* does not allow access to and use of a person, place or thing for the *Consultant* as stated in the contract.

(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 *Employer* gives an instruction 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 within the conditions stated in the Scope.

(6) The *Employer* does not reply to a communication from the *Consultant* within the period required by this contract unless

- in the opinion of the *Employer* the communication does not contain sufficient information to enable a response to be made and the *Employer* has notified the *Consultant* accordingly; or
- the *Employer* withholds acceptance of the communication for a reason stated in this contract and the *Employer* has notified the *Consultant* accordingly.

(7) The *Employer* changes a decision which he has previously communicated to the *Consultant*.

(8) The *Employer* withholds an acceptance (other than acceptance of a quotation for acceleration) for a reason not stated in this contract.

(9) The *Employer* notifies a correction to an assumption which he has stated about a compensation event.

(10) A breach of contract or act of prevention on the part of the *Employer* (except to the extent caused or contributed to by the *Consultant* or any Subconsultant or other person for whom the *Consultant* or his Subconsultant's are responsible) which is not one of the other compensation events in this contract.

(11) An event which is a Prevention Event and is not a breach of contract by the *Consultant* and is not one of the other compensation events stated in this contract provided that the *Consultant* is not entitled under this sub-clause 60.1(11) to any change to the Prices.

(12) The *Consultant* corrects a Defect for which he is not liable under this contract.

60.2 Notwithstanding clause 60.1, compliance with the Framework Agreement by the *Consultant* shall not amount to a compensation event.

**Notifying
compensation-
events**

61

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

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

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

- the *Consultant* believes that the event is a compensation event; and
- the *Employer* has not notified the event to the *Consultant*.

If the *Consultant* does not notify a compensation event within four (4) weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in Prices, the Completion Date or a Key Date unless the *Employer* should have notified the event to the *Consultant* but did not. The *Employer* may, in his absolute discretion, assess a change to the Completion Date or a Key Date (but not a change to the Prices) in the absence of a timely notice from the *Consultant* in accordance with this sub-clause.

61.4 If the *Employer* decides that an event notified by the *Consultant*

- arises from including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Consultant* or any of his employees or agents or of any Subconsultant or supplier or any of their employees or agents,
- has not happened and is not expected to happen,
- has no effect upon the *Consultant*'s costs, Completion or meeting a Key Date; or
- is not one of the compensation events stated in this contract,

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

If the *Employer* decides otherwise, he notifies the *Consultant*

accordingly and instructs him to submit quotations including any supporting information reasonably required by the *Employer* or the *Employer's Agent*.

If the *Employer* does not notify his decision to the *Consultant* within either

- two (2) weeks of the *Consultant's* notification; or
- a longer period to which the *Consultant* has agreed,

the *Consultant* may notify the *Employer* to this effect. A failure by the *Employer* to reply within four (4) weeks of this notification is treated as acceptance by the *Employer* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Employer* decides that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, he notifies this decision to the *Consultant* when he instructs him to submit quotations.

61.6 If the *Employer* 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 *Consultant* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Employer* notifies a correction.

61.7 A compensation event is not notified after Completion other than in relation to an instruction given by the *Employer* changing the Scope before the *defects date*. No payment is made by the *Employer* to the *Consultant* in respect of any matter notified after the *defects date*.

Quotations for-compensation events

62

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

62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Consultant*. The *Consultant* submits details of his assessment including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subconsultant and with regard to the services and planned works by Others with each quotation. If the programme for remaining work is altered by the compensation event, the *Consultant* includes the alterations to the Accepted Programme in his quotation. If the quotations comprise or include delays, the details of the *Consultant's* assessment include sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

62.3 The *Consultant* submits quotations within four (4) weeks of being instructed to do so by the *Employer*. The *Employer* replies within four (4) 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 *Employer* instructs the *Consultant* to submit a revised quotation only after explaining his reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three (3) weeks of being instructed to do so.

Assessing compensation-events

- 62.5 The *Employer* extends the time allowed for
- the *Consultant* to submit quotations for a compensation event; and
 - the *Employer* to reply to a quotation,
- if the *Employer* and the *Consultant* agree to the extension before the submission or reply is due. The *Employer* notifies the extension that has been agreed to the *Consultant*.
- 62.6 If the *Employer* does not reply to a quotation within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* does not reply to the notification within four (4) weeks and, unless the quotation is for a proposed instruction or a proposed changed decision, the *Consultant's* notification is treated as acceptance of the quotation by the *Employer*.
- 63**
- 63.1 The changes to the Prices are assessed as the effect of the compensation event upon
- the actual Time Charge for the work already done; and
 - the forecast Time Charge for the work not yet done.
- The date when the *Employer* instructed or should have instructed the *Consultant* 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 Time Charge, the Prices are not reduced excepted as stated in this contract.
- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that any delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent
- that the compensation event is the sole or principal cause of the delay; and
 - there is sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.
- For the avoidance of any doubt, the *Employer* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.
- 63.4 The rights of the *Employer* and the *Consultant* 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 *Consultant* other than amounts claimable and recoverable under this contract.
- 63.5 If the *Consultant*:
- did not give early warning of a compensation event which an experienced consultant 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 early warning,

- the event is assessed as if the *Consultant* had given an early warning at the appropriate time.
- 63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time matters which
- are not compensation events in themselves,
 - have a material and significant chance of occurring; and
 - are at the *Consultant's* risk under this contract.
- 63.7 Assessments for work not yet done are based upon the assumptions that the *Consultant* will react competently and promptly to the compensation event and that the Accepted Programme can be changed. Assessments for work already done include only cost and time which were reasonably incurred. Where the *Employer* decides that the *Consultant* has failed to act in accordance with such assumptions this can be taken into account when making the assessment.
- 63.8 An instruction to change the Scope in order to resolve an ambiguity or inconsistency which (in accordance with sub-clauses 16.1,16.2 and 60.1(1)) is a compensation event 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 Scope.
- 63.9 If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Employer* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.10 If the work included in a quotation for a compensation event includes work by staff for which there is no *staff rate*, a proposed rate is included in the quotation.
- 63.11 The following are deducted from the assessment of compensation events:
- the cost of events for which this contract requires the *Consultant* to insure; and
 - other costs paid to the *Consultant* by insurers.

The *Employer's*-assessments

64

- 64.1 The *Employer* assesses a compensation event
- if the *Consultant* has not submitted a required quotation and details of his assessment including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subconsultant and with regard to the *services* and planned works by Others within the time allowed,
 - if the *Employer* decides that the *Consultant* has not assessed the compensation event correctly in a quotation and he does not instruct the *Consultant* to submit a revised quotation,
 - if, when the *Consultant* 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 *Consultant* submits quotations for a compensation event, the *Employer* has not accepted the *Consultant's* latest programme for one of the reasons stated in this contract.

- 64.2 The *Employer* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme; or
 - the *Consultant* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- 64.3 The *Employer* notifies the *Consultant* of his assessment of a compensation event and gives him details of it within the period allowed for the *Consultant's* submission of his quotation for the same event. This period starts when the need for the *Employer's* assessment becomes apparent.
- 64.4 If the *Employer* does not assess a compensation event within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* does not reply within four (4) weeks of this notification the notification is treated as acceptance of the *Consultant's* quotation by the *Employer*.
- 64.5 The *Employer* may at his discretion extend the time allowed for the following actions
- notification of a decision and/or instruction (clause 61.4),
 - reply to a quotation (clause 62.3); or
 - assessment of a compensation event (clause 64.3 and clause 64.4)
- provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including without limitation 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 *Employer* notifies the extension to the *Consultant* 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 *Employer* notifies his acceptance of the *Consultant's* quotation,
 - the *Employer* notifies the *Consultant* of his own assessment; or
 - a *Consultant's* quotation is treated as having been accepted by the *Employer*.
- 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.
- 65.4 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.

material

- 70.1 The *Employer* has the right to use the material provided by the *Consultant* for any purpose whatsoever including, without limitation, the execution, completion, maintenance, letting, advertisement, modification, enhancement, alteration, extension, reinstatement and repair of the *services* or the Works. The *Consultant* obtains from a Subconsultant equivalent rights for the *Employer* to use material prepared by the Subconsultant.
- 70.2 The *Consultant* has the right to use material provided by the *Employer* only to Provide the Services. The *Consultant* may make this right available to a Subconsultant. On Completion of the whole of the *services*, the *Consultant* returns the material provided by the *Employer* to him.
- 70.3 The *Consultant* may not use the material provided by him under this contract for other work unless stated otherwise in the Scope.

Publicity

- 71
- 71.1 Except as provided under deeds of warranty required by the *Employer* under sub-clause 100 and subject to clause 109, the *Consultant* 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, the *services* or the Works.

8 Indemnity, insurance and liability

Indemnity

80

- 80.1 The *Consultant* is responsible for and indemnifies the *Employer*, its employees and agents against any and all Losses arising out of
- any failure by the *Consultant* to use the degree of skill, care and diligence normally used by competent professionals experienced in providing services similar to the *services* in connection with works of a similar size, scope and complexity to the Works,
 - death or bodily injury to any person whomsoever arising out of or caused by the carrying out of the *services* by the *Consultant*,
 - loss of or damage to property real or personal including without limitation the property of LU (which includes those parts of LU which do not form part of the works) (and any novated *Employer*) arising out of or caused by the carrying out of the *services* by the *Consultant*; and
 - any infringement by the *Consultant* of the rights of Others, except an infringement which arose out of the use by the *Consultant* of things provided by the *Employer*,
- to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission or default by the *Consultant*, his employees, Subconsultants or agents. The liability of the *Consultant* to indemnify the *Employer* is reduced to the extent that such Losses are caused by the *Employer*.
- 80.2 The *Consultant's* indemnity under clause 80.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to the indemnity.

Insurance cover

81

- 81.1 The *Consultant* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The insurances provide cover from the *starting date* or the Contract Date (whichever is the earlier) until the end of the

periods stated in the Contract Data.

INSURANCE TABLE

Insurance against	Minimum amount of cover
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the degree of reasonable skill, care and diligence normally used by competent professionals experienced in providing services similar to the <i>services</i> in connection with works of a similar size, scope and complexity to the Works (professional indemnity insurance).	Not less than £10,000,000.00 (ten million pounds) for each and every claim and in the aggregate per annum, or as otherwise stated in the Contract Data.
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> .	Not less than £10,000,000.00 (ten million pounds) in respect of each claim or as otherwise stated in the Contract Data.
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract.	Not less than £10,000,000.00 (ten million pounds) in respect of each claim or as otherwise stated in the Contract Data.

81.2 When requested by a Party the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.3 The *Consultant's* professional indemnity insurance

- is under the usual and customary terms and conditions prevailing in the insurance market,
- does not include any term to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers,
- does not include any other term which might adversely affect the right of any person (other than the Parties) to recover from the insurers under any applicable law relating to the rights of third parties,
- is with a reputable insurer authorised to underwrite such risks in the United Kingdom,

provided that such insurance is available upon commercially reasonable terms and premiums. If at any time such insurance becomes unavailable on commercially reasonable terms and premiums (excluding any increase in premiums attributable to the actions, omissions errors or default of the *Consultant*) the *Consultant* as soon as reasonably practical and in any event within 7 working days, informs the *Employer* in writing and the Parties meet and agree an alternative method of managing such risk.

Limitation of liability

82

82.1 The *Consultant'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*. If no such amount is stated, the *Consultant's* liability is not limited.
The excluded matters are amounts payable by the *Consultant* as

stated in this contract for

- delay damages if Option X7 applies,
- *Consultant's* share if Option C applies,
- an infringement by the *Consultant* of the rights of Others,
- loss of or damage to third party property,
- death of or bodily injury to a person other than an employee of the *Consultant*,
- Losses caused by fraudulent acts or acts of a criminal nature,
- any other Losses against which the *Consultant* is entitled to an indemnity under any policy of insurance up to (but not exceeding) the amount which the *Consultant* is obliged to maintain under this contract and such amount will be the limit of *Consultant's* liability in respect of such Losses; and
- all Losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the intellectual property rights or other rights of any third party.

Provisions relating to insurances 83

- 83.1 The insurances provided pursuant to this contract do not relieve the *Consultant* from any of his obligations and liabilities under the contract.
- 83.2 The *Consultant* cooperates 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. The *Consultant* does not compromise, settle or waive any claim, or by an act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against insurers, which the *Consultant* may have under the *Employer's* insurances or any claim which the *Consultant* may have against insurers and which relates to a claim by the *Employer* against the *Consultant*, without the prior written consent of the *Employer*.
- 83.3 Unless the *Employer* otherwise instructs, the *Employer* submits all claims under his insurances and the *Consultant* provides such information in connection with such claims as the *Employer* and its insurers require.
- 83.4 The *Consultant* does not by any act, omission or default prejudice, lose or forego the Parties' right or the right of either of them to make or proceed with a claim against any insurers.
- 83.5 To the extent that the *Employer* arranges any insurance policies on behalf of the *Consultant*, the *Consultant* pays all excesses and bears all deductibles on claims arising under the insurance policies maintained by the *Employer* to the extent that the *Consultant* is responsible for the loss or damage in question. If the premiums payable for such insurances increase as a result of claims made by the *Consultant* arising from events which a prudent and experienced consultant familiar with works of a similar size, nature and complexity to the *services* might reasonably have avoided (including claims attributable to his Subconsultants), then the *Consultant* pays to the *Employer* the increase in premium which is deemed to be a debt due on demand.
- 83.6 The *Consultant* procures that his Subconsultants of any tier maintain professional indemnity insurance covering their liabilities under subcontracts in respect of their design.

- 83.7 The *Consultant* submits documentary evidence for the insurances which he is to provide to the *Employer* for acceptance before the *starting date*. The *Consultant* continues to submit documentary evidence to the *Employer* as required or necessary to prove that such insurances are being maintained in accordance with this contract. Such documentary evidence shall state that the insurance required by this contract is in force and be signed by the *Consultant's* insurer or insurance broker. A reason for not accepting the documentary evidence for the insurances is that the insurances or the documentary evidence do not comply with this contract.

9 Termination

Termination

90

- 90.1 Either Party may terminate the *Consultant's* obligation to Provide the Services by notifying the other Party if the other Party has done one of the following or its equivalent
- If the other Party is an individual and has,
 - presented his petition for bankruptcy,
 - had a bankruptcy order made against him,
 - had a receiver appointed over his assets; or
 - made an arrangement with his creditors.
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it,
 - had a provisional liquidator appointed to it,
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency),
 - had an administration order made against it,
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets; or
 - made an arrangement with its creditors.
- 90.2 Save when the *Employer* has complied with clause 121.4, the *Consultant* may terminate his obligation to Provide the Services by notifying the *Employer* if the *Employer* has not paid an amount due to the *Consultant* within eight (8) weeks of the issue of a notice by the *Consultant* to the *Employer* that payment is overdue provided always that the *Consultant* has given written notification to the *Employer* of such intention to terminate at least five (5) weeks prior to any such termination and the *Employer* has not paid the amount due within that period.
- 90.3 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if
- the *Consultant* is in breach of clause 106 (Conflict of Interest) and/or clause 110 (Corrupt Gifts, Fraud, Payment of Commission and Safety Breaches) and/or clause 132 (Supplier Diversity),
 - the *Employer* no longer requires the services or otherwise wishes to *terminate* the *Consultant's* obligation to Provide the Services for any reason; or
 - the *Consultant* has substantially failed to comply with his obligations and has not put the default right within four (4) weeks of a notification by the *Employer*.
- 90.4 The *Employer* may terminate the *Consultant's* obligation to Provide

the Services by notifying the *Consultant* if an event occurs which

- stops the *Consultant* completing the service; or
- stops the *Consultant* completing the services by the date shown on the Accepted Programme and is forecast to delay Completion by more than thirteen (13) weeks.

and which

- neither Party could prevent; and
- an experienced and prudent consultant familiar with works similar to the services and exercising the foresight appropriate to such a consultant 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.

90.5 The *Employer* may terminate the *Consultant's* appointment:

- in any event that any cap or *Consultant's* liability under contract has been or is reasonably likely to be exceeded,
- in the event of the *Employer* not obtaining any necessary funding for the project and/or the necessary funding being curtailed,
- in the event of a Change of Control.

90.5A The *Employer* may terminate the *Consultant's* appointment if the *Employer* issues the Stage 2 Services Non-Commencement Notice in accordance with Clause 21A4.

90.6 In the event that either (a) 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 (b) 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 Regulations 2016 then,;

- the *Employer* notifies the *Consultant* in writing as soon as reasonably practicable of the declaration or order;
- the *Employer* issues a termination certificate to the *Consultant* 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.

Notwithstanding the declaration or order, the provisions of clauses 90-92 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.

Procedures on termination

91

91.1 On termination

- the *Consultant* does no further work necessary to Provide the Services,
- the *Employer* may complete the services and may use any

material to which he has title,

- the *Employer* may require the *Consultant* to assign the benefit of and/or enter into a novation of any subconsultancy or other contract related to performance of this contract to the *Employer*,
- the *Consultant* makes available to the *Employer* within seven (7) days all information prepared in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format,
- the Parties continue to comply with the constraints and obligations in this contract on the use of material prepared or obtained by the *Consultant* and publicising the *services*.

The *Consultant* gives to the *Employer* work carried out to date, information resulting from work carried out to date, and information the *Consultant* has obtained which he has a responsibility to provide under this contract.

Payment on termination

92

92.1 Subject to Clause 92.2A below, the amount due on termination includes:

- an amount due assessed as for normal payments; and
- other costs reasonably incurred by the *Consultant* in expectation of completing the whole of the *services* and to which the *Consultant* is committed.

92.2 If the *Employer* terminates because of the occurrence of one or more of the events described in sub-clause 90.1, or the material failure of the *Consultant* to comply with his obligations (including, for the avoidance of doubt and without limitation, a failure to comply with his obligations pursuant to clauses 109 or 110), or because the *Consultant* has not provided a bond which this contract requires, then, without prejudice to the *Employer's* other rights and remedies, the final payment due to the *Consultant* or the *Employer*, as the case may be, includes a credit to the *Employer* of the forecast of the additional cost to the *Employer* resulting from the termination.

If the *Employer* terminates pursuant to Clause 90.5A, the amount due on termination includes any amounts assessed as due for the Stage 1 *Services*.

10 Additional conditions of contract Consultant's warranties

100

100.1 The *Consultant*, within 14 days of the *Employer's*, or any novated *Employer's*, request (as the case may be), duly executes and delivers to the *Employer*, or any novated *Employer*, (as the case may be) deeds of warranty in the appropriate form set out in Schedules 7, 8 and 12 of the Framework Agreement in favour of:

- the PFI Contractors;
- any member of the TfL Group;
- persons providing finance in connection with the Works;
- developers having or requiring 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; and
- upon execution of a novation agreement pursuant to clause 102, a deed of warranty in favour of the *Employer* in the form set out in Schedule 8 of the Framework Agreement.

100.2 The *Employer* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Employer*, then as between the *Consultant* and the *Employer*, upon such recipient of the collateral warranty serving the requisite notice, the *Consultant* treats the said recipient as standing in substitution for the *Employer* and the *Employer* raises no objection to such substitution.

Subconsultant's warranties

101

101.1 The *Consultant*, within 14 days of the *Employer's*, or any novated *Employer's*, request (as the case may be), uses his best endeavours to procure that the Subconsultants named or identified by discipline in the *Employer's*, or any novated *Employer's*, request (as the case may be) duly execute and deliver to the *Employer*, or any novated *Employer* (as the case may be) deeds of warranty in the appropriate form set out in Schedules 9A, 9B and 13 of the Framework Agreement in favour of:

- the *Employer* and (upon novation) any novated *Employer*;
- the PFI Contractors;
- any member of the TfL Group;
- persons providing finance in connection with the Works;
- purchasers and tenants of the whole or any part of the Works;
- developers having or requiring 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; and
- any purchaser of an Oversight Development or from an Oversight Developer;

101.2 If the *Consultant* is unable to procure and deliver to the *Employer*, or any novated *Employer*, (as the case may be) any requisite deed of warranty in the appropriate form within fourteen (14) days of the *Employer's*, or any novated *Employer's*, request (as the case may be), the *Consultant* without prejudice to the *Employer's*, or any novated *Employer's*, (as the case may be) rights and remedies consults with the *Employer*, or any novated *Employer*, (as the case may be) as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the *Employer's*, or any novated *Employer's*, interests (as the case may be).

Novation

102

102.1 If requested by the *Employer*, the *Consultant* duly executes and delivers a novation agreement in the form of the novation agreement set out in Schedule 10 of the Framework Agreement (subject to any amendments which the *Employer* (acting reasonably) may require) in order to novate the benefit and burden of this contract to another member of the TfL Group or GLA or to the Contractor, or where applicable to an Infraco within fourteen (14) days of the *Employer's* request to do so.

Statutory Undertakers 103

- 103.1 The *Consultant* complies with the special requirements of relevant suppliers of utilities acting as Statutory Undertakers which shall include the following
- electricity,
 - gas,
 - water,
 - telecommunications; and
 - Others.
- 103.2 The *Consultant* is responsible for determining the requirements of Statutory Undertakers and for complying with the same.

Data and information 104

- 104.1 Any data or information received at any time by the *Consultant* from the *Employer* or Others does not relieve the *Consultant* from his responsibility for the services he undertakes under this contract.
- 104A The *Consultant* acknowledges that the *Employer* requires cost benchmarking data for use in the *Employer's* EBS cost database.
The *Consultant* provides all information relating to the Price for Services Provided to Date at the assessment date occurring on Completion of the whole of the services.

Accounts and records 105

- 105.1 In this section
“**Minimum Records**” means:
- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subconsultants,
 - management accounts, information from management information systems and any other management records,
 - accounting records (in hard copy as well as computer readable data),
 - sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
 - original estimates,
 - estimating worksheets,
 - correspondence,
 - compensation event files (including documentation covering negotiated settlements),
 - schedules including capital works costs, timetable and progress towards Completion,
 - general ledger entries detailing cash and trade discounts and rebates,
 - commitments (agreements and leases) greater than £5,000 (five thousand pounds),
 - detailed inspection records,
 - such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*, and
 - accounts and records of the Price for Services provided to Date and all other amounts to be paid to the *Consultant* under this contract.
- 105.2 The *Consultant* maintains and procures in each subcontract that each of his Subconsultants, maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Consultant* and his Subconsultants are responsible under this contract. The *Consultant* procures that each subcontract contains open-book audit rights in favour of the *Employer* and any novated *Employer* and their authorised representatives.
- 105.3 The *Consultant* undertakes and procures that his Subconsultants undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer*

and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Consultant's* technical and organisational security measures for the protection of personal data, any aspect of the *Consultant's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Consultant* and/or his Subconsultants including, without limitation, Minimum Records.

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

Conflicts of interest

106

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

Intellectual property rights

107

107.1 Vesting of Intellectual Property Rights

The parties agree that the Intellectual Property Rights in all documents, drawings, materials, computer software, any other material or works prepared

or developed by or on behalf of the *Consultant* in the performance of this contract (including Intellectual Property Rights in materials or works created by a Subconsultant) vests in the *Employer*. The *Consultant* procures that each Subconsultant assigns such Intellectual Property Rights to the *Employer*.

107.2 Background Intellectual Property Rights

In respect of Background Intellectual Property Rights, the *Consultant* grants (in respect of his own Background Intellectual Property Rights) and procures the grant of (in respect of a Subconsultant's or other third party's Background Intellectual Property Rights) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes of

- understanding the *services*,
- operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *services*,
- extending, interfacing with, integrating with, connection into and adjusting the *services* and/or the works of Others; enabling LUL to carry out the operation maintenance, repair, renewal and enhancement of the Underground Network (where applicable); and
- enabling LUL to perform functions as Infrastructure Manager.

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.

107.2A The *Consultant* agrees to provide to the *Employer* or any person nominated by the *Employer* immediate access to all Documentation in whatever form requested by the *Employer* at any time but at the latest upon term or expiry of this contract "Documentation" means all documents, items of information, data, reports, drawings, specifications, plans, software designs, inventions and for other material produced or supplied by or on behalf of the *Consultant* in performance of this contract.

107.3 The *Consultant* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Consultant's* Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes listed in clause 107.2.

107.4 The *Consultant* indemnifies the *Employer* (and members of the TfL Group) against all Losses arising out of any use by the *Employer* of the Background Intellectual Property Rights, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the Intellectual Property Rights rights or other rights of any third party.

107.5 Corporate Intellectual Property Rights

The *Consultant* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the *Employer*.

107.6 Moral rights

The *Consultant* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Works.

Assignment

108

- 108.1 The *Consultant* does not assign, transfer, charge or otherwise deal with this contract (or any of his rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Employer*.
- 108.2 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person without the consent of the *Consultant* being required.

Confidentiality, Announcements and Transparency

109

- 109.1 Subject to clause 109.6 and clause 122.3, The *Consultant* shall keep confidential:
- the terms of this contract, and
 - any and all Confidential Information (all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the *Employer* whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the *Employer* that it may acquire in relation to the *Employer*).
- 109.2 The *Consultant* will not use the *Employer's* Confidential Information for any purpose other than to perform its obligations under this Contract. The *Consultant* will ensure that its officers and employees comply with the provisions of clause 109.1.
- 109.3 The obligations on the *Consultant* set out in clause 109.1 will not apply to any Confidential Information:
- which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this clause 109),
 - which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 109.4 The *Consultant* shall keep secure all materials containing any information in relation to this contract and its performance.
- 109.5 The *Consultant* shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this contract or that it is providing the *services* to the *Employer* or in relation to any matter under or arising from this contract unless specifically granted permission to do so in writing by the *Employer*. The *Employer* shall have the right to approve any announcement before it is made.
- 109.6 The *Consultant* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clause 109.1 and clause 122.3, the *Consultant* hereby gives its consent for the *Employer* to publish the contract information to the general public.
- 109.7 The *Employer* may in its absolute discretion redact all or part of the contract information prior to its publication. In so doing and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Legislation). The *Employer* may in its absolute discretion consult with the *Consultant* regarding any redactions to the contract information to be published pursuant to clause 109.6. The *Employer* shall make the final

**Corrupt Gifts, Fraud,
Payment of
Commission, and
Safety Breaches**

- 109.6 decision regarding publication and/or redaction of the contract information.
The provisions of this clause 109 will survive any termination of this Contract for a period of six (6) years from termination.
- 110
- 110.1 In relation to Safety Breaches, the *Consultant* does not and uses its reasonable endeavours to procure that his Subconsultants do not commit any Safety Breach.
- 110.2 The *Consultant* does not, and ensures that its employees, agents and Subconsultants do not:
- pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of the *Employer* or any member of the TfL Group or GLA,
 - favour any employee, servant, officer or agent of the *Employer* or any member of the TfL Group or GLA with gifts or entertainment of significant cost or value,
 - enter into any business arrangement with employees, servants, officers or agents of the *Employer* or any member of the TfL Group or GLA other than as a representative of the *Employer*, without the *Employer*'s prior written approval, or offer or agree to give to any servant, employee, officer or agent of the *Employer* 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*;
- commit any offence:
- under the Bribery Act 2010,
 - under any law or legislation creating offences in respect of fraudulent acts;
 - at common law in respect of fraudulent acts in relation to this contract or any other contract with the *Employer*; or
 - defraud or attempt to defraud the *Employer*.
- 110.3 Without prejudice to its rights under clause 105 the *Employer* and/or any novated *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 twelve (12) years thereafter.
- 110.4 If any fraudulent activity comes to the attention of the *Consultant* in relation to this contract the *Consultant* notifies the *Employer* by the most expeditious means available. The *Consultant* cooperates with the *Employer* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Subconsultants.
- 110.5 If the *Consultant*, any of its shareholders or any Subconsultant or anyone employed by or acting on behalf of the *Consultant* or any of his agents commits any Safety Breach and/or breach of clause 110.2 and/or 110.4 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 90.3.
- 110.6 If a Safety Breach or breach of clause 110.2 or 110.4 is committed by an employee of the *Consultant* or by any Subconsultant (or employee or agent of

such Subconsultant) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Consultant* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Consultant* terminates, or procures the termination of, the employee's employment or Subconsultant's appointment (as the case may be) and (if necessary) procures the provision of the affected services by another person, 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 sub-clause 90.3.

110.7 In the event of any breach of this clause 110 by the *Consultant* the *Employer* recovers from the *Consultant* any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Consultant*.

Quality assurance and best value 111

111.1 The *Consultant* maintains an effective and economical quality control programme in accordance with the requirements set out in clause 40 and the Scope. The *Consultant* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The *Consultant* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the services reasonably requested by the *Employer* from time to time.

IT requirements 112

112.1 The *Consultant* warrants to the *Employer* that

- neither the functionality nor the performance of,
 - his work,
 - any software, electronic or magnetic media, hardware, computer system, application or system forming part of his work,
 - any part of the railways on which his work is undertaken;
 - any part of the Underground Network is affected, made inoperable, different or suffers any abnormality by reason of any data related input or data related processing in or on any part of such software, electronic or magnetic media or computer system, or

any software, electronic or magnetic media, hardware or computer system used or supplied by the *Consultant* in connection with this contract,

- is Euro compliant and is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, <https://www.cabinetoffice.gov.uk>;
- does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the *Employer* and/or any other member of the TfL Group on which it is used or with which it interfaces or comes into contact; and
- any variations, enhancements or actions undertaken by the *Consultant* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Consultant's* compliance with this warranty.

Procurement

- 113.1 The *Consultant* acknowledges the requirements of the “Responsible Procurement Policy” in the performance of its obligations under this contract which is available at the following link: <https://legacy.london.gov.uk/gla/tenders/docs/responsibleprocurementpolicy.pdf>
- 113.2 The *Consultant* provides such cooperation and assistance as may be reasonably requested by the *Employer* in relation to the “Responsible Procurement Policy”.

Severability

114

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

Crime and Disorder

115

- 115.1 The *Consultant* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to:
- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
 - where appropriate, identify actions to reduce levels of crime and disorder; and
 - without prejudice to any other obligation imposed on the *Employer*, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,
- and in the performance of the contract, the *Consultant* assists and co-operates, and uses reasonable endeavours to procure that its Subconsultants and Indirect Subconsultants assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty

Employer's business

116

- 116.1 The *Consultant* acknowledges that it
- has sufficient information about the *Employer* and the *services*; and
 - is aware of the *Employer's* processes and business; has made all appropriate and necessary enquiries to enable it to Provide the Services in accordance with this contract;
- is aware of the purposes for which the *services* are required and acknowledges that the *Employer* is reliant upon the *Consultant's* expertise and knowledge in Providing the Services; shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *services*.

Access to premises

117

- 117.1 Any TfL Premises made available to the *Consultant* in connection with this contract shall be free of charge and shall be used by the *Consultant* solely for the purpose of Providing the Services provided, for the avoidance of doubt, that the *Consultant* is responsible for its own costs or travel including any congestion charging. The *Consultant* shall
- have the use of TfL, Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL Premises,
 - vacate such TfL, Premises upon the termination or expiry of the

Compliance with policies

- contract or at such earlier date as the *Employer* may determine; not exercise or purport to exercise any rights in respect of any TfL Premises in excess of those granted under this clause 117,
 - ensure that the *Consultant's* personnel carry any identity passes issued to them by the *Employer* at all relevant times and comply with the *Employer's* security procedures as may be notified by the *Employer* from time to time; and
 - not damage the TfL Premises or any assets on the TfL Premises.
- 117.2 Nothing in this clause 117 shall create or be deemed to create the relationship of landlord and tenant between the *Consultant* and any member of the TfL Group.
- 117.3 The *Employer* shall be under no obligation to provide office or other accommodation facilities or *services* (including telephony and IT services) to the *Consultant* except as may be specified in the Scope.
- 117.4 The *Employer* is responsible for maintaining the security of TfL Premises in accordance with its standard security requirements. The *Consultant* shall comply with all of the *Employer's* security requirements while on TfL Premises, and shall ensure that all of its personnel comply with such requirements. Upon request, the *Employer* shall provide the *Consultant* with details of the *Employer's* security procedures.
- 117.5 The *Employer* reserves the right under this contract to refuse to admit to any TfL Premises any of the *Consultant's* personnel who fail to comply with any of the *Employer's* policies and standards referred to in this contract.
- 117.6 The *Employer* reserves the right under this contract to instruct any of the *Consultant's* personnel to leave any TfL Premises at any time for any reason and such personnel shall comply with such instructions immediately.
- 117.7 Where the *Consultant* is required to access (with appropriate permission and approval of the *Employer*) any areas under the control of any of the *Employer's* PPP or PFI Contractors, the *Consultant* must comply with any applicable rules, regulations and standards as appropriate.
- 118
 - 118.1 The *Consultant* notifies its personnel and the *Employer* of any health and safety hazards that exist or that may arise in connection with providing the *services* of which the *Consultant* is aware or ought reasonably to be aware.
 - 118.2 The *Consultant* undertakes that all its personnel and those of its Subconsultants comply with all of the *Employer's* policies and standards that are relevant to providing the *Services*, including those relating to occupational health and safety, security, business ethics, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Employer* for personnel working at TfL Premises or accessing the *Employer's* computer systems. The *Employer* provides the *Consultant* with copies of such policies on request.
 - 118.3 In Providing the *Services*, the *Consultant* shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Consultant's* activities may impact on the environment) to the need to
 - preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
 - enhance the environment and have regard to the desirability of achieving sustainable development,
 - conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Recovery of sums due from the consultant	119	
	119.1	Subject to clause 121 when under this contract any sum of money is recoverable from or payable by the <i>Consultant</i> such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the <i>Consultant</i> under this contract or any other contract with the <i>Employer</i> . Any sum due from the <i>Consultant</i> , whether under this contract or any other contract with the <i>Employer</i> , shall be payable as a debt to the <i>Employer</i> .
	119.2	Where required by the Scope or by the <i>Employer's Agent</i> , all design prepared by the <i>Consultant</i> and submitted to the <i>Employer</i> is supported by a design check certificate in the form attached to the Scope signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the <i>Consultant</i> , he is a Subconsultant.
Dispute resolution	120	
	120.1	The Parties shall follow the procedure set out in the Framework Agreement for the avoidance and resolution of any Dispute arising under or in connection with this contract.
The Housing Grants, Construction and Regeneration Act 1996	121	
	121.1	The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
	121.2	Pay Less Notice means the notice referred to in clause 121.4.
	121.3	The <i>Employer's</i> certificate issued under clause 51.4 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.
	121.4	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. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Employer's Agent</i> .
	121.5	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.
	121.6	If a certificate is not issued by the <i>Employer</i> in accordance with clause 51.4, the sum to be paid by the <i>Employer</i> is, subject to clause 121.4 the sum stated as due in the <i>Consultant's</i> assessment in accordance with clause 50.1.
	121.7	If the <i>Consultant</i> is entitled to suspend performance and exercises his right under the Act to suspend performance, it is a compensation event whether or not the event has been notified by the <i>Consultant</i> within the period specified in clause 61.3.
	121.8	If the <i>Consultant's</i> employment is terminated under clause 90.1 because the <i>Consultant</i> has become insolvent within the meaning of Section 113 of the Act, the <i>Employer</i> need not pay any sum due to the Contractor other than any amount due to him under clause 92.1 either • where the <i>Consultant</i> becomes insolvent prior to the prescribed period before the final date for payment, provided that the <i>Employer</i> or <i>Employer's Agent</i> issues a Pay Less Notice notifying the <i>Employer's</i> intention not to pay such sum; or • in any prescribed event, if the <i>Consultant</i> becomes insolvent after the prescribed period before the final date for payment.
Data Protection, and Freedom of	122	

information

- 122.1 Without prejudice to clause 105, the *Consultant* complies with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the *Employer* ("Employer Personal Data"), the *Consultant* only carries out such processing for the purpose of Providing the Services and in accordance with instructions from the *Employer*.
- When the *Consultant* receives a written request from the *Employer* for information about, or a copy of, Employer Personal Data, the *Consultant* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within fourteen (14) days from the date of the request.
- The *Employer* remains solely responsible for determining the purposes and manner in which Employer Personal Data is to be processed. The *Consultant* does not share any Employer Personal Data with any Subconsultant or third party unless there is a written agreement in place which requires the Subconsultant or third party to:
- only process Employer Personal Data in accordance with the *Employer's* instructions to the *Consultant*; and
 - comply with the same data protection requirements that the *Consultant* is required to comply with under this contract.
- 122.2 The *Consultant*:
- 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* with such information as he may reasonably require to satisfy himself of compliance by the *Consultant* with the requirements of this clause 122;
 - cooperates with the *Employer* in complying with requests or enquiries made pursuant to the Data Protection Act.
- 122.3 The *Consultant* acknowledges that the *Employer* and any novated *Employer* is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation and agrees to assist and co-operate and procure that its Subconsultants assist and co-operate with the *Employer* and any novated *Employer* to enable the *Employer* and any novated *Employer* to comply with its obligations under such legislation including providing to the *Employer* and any novated *Employer* such information as the *Employer* and any novated *Employer* may reasonably request concerning this contract within five (5) days of a request from the *Employer* or any novated *Employer*. The *Consultant* further acknowledges that the *Employer* and any novated *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Consultant*. Without prejudice to the generality of the foregoing the *Consultant* transfers to the *Employer* and any novated *Employer* any request for information under the Act that it receives as soon

as reasonably practicable. The *Consultant* does not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the *Employer* and any novated *Employer*. This clause survives the expiry or termination of this contract.

Not Used **123**

Crime and Disorder Act 1998 **124**

- 124.1 The *Consultant* 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, to identify actions to reduce levels of crime and disorder; and
 - without prejudice to any other obligation imposed the *Employer*, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,
- and in the performance of the Contract, the *Consultant* will assist and co-operate with the *Employer*, and will use reasonable endeavours to procure that its sub-contractors observe these duties and assists and co-operates with the *Employer* where possible to enable the *Employer* to satisfy its duty.

Standards **125**

The *Consultant* complies with Standards including all European Standards, British Standards and International Standards and associated codes of practice as required to enable the consultant to Provide the Services in accordance with Good Industry Practice and this contract.

126 Not Used.

Assurance **127**

- 127.1 The *Consultant* provides safety and technical assurance to the *Employer* in accordance with Standard 1-538 (Assurance) in respect of all services under this contract.
- 127.2 The *Consultant* complies with the Assurance Regime.
- 127.3 The Assurance Regime may be amended at any time by agreement between the *Consultant* and the *Employer*.
- 127.4 In relation to the initiation, development, design, construction, delivery, testing, commissioning and handover of new, refurbished or altered systems and assets, the *Consultant* prepares Assurance Plans.
- 127.5 Before the start of specific delivery activities or at defined milestones, as appropriate, the *Consultant* submits an Assurance Plan to the *Employer* and any other regulatory body.
- 127.6 The Parties consult and confer together in relation to the Assurance Plans after their delivery to the *Employer*. Within thirty (30) days thereafter, the *Employer* may give notice to the *Consultant* requiring the *Consultant* to make changes to the Assurance Plans or any elements thereof. The *Consultant* makes the changes within seven (7) days of receiving the notice.
- 127.7 The Assurance Plans do not become final until approved by the *Employer*.
- 127.8 The Parties may agree to update the Assurance Plan as appropriate to take account of any changes to or development of the services.
- 127.9 The *Consultant* complies with the approved Assurance Plan as amended from time to time.

Master Projects Database **128**

- 128.1 The *Consultant* maintains and updates a database recording details of the services in a form and at a level of detail consistent with the requirements of

the Master Projects Database, as detailed in the Master Projects Database Desk Reference, and provides to the *Employer* such information in the required format for regular reporting intervals for the purpose of updating the Master Projects Database.

128.2 The *Employer* uses reasonable endeavours to keep current the information in the Master Projects Database, but the *Employer* has no liability to the *Consultant* in respect of any inaccuracy, error, mis-statement contained in or any omission from the Master Projects Database.

128.3 In complying with this clause, the *Consultant* has regard to the Master Projects Database Desk Reference dated September 2007 (as updated and amended from time to time) attached at Schedule 14 to the Framework Agreement.

Criminal Record Declarations

129

129.1 “**Relevant Individual**” means any servant, employee, officer, consultant or agent of the *Consultant* or any Subconsultant carrying out, or intended to carry out, any aspects of the *services*.

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

129.2 The *Consultant* 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 *services*. The *Consultant* 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 *Consultant* shall procure that a Relevant Individual notifies the *Consultant* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Consultant* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

129.3 The *Consultant* is not permitted to engage or allow to act on behalf of the *Consultant* or any Subconsultant in the performance of any aspect of the *services* any Relevant Individual who has disclosed a Relevant Conviction.

129.4 The *Employer* may in accordance with the audit rights set out in this contract 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.

129.5 If the *Consultant* fails to comply with the requirements under clauses 129.2 and/or 129.3, the *Employer* may, without prejudice to his rights under clause 90.3, serve notice on the *Consultant* requiring the *Consultant* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from TfL Premises 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 *services* unless (in the case of non-compliance with clause 129.2) within 7 days of receipt of the notice the *Consultant* confirms to the *Employer* he has procured all of the Declarations required under clause 129.2.

129.6 A persistent breach of clause 129.2 and/or 129.3 by the *Consultant* 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 90.3.

129.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Consultant* shall remove or procure the removal (as the case may be) of such Relevant Individual from TfL Premises 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 *services*.

129.8 Nothing in this clause 129 in any way waives, limits or amends any obligation of the *Consultant* to the *Employer* arising under this contract and the *Consultant's* obligation to Provide the Services remains in full force and effect and the *Consultant* cannot claim any extra costs or time as a result of any

**Waste Electrical
and Electronic
Equipment
Regulations 2006**

130

actions under this clause 129.

- 130.1 For the purposes of this clause, unless the context indicates otherwise, the following expressions shall have the following meanings:
WEE Equipment means any Equipment which falls within the scope of the WEEE Regulations; and
WEE Regulations means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2009).
- 130.2 When procuring any WEE equipment for use in accordance with the *services* whether by direct purchase by the *Consultant*, purchase on behalf of the *Employer*, lease or otherwise the *Consultant* will ensure that in accordance with the WEEE Regulations that the producer of the WEE Equipment (whether that be the *Consultant* or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of:
- (a) all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and
 - (b) all Waste Electrical and Electronic Equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.
- 130.3 The *Consultant* shall indemnify and keep indemnified the *Employer* as a result of any Losses which it incurs as a result of any failure on the part of the *Consultant*, *Employer* or the relevant producer to comply with the terms of this clause 131.

**Work Related Road
Risk**

131

- 131.1 For the purposes of this clause the following definitions shall apply:

“Bronze Accreditation”	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Car-derived Vans”	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
“Collision Report”	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the <i>Consultant</i> (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the <i>Consultant</i> while Providing the Services;

“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Silver Accreditation”	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Van”	a vehicle with a MAM not exceeding 3,500 kilograms.

131.2

Fleet Operator Recognition Scheme Accreditation

Where the *Consultant* operates Delivery and Servicing Vehicles to Provide the Services, it shall within 90 days of the *starting date*:

- (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the *Employer*, is an acceptable substitute to FORS (the “**Alternative Scheme**”); and
- (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative

Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the *Consultant* has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

131.3

Safety Equipment on Vehicles

The *Consultant* shall ensure that every Lorry, which it uses to Provide the Services, shall:

- have Side Guards, unless the *Consultant* can demonstrate to the reasonable satisfaction of the *Employer* that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

131.4

Driver Licence Checks

Where the *Consultant* operates Delivery and Servicing Vehicles to Provide the Services the *Consultant* shall ensure that:

- it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- each of its Drivers engaged in the Provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the *services* and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the *Consultant's* risk scale, provided that the *Consultant's* risk scale has been approved in writing by the Employer within the last 12 months:
 - 0 – 3 points on the driving licence – annual checks;
 - 4 – 8 points on the driving licence – six monthly checks;
 - 9 – 11 points on the driving licence – quarterly checks; or
 - 12 or more points on the driving licence – monthly checks.

131.5

Driver Training

Where the *Consultant* operates Delivery and Servicing Vehicles to Provide the services the *Consultant* shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the contract.

131.6

Collision Reporting

Where the *Consultant* operates Delivery and Servicing Vehicles to Provide the Services, the *Consultant* shall:

- ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- within 15 days of the *starting date*, provide to the *Employer* a Collision Report. The *Consultant* shall provide to the *Employer* an updated Collision Report within five working days of a written request from the *Employer*.

131.7

Self Certification of Compliance

Where the *Consultant* operates Delivery and Servicing Vehicles to Provide the Services, within 90 days of the *starting date*, the *Consultant* shall make a written report to the *Employer* detailing its compliance with **Clauses 131.3, 131.4 and 131.5** of this contract (the “**WRRR Self-certification Report**”). The *Consultant* shall provide updates of the WRRR Self-certification Report to the *Employer* on each three month anniversary of its submission of the initial WRRR Self-certification Report.

131.8

Obligations of the *Consultant* Regarding Subconsultants

The *Consultant* shall ensure that those of its Sub-consultants who operate Delivery and Servicing Vehicles to Provide the Services shall:

- comply with Clause 131.2; and
- where its subconsultants operates the following vehicles to Provide the Services shall comply with the corresponding provisions of this contract:
 - For Lorries – Clauses 131.3, 131.4, 131.5 and 131.6; and
 - For Vans – Clauses 131.4, 131.5 and 131.6

as if those Sub-consultants were a party to this contract.

131.9

Failure to Comply with Work Related Road Risk Obligations

Without limiting the effect of any other clause of this contract relating to termination, if the *Consultant* fails to comply with Clauses 131.2, 131.3, 131.4, 131.5, 131.6, 131.7 and 131.8:

- the *Consultant* has committed a substantial breach of this contract; and
- the *Employer* may refuse the *Consultant* , its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by TfL for any purpose (including but not limited to deliveries).

Supplier Diversity

132

132.1

Without limiting the generality of any other provision of this contract, the *Consultant*:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its direct and indirect Subconsultants do not unlawfully discriminate in relation to the *services*, within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.

132.2

The *Consultant* acknowledges that the *Employer* as a public authority is subject to statutory duties to promote race, disability and gender equality. In the performance of the contract, the *Consultant* shall and shall use reasonable endeavours to procure that its direct and indirect Subconsultants assist and cooperate with the *Employer* where possible in satisfying the following duties under the: Equality Act 2010 to:

- (a) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation; or religion
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation, and in the performance of the contract, the *Consultant* shall and shall use reasonable endeavours to procure that it and its direct and indirect Subconsultants assist and co-operate with *Employer* where possible to enable the *Employer* to satisfy its duty.

132.3

TfL's Harassment, Bullying and Discrimination Policy ("Policy") as up-dated from time to time (copies of which are available on request from the *Employer*) requires TfL's own staff and those of its direct and indirect Subconsultants to comply fully with the Policy to eradicate harassment in the workplace. The *Consultant* shall:

- (a) ensure that its staff, and those of its direct and indirect Subconsultants who are engaged in the performance of the contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

SECONDARY OPTION CLAUSES - For Information

Option X1: Price adjustment for inflation

If *staff rates* are fixed at the Contract Date and are not variable with changes in salary paid to individuals.

Price adjustment factor

X1

X1.1 On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before the Contract Date.

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 *services* is used for calculating price adjustment after this date.

Price adjustment

X1.2

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

- the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary; and
- the amount for price adjustment included in the previous amount due.

Price adjustment Option C

X1.3

Each time the amount due is assessed after the first anniversary, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.

Expenses adjustment

X1.6

If payment rates for any of the *expenses* are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the first anniversary includes an amount for *expenses* adjustment which is the sum of

- the change in fixed *expenses* since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary; and
- the amount for *expenses* adjustment included in the previous amount due.

If *staff rates* are variable with changes in salary paid to individuals.

Price adjustment factor

X1

X1.1

On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before the Contract Date.

		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>services</i> is used for calculating price adjustment after this date.
Price adjustment Option A	X1.2	Each amount due after the first anniversary includes an amount for price adjustment which is the sum of - the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary; and - the amount for price adjustment included in the previous amount due.
Price adjustment Option C	X1.3	Each time the amount due is assessed after the first anniversary, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.
Price adjustment Option G	X1.4	Each amount due after the first anniversary includes an amount for price adjustment which is the sum of - for the lump sum items on the Task Schedule, the change in the lump sums included in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary before the assessment; and - the amount for price adjustment included in the previous amount due.
Compensation events Options A, C and G (lump sum items on the Task Schedule) only	X1.5	The Time Charge for compensation events is assessed using the <i>staff rates</i> current at the time of assessing the compensation event adjusted to the Contract Date by dividing by $(1+PAF)$, where PAF is the price adjustment factor calculated at the last anniversary.
Expenses adjustment	X1.6	If payment rates for any of the <i>expenses</i> are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the first anniversary includes an amount for <i>expenses</i> adjustment which is the sum of - the change in fixed <i>expenses</i> since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and - the amount for <i>expenses</i> adjustment included in the previous amount due.
Option X2: Changes in the law		
Changes in the law	X2	
	X2.1	A change in the <i>law of the contract</i> (and which is not a change in law which a competent and experienced consultant familiar with

works similar to the *services* and exercising the foresight appropriate to such a consultant ought, or ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. Either Party may notify the other of a compensation event for such a change in law. If the effect of a compensation event which is such a change in law is to reduce the total Time Charge, the Prices are reduced.

Option X3: Multiple currencies (used only with Options A and G)

Multiple currencies

X3

- X3.1 The *Consultant* 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 *Consultant* 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: Not Used

Option X5: Sectional Completion (not used with Option G)

Sectional Completion

X5

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

Option X6: Bonus for early Completion (not used with Option G)

Bonus for early Completion

X6

- X6.1 The *Consultant* is paid a bonus calculated at the rate stated in the Contract Data for each day from Completion until the Completion Date.

Option X7: Delay damages¹

Delay damages

X7

¹ X7: Delay damages, apply to all Call Off Contracts under this Framework Agreement

Options A, C and E

- X7.1 The *Consultant* pays delay damages at the rate stated in the Contract Data for each day from the Completion Date until Completion. For the avoidance of doubt, the Consultant has no liability for unliquidated delay damages where this Option X7 applies.
- 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.

Option X8: Not Used

Option X9: Not Used

Option X10: *Employer's Agent*

Employer's Agent

X10

- X10.1 The *Employer's Agent* acts on behalf of the *Employer* with the authority set out in this Option X10 or as otherwise stated in the Contract Data.
- X10.2 Except to the extent that the *Employer* may otherwise specify by written notice to the *Consultant* or as otherwise stated in the Contract Data, the *Employer's Agent* has full authority to receive and issue applications, certificates, consents, instructions, notices, requests or statements and otherwise to act for the *Employer* under any of the *conditions of contract*. All instructions from the *Employer's Agent* are in writing and signed by the *Employer's Agent*. For the avoidance of doubt the *Employer's Agent* does not have the authority to vary the *conditions of contract*.
- X10.3 The *Employer* may replace the *Employer's Agent* after he has notified the *Consultant* of the name of the replacement.

Option X11: Termination by the *Employer*

Termination by the *Employer*

X11

- X11.1 The *Employer* may terminate the *Consultant's* obligation to Provide the Services for a reason not stated in this contract by notifying the *Consultant*.
- X11.2 If the *Employer* terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between
- the forecast of the final total of the Prices in the absence of termination and
 - the total of the other amounts and costs included in the amount due on termination.

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 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 him in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

Working together

X12.3 (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

(2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Consultant* 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: Not Used

Option X18: Limitation of liability

Limitation of liability

X18

X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7) where that option is included in this contract, the *Consultant's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data provided that this limitation does not apply to any liability for:

- Losses caused by fraudulent acts or acts of a criminal nature;
- any other Losses against which the *Consultant* is entitled to an indemnity under any policy of insurance up to (but not exceeding) the amount which the *Consultant* is obliged to maintain under this Contract;
- all Losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the intellectual property rights or other rights of any third party,
- delay damages if Option X7 applies,
- *Consultant's* share if Option C applies,
- an infringement by the *Consultant* of the rights of Others,
- loss of or damage to third party property, and
- death of or bodily injury to a person other than an employee of the *Consultant*.

X18.2 The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is not limited and is an addition to any damages stated in this Contract for delay.

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

Incentives

X20

- X20.1 A Key Performance Indicator is an aspect of performance by the *Consultant* 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 date*, the *Consultant* reports to the *Employer* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.
- X20.3 If the *Consultant's* forecast final measurement against a Key Performance Indicator will not, or may not achieve the target stated in the Incentive Schedule, he submits his proposals for improving performance.
- X20.4 The *Consultant* 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 *Employer* notifies the *Consultant* that the target has been improved upon or achieved.
- X20.5 The *Employer* may add or omit or amend a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete a payment stated in the Incentive Schedule.

Option X21: Single Point Design Responsibility

Single point design responsibility

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 Scope.
- X21.2 The *Consultant* is fully responsible in all respects for the design of the *services* including, without limitation, any *Employer's* Design Information (which, for all purposes of this contract is deemed to be part of the *Consultant's* design).
- X21.3 Where there is a mistake, inaccuracy or discrepancy in the *Employer's* Design Information, the *Consultant* informs the *Employer* in writing of his proposed amendment to remove the mistake, inaccuracy or discrepancy. Within two weeks, the *Employer* may consent to the *Consultant's* proposed amendment or comment in writing on such an amendment provided that the *Employer* does not unreasonably withhold his consent to a proposed amendment. The *Consultant* takes account of such comments and resubmits his proposed amendment to the *Employer*. Such process is repeated until the *Employer* accepts the *Consultant's* proposed amendment.

X21.4 The *Consultant* is not entitled to any changes to the Prices, the Completion Dates or Key Dates by reason of anything in this Option X21. Further, the *Consultant* hereby agrees that any comment or failure to comment by the *Employer* under this Option X21 is not treated as an act of prevention or breach of contract by the *Employer*.

Schedule 3 - Framework Scope



**Framework Scope
for
Project Wide Project Integrator**

1. Introduction

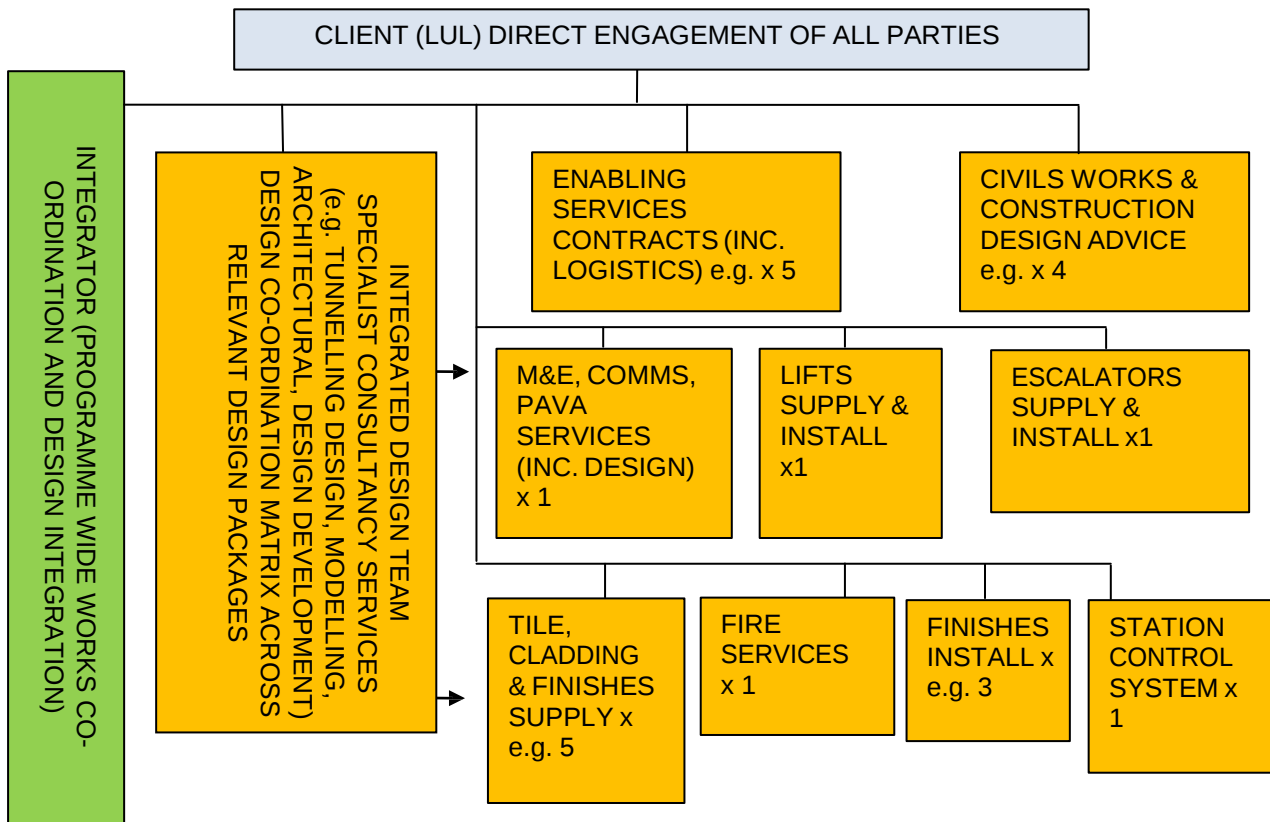
1.1 Background

This scope document describes the provision of Services, as part of the LUL delivery team, to support LUL in design development and works delivery of specified projects. This includes providing resources to co-ordinate the design development, to advise LUL on the contract packaging strategy and to advise on the sequencing and construction management of the works and being the Principal Designer and/or Principal Contractor under the Construction (Design and Management) Regulations 2015. Key roles will include planning, design co-ordination, BIM management and construction management. The services may be extended to providing people to supplement LUL's internal capability or to fill any resource shortfalls (for example, contract administration or project management). The *Consultant* itself will not be required to take on ownership of the design as they will be treated as part of the LU delivery team.

1.1.1 Contractual Model

The *Consultant* is to assist LUL in project delivery, including developing and defining project specific work packages; an example, high level, work package structure is shown below:

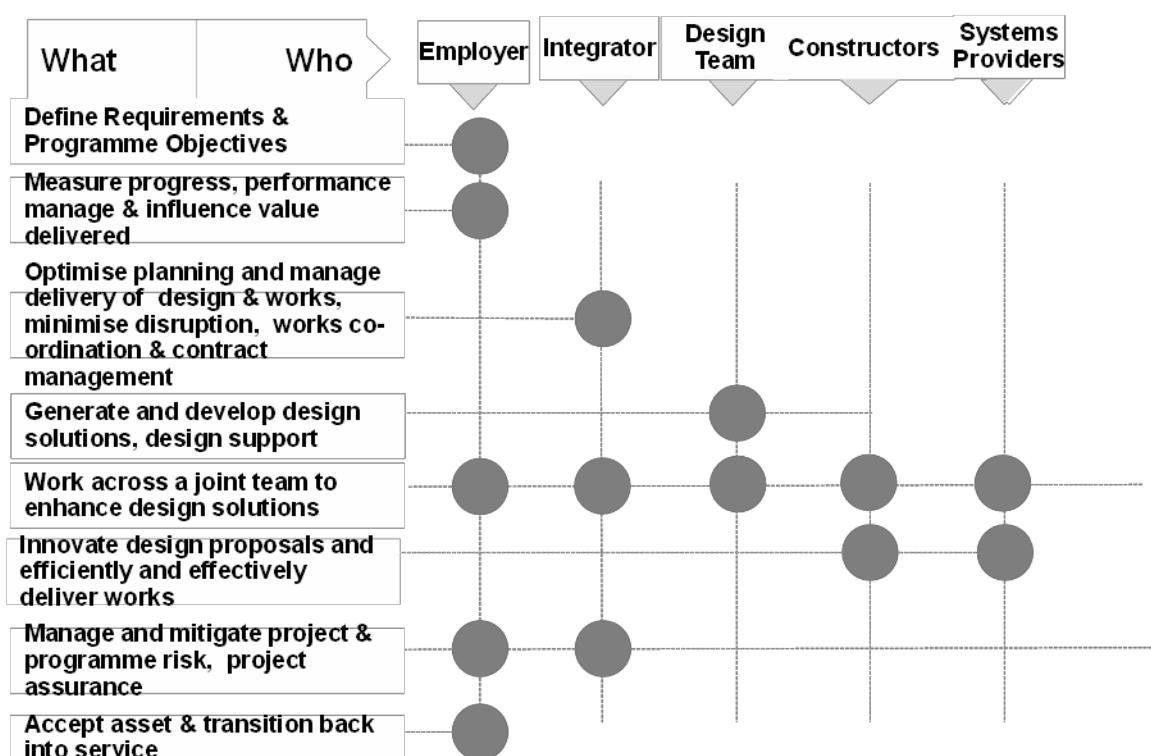
Integrator Contracting Model: Contract Packaging Example



1.1.2 Responsibilities

A description of the key features and responsibilities showing LUL and the *Consultant* is below.

- Key features:**
- Relationship with the supply chain held by LU.
 - Responsibility for the delivery of the design and the works rests with the various design & works package contractors.
 - LU appoint a consultant integrator to co-ordinate the design and construction.
 - The integrator plans the work and co-ordinates the consultants and works contractors in carrying out the work.
 - Reflects a higher risk appetite for LU. However, the multiple works contracts approach lessens the impact of change as it is more flexible.
 - Greater visibility of cost and supply chain performance; closer relationship between LU and the supply chain.
 - LU, with the integrator, administers multiple works contracts.
 - LU act as the *Project Manager* under the NEC contract.
 - LU engineering team provide assurance and act as the *Supervisor* under the NEC contract.



1.2 Services

The Services to be provided by the *Consultant* may be grouped into 3 areas:-

- 1) **Core services:** Responsibility for managing, co-ordinating and integrating the:- project planning; design development; construction delivery; commissioning delivery; and delivery of initial asset maintenance prior to project completion. Such services may include the provision of Information Modelling and Management (IM&M) services, if requested by the *Employer*. Further details are set out in paragraphs 2.1 below;
- 2) **Principal Designer and/or Principal Contractor:** Fulfilment of Principal Designer and / or Principal Contractor roles in accordance with Construction (Design and Management)

Regulations 2015 (CDM Regulations 2015) when requested by the *Employer*. Further details are set out in paragraph 2.2 below;

- 3) **Supporting Resources:** Provision of supplemental resource to the *Employer* to fulfil project or programme support roles or services, as required, including, inter alia:- cost management; project management; resource management; risk management; contract management and stakeholder management. Further details are set out at paragraph 2.3 below.

2. Services

The Services have been divided into three work streams (as mentioned above) and these are broken down below. The Services that the *Consultant* is to deliver include, but are not limited to, the following:-

2.1 Core Services

- Provide design co-ordination and integration across projects, including co-ordinating design development, review, validation and verification, design change management and assurance across a matrix of multiple:- LUL engineering, operational, maintenance and project stakeholders; specialist design and service providers; product providers; product installers; construction works providers; and external stakeholders;
- Provide access and logistics planning and construction integration across projects including the planning and integration of the supply chain's works within the needs of the operational stations and networks;
- Establish and manage interface arrangements between Integrated Delivery Team (IDT) members throughout the project(s) lifecycle; including the *Employer*, designers, constructors, Pan TfL or other framework providers, product suppliers, logistics providers;
- Provide integration of planning and resources for both the project and the programme across the IDT;
- Compile project completion handover documentation including construction, maintenance and health and safety related files and information;
- Exert a positive influence on safety in design outputs, whether in relation to: planning; construction; use; maintenance or future decommissioning or demolition considerations;
- Define specialised systems requirements for the IDT, to complement and / or enhance, LUL's existing systems;
- Provision of IM&M services, if required by the *Employer*;
- Define and manage specialised process requirements for the IDT, to complement and / or enhance LUL's existing processes;
- Assist LUL to administer construction works contracts, utilising our nominated contract administration IT system and interfacing with our contract payment process.

2.2 Principal Designer and / or Principal Contractor

- Fulfilment of the Principal Designer role in line with CDM Regulations 2015 (optional role to be defined at LUL's discretion by project as may be undertaken by appointed designers);
- Fulfilment of the Principal Contractor role in line with CDM Regulations 2015 (optional role to be defined at LUL's discretion by project as may be undertaken by site works contractors).

2.3 Supporting Resources

The *Consultant* may also be required to support the LUL delivery team through provision of supplemental resource including, but not limited to:-

- Value Engineering

Increased project value outcomes, that deliver improved project business case realisation, shall be targeted through value engineering throughout the duration of the project.

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Implementation of design and construction methodology reviews
- o Maximising value in the development and delivery of operational solutions for the project;
- o Identifying and realising project or programme wide efficiency or synergy opportunities e.g. waste management;
- o Developing and delivering scheme solutions that benefit efficient project delivery, whole life asset value, safety and functionality, through identification and exploitation of technological advances and standardised approaches such as:- BIM and digital technology; build off site; product standardisation; modularisation; design for manufacture and assembly; and sustainability;
- o Developing and implementing a performance management regime across the IDT to drive innovation, efficiency, effectiveness of delivery and attainment of objectives;
- Value Enhancement (VE)

A value enhancement process shall be applied prior to the detail design development stage with the objective of identifying opportunities for improved project outcomes.

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Supporting LUL in design and methodology enhancement and improvement, with the objective of increasing project value outcomes: this shall require an understanding of business case parameters and identification, selection and implementation of innovative value enhancement proposals;
- o Working with LUL in forming an Integrated VE team and in developing the process as necessary.
- Delivery of TWAO and priority themes

The *Consultant* shall be responsible for assisting LUL in relation to supporting achievement of planning consents, including a Transport and Works Act Order (TWAO), if required, and in realisation of strategic themes:-

- o In category management and Design Idiom strategies through identifying opportunities and managing interfaces for the programme;
 - o Establishing an integrated approach to health, safety and welfare;
 - o Delivering sustainability, environmental, equality and diversity objectives;
 - o Generating and submitting planning, TWAO or consent applications.
- Procurement and commercial strategy:-

The procurement and commercial strategy refers to the approach to be applied to supply chain engagement. The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Development and implementation of policies and procedures for the successful operation of the IDT, aligned with LUL governance and controls – including delegated authorities, project controls, change management and governance;
 - o Procurement, as required, of designers, constructors and other suppliers;
 - o Managing mobilisation of the supply chain;
 - o Developing appropriate incentive arrangements for suppliers;
 - o Ensuring benefits realisation with financial incentives for key delivery targets (milestones, objectives);
 - o Managing supply chain relationships, engagement strategies and supplier performance monitoring to create more long term strategic relationships with key suppliers;
 - o Managing the interface of cross-IDT commercial and cost information and controlling costs effectively whilst ensuring that the quality of design and construction and other deliverables are consistent with agreed quality standards;
- Organisation Development

Organisational development means development of a project delivery organisation including for programme and portfolio level alignment.

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Creating an organisational structure for the IDT comprising:- TfL/LUL; project integrator; design specialists; constructors; product suppliers and installers; and others, as may be incorporated from time to time, including architects and specialist resources;
- External Stakeholder Management
- External stakeholder management means liaison with third parties that have an interest in the project delivery stage or outcomes.

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Managing interfaces with external stakeholders;
 - o Establishing, developing and maintaining interfaces, where appropriate, with developers, local authorities, businesses, oversight developers, potential funders and other stakeholders.
- Project Controls Strategies

Project controls strategies means methods for applying efficient and effective management of project reporting including financial reporting, risk management and project governance.

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Designing and implementing information management and reporting to, inter alia, LUL's governance and Boards;
 - o Establishing an integrated approach to risk to minimise risk exposure and proposing and implementing strategies to mitigate against risk.
- Health, Safety and Environment (HS & E)

The *Consultant* shall be responsible for assisting LUL in relation to:-

- o Provision of suitably qualified HS & E professionals to work closely with LUL's safety, environmental management and sustainability team as well as support the project teams.

SCHEDULE 4
Form of 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 services 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.

Attachment 1 of this Direct Request Form sets out the Call-Off Contract Data Part One and other relevant information, including the Scope.

In your Proposal, you must respond by completing the Call-Off 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 Call-Off 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 Call-Off 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 [insert Date]. Please e-mail or use the e-portal as appropriate to send your Proposal, and send a paper copy to: [insert Name]

Name:

e- mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Direct Request should be directed to the above via e-mail or through the e-portal. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Signed: _____

for and on behalf of London Underground Limited

Attachments: Attachment 1: Call-Off Contract Data Part One and other relevant information, including the Scope⁶

- ⁶ NOTE: Scope for each call-off to include definition of "Stage 1 Services" and "Stage 2 Services", description of the Works to which the services relate, any constraints on the services to be provided, details of any assurance regime over and above the assurance standard, Quensh conditions menu, template for EBS cost database, details of CAMS, Any H&S requirements, any evidence required to support completion of the services, quality management system, Standards, any additional evidence to support invoices and any interface requirements.

SCHEDULE 5

Mini-Competition Request Form

Schedule 5

Mini-Competition Request Form – Call Off Contract

Framework Agreement Name and Reference Number: insert

Mini-competition Reference: insert

From: insert name

Date: insert

This is a Mini-Competition Request Form for the provision of services in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and 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.

Attachment 1 of this Mini-Competition Request Form sets out the Contract Data;

Attachment 2 of this Mini-Competition Request Form sets out the services.

In your Proposal, you must respond by providing the information required as detailed in this Schedule 5 and by completing Contract Data Part Two contained in Attachment 1.

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 Call Off Contract the *Employer* will evaluate the Proposals to determine which is the most economically advantageous with reference to the assessment criteria set out in this Schedule 5.

Any clarifications regarding this Mini-Competition should be directed per the instructions in this Schedule 5. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Signed: _____

for and on behalf of London Underground Limited

Attachments: Attachment 1: Contract Data. Attachment 2: Scope⁷

⁷ NOTE: Scope for each call-off to include definition of "Stage 1 Services" and "Stage 2 Services", description of the Works to which the services relate, any constraints on the services to be provided, details of any assurance regime over and above the assurance standard, Quensh conditions menu, template for EBS cost database, details of CAMS, Any H&S requirements, any evidence required to support completion of the services, quality management system, Standards, any additional evidence to support invoices and any interface requirements.

Instructions to Tenderers

Mini-Competition **[insert reference]**

Confidentiality

The contents of this Mini-Competition are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.

Contact

The *Employer's* procurement lead allocated to this Mini-Competition is **[insert name]**.

Any contact with other *Employer's* personnel relating to this Mini-Competition may invalidate the *Consultant's* Proposal. All contact must be via the e-tendering portal. Only technical issues relating to the e-tendering portal allow for direct contact of the procurement lead. In the first instance, the *Consultant* should contact the e-tendering portal help desk. If unresolved, contact the procurement lead:

[insert email address]

[insert telephone number]

The Services

The Scope to be provided under this appointment are any or all of the *services* detailed in Attachment 2.

If stipulated in Attachment 1 or Attachment 2, the *starting date* and date for Completion should be deemed material to the Call Off Contract. If the *Consultant* is unable to meet these dates, the *Consultant* should propose alternatives within the formal clarification process which may be accepted at the sole discretion of LUL.

Price

The Call Off Contract is an Option E, Time based contract

If the *Consultant* intends to propose a cap on liability, the *Consultant* must complete and submit with its 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.

Mini-Competition clarification

Clarifications must be submitted via the e-tendering portal, by **[insert time and date]**. The clarification(s) and their response(s) will be circulated on an anonymous basis to all consultants via the e-tendering portal.

Proposal submissions

In the Proposal, the technical proposal, commercial proposal and Contract Data must be separated. Prices **must not** be included in the technical proposal. The documents must be clearly titled 'Technical Proposal', 'Commercial Proposal' and 'Contract Data'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents.

Return of proposal

All documents must be correctly uploaded to our e-tendering portal, by **[insert time and date]**.

Validity

Proposals must remain open for acceptance for 6 (six) months from the return of proposal date.

Proposal submission clarifications

During the course of the evaluation of submissions, the *Consultant* may be asked to answer questions about his submission and other matters related to the *services*. The *Consultant* must respond to such questions as quickly as possible but, in any event, within 2 (two) working days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the *Employer* rejecting the Proposal submission. Any amendments to the Proposal submission arising from these discussions with the *Consultant* will be taken into account in the final evaluation.

Proposal clarification meeting

To enable moderation of the Proposal evaluation process, The *Employer* may request a meeting from all, some or one of the consultants. Failure to attend may result in the *Employer* rejecting the Proposal submission.

Proposal submission evaluation

Evaluation of submissions will be on the basis of most economically advantageous proposal as per the assessment criteria set out in the tables contained in this Schedule 5.

Compliance

All Proposals returned should comply in every respect with the requirements of this Mini-Competition. However, the *Employer* reserves the right to consider non-compliant submissions where permitted.

Failure to disclose all material information (facts that the *Employer* regards as likely to affect the evaluation process), or disclosure of false information at any stage of this procurement process may result in ineligibility for award. The *Consultant* must provide all information requested and not assume that the *Employer* has prior knowledge of any of the *Consultant's* information.

Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If you wish the *Employer* to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting your Proposal.

The *Employer* shall not be liable for any costs, charges or expenses borne by the *Consultant* whether or not he is awarded a Call Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

Acknowledgement of receipt of this Mini-Competition

The *Consultant* should acknowledge in the e-tendering portal receipt of this Mini-Competition and confirm whether they intend to submit a Proposal. Failure to do so may lead to the *Consultant* not receiving any amendments, addendums and clarifications to Mini-Competition documentation.

[Other – **Optional, delete if not required**]

Submissions & Evaluation Criteria

Technical Proposal	
Evaluation: [insert technical weighting] and discretionary pass/fail	
[Optional] The <i>Employer</i> will not appoint a <i>Consultant</i> that scores less than [insert minimum score to pass] out of the available marks	
[Optional] The technical submission must not exceed [insert number] of words contained in a maximum of [insert number of sides (approx 450 words to a side of A4)] sides of A4	
Evaluation Criteria	Weighting
[insert criterion 1]	[insert sub-weighting]
[insert criterion 2]	[insert sub-weighting]
[insert criterion 3]	[insert sub-weighting]
[expand as necessary]	
Conflicts of Interest: Provide details of actual or potential conflicts of interests that would arise were you to be appointed, and details of how these conflicts would be mitigated.	Discretionary Pass/Fail

Commercial Proposal	
Evaluation: [insert commercial weighting] and discretionary pass/fail	
Evaluation Criteria	Weighting
[insert criterion 1]	[insert weighting/ sub-weighting]
[expand as necessary]	
Full contact details of the <i>Consultant's</i> bid manager	For info

Contract Data	
Information Required	Evaluation
Un-amended Contract Data Part One (in Microsoft Word)	For info
Completed Contract Data Part Two (in Microsoft Word)	For info

SCHEDULE 6A
Call-Off Contract 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 ● ("the *Consultant*").

WHEREAS:

- (A) This Agreement is made pursuant to a framework agreement between the Parties relating to the provision of integrator services dated ● ("the Framework Agreement").
- (B) The *Employer* wishes to have provided ● ("the services") at ●.
- (C) The *Employer* has accepted a tender by the *Consultant* for the design of the services and correction of Defects therein in accordance with the *conditions of contract*.

NOW IT IS AGREED THAT:

2. Terms and expressions defined in (or definitions referred to in) the *conditions of contract* have the same meanings herein.
3. The *Consultant* Provides the Services in accordance with the *conditions of contract*.
4. The *Employer* pays the *Consultant* the amount due in accordance with the *conditions of contract*.
5. The documents forming the contract are:
 - 5.1 this Form of Agreement duly executed by the Parties as a deed;
 - 5.2 the *conditions of contract*;
 - 5.3 the attached Call-Off Contract Data Part 1;
 - 5.4 the attached Call-Off Contract Data Part 2; and
 - 5.5 the following documents:
 - the Scope;
 - Schedules [] to [] inclusive of the Framework Agreement;
 - [any other contract documents.]
6. 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 *conditions of contract*;
 - Third : The Scope and any other documents included in this contract.
7. Notwithstanding the manner of execution of this Agreement it is agreed that:

- 7.1 the limitation period within which any claim may be brought by the *Employer* for breach of this Agreement by the *Consultant* is 12 years from the date of breach; and
- 7.2 the *Consultant* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.

IN WITNESS whereof this Agreement has been signed for and on behalf of the *Employer* and the *Consultant* the day and year written above.

Signed by)
for and on behalf of)
London Underground Limited)

Signature

Print name and position

Date:

Signed by)
for and on behalf of)
The *Consultant*)

Signature

Print name and position

Date:

Proforma Call-Off Contract Data

CALL OFF CONTRACT DATA

Part One - Data provided by the *Employer*

Statements given in all contracts

1 General

Completion of the data in full, according to the chosen options, is essential to create a complete contract.

- The *conditions of contract* are the core clauses as may be amended or supplemented by the clauses for Main Option E and Secondary Options [X1] [X2] [X3] [X5] [X6] X7² [X10] [X11] [X12] [X18] [X20] [X21] as attached to the Framework Agreement).
- The *Employer* is
Name
.....
Address
.....
.....
- The *Employer's Agent* is
Name
.....
Address
.....
.....
.....
.....
- The authority of the *Employer's Agent* is
.[as set out in Option X10]
- The *services* are
.....
.....
.....
- The *Scope* is in
.....
.....
.....
- The *language of this contract* is **English**
- The *law of the contract* is **the law of England and Wales**
- The *period for reply* is [] **weeks**.
- The *period for retention* is **12 years following Completion or earlier termination**.
- The *tribunal* is **the courts of England and Wales**
- The following matters will be included in the Risk Register
.....
.....
.....
.....

² X7 Delay Damages, apply to all Call Off Contracts under this Framework Agreement

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things

access to

access date

.....	
.....	
.....	
.....	
.....	

3 Time

- The *starting date* is
- The *Consultant* submits revised programmes at intervals no longer than [] weeks.

4 Quality

- The quality policy statement and quality plan are provided within [] weeks of the Contract Date, or as stated here
- The *defects date* is [] weeks after Completion of the whole of the services.

5 Payment

- The *assessment interval* is [] weeks
- The *currency of this contract* is **pounds Sterling (£)**
- The *interest rate* is [] % **per annum above the base rate of the Bank of England**

8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

Event	Cover	Period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the degree of reasonable skill, care and diligence normally used by competent professionals experienced in providing services similar to the <i>services</i> in connection with works of a similar size, scope and complexity to the Works (professional indemnity insurance)	£10,000,000 (ten million pounds) or as stated below for each and every claim and in the aggregate per annum	

Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£10,000,000 (ten million pounds) or as stated below in respect of each claim, without limit to the number of claims [with financial loss extension cover]	
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising of and in the course of their employment in connection with this contract.	£10,000,000 (ten million pounds) or as stated below in respect of each claim, without limit to the number of claims	

- The *Employer* provides the following insurances

.....
.....
.....
.....
.....

- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is [unlimited]

.....
.....

Optional statements

[The *Employer* appoints the *Consultant* as **Principal Designer** in line with the Construction (Design and management) Regulations 2015.]⁸

[The *Employer* appoints the *Consultant* as **Principal Contractor** in line with the Construction (Design and Management) Regulations 2015]⁹.

[The *Consultant* must carry out the provision of Information Modelling and Management (IM&M) services]¹⁰.

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

- The **completion date** for the whole of the **services** is

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

- The *Consultant* 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 **condition** to be met

⁸ NOTE: Insert wording in square brackets, if applicable.

⁹ NOTE: Insert wording in square brackets, if applicable.

¹⁰ NOTE: Insert wording in square brackets, if applicable.

condition to be met	key date
.....	
.....	

- If the Contract Date is not the date of the Call-Off Contract it is:

[DATE]

If the *Employer* states any expenses

- The *expenses* stated by the *Employer* are

Item	amount
.....	
.....	
.....	
.....	
.....	

If the *Consultant* is to provide additional insurances

- The *Consultant* provides these additional insurances

1. Insurance against

Cover is

Period of cover

Deductibles are

2. Insurance against

Cover is

Period of cover

Deductibles are

If Option E is used

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than [] weeks.

- The *exchange rates* are those published in
..... on(date)¹¹

If Option X1 is used

- The *index* is

If Option X2 is used

- The *law* of the *project* is

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 payment currency	maximum in the currency
----------------------	-------------------	------------------------------	-------------------------------

1
 2
 3

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

If Option X5 is used

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

<i>section</i>	<i>description</i>	<i>completion date</i>
1		
2		...
3		
4		...
5		
		...
		
		...
		
		...

If Option X5 and X6 are used together

- The bonuses for each *section* of the *services* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1		
2		...
3		
4		...
5		
		...
		
		...
		
		...

Remainder of the *services*

¹¹ NOTE: This section must be completed as the Call-Off contract is an Option E time based contract.

<i>section</i>	<i>description</i>	<i>amount per day</i>
1		
2		...
3		
4		...
5		
		...
		
		...
		
		...
Remainder of the <i>services</i>		

- The bonus for the whole of the services is
... per day.

- Delay damages for Completion of the whole of the services are [£] per day.

- The *Client* is
Name
Address

- The *Client's objective* is
- The Partnering Information is in

- The Consultant's liability to the Employer for indirect or consequential loss is limited to [].

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

³ X7: Delay damages, apply to all Call Off Contracts under this Framework Agreement.

CALL OFF CONTRACT DATA PART TWO

Data provided by the *Consultant*

Statements given in all contracts

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

- The *Consultant* is

Name

Address

.....
.....
.....

- The *key persons* are

(1) Name

Job

Responsibilities

Qualifications

Experience

(2) Name

Job

Responsibilities

Qualifications

Experience

- The *staff rates* are

Name / designation	rate
.....	
.....	

- The following matters will be included in the Risk Register

.....
.....
.....
.....

Optional statements

If the *Consultant* is to decide the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is

...

If the *Consultant* states any expenses

- The *expenses* stated by the *Consultant* are

item	amount
.....	
.....	

If the *Consultant* requires additional access

- The *Employer* provides access to the following persons, places and things

access to	<i>access date</i>
.....	
.....	

SCHEDULE 6B
Call Off Contract Form of Variation

SCHEDULE 6B – CALL OFF CONTRACT FORM OF VARIATION

Contract Parties: [to be inserted]

Contract Number: [to be inserted]

Variation Number: [to be inserted]

London Underground Limited Contact Telephone [to be inserted]

Fax [to be inserted]

Date: [to be inserted]

THE EMPLOYER APPROVAL FOR VARIATION TO CONTRACT (AVC)

Pursuant to Clause 20.2 of the Call Off Contract, authority is given for the variation to the *services* and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the *Consultant* and returned to the Procurement Manager as an acceptance by the *Consultant* of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
ALLOWANCE TO THE EMPLOYER	•
EXTRA COST TO THE EMPLOYER	•
TOTAL	•

.....
For London Underground Limited (signed)

.....
(print name)

ACCEPTANCE BY THE CONSULTANT	
Date	Signed

SCHEDULE 7

Form of Warranty from *Consultant* to Financier or Purchaser/Tenant/Developer

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**"); and
- (2) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) By a call off contract dated ● (the "**Contract**") [EMPLOYER] whose registered office is at [ADDRESS] ("the **Employer**", which expression shall include its successors in title and assigns) appointed the *Consultant* to design, carry out and complete certain [DESCRIPTION OF SERVICES] at ● (the "**services**") at ● (the "**Works**").
- (B) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*, the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract)]. [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 *services* it will [purchase] / [take a lease of] the whole or part of the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract)]. [The Beneficiary has an interest in, over or above the whole or part of the *services*, the Works and/or an Oversight Development (as defined in the Contract) as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●].][It is a term of the Contract or has otherwise been agreed that the Consultant enters into this Deed with the Beneficiary in relation to the *services*, the Works and/or an Oversight Development (as defined in the Contract).]

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 *Consultant* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
 - 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant*

immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract

4. The *Consultant* further warrants and undertakes to the Beneficiary that:
 - (a) subject to clause 2(a), the *services* will on Completion satisfy all requirements contained in the Contract;
 - (b) subject to clause 2(a), all materials will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship; and
 - (c) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards.
5. The *Consultant* 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 £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the Works. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* 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 *Consultant's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Consultant* 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 designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Consultant* 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.
8. The *Consultant* 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 *Consultant's* expense to provide the Beneficiary with a set of all such material on Completion of the *services*.
9. If called upon to do so by the Beneficiary, the *Consultant* shall provide the Beneficiary with such information relating to the *services* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any

- inspection of the *services* 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 *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Consultant* being required and the *Consultant* 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 *Consultant*. For the purposes of this clause, "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary. The *Employer* is a member of the TfL Group.
 11. The *Consultant* 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 *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
 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 *Consultant* including without limitation any remedies in negligence.
 - 14.1 Notwithstanding any other provision of this Deed, the *Consultant* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Consultant* from the *Employer*.
 - 14.2 The *Consultant* shall be entitled in any actions or proceedings brought 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 (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
 15. 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.
 - 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement 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.
 18. **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
[THE BENEFICIARY]** 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 CONSULTANT]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 8

Form of warranty from *Consultant* to *Employer* upon novation

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Consultant**"); and
- (3) ● whose registered office is situate at ● [(the "**Contractor**")].

WHEREAS:

- (A) By a call off contract dated ● (the "**Contract**") the *Employer* appointed the *Consultant* to [design, carry out and complete] certain [SERVICES] (the "**services**") at ● ("the **Works**").
- (B) [Pursuant to a contract dated ● (the "**Main Works Contract**") the *Employer* has appointed Contractor(s) to [design,] carry out and complete certain works in respect of the Works ("the **Main Contracts Works**").]
- (C) [The *Employer* has novated the Contract to the [Contractor] by a Deed of Novation dated ●.]
- (D) The *Consultant* has agreed to execute this Deed in favour of the *Employer*.

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. The following expression has the meaning set out herein:
 - (a) "Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made);
2. The *Consultant* warrants and undertakes to the *Employer* that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
 - 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the *Employer* in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract
4. The *Consultant* further warrants and undertakes to the *Employer* that:
 - (a) subject to clause 2(a), the *services* will on Completion satisfy all requirements contained in the Contract;

- (b) subject to clause 2(a), will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
 - (d) he shall not commit a Safety Breach;
5. The *Consultant* warrants and undertakes to the *Employer* 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 £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the *services*. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* 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 *Consultant's* insurance claims record.
6. As and when reasonably requested by the *Employer*, the *Consultant* 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 have not already vested in the *Employer*, the *Consultant* 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.
8. The *Consultant* 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 *Consultant's* expense to provide the *Employer* with a set of all such material on Completion of the *services*.
9. If called upon to do so by the *Employer*, the *Consultant* shall provide the *Employer* with such information relating to the *services* as the *Employer* may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* 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 *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. The *Consultant* 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 *services* with

¹² NOTE: Insert, if applicable to the Main Contracts.

respect to all matters for which the *Consultant* is responsible under the Contract. The *Consultant* further warrants and undertakes to the *Employer* that the Contract 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 Contract 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 *Consultant* including, without limitation the Minimum Records. The *Consultant* 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 *Consultant* acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the *Consultant's* obligations under the Contract with respect to Safety Breaches at any time during performance of the Contract and during the 12 years thereafter.

11.1 Without limitation to Clause 2 above, the *Consultant* hereby warrants to the *Employer* that:

- (a) except as provided under deeds of warranty required under clause 100.1 of the conditions of contract, 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 Contract, this Deed or the Works;
- (b) it shall treat all information obtained under, arising from or in connection with the Contract, this Deed and the Works as confidential, and that other than for the purpose of providing the services, it shall not disclose any information or documents concerning the Contract to any other person; and
- (c) it shall not, without the prior written consent of the *Employer*, disclose any information obtained by it concerning the *Employer* or the TfL Group to any other person.

11.2 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*.

11.3 Clause 11.1 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 *Consultant* 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.

11.4 The *Consultant* shall procure that the Connected Persons comply with the provisions of this Clause 11 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

11.5 The *Consultant* shall notify the *Employer* promptly if the *Consultant* 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.

11.6 The *Consultant* acknowledges that damages would not be an adequate remedy for any breach of this Clause 11 by the *Consultant* 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 11.

11.7 At the *Employer's* request and in any event upon the termination or expiry of the Contract, the *Consultant* 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 *Consultant* (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.
12. In the event that the Main Works 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 *Consultant* 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 Contract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Contract to the exclusion of the Contractor whereupon all rights and obligations of the Contractor under the Contract 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 Contract reasonably required by the *Employer*.
- 13.1 The *Consultant* warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the Contractor under the Contract 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 Contract or to treat the same as having been repudiated by the Contractor or to suspend performance of his obligations under the Contract.
- 13.2 The *Consultant's* right to terminate the Contract 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 *Consultant* requiring the *Consultant* 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 services upon the terms of the Contract.
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 *Consultant*. Upon the issue of any such notice by the *Employer*, the Contract shall continue in full force and effect as if no right of termination on the part of the *Consultant* had arisen and the *Consultant* shall be liable to the *Employer* or its appointee under the Contract in lieu of its liability to the Contractor. If any notice given by the *Employer* under Clauses 12 or 13 requires the *Consultant* to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the *Consultant* as guarantor for the payment of all sums from time to time due to the *Consultant* 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 *Consultant* shall not be in breach of the Contract by complying with the obligations imposed on the *Consultant* 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 *Consultant* being required and the *Consultant* 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 *Consultant*.
17. The *Consultant* 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 *Consultant* under this Deed shall cease 12 years following Completion of the whole of the services.
19. 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 *Consultant* including without limitation any remedies in negligence.

20. The *Consultant* 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 *services* and/or the *Infraco(s)* 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*.
- 21.1 Notwithstanding any other provision of this Deed, the *Consultant* shall owe no greater obligations to the *Employer* than he owes to the Contractor under the Contract as if, in lieu of this Deed, the *Employer* was named in the Contract as joint employer with the Contractor, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the *Consultant* from the Contractor.
- 21.2 The *Consultant* shall be entitled in any actions or proceedings brought by the *Employer* to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the Contractor thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the *Employer* was named in the Contract as joint employer with the Contractor.
22. 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.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement 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.
25. **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
[EMPLOYER]
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary

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

SCHEDULE 9A

Form of Warranty from Subconsultant to *Employer*

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is situate at ● ("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 "***Consultant***").

WHEREAS:

- (A) The *Consultant* has entered into a call off contract dated ● (the "***Contract***") with the *Employer* for the carrying out of certain [***Services***] at ● (the "***services***").
- (B) The Subconsultant has been invited to design certain parts (the "***design works***") of the *services* and [has entered] [will shortly enter] into a deed of appointment with the *Consultant* (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 the Deed. The following definitions shall apply in this Deed:
 - (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 designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (c) "Infraco(s)" means any and all of those contractors who have or will enter into contracts with London Underground Limited under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;
 - (d) "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;
 - (e) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with London Underground Limited under the private finance initiative;
 - (f) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Consultant* 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 *Consultant* 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 *Consultant*;
 - (ii) entering into the Appointment or any other contract with the *Employer* or the *Consultant* 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 *Consultant*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916, 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 *Consultant*; or
- (iv) defrauding or attempting to defraud the *Employer* or the *Consultant*;
- (g) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence or wilful default of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) or any of his agents which has materially affected the safe operation of the Underground Network or the *Employer's* employees, or the public or any other persons;
- (h) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross Rail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;
- (i) "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 *Consultant* under the Appointment; and
- (b) he has complied with and will continue to comply with the terms of the Appointment.
- 3.
- 3.1 The Subconsultant warrants and undertakes to the *Employer* that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
- (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.
- 3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the *Employer* in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.
4. The Subconsultant further warrants and undertakes to the *Employer* that:
- (a) subject to clause 2(a), the *design works* will on Completion satisfy requirements contained 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* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
 - (d) he shall not commit a Prohibited Act and/or Safety Breach; and
- 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 £[2/5 million] [in respect of each and every claim and in the aggregate] 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 *services* 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 *Consultant*, 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 all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of 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 *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 *services* provided that neither the provision of such information nor any inspection of the *services* 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 *services* 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 and 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 *Consultant* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Consultant* (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 *Consultant* whereupon all rights and obligations of the *Consultant* 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 *Consultant* 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 *Consultant* 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 *Consultant* 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 *Consultant*. 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 *Consultant* 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 *services*.
- 19.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the *Employer* had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.
- 19.2 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 *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the *Employer* had been a party to the Appointment as joint employer.
20. 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.
21. The *Consultant* 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 *Consultant* under the Appointment.
22. 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. The Subconsultant 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 *design works* and/or the Infraco(s) 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*.
- 24.1 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 Works (as defined in the Contract);
 - (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the Works 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.
- 24.2 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*.
- 24.3 Clause 24.1 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.

- 24.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 24 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 24.5 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.
- 24.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 24 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 24.
- 24.7 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.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement 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.
27. **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
[EMPLOYER]
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE SUBCONSULTANT] 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 CONSULTANT]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

Schedule 9B
Form of Warranty from Subconsultant to Financier/P&T/Developer

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is ● (the "**Beneficiary**");
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) The *Consultant* has entered into a call off contract dated ● (the "**Contract**") with [EMPLOYER] whose registered office is at [ADDRESS] ("the *Employer*", which expression shall include its successors in title and assigns) for the carrying out of certain [Services] (the "**services**") at ● ("the **Works**").
- (B) The Subconsultant has entered into a deed of appointment dated ● (the "**Appointment**") with the *Consultant* for the design of certain parts of the *services* (the "**design works**") and into a collateral warranty dated ● (the "**Employer's Warranty**") with the *Employer*.
- (C) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*, the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract). [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *services* it will [purchase] / [take a lease of] the whole or part of the *services*, the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract)]. [The Beneficiary has an interest in, over or above the whole or part of the *services* the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract) as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* for [●]]. [It is a term of the Contract or has otherwise been agreed that the *Consultant* enters into this Deed with the Beneficiary in relation to the *services*, the Main Contracts Works, the Works and/or an Oversight Development (as defined in the Contract).]

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) "Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) "Infraco(s)" means any and all of those contractors who have or will enter into contracts with London Underground Limited under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;
 - (c) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with /London Underground Limited under the private finance initiative;
 - (d) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross Rail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;
 - (e) "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 *Consultant* under the Appointment;

- (b) and he has complied with and will continue to comply with the terms of the Appointment.
- 3.
- 3.1 The Subconsultant warrants and undertakes to the Beneficiary that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
- 3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.
4. The Subconsultant further warrants and undertakes to the Beneficiary that:
- (a) Subject to clause 2(a), the *design works* will on Completion satisfy all requirements contained 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* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards; and
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 the *Employer's Warranty* and that he has professional indemnity insurance with a limit of indemnity of £[2/5 million] [in respect of each and every claim and in the aggregate] 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 *services* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be available at commercially reasonable rates. 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 *Consultant*, 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 all purposes relating to

the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of 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 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 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 *services* provided that neither the provision of such information nor any inspection of the *services* 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 the *Employer's Warranty* 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 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.
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 *services*.
13. The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.
14. 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 *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.
15. 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.
16. The *Consultant* agrees that he will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
17. 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.

18. Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
19. 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 20.
20. 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.
21. 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**

[THE BENEFICIARY] 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 SUBCONSULTANT] 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 CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 10 Form of Deed of Novation

THIS DEED is made ● day of ● 201●
BETWEEN:

- (1) ● of [ADDRESS] whose registered office is at (1) ● (the "**Employer**" which expression includes its successors in title and assigns);
- (2) **[Member of TfL Group][GLA] [Infraco] [Contractor]** whose registered office is at **[INSERT REGISTERED ADDRESS OF REPLACEMENT EMPLOYER]** (the "**Replacement Employer**"); and
- (3) **[CONSULTANT]** whose registered office is at **[INSERT REGISTERED ADDRESS OF CONSULTANT]** (the "**Consultant**").

WHEREAS:

- (A) Pursuant to the terms of a framework agreement reference [] the Employer has appointed the Consultant to **[INSERT DESCRIPTION OF THE SERVICES]** (the "**Services**") by a call off contract dated ● (the "**Call Off Contract**").
- (B) [The Employer has appointed the Replacement Employer as a contractor pursuant to a building contract ("**the Contract**") to [design and] construct certain works as therein described ("**the Works**") [The Employer has entered into an agreement with the Replacement Employer pursuant to a contract ("**the Contract**") to [design and] construct certain works as therein described ("**the Works**") [The Employer has appointed the Replacement Employer as a design consultant pursuant to a contract ("**the Contract**") to carry out design in connection with certain works as therein described ("**the Works**")]*[Select or recite as appropriate]*.
- (C) The Replacement Employer wishes to become the Employer pursuant to the Call Off Contract and the Employer wishes to be discharged from all its obligations under the Call Off Contract.

NOW IT IS HEREBY AGREED as follows:

1. NOVATION

- 1.1 The Employer as beneficial owner hereby assigns to the Replacement Employer its entire rights, benefits, liabilities and obligations under and pursuant to the Call Off Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.
- 1.2 The Consultant releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Call Off Contract and accepts the liability of the Replacement Employer under the Call Off Contract in lieu of the liability of the Employer.
- 1.3 The Consultant undertakes to perform the Call Off 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 Call Off Contract in lieu of the Employer. The Replacement Employer agrees that it will not hereafter terminate the Consultant's engagement under the Call Off Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.
- 1.4 The Replacement Employer undertakes to perform the Call Off 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 Call Off Contract in lieu of the Employer.
- 1.5 The Consultant shall be liable for any loss, damage, cost or expense (including the cost of settling any action) incurred by the Replacement Employer arising from any act, omission or default of the Consultant (whether based in negligence or any other form of legal liability) in the performance of the Call Off Contract prior to the execution of this Agreement whether or not such act, omission or default would have caused the Employer to suffer any loss, damage, cost or expense, provided that the Consultant has no liability under Deed of Novation which is greater or of longer duration than it would have pursuant to the Call Off Contract if the Replacement Employer had been a party to the Call Off Contract as joint employer with the Employer.
- 1.6 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Call Off Contract up to the date of this Agreement have been paid by the Employer.

2. WARRANTY TO THE EMPLOYER

The Consultant hereby:

- (a) warrants to the Employer that it has performed and will continue to perform each and all of its obligations, duties and undertakings under and pursuant to the Call Off Contract as and when required by and in all respects in accordance with the Call Off Contract;

- (b) warrants to the Employer, without limitation to Clause 2(a) above, that it currently has and will maintain professional indemnity insurance as required by and in accordance with the Call Off Contract;
- (c) grants to the Employer, to the extent that the intellectual property rights in any and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and any other materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Consultant in the performance of the Call Off Contract (whether in existence or to be made) ("Documents") are not vested in the Employer or the Replacement Employer, an irrevocable, royalty-free, non-exclusive 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 Consultant incorporated or referred to in them for all purposes relating to the Works including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Services and/or Works provided always that the Consultant 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 Consultant;
- (d) warrants to the Employer, without limitation to Clause 2(a) above, that it has, and at all times will, comply with the duties and obligations set out in Annex 1 of this Deed; and
- (e) acknowledges that the liability of the Consultant shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Employer nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Employer.

3. **THIRD PARTIES**

- 3.1 The Employer may give a written notice (a "Notice") to the Consultant at any time that it requires the Consultant to execute and deliver collateral warranty agreements in favour of all or any of the beneficiaries identified in Clause 100.1 of the Call Off Contract ("Warranties") in accordance with that Clause 100.1, provided that:
 - (a) no Notice shall be served on the Consultant more than 12 years from the date of practical completion of the Works; and
 - (b) no Notice shall require the Consultant to execute a Warranty in favour of any beneficiary where the Consultant has already entered into a Warranty in favour of such beneficiary.
- 3.2 The Consultant shall execute and deliver to the Employer appropriate Warranties within 7 days of any Notice issued by the Employer pursuant to Clause 3.1.
- 3.3 The Consultant shall, upon execution of this Deed, execute and deliver a deed or deeds of collateral warranty in the form required by the Call Off Contract in favour of the Employer.
- 3.4 The Consultant shall, within 21 days of each request made from time to time by the Employer, procure that any subcontractor or subconsultant appointed by the Consultant executes and delivers a deed of collateral warranty in the form required by the Call Off Contract in favour of the Employer and/or any of the beneficiaries identified therein.

4. **STEP-IN RIGHTS**

- 4.1 The Consultant agrees that in the event of the termination of the Contract by the Employer, the Consultant will, if so required by notice in writing given by the Employer accept the instructions of the Employer or its appointee to the exclusion of the Replacement Employer in respect of the Services and/or Works upon the terms and conditions of the Call Off Contract. The Replacement Employer acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Employer under this Clause 4.1 as conclusive evidence for the purposes of this Deed of this termination of the Contract by the Employer.

- 4.2 The Consultant further agrees that it will not without first giving the Employer not less than 21 days notice in writing exercise any right it may have to terminate the Call Off Contract or to treat the same as having been repudiated by the Replacement Employer or to discontinue the performance of any duties to be performed by the Consultant pursuant thereto. The Consultant's right to terminate the Call Off Contract with the Replacement Employer or treat the same as having been repudiated or discontinue performance shall cease if, within such period of notice, the Employer shall given notice in writing to the Consultant requiring the Consultant to accept the instructions of the Employer or its appointee to the exclusion of the Replacement Employer in respect of the Services and/or Works upon the terms and conditions of the Call Off Contract.
- 4.3 It shall be a condition of any notice given by the Employer under Clauses 4.1 or 4.2 that the Employer or its appointee accepts liability for payment of the sums payable to the Consultant under the Call Off Contract, including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Employer under Clauses 4.1 or 4.2, the Call Off Contract shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Employer or its appointee under the Call Off Contract in lieu of its liability to the Replacement Employer. If any notice given by the Employer under Clauses 4.1 or 4.2 requires the Consultant to accept the instructions of the Employer's appointee, the Employer shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Employer's appointee.
- 4.4 The Replacement Employer acknowledges that the Consultant shall not be in breach of the Call Off Contract by complying with the obligations imposed on it by Clauses 4.1 and 4.2.
5. **SERVICES FOR THE EMPLOYER**
- 5.1 The Consultant agrees that, notwithstanding the novation of the Call Off Contract pursuant to this Deed, it will perform the services ("Further Services") set out in Annex 2 to this Deed for the Employer for the remuneration referred to in Annex 3 hereof.
- 5.2 The Consultant 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]¹³ holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms, obligations and liabilities set out in the Call Off Contract as if they were set out in this Deed; and
 - (b) it will have in place professional indemnity insurance on the terms set out in the Call Off Contract in respect of such Further Services.
6. **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.
7. **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 Deed on the day and year first before written.

THE COMMON/CORPORATE SEAL of
[EMPLOYER]

was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

¹³ [To be completed prior to signing deed of novation]

Signature of Director/Secretary

Print name of Director/Secretary
**[EXECUTED AND DELIVERED AS
A DEED by
[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
[CONSULTANT]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX 1
(ADDITIONAL OBLIGATIONS OWED TO THE EMPLOYER)

8. The following expressions have the meanings set out herein:
- 8.1 "Connected Persons" means any and all of the Consultant's, directors, consultants, agents, sub-contractors, contractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.
- 8.2 "Minimum Records" means all records relating to the Consultant'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.
- 8.3 "Prohibited Act" means:
- (a) offering or agreeing to give to any servant, employee, officer or agent of the Employer or the Replacement Employer 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 Call Off Contract or any other contract with the Employer or the Replacement Employer or for showing or not showing favour or disfavour to any person in relation to the Call Off Contract or any other contract with the Employer or the Replacement Employer;
 - (b) entering into the Call Off Contract or any other contract with the Employer or the Replacement Employer in connection with which commission has been paid or has been agreed to be paid by the Consultant 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 Replacement Employer;
 - (c) committing any offence under the Prevention of Corruption Acts 1889-1916, 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 Call Off Contract or any other contract with the Employer or the Replacement Employer; or
 - (d) defrauding or attempting to defraud the Employer or the Replacement Employer.
- 8.4 ["Safety Breach" means a material breach of the Call Off Contract caused by the gross incompetence or wilful default of the Consultant (or anyone employed or acting on behalf of the Consultant) or any of his agents which has materially affected the safe operation of the Underground Network or the Employer's employees, or the public or any other persons.] ***[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]***
- 8.5 "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross Rail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.
- 8.6 ["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".] ***[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]***
9. **CONFIDENTIALITY AND PUBLICITY**
- 9.1 Without limitation to Clause 2 of this Deed, the Consultant hereby warrants and undertakes to the Employer that:
- (a) except as provided under deeds of warranty required under clause 100.1 of the Call Off Contract, 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 Call Off Contract, this Deed or the Works (as defined in the Call Off Contract);

- (b) it shall treat all information obtained under, arising from or in connection with the Call Off Contract, this Deed and the Works as confidential, and that other than for the purpose of providing the Services, it shall not disclose any information or documents concerning the Call Off Contract to any other person; and
 - (c) it shall not, without the prior written consent of the Employer, disclose any information obtained by it concerning the Employer or the TfL Group to any other person.
- 9.2 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.
- 9.3 Paragraph 9.1 above 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 Consultant 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.
- 9.4 The Consultant shall procure that the Connected Persons comply with the provisions of this paragraph 9 and is responsible to the Employer for any act or omission of any Connected Person in breach of such obligations.
- 9.5 The Consultant shall notify the Employer promptly if the Consultant 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.
- 9.6 The Consultant acknowledges that damages would not be an adequate remedy for any breach of this paragraph 9 by the Consultant 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 paragraph 9.
- 9.7 At the Employer's request and in any event upon the termination or expiry of the Call Off Contract, the Consultant 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 Consultant (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.
- 10. **PROHIBITED ACTS AND SAFETY BREACHES**
- 10.1 Without limitation to paragraph 9 of this Deed, the Consultant hereby warrants and undertakes to the Employer that he shall not commit a Prohibited Act and/or Safety Breach.
- 11. **MINIMUM RECORDS AND AUDITS**
- 11.1 Without limitation to paragraph 9 of this Deed, the Consultant hereby warrants and undertakes to the Employer that 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 Consultant is responsible under the Call Off Contract. The Consultant further warrants and undertakes to the Employer that the Call Off Contract 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 Call Off Contract 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 Consultant including, without limitation the Minimum Records. The Consultant 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 Consultant acknowledges and agrees that the Employer may audit and check any and all records as are necessary in order to monitor compliance with the Consultant's obligations under the Call Off Contract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Call Off Contract and during the 12 years thereafter.

**ANNEX 2
(FURTHER SERVICES)**

ANNEX 3
(FURTHER SERVICES REMUNERATION)

SCHEDULE 11
Supplier Performance

Supplier Performance

Measuring the performance of its consultants is important to LUL.

For the avoidance of doubt, TfL reserves the right at its sole discretion not to utilise an Incentive Schedule as per Secondary Option X20 when calling off from the Framework.

A set of Key Performance Indicators (KPI's) will be prepared by LUL and included within each Call-Off Contract.

The KPI's will be grouped in to 2 areas and developed from the below measures:-

- a) against the 7 measures contained in Appendix A and B respectively of this schedule 13. The KPI results will be collected every quarter as a minimum; and
- b) measures contained in Appendix C associated with project delivery performance including project cost, earned value, programme, health safety and environmental and quality measures aligned with LUL's project measures that are current at the point of contract award, an example of which is included in this schedule. The KPI measures will be collected every quarter as a minimum.

LUL will collect data on the *Consultant's* performance. Each Call off 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 supplier
1	The supplier does not display any examples of good practice
2	The supplier displays some good practice but is generally poor in this area
3	The supplier is average/acceptable in this area
4	The supplier demonstrates good practice
5	The supplier excels in this element

Escalation route for poor performance

If the *Consultant* has a poor score (1 or 2) on any Call-Off Contract, it is important that a speedy resolution is in place to remedy and address the poor performance.

The *Consultant* 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 LUL and provided to the LUL framework manager within 5 days of the poor performance being identified.

If the next quarterly survey identifies the project is still under performing this will be escalated to the Directors for the relationship 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, LUL's Managing Director and the supplier'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 *Consultant* may be asked not to bid for future work under the Framework until their performance issue is resolved, (the supplier would need to agree to this course of action in writing) or in extreme cases they may be removed from the framework.

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APPENDIX A

KEY ELEMENT:	GUIDANCE FOR PREPARING KPI's	APPENDIX
SAFETY & ENVIRONMENTAL	- Supplier undertakes regular training / awareness sessions for their employees on Health & Safety, Quality and Environment - Supplier has a 'Zero Harm' campaign internally to create a safety 'culture' (i.e. posters, desk drops, CBT, videos, spot-checks)? - Supplier employees demonstrate Safety and Environmental knowledge and practice it as appropriate in their work - Are there regular safety audits / risk assessment carried out by the supplier/ an authorised body on their sites? - Supplier preventative measures - after any kind of incident, is there a recognised and documented process the supplier has in place to ensure it does not re-occur? - Does the supplier have targets for recycling and wastage in place that they achieve on a regular basis?	
RELIABILITY / RESILIENCE / QUALITY	- Supplier's ability to deliver at a good level over a sustained period - Supplier accreditations i.e. BS 9001 (or industry equivalent) - Supplier's attitude is 'can-do' and they flex to our evolving requirements, given the nature of our work is not always predictable - Supplier's delivery meets with customer / end user satisfaction - Any pre-delivery and post-delivery service / management of expectations by the supplier - Frequency of non-conformance / re-work due to errors or not meeting TfL's specification	
CLOSURES / DISRUPTIONS / NETWORK CONGESTION	- Has the supplier caused any unplanned closures to a line / track / station / lift / escalator / platform etc in the quarter due to their error / lack of delivery / lack of planning / lack of understanding of the impacts their works would have on other utilities? - How good is the supplier at managing expectations of the works they undertake and the impact of these works on TfL and our customers? - If the supplier does cause any unplanned closures, how good are they at managing and mitigating the impact of it on TfL and our customers?	
INNOVATION	- Does the supplier hold regular innovation workshops or meetings? - Does the supplier proactively come up with innovative new ideas or better ways of working for TfL? - Has the supplier implemented any innovative ideas / new ways of working with TfL? - Supplier receptivity to TfL innovative ideas - Supplier support on implementing ideas - Supplier proactive / willing to make necessary changes to existing processes/ procedures where it is clear they add no value anywhere or if they do not work for TfL - Process improvements achieved by value analysis with supplier - Savings generated from value analysis exercise undertaken with supplier - Supplier demonstrates a deep understanding of our business and industry and enhances our services to our customers	
£ EFFICIENCY / VALUE FOR MONEY	- Ability to deliver within budget / contract price - Savings delivery against targets - Proactively delivering over and above the contract to generate value for TfL - doesn't have to be massive things, but can be small value-adding things (for example a supplier may proactively decide 'piggy-back' with a competitor on their common deliveries to save costs and carbon emissions and pass some of the savings on to TfL)	
DELIVERY	- Delivery on or within schedule / milestones met - Ability to meet or exceed contractual obligations - Ability to plan and forecast resources and logistics to meet TfL specification - Supplier's competency and capability in their delivery - Supplier's management of their supply chain to deliver to TfL	
RESPONSIBLE PROCUREMENT	- Supplier's willingness to drive RP initiatives - Supplier has dedicated resources in their organisation to establish RP firmly on their agenda - Supplier has set themselves RP targets and objectives - Supplier works with their peers and their supply chain to establish joint RP initiatives /share RP best practice - Supplier is working with TfL on establishing RP initiatives	

APPENDIX B

TIL - MUTUAL BEHAVIOURS FOR SUPPLIER RELATIONSHIPS		BEHAVIOURS				
		Collaborative - 5	Aligned - 4	Effective - 3	Distant-2	Negative-1
SAFETY & ENVIRONMENTAL		Supplier senior management demonstrate a 'zero harm' culture by promoting HSE discussions at meetings, sharing HSE standards and best practices, and collaborating to continually improve by facilitating joint HSE training sessions and knowledge - Superlstaff proactively take ownership of ensuring their colleagues are informed and compliant with HSE standards and best practices and how these translate into activities relevant to their roles within the relationship - Superlstaff exhibit a positive and responsible attitude to safety and environmental practices and are compliant with them at all times	Supplier senior management actively encourages their staff to exhibit safety and environmental practices by providing regular training sessions, running desk drop campaigns and having policies in place on HSE with annual targets etc. - Superlstaff usually demonstrate compliance with safety and environmental good practices Supplier colleagues regularly collaborate with others to ensure they have a mutual understanding of the HSE activities each is doing	Supplier is working towards embedding a strong HSE compliant culture and this is led by senior management (i.e. Intranet, training sessions, desk drop, posters, internal comms etc.) Supplier staff usually demonstrate compliance to their own HSE standards and practices and share these as required with each other, communicating any updates or changes as necessary Supplier teams display willingness to engage on further safety and environmental training and awareness to improve.	Supplier senior management do not actively promote safety and environmental practices within the organisation, but a general awareness of HSE is communicated - TIL / supplier staffs understanding and recognition of good safety and environmental practice is limited and / or they sometimes display non-compliant behaviour - Sharing and communication of changes to HSE requirements are infrequent and may be unclear	Supplier senior management do not appear to promote safety and environmental within their organisation - The understanding and demonstration of good safety and environmental practices and behaviours by staff is frequently poor and non-compliant - Little or no effort to communicate their organisation's HSE standards or changes is made to other colleagues or parties
RELIABILITY/QUALITY		Supplier's behaviour is consistent with its organisational values and their teams demonstrate honesty and promote trust by doing what they will when they say they will Supplier demonstrates flexibility in their work to their colleagues and are able to collaborate on and prioritise what is important an ever-changing environment Supplier teams display reciprocal behaviour to their colleagues and other parties and maintain positive composites under pressure - Trustworthiness is evident in proactive sharing of necessary and relevant information without being asked and by taking ownership of issues / errors without apportioning blame, but emphasising the lessons to be learned - Constructive feedback is proactively solicited and acted upon	Supplier behaviours are consistent with their organisational values Supplier demonstrates flexibility in their work to their colleagues and are able to collaborate on and prioritise what is important - Trust is evident in ownership being taken of important issues and their quick resolution - Constructive feedback is sought, offered and is acted upon - Superlstaff demonstrate ability to deliver under pressure	Supplier behaviours are usually consistent with their organisational values Supplier team shares required information with other parties and usually manages expectations accurately - Issues are dealt with in reasonable timeframes, occasionally clarity of issue and ownership may be disputed Supplier regularly asks for feedback and displays evidence of applying it - Accepts responsibility for delivery of strategic responsibility	Supplier behaviours are sometimes inconsistent with their organisational values - Issues are not always owned or resolved within reasonable timeframes due to disagreements about ownership / lack of understanding / clarity about what was needed - Feedback is sought sporadically and whilst it is sometimes acted upon, it is not always constructive when it is offered Supplier staff can sometimes display a defensive attitude under pressure	Supplier behaviours are not very consistent with their organisational values - Trust and flexibility are not evident, however frustration, defensiveness and aggression are frequently exhibited to the detriment of the relationship - Constructive feedback is not sought for, nor offered and there is little evidence it is acted upon if it is given - Team does not appear able to deliver under pressure and is perceived as unreliable
MINIMISING DISRUPTIONS		Supplier holds itself accountable for delivering tasks, responsibilities and targets Supplier staff often exceed targets and proactively seek to take ownership of disruption issues Supplier exhibits understanding of the industry, environment and restraints their colleagues and other parties have to work within and proactively suggests changes to help reduce disruptions, even if it is not in their line of responsibility and demonstrates willingness and receptivity to such suggestions if made to them - Superlescalates issues when appropriate, but also takes responsibility and makes executive decisions where necessary to ensure disruptions are minimised	Supplier holds itself accountable for delivering tasks, responsibilities and targets Supplier exhibits understanding of the environment, industry and restraints their colleagues / other parties have to work within and may suggest changes to help reduce disruptions from time to time and demonstrates receptivity to such suggestions if made to them Supplier is not afraid to escalate issues in their organisation when appropriate to expedite resolution	Supplier usually demonstrates responsibility for their tasks and does not make excuses for any minor failures but holds themselves accountable and displays ability to learn from any issues Supplier staff exhibit empathy of the environment, industry and any restraints their colleagues / other parties work within - Ownership is usually demonstrated of issues to minimise delays - Accepts no responsibility for delivery of strategic priorities	Supplier takes responsibility for their tasks and activities, however not always the targets, which are sometimes missed, causing unnecessary disruption - Supplier does not always display a clear understanding of the environment, industry and restraints that their colleagues / other parties work within and as a result this sometimes causes disruption and delay	Supplier does not deliver against all targets Supplier frequently disputes the ownership of tasks and responsibilities, which can result in disruption and delays to projects - May sometimes apportion blame mistakenly for their non-delivery of targets and fails to manage expectations and escalate issues to resolve them - Does not demonstrate understanding of the environment, industry and restraints other colleagues / parties have to work within
INNOVATION		Supplier shows the ability to spot opportunities for mutual benefit and often comes up with new, innovative ideas - supplier is receptive to and often solicits other people's new ideas Supplier proactively analyses trends / MI to anticipate new opportunities to add mutual value Supplier proactively establishes innovation workshop/meetings and their staff lead and facilitate these Supplier exhibits sound decision-making on feasibility and reality of the adoption of new ideas or ways of working	Supplier recognises changing demands / requirements and is able to offer and is receptive to differing solutions Supplier is open to new ideas / ways of working and is willing to host / facilitate innovation workshops/meetings and progress and develop initiatives from them Supplier staff are active and positive participants of any such meetings or workshops	Supplier recognises changing demands / requirements and is receptive to differing solutions Supplier is open to new ideas / ways of working Supplier is willing to attend innovation workshops/meetings and progress and develop initiatives from them	Supplier is open to other ideas but can be reluctant to embrace change or new and different ways of working - Superlstaffs willing to attend innovation workshops/meetings but their staff are not active participants	Supplier does not exhibit receptivity to, or offer new ideas or different ways of working to develop mutual value - TIL supplier is very reluctant to embrace change Supplier makes minimal effort to attend or contribute to innovation meetings or workshops
DELIVERY		Supplier demonstrates an excellent understanding of the industry and market other parties / clients operate in and has the ability to anticipate what their colleagues / partners need / aspire to Supplier staff collaborate, plan and organise themselves to ensure that their colleagues / partners / clients have everything needed for successful delivery Supplier staff are prompt to respond to queries or concerns, and goes the extra mile to add value and continually works to improve delivery of wider organisation. Supplier demonstrates a strong working ethic in their culture and displays initiative when undertaking tasks and activities - Superlstaff are always professionally courteous, punctual to meetings and are respectful of other people's opinions Supplier staff display diligence in accurately documenting actions and meeting summaries or minutes, rarely forgetting actions and can juggle and deliver against conflicting and changing priorities	Supplier demonstrates a strong understanding of their colleagues / partners / clients industry Supplier staff work, plan and organise themselves to ensure that their colleagues / partners / clients have everything required for successful delivery Supplier staff respond to queries or concerns quickly and efficiently Supplier demonstrates a good working ethic in their culture and often displays initiative when undertaking tasks and activities Supplier staff are professionally courteous, are punctual to meetings and calls and respectful of other people's opinions Supplier staff display diligence in accurately documenting actions and meeting summaries/minutes	Supplier demonstrates a good understanding of partners / clients industries and is usually able to deliver efficiently - Superlstaff work and plan to ensure that clients / partners are able to deliver Supplier usually responds to queries or concerns Supplier demonstrates a good working ethic in their culture Supplier staff are professionally courteous, punctual and respectful of other people's opinions - Shares, promotes and seeks "buy-in" to vision	Supplier demonstrates a limited understanding of partners / clients industries Supplier sometimes struggles to plan and organise themselves to enable delivery - Superlstaff respond to most queries or concerns in a reasonable timeframe Supplier staff are sometimes late to meetings, or cancel meetings at short notice and are perceived as lacking in professional courtesy at times	Supplier does not demonstrate an understanding of partners / client industries - Supplier ignores obvious opportunities for business performance improvement Supplier is not able to demonstrate that they have the ability to plan and organise themselves to deliver as they often miss deadlines Supplier do not respond to queries or concerns raised in a timely manner Supplier staff frequently display a lack of professional courtesy to others (i.e. lateness, lack of planning, disrespectful of others opinions, etc). - Fails to convince/engage with audiences to the detriment of delivery
VALUEFORMONEY		Supplier staff proactively seek to eliminate waste and unnecessary cost from the supply chain and exhibit collaboration, empathy and transparency in doing so - Superlteam demonstrate simplicity and fairness in their approach to agreeing financials and are well regarded by all who deal with them	Supplier displays an understanding of how their actions and decisions impact on other parties' profits, revenues and costs Supplier staff are active participants and collaborators in any initiatives to eliminate waste in their supply chain Supplier team demonstrate simplicity and fairness in their approach to agreeing financials and are well regarded by all who deal with them	Supplier team demonstrate simplicity and fairness in their approach to agreeing financials Supplier participates in some initiatives to reduce waste in their supply chain Supplier shows an understanding of how their actions impact on their own costs and those of other organisations	Supplier team are sometimes difficult in their approach to agreeing financials Supplier does not actively seek to eliminate hidden costs or waste from their supply chain Supplier sometimes displays a misunderstanding of how their actions and decisions impact on the costs, revenues and profits of their own organisation as well as other parties	Supplier is unable to gauge the impact of their financial decisions on themselves and other organisations Supplier staff often make financial decisions that are sub-optimal and overly complex and may be perceived as manipulative and difficult, resulting in a lack of trust with colleagues from other organisations Supplier has little or no evidence to support that they participate in or promote any waste reduction initiatives in their supply chain Supplier exhibits a lack o f transparency / fairness / simplicity in their costing / pricing
RESPONSIBLE PROCUREMENT		Supplier staff display a conscientious outlook about promoting Responsible Procurement and what it means for their colleagues throughout their supply chain - Superl regularly drives collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management demonstrate a commitment to procuring goods and services responsibly within their organisation and Tier 1 suppliers by internal comms, hosting meetings etc on the topic Supplier staff display a conscientious outlook about promoting Responsible Procurement Supplier regularly attends collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management demonstrate a commitment to procuring goods and services responsibly within their organisation Supplier sometimes attends collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management do not appear to promote Responsible Procurement within their own organisation Superlstaff sometimes display ignorance of RP as a topic and what it entails Supplier occasionally attends a meeting on Responsible Procurement but is not an active participant	Supplier senior management do not appear to promote Responsible Procurement within their own organisation at all Superlstaff display ignorance of RP as a topic and what it entails - Supplier does not attend any meetings or workshops on Responsible Procurement

APPENDIX C

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	TfL 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/year/month etc.] to date - The accident Frequency rate - no. of Accidents/no. of Hours worked. (RIDDORS)	>0.15	>0.05	<0.05	Periodically	Supplier	Delivery	As per records on site	Zero	Compliance with H&S
2	N	Health & Safety	Safety	RIDDOR 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 (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) first time	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, re-work tasks on Client audit on contractor obligations.	Low	Customers (and therefore customer service) is one of the TfL 4x pillars. This KPI will push suppliers to comply with our focus on minimizing customer and network impact.
6	Y	Closures	Performance & Reliability	Overrun into Traffic Hours - record level of LCH as a rolling statistic/cost of overrun in fixed period and/or total minutes of overrun in fixed period	Cost - Greater than £25k / period Time - Greater than 5hr delay in period	Cost - £15k to £25k / period Time - 3-5hr 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 are an incentive in themselves but they are not tracked and recorded for reporting purposes
7	N	Delivery	Efficiency	Accuracy of contractor VOWD 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 due (e.g. plans, programmes, procedures, notices, invoices) are submitted complete, correct and on time.	< % complete, correct and on-time communications	No Amber	% complete, correct and on-time communications	Periodically	Supplier/TfL	Value and also 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 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/TfL	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 (EFC) compared to contract award (adjusted for indexation 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 resource loaded programme]	< 80% accuracy	80-90% accuracy	> 90% accuracy	Periodically	Supplier	Delivery / Value	Sourced by the suppliers on site 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	TfL Four Pillars	Process of obtaining data by source	Additional cost of obtaining measure (Zero/L/M/H)	Benefit of KPI for LUL (the why)
13	N	Responsible Procurement	Delivery	No. of / % of tender events schedule posted and awarded on CompeteFor	<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 in new entrants or SME	Quarterly	Supplier	Delivery	Sourced by the supplier	Low	As a responsible business we need to demonstrate the effective use of CompeteFor, 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	<7% complete	80-89% complete	90-100% of inspections / test plans complete	Periodically	Supplier/TfL	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/Material 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, re-work tasks, on Client audit on contractor obligations.	Low	Customers (and therefore customer service) is one of the TfL 4x pillars. This KPI will push suppliers to comply with our focus minimizing customer and network impact.
16	N	Behaviours	Delivery	Effective communication and engagement with (integrated project team/ client/ sub-contractors/ internal and external stakeholders). Measure scoring the relationship out of 10 and taking an average for the results. Survey issued to key R&U and contractor project staff.	Relationship Score 1-3	Relationship Score 4-7	Relationship Score 8-10	Quarterly	Supplier/ TfL	People	Client (LUL) 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 (insert period). (note this KPI should be stretched annually/period-on-period to drive increasing performance)	<25% 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	<1 Change events not agreed	1-10 Changes 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 targets)	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 TfL's commitment to RP and legislative targets for apprentices
20	N	Responsible Procurement	Delivery	Carbon reduction %age 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 TfL'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 within 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/error/omission	Greater than planned	No Amber	Less than planned	Periodically	Supplier/ TfL	Closures	Commission Manager (TfL)	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	51+ Complaints	31-50 Complaints	0-30 Complaints	Quarterly	TfL	Delivery	TfL records	Medium	Demonstrates the impact of the contract on stakeholders and customers

SCHEDULE 12

Form of Warranty from *Consultant* to Infracore/PFI 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 "**Consultant**").

WHEREAS:

- (A) [The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the **Employer**", which expression shall include its successors in title and assigns) under the public private partnership for the provision of infrastructure maintenance services on the • Lines]/[The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the **Employer**", which expression shall include its successors in title and assigns) under the private finance initiative for •].
- (B) By a call off contract dated • (the "**Contract**") the *Employer* appointed the *Consultant* to design, carry out and complete certain [**Services**] (the "**services**") at • ("the **Works**").

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 *Consultant* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
- 3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.

- 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract
4. The *Consultant* further warrants and undertakes to the Beneficiary that:
- (a) subject to clause 2(a), the *services* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) subject to clause 2(a), the *services* 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) his designs are integrated with the designs of Others and in particular the Infraco(s) and PFI Contractor(s);
 - (d) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
 - (e) the *services* will be carried out and completed timeously in accordance with the Accepted Programme; and
 - (f) the *services* will not on Completion render the Main Contracts Works incapable of being Available.
5. The *Consultant* 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 £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the *services*. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* 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 *Consultant's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Consultant* 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 designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made) ("**Documents**") have not already vested in the *Employer*, the *Consultant* 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.

8. The *Consultant* 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 *Consultant's* expense to provide the Beneficiary with a set of all such material on Completion of the *services*.
9. If called upon to do so by the Beneficiary, the *Consultant* shall provide the Beneficiary with such information relating to the *services* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* 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 *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary for the purpose specified in Recital (A), or to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Consultant* being required and the *Consultant* 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 *Consultant*. For the purposes of this clause, "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross Rail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary. The *Employer* is a member of the TfL Group.
11. The *Consultant* 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 *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
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 *Consultant* including without limitation any remedies in negligence.
- 14.1 The *Consultant* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Consultant* from the *Employer*.
- 14.2 The *Consultant* shall be entitled in any actions or proceedings brought 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 (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
15. 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.

- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 120 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.
- 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.
18. **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

[THE BENEFICIARY] 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 CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 13

Form of Warranty from Subconsultant to Infracore/PFI Contractor

THIS DEED is made on • 201•

BETWEEN:

- (1) • whose registered office is at • (the "**Beneficiary**")
- (2) • whose registered office is situate at • (the "**Subconsultant**"); and
- (3) • whose registered office is situate at • (the "**Consultant**").

WHEREAS:

- (A) [The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the **Employer**", which expression shall include its successors in title and assigns) under the public private partnership for the provision of infrastructure maintenance services on the • Lines.]/[The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the **Employer**", which expression shall include its successors in title and assigns) under the private finance initiative for • .]
- (B) The *Consultant* has entered into a call off contract dated • (the " **Contract**") with the *Employer* for the carrying out of certain [**Services**] (the "**services**") at • ("the **Works**").
- (C) The Subconsultant has been invited to design certain parts (the "**design works**") of the services and [has entered] [will shortly enter] into a deed of appointment with the *Consultant* (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) "Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) "Infraco(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;
 - (c) "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;
 - (d) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross Rail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;

- (e) "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 *Consultant* under the Appointment; and
- (b) he has complied with and will continue to comply with the terms of the Appointment.

3.

3.1 The Subconsultant warrants and undertakes to the Beneficiary that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
- (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.

4. The Subconsultant further warrants and undertakes to the Beneficiary that:

- (a) subject to clause 2(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 Beneficiary, the *Consultant* and others (and in particular the Infraco(s) and PFI Contractor(s));
- (d) the *design works* will on Completion comply with the Statutory Requirements, 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 £[2/5 million] [in respect of each and every claim and in the aggregate] 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 *services* 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 *Consultant*, 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 all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of 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 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 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 *services* provided that neither the provision of such information nor any inspection of the *services* 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 (A), or 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.

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 services.
- 12.1 The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.
- 12.2 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 *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.
13. The rights and benefits conferred upon the Beneficiary to any person providing finance to the Beneficiary for the purpose specified in Recital (A) 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.
14. The *Consultant* and *Employer* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
15. 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.
- 15.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 120 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).
- 15.2 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 15.3
- 15.3 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.
16. 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.
17. **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

[THE BENEFICIARY] 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 SUBCONSULTANT]** acting by:

Signature of Director

Print name of

Director

Signature of Director/Secretary

Print name of

Director/Secretary

**[EXECUTED AND DELIVERED
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SCHEDULE 14

Master Projects Database Desk Reference



Master Project Database

Desk Reference

September 2007

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Preface – Overview and Strategy of the MPD

Why was the MPD created?

The Master Projects Database (MPD) is a database of project information which has been developed by London Underground (LU) for the purpose of facilitating the co-ordination of works, projects and programmes between all parties carrying out work on the Underground Network.

These parties, referred to herein as MPD Data Suppliers, are required to maintain and update project programmes at regular reporting intervals in a format and level of detail consistent with the requirements described in this document.

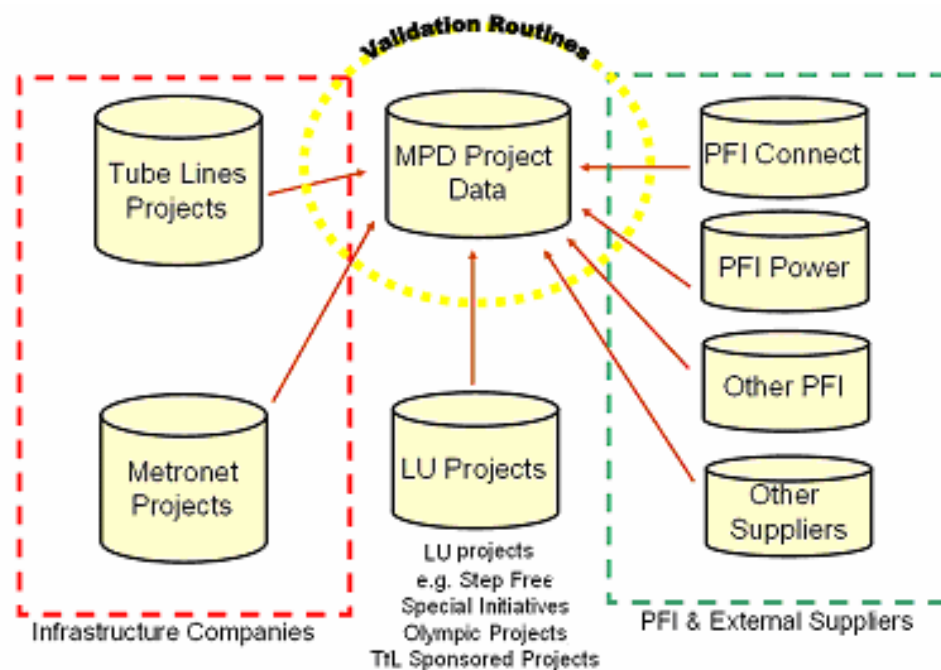


Figure P-1 - MPD Data Suppliers

The Benefits of the MPD

- Co-ordination of works across the network
- Information to support business decisions
- Identify and communicate critical business issues
- Tracking of milestones
- Single source of project progress and forecast data
- Enables management of interfaces

Primary Components of the MPD

The MPD comprises three separate but closely integrated components that work together to provide the overall MPD system functionality:

- 1. The MPD Primavera Database** - a planning tool which uses critical path method programmes as the primary source of data stored in the MPD.
- 2. The MPD Data Warehouse** - where data is validated, controlled, analysed and archived as appropriate and from which the periodic reports are generated.
- 3. The MPD Web Site** - which is hosted on the LU Intranet and provides the general user interface to the MPD project data and reports.

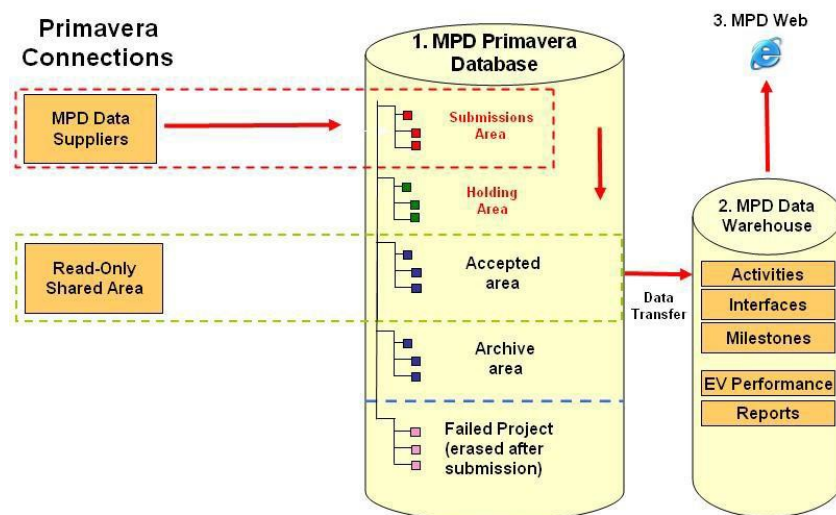


Figure P-2 - Primavera Enterprise and the MPD

Key Outputs of the MPD

Gantt Charts

A visual representation for project activities, milestones and interfaces phased over time:

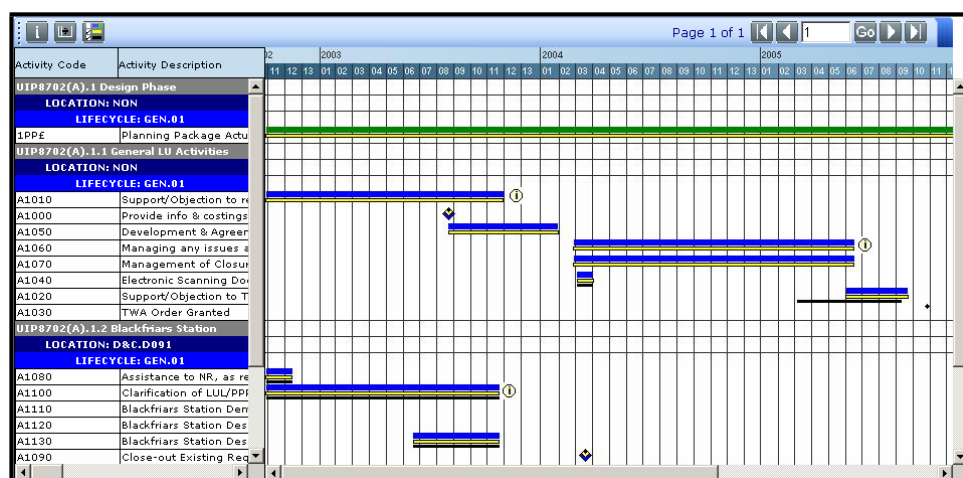


Figure P-3 - Gantt Chart Example

Project Summary

Portfolios	Projects	Interfaces	Reports	Validation	Search	Help	MyMPD
New Search	Page Help						
Project Summary Back							
Project Code: UIP8732 Project Name: King's Cross Redevelopment Project Organisation: London Underground Manager: Graham Sims Status: Active EPS Node: LU.11(A) CIP: LU-PF41(LU CTRL At Kings Cross) AMP: AMP05(Stations) FBS: LUL_AMP05		Earned Value Data as of 2007 P4 Period Year: 4 2007/08 OK Dates Planned % Complete(PPC): 69.05 Data Date: 22/07/2007 Earned % Complete(EPC): 65.59 Start Date: 01/01/2005 Act % Expended(APE): 66.12 End Date: 15/09/2010 CPI: 0.99 Submission Date: 30/07/2007 SPI: 0.95 The last successful submission of this project was made on 30/07/2007 (during 2007/08 period 4)					
Summary Submission Planning Packages Reports Comments Lifecycle Other Codes Baselines Interfaces Reports (Dynamic)							
Project Summary							
Description							
Project Data Date		Jul 22 2007 12:00AM					
Project Planned Start Date		Jan 1 2005 12:00AM					
Project Planned End Date		Sep 15 2010 12:00AM					
Total Number Of Activities		982					
Total Number Of Milestones		79					
Total Percentage Of Milestones		8.04%					
Current (Most Recent) Baseline Total For Project		£ XXXX,XXXX,XXXX					
Total Budget Amount For Project		£ XXXX,XXXX,XXXX					
Longest Activity Starts on Jun 25 2007 8:00AM Finishes on Mar 31 2011 5:00PM		1376 Days					
Programme Assurance Office, London Underground Version 1.5.8.1 © Copyright 2005, London Underground Ltd. All rights reserved.							

Figure P-4 Project Summary Page

Earned Value Reporting

EV Reporting provides typical schedule and cost performance information:

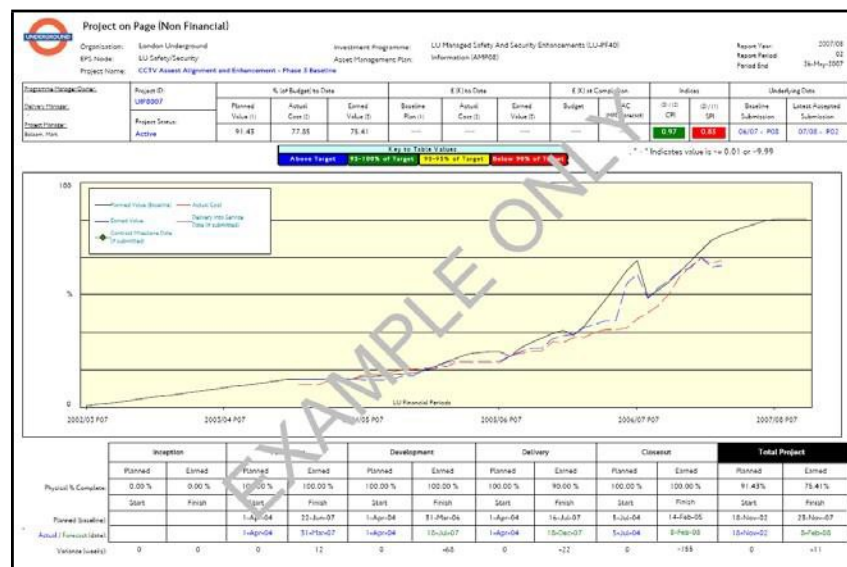


Figure P-5 Example of a 'Project on a Page Report-Non Financial'

Programme Level Reporting

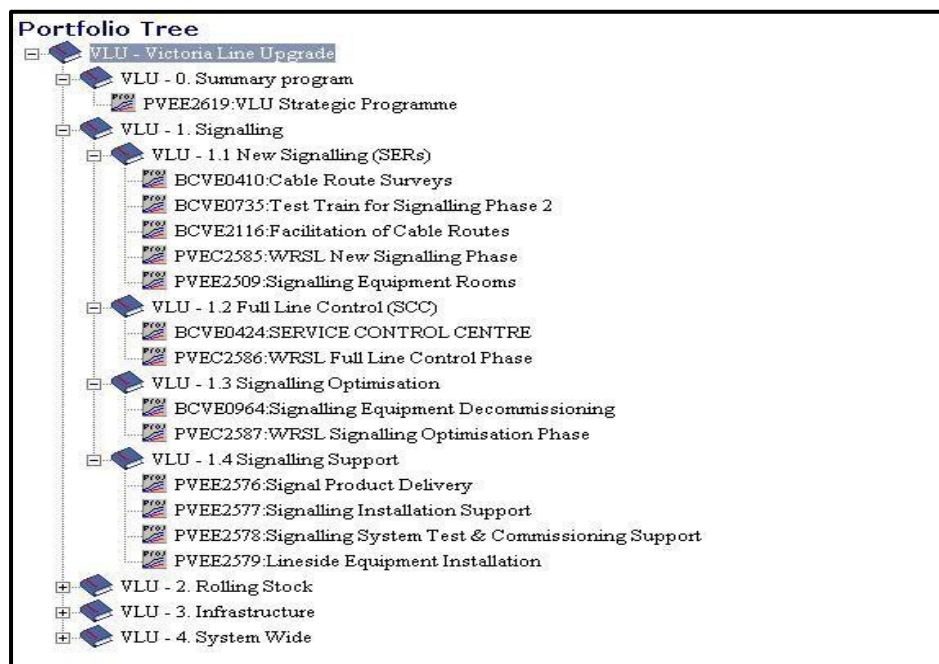


Figure P-6 Example of an MPD Portfolio

Portfolio Delivery Measurement

LU-PP32 LU Modernisation and Refurbishment - PPP BCV

LU Modernisation and Refurbishment - PPP BCV (LU-PP32) MPD generated CIP portfolio

Report Year: 2007/08
Report Period: 0
Period End Date: 26-May-2007

Project	Description	Status	% of budget to date			EAC to date		EAC at completion		Indices		Underlying Data	
			Planned Value (1)	Actual Cost (2)	Earned Value (3)	Baseline Plan (1)	Actual Cost (2)	Earned Value (3)	Budget	EAC (with known)	CI (2)	SP (3)	Baseline Submission
BCVA2076	Layton Station Refurbishment	Complete	100.00	104.41	100.00					0.94	1.00	04/07 P12	07/08 P01
BCVA2096	Shepherd's Bush Station Modernisation	Complete	100.00	945.59	921.09					0.91	1.01	05/06 P13	04/07 P13
BCVA0661	Oxford Circus Esc. 5 and 6 Refurbishment	Complete	100.00	95.35	96.92					0.91	0.95	04/07 P08	04/07 P10
BCVE2101	Adelphi Survey of Vic Line Stations - To Close Out	Complete	100.00	100.00	100.00					1.00	1.00	06/06 P01	04/07 P03
BCVF0413	Watlington Car Subsidy Interchange Site	Complete	100.00	99.99	100.00					1.00	1.00	04/07 P11	04/07 P11
BCV09007	Refurbishment of Warren St 7 & Bond St 8	Complete	100.00	100.00	100.00					1.00	1.00	04/07 P06	04/07 P06
BCVA0926	SE79/Center Line 11 HD Escators Ingress Replacement	Complete	100.00	100.00	100.00					1.00	1.00	04/07 P06	04/07 P13
BCVA0660	Bond St. Esc's 6 and 7 Refurbishment	Complete	99.99	117.13	103.41					0.99	1.00	04/07 P01	04/07 P10
BCVA2220	Seven Stairs Esc. 5 Refurbishment	Complete	100.00	109.63	101.09					0.91	1.01	04/07 P09	04/07 P10
BCVA2227	Warren St. Esc's 4 and 6 Refurbishment	Active	13.36	1.99	1.44					0.12	0.11	07/08 P01	07/08 P02
BCVA2228	Warren St. Esc. No. 9 Refurbishment	Active	1.41	0.86	0.86					0.06	0.01	04/07 P18	07/08 P02
BCVA0916	Watlington Escators 1 & 3	Active	100.00	94.34	99.99					1.00	1.00	04/07 P13	07/08 P02
BCVA2209	Chancery Lane Esc. No. 3 Refurbishment	Active	100.00	117.34	129.46					0.91	1.00	04/07 P13	07/08 P02

FINANCIAL DATA APPEARS HERE

Note:

1. - Indicates Report the project as source of baseline.

2. - Indicates an underlying data issue. Please refer to the Inactive Project Report for more information.

3. - Indicates performance indices are outside valid limits < 0.01 or > 9.99

4. Where a valid submission has not been made for the reporting period, the latest previously accepted submission will be rolled forward.

09-Jun-2007 10:19

Final

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Figure P-7 Example of a 'Portfolio Delivery Measurement Summary Report'

How to Use the MPD Desk Reference

The main sections of this desk reference describe in greater detail the Master Project Database application. It assumes the reader has a working knowledge of project planning/management. Section 1 describes the data requirements for a primavera project file to be submitted. Section 2 describes the submission process and the validation rules. Section 3 describes how data can be accessed from the MPD web site and how project data is communicated.

1 Your Project and the MPD

1.1 Software

MPD Data Suppliers will use Primavera Enterprise (the current version is Primavera 5.1) to provide the project information in a format and level of detail consistent with the requirements of the MPD.

1.2 Work Breakdown Structure

Every Project programme shall utilise the Primavera Enterprise functionality for the Work Breakdown Structure at an appropriate level of detail to enable clear identification of the delivery elements of scope. A clear WBS is particularly important in the MPD because it is the primary method of organising Gantt chart views visible to other Data Suppliers.

The exact number of levels and design of each WBS is within the governance of the MPD Data Supplier.

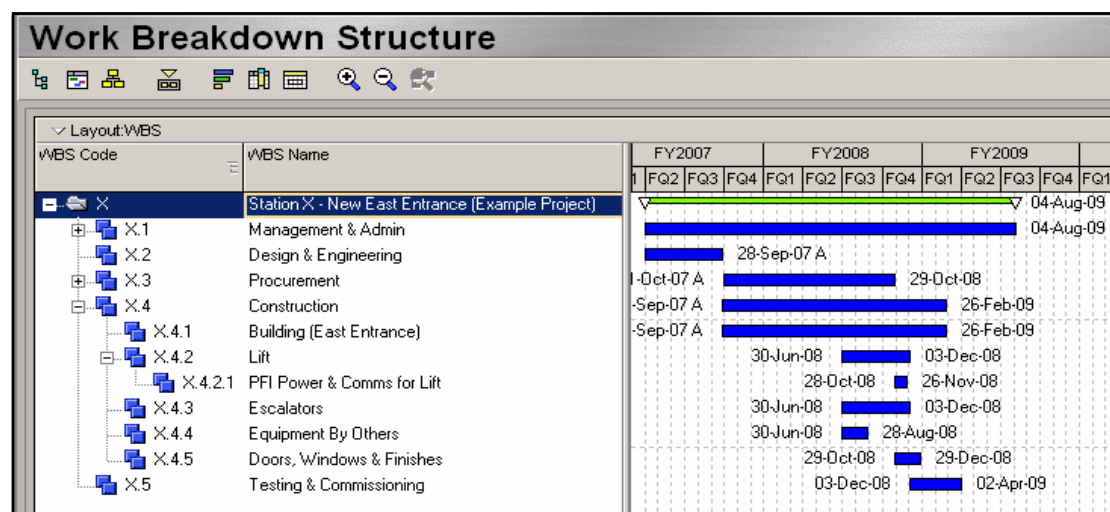


Figure 1.1 - Work Breakdown Structure

1.3 Activities and Milestones

A project shall have sufficient activities and milestones to understand, communicate and co-ordinate the scope of the project at different management levels.

See Figure 1.2 - Sample Project data in MPD (Example Project X)

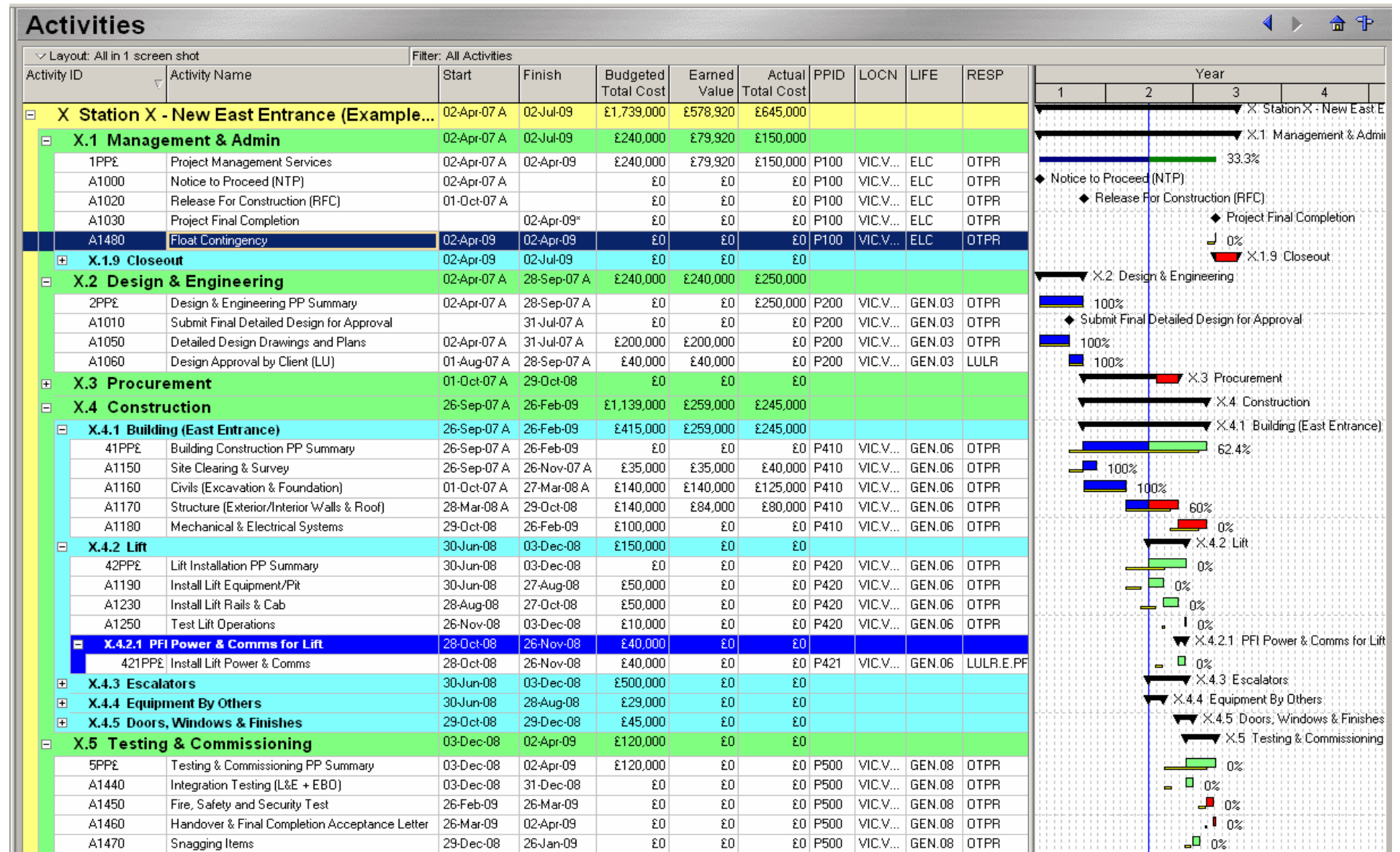


Figure 1.2 - Sample Project data in MPD (Example Project X)

1.4 MPD Codes and Planning Packages

1.4.1 Global Activity Codes

The MPD uses global activity codes to categorise the activities for sorting, grouping or filtering by key attributes. Through the life of the MPD there will be hundreds of contractors using many different ways to describe their work. The MPD global codes provide all MPD Data Suppliers and users with a common language for categorising work. All programmes imported into the MPD must have these codes correctly applied to all activities in order to comply with the MPD Submission and validation requirements.

Activity Code	Description and application
PPID	Planning Package Identifier code identifies all the activities in a Planning Package.
LOCN	Location code identifies the physical location of the work/activities on the Underground Network.
LIFE	Lifecycle code identifies the particular phase of a project that an activity occurs in.
RESP	Responsibility codes identify the parties responsible for carrying out an activity.
MPD_Milestone	MPD milestone code identifies project or programme critical deliverables.
ESMA	Engineering Safety Management code identifies Safety Management scope.
FUND	Funding source code identifies ISC, PFI or UIP funding source.

Figure 1.3 - Global Activity Codes

Each of these codes has a pre-defined set of values that must be assigned to the activities in each project. The codes are managed via a change control process and therefore can only be modified by the MPD Administrator. MPD Data Suppliers may create as many other Activity Codes (global or project-specific) as required for their own purposes within their own Primavera Enterprise working environment.

NB: All Global Activity Codes which are hierarchical must be applied at the lowest level of the hierarchy.

1.4.2 PPID - Planning Package Identifier Code

Primavera Enterprise uses activity level attributes such as codes, budgets and durations. Although the MPD uses this activity level data for reporting it also uses summarised data. In particular, budget, actual cost and percent complete data are only reported at a summarised level called a Planning Package. The method of summarising this financial data is by grouping like activities using the Planning Package Identifier Code. The code is a series of values ranging from "P001" through "P999". The code is not meant to assign a

title or description to the Planning package only to indicate that all activities which share the code are financially associated. Read more about Planning Packages in Section 1.4.10.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of how PPID values are assigned.

1.4.3 LOCN - Location Code

Location Codes identify the physical location of the work/activities on the Underground Network and have a hierarchical structure. The Location Codes used in the MPD follow the LU Standard Codes for locations, (e.g. Location Coding Structure (LCS) formerly BRS codes LU Standard E1115). Figure 1.4 shows an example of a location code and its hierarchy:

Location Code Hierarchy		
BAK.	B063.	NB
LEVEL 1	LEVEL 2	LEVEL 3

Figure 1.4 - Location Code Hierarchy

The three hierarchical parts as of a location code are as follows:

- Level 1 identifies the London Underground Line; e.g. D&C for District and Circle Line.
- Level 2 the second level identifies the non-track or trackside area between adjacent stations, at stations, in depots, sidings or major junctions; e.g. DO91 for Blackfriars Station (this is the same as the LU Level 1 LCS Code).
- Level 3 identifies either:
 - The direction of travel (obtained from the LU 'Traction Current Station Diagrams')
 - The station areas (other than the platforms & associated track) within a station envelope. (This is the same as the LU Level 3 LCS Code.)
 - Only one Location Code may be assigned to an activity. If an activity spans several locations, e.g. an activity whose location encompasses both track directions, then the activity must be divided into smaller activities with one Location Code assigned to each. The figures below show example Location Codes.

Character	Meaning
NB	Northbound
EB	Eastbound
SB	Southbound
WB	Westbound
NET	Network wide
XX	Infrastructure (All station areas other than platforms & track)
NON	Not on the LU Network

Figure 1.5 - 3rd Level Location code identifiers

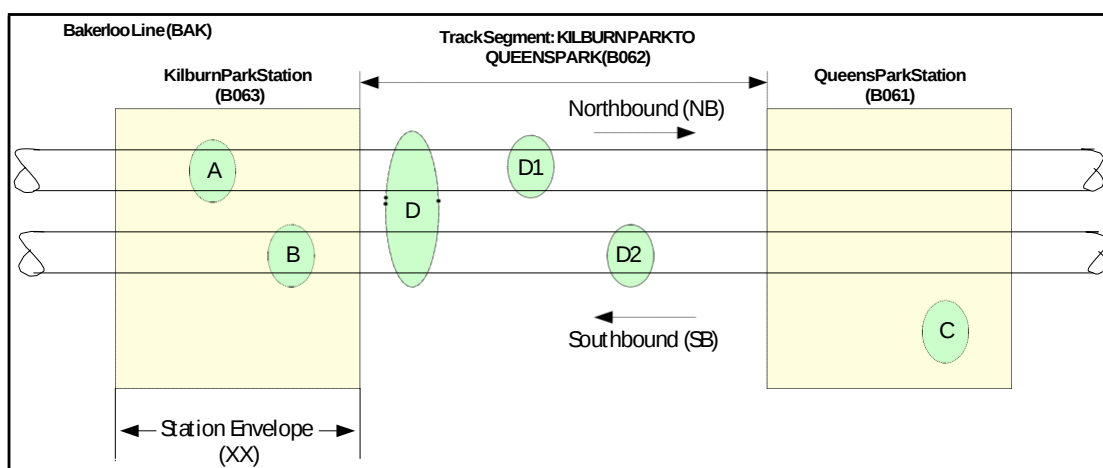


Figure 1.6 - Example Location Code Scheme

Area	Location Code
A	BAK.B063.NB
B	BAK.B063.SB
C	BAK.B061.XX

Figure 1.7 - Example use of Location Codes

Work represented in the diagram as 'D' cannot be entered as a single activity as it spans more than one location. Therefore activity D must be split into two activities as follows:

Area	Location Code
D	BAK.B062.NB
D	BAK.B062.SB

Figure 1.8 - Example use of Splitting activities for Location Codes

1.4.4 LIFE - Lifecycle Code

MPD Data Suppliers are free to use whichever lifecycle model is most appropriate to represent activities in their specific projects. However, the use of a particular lifecycle model and its associated code sets must be consistent within any one project. Where a hierarchical structure is used, activities must be coded at the lowest practical level to accurately reflect the activity scope of work. Activities must be created at a level of detail allowing all Lifecycle Codes to be applied throughout a project programme.

The duration of a lifecycle is determined by its activities. Since milestones do not represent work, Lifecycle Codes applied to Milestones are ignored by the MPD when calculating total lifecycle duration.

Activity Code TfL Reporting Code	Generic Code	Description
INCEP		
FEASI	GEN.01	Requirements Definition, Feasibility Assessment & Business Case
DEVEL	GEN.02	Specification
	GEN.03	Design/Engineering
	GEN.04	Design Acceptance
DELIV	GEN.05	Procurement
	GEN.06	Installation
	GEN.07	Integration
	GEN.08	Commissioning
CLOSE	GEN.09	Service Acceptance
WHOLE	ELC	Entire Lifecycle

Figure 1.9 - Lifecycle Codes

1.4.5 RESP - Responsibility Code

The MPD defines responsibility codes that are used to identify the parties responsible for carrying out respective activities and supplying the relevant resources to achieve this as follows:

BCVR	- used by Metronet Rail BCV to identify all its own activities
JNPR	- used by Tube Lines Limited to identify all its own activities
SSLR	- used by Metronet Rail SSL to identify all its own activities
CONN	- used by PFI Connect to identify all its own activities
POWR	- used by PFI Power to identify all its own activities
PRES	- for all PFI Prestige activities
OTPR	- used by any other organisations (Other Third Parties) to identify their own activities
LULR	- for all London Underground activities, using an appropriate sub-code for activities to be undertaken by LU (LULR.I – Internal) or activities to be assigned to another organisation (LULR.E – External) using the code hierarchy as described below.

All MPD Data Suppliers other than LU must select either their own organisation RESP code for all activities delivered by their own organisation or an LU Responsibility code for any other activity. Therefore a particular data supplier must not assign another party's RESP code value to any activities within their own programme.

The RESP Code and Co-ordination of Works

Some of the most important and useful functionality that the MPD provides is the facility for users to co-ordinate their programmes and manage programme interfaces with others at an activity level.

This functionality depends upon the Responsibility Code. It is therefore essential that all activities in a project programme have accurately assigned Responsibility Codes.

The London Underground Responsibility Codes (LULR)

The LULR Responsibility code is hierarchical and should be coded at the lowest possible layer. The base level comprises 3 sets of sub-codes as follows:

- LULR.I (Internal) Responsibility Codes refer to and are assigned to specific activities for which LU uses its own resources and over which LU has direct control. In general, these codes are also referred to as “LU Obligations”
- LULR.E (External) Responsibility Codes refer to and are assigned to specific activities that LU will facilitate the co-ordination of works with other parties involved in the works on the Underground Network. In general, these codes are also referred to as Interfaces and should be coded to the 5th level.
- LULR.P (Procurement) Responsibility Codes refer to activities associated with the procurement process which leads to an LULR.E delivery milestone.



Figure 1.10 - Lifecycle Gantt Chart

1.4.6 MPD Milestone Codes

The MPD Milestone Codes allow data suppliers to identify key dates to increase visibility and support/improve performance analysis across the business. See Figure 1.11 - MPD Milestones Codes for the current list of MPD Milestone Codes.

MPD Milestone Code	Milestone Description
WPP	Works Package Plan Approval by LU
PAP	Project Assurance Plan Approval by LU
DSN	Commence Detailed Design
CA	Compliance Approval by LUL
CTA	Contract Award by LUL
SOS	Start On Site
PRC	Approval of Practical Completion Submission by LU
DIS	Delivery into Service
FOS	Finish on Site (Snagging List Complete)

Figure 1.11 - MPD Milestones Codes

1.4.7 ESMA - Engineering Safety Management Code

Engineering Safety Management Activity (ESMA) is the process of safety risk management specified with regards to physical, organisational or process change to the LU Network. ESMA Codes identify activities that are involved in the development and progression of the Engineering Case for Safety for the purpose of safety approval. The ESMA Code is required to enable clear communication of the Safety Management scope and process.

There are two possibilities/types of ESMA code:

ESMA - Applied to activities that are involved in the development and progression of the Engineering Case for Safety for the purpose of safety approval.

NA - (Not applicable), which is applied to all other activities.

1.4.8 FUND - Funding Source Code

NOTE: This is not yet implemented (as of September 2007)

This code allows clear identification of scope associated with a specific funding source. In projects with multiple funding sources, each activity must select one of three possible code values (ISC, PFI or UIP) for funding source. See Figure 1.12 - Funding Source Code:

The screenshot shows a software window titled 'Activity Codes'. It has three radio buttons at the top: 'Global' (selected), 'EPS', and 'Project'. Below them is a section 'Select Activity Code' with a dropdown menu currently showing 'FUND - Funding Source'. Underneath is a checkbox labeled 'Display: All Values' which is checked. At the bottom is a table with two columns: 'Code Value' and 'Description'.

Code Value	Description
ISC	Infraco Service Charge
PFI	Private Finance Initiative
UIP	LU UIP Funded
TfL(Other)	TfL other than LU

Figure 1.12 - Funding Source Code

1.4.9 Project Codes

Every project must have an AAMP_FBS (Annual Asset Management Plan Financial Breakdown Structure) code assigned. This allows the grouping of projects by asset management type.

The method of communicating to the MPD that a project is to be rebaselined is via the Baseline_Period project code. A project re-target (similar to a rebaseline) is communicated by adding "Base_" as a prefix to the Project ID before submission to MPD.

1.4.10 Planning Packages

The Planning Package is a summary of the time frame, budget, actual costs and physical percent complete data associated with a group of one or more activities. The Planning Package Identifier Code (PPID) is discussed in section 1.4.2 and is the method used to communicate this grouping to the MPD.

The Planning Package forms the basis from which progress analysis is reported.

Planning Packages are typically formed by grouping activities together that have mutually common global code values (as suggested in Figure 1.13 - Compilation of Planning Package).

PLANNING PACKAGE = WBS + LOCN + LIFE + RESP + FUND (Asset) + (Station) + (Phase) + (DeliveryOrg) + (FundSource) <i>What? Where? When? Who? How?</i>				
---	--	--	--	--

Figure 1.13 - Compilation of Planning Package

There are four sets of data associated with Planning Packages which are used for calculation and summarised reporting as follows:

Time Frame

The Planning Package takes on the earliest start and the latest finish dates of the group of activities that it represents.

Budget

The budget associated with a Planning Package is the sum of activity level budgets in the group. The MPD stores this sum in one cumulative budget figure per period through the entire time frame of the Planning Package.

Physical Percent Complete

The physical percent complete associated with a Planning Package is the aggregate sum of earned value for activities within the group divided by the total budget for the Planning Package.

Actual Cost

The actual cost associated with a Planning Package is calculated by the sum of the actual costs reported on each activity in the group.

1.5 Budget Loading

Primavera Enterprise provides many options for loading budget in a project. In the MPD, budget loading of the project is carried out by the data suppliers and therefore may be subject to their protocol with one exception.

The budget must NOT be loaded by assigning a unit rate pound value to a resource and then applying multiple units of the resource to an activity.

The MPD utilises the Primavera Enterprise field labelled 'budgeted total cost' in calculations which measure the performance or trends of a project. The ability to predict future performance of a project is enhanced when the project budget is spread across many activities which have durations that are less than two reporting periods. The total cost should reflect the cost of all work in the project including subcontractors.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of budget loading.

1.6 Interfaces

The term "Interface" is used to describe an activity or milestone where one organisation has identified a dependency on, or expectation of, another organisation to perform work or supply a deliverable. Both the organisation performing the work and the organisation receiving the deliverable must represent this 'interface' in their own project. The MPD Interface functionality is largely based on the correct use of the RESP (Responsibility) codes LULR.E (External) and LULR.P (Procurement) as described above. In addition the following requirements apply.

Summary of Requirements:

1. Final activity in a logic-string is coded to the lowest level as an interface using 'LULR.E...'.
2. Key procurement activities leading to the interface must be coded using 'LULR.P'
3. All Interface activities must be coded at the lowest RESP code level available.

The MPD Interface tool assists users in managing the relative status of the interface activities.

1.7 Project Baseline

The MPD uses baseline budget loaded projects as the basis for analysing and reporting progress. By default, the project baseline is taken to be the first accepted submission into the MPD. The supplier may change or modify the Baseline Programme by informing LU at time of submission. The budgeted total cost of the current schedule must remain equal to the baseline.

Acceptance of the Baseline Programme by LU shall not relieve the Supplier of any duties or obligations under the Contract.

1.8 Project Status

The MPD represents the MPD Data Supplier's total scope and budget for capital works in the form of project programmes. In order to facilitate the co-ordination of works all projects are to be submitted to the MPD. The level of detail and frequency of submission are determined by the Project Status.

There are 6 categories of project status in the MPD:

- **Proposed**
- **Initial**
- **Active**
- **Completed**
- **Closed**
- **Discontinued**

A summarised view of the six types of project programmes in the MPD is shown in Figure 1.14 and the conditions that define the status of each project programme are described in the following paragraphs.

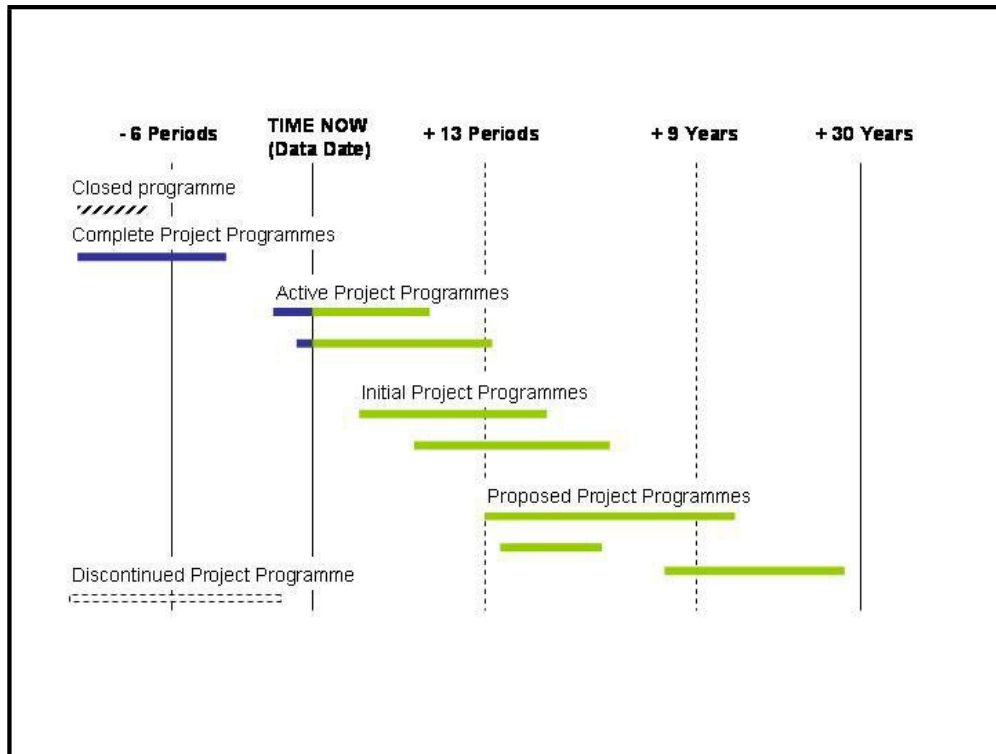


Figure 1.14 - Six categories of project programmes

1.8.1 Proposed Project Programmes

A Proposed project programme is a representation of a project that is planned to start after the forthcoming thirteen periods (to commence in next or future financial year).

With respect to Infracore PPP contracts, its purpose is to identify capital projects planned to be undertaken in accordance with the Annual Asset Management Plan (AAMP). It is expected that the sum of the Proposed, Initial and Active project programmes for the forthcoming nine years will be equal to the cost data submitted in the MPD Data Suppliers' AAMP.

1.8.2 Initial Project Programmes

The purpose of an Initial Project Programme is to highlight resources required by LU and others for works that may impact the MPD Data Supplier's delivery.

An Initial project programme is a representation of a project that is planned to start within the forthcoming thirteen periods and contains, as a minimum, a single activity for works to be performed by the data supplier and a detailed plan containing a forecast or long-term view of activities that require LU or other third party resources.

1.8.3 Active Project Programmes

An Active project programme is a detailed representation of the total scope and budget for a Project which has started.

1.8.4 Complete Project Programmes

A Complete project programme is a representation of a Project that has all activities complete. Its purpose is to record the fact that there will be no further progress on a project. An Active Project Programme becomes a Complete Project Programme in the MPD when all its activities are 100% complete. By definition Complete Project Programmes are not updated unless actual cost data changes prior to the project being Closed.

1.8.5 Closed Project Programmes

A closed project programme is a representation of a Project that has all activities complete and is financially closed in the data suppliers accounting system. Its purpose is to record that there will be no further updates of a project. An Active Project Programme becomes a Closed Project Programme in the MPD when all its activities are 100% complete and when the final budget, earned value and actual cost are equal. In addition the data supplier must notify MPD Admin of their wish to close the project via the Master Project List.

By definition, Closed Project Programmes can no longer be updated.

NB: Notification to MPD Admin to close a project programme in the MPD should be one period after the final submission (this **must** be first approved by the PAO Level 1 and sent to MPDAdmin@tfl.gov.uk). Otherwise the project will be closed in the MPD just prior to the final submission.

1.8.6 Discontinued Project Programmes

A Discontinued Project Programme is a representation of a Project that should never have been submitted to the MPD. This representation of a project programme means that no previous submission data will be visible in the MPD. No future submission of the project will be allowed.

1.9 Progress

1.9.1 Data Date

It is important that the Data Date for all programmes submitted to the MPD each period are synchronised. The Data Date of the imported projects shall be the first day of the period following midnight of the submission period; e.g. for all projects submitted at the end of Period 1 the Data Date must be the first day of Period 2.

1.9.2 Physical % Complete

Physical progress will be recorded (updated) on programme activities by the Contractor each period using physical % complete as the basis for 'progress status'. The entire updated programme will be submitted each LU 4-weekly reporting period in accordance with the LU MPD Desk Reference requirements.

1.9.3 Actual Costs

The actual costs of work done as of the data date must be recorded on the programme.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of applying actual costs to date.

2 Your Submissions to The MPD

2.1 Process Map

A summary of the submission process is shown in figure 2.1 below:

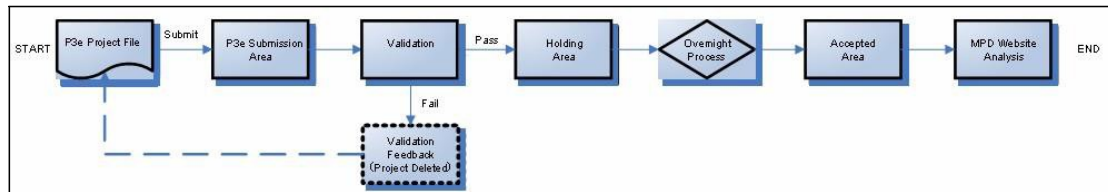


Figure 2.1 - Submissions Process Map

2.2 Master Project List

All projects being submitted to the MPD must first exist on the Master Projects List (MPL). The MPL is used to manage Project IDs in order for the MPD to correctly determine whether each project is a new submission or an update. It shows all projects that have ever been submitted to the MPD and projects expected to be submitted for the first time in the current period.

The MPL is displayed on the MPD Website and is an essential reference that identifies valid Project IDs and facilitates various groupings of projects into MPD maintained public portfolios.

The MPD uses the Project ID of a submitted project to match it to previously submitted versions (if available). Submitted projects are checked against the Master Projects List to ensure they have a recognised and valid Project ID. If a match is found, the system determines it to be an update to an existing submission. If a match is not found, it is flagged as “unrecognised” (Project ID is suffixed with ‘(U)’ for identification and subsequent correction).

NB: The first submission of a project to the MPD is used as its Original Baseline.

Portfolios

Projects

Interfaces

Reports

Validation

Search

Help

MyMPD

Submission Stats

Period Statistics

Master Project List

Validation Rules

View Alerts

Project Managers

Page Help

Master Projects List

Organisation:

LUL

☒ Exclude closed and discontinued Projects
 ☐ Show Projects accepted in this period only

Search

Projects Listed: 597

Status	Number Of Projects
Active	223
Initial	9
Proposed	4
Complete	353
Not Statused	8

Edit Project Assignments

Project ID	Project Name	FPS Node	Status	Baseline Period	AMP Code	CIP Code	Investment Code	LU Manager	FBS Code
UIP1297	Every Second Counts	LU.99(A)	Active	2006 P01	AMP10	NON-CIP	REV	Desmond Moffatt	LUL AMP01
UIP8804	Work flow standards regime	LU.99(A)	Complete	2006 P06	AMP08	NON-CIP		John Wood	LUL AMP01
UIP8744	Victoria Transport Interchange	LU.99(A)	Complete	2006 P06	AMP05	NON-CIP	REV	Steve Hodgson	LUL AMP01
UIP1470	Train Number Box 72 Stock	LU.99(A)	Active	2006 P07	AMP08	NON-CIP		Steve Dodd	LUL AMP01
UIP8312	PPP Variations Support - Contracts	LU.99(A)	Complete	2006 P06	AMP10	NON-CIP	REV	Chris Durno	LUL AMP01
UIP8912	Train Crew Accommodation 01/02 - Phase 2	LU.13(A)	Complete	2006 P07	AMP10	LU-PF47		Stephen Sinnott	LUL AMP01
UIP1168	Project Scoping Feasibility BCV	LU.99(A)	Complete	2006 P08	AMP05	NON-CIP	REV	Stephan Helal	LUL AMP01
UIP8413	Earls Court Train Crew Accommodation (COMPLETE)	LU.13(A)	Complete	2006 P07	AMP04	LU-PF47	CAP	Stephen Sinnott	LUL AMP01
UIP8944	ACIS 10 - Telephone Services	LU.99(A)	Complete	2006 P06	AMP08	NON-CIP	REV	Vic Smith	LUL AMP01

Figure 2.2 - Master Projects List view on the MPD Website

2.2.1 Master Project List Updates

MPD Data Suppliers must advise LU of any changes or additions to the MPL in an agreed format (via a notification email to the MPD Administrator) each period in accordance with the Submission Cycle. MPD Data Suppliers are not able to delete projects from the MPL and must ensure that all Project IDs are unique. MPD Data Suppliers are responsible for populating and keeping this register current and up-to-date. In addition, all changes to the Master Projects List and associated data are controlled and recorded by the MPD Administrator.

MPD Data Suppliers must inform the MPD Administrator of any required changes **before** beginning project submissions. Such amendments may include:

- Adding a new project to the list
- Change of Project ID
- Discontinued Projects
- Closed Projects

The MPD Data Supplier must provide the MPD Administrator with any details of new projects they wish to submit to the MPD. If a project ID is added to the Master Project List it is deemed a brand new project to be submitted. The name of a submitted project (project description) is updated from the Primavera Project Name. It is not possible to delete projects from the Master Projects List.

If an MPL project ID is changed, it signifies an ID change of an existing project. In the event of this happening, the system will link all previous ID's for the project to ensure data summarisation and reports are continuous. Proposed or Initial project programmes may be discontinued to reflect scope or budget changes within an organisation.

Projects that are discontinued are listed on the Master Projects List but are not visible on MPD reports.

The Project ID of a discontinued project is held within the system and no future submissions are allowed. Discontinued and Closed projects must be authorised by the respective Programme Manager.

2.3 Submission Process

Every LU Period, MPD Data Suppliers shall export or otherwise save their project programmes from their own Primavera Enterprise environment and then import ("submit") these project programmes to the MPD submission area. In order to achieve this, authorised users within the MPD Data Supplier's organisations are granted access to the submissions window of the MPD to submit the necessary projects.

Submissions are controlled and monitored by the MPD Administration Team. Preliminary project and organisation level reports are produced each day for projects submitted during the submission window. Once the submission window is closed for a given organisation, final reports and other outputs are produced and made available to MPD Data Suppliers and Users.

A project can be submitted for 4 purposes:

- 1) Initial Submission – To establish the original baseline for a project (usually un-progressed)
- 2) Update Only – This submission will be used to update earned value, actual cost and forecast data of this project in the MPD.
- 3) Update and Re-baseline- This submission will be used as above and in addition will be used to reset the planned (target) value for the current and all future periods for the project
- 4) Re-target – This submission type is also used to reset the planned (target) value for the current and all future periods for the project but its submission may have a data date earlier than the current period. This type of submission allows an organisation to maintain a set of un-statused baselines that reflect all scope changes to date.

2.3.1 Submission Cycle

The submission and reporting cycle revolves around the standard LU reporting calendar (every 4 weeks beginning the 1st of April for 13 periods per year). For a given period (in this example, 'Period A'), all submissions of project schedule and cost related data must be imported into the MPD Submissions Area by the end of the second week of the following period (e.g. 'Period B').

NB: At the end of the second week of 'Period B', 'Period A' is closed and reports are produced and made available on the MPD Website.

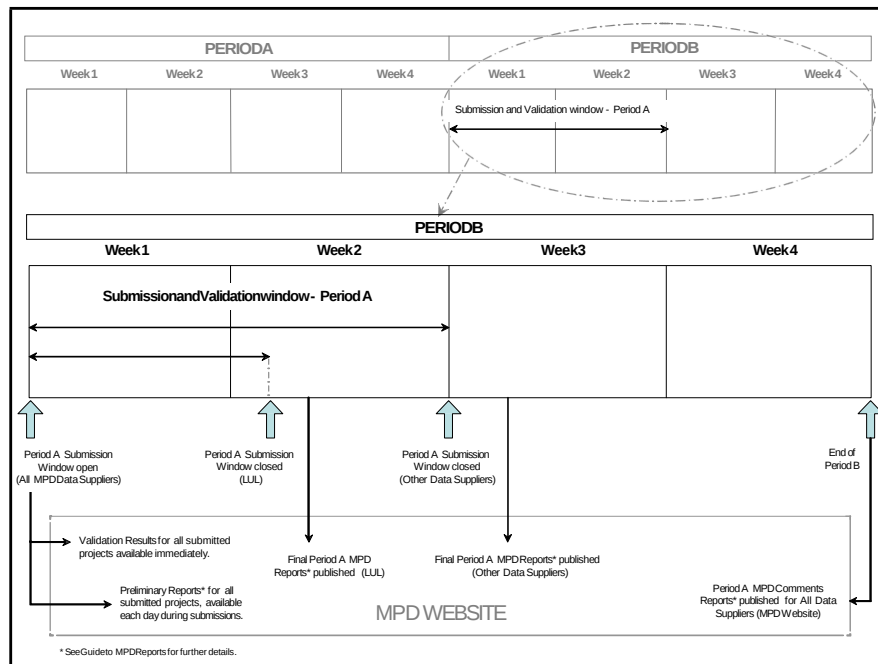


Figure 2.3 - Submissions Timetable

2.3.2 Data Validation

Projects submitted to the MPD are subject to a number of validation checks before they are processed by the system. These validation checks ensure that Projects with missing or invalid data do not enter the system. Once the MPD Data Supplier has closed all imported projects and logged out of Primavera, their submitted projects will undergo the Validation process. The Validation process runs on all projects in the MPD Submissions Area every 15 minutes during the submissions window. Projects are validated in batches grouped by Submission ID. The validation results and further explanation of any exceptions are immediately made available on the MPD Website.

Portfolios	Projects	Interfaces	Reports	Validation	Search	Help	MyMPD
Submission Stats	Period Statistics	Master Project List	Validation Rules	View Alerts	Project Managers	Page Help	
Validation Summary Organisation: LUL ☐ Passed Without Warnings ☒ Active Year: 2006/07 ☒ Passed with Warnings ☒ Proposed Period: 3 ☐ Failed ☒ Initial View: ☐ Project ☒ Submission Show >>							
Project ID	Project Name	Submission Date	Submission Status	Status	Planned CSV	Progress CSV	
☐ UIP1034 UIP1034 Smartcard Billing-AutoLoad Replay (completed) 26/06/2006 09:30:04 Success with warnings Complete No No							
☐ UIP1115 UIP1115 Customer Info. System (CIS) - Pic Line 26/06/2006 14:30:05 Successful Active No No							
☐ UIP1120 UIP1120 CCS - Track Access Control System 26/06/2006 17:15:08 Successful Active No No							
☐ UIP1142 UIP1142 Car Park Development Strategy 26/06/2006 09:30:04 Successful Active No No							
☐ UIP1175 UIP1175 Capture North End Bakerloo Line 26/06/2006 09:30:04 Successful Active No No							
☐ UIP1198 UIP1198 Victoria Station Re-Signage 26/06/2006 14:30:05 Successful Active No No							
☐ UIP1199 UIP1199 MI - Performance Reporting Transformation 26/06/2006 12:30:04 Success with warnings Active No No							

Figure 2.4 - Validation Summary

2.3.3 Validation Categories

The Validation Rules cover several main areas of integrity and planning categories and are applied to submitted projects at various levels of detail; e.g. at the Project, Lifecycle, Planning Package and Activity Level. In the event of a single activity or Planning Package failing validation, the whole project will also fail. The MPD cannot accept and store parts of a project. The categories of Validation Rules are summarised in Figure 2.5 - Validation Categories:

Validation Category	Description
Project Categories	Ensures the projects are assigned to one of the mandatory categories – for example AMP Code.
Activity Coding	Used to ensure activities have been assigned codes allowed into the system and that there are no missing codes.
Financials	Rules covering budget assignment and budget changes between submissions.
Master Projects List	Projects are validated against the Master Projects List to ensure the Project ID is unique and that the submission is not closed or discontinued.
Planning Logic	This category includes rules that are fundamental to planning to prevent inaccuracies and incorrect project logic being imported into the system.
Planning Packages	Planning packages of activities are validated for data alignment and status.
Primavera Settings	Certain Primavera options must be selected to ensure projects are not submitted with invalid auto compute settings.
Project Structures	Rules covering WBS logic and the count of activities between submissions are enforced within this category.

Figure 2.5 - Validation Categories

2.3.4 Validation Areas

2.3.5 MPD Holding Area

Projects which successfully pass validation are moved to the Holding Area where they remain until being moved to the Accepted Area at the end of each day during the submissions window.

2.3.6 MPD Accepted Area

The Accepted Area contains the latest accepted version of a project. It is this version of the project that is extracted into the MPD system for reporting. Data in these projects is subject to recalculation, history storage and processing for Earned Value Analysis.

2.3.7 MPD Failed Area

Projects which fail validation are immediately moved to the Failed Area. MPD Data Suppliers can access validation results and exception details on the MPD Website. Failed projects should be corrected at the

source, re-scheduled and re-submitted by the MPD Data Supplier within the same submission window. There is no limit to the number of times a project can be submitted to the MPD. The MPD does not use Failed Area project data.

2.3.8 MPD Archive Area

As subsequent project submissions are made to the MPD the existing Accepted Area project is moved to the Archive Area and is replaced (in the Accepted Area) by the latest accepted version of the same project.

3 Using the MPD

This section assumes that your project has passed and you are now ready to log on to the MPD.

NB: Draft project reports are available the next business day following a valid submission to the MPD.

3.1 MPD Website

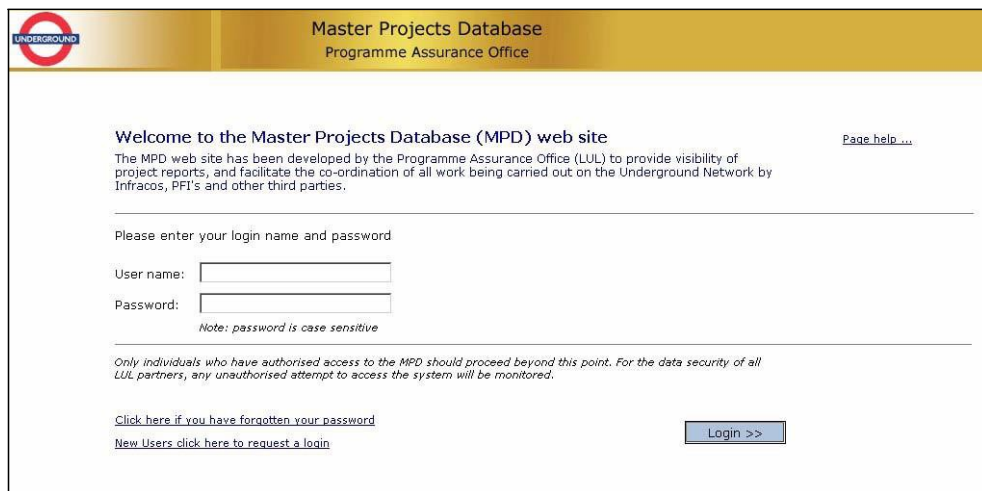
The MPD website provides the general user interface and access to query tools and reports. It is hosted on the LU Intranet and provides users with the ability to:

- Check the status of Project submissions
- View Validation Rules, results and exceptions
- See project details such as status, EPS node, submission history, lifecycle summaries and Earned Value data
- Create and manage user-defined portfolios
- Add comments to projects and portfolios
- Set-up or create interfaces between projects
- View and print current and historical reports
- Personalise the web interface using MyMPD

NB: The MPD website is a secure site managed by LU Information Management (LU IM). MPD Data Suppliers should direct all access requests and fault reports to the MPD Administrator ('MPDadmin@tube.tfl.gov.uk')

3.1.1 Logging On To the Website

The Master Project Database website is accessed by following the link on the Chief Programmes Office web page. It can also be accessed at <http://mpd.lul.co.uk>. The following screen allows users to log in. If you are new to the MPD and require a username and password, use the link for 'New Users'.



Master Projects Database
Programme Assurance Office

Welcome to the Master Projects Database (MPD) web site [Page help ...](#)

The MPD web site has been developed by the Programme Assurance Office (LUL) to provide visibility of project reports, and facilitate the co-ordination of all work being carried out on the Underground Network by Infracos, PFI's and other third parties.

Please enter your login name and password

User name:

Password:

Note: password is case sensitive

Only individuals who have authorised access to the MPD should proceed beyond this point. For the data security of all LUL partners, any unauthorised attempt to access the system will be monitored.

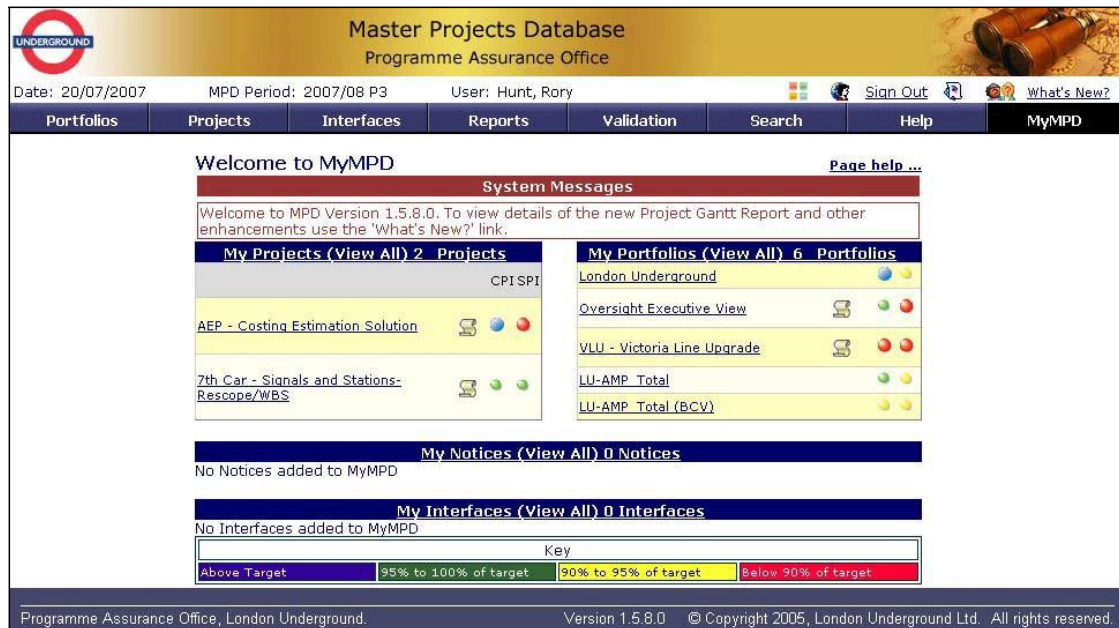
[Click here if you have forgotten your password](#)

[New Users click here to request a login](#)

Figure 3.1 - Log-On Screen

3.1.2 Finding Your Project

As you enter the MPD you will first see the MyMPD page. You may customise this area to automatically include your projects. Prior to setting up MyMPD you may find your project by clicking the 'projects' button in the blue bar in the upper left of the screen.



Master Projects Database
Programme Assurance Office

Date: 20/07/2007 MPD Period: 2007/08 P3 User: Hunt, Rory Sign Out What's New?

Portfolios Projects Interfaces Reports Validation Search Help MyMPD

Welcome to MyMPD [Page help ...](#)

System Messages

Welcome to MPD Version 1.5.8.0. To view details of the new Project Gantt Report and other enhancements use the 'What's New?' link.

My Projects (View All) 2 Projects

CPI SPI

[AFP - Costing Estimation Solution](#)

[7th Car - Signals and Stations- Rescope/WBS](#)

My Portfolios (View All) 6 Portfolios

[London Underground](#)

[Oversight Executive View](#)

[VLU - Victoria Line Upgrade](#)

[LU-AMP Total](#)

[LU-AMP Total \(BCV\)](#)

My Notices (View All) 0 Notices

No Notices added to MyMPD

My Interfaces (View All) 0 Interfaces

No Interfaces added to MyMPD

Key

Above Target 95% to 100% of target 90% to 95% of target Below 90% of target

Programme Assurance Office, London Underground. Version 1.5.8.0 © Copyright 2005, London Underground Ltd. All rights reserved.

Figure 3.2 - Finding Your Project

The project search screen lets you find your projects by typing in either the project ID or part of the project name to search the database. Enter some text from the title of your project and press 'Search'. You may change the Organisation, Project Status or MPD area fields to expand your search.

Portfolios	Projects	Interfaces	Reports	Validation	Search	Help	MyMPD
Submission Stats	Period Statistics	Master Project List	Validation Rules	View Alerts	Project Managers	Page Help	
Organisation:	LUL	Project status:	Active	Year:	[ALL]	☐ Filter Accepted Area By Submission Period	
Project ID contains:		MPD area:	Accepted	Period:	[ALL]		
AND Name contains:		Items per page:	10	Clear Filters Search			

Figure 3.3 - Change Search Criteria

The search will return a list of projects. When you have found your project you may add it to MyMPD by ticking the box on the far right of the project list. Clicking on the name of your project will take you to the Project Summary page.

3.1.3 MPD Project Summary Page

The Project Summary Page can be reached from many areas of the Web Application and provides a convenient synopsis of the project's vital statistics.

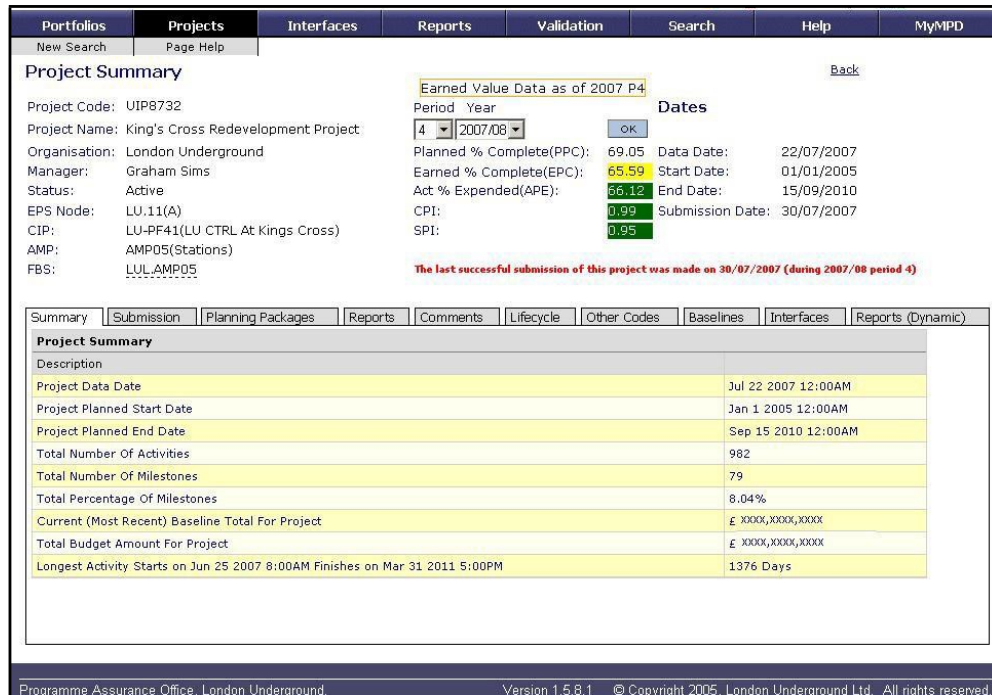


Figure 3.4 - MPD Project Summary Page

The summary page contains sub tabs, with links to project reports, submission data, codes used and interfaces etc.

3.1.4 Project Gantt Chart

A visual representation for project activities, milestones and interfaces phased over time. The MPD Gantt chart is available for all projects in the MPD accepted area and can be found under the 'Reports (Dynamic)' tab on the project summary page.

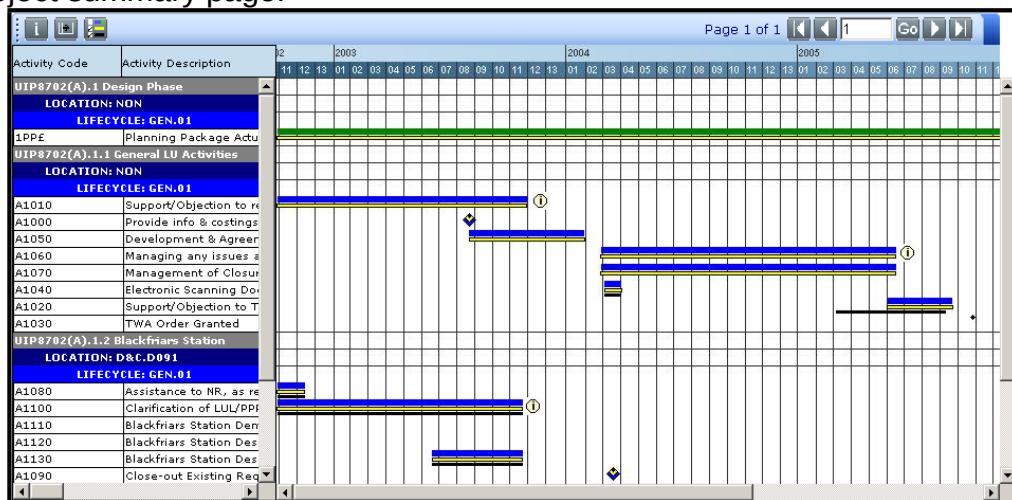


Figure 3.5 - Project Gantt Chart

3.1.5 Milestone Summary Chart

Also available through the 'Reports (Dynamic)' tab, the milestone summary screen displays milestones coded with the MPD_Milestone code. These are summarised by period and allow a drill down to project activity details.

Milestone Summary

Portfolio Name: Chief Programme Officer

Report Year: 2007

Portfolio Officer: MPD, Portfolio Manager

Report Period: 1

Period End Date: Apr 28 2007 11:59PM

Back

% of Budget to Date			E (O) M Date			E (O) to Completion			Indices		
Planned value	Actual Cost	Forecast	Baseline Plan value	Actual Cost	Forecast	Budget	EAC (MPD Forecast)	OPI	SPI		
45.92	42.94	49.05	5235.6293	277.9231	279.9118	4275.737	3.112307	1.00	0.94		

Notes: The latest recalc date was: May 22 2007 5:57AM

		Choose Milestone Year: 2007/08					Choose Planned Type: Baseline Planned						
		P 1	P 2	P 3	P 4	P 5	P 6	P 7	P 8	P 9	P 10		P 11
P&P Project Assurance Plan Approved by LUL	Planned	-	-	-	-	-	-	-	-	-	-	-	Previous Planned Period One 2007-08
	Actual/Forecast	-	-	-	-	-	-	-	-	-	-	-	Baseline Planned
WFP Work Programme Plan Approved by LUL	Planned	1	-	3	-	-	-	-	-	-	-	-	4
	Actual/Forecast	1	4	0	-	-	-	-	-	-	-	-	0
DSN Commence Detailed Design	Planned	1	-	2	-	-	-	-	-	-	-	-	3
	Actual/Forecast	1	-	2	-	-	-	-	-	-	-	-	3
CA Compliance Approval by LUL	Planned	1	-	2	-	-	-	-	-	-	-	-	3
	Actual/Forecast	1	-	2	-	-	-	-	-	-	-	-	2
CTA Contract Award by LUL	Planned	1	2	-	2	-	-	-	-	-	-	-	6
	Actual/Forecast	1	7	1	2	-	-	-	-	-	-	-	10
SOS Start on Site	Planned	1	-	-	-	1	-	-	-	-	-	-	3
	Actual/Forecast	1	-	-	-	1	-	-	-	-	-	-	3
PRG Approval of Practical Completion Submission by LUL	Planned	1	-	-	-	1	-	-	-	-	-	-	2
	Actual/Forecast	1	1	-	2	1	-	-	-	-	-	-	2
DIS Delivery into Service	Planned	1	1	-	-	-	1	1	-	1	1	1	6
	Actual/Forecast	1	2	-	1	1	1	-	-	1	2	3	11
POS Finish on Site (Snagging List Complete)	Planned	-	-	-	-	-	-	2	-	-	-	-	2
	Actual/Forecast	-	2	1	-	-	1	2	-	1	-	-	13
Total Planned		4	11	5	2	1	1	1	2	1	1	1	58
Actual/Forecast		3	22	8	6	3	3	3	1	1	1	3	62

Figure 3.6 - Milestone Summary Report

The planned data in this report can be drawn from baseline, previous period or start of financial year data for comparison.

3.1.6 Earned Value and 'S' Curve Reports

Earned Value Reporting

Earned Value Management best practice is a project control process based on a structured approach to planning, cost collection and performance measurement. It facilitates the integration of project scope, schedule and cost objectives and the establishment of a baseline target programme for performance measurement.

Earned Value Reporting

Earned Value Analysis is a method for comparing planned value, actual spend and progress in the same units.

Earned Value (EV) is a measure of the completed work expressed in terms of the budget assigned to that work

Planned Value (PV) is the 'baseline' or target budget scheduled to be achieved in the same time period

Actual Cost (AC) the costs actually incurred and recorded in accomplishing work performed

The MPD displays the earned value data in the industry standard 'S' curve format, an example is shown below.

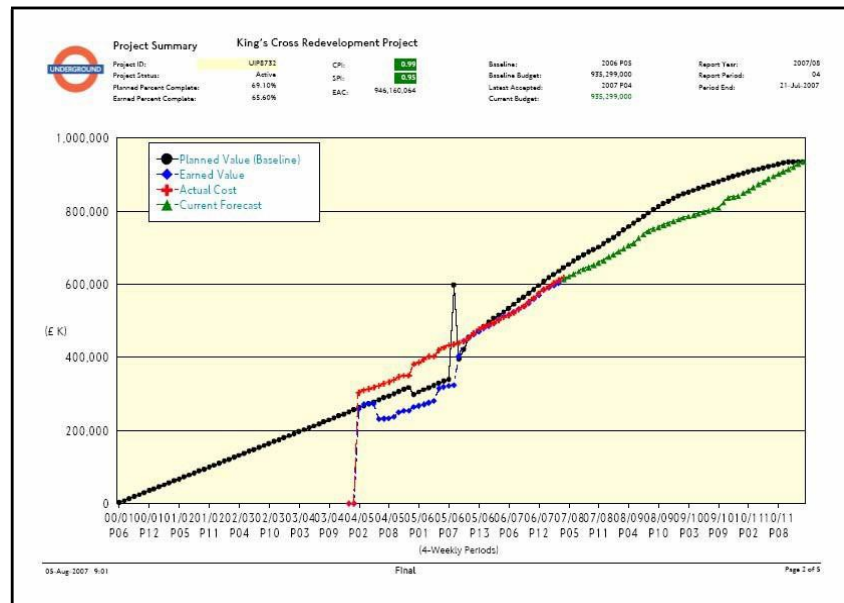


Figure 3.7 - Earned Value 'S' Curve

3.1.7 Earned Value Grid and Commentary

Project performance is measured in physical terms (i.e. physical percent complete of deliverables), financial terms (i.e. over/under budget) and schedule terms (i.e. ahead/behind planned finish date).

Project performance analysis is provided to the MPD by the project managers in the form of 'PM Commentary'. The screen below shows a combined input screen to enable comments to be added whilst viewing earned value data.

Project Managers: Progress Page															Back																																																																																																																																
Organisation: London Underground					Investment Programme: LU-PF41(LU CTRL at Kings Cross)					Report Year: 2007																																																																																																																																					
EPS Node: LU.11(A)					Asset Management Plan: AMP05(Stations)					Report Period: 4																																																																																																																																					
Project Name: King's Cross Redevelopment Project					Project Manager: amprosim					Period End: 21/07/2007																																																																																																																																					
% (of budget) to Date Planned Actual Value Cost £ (k) to Date Earned Baseline Actual Value Plan Cost Earned Value Budget EAC Indices CPI SPI Submission Date Baseline 06/07 P5 Last Accepted 07/08 P4																																																																																																																																															
Project ID: UIP8732 Status: Active 69.05 66.12 65.59 XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX 0.99 0.95 Start Finish 31/08/2000 28/01/2011 Start Finish 31/08/2000 31/03/2011																																																																																																																																															
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PM Comments Progress Issues and Risks: Assign Notes to: houston, sam King's Cross CTRL CPI 0.99 SPI 0.95 Phase 1: Completion was due on 10 Dec 06. Physical works are complete and all public areas are in use. Assurance evidence from MR to support completion continues to be received and LU is due to respond in due course. Phase 2: Northern Ticket Hall: The critical activity in the NTH, the excavation beyond the TH level, continued during the period and is achieving programme. Concreting of the mezzanine slab is due to commence on programme during period 5. Bomb Gap: Bomb Gap enabling works have not generally progressed in line with the programme. 13 calendar days of float was lost during the period, mainly due to design issues with Network Rail. However, mitigation measures are being developed. Tunnelling: Activities in the period in the PLA have included continuing the mining of the cross passages and continuation of the enlargement of the link beyond the cruciform. In the NLA, activities have been commencement of intrusive works in the over bridge and continuation of the enlargement of the NLA escalator barrel. 3 calendar days of float was lost in the period.								PM Comments Financial Issues and Risks: Assign Notes to: houston, sam A cost-loaded, integrated Level 2 programme to support the Recovery Programme was presented to LUL by MRSSL. Preliminary assessment indicates that there is still a great deal of work that needs to be completed on this programme to demonstrate full confidence in the Recovery Programme.																																																																																																																																							

☒ Send an eMail notification to the Assigned User?

Add Note
Save Note

☐ Tick this box if you wish to report a Critical Project Issue

☒ Send an eMail notification to the Assigned User?

Add Note
Save Note

Figure 3.8 - Earned Value Grid and Commentary

The MPD Web Application allows setup and monitoring of interfaces between different projects. Reports are available to show variances as project dates change. An example of the interface setup screen is shown below.

Figure 3.9 - Interface Setup Screen

Figure 3.9 - Interface Setup Screen

4 Finding Help / Glossary

4.1 Finding Help

In addition to the Help tab found on the MPD web page you may direct queries to **MPDAdmin@.tube.tfl.gov.uk**.

4.2 Glossary

As attached in Appendix 1 – Glossary.

Appendix 1 – Glossary

4.2.1 Glossary of Terms and Abbreviations

Refer also the LU Intranet for standard abbreviations and the LU “Jargon Buster”.

Term	Abbreviation	Description
Active Project Programme		An Active Project Programme is a representation of a project that has commenced. It is a detailed programme representing the total scope and budget for the programme
Actual Cost	AC	The actual costs incurred in accomplishing the work performed to the data date
AMP Codes		Codes used to report a consistent asset structure for projects in the MPD. Comprises a standard of 10 flat codes
Annual Asset Management Plan	AAMP	A contractually defined document supplied by each Infracore on an annual basis listing management strategy and scope for the coming year
Baseline Programme		The Project Programme that the MPD uses as the basis for analysing and reporting the project progress. By default the project baseline date for reporting is taken to be the first accepted submission period of the project in the MPD. Thereafter, MPD Data Suppliers may request any current period submission period as the reporting baseline by formally advising MPD Admin
Budget at Completion	BAC	The total budget for achieving the project scope of work
CIP Codes	CIP	A hierarchical set of codes used to define funding and deliverables listed in the TfL 5 year Investment Programme
Complete Project Programme		A project programme which has all activities marked as 100% complete and no remaining budget on any Planning Packages; representing the fact that there will be no further progress or updates on this piece of work

Term	Abbreviation	Description
Contractual/Delivery Milestones	CM	Contractual/Delivery Milestones represent the latest completion dates or latest implementation dates for objectives such as station modernisation, station refurbishment and line upgrades
Cost Performance Index	CPI	This is an indicator of cost efficiency. It is calculated as a ratio of Earned Value to Actual Cost ($CPI = EV/AC$). Above 1.0 is good, below 1.0 is bad. It is often used to predict the magnitude of a possible cost overrun
Cost Variance	CV	A measure of the cost performance of a project. It is the difference between Earned Value and Actual Cost ($CV = EV - AC$). A positive value Indicates a favourable position and a negative value indicates an unfavourable position
Data Date		The date up to which progress data are recorded on the project. The Data Date of the projects imported to the MPD shall be the first day of the period following the submission period
Discontinued Project Programme		A project which has been completely removed from MPD reporting and the submitted Primavera file has been archived
Earned Value	EV	Value of work completed expressed in terms of budget assigned to that work. EV is calculated as the Physical Percent Complete multiplied by Budget at Completion
Enterprise Project Structure	EPS	The Enterprise Project Structure is a hierarchical structure of projects which allows individual project teams to manage their projects separately and allows projects to be rolled up or summarised to any node of the EPS
FBS Codes	FBS	The Infracore Financial Breakdown Structure recorded in the MPD used to represent used to represent their assets
Estimate at Completion	EAC	The estimated cost of completing all of the project scope
Gantt Charts		A graphical display of a project's schedule information or the order in which the activities occur over the course of the project

Term	Abbreviation	Description
Global Activities Codes		A code that may be assigned to activities in order to communicate an important attribute. Global Activity Codes are defined at Enterprise level and are therefore accessible to all projects in the MPD. The MPD uses several types of Global Activity Codes which must be used by all MPD Data Suppliers. See also Project Activity Codes
Good Industry Practice		As stated in the Infraco Service Contract, Master Definition Agreement, and the Infraco Service Contract, Schedule 1.9, Annex 2, Guidance to the Statutory Arbitrator, paragraph 6.5
Infraco Service Contract	ISC	A contract between an Infraco and London Underground
Infracos Also 'Infrastructure Companies'		The consortia of private companies forming the Public Private Partnership (PPP) with LU; namely Metronet Rail BCV Limited, Metronet Rail SSL Limited and Tube Lines Limited
Initial Project Programme		A representation of a project that is planned to start within the forthcoming 13 periods and contains as a minimum a single activity for the project and all activities that require LU or OTP resources
Interface		Activity or Milestone where an organisation has identified a dependency on, or expectation of another organisation to perform work or supply a deliverable required for completion of the overall project
Interface Management		Co-ordination of works; Projects and/or Programmes
London Underground Network (or "the Underground Network")		All operational and supporting assets which make up the London Underground railway
Master Project Programme	MPP	A non-financial programme view of all projects in the MPD available in a Primavera Enterprise environment at the end of each submission period used to analyse the past as it relates to the future across the Enterprise. The Master Programme comprises 3 levels of detail, project, lifecycle and planning package

Term	Abbreviation	Description
Master Project List	MPL	The agreed list of all projects that a MPD Data Supplier will issue to the MPD, visible on the MPD website
Milestone		A scheduled event that signifies the completion of a major deliverable or a set of deliverables. Milestones have a duration of zero and no effort; i.e., no work is associated with a Milestone
MPD Data Suppliers		Groups, companies or individuals supplying data to the MPD, i.e. LU, Infracos, PFIs and Other Third Parties (OTPs)
MPD Milestones		A set of 9 agreed Milestone Codes which, when assigned to activities in MPD Data Supplier projects, are used to track key Milestones and provide visibility and performance analysis across the business
MPD Reports		A suite of reports produced using summary data for all (eligible) projects in the MPD. These reports are produced at the Enterprise, Organisation, Portfolio and Project level at the end of each reporting cycle
MPD Users		Groups or companies accessing MPD data via the MPD Web Application
Non-UIP		Projects within the MPD that are not Underground Initiative Projects (UIP projects)
Other Third Party	OTP	Any group other than LU, Infracos and PFIs involved in undertaking work on the Underground Network
P3e/Primavera Enterprise		Primavera Project Management Planning and Control software which is the primary user interface for project programme data input into the MPD

Term	Abbreviation	Description
PFI Contractor	PFI	The consortia formed under the Government's Private Finance Initiative (PFI) Scheme, formed to upgrade and replace key LU network-wide assets while maintaining ongoing support and maintenance to LU operations. Specifically, the PFI MPD Data Suppliers are Power PFI and Connect PFI
Period	P	LU Financial calendar is based on a 28 day (4 weekly) reporting cycle known as a period
Physical Percent Complete	PPC	This is a measure of progress. It is the MPD Data Suppliers' assessment of the completeness of an activity
Planned Value		Planned Value is the cumulative total value of budget, at any point in time, as per the project programme baseline
Planning Package	PP	A group of activities that need to be performed to achieve a deliverable, and summarises the time frame, budget, actual costs and physical percent complete data of the group. The MPD uses Planning Packages as the basis for producing Earned Value reports
Portfolio Baselines		The frozen planned data of certain groups of Portfolios are set as baselines in the MPD for reporting purposes
Project Activity Codes		A project-specific code that may be assigned to activities in order to communicate an important attribute. Project activity codes are created by the individual project teams and defined at project level, and are therefore accessible only to that project and not enterprise-wide. See also Global Activity Codes
Project Baselines		A project level Baseline Programme used for reporting purposes (see Baseline Programme)
Project Category		Identifies project programme category in the MPD, i.e. Proposed, Initial, Active, or Closed
Project Milestones		Activities codes as Milestones by an MPD Supplier are used to represent the completion of a major deliverable or set of related deliverables

Term	Abbreviation	Description
Project Programme		A representation of a project, specifically the project data that is stored in the MPD; Project Programme may be Proposed, Initial, Active, complete or Discontinued
Project Status		The definition of a project within the MPD determined by the range of its activities in relation to the Data Date; Project status is determined by the validation process
Proposed Project Programme		A representation of a project that is planned to start after the forthcoming 13 periods and is used to identify Capital projects planned to be undertaken in accordance with the AAMP documents
SAP	SAP	Integrated Finance and Business Management solution used by TfL to co-ordinate Financials, Accounting, Banking, HR etc
Schedule Performance Index	SPI	Indicates how far behind or ahead of the programme the project is (in terms of the value of work accomplished). It is calculated as a ratio of Earned Value to Planned Value ($SPI = EV/PV$). An index greater than 1.0 is good, an index below 1.0 is bad
Schedule Variance	SV	A measure of the schedule performance on a programme. It is the difference between Earned Value and Planned Value ($SV = EV - PV$). A positive value indicates a favourable position and a negative position indicates an unfavourable position

UIP	UIP	Underground Investment Programme
Variation Order	VO	The commercial documents covering requests for PPP partners to get PFI organisations to do work. The MPD holds records of each VO to show where an interface describes this work
Work Breakdown Structure	WBS	The Work Breakdown Structure is a hierarchical arrangement of scope ranging from the highest level of management deliverable or asset groups to detailed task-based activities that are to be carried out during the delivery of the project

SCHEDULE 15

Access Arrangements

ACCESS ARRANGEMENTS

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2. Application to Work Form
3. Indicative Timescales for the Publication of Notices
4. Access Subcategories
5. Network Rail Interface Locations

1. DEFINITIONS

Accepted Access Plan is the latest Access Plan accepted by the Contract Manager and the Access Manager and which supersedes previous Accepted Access Plans.

Access Manager: The person designated by the Head of Access as the manager for access requests for the Services and who will act as the single point of contact for all access related matters.

Access Plan: The access plan prepared by the Contractor in accordance with the Access Plan Template.

Access Plan Template: The template provided as Appendix 1 to this Schedule 15.

Access Subcategories has the meaning given in paragraph 1.9 of section 6 of this Schedule 18.

Access Visualisation Tool: Provides a graphical overlay on a London Underground 'Harry Beck' map of planned and booked work for a user specified area (Track / Stations) for a user specified time period.

Applicant: [The Contractor] [The Contract Manager]¹⁴

Application to Work Form means the form contained in Appendix 2 to this Schedule 15.

Bank Holiday” means a recognised UK Bank Holiday excluding Christmas and New Year Bank Holidays, which are more particularly defined below. Start and end times as per definition for “Sunday” stated above.

Christmas and New Year Bank Holidays” means the 25 December, 26 December and 01 January within each year. For the avoidance of doubt, each day is deemed to commence at the start of Engineering Hours with the previous Traffic Hours shift paid at the rate applicable for the day in question

Emergency Access has the meaning given in paragraph 1.5 of section 6 of this Schedule 15.

Engineering Hours: This term applies to the running line and is described as being when traction current is switched off (as published in the Guide to Switching Current On and Off subject to variance as published in an Engineering Notice) and trains are not running (ref [LU Rule Book](#) 17 for the definition of Engineering Hours).

Engineering Notice: A publication produced and circulated within LUL at short notice containing details of engineering works, special current arrangements, engineers' possessions and engineers' trains and similar activities not included in the Traffic Circular.

Engineering Notice Look Ahead: A draft publication produced and circulated by LUL providing a week-view of items that, at that time, are planned to be published on the Engineering Notice for a specific shift.

Exclusive Access has the meaning given in paragraph 1.4 of section 6 of this Schedule 15.

General Access has the meaning given in paragraph 1.1 of section 6 of this Schedule 15.

¹⁴ Delete as applicable

Head of Access: The person responsible for managing access to the LUL infrastructure for the Services. This role includes but is not limited to the responsibility for the publication of safety documentation.

Incident Officer: The senior LUL operating officer responsible for managing an incident.

L&E Closures has the meaning given in paragraph 1.8 of section 6 of this Schedule 18.

Latest Request Date: The last date an access request can be made in line with a given timescale.

Local Station Access Arrangement Reference Files: The files published by the Head of Access detailing where works may potentially be undertaken on LUL Stations in Traffic Hours including details of possible locations for the storage of materials and equipment and LUL Station opening and closing hours.

LUL Rule Book: The rule books covering the operation of trains and LUL Stations and accessing the Track.

Major Closure: has the meaning given in paragraph 1.6 of section 6 of this Schedule 15.

Minor Closure: has the meaning given in paragraph 1.7 of section 6 of this Schedule 15.

Monday to Friday means the time from start of Traffic Hours on Monday morning to the time at the end of Engineering Hours on Friday night/ Saturday morning.

Network Rail Network Rail Infrastructure Limited company nr 02904587.

Network Rail Interface Locations means locations on the LU Network where Network Rail infrastructure interfaces with LU infrastructure including but not limited to the location identified in Appendix 5.

Nightly Engineering Protection Arrangements (NEPA): A publication produced and circulated within LUL at short notice containing details of safety related material for engineering services and engineer's trains and vehicles.

Night Tube means the provision of a 24 hour revenue service commencing from the Night Tube Start Date.

Night Tube Start Date means [DATE]

Night Tube Running Period means nominally the period between 21:00hrs Friday night and 06:00hrs Sunday morning.

Night Tube Sections means the sections of the Underground Network which provide Night Tube. The applicable sections of the Underground Network are:

- (a) The Central Line route between and including Hainault, Loughton and Ealing Broadway Stations (no Night Tube outside of this route)
- (b) The Jubilee Line entire network
- (c) The Northern Line route between and including High Barnet, Edgware and Morden Stations via the Charring Cross Branch (no Night Tube outside of this route)

- (d) The Piccadilly Line route between and including Cockfosters and Heathrow Terminal 5 Stations (no Night Tube outside of this route)
- (e) The Victoria Line entire network.

Non-Restrictive/Exclusive Access has the meaning given in paragraph 1.2 of section 6 of this Schedule 15.

Operational Managers: Are Group Station Managers and Train Operations Managers.

Operational Assurance: An Operational Assurance Notification made to LUL in accordance with the requirements of Standard 1-538 (Assurance).

Others are people or organisations who are not LUL, the Infracos, the Contract Manager, the Contractor or any employee, subcontractor or supplier of the Contractor.

Possession Meeting: A meeting to discuss the viability of a proposed Track possession.

Pre-Closure Request Meeting: A meeting to discuss the viability of a proposed closure request.

Published means in respect of Restrictive and Exclusive Track access, the works need to be notified in the Engineering Look Ahead Notice, the Engineering Notice and the Nightly Engineering Protection Arrangements (NEPA) Notice. For Restrictive and Exclusive Stations access published means the works need to be notified in the Station Works Plan.

Restrictive Access has the meaning given in paragraph 1.3 of section 6 of this Schedule 15.

SABRE: (Site Access Booking for Railway Engineering) The system used to plan access, and any system that may supersede it at any time in the future.

Saturday' means the time from start of Traffic Hours on Saturday morning to the time at the end of Engineering Hours on Saturday night/Sunday morning.

Station Works Plan: The general access requests; planned works weekly and planned daily publications circulated by LUL detailing the access arrangements for works planned to be undertaken at all stations.

Stations: Areas to which LUL Rule Book 10 applies including buildings, equipment or facilities designed to be used by customers to access or leave a train.

Sunday means the time from start of Traffic Hours on Sunday morning to the time at the end of Engineering Hours on Sunday night/Monday morning.

Track: Areas to which LUL Rule Book 17 applies including track, tunnels, embankments and other line side infrastructure.

Traffic Circular: The weekly Traffic Circular which contains diverse information such as, infrastructure changes, train service changes, events affecting LUL, notification of restrictions to LU operations and operational communications.

Traffic Hours: This term applies to the running line and is described as being when traction current is switched on (as published in the Guide to Switching Current On and Off subject to variance as published in an Engineering Notice) and trains are running (ref [LU Rule Book 17](#))

for the definition of Traffic Hours).

TransPlant Agreement: the contract for the provision of services for the period 1 January 2013 to 31 March 2018 in respect of which the prevailing plant charges are set out in Appendix [17.11].

Work Request: Work Request e-Form provided on LUL's access booking portal and which is completed by the Contractor to reflect the Access Plan and requirements for plant and equipment and specialist protection.

Working Time: a period of agreed access (including closures) in either Traffic or Engineering Hours.

2. GENERAL OBLIGATIONS

1. The Contractor shall comply with its obligations under this Schedule 15.
2. The Contractor shall be responsible for supplying to the Contract Manager and the Access Manager all such information and taking all such steps as may be necessary to enable the Contract Manager to obtain where applicable Operational Assurance in respect of the access required by the Contractor.
3. The Parties agree that:
 - 3.1 the dates and times of any access approved may be cancelled, altered or delayed on notice (or no notice in the case of an emergency or for safety reasons). Alternative arrangements shall be made as soon as the Contract Manager and Access Manager can permit;
 - 3.2 neither Party shall have any claim against the other as a consequence of such cancellation, alteration or delay; and
 - 3.3 the Contractor shall as soon as practicable take all reasonable steps necessary to avoid, overcome or minimise the effect of such cancellation, alteration or delay.
4. For access to Network Rail and/or train operating companies' infrastructure and Stations, the Contractor is solely responsible for securing access. The Contractor shall make all necessary arrangements directly with Network Rail and/or train operating companies and shall comply with all their rules and regulations.
5. For Access, following a request to the Contractor from the Contract Manager's fault reporting centre for a part or all of the Services, the Contractor shall apply for access in accordance with the requirements of this Schedule 15.
6. LUL shall have no responsibility to the Contractor, and the Contractor shall hold LUL harmless against any losses that may arise out of any failure by the Contractor to comply with this Schedule 15.

3. THE ACCESS PLAN

1. The Contractor prepares an Access Plan with the objective to maximise the efficient use of the available working time and takes account of the following in the access planning process:
 - the information provided in the Local Station Access Arrangement Reference Files (the use of any potential storage areas identified by the Local Station Access Arrangement Reference Files remains subject to the Contractor obtaining the appropriate storage licences);
 - if the Services can be carried out in Traffic Hours and constructs the Access Plan to achieve the optimisation of working time;
 - the minimisation of the number and duration of closures;
 - the utilisation and extension of existing planned closures;
 - the hours/shifts/days in the week required to be worked in order to comply with the Contract Programme;
 - the timescales for booking access and closures as defined in this Schedule 15;
 - the sharing of access with Others and the minimisation of disruption of the work of Others;
 - if the productivity of Engineering Hours working can be increased, safely, by completing the clearance of workers, materials tools and equipment tools in Traffic Hours and supports plans with method statements detailing appropriate measures for the protection of the public;
 - the maximisation of working time during Engineering Hours when accessing the Track through a Station (where it is safe to do so, all persons, plant and equipment may be positioned within the Station ready to access the Track immediately on confirmation of traction current being turned off);
 - a minimum call back time of 20 (twenty) minutes for Track access before the expiry of each shift of Engineering Hours (to allow for the safe removal of all workers, materials, tools, equipment and the like) unless a shorter period is agreed by the Contract Manager;
 - any limitation on Engineering Hours specific to the Services as may be specified by the Contract Manager ; and
 - the time required for the Contractor to ensure the site is left clean and safe;
 - Night Tube.
2. The Contractor submits an Access Plan to the Contract Manager for acceptance. Within two weeks of the Contractor submitting an Access Plan for acceptance the

Contract Manager either accepts the Access Plan or notifies the Contractor of his reasons for not accepting it. A reason for not accepting an Access Plan is that:

- it is not compatible with the Access Plan Template;
 - it does not take into account the information provided in the Local Station Access Arrangement Reference Files;
 - it does not optimise the working time;
 - it proposes an excessive number or duration of closures;
 - it does not adequately make use of existing planned closures;
 - it is not compatible with the Contract Programme;
 - it does not comply with the timescales for booking access and closures as set out in this Schedule 15;
 - it assumes the use of an existing closure for which an Application to Work Form has not been approved by the Access Manager;
 - it assumes an extension to an existing planned closure which has not had the prior approval of the Access Manager;
 - requests an access or closure type which is not appropriate for the Services;
 - it does not adequately provide for the work of Others;
 - it does not maximise the use of available access;
 - it does not allow for minimum call back periods or other working constraints detailed by the Contract Manager;
 - it does not provide as a minimum all the information provided in the Access Plan Template;
 - it does not allow sufficient time for the site as a whole to be left clean and safe;
 - it does not allow for the operation of Night Tube.
3. The Contractor submits a revised Access Plan for acceptance in the following circumstances:
- if the Accepted Access Plan is no longer applicable in all the circumstances;
 - when a change is required to align with the Contract Programme; and
 - within the period for reply after the Contract Manager has instructed the Contractor to do so. For the avoidance of doubt such instruction does not constitute a Variation or entitle the Contractor to apply for an extension of time.
4. Should the Contractor need to work hours additional to those stated in the Accepted Access Plan (within the constraint of the maximum working hours available within the booked access types), the Contractor gives at least 5 working days' notice and

obtains the Contract Manager's prior written acceptance.

4. BOOKING AND ARRANGING ACCESS

1. The Contractor books and co-ordinates access to the Premises with the Access Manager in accordance with the Work Request/SABRE process and the accepted Access Plan. The Contractor accepts that access to the Premises will be refused without a valid SABRE number and the Contractor checks that it is in possession of a valid SABRE number for all access requirements detailed on the accepted Access Plan. If the Contractor is not in possession of the same it advises the Contract Manager accordingly.
2. The Contractor complies with the requirements of the use of LUCAS (London Underground Combined Access System) and Sentinel (Network Rail's Access and Competency System), particularly in the context of access control at the point of site entry. The Contractor shall note that individuals will be refused access to Sites without a valid LUCAS or Sentinel Card.

Note LUL is phasing out the use of LUCAS cards and is adopting Sentinel as a replacement access and competency control system. On expiry of existing LUCAS cards the Contractor shall sponsor its personnel required to work on LUL infrastructure to obtain replacement Sentinel cards if they are not already a Sentinel card holder.

3. Training, Certificates, Identity Cards and Entry Permits

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

The Standards, and in particular QUENSH and the Rule Book(s) set out the training and certifications required to be met by the Contractor.

- 3.2 Not used

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

- 3.4 The Contractor allows a minimum of 28 days notice period for all LUL provided training and certification courses. This must be included on the programme for acceptance. Any time period less than this cannot be guaranteed, and although efforts may be made to facilitate wherever possible, the Contractor does not rely on such reduced time periods being accommodated.

- 3.5 At the starting date of the Contract, the Contractor must produce a competency matrix for all Contractor's staff or personnel involved in providing the Services detailing the training, certification and other competency information held on record. The Contractor updates the matrix throughout the Contract duration maintaining current records and make available on request of the Contract Manager.

4. **London Underground Access control**

4.1 LUCAS (London Underground Combined Access System) Smartcards will not be issued after 01/04/2015. Unexpired cards issued before this date remain valid until they expire or by further notification from LUL.

4.2 All Contractor personnel require either

- A valid LUCAS smartcard OR
- A Sentinel smartcard endorsed with the Industry Common Induction (ICI) competence plus the LU-ICI endorsement

in order to access the site and carry out works on London Underground operational infrastructure.

4.3 The Contractor registers to become a Sentinel Sponsor via the Rail Industry Supplier Qualification Scheme (RISQS). Further details can be found at the following Achilles website address (Achilles administer the Scheme on the behalf of RISQS).

http://www.achilles.com/en/?option=com_content&view=article&id=285.

4.4 All Sponsors and Sponsored individuals must abide by the Sentinel Scheme Rules, the latest version of these can be found at the following Sentinel website address:

<https://www.railsentinel.co.uk/Content/Downloads/SentinelSchemeRules.pdf>

4.5 The Smartcard is specific to an individual and is not transferable.

4.6 The Contractor's personnel carry their Smartcard at all times when working on operational underground network property and present them to any authorised representative of LUL for inspection when requested to do so. Failure to produce a valid Smartcard, or requisite certification, for inspection may result in the individual being instructed to leave site. A Smartcard is not required when working solely on non-operational underground network property.

4.7 The Smartcard does not entitle the Contractor's staff or personnel to any benefits other than permitting access to the site for the purpose of carrying out works during the agreed hours of work. The LUCAS Smartcard remains the property of the Employer and is required to be returned immediately upon request.

4.8 Details of required courses and medicals are detailed in QUENSH.

4.9 Exceptions to the Smartcard process;

8. For certain exceptional access circumstances it may not always be practical or cost effective to enrol the suppliers or Others onto the Sentinel Scheme.

9. Such scenarios whereby temporary LUA-LU paper certificates are issued would be;

- Specialised contractors requiring limited access

- Survey work requiring limited access

If the Contract Manager decides to permit exceptional access to site or working areas, the Contractor must obtain the Contract Manager's written acceptance regarding the personnel and work activities prior to commencement on site.

- 4.10 Any person attempting to gain access to the site or working areas who is not in possession of a valid LUCAS or Sentinel Smartcard is treated as a visitor. All visitors, except for authorised collection or delivery drivers, are escorted or supervised at all times by an authorised member of staff whilst on site.

The Contractor maintains a register of all visitors including:-

- Name;
- Employer;
- Nature of business / persons being visited;
- Time in;
- Time out;
- Supervisor/escort name including signature.

The Contractor provides a health and safety site briefing to the visitor who signs a form to confirm that they have received the briefing and understand the site rules and their respective responsibilities as a visitor.

The Contractor issues the visitor a temporary pass that is valid for a maximum 24 hours and the expiry date and time is clearly indicated.

The Contractor ensures the temporary pass is returned when the visitor leaves the site and that a list of lost any passes is maintained.

Lost electronic visitor passes are de-activated immediately on the Contractor being made aware of the loss.

5. **London Underground – Access Control**

- 5.1 When booking in and out of the site, the Contractor's staff and personnel report in, record entry and exit, and present their Smartcards when and where required, in accordance with the local access control arrangements.
- 5.2 Where a Smartcard reader is installed on site as part of the local access control arrangements, then all Contractor staff and personnel as a mandatory requirement swipe their Smartcard on entry and egress from the site. Any individuals found on site where such a card-reading system is in place who have not followed such a procedure may be instructed to leave site for the duration of the associated shift, regardless of whether they may hold the appropriate Smartcard. LUL takes no responsibility for any abortive costs or impact to schedule of any such instruction to any member of the Contractor's staff under such circumstances.
- 5.3 If the Contractor wishes to make a change to the Contractor's requirements for access after it has been approved by the Contract Manager and Access Manager,

the Contractor shall submit written request of such change and a revised programme and Access Plan to the Contract Manager and Access Manager confirming any and all revised access requirements.

5. CLASH CHECKING

1. The Contractor shall be responsible for checking for clashes (Clash Checking) in respect of access booked by Others and the Contract Manager in respect of which the Contract Manager has provided the Contractor with the Access Visualisation Tool. The Contractor shall also monitor the following publications:
 - (a) Engineering Look Ahead Notice
 - (b) Engineering Notice
 - (c) Nightly Engineering Protection Arrangements (NEPA)
 - (d) Traffic Circular
 - (e) Station Works Plan
2. In the event of clashes the Contractor shall notify the Contract Manager and where instructed submit a revised Access Plan for acceptance. The indicative publication timescales (in advance of proposed works) for the above notices are as provided in Appendix 3.
3. Clash Checking is a condition precedent in respect of any entitlement to apply for relief.
4. In the event that the Contractor attends the site and access is not provided by LUL in accordance with the Accepted Access Plan the Contractor shall complete the Cancelled or Delayed/Curtailed Access Form.
5. Clash Checking, the completion of a Cancelled or Delayed/Curtailed Access Form in full (including the obtaining of all necessary signatures) and the identification of the period access in question on the Accepted Access Plan (with the relevant SABRE number) are all condition precedents in respect of any entitlement to apply for a compensation event/claim.

6. TYPES OF ACCESS

1. Summarised below are the types of access that the Contractor's Access Plan shall be based upon. In preparing the Access Plan the Contractor selects the type of access required for the works. The Contractor consults with the Access Manager as to the appropriateness of the selection as set out in the Access Plan. The Access Manager's decision as to the types of access and closures which can be used in the formulation of the Access Plan is final and binding.

1.1 General Access

General Access is a category of access for undertaking non-exclusive/non-restrictive works on the Underground Network, using all necessary tools and equipment. It is valid for both Station and Track. SABRE numbers may be valid for up to a whole financial year, but can also be issued for shorter time periods to suit work demands.

General Access may be applied for to cover large areas of the Underground Network, for example whole lines, or for more discreet locations or worksites to suit work demands. The Contractor may apply for a number of General Access SABRE numbers, but the Access Manager will aim to limit the proliferation of General Access SABRE numbers for the same or similar work teams, projects, or areas etc.

General Access does not need to be Published.

1.2 Non-Restrictive/Exclusive Access

Non-Restrictive/Exclusive Access is a category of access for undertaking non-restrictive and non-exclusive works on the Underground Network, using all necessary tools and equipment. It is valid for both Station and Track.

The Contractor clearly defines the area covered by a Non-Restrictive/Exclusive Access request and limits the area to the minimum required to deliver the Services.

Non-Restrictive/Exclusive Access does not need to be Published.

1.3 Restrictive Access

Restrictive Access and is a category of access that places a restriction on what can take place within a particular worksite and where the restriction will apply to all parties attempting to work that particular shift.

The Contractor demonstrates that this is the most appropriate form of access and takes account of the impact that the granting of Restrictive Access would have on the network and other work streams. Restrictive Access will not typically be permitted to cover a protracted number of shifts or consecutive shifts, across the same geographical area.

The Contractor clearly defines the area covered by a Restrictive Access request and restricts the area to the minimum required to deliver the works and avoids unduly impeding the works of Others.

Restrictive Access will need to be Published.

1.4 Exclusive Access

Exclusive Access is a category of access that prohibits any party not directly involved in the works (for which Exclusive Access has been booked) from working in that worksite.

The Contractor demonstrates that this is the most appropriate form of access and takes account of the impact that granting Exclusive Access would have on the Underground Network and other work streams. Exclusive Access will not typically be permitted to cover a protracted number of shifts or consecutive shifts, across the same geographical area.

The Contractor clearly defines the area covered by an Exclusive Access request and restricts it to the minimum area required to deliver the works and to avoid unduly impeding the works of others.

Exclusive Access will need to be Published.

1.5 Emergency Access

Emergency Access is access required to deal with an Incident as defined in the Rule Book, or is required to rectify the failure of an asset which, if not rectified, would have a material adverse impact on passenger services for the following day. Emergency Access takes precedence over any other booking or request as directed by the Incident Officer.

1.6 Major Closures

A Major Closure can be classified as any planned disruptive work which results in any LU service being unavailable between 0600 and 2100 on a weekday (excluding Bank Holidays).

1.7 Minor Closures

A Minor Closure can be classified as any planned disruptive work, apart from L&E Closures (defined below) which results in any LUL services being unavailable outside the hours of 0600 and 2100 on a weekday (excluding Bank Holidays or at any other time at Weekends and Bank Holidays (including the Night Tube Period for work with the Night Tube Sections) .

1.8 L&E Closures

Lift & Escalator Closures are closures of lifts, escalators, travelators, fixed stairways, routeways or cross-passageways which can be accommodated without requiring a Station or platform to be closed. The Contractor will liaise with the Access Manager to review the impact of the requested L&E Closure in the context of any other concurrent Underground Network closures. The Contract Manager may also participate in such liaison.

1.9 Access Subcategories

Within the above access types there are a number of access subcategories which are used in the booking system. The subcategories are detailed in Appendix 4 hereto and a description of the typical work to which they apply, such as track possession, is also provided in order to assist the Contractor in identifying the type of

access applicable to particular works.

7. CLOSURE REQUESTS PROCESS

1. For all closure requests the Contractor attends a Pre-Closure Request Meeting or Possession Meeting with the Access Manager before a Work Request is submitted by the Contractor for approval. The Contract Manager may attend such Meetings.
2. Where the Contract Manager and Contractor agree a proposed closure has business justification the Contractor confirms with the Access Manager the acceptability of the proposed closure. Where the Access Manager confirms that the proposed closure dates are not acceptable the Contractor will liaise with the Access Manager to identify alternative closures that are as near as possible and equivalent to, the closures originally proposed by the Contractor. The Contract Manager may also participate in such liaison. The Access Manager's decision as to acceptability of a proposed closure or proposed alternative closures is final and binding.
3. The Access Manager may reject proposed closures on, including (without limitation) the grounds that if granted it would unduly limit journey opportunities. By way of guidance, and without limitation, examples of such a limitation of journey opportunities would be:
 - a closure of a central London Station during a seasonal event;
 - a closure of key Station for access to a popular one-off event during the period of the event;
 - a closure of a key branch for access to airport terminals during a peak travel weekend; or
 - a closure on a part of a line when there is a concurrent closure on the only alternate line during an abnormally busy period.

Similarly a closure request may be rejected where it is considered that the level of disruption caused is not justifiable given the nature and the scope of the works.

8. TIMESCALES FOR BOOKING ACCESS AND CLOSURES

1. In preparing an Access Plan the Contractor makes allowance for the minimum booking periods for the applicable access and closure types, as listed in the following table

Type	Applicable to:			
	Station Access	Track Access	Working Time in	
			Engineering Hours	Traffic Hours
General Access Non-Restrictive/ Exclusive Access	Yes (14)	Yes (14)	Yes	Yes
Restrictive Access Exclusive Access	Yes (21)	Yes (56)	Yes	Yes
Major Closures	Yes (540)	Yes (540)	No	Yes
Minor Closure	Yes (222)	Yes (222)	No ⁽ⁱⁱ⁾	Yes
L&E Closure	Yes (90)	N/A	Yes	Yes

Notes:

- i. The above table gives the T- date in brackets by which planning must be completed (the Latest Request Date). The Contractor must allow for sufficient time for adequate access planning.
 - ii. A Minor Closure may be applicable to Engineering Hours if a vehicle is being outstabled. Where no more than two vehicles are being outstabled at any single location the timescale for booking may, subject to the agreement of the Access Manager, be reduced to 90 days.
 - iii. A Closure in respect of a depot or sliding may be required if the proposed works affects the operational railway
2. At specific locations the minimum booking period for Closures stated in the above table may be able to be reduced. Where a reduced period applies this shall be specified by the Contract Manager.
 3. The Contractor plans access as early as possible and in no event applies for access or closures after the Latest Request Date past.
 4. Where access is required to Network Rail infrastructure at the Network Rail Interface Locations the minimum booking period for all access types is [294] days access except for Major Closures which remains unchanged.

9. UTILISING EXISTING CLOSURES

1. The Contractor actively seeks to utilise the LULs existing closure programme to progress the Services. The Contractor may request details of such closure programme from the Contract Manager, to the extent relevant to the provision of the Services.
2. The Contractor identifies all possible opportunities to use LUL's existing closure programme and provides the information necessary to complete the Application to Work Form. The Contractor completes the Application to Work Form and submits this to the Access Manager and the Contract Manager for approval. Such Form shall be submitted a minimum of 15 (fifteen) weeks prior to the relevant closure start date. The Contractor attends the planning meetings for the relevant closure and the Contractor prepares for submission by the Contractor any information as may be requested by the Access Manager as part of this planning process. The Contract Manager may attend such Meetings.
3. The Contractor may also propose an extension to an existing planned closure. The Contract Manager considers the proposal and where the business benefits more than offsets the increased customer disruption, authorises the Contractor to seek endorsement by the Access Manager. The Access Manager determines whether the request should be taken forward as a formal application and advises the Contractor accordingly. Where such application has been approved by the Contract Manager, the Contractor submits an updated Access Plan, to reflect such application, to the Contract Manager for approval. Where such application has been approved by the Contract Manager, the Contractor submits an updated Access Plan, to reflect such application, to the Contract Manager for approval.
4. The Contractor recognises the level of disruption and limitation of journey opportunities which result from closures and where the Contractor plans any change to the scope or type of works to be undertaken under an existing closure, seeks the approval of the Contract Manager accordingly. The Contractor seeks consent for the change from the Access Manager. The Contractor accepts that if the Access Manager or the Contract Manager considers that changes in scope are such that the business benefit of the works to be carried out is no longer commensurate with the disruption caused, that the closure may be cancelled..

Transport for London

London Underground Limited

<Programme>

<Project>

<UIP Code>

<Document Reference>

Access Plan

Lifecycle Stage

<lifecycle stage>

Prepared by		
Manager (LU Accountable Manager / LU Project Manager)	The Access Plan conforms to the template and the information is up to date, reflecting the current state of the project design and requirements for access.	
Name:	Signed:	Date:
Approved by		
LU Access Manager	I confirm that the Access Plan provides sufficient information to agree the access arrangements in principle and no further design details are needed at the current time.	
Name:	Signed:	Date:

Distributed to:

<Name>	<Role>	<Name>	<Role>
<Name>	<Role>	<Name>	<Role>
<Name>	<Role>	<Name>	<Role>
<Name>	<Role>	<Name>	<Role>

Document History

Revision	Date	Summary of changes

MAYOR OF LONDON

Transport for London



Access Plan

1.0 GENERAL INFORMATION

Programme	<Programme>	Document Ref	<Document Reference>
Project Title	<Project>	Project / UIP Code	<UIP Code>
SAP MPD No.		Lifecycle Stage	<lifecycle>
Sponsor		Date	
Proj Man		Prog Man	
email		phone	
Access Man		phone	
email			

2.0 ACCESS LOGISTICS

Applicant	Access Manager
Station ☐	Exclusive ☐
Track ☐	Restrictive ☐
Depot / Sidings ☐	General Access ☐
Veh/Plant ☐	NR / 3rd Party ☐
Protection ☐	
	Vehicles (T/Plant) ☐
	Vehicles (Other) ☐
	Plant ☐
	Possession ☐
	Specialist Resources ☐
	Urg ☐
	App ☐

All planning & works request applications must be complete & submitted days in advance of the Monday of the week access is required

3.0 WORK DESCRIPTION & PHASING

Description of works & particular requirements

Will work be delivered in phases?		Will you need specialist resources?		Will you need a closure?	
How many phases?				L&E Closure	
Further Details Attached		Do you need vehicles / plant / equipment?		Minor Closure	
				Major Closure	

4.0 LOCATIONS

Describe where you will need access (include storage details & access routes if known)

Space Allocation Movement of Materials Storage License Site map(s) attached

5.0 STATION SPECIFIC DETAILS (if applicable)

Station Specific Details:

Station	SID Code	Area Description	Type of Access	Details of Work

6.0 DATES & SHIFTS

Earliest Start Date		Earliest Finish Date		Minimum Duration		Traffic / Opening Hours	
Likely Start Date		Likely Finish Date		Maximum Duration		Engineering / Closed	
Latest Start Date		Latest Finish Date		Contingency		Both	

Describe when you will need access and your preferred shift pattern(s)

Have you considered working during traffic / opening times?		Do you need set-up / clear down time?		Works schedule attached	
		How much time?			

7.0 SPECIALIST PROTECTION (if applicable)

Describe what specialist resources will be required & whether these will be provided by LU / Contractor or a Third Party

8.0 VEHICLES / PLANT / EQUIPMENT (if applicable)

Describe what Vehicles / Plant / Equipment will be required

Describe any access / planning requirements

9.0 ADDITIONAL INFORMATION

Add any other information which may be pertinent to the access requirements here

For details on completion timescales for processing Access Requests, talk to an Access Manager

A resource loaded schedule of work is to be attached when the form is submitted for final approval & processing

Appendix 2: Application to Work Form

Multi-Worksite Possession Team Application to Work Form						
Date of Application			Week No.		Equivalent Engineering hours shifts	
Date of Possession			Week No.			
Responsible manager for work	Name					
	Organisation				Cost Centre	
	Contact number				E mail:	
Scope of work: Brief Description						
Chainage	Line(s) Affected	Times Reqd.		Limits		
Worksite Location Lines Affected Including EB – WB – IR – OR – NB – SB Limits 1 No. Form For Each Respective Worksite						
Is it Possible to Pass Engineering Trains through your worksite. Ensure all information is correctly entered.		Yes If Yes, how much notice reqd. to clear site			No If No, enter justification below	
Engineering Trains						
Are Engineering trains working in your worksite		Yes		If Yes, how many and which type:		
		No				
Road Rail Vehicles (RRVs)						
Are EHs Possessions required to Outstable RRVs prior to Closure		Yes		Are EHs Possession required to return RRVs following Closure		Yes
		No				No
Comments						
On Track Plant / machinery						
Are any On Track Plant / machinery Working in your worksite		Yes		If yes ensure you enter all information correctly in the respective boxes below		
		No				
Line(s) Affected		Access		Egress		
Resources						
Are any specific resources required for your worksite		Yes		If yes ensure you enter all information correctly in the respective boxes below		
		No				
Are all staff on site Track Accustomed certificated?		Yes		If no ensure, adequate time is allocated to clear line(s) of all non cert. staff to allow passage of Engineering train if applicable		
		No				
Anticipated No of staff in worksite						
Control measures for access to worksite						
Is station Access required		Yes No				
Worksite Notification: Date Worksite Notification accessible for review.						

Appendix 3: Indicative Timescales for the Publication of Notices

						Monday	T - 4 weeks
						Tuesday	
						Wednesday	
						Thursday	
					Closing date for draft ELAN	Friday	
						Saturday	
						Sunday	
						Monday	T - 3 weeks
						Tuesday	
						Wednesday	
					Draft ELAN published for requesters comments	Thursday	
						Friday	
						Saturday	
						Sunday	
						Monday	T - 2 weeks
					Closing date for Final ELAN comments 17:00hrs	Tuesday	
						Wednesday	
						Thursday	
						Friday	
						Saturday	
						Sunday	
						Monday	T - 1 week
						Tuesday	
						Wednesday	
						Thursday	
						Friday	
						Saturday	
						Sunday	
						Monday	T - 1 week
						Tuesday	
				Publication deadline for changes. EN and NEPA	Final ELAN Published	Wednesday	
			Publication deadline for changes. EN and NEPA			Thursday	
		Publication deadline for changes. EN and NEPA				Friday	
						Saturday	
						Sunday	
	Publication deadline for changes. EN and NEPA				Planned work due to start - EN / NEPA published by 15:00hrs	Monday	Work due this week
Publication deadline for changes. EN and NEPA			Planned work due to start - EN / NEPA published by 15:00hrs		Planned work, anytime this week	Tuesday	
		Planned work due to start - EN / NEPA published by 15:00hrs				Wednesday	
	Planned work due to start - EN / NEPA published by 15:00hrs					Thursday	
Planned work due to start - Engineering Notice / NEPA published by 15:00hrs on Friday						Friday	
						Saturday	
						Sunday	

Notes

ELAN = Engineering Look Ahead Notice

EN = Engineering Notice

NEPA = Nightly Engineering Protection Arrangements

Appendix 4: Access Subcategories

Station works			
Access Type	Booking Description	Days	Work Type Description
General Access	General Access (non Track)	14	For undertaking the majority of everyday access needs, using relevant tools and materials. Not to be used for works that imposes a restrictive or exclusive requirement on other access users.
Non Restrictive/ Exclusive Access	Non Restrictive/ Exclusive Access (non Track)	14	For undertaking everyday access needs, using relevant tools and materials within a defined area
Restrictive Access (	Restrictive - Asbestos Premises	56	Only issued to specialist Asbestos contractors registered with LU for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
	Restrictive - Bright Lights	56	For where access introduces the use of additional lighting that could potential impact other access users. Rarely applied.
	Restrictive - Closure Area	56	To define an area of a station subject to a Closure (i.e. taken out of service for the purposes of engineering works).
	Restrictive - Movement of Materials	56	For where access necessitates the movement of materials either through a station that may impact on other access users. May include craning over of materials.
	Restrictive - Noisy Works	56	For where access will result in particularly noisy works that may have an impact on other access users.
	Restrictive - Plant / Chemicals in a confined space	56	For where access introduces the use of plant and chemicals in a confined space . Rarely used.
	Restrictive - Power Cessation- Power Outages Possible	56	For where access will introduce a cessation of power that may impact other access users (e.g. need for temporary supplies/portable lighting).
Exclusive Access	Exclusive – Asbestos Exclusion Zone	56	Only issued to specialist Asbestos contractors registered with LU for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.

Track			
Booking Description	Booking Description	Booking Description	Booking Description
General Access (Non Exclusive/ Non-Restrictive)	General Access (Track)	14	For undertaking the majority of everyday access needs, using relevant tools and materials. Not to be used for works that imposes a restrictive or exclusive requirement on other access users.
Non Restrictive/ Exclusive Access	Non Restrictive/ Exclusive Access (Track)	14	For undertaking everyday access needs, using relevant tools and materials within a defined area
Restrictive	Restrictive - Allied Track	56	To define an area of track used in conjunction with, or subject to impact from, another access booking e.g. unloading of materials from a train booked under an Exclusive Specified Area.
	Restrictive - Asbestos Premises	56	Only issued to specialist Asbestos contractors registered with LU for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
	Restrictive - Bright Lights	56	For where access introduces the use of additional lighting that could potential impact other access users. Rarely applied.
	Restrictive - Closure Area	56	To define an area of the LU railway subject to a Closure (i.e. taken out of service for the purposes of engineering works).
	Restrictive - Motorised Trolley	56	For the operation of a motorised track trolley on the railway.
	Restrictive - Movement of Materials	56	For where access necessitates the movement of materials either on, over or adjacent to the LU railway that may impact on other access users. May include craning over of materials.
	Restrictive - Noisy Works	56	For where access will result in particularly noisy works that may have an impact on other access users.
	Restrictive - Out-stabled Trains	56	To define an area of the LU railway where a service train is stabled (normally in platforms/sidings). May restrict the type of works that can be performed adjacent to this location.
	Restrictive - Plant / Chemicals in a confined space	56	For where access introduces the use of plant and chemicals in a confined space (e.g. platform invert). Rarely used.

Track			
Booking Description	Booking Description	Booking Description	Booking Description
	Restrictive - Power Cessation- Power Outages Possible	56	For where access will introduce a cessation of power (e.g. tunnel lighting, supply points) that may impact other access users (e.g. need for temporary supplies/portable lighting).
	Restrictive - Protection Area	56	To define an area of track used as a protecting or 'buffer' zone. Used in conjunction with another Exclusive booking e.g. Specified Area, Possession.
	Restrictive - Sub Station Works	56	Primarily for the use of LU Power teams requiring access to sub stations supplying power to the LU traction current system.
	Restrictive - Wheels Free Zone	56	For works that require the running rails to be free of electrically conducting plant or equipment e.g. trolleys, trains etc. Usually used for works requiring isolation of the signalling circuits e.g. commissioning.
Exclusive	Exclusive	56	For works necessitating sole access of the LU railway, and not more appropriately catered for under other categories herein. Only used sparingly and for short durations due to its restrictive nature on other works.
	Exclusive - Asbestos Exclusion Zone	56	Only issued to specialist Asbestos contractors registered with LU for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
Exclusive	Exclusive - Current Rail Resistance Measurements	56	Primarily for the use of LU Power teams requiring controlled current measurements of the traction current delivery system.
	Exclusive - Engineers' Current Area	56	For the running of engineering vehicles on live traction current in accordance with the Rule Book.
	Exclusive - Possession	56	For the exclusive control of access to a given area of the railway. Traction current may be on or off. May involve the use of engineering trains, RRVs etc. As defined in the Rule Book
	Exclusive - Running on current, moving according to signals	56	For the running of vehicles on live traction current obeying LU signalling systems (e.g. test trains). Often referred to as 'Cancelled Engineering Hours'. As defined in the Rule Book.

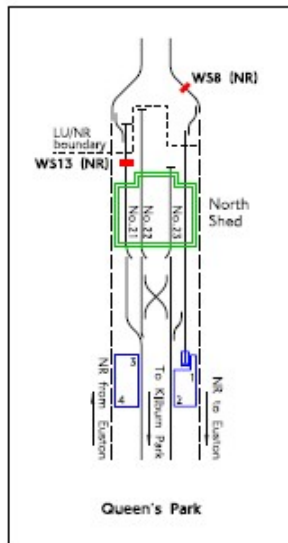
	Exclusive - Specified Area	56	For the running of engineering machines e.g. trains, RRVs on the railway. As defined in the Rule Book
--	----------------------------	----	---

Track			
Booking Description	Booking Description	Booking Description	Booking Description
	Exclusive - Traction Current Switching During Eng Hrs	56	For access that requires traction current to be switched on and off intermittently during the engineering hours shift. Primarily used in relation to power supply testing/commissioning etc.

Appendix 5: Network Rail Interface Locations

Bakerloo line

T03: Harrow & Wealdstone to Kiburn High Road via Queen's Park Track Agreement. LU is Network Rail's customer for track, signalling and traction current. These are shared with LOROL which also has an Agreement with Network Rail.



Station Agreements between Harrow & Wealdstone and Kiburn High Road via Queen's Park. Excluding Willesden Junction LU is the Station Facility Owner.

LU's access to Stonebridge Park is via Network Rail track. There is an end-on track interface between LU and Network Rail track at the depot entrance.

There are end-on track interfaces between LU and Network Rail at the North end of the LU Queen's Park North Shed. LU and Network Rail tracks also run parallel through Queen's Park Station.

The route from Queen's Park to Kiburn High Road station is provided under Track agreement T03 for reversing the service in emergency only.

Richmond Network Rail owned station (with SFO, may be other TOC's)
T03 Track Agreement
 Location of Track Agreement

Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements LNW-B, SE-B and WN-B

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Central line

Exiting Broadway - Station Agreement.
FGW is the Station Facility Owner.
LU is the customer but owns the
Central and District line platforms.

West and South Ruislip • Station Agreements. LU is the station owner. Chiltern Railways is LU's customer but manages its own platforms.

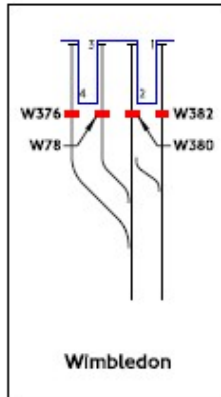
Greenford - Station Agreement. LU is the station owner. FGW is LU's customer. Network Rail owns the track in the bay platform.



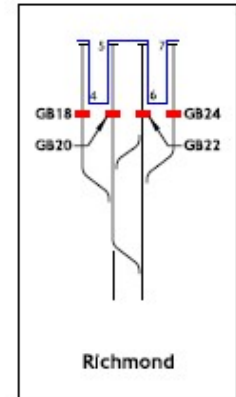
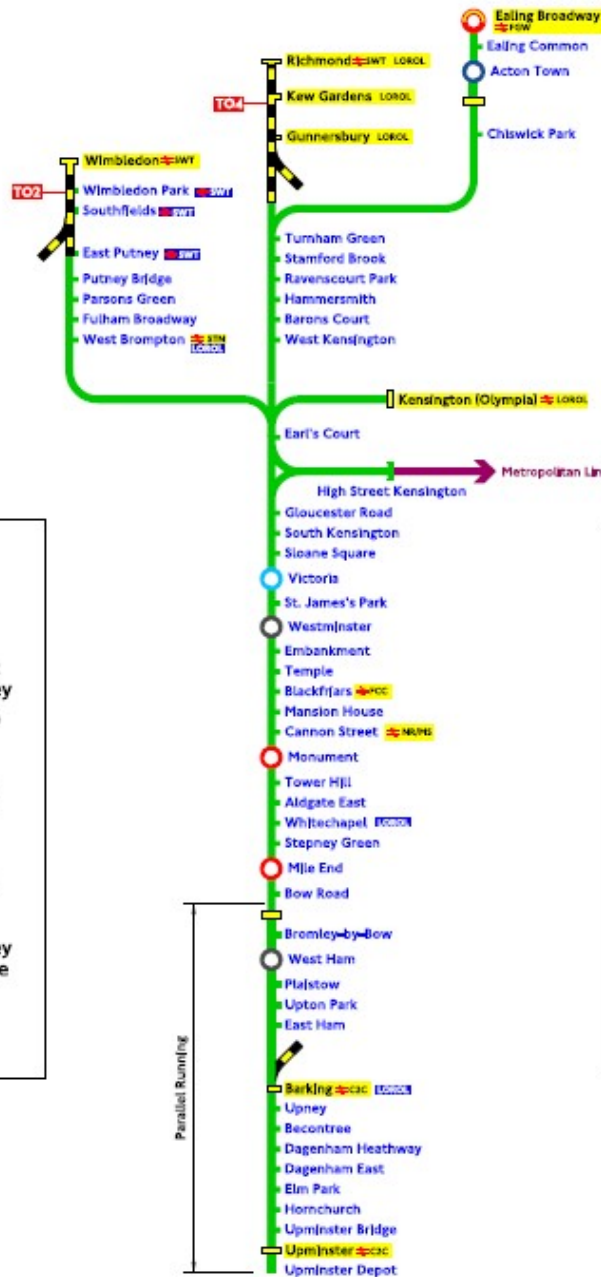
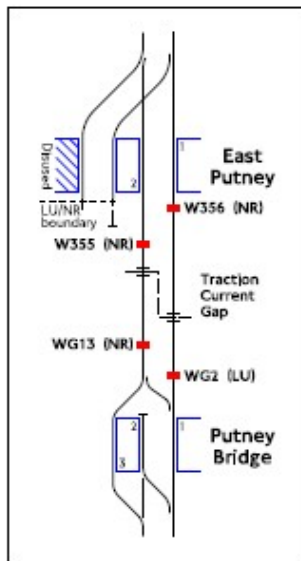
 Richmond	Network Rail owned station (with SFO, may be other TOC's)
 TOS	Track Agreement
	Location of Track Agreement

For details of Land and Property boundaries refer to Site Specific Engineering arrangements
GW-C, ML-C and SE-C

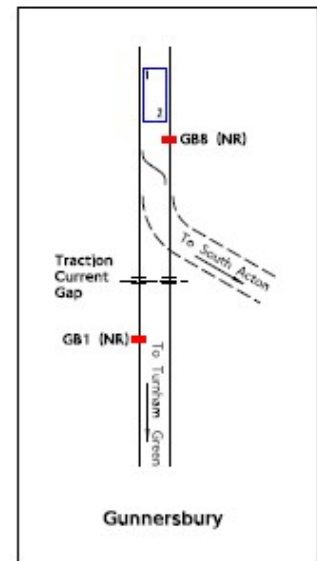
District line



T02, East Putney to Wimbledon Track Agreement. Gives South West Trains a diversionary and empty stock route. Network Rail supplies the traction current and signal operation but is LU's customer for track.



Kensington Olympia - Station Agreement. LOROL is the Station Facility Owner. LU is the customer.



Barking and Upminster - Station Agreements. C2C is the Station Facility Owner. LU is the customer.

Richmond - Network Rail owned station (with SFO, may be other TOC's)

T03 - Track Agreement

TO2 - Location of Track Agreement

For details of Land and Property boundaries refer to Site Specific Engineering arrangements SE-D and WN-D

Jubilee line



Canning Town - Station Agreement. LU is the Station Facility Owner. The Docklands Light Railway's access is covered by a lease but LU provides some station services.

West Ham - Station Agreement. LU is the station facility owner. CTC is the customer but manages its own platforms.

Stratford - Station Agreement. High level platforms and subways. NXEA are the Station Facility Owner. LU (Central line) is the customer, but staff Central line platforms.

Richmond (SW)	Network Rail owned station (with SFO, may be other TOC's)
TO3	Track Agreement
■ ■ ■	Location of Track Agreement

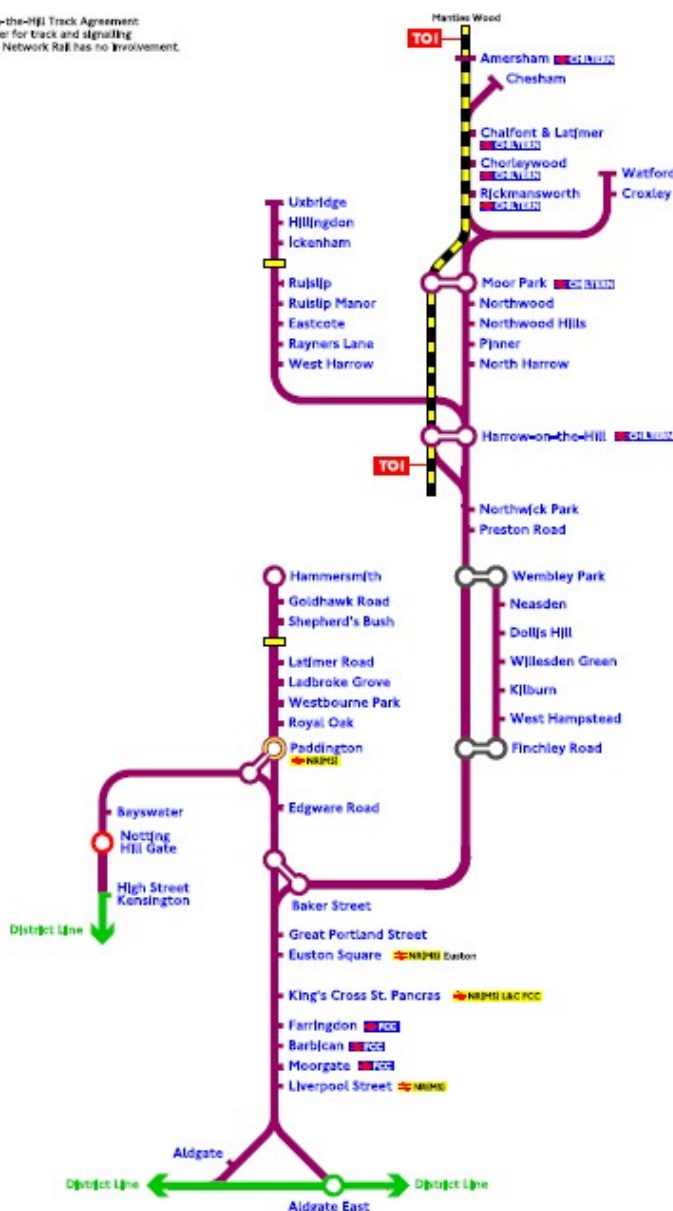
Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements SE-J and LNW-J

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Metropolitan line

TOI - Mares Wood - Harrow-on-the-Hill Track Agreement
Chiltern Railways is LU's customer for track and signalling over the Metropolitan main line. Network Rail has no involvement.



Station Agreements between Amersham and Harrow-on-the-Hill. LU is the station facility owner. Chiltern Railways is the customer. Chiltern uses Moor Park in emergencies only.

Farringdon and Moorgate - Station Agreements. LU is the Station Owner. FCC is the customer at Moorgate but manages its own platforms.

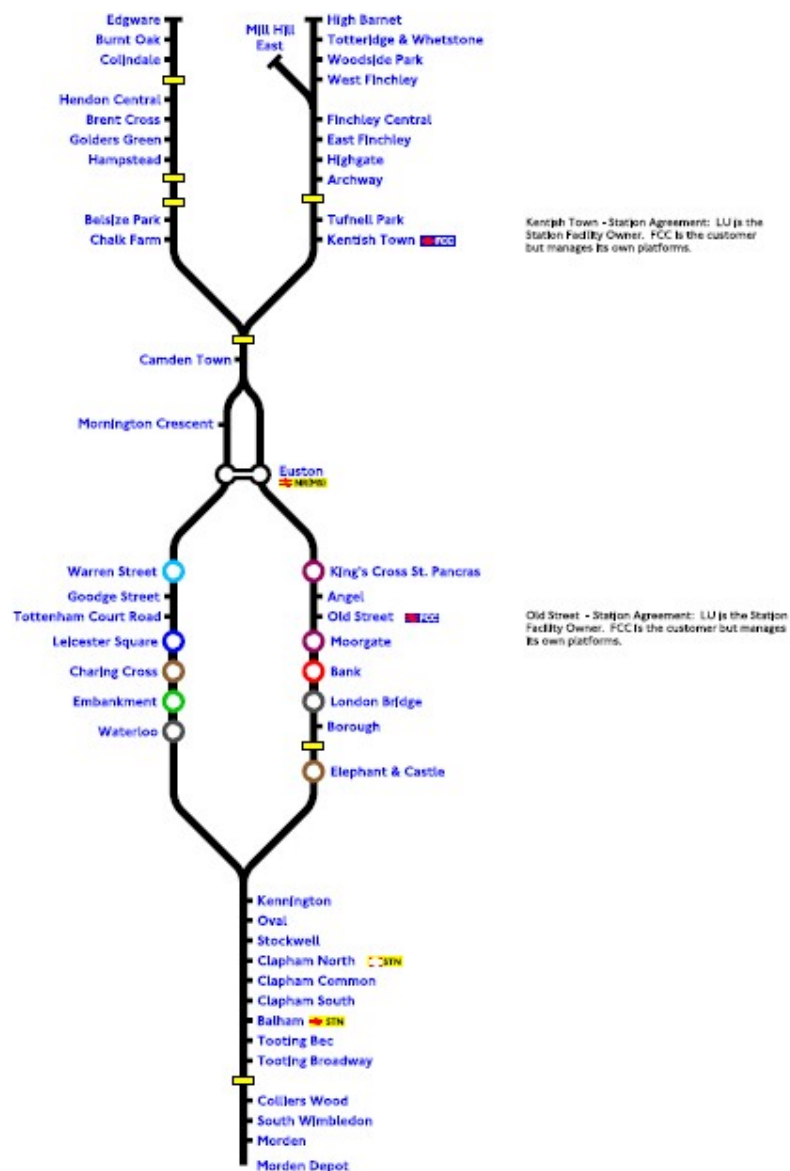
Richmond-Low	Network Rail owned station (with SFO, may be other TOCs)
TOI	Track Agreement
■	Location of Track Agreement

Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements LNE-M, LNW-M, SE-M and WN-M

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Northern line



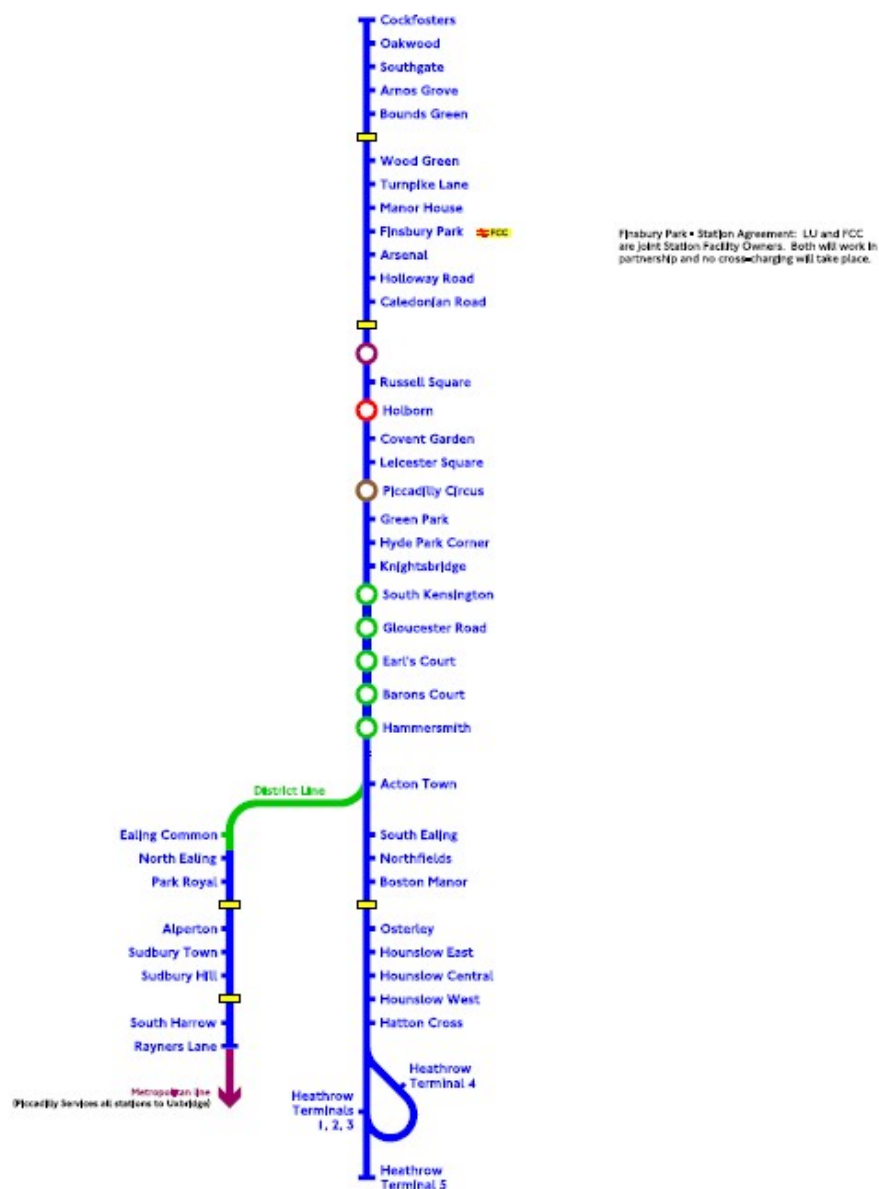
Richmond-ewt Network Rail owned station (with SFO, may be other TOC's)
 TO3 Track Agreement
 Location of Track Agreement

Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements LNE-N, LNWN and SE-N

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Piccadilly line



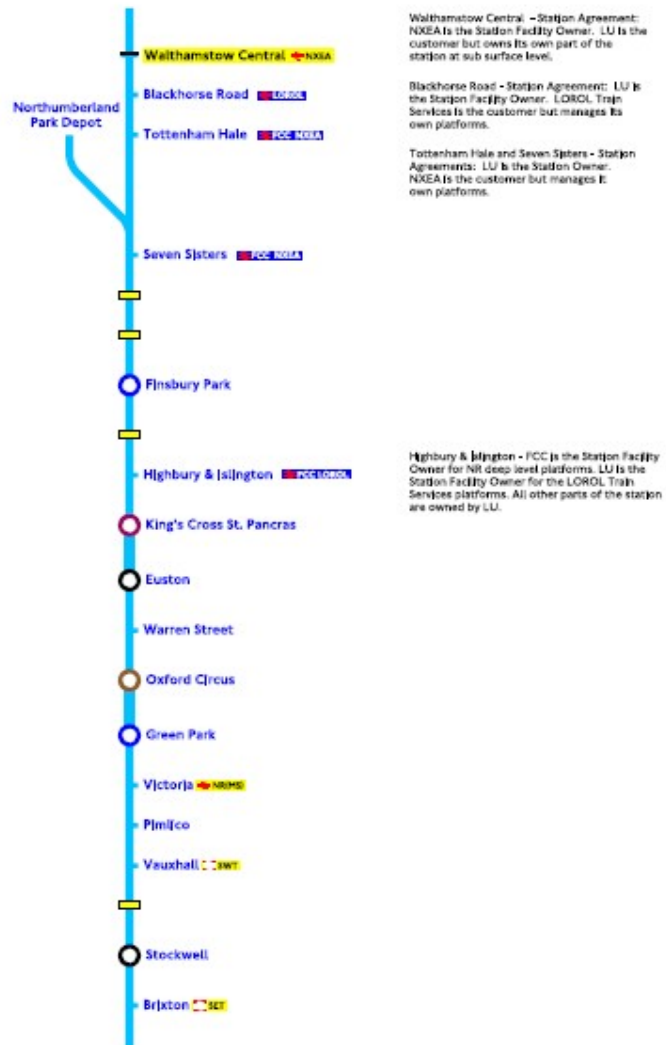
Richmond	Network Rail owned station (with SFO, may be other TOCs)
TO3	Track Agreement
■ ■ ■	Location of Track Agreement

Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements LNE-P, LNW-P, SE-P and WN-P

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Victoria line



Richmond-SWT Network Rail owned station (with SFO, may be other TOC's)
 TOS Track Agreement
 Location of Track Agreement

Created: 30 March 2012

For details of Land and Property boundaries refer to Site Specific Engineering arrangements LNE-V, LNW-V and SE-V

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SCHEDULE 16

(QUENSH)

(London Underground's Quality, Environmental Safety and Health Conditions)

For work undertaken for LUL, QUENSH conditions will apply. Below is a link to the LUL Management System library. As QUENSH is constantly under review, the Consultant may find that some or all of the conditions change a number of times within the term of the Framework Agreement.

Follow the link and the online instructions for registration. Once your registration has been approved, you will be given access to the library. You will then be able to view QUENSH.

<http://www.tfl.gov.uk/assets/downloads/businessandpartners/access-to-lu-management-systems.pdf>

Whenever QUENSH applies to a Call Off Contract, the Employer will select from the QUENSH menu those conditions, which it considers to be applicable to the work involved. The QUENSH menu includes guidance as to how the Consultant must complete the QUENSH menu.

SCHEDULE 17

INCENTIVE SCHEDULE

Incentives

Whilst the Integrator is expected to provide a multiple station support role, incentives, where applied, will be, chiefly, project specific.

LU will consider application of incentives on a project by project basis according to the relevant opportunities, risks, commercial agreement and nature of the project.

An example incentive proposal is included below and will form a basis for consideration, development and agreement for application on call off contracts.

Incentives	Integrator: Project Incentives	Comments
Value Enhancement	Value enhancement measured according to defined value criteria. To be finalised upon successful review & acceptance. Sum to be apportioned between Integrator and specialist support according to LUL share proposal determined against perceived input	Total value relates to entire design enhancement team, with, an amount included for the Integrator opportunity.
Project cost (total EFC)	At project end; though may apply throughout the project with a retention against final outcomes	Baselined at project start, subject to extension to reflect appropriate change i.e. funded scope expansion. May apply to discrete sub-contracts.
Programme delivery	Aligned with key completion dates.	Restricted to dates related to value realising asset utilisation, rather than intermediate activities
Project value outcomes	At project end Baseline through VE process & linked to business case	Exclude EFC and time as included above. Includes disruption, whole life cost impacts, passenger journey time and induced revenue.
Minimise cost of failure to co-ordinate	Opportunity sum that is reduced according to qualifying events. Consider design and works sub-contract price change, including compensation events that increase price associated with:- access, inefficiency or programme impact due to sub-optimal design or works integration or co-ordination	Opportunity to be reduced on each qualifying event at x% of event impact.
Cost of Integrator contract	Actual staff costs vs stated typical (may be plus or minus sum) Potential to alter fees or rates should agreed contract costs be exceeded (if option A or C applied) to reflect scale benefits	Assume base contract sum for Integrator's delivery stage contract
Collaboration, innovation & effectiveness	LUL Project team feedback	6 monthly; based on KPI measure