

**TRANSPORT FOR LONDON**

**STANDARD AMENDMENTS TO**

**FORM OF CONTRACT**

**NEC3 ECC OPTION A**

For the provision of  
**Station Fire Hydrants**  
**Tranches 1 – 4 Replacement Works**

**TfL Reference: UIP 3258.644**

BETWEEN

**TRANSPORT FOR LONDON**

AND

**TEW Plus T/A LB Foster**



**Contract Number – CW76819**

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## FORM OF AGREEMENT

### NEC3 ECC OPTION A

**THIS AGREEMENT** is made the 25 day of September 2025

#### **BETWEEN:**

- (1) **LONDON UNDERGROUND LIMITED** whose registered office is at **5 Endeavour Square, London E20 1JN** (“the *Employer*” which expression shall include its successors in title and assigns); and
- (2) **Tew Plus T/A LB Foster**, as company incorporated in and in accordance with the laws of **ENGLAND AND WALES** having its registered number **05858025** and it’s registered office is at **Mincoffs Solicitors LLP, 5 Osborne Terrace, Jesmond, Newcastle Upon Tyne, England. NE2 1SQ** (“the *Contractor*”).

#### **RECITALS**

- (A) The Employer wishes to appoint the Contractor to carry out works being **Station Fire Hydrants Tranches 1 – 4 Replacement Works** for which the Employer has submitted to the Contractor his invitation to tender.
- (B) The Contractor has submitted his tender offer dated **06 September 2024** in response to the Employer's invitation to tender. The Employer has examined the Contractor’s said tender and subject to the provisions of this contract is willing to engage the Contractor to carry out the works in accordance with this contract.

#### **OPERATIVE PROVISIONS:**

- (1) In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the conditions of contract.
- (2) The conditions of contract are the NEC Engineering and Construction Contract Option A: Priced Contract with Activity Schedule (Third edition June 2006 with amendments 2013) together with and as amended by Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, and Z (being the amendments set out in Schedule 1).
- (3) This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract,
  - 3.1 the conditions of contract (including, for the avoidance of doubt, the Option Z clauses set out in Schedule 1 to this document),

- 3.2 the Contract Data Part One,
- 3.3 the Contract Data Part Two,
- 3.4 the Works Information,
- 3.5 the Site Information,
- 3.6 Schedules 1 - 29

4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity, they shall be construed in the order set out in Clause 3 of this Contract Agreement.

5. The Contractor Provides the Works in accordance with this contract.

6. The Employer pays the Contractor for complying with his obligations to Provide the Works the amount due in accordance with this contract.

This Contract Agreement has been executed under hand and delivered on the date stated at the start of this Contract Agreement.

**Executed Under Hand by**  
**L.B Foster Acting by a Director**

.....  
[Redacted signature]

**DocuSigned by:**

[Redacted signature]

**Executed Under Hand by**  
**L.B Foster Acting by a Director**

.....  
[Redacted signature]

**DocuSigned by:**

[Redacted signature]

**Executed Under Hand**  
**On Behalf of TfL / LU Company:**

[Redacted signature]

**DocuSigned by:**

[Redacted signature]

## CONTRACT DATA

### Part One Data provided by the *Employer*

#### Statement given in all contracts

1.
  - The *conditions of contract* are the core clauses and the clauses for main General Option A and secondary Options clauses **X2, X4, X7, X13, X15, X16, X18 X20, X21, X23**, Y(UK)2 and Y(UK)3 of the NEC3 Engineering and Construction Contract April 2013 and January 2016 amended as amended or inserted in each case in accordance with secondary Option Z.
2.
  - The *works* are Station Fire Hydrants Tranches 1 – 4 Replacement Works
  - The *Employer* is  
Name: London Underground Limited  
Address: 5 Endeavour Square, London, E20 1JN
  - The *Project Manager* is  
[REDACTED]  
Address: 5 Endeavour Square, London, E20 1JN
  - The *Supervisor* is  
[REDACTED]  
Address: 5 Endeavour Square, London, E20 1JN
  - The Works Information is in Volume 3 Appendix 5  
  
The Site Information is in Volume 3 Appendix 26  
  
The *boundary of the site* are as described in the site information, specification document and works information  
  
The *language of this contract* is English  
  
The *law of the contract* is the law of England and Wales
    - The *period for reply* is 2 weeks.
    - The *tribunal* is the courts of England and Wales
    - The following matters will be included in the Risk Register: TBC
3. Time
  - The *starting date* is: September 2025
  - The *access dates* are:

Part of the Site	Date
1. Site Compound Area	September 2025
2. Whole Site	September 2025

- The *Contractor* submits revised programmes at intervals no longer than 4 weeks.
4. Testing and Defects
- The *defects date* is 52 weeks after Completion of the whole of the *works*. Retention to be released at the end of the defects liability period, 52 Weeks after TfL's acceptance of AIR documentation of each site ( Station)
  - The defects correction period is two weeks.
5. Payment
- The *currency of this contract* is UK£
  - The *assessment interval* is 4 weeks (not more than five)
  - The *interest rate* is 2 % per annum (not less than two) above the rate of the Bank of England.
  - The Contractor submits invoices after receipt of the Employer's assessment of the Contractor's application for payment and the issuing of a payment certificate by the Employer stating the amount due and such invoices contain the following information: Employer's certified amount due, VAT, vendor's invoice number, purchase order number, SAP order number and a brief description of the work / service performed
  - The *Employer* is an End User for the purposes of this contract.
6. Compensation events
- The place where weather is to be recorded is Site
  - The *weather measurements* to be recorded for each calendar month are
    - the cumulative rainfall (mm)
    - the number of days with rainfall more than 5 mm
    - the number of days with minimum air temperature less than 0 degrees Celsius
    - the number of days with snow lying at 9.00 hours GMT.
    - and these measurements: None

- The *weather measurements* are supplied by The Met Office, Fitzroy Road, Exeter EX1 3PB.
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at Central London, and which are available from Met Office

**Where no recorded data are available**

Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are N/A

8. Risks and insurance

**Insurances taken out by the *Employer***

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

**Insurances taken out by the *Contractor***

- **Employer's liability insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of [REDACTED]
- **Contractor's equipment loss insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
- **Professional indemnity insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of [REDACTED].

**Optional whole of the statement**

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

The *completion date* for the whole of the *works* is November 2031

- The contract completion date is November 2031

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

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

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

- The *Contractor* is to submit a first programme for acceptance within 2 weeks of the Contract Date.

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

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

*Conditions to be met*

*key date*

- |   |                |
|---|----------------|
| 1 Submission of all related Temporary Works Designs for all sites .                         | September 2025 |
| 2. Submission of SSOW and other preconstruction Information.                                | October 2025   |
| 3. Start on Site (Intrusive Survey)   | October 2025   |
| 4. Detail design of new configuration of Fire Hydrant for all Sites                         | October 2025   |
| 5. Detail design of new configuration of Fire Hydrant for all Sites inclusive of Lot 1 & 2. | October 2025   |

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

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

- These are the additional *Employer's* risks

1. None

**Cover/deductibles for insurances provided by the Employer**

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

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

The deductibles are:

- £250,000 per occurrence for loss or damage to the *works* caused by defects in design plan specification materials or workmanship (DE5 1995). Such deductible shall only apply in respect of reinstatement or making good of that part which is itself defective;
- £25,000 per occurrence in respect of loss or damage to the works caused by defect in design plan specification materials or workmanship (DE3 1995);
- £25,000 per occurrence in respect of loss or damage caused by storm, tempest, water damage, subsidence or collapse;
- £5,000 every other occurrence.

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

[REDACTED]

[REDACTED]

**If additional insurances are to be provided**

- The *Contractor* provides these additional insurances

1. Insurance against Liability for death of or bodily injury or illness sustained by employees of the Contractor arising out of or in the course of their employment in connection with this contract or the Project.

i). Cover/indemnity is not less than £10,000,000 (Ten Million Pounds) per occurrence.

ii) Insurance against loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein)

Cover/indemnity is the replacement cost

iii). Insurance against Fault in respect of design of the works or other

professional services for which the Contractor or his Subcontractors is responsible.

iv). Cover/indemnity is £20,000,000 (Twenty Million Pounds) for each and every claim.

**If there are *additional termination events*:**

- These are the *additional termination events*

**Option X1 is NOT USED**

**Option X3 is NOT USED**

**Option X5 is NOT USED**

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

- Delay damages for Completion of the whole of the *works* are £1,500 per day

**Option X12 is NOT USED**

**Option X13 is used.**

- The amount of performance bond is 10% of the tendered total of the Prices.

**Option X14 is NOT USED**

**Option X16 is used.**

- The *retention free amount* is Nil
- 

**Option X17 is Not Used**

**Option X18 is used: capped at 100% of the Contract Value**

- The Contractor's liability to the Employer for indirect or consequential loss is limited to 100% of the total of the Prices at the Contract Date.
- The Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to 100% the total of the Prices at the Contract Date.
- The Contractor's liability for Defects due to its design which are not listed Defects Certificate is limited to 100% of the total of the Prices.
- The Contractor's total liability to the Employer for all matters arising in connection with this contract, other than excluded matters is 100% of the total of the Prices at the Contract Date

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

- The Key Performance Indicators is in Appendix 27
- A report of performance against each Key Performance Indicator is provided at intervals of 3 months.

**Option Y(UK)1 is NOT USED**

**Option Y(UK)3 is used.**

<b>term</b>	<b>person or organisation</b>
Z2.15, Z2.17.14	Any member of the TfL Group

**If Option Y(UK)1 and Y(UK)3 are both used**

<b>term</b>	<b>person or organisation</b>
The provisions of Suppliers <b>Option Y(UK)1</b>	Any member of the TfL Group& named

**Option Z**

The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract.

## Contract Data

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

- The *Contractor* is

Name: L B Foster (TEW Plus)

Address: 1<sup>st</sup> Floor, 44-46 Sekforde Street, Farringdon, London  
EC1R 0HA

- [REDACTED]

- The *working* areas are the Site and

- The key people are

1.

[REDACTED]

[REDACTED]

Responsibilities: Direct Responsibility for contract delivery

Qualifications:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Experience: Project Engineer, Assistant Project Manager, Pre-  
Construction Manager, Project Manager & Fire Designer

2. Name:

[REDACTED]

[REDACTED]

Responsibilities : Overseeing Contract Delivery

Qualifications:

Experience: Senior Project Manager, Fire Divisional Manager, Head of Operations.

3. Name:

Job:

Responsibilities:

Qualifications:

Experience:

- The following matters will be included in the Risk Register

**Optional  
Statements**

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

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

**If a programme is to be identified in the Contract Data**

- The programme identified in the Contract Data is

1.10. T-010 – Programme – LB Foster

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

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

**23/09/31**

**If Option Y(UK)1 is used**

- The *project bank* is

- *named suppliers* are
- The *activity schedule* is:
- The tendered total of the Prices is

**If Option X13 is used**

- The *parent company* of the *Contractor* is the ultimate parent company unless an intermediate parent company is named below:

**If Option X23 is used**

- The *handover period* for                    is
- The *handover period* for                    is

**Data for Shorter Schedule of Cost Components**

The percentage for people overheads is: ■■■■

The published list of Equipment is the last edition of the list published by

The percentage for adjustment for Equipment in the published list is ■■■■ (state plus or minus)

The rates for other Equipment are

	<b>Equipment</b>	<b>size or capacity</b>	<b>rate</b>
1.	N/A	N/A	N/A
2.	N/A	N/A	N/A

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

category of employee    hourly rate

1. [                    ] [                    ]
2. [                    ] [                    ]

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

## SCHEDULE 1

### The Core Clauses (Z Clauses)

#### CORE CLAUSES

##### 1 General

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

Z1.1.5

(11) The Parties are the *Employer* (which expression includes its successors in title and assigns) and the *Contractor*.

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

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

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

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

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

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

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

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

Z1.2

Interpretation and the law

11.3 Additional defined terms are included in Schedule 2.

12

Z1.3

12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

Z1.3.1

12.1A References to "this contract" mean the contract between the *Employer* and the *Contractor* including the documents listed as forming the contract in the Form of Agreement.

Z1.3.2

12.1B In this contract, unless the context otherwise requires, references to:

- (a) "including" means "including without limitation", and
- (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).
- Z1.3.3 12.2 This contract is governed by and is construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.4 12.3A Words denoting persons or parties includes individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.5 12.4 This contract ~~is the entire agreement between the Parties~~ supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.6 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.7 12.7 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
  - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- The *Contractor* complies with the applicable law. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs 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 *Contractor*.
- Z1.3.8 12.8 Failure by the *Employer* to exercise its rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of its obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

**Communications 13**

- Z1.4
- Z1.4.1 13.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* comply with the communications requirements in the Works Information. Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- Z1.4.2 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, ~~they~~ **he** reply ~~replies~~ within the *period for reply*.
- Z1.4.3 13.4 The *Project Manager* replies to a communication submitted or resubmitted ~~to him~~ by the *Contractor* for acceptance. ~~If the his~~ **his** reply is not acceptance, the *Project Manager* states ~~his~~ **the** reasons ~~in the reply~~ and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A

reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.

- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- Z1.4.4 13.6 The *Project Manager* issues ~~his~~ certificates to the *Employer* and the *Contractor*. The *Supervisor* issues ~~his~~ certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

**The Project Manager and 14**

- Z1.5 the 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or **acceptance of the** ~~his~~ work does not change the *Contractor's* responsibility to Provide the Works or ~~his~~ liability for **its** ~~his~~ design.
- Z1.5.1A
- Z1.5.1B 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by **their** ~~his~~ delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- Z1.5.1C 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after **notifying** ~~he has notified~~ the *Contractor* of the name of the replacement.
- Y2.1/Z1.5.1 14.5 **The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.**

**Adding to the Working 15**

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

**Early warning 16**

- Z1.7 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
  - increase the total of the Prices,
  - delay Completion,
  - delay meeting a Key Date, or
  - impair the performance of the *works* in use,
  - **adversely affect the work of Others, or**
  - **adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the Project) and/or cause any disruption to the operation of the Underground Network.**
- Z1.7.1

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

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

- 16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in

		<ul style="list-style-type: none"> <li>• making and considering proposals for how the effect of the registered risks can be avoided or reduced,</li> <li>• seeking solutions that will bring advantage to all those who will be affected,</li> <li>• deciding on the actions which will be taken and who, in accordance with this contract, will take them and</li> <li>• deciding which risks have now been avoided or have passed and can be removed from the Risk Register.</li> </ul>
Z1.7.2	16.4	The <i>Project Manager</i> revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the <i>Contractor</i> . If a decision needs a change to the Works Information, the <i>Project Manager</i> instructs the change at the same time as <del>when he issues</del> the revised Risk Register <del>is issued</del> .
	<b>Ambiguities and Inconsistencies</b>	<b>17</b>
	17.1	The <i>Project Manager</i> or the <i>Contractor</i> 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 <i>Project Manager</i> gives an instruction resolving the ambiguity or inconsistency.
	<b>Illegal and impossible Requirements</b>	<b>18</b>
Z1.7A.1	18.1	The <i>Contractor</i> notifies the <i>Project Manager</i> as soon as <del>it</del> <del>he</del> considers that the Works Information <del>includes an</del> <del>requires him to do anything which is</del> illegal or impossible <del>requirement</del> . If the <i>Project Manager</i> agrees, <del>the</del> <i>Project Manager</i> <del>he</del> gives an instruction to change the Works Information appropriately.
	<b>Prevention</b>	<b>19</b>
Z1.7B	19.1	If an event occurs which
Z1.7B.1		<ul style="list-style-type: none"> <li>• stops the <i>Contractor</i> completing the <i>works</i> or</li> <li>• stops the <i>Contractor</i> completing the <i>works</i> by the date shown on the Accepted Programme,</li> </ul> <p>and which</p> <ul style="list-style-type: none"> <li>• neither Party could prevent and</li> <li>• an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable <del>for</del> <del>him</del> to have allowed for it,</li> </ul> <p>the <i>Project Manager</i> gives an instruction to the <i>Contractor</i> stating how <del>the event is to be dealt with</del> <del>he is to deal with the event</del>.</p>

## 2 The *Contractor's* main responsibilities

	<b>Providing the Works</b>	<b>20</b>
Z1.8		
Z1.8.1	20.1	The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.2-20.5	Not used (as not option A clauses)
Z1.8.2	20.6	These <i>conditions of contract</i> and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the <i>Contractor</i> <del>both before and after the Contract Date</del> .

**The Contractor's design 21**

Z1.9

Z1.9.1

21.1 The Contractor is responsible for the design of all of the works”.

Z1.9.2

21.2 The Contractor submits the particulars of its his design as the Works Information requires to the Project Manager for acceptance. A reason for not accepting the Contractor's design is that it does not comply with the Works Information, this contract or the applicable law.

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

Z1.9.3

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

**Using the Contractor's 22**

Z1.10

**Design**

22.1 The Employer may use and copy the Contractor's design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information specified in clause Z2.7.

Z1.10.1

**Design of Equipment 23**

Z1.10A

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

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

**People 24**

Z1.11

Z1.11.1

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

Z1.11.2

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

**Working with the 25**

Z1.12 Employer and Z1.12.1A Others

25.1 The Contractor co-operates with Others in obtaining and providing information which they need in connection with the works. The Contractor He co-operates with Others and shares the Working Areas with them as stated in the Works Information.

Z1.12.1B

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

Z1.12.1

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

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

on the same project-Project, the additional cost which the Employer has paid or will incur is paid by the Contractor. The Project Manager assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The Employer's right to recover the additional cost is his only right in these circumstances. The Project Manager's assessment is without prejudice to any

other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

**Subcontracting 26**

Z1.13

Z1.13.1

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

Z1.13.1A

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

Z1.13.2

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

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

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

- they will not allow the *Contractor* to Provide the Works, ~~or~~
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation
- ~~they contain payment terms that do not comply with the Public Contracts Regulations 2015 or~~
- ~~they do not grant suitable third party rights (by way of collateral warranty or pursuant to the Contracts (Rights of Third Parties) Act 1999) in favour of the Employer or other members of the TfL Group.~~

**Other responsibilities 27**

Z1.14

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

Z1.14.1A

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

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

Z1.14.1B

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

Z1.14.1

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

### 3 Time

#### Starting, Completion and 30 Z1.15

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

Z1.15.1 30.1A The *Contractor* notifies the *Project Manager* when in the *Contractor's* opinion the works will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information. The *Supervisor* may attend the inspection.

Z1.15.2 30.2 The *Contractor* provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the works have been so completed. If the *Project Manager* is satisfied that the works have been so completed, the *Project Manager* ~~Project Manager~~ decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion. If the *Project Manager* is not so satisfied, the *Project Manager* notifies the *Contractor* of the reasons for not accepting that the works have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.

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

#### Z1.16 The programme 31

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

Z1.16.1 31.2 The *Contractor* shows on each programme which ~~he submits~~ is submitted for acceptance

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

Z1.16.2 31.3 Within two weeks of the *Contractor* submitting a programme ~~to him~~ for acceptance, the *Project Manager* either accepts the programme or notifies the

~~Contractor of the his~~ reasons for not accepting it. A reason for not accepting a programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which this contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Works Information.

Z1.16.3

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

**Revising the programme**  
Z1.16A

**32**  
32.1 The *Contractor* shows on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- how the *Contractor* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Contractor* proposes to make to the Accepted Programme.

Z1.16A.1

32.2 The *Contractor* submits a revised programme to the *Project Manager* for acceptance

- within the *period for reply* after the *Project Manager* has instructed the *Contractor* ~~him~~ to,
- when the *Contractor* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *works*.

**Access to and use of**  
Z1.17

**the Site**

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

Z1.17.1

Z1.17.2

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

**Instructions to stop or**  
Z1.17A **not to start work**

**34**  
34.1 The *Project Manager* may instruct the *Contractor* to stop or not to start any work and may later instruct ~~the~~ *Contractor* to ~~him that he may~~ re-start or start it.

**Take over**  
Z1.18  
Z1.18.1A

**35**  
35.1 The *Employer* need not take over the *works* before the Completion Date if ~~it is stated in the Contract Data states it that he~~ is not willing to do so. Otherwise the *Employer* takes over the *works* not later than two weeks after Completion.

Z1.18.1

35.2 The *Employer* may use ~~or permit Others to use~~ any part of the *works* before Completion has been certified. If ~~the~~ *Employer* ~~he~~ does so, ~~it he does not take~~ ~~takes~~ over, and is not treated as having taken over, the part of the *works* when ~~it he~~ (or Others) begins to use that part of the *works* ~~it~~ and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3. ~~except if the use is~~

- ~~for a reason stated in the Works Information or~~
- ~~to suit the Contractor's method of working.~~

35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the *works* and its extent within one week of the date.

**Acceleration**  
Z1.19

**36**

- Z1.19.1A 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of ~~its~~ ~~his~~ assessment with each quotation.
- Z1.19.1B 36.2 The *Contractor* submits a quotation or gives ~~his~~ reasons for not doing so within the *period for reply*.
- Z1.19.1 36.3 **When the *Project Manager* accepts a quotation for an acceleration, the *Project Manager* ~~he~~ changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction and the *Project Manager* makes an assessment of the compensation event**
- 36.4 Not used (as not an Option A clause).

## 4 Testing and Defects

### Tests and inspections 40

#### Z1.19A

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

### Testing and inspection before delivery 41

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

### Searching for and notifying Defects 42

#### Z1.19B.1

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

#### Z1.19B.2

- 42.2 Until the *defects date*, the *Supervisor* **and the *Contractor* notifies the other as soon as they become aware of a Defect** ~~notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.~~

### Correcting Defects 43

#### Z1.19C

#### Z1.19C.1

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

#### Z1.19C.2

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

### Accepting Defects 44

- Z1.19D 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
- Z1.19D.1 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the quotation is accepted, the *Project Manager* ~~accepts the quotation,~~ he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

**Uncorrected Defects 45**

- Z1.19E  
Z1.19E.1 45.1 If the *Contractor* is given access in order to correct a notified Defect but the Defect is ~~he has~~ not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.
- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

## 5 Payment

Assessing the amount	50	
Z1.20	due	<p>50.1 The <i>Project Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Project Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i>. Later assessment dates occur</p> <ul style="list-style-type: none"> <li>• at the end of each <i>assessment interval</i> until four weeks after the <i>Supervisor</i> issues the Defects Certificate and</li> <li>• at Completion of the whole of the <i>works</i>.</li> </ul>
Z1.20.1		<p>50.1A The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to it at the payment due date and the basis on which that sum is calculated.</p> <p>50.2 The amount due is</p> <ul style="list-style-type: none"> <li>• the Price for Work Done to Date,</li> <li>• plus other amounts to be paid to the <i>Contractor</i>,</li> <li>• less amounts to be paid by or retained from the <i>Contractor</i>.</li> </ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due.</p> <p>50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.</p>
Z1.20.2		<p>50.3A If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.</p>
Z1.20.3		<p>50.4 In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A <del>on or before the assessment date</del>. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.</p> <p>50.5 The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.</p> <p><b>50.6 Not used (as not an Option A clause).</b></p> <p><b>50.7 Not used (as not an Option A clause).</b></p>
Z1.20.4		<p>50.8 If any performance bond or parent company guarantee required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such documents have been delivered.</p>
Z1.20.5		<p>50.9 If a warranty required under sub-clauses Z2.1.2 and/or Z2.2 is not delivered to the <i>Employer</i> in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable:</p> <ul style="list-style-type: none"> <li>• in the case of warranties required under sub-clause Z2.1.2 one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such warranty is retained in all assessments of the amount due; or</li> <li>• in the case of warranties required under sub-clause Z2.2, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such warranty relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in all assessments of the amount due</li> </ul> <p>and in each case is not payable to the <i>Contractor</i> until such warranty is delivered.</p>

- Z1.20.6 50.10 If a Management Plan is not provided by the times or within the timescales required by this contract, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such Management Plan is retained in all assessments of the amount due and is not payable to the *Contractor* until such Management Plan is delivered.
- Z1.20.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to it under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
  - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

**Payment 51**

- Y1.1.1 51.1 The *Project Manager* certifies a payment within ~~one week~~ **seven days** of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract. **If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.**
- Y1.1.2 Y2.2 The date on which payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.
- Y1.1.2A 51.1B The *Project Manager's* certificate is the *Employer's* notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount is calculated.
- Y1.1.2B 51.1C **Not later than five days after receipt of the payment certificate the *Contractor* delivers to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.**
- Y1.1.3 51.2 Each certified payment is made within ~~three weeks~~ **twenty-one days** of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which ~~he should issue~~ **should have been issued, or either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment**, interest is paid on the late payment. Interest is assessed from the **final** date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- Y1.1.3A 51.2A **If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand.**
- Y1.1.4 Y2.3 If either Party intends to pay less than the notified sum, ~~it he~~ notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless ~~it he~~ has notified ~~its his~~ intention to pay less than the notified sum as required by this contract. **In the case of the *Employer*, the notice may be given on its behalf by the *Project Manager*.**
- 51.3 If an amount due is corrected in a later certificate either
- by the *Project Manager* in relation to a mistake or a compensation event or
  - following a decision of the *Adjudicator* or the *tribunal*,
- interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.
- 51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Z1.20.8 51.5 The consideration for any supply made pursuant to or in connection with the terms of this contract, and all sums payable under this contract, are exclusive of VAT. Where, under the terms of this contract, a supply is made that is subject to VAT, the person receiving the supply must pay a sum equal to the amount of VAT which is or becomes chargeable on that supply to the person making the supply in addition to, and at the same time as, paying any other consideration for that supply and a valid VAT invoice must be issued by the person making the supply.

If any VAT invoice delivered by the *Contractor* under this contract is an electronic invoice, the *Employer* accepts and processes the electronic invoice submitted by the *Contractor* where the invoice is undisputed and where it complies with the Standard on Electronic Invoicing.

Z1.20.9 51.6 Where the *Employer* is an End User for the purposes of this contract, the Parties acknowledge that:

services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract are expected to include “specified services” (within the meaning of article 4 of the Reverse Charge Order) and will be “excepted supplies” (within the meaning of article 8 of the Reverse Charge Order) on the basis that the *Employer* is an End User in respect of such specified services, and

accordingly, the Reverse Charge Order will not apply and the *Employer* will not be required to account for VAT to HM Revenue & Customs in respect of such supplies under section 55A of VATA.

Where the *Employer* is not an End User for the purposes of this contract:

the Parties acknowledge that services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract will include “specified services” (within the meaning of article 4 of the Reverse Charge Order) and are expected to be subject to the Reverse Charge Order on the basis that the *Employer* is not an End User,

accordingly, the Parties acknowledge that the *Employer* will be required to account for VAT to HM Revenue & Customs in respect of such supplies from the *Contractor* under section 55A of VATA, and

the *Contractor* will deliver an invoice to the *Employer* in accordance with clause 51.1A stating that the Reverse Charge Order applies or any other appropriate language as suggested by HM Revenue & Customs in their relevant guidance.

In any event the *Contractor* indemnifies the *Employer*, its employees and agents, and members of the TfL Group on a continuing basis from and against all Losses arising from the *Contractor*’s failure to account for or to pay any VAT relating to payments made to the *Contractor* under this contract. Any amounts due under this clause 51.6 are paid in cleared funds by the *Contractor* to the *Employer* not less than five (5) days before the date upon which the tax or other liability is payable by the *Employer*.

Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount includes any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

If the Reverse Charge Order is incorrectly applied and the *Employer* pays an amount in respect of VAT to the *Contractor* in error, then the *Contractor* will pay to the *Employer* on demand an amount equal to such VAT plus any interest, penalties or surcharges charged or imposed on the *Employer* by HM Revenue & Customs arising from the late payment of any VAT.

If the *Employer*’s status as an End User changes during the term of this contract, the *Employer* uses its reasonable endeavours to notify the *Contractor* and the *Contractor* applies the Reverse Charge accordingly.

	<b>Defined Cost</b>	<b>52</b>	
		52.1	All the <i>Contractor's</i> costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.
		<b>53</b>	<b>Not used (as not an Option A clause)</b>
	<b>The Activity Schedule</b>	<b>54</b>	
	Z1.20A	54.1	<b>Information in the Activity Schedule is not Works Information or Site Information.</b>
	Z1.20A.1	54.2	<b>If the <i>Contractor</i> changes a planned method of working at <b>its</b> his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, <b>the <i>Contractor</i></b> he submits a revision of the Activity Schedule to the <i>Project Manager</i> for acceptance.</b>
		54.3	<b>A reason for not accepting a revision of the Activity Schedule is that</b> <ul style="list-style-type: none"> <li>• <b>it does not comply with the Accepted Programme,</b></li> <li>• <b>any changed Prices are not reasonably distributed between the activities or</b></li> <li>• <b>the total of the Prices is changed</b></li> </ul>
		<b>55</b>	<b>Not used (as not an Option A clause)</b>
	Z1.21.1	56	<b>In addition to any other rights of the <i>Employer</i> whether at law or equity under this contract, whenever</b> <ul style="list-style-type: none"> <li>• <b>under this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i> any sum of money is recoverable from or payable by the <i>Contractor</i> or</b></li> <li>• <b>any Losses are reasonably and properly owed to, or incurred by, the <i>Employer</i> or any member of the TfL Group under or arising out of this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i></b></li> </ul> <p>the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the <i>Contractor</i> under this contract.</p>
	Z1.22.1	57.1	<b>If the <i>Employer</i> is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, its obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the <i>Contractor</i> complies with the provisions of the Works Information regarding the Construction Industry Scheme.</b>

## 6 Compensation events

### Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events

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

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

(2) ~~The *Employer*~~ Subject to the requirements of the Works Information regarding access and provided that the *Contractor* has booked and co-ordinated access in accordance with its requirements, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its access date and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

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

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

(13) A *weather measurement* is recorded

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

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

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

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

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

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

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

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

(19) An event which

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

and which

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

Z1.23.2

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

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

Z1.23.3

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

**Notifying compensation 61**

**Z1.24  
Events**

Z1.24.1A

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

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

Z1.24.1

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

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

If the *Contractor* does not notify a compensation event within two weeks of becoming aware or when the *Contractor* ought reasonably to have become aware of the event, the *Contractor* he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

Z1.24.2

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

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

the *Project Manager* he notifies the *Contractor* of the his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, the *Project Manager* he notifies the *Contractor* accordingly and instructs the *Contractor* him to submit quotations.

The *Project Manager* notifies the his decision to the *Contractor* and, if the his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs the *Contractor* him to submit quotations before the end of either

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

If the *Project Manager*'s decision is that the Prices, the Completion Date or the Key Dates are not to be changed, the *Contractor* notifies the *Project Manager* if it does not accept the decision and at the same time of its reasons for not accepting the decision. The *Contractor*'s notification does not affect the *Project Manager*'s decision that the Prices, Completion Date or the Key Dates are not to be changed. If the *Contractor* does not provide this notification within four weeks of notification of the *Project Manager*'s decision, the *Contractor* is treated as having accepted the *Project Manager*'s decision.

If the *Project Manager* does not notify the his decision, the *Contractor* may notify the *Project Manager* of that his failure. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

Z1.24.3 61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the *Project Manager* states this in the instruction to he notifies this decision to the *Contractor* when he instructs him to submit quotations.

Z1.24.4 61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, the *Project Manager* he states assumptions about the event in the his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

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

**Quotations for compensation events 62**

Z1.25 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which it he considers practicable.

Z1.25.1 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of the his assessment in accordance with the requirements of the *Works Information* with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in the his quotation.

Z1.25.2 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. The 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 the *Project Manager* he will be making the his own assessment.

Z1.25.3 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining the his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Project Manager* extends the time allowed for

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

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

Z1.25.4

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

**Assessing 63  
compensation**

Z1.26  
Events

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

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

If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

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

Z1.26.1

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme **provided always that the delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent that the compensation event is the principal cause of the delay**

**The *Project Manager* may determine an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.**

Z1.26.2

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

Z1.26.3A

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

Z1.26.3

63.6 Assessment of the effect of a compensation event includes **reasonable and proportionate** risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract. **Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event.**

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

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

**The *Project Manager's* Assessments** 64

Z1.27

- Z1.27.1** 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of ~~its~~ ~~his~~ assessment **in accordance with the Works Information** within the time allowed,
  - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and **has not** ~~he does not instruct~~ instructed the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, ~~it~~ ~~he~~ has not submitted a programme or alterations to a programme which this contract requires ~~it~~ ~~him~~ to submit or
  - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- Z1.27.2** 64.2 The *Project Manager* assesses a compensation event ~~using his own~~ **by carrying out an** assessment of the programme for the remaining work if
- there is no Accepted Programme or
  - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- Z1.27.3** 64.3 The *Project Manager* notifies the *Contractor* of ~~the~~ ~~his~~ assessment of a compensation event and gives ~~the~~ ~~Contractor~~ ~~him~~ details of it within the period allowed for the *Contractor's* submission of ~~its~~ ~~his~~ quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.
- Z1.27.4** 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of ~~that~~ ~~his~~ failure. If the *Contractor* submitted more than one quotation for the compensation event, ~~the~~ ~~Contractor~~ ~~he~~ states in ~~its~~ ~~his~~ notification which quotation ~~it~~ ~~he~~ proposes is to be accepted. If the *Project Manager* does not reply within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

**Implementing compensation events** 65

Z1.28

Z1.28.1A

- 65.1 A compensation event is implemented when
- the *Project Manager* notifies ~~his~~ acceptance of the *Contractor's* quotation,
  - the *Project Manager* notifies the *Contractor* of **an assessment made by the *Project Manager*** ~~his own assessment~~ or

- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

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

Z1.28.1

65.3 *The Contractor notifies the Project Manager if it does not accept the Project Manager's assessment and at the same time of its reasons for not accepting the Project Manager's assessment. If the Contractor does not provide this notification within four weeks of notification of the Project Manager's assessment, the assessment is treated as having been accepted by the Contractor.*

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

## 7 Title

### **The Employer's title to Plant and Materials 70**

Z1.29  
Z1.29.1

70.1 Whatever title the *Contractor* has to Plant and Materials which is outside the Working Areas passes to the *Employer* *as soon as the Contractor or Supervisor has marked them as for this contract or the Employer makes payment (partial or otherwise) for them, whichever is the earlier if the Supervisor has marked it as for this contract.* *The Contractor ensures that such Plant and Materials are clearly identified as belonging to the Employer and are set aside for the Employer.*

70.2 Whatever title the *Contractor* has to Plant and Materials passes to the *Employer* if it has been brought within the Working Areas. The title to Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission.

Z1.29.2

70.3 *If requested by the Project Manager, the Contractor provides proof of its title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.*

### **Marking Equipment, Plant and Materials outside the Working Areas 71**

71.1 The *Supervisor* marks Equipment, Plant and Materials which are outside the Working Areas if

- this contract identifies them for payment and
- the *Contractor* has prepared them for marking as the Works Information requires.

### **Removing Equipment 72**

72.1 The *Contractor* removes Equipment from the Site when it is no longer needed unless the *Project Manager* allows it to be left in the works.

### **Objects and materials within the site 73**

73.1 The *Contractor* has no title to an object of value or of historical or other interest within the Site. The *Contractor* notifies the *Project Manager* when such an object is found and the *Project Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions.

73.2 The *Contractor* has title to materials from excavation and demolition only as stated in the Works Information.

## 8 Risks and insurance

### Z1.30 **Employer's risks** 80

80.1 The following are *Employer's* risks.

#### Z1.31.1

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

### **The Contractor's risks** 81

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

#### **Repairs** 82

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

#### **Indemnity** 83

#### Z1.31 Z1.31.1

83.1 ~~Each Party~~ **The *Contractor* is responsible for and indemnifies the *Employer*, the *Employer's* employees and agents and members of the TfL Group against all Losses in respect of events or matters the other against claims, proceedings, compensation and costs due to an event which is are at the *Contractor's* his risk including:**

- personal injury to or death of any person;
- loss of or damage to property real or personal other than to the *works*; and
- any other Losses arising under the *Employer's* contracts with Others.

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

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the *works* or the project,
- any Losses arising from the *Contractor's* failure to account for or to pay any VAT relating to payments made to the *Contractor* under this contract in accordance with clause 51.6,
- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the *Contractor* using all reasonable and practical means, and
- any Losses arising from any breach of Data Protection Legislation or clause Z2.17.

- Z1.31.2 83.2 The ~~Contractor's liability of each Party to indemnify the Employer, the Employer's employees and agents and members of the TfL Group~~ ~~other~~ is reduced if events at the ~~other Party's~~ *Employer's* risk contributed to the ~~Losses claims, proceedings, compensation and costs~~. The reduction is in proportion to the extent that events which were at the ~~Employer's other Party's~~ risk contributed, taking into account each Party's responsibilities under this contract. ~~The Contractor's indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.~~
- Z1.31.3 83.3 Notwithstanding any other clause in this contract the *Contractor's*, and its Subcontractors', liability for damage to existing structures belonging to the *Employer* which do not form part of the *works* and which arises during the carrying out of the *works* at the Site shall be limited to £25,000 per occurrence and the *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* and its Subcontractors for such Losses.

**Remedies**

- Z1.32 83A.1 The Parties acknowledge and agree that the payment or deduction of:
- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7 and/or low performance damages pursuant to Option X17; and
  - (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages for disruption pursuant to clause Z2.12.

**Insurance cover 84**

- Z1.33 84.1 The ~~Parties provide Contractor provides~~ the insurances stated in the Insurance Table ~~except any insurance which the Employer is to provide as stated in the Contract Data~~. The *Contractor* provides additional insurances as stated in the Contract Data.
- Z1.33.1 84.2 ~~The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor's risk from the starting date until the Defects Certificate or a termination certificate has been issued.~~

**INSURANCE TABLE**

<b>Insurance against</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the <i>Employer</i>
Loss of or damage to Equipment	The replacement cost

Liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately
Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event

**Insurance Table**

<b>Insurance Against</b>	<b>Party Responsible for ensuring insurance is in place</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
<b>Construction All Risks insurance</b>		
All risks of loss of or damage (not excluded by the terms and conditions of the policy) to the works and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the works), equipment, temporary buildings and property owned by or supplied by the Employer.	Employer  in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the works on the Site and any associated compounds storage and transit locations and other places accepted by the Project Manager and used solely for the purposes of carrying out of the physical works within the United Kingdom.	The full reinstatement value of the works
<b>Public liability insurance</b>		
All sums for which the insured becomes legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the carrying out of the works at the Site (unless excluded by the terms and conditions of the policy).	Employer  in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the works on the Site and any associated compounds storage and transit locations and other places accepted by the	Not less than £25,000,000 per occurrence or as otherwise stated in the Contract Data.

*Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

**Employer's liability insurance**

Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with this contract or the Project	<i>Contractor</i>	Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater
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**Contractor's Equipment loss insurance**

Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the <i>Contractor</i>	<i>Contractor</i>	The replacement cost
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**Professional Indemnity Insurance**

Fault in respect of design of the <i>works</i> or other professional services for which the <i>Contractor</i> or its Subcontractors is responsible	<i>Contractor</i>	£2,000,000 for each and every claim or as otherwise stated in the Contract Data
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Z1.33.3

84.3 In respect of the insurances provided by the *Contractor*:

- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that its professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
- the *Contractor* bears the cost of all premiums, which is deemed to be included in the Fee;
- if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps it intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.

Z1.33.4

84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.

Z1.33.5

84.5 The *Contractor* procures that:

- its Subcontractors (and sub-subcontractors of any tier) maintain employer's liability (and where appropriate) motor liability insurances as required by law; and

its Subcontractors for *where such subcontracts exceeds £25,000* maintain professional indemnity insurance covering their liabilities under subcontracts in respect of their design.

Z1.33.6

84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of its obligations and liabilities under this contract.

**Insurance policies 85**

Z1.34

Z1.34.1

85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is **that:**

- ~~that they do not comply with this contract,~~
- **the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom; or**
- **the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.**

Z1.34.2

85.2 ~~Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.~~ **Not used.**

85.3 The Parties comply with the terms and conditions of the insurance policies.

Z1.34.3

85.4 Any amount not recovered from an insurer (including **excesses or deductibles**) is borne by the *Employer* for events which are at **the *Employer's* his** risk and by the *Contractor* for events which are at **the *Contractor's* his** risk.

Z1.34.4

85.5 **In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.**

**If the *Contractor* does 86**

Z1.35

**insure**

**not**

Z1.35.1

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

**Insurance by the 87**

***Employer***

Z1.36

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

87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.

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

Z1.36.1

87.4 **The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.**

Z1.36.2

87.5 **The *Contractor* complies and ensures that its Subcontractors comply with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.**

Z1.36.3

87.6 **The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.**

Z1.36.4

87.7 **The insurances provided by the *Employer* are in effect for the duration of the *works* at the Site and any associated compounds storage and transit locations**

and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

Z1.36.5

87.8 The *Contractor* ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the *Employer* while the Subcontractor is engaged in carrying out the works at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

## 9 Termination

### Termination 90

Z1.37  
Z1.37.1A

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

**TERMINATION TABLE**

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21 the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, R10B, R18, R25A	P1, P2 and P3	A1 and A3
	R17, or R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
The <i>Contractor</i>	R1–R10, R10A, R10B, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

Z1.37.2

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

### Reasons for termination 91

Z1.38  
Z1.38.1

- 91.1 Either Party may terminate if the other Party has done one of the following (or its equivalent **in other jurisdictions**).
- If the other Party is an individual and has
    - presented **its his** petition for bankruptcy (R1),
    - had a bankruptcy order made against **it him** (R2),
    - had a receiver appointed over **its his** assets (R3) or
    - made an arrangement with **its his** creditors (R4).
  - If the other Party is a company or partnership and has
    - had a winding-up order made against it (R5),
    - had a provisional liquidator appointed to it (R6),
    - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
    - had an administration order made against it (R8),
    - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
    - made an arrangement with its creditors (R10).
  - **If the other Party has become insolvent as defined in section 113 of the Act (R10A).**
  - **If the other Party has applied to court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B).**

Z1.38.1A

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

Z1.38.2

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

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).

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

91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
- either Party may terminate if the instruction was due to any other reason (R20).

Z1.38.3

- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
  - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.4

91.8 The *Employer* may terminate the *Contractor's* appointment in the event of:

- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with its obligations under Clause Z2.20 or has failed to comply with its obligations under Clause Z2.17 (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.18 (R23),
- any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
- the *Employer* not obtaining any necessary funding for the Project and/or the necessary funding is curtailed (R25),
- A Change of Control (R25A).

Z1.38.5

91.9 In the event that either:

- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union as assimilated by the EUWA;
- this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016; or
- the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (to the extent not already covered by this clause 91.9) and should therefore have been excluded from the procurement procedure in accordance with those Regulations

then:

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

Notwithstanding the declaration or order, the provisions of clauses 90-93 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 survive the declaration or order as aforesaid.

Z1.38.6

91.10 Not Used

**Procedures on 92**

Z1.39

**termination**

Z1.39.1A

92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which it ~~he~~ has title (P1).

Z1.39.1

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.

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

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

P4 The *Contractor* leaves the Working Areas and removes the Equipment.

**Payment on termination 93**  
Z1.40

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

**2. Additional Conditions of Contract**  
**Contractor's Warranties**

- Z2.1
- Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:
- PFI Contractors,
  - persons providing finance in connection with the *works*,
  - purchasers and tenants of the whole or any part of the *works*,
  - developers having or acquiring an interest in whole or any part of the *works*;
  - any other persons having or acquiring an interest in neighbouring or adjacent property;
- Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request made no later than the Completion Date, duly executes and delivers to the *Employer* deeds of warranty in the appropriate form attached at Schedule 23 in favour of each such persons and/or in favour of any member of the TfL Group.

**Subcontractors' Warranties**

- Z2.2
- Z2.2.1 This clause applies to Subcontractors for TfL Station Fire Hydrants Tranches 1 – 4 Replacement Works where such subcontracts exceed £25,000. Unless informed by the Project Manager in writing that such warranties are not required, the *Contractor* uses its best endeavours to procure that the Subcontractors (and sub-subcontractors of any tier with design responsibility, and other sub-subcontractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in the appropriate form attached at Schedule 24 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 25 in favour of

- any member of the TfL Group,
- the PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in the whole or any part of the *works*;
- any other persons having or acquiring an interest in neighbouring or adjacent property;

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

Z2.3 Not used

## Warranties and Undertakings

Z2.4

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

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

## Accounts and Records

Z2.5

- Z2.5.1 The *Contractor* maintains and retains (and procures that its Subcontractors maintain and retain) the Minimum Records for a minimum of 12 years from Completion of the *works*.
- Z2.5.2 The *Contractor* complies with (and ensures its Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and its authorised representatives are entitled to audit the Minimum Records in accordance with the provisions set out in the Works Information.
- Z2.5.3 The *Contractor* ensures that any requirements of Data Protection Legislation are complied with to enable the *Employer* to exercise its rights under or pursuant to this clause Z2.5.

**Nuisance**

Z2.6

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

**Intellectual Property Rights**

Z2.7

**Z2.7.1 Vesting of IPR**

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

**Z2.7.2 Background IPR**

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

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

(g) designing, testing and commissioning the *works*.

Z2.7.3 The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* access as soon as reasonably practicable to all Documentation in whatever form requested by the *Project Manager* at any time but at the latest on termination or expiry of this contract.

**Z2.7.4 IPR Claims**

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

**Z2.7.5 Corporate IPR**

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

enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

**Assignment**

Z2.8

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

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

**Confidentiality**

Z2.9

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

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

Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.

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

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

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

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

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

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

Z2.9.9 Except as provided under deeds of warranty required by the *Employer* under Sub-clause Z2.1, the *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for

any reason disclose to any person or publish or make any statement concerning this contract or the *works* or the Project.

**Conflict Avoidance Panel**

Z2.10

Z2.10.1 The *Employer*, the *Contractor* and the *Project Manager* co-operate with each other in the early identification, notification and avoidance or resolution of any Dispute.

Z2.10.2

Subject to clause W2.1, any Dispute may in the first instance be referred to a Conflict Avoidance Panel by notice in writing from the referring party to the other party. The parties to the Dispute endeavour to agree upon (a) the person(s) whom they would consider suitable to act as the member(s) of the Conflict Avoidance Panel and (b) the number of member(s) of the Conflict Avoidance Panel (which as a general principle depends upon the issues in dispute but is always an odd number). In the event of the parties to the Dispute failing to reach such agreement within 14 days of receipt by the responding party of notice pursuant to this clause Z2.10.2, either party to the Dispute may request the Royal Institution of Chartered Surveyors (RICS) to nominate the member(s) of the Conflict Avoidance Panel to do so (including the number of member(s) of the Conflict Avoidance Panel, which as a general principle depends upon the issues in dispute but is always an odd number). Any person selected to act as a member of the Conflict Avoidance Panel (a) is a natural person acting in their personal capacity and (b) is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.

Z2.10.3

Within 7 days of the appointment of the member(s) of the Conflict Avoidance Panel in accordance with clause Z2.10.2, the referring party refers the Dispute in writing to the Conflict Avoidance Panel. The referral gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought, including the provisions of the Contract that are relevant to the Dispute. The referral may include copies of, or relevant extracts from, the Contract and any other documents on which it relies. The referring party provides the responding party with a copy of any documents which it provides to the Conflict Avoidance Panel at the same time as it provides them to the Conflict Avoidance Panel.

Z2.10.4

Within 7 days of receipt of the referral of the Dispute to the member(s) of the Conflict Avoidance Panel pursuant to clause Z2.10.3, the responding party provides the Conflict Avoidance Panel with a brief written response. The responding party may at the same time provide the Conflict Avoidance Panel with any documents on which it relies. The responding party provides the referring party with a copy of any documents which it provides to the Conflict Avoidance Panel at the same time as it provides them to the Conflict Avoidance Panel.

Z2.10.5

Within 7 days of receipt of the response pursuant to clause Z2.10.4 (or such longer period as may be agreed by the parties to the Dispute), the Conflict Avoidance Panel notifies the parties to the Dispute of its recommendation(s) for avoiding or resolving the Dispute. The notice is in writing and includes a summary of the Conflict Avoidance Panel's findings and a statement of its reasons for the recommendation(s). The recommendation(s) is (are) not binding on the parties to the Dispute.

Z2.10.6

If a party to the Dispute is dissatisfied with the recommendation(s) notified by the Conflict Avoidance Panel pursuant to clause Z2.10.5, it notifies the other party to the Dispute in writing, within 7 days of notification by the Conflict Avoidance Panel pursuant to clause Z2.10.5, of the reasons why it is dissatisfied with the recommendation(s).

Z2.10.7

Each party to the Dispute (a) bears its own costs and expenses in relation to any reference of a Dispute to the Conflict Avoidance Panel and (b) bears in equal shares the remuneration and expenses of the member(s) of the Conflict Avoidance Panel and the fees of the professional body or association requested to propose the member(s) of the Conflict Avoidance Panel.

Z2.10.8

Save as required by law, the Parties and the member(s) of the Conflict Avoidance Panel keep confidential all information of whatever nature provided by or on behalf of the parties to the Dispute pursuant to clause Z2.10 and the Conflict

Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)). The Parties do not make use of or rely upon any such information or the Conflict Avoidance Panel's recommendation(s) (including its findings and its reasons for the recommendation(s)), which are without prejudice.

#### **Dispute Resolution Procedure**

##### **Z2.11**

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

#### **Liquidated Damages for Disruption (to the Underground Network)**

##### **Z2.12**

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

#### **Responsible Procurement**

##### **Z2.13**

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

#### **Crime and Disorder**

##### **Z2.14**

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

- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
- where appropriate, identify actions to reduce levels of crime and disorder,
- without prejudice to any other obligation imposed on the *Employer*, exercise 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 *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors (and sub-subcontractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty.

#### **London Living Wage**

##### **Z2.15**

Z2.15.1 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

Z2.15.2 Without prejudice to the generality of Clause Z2.15.1, the *Contractor* will and procures that its Subcontractors (and sub-subcontractors of any tier) will:

- (a) ensure that none of its employees and workers engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
- (b) ensure that none of its employees and workers engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment,
- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage,
- (d) provide to the *Employer* or its nominees such information concerning the London Living Wage as the *Employer* or its nominees may reasonably require from time to time, including (without limitation):
  - all information necessary for the *Employer* to confirm that the *Contractor* is complying with its obligations under this clause Z2.15, and
  - reasonable evidence that sub-clause Z2.15.2(a) is implemented,
- (e) in connection with sub-clause Z2.15.2(d)
  - acknowledge and agree that the CCSL may contact and meet with any trade unions representing the employees and workers of the *Contractor* and Subcontractor (and sub-subcontractor of any tier) in order to establish that the obligations in sub-clause Z2.15.2(a) have been complied with, and
  - liaise and cooperate with the *Employer* and the CCSL in order to establish that the obligations in sub-clause Z2.15.2(a) have been complied with, and
- (f) disseminate on behalf of the *Employer* to its employees and workers engaged in the performance of the *works* such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the *Employer* responses to such questionnaires.

Z2.15.3 For the avoidance of doubt, the *Contractor*:

- (a) implements the annual increase in the rate of the London Living Wage, and
- (b) procures that its Subcontractors (and sub-subcontractors of any tier) implement the annual increase in the rate of the London Living Wage on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

Z2.15.4 The *Employer* may in accordance with the audit right set out in clause Z2.5 audit and check the provision of the London Living Wage to the employees and workers of the *Contractor* and Subcontractor (and sub-subcontractor of any tier).

Z2.15.5 Any breach by the *Contractor* of the provisions of this clause Z2.15 is treated as the *Contractor* having substantially failed to comply with its obligations for the purpose of clause 91.2 of this contract.

## Data Transparency

### Z2.16

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

Z2.16.2 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. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

## Data Protection

### Z2.17

Z2.17.1 The *Contractor* complies with all of its obligations under the Data Protection Legislation and, if Processing Personal Data on behalf of the *Employer*, only carries out such Processing to Provide the Works in accordance with this contract. With respect to the Parties' rights and obligations under this contract, the Parties acknowledge that the *Employer* is a Data Controller solely responsible for determining the purposes and manner in which Employer Personal Data is to be Processed and the *Contractor* is a Processor.

Z2.17.2 Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place.

Z2.17.3 The *Contractor*:

- (a) Processes the Employer Personal Data only in accordance with documented instructions from the *Employer* to perform its obligations under this contract;
- (b) uses its reasonable endeavours to assist the *Employer* in complying with its obligations under Data Protection Legislation and does not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (c) notifies the *Employer* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Employer* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (d) maintains, and makes available to the *Employer* on its request, documentation which describes the Processing operations for which it is responsible under this contract including:
  - the purposes for which Employer Personal Data is Processed,
  - the types of Personal Data and categories of Data Subject involved,
  - the source(s) of the Personal Data,
  - any recipients of the Personal Data,
  - the location(s) of any overseas Processing of Employer Personal Data,
  - retention periods for different types of Employer Personal Data and
  - where possible a general description of the security measures in place to protect Employer Personal Data;
- (e) where requested to do so by the *Employer* assists the *Employer* in carrying out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation);
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, takes appropriate technical and organisational security measures which are appropriate to protect against unauthorised or unlawful Processing of Employer

Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data which the *Employer* may reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the measures);

- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provides the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor and sub-subcontractor of any tier) with clauses Z2.17.3(f) and Z2.17.3(h), including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer*;
- (h) notifies the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause Z2.17, including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;
- (i) having notified the *Employer* of a breach in accordance with clause Z2.17.3(h), keeps the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer*;
- (j) fully cooperates as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);
- (k) notifies the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor and sub-subcontractor of any tier), receives:
  - from a Data Subject (or third party on their behalf):
    - a Subject Request (or purported Subject Request), or
    - any other request, complaint or communication relating to the *Employer's* obligations under Data Protection Legislation;
  - any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or
  - a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;
- (l) provides the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer*) in relation to any complaint, communication or request made as referred to in clause Z2.17.3(k), including by promptly providing:
  - the *Employer* with full details and copies of the complaint, communication or request;
  - where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Request within the relevant timescales set out in Data Protection Legislation;
- (m) when notified in writing by the *Employer*, supplies a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and

in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;

- (n) when notified in writing by the *Employer*, complies with any agreement between the *Employer* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;
- (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer; and
- (p) makes available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in this clause Z2.17.

Z2.17.4 The *Contractor* does not share Employer Personal Data with any Subcontractor (or sub-subcontractor of any tier) without prior written consent from the *Employer*. The *Contractor* provides the *Employer* with such information regarding the proposed Subcontractor (or sub-subcontractor of any tier (as applicable)) as the *Employer* may reasonably require. The *Contractor* only shares Employer Personal Data with a Subcontractor (or sub-subcontractor of any tier (as applicable)) where there is a written contract in place between the *Contractor* and the Subcontractor (or sub-subcontractor of any tier (as applicable)) which requires the Subcontractor (or sub-subcontractor of any tier (as applicable)) to:

- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor*; and
- (b) comply with the same obligations which the *Contractor* is required to comply with under this clause Z2.17 (and clauses Z2.5 and Z2.9).

The *Contractor* remains responsible and liable to the *Employer* for all acts and omissions of any Subcontractor (and sub-subcontractor of any tier) as if they were its own.

Z2.17.5 The *Contractor* itself, and procures that any Subcontractor (and sub-subcontractor of any tier):

- (a) only Processes Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and as reasonably necessary to perform this contract in accordance with its terms;
- (b) does not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer*;
- (c) does not Process Employer Personal Data in such a way as to:
  - place the *Employer* in breach of Data Protection Legislation,
  - expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects, or
  - expose the *Employer* to reputational damage including adverse publicity;
- (d) the *Contractor* does not allow its personnel to access Employer Personal Data unless such access is necessary to Provide the Works;
- (e) the *Contractor* takes all reasonable steps to ensure the reliability and integrity of the Connected Persons who can access Employer Personal Data;
- (f) the *Contractor* ensures that all Connected Persons who can access Employer Personal Data:
  - are informed of its confidential nature,
  - are made subject to an explicit duty of confidence,

- understand and comply with any relevant obligations created by either this contract or Data Protection Legislation and
  - receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;
- (g) does not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
- (h) without prejudice to clause Z2.17.3, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensures that each such device encrypts Employer Personal Data; and
- (i) complies during the course of this contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time.

Z2.17.6 The *Contractor* does not, and procures that any Subcontractor (and sub-subcontractor of any tier) does not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*).

Z2.17.7 If, after the Contract Date, the *Contractor* (including any Subcontractor and sub-subcontractor or any tier) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:

- (a) the *Contractor* submits a written request to the *Employer* setting out details of the following:
- the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,
  - the Restricted Countries which the Employer Personal Data will be transferred to and/or Processed in,
  - any Subcontractor, sub-subcontractor of any tier or other third parties who will be Processing and/or receiving Employer Personal Data in Restricted Countries,
  - how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Employer Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Employer's* compliance with Data Protection Legislation,
- (b) in preparing and evaluating such a request, the Parties refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
- (c) the *Contractor* complies with any instructions and carries out such actions as the *Employer* may notify in writing when providing its consent to such Processing or transfers, including:
- incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties, and
  - procuring that any Subcontractor and sub-subcontractor or other third party who will be Processing and/or receiving or accessing the Employer Personal Data in any Restricted Countries enters into a data processing agreement with the *Contractor* on terms which are equivalent to those agreed between the *Employer* and the *Contractor* in connection with the Processing of Employer Personal Data in (and/or transfer of Employer Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in the bullet point above.

Z2.17.8 The *Contractor* and any Subcontractor (and sub-subcontractor of any tier) (if any), acknowledges:

- (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer's* documented instructions and this contract;
- (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this contract or negligence in relation to Employer Personal Data;
- (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non-performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with its obligations;
- (d) notwithstanding clause 91.2, if the *Contractor* has committed a material breach under clause Z2.17.8(c) on two or more separate occasions, the *Employer* may at its option:
  - withdraw authorisation for Processing by a specific Subcontractor (or sub-subcontractor of any tier) by immediate written notice; or
  - terminate the *Contractor's* obligation to Provide the Works in whole or part with immediate written notice to the *Contractor*.

Z2.17.9 Compliance by the *Contractor* with this clause Z2.17 is without additional charge to the *Employer* and compliance with this clause is not a compensation event.

Z2.17.10 Following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works, in each case howsoever arising, the *Contractor*:

- (a) may Process the Employer Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with clause Z2.17.10(b)(i));
- (b) where clause Z2.17.10(a) does not apply, may Process the Employer Personal Data only for such duration as agreed in accordance with the Processing Statement and following such duration:
  - (i) subject to clause Z2.1710(a) on written instructions from the *Employer* either securely destroys or securely and promptly returns to the *Employer* or a recipient nominated by the *Employer* (in such usable format as and to the extent the *Employer* may reasonably require) the Employer Personal Data, or
  - (ii) in the absence of instructions from the *Employer* after 12 months from the expiry or termination of this contract or termination of the *Contractor's* obligation to Provide the Works securely destroys the Employer Personal Data.

Z2.17.11 Employer Personal Data may not be Processed following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works save as permitted by clause Z2.17.10.

Z2.17.12 For the avoidance of doubt, and without prejudice to clause Z2.17.10, the obligations in this clause Z2.17 apply following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works to the extent the Party concerned retains or Processes Employer Personal Data.

Z2.17.13 The *Contractor* takes reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.

Z2.17.14 The *Contractor* indemnifies the *Employer* and members of the TfL Group from and against all Losses resulting from any breach by the *Contractor* or any Subcontractor (or sub-subcontractor of any tier) of the Data Protection Legislation or clause Z2.17. Without prejudice to clause X18.6, the *Contractor's* liability in respect of any breach of this clause Z2.17 insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

**Conflict of Interest**

Z2.18

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

**Freedom of Information**

Z2.19

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

**Criminal Record Declarations**

Z2.20

- Z2.20.1 The *Contractor* procures from each Relevant Individual (as the case may be) a declaration that such person has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions which have been committed. A Declaration is procured prior to a Relevant Individual carrying out any aspect of the works. The *Contractor* confirms to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* procures that a Relevant Individual notifies the *Contractor* immediately if such person commits a Relevant Conviction throughout the duration of this contract and the *Contractor* notifies the *Employer*

in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- Z2.20.2 The *Contractor* is not permitted to engage or allowed to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.3 The *Employer* may in accordance with the audit rights set out or referred to in Clause Z2.5 audit and check any and all such records as are necessary or referred to in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.4 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.1 and/or Z2.20.2, the *Employer* may, without prejudice to its rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* it has procured all of the Declarations required under Clause Z2.20.1.
- Z2.20.5 A persistent breach of Clause Z2.20.1 and/or Z2.20.2 by the *Contractor* constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* removes or procures the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z2.20.7 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

**Best Value**

Z2.21

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

**Prohibited Acts**

Z2.22

- Z2.22.1 The *Contractor* does not and uses its reasonable endeavours to procure that its Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to its rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3 If the *Contractor*, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of its agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22.4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may

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

**Modern Slavery Act**  
Z2.23

Z2.23.1 In performing its obligations under this contract, the *Contractor*

- complies with the Anti-Slavery Policy,
- complies, and procures that its Subcontractors (and sub-subcontractors of any tier) comply, with the Modern Slavery Act 2015, and
- unless otherwise agreed in writing by the *Employer* (at the *Employer's* sole and absolute discretion), only procures, and ensures that its Subcontractors (and sub-subcontractors of any tier) only procure, labour from a Certified Ethical Labour Provider.

Where the *Contractor*, a Subcontractor (or any sub-subcontractor of any tier) is procuring labour from a Certified Ethical Labour Provider in accordance with the Clearview Scheme (or any Alternative Labour Scheme in respect of which audit reports are prepared), the resulting audit reports are made available to the *Employer* (at no additional cost) through the Supplier Ethical Data Exchange (Sedex) platform or such other equivalent platform as the *Employer* in its sole and absolute discretion may approve.

Z2.23.2 On each 12-month anniversary of the *starting date*, until the Defects Certificate has been issued, the *Contractor* shall submit a report to the *Employer* which confirms that all labour used to Provide the Works has been procured from a Certified Ethical Labour Provider and includes such evidence as the *Employer* may reasonably require to evidence compliance.

Z2.23.3 A failure by the *Contractor* to comply with its obligations under clause Z2.23.1 and Z2.23.2 constitutes a substantial failure by the *Contractor* to comply with its obligations for the purpose of clause 91.2 of this contract.

Z2.23.4 The *Employer* may refuse any labourer employed or engaged by the *Contractor*, a Subcontractor (or any sub-subcontractor of any tier) entry onto any property that is owned, occupied or managed by the *Employer* if that labourer has not been procured from a Certified Ethical Labour Provider or if the *Employer* has reasonable grounds to suspect that such employee or agent has not been procured from a Certified Ethical Labour Provider. Any losses arising from such refusal of entry shall not constitute a compensation event.

## DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.10 and Z2.11)

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation

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

### Option X2: Changes in the law

<b>Changes in the law</b>	<b>X2</b>	
Z1.40.1	X2.1	<p>A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for <b>such</b> a change in the law and instruct <b>it</b> <del>him</del> to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.</p>

### Option X3: Multiple currencies

<b>Multiple currencies</b>	<b>X3</b>	
	X3.1	<p>The <i>Contractor</i> is paid in currencies other than the <i>currency of this contract</i> for the items or activities listed in the Contract Data. The <i>exchange rates</i> are used to convert from the <i>currency of this contract</i> to other currencies.</p>

X3.2 Payments to the *Contractor* in currencies other than the *currency of this contract* do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the *currency of this contract*.

## Option X4: Parent company guarantee

<p><b>Parent company Guarantee</b></p> <p>Z1.41.1</p> <p>Z1.41.2</p> <p>Z1.41.3</p> <p>Z1.41.4</p> <p>Z1.41.5</p>	<p><b>X4</b></p> <p>X4.1</p> <p>X4.2</p> <p>X4.3</p> <p>X4.4</p> <p>X4.5</p>	<p>If a parent company owns the <i>Contractor</i>, the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the <del>parent company</del> <i>parent company</i> of the <i>Contractor's</i> performance in the form set out in the Works Information attached at Schedule 18. <del>If the</del> <del>The guarantee was not</del> <del>is given by</del> <del>at the Contract Date, it is given to the</del> <del>Employer within four weeks of the Contract Date</del> unless the <i>Employer</i> (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.</p> <p>If the <i>Contractor</i> is an incorporated joint venture, the <i>parent company</i> of each shareholder in the <i>Contractor</i> gives to the <i>Employer</i> a guarantee of the <i>Contractor's</i> performance in the form set out in Schedule 18. The guarantee is given at the Contract Date unless the <i>Employer</i> (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.</p> <p>If the <i>Contractor</i> comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the <i>Employer</i> a guarantee by its <i>parent company</i> of such company's performance in the form set out in Schedule 18. The guarantee is given at the Contract Date unless the <i>Employer</i> (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.</p> <p>If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion in the form set out in Schedule 26 on the guarantor's execution of any such guarantee.</p> <p>Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.</p>
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## Option X5: Sectional Completion

<p><b>Sectional Completion</b></p>	<p><b>X5</b></p> <p>X5.1</p>	<p>In these <i>conditions of contract</i>, unless stated as the whole of the <i>works</i>, each reference and clause relevant to</p> <ul style="list-style-type: none"> <li>• the <i>works</i>,</li> <li>• Completion and</li> <li>• Completion Date</li> </ul> <p>applies, as the case may be, to either the whole of the <i>works</i> or any <i>section</i> of the <i>works</i>.</p>
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## Option X6: Bonus for early Completion

<p><b>Bonus for early Completion</b></p>	<p><b>X6</b></p> <p>X6.1</p>	<p>The <i>Contractor</i> is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of</p> <ul style="list-style-type: none"> <li>• Completion and</li> <li>• the date on which the <i>Employer</i> takes over the <i>works</i></li> </ul> <p>until the Completion Date.</p>
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## Option X7: Delay damages

### Delay damages X7

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

## Option X12: Partnering

### Identified and defined terms X12

- X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
- (2) An Own Contract is a contract between two Partners which includes this Option.
- (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.
- (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.
- (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

### Actions

- X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
- (2) Each Partner nominates a representative to act for it in dealings with other Partners.
- (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.
- (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.

Z1.42.1

- (2) A Partner may ask another Partner to provide information which ~~it~~ ~~he~~ needs to carry out the work in ~~its~~ ~~his~~ Own Contract and the other Partner provides it, **subject to any obligations of confidentiality owed by that Partner under its Own Contract.**

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

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

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

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

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Contractor* changes ~~its his~~ programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work.

**Incentives** X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

## Option X13: Performance bond

### Performance bond X13 X13.1

Z1.43.1 X13.1 The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in ~~Schedule 2 the Works Information~~. A reason for not accepting the bank or insurer is that ~~it is not licensed to carry out surety business in the United Kingdom or that it is a Group Company of the provider of a bond under Option X4 or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the *Project Manager* agrees otherwise) be strong enough if it is rated less than 'A+' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider).~~ ~~If The the bond is was not given by at the Contract Date, it is given to the *Employer* within four weeks of the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.~~

Z1.43.2 X13.2 Not used

Z1.43.3 X13.3 If a performance bond expires in accordance with its terms prior to the issue of the Defects Certificate or the provider of a performance bond no longer holds a long-term credit rating of at least 'A' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider) and if the *Employer* so requests, the *Contractor* provides to the *Employer* a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted:

- in the case of an expired bond, not later than 7 days before the expiry of the original bond; or
- in the case of a downgraded credit rating, within 35 days of the *Employer's* request for a replacement bond.

Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.

## Option X14: Advanced payment to the *Contractor*

### Advanced payment X14

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

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

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

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

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

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

### The *Contractor's* design X15

Z1.44.1

X15.1 The *Contractor* is not liable for Defects in the *works* due to **its** his design so far as **it** he proves that **it** he used **all the** reasonable skill, **and** care **and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the works in connection with projects of a similar size, scope and complexity to the Project** to ensure that **its** his design complied with the Works Information.

Z1.44.2

X15.2 If the *Contractor* corrects a Defect for which **it** he is not liable under this contract it is a compensation event.

## Option X16: Retention

### Retention X16

X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of

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

the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or
- in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

Z1.45.1

X16.3 **Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer***

without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.

- Z1.45.2 X16.4 After the Price for Work Done to Date has reached the *retention free amount*, as an alternative to a cash retention, the *Contractor* may provide a retention bond in the form attached at Schedule 19 from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted. Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.
- Z1.45.3 X16.5 The following applies in respect of a retention bond provided pursuant to clause X16.4:
- until Completion of the whole of the *works*, the amount of the retention bond is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*;
  - the amount of the retention bond is halved at Completion of the whole of the *works* and remains at this amount until the Defects Certificate is issued. No amount is retained after the Defects Certificate has been issued.

## Option X17: Low performance damages

### Low performance Damages X17

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

## Option X18: Limitation of liability

### Limitation of liability X18

- Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages for disruption pursuant to Z2.12, ~~the~~ *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to ~~its~~ *his* design which are not listed on the Defects Certificate ~~is limited to the amount stated in the Contract Data~~ is not limited by the issue of the Defects Certificate and is in addition to any damages stated in this contract for delay, low performance or disruption.
- Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
  - liquidated damages for disruption (Z2.12),

- delay damages if Option X7 applies,
  - low performance damages if Option X17 applies and
  - the matters listed in X18.6.
- Z1.46.4 X18.5 ~~The Contractor is not liable to the Employer for a matter unless it is notified to the Contractor before the end of liability date. Not used.~~
- Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:
- Losses caused by fraudulent acts or acts of a criminal nature;
  - Losses against which the Contractor is entitled to an indemnity under any policy of insurance; or
  - any other Losses against which the Employer or any member of the TfL Group is entitled to an indemnity under clause 83.1, in respect of:
    - personal injury to or death of any person;
    - loss of or damage to property real or personal belonging to the Employer or for which it is responsible other than to the works;
    - any other Losses arising under the Employer's contracts with Others;
    - all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the works or the project;
    - any Losses arising from the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this contract in accordance with clause 51.6;
    - any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the Contractor using all reasonable and practicable means; and
    - any Losses arising from any breach of Data Protection Legislation or clause Z2.17.

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

- Z.1.46A Incentives X20.1 A Key Performance Indicator is an aspect of performance by the Contractor for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with this contract.
- Z1.46A.1 X20.2 From the *starting date* until the Defects Certificate has been issued, the Contractor reports to the Project Manager its 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.
- Z1.46A.2 X20.3 If the Contractor's forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the Project Manager its proposals for improving performance.
- X20.4 Not used
- X20.5 Not used
- Single Point Design Responsibility X21
- Z1.47 X21.1 In this Option, "**Employer's Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the Employer and included in the Works Information.

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

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

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

- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
- (b) definitions of intended purposes of the *works* or any part thereof, and
- (c) criteria for the testing and performance of the completed *works*.

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

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

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

**Novation of Associated Contracts X22**

Z1.48

X22.1 In this Option:

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

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

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

X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 22 hereto within 14 days of request from the *Employer* to do so.

X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 24 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2 if applicable.

X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer*. Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the Project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold its consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is

practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).

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

**Key Person Succession Plan X23**

Z1.49

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

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

X23.3 Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:

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

the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* decides to reduce or waive this requirement.

**Fee Cap X24 Not used with Option A**

**Escrow Agreement X25**

Z1.51

X25.1 In this Secondary Option X25:

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

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

**"Escrow Agreement"** means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 27 provided that the Release Events referred to in clause 6 thereof is amended to include:

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

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

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

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

X25.2 The *Contractor*, no later than the Contract Date procures that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and thereafter maintains the agreement for a minimum period of 12 years from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) is borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement then one tenth of the total cumulative increase in the amount due since the date at which the Escrow Agreement was last maintained is retained in all assessments of the amount due and is not payable to the *Contractor* until the *Contractor* has provided the same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

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

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

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

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

## Lift and Escalator X26 Subcontractors

Z1.52

X26.1 In this Secondary Option X26:

**"Escalators Subcontract"** means the subcontract for the design, supply, installation, testing and/or commissioning of escalators entered into by the *Contractor* and Escalators Subcontractor.

**"Escalators Subcontractor"** means the subcontractor for the design, supply, installation, testing and/or commissioning of escalators specified in the Works Information.

**"Lifts Subcontract"** means the subcontract for the design, supply, installation, testing and/or commissioning of lifts entered into by the *Contractor* and Lifts Subcontractor.

**"Lifts Subcontractor"** means the subcontractor for the design, supply, installation, testing and/or commissioning of lifts specified in the Works Information.

X26.2 Where this Secondary Option X26 is selected the *conditions of contract* are amended as follows:

- Clause 11.2(17): insert at the end of the definition of a "Subcontractor": "and for the avoidance of doubt, except where otherwise stated, includes the Lifts Subcontractor and Escalators Subcontractor".
- Clause 26: insert a new sub-clause 26.1A as follows: "This clause applies to all subcontracts except the Lifts Subcontract and Escalators Subcontract".
- Clause 60.1: insert a new sub-clause 60.1(20) as follows: "A Lifts Subcontractor and/or an Escalators Subcontractor becoming insolvent within the meaning of section 113 of the Act."

- Clause 90.2 (Termination Table): In the column entitled 'Reason' in the second row of the table, insert "R13A" after "R10A".
- Clause 91.2: insert a new bullet at the end as follows: "Appointed a Lifts Subcontractor and/or Escalators Subcontractor without complying with the requirements of this contract (R13A)"
- Z2.2.1: insert after the first sentence of the clause: "This sub-clause does not apply to the Lifts Subcontractor and Escalators Subcontractors".

X26.3 The *Contractor* appoints the Lifts Subcontractor using the form of Lifts Subcontract specified in the Works Information and the Escalators Subcontractor using the form of Escalators Subcontract specified in the Works Information.

X26.4 The *Contractor* is responsible for Providing the Works which are the subject of the Lifts Subcontract and Escalators Subcontract as if it had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

X26.5 If any event arises which in the opinion of the *Contractor* entitles it to terminate a Lifts Subcontract and/or Escalators Subcontract, or to treat a Lifts Subcontract and/or Escalators Subcontract as having been repudiated by the Subcontractor, the *Contractor* at once notifies the *Project Manager* who instructs the *Contractor* how to proceed having regard to the provisions of this Contract. The *Contractor* complies with any such instruction.

X26.6 If the Lifts Subcontractor and/or Escalators Subcontractor claims or gives any indication that it may be entitled to terminate the Lifts Subcontract and/or Escalators Subcontract, or to treat a Lifts Subcontract and/or Escalators Subcontract as having been repudiated by the *Contractor*, the *Contractor* notifies the *Project Manager* as soon as it is aware of any such claim, and the *Project Manager* instructs the *Contractor* how to proceed. The *Contractor* complies with any such instruction.

X26.7 The *Contractor* does not agree to assign, transfer, novate or charge a Lifts Subcontract and/or Escalators Subcontract (or any rights or obligations under them) without the prior written approval of the *Employer*.

X26.8 The *Contractor* does not agree to vary or amend the terms of a Lifts Subcontract and/or Escalators Subcontract nor waive or release any of the obligations of a Lifts Subcontractor and/or Escalators Subcontractor without the prior written approval of the *Employer*.

X26.9 Not used.

X26.10 The *Contractor* procures that the Lifts Subcontractor and Escalators Subcontractor duly execute and deliver to the *Employer*, within 21 business days (in the case of the Escalators Subcontractor) or 30 business days (in the case of the Lifts Subcontractor) of the date of their appointment, deeds of warranty from the Lifts Subcontractor, Escalators Subcontractor and their sub-subcontractors and sub-subconsultants in the appropriate form attached to the Lifts Subcontract and Escalators Subcontract.

X26.11 In respect of IPRs which are subject to the Lifts Subcontract, the *Contractor* procures the grant of a non-exclusive, perpetual, irrevocable and royalty free licence to copy and use any IPRs and Documentation owned, controlled or used by the *Contractor* and/or the Lifts Subcontractor for the purposes listed in clause Z2.7(a)-(e) and for the purpose of training of personnel in connection with any of the above activities.

In the event that:

- (a) an act of Insolvency occurs in relation to the *Contractor* and/or the Lifts Subcontractor; or
- (b) the *Contractor* fails, within 14 days of a written request by the *Employer*, to correct a failure to Provide the Works which are the subject of the Lifts Subcontract or supply the Documentation or to develop, enhance,

supplement, modify, interface, integrate and/or maintain the Documentation where required by the Lifts Subcontract,

the licence procured by the *Contractor* under this clause X26.11 in addition includes the right for the *Employer* to copy, use, develop, enhance, supplement, modify, interface, integrate and/or maintain the IPRs and Documentation for the purposes listed in this clause X26.11 and in addition for the purposes of designing, testing, commissioning, executing and completing the *works*.

**Design compliance**

**X27**

Z1.53

X27.1 As a condition of satisfying each of (a) the completion of the concept design as set out in Works Information, (b) the completion of the compliance design as set out in the Works Information, and (c) Completion, the *Contractor* demonstrates to the *Employer* that, as at that time (whichever of (a), (b) and (c) is applicable), both:

- (i) [the Business Case Assistant (BCA) and BCA Assumptions Template] included in [INSERT REFERENCE] and
- (ii) [the Legion Passenger Modelling] included in [INSERT REFERENCE]

conform with those specified in [INSERT REFERENCE] as part of the Works Information for the Contractor's design PROVIDED THAT, for the purposes of demonstrating conformity, an aggregate cumulative tolerance of up to [plus or minus 0.25% (one quarter of one per cent) is permitted in respect of the Legion Passenger Modelling referred to in paragraph (ii).]

X27.2 Failure by the *Contractor* to demonstrate any requirement pursuant to clause X27.1 constitutes a Defect for the purposes of this contract.

X27.3 If the *Contractor* fails to correct a Defect referred to in clause X27.2 within three (3) months of it arising, this is deemed to be a substantial failure by the *Contractor* to comply with its obligations and the *Employer* may terminate under clause 91.2 (R11) on written notice to the *Contractor*.

X27.4 If a compensation event arises under clause 60.1(1), the modelling referred to in paragraphs (i) and (ii) of clause X27.1 is rebased as follows: The *Contractor* re-runs the relevant model to reflect the relevant change and the *Employer* validates any consequent proposed rebasing.

**OPTION Y**

**Option Y(UK)1: Project Bank Account**

**Definitions**

Z1.53A.1

**Y(UK)1**

Y1.1

- (1) The Authorisation is a document authorising the *project bank* to make payments to the *Contractor* and Named Suppliers.
- (2) Named Suppliers are *named suppliers* and other Suppliers who have signed the Joining Deed.
- (3) Project Bank Account is the account used to receive payments from the *Employer* and the *Contractor* and make payments to the *Contractor* and Named Suppliers.
- (4) A Supplier is a person or organisation who has a contract to construct or install part of the *works*, provide a service necessary to Provide the Works or supply Plant and Materials for the *works*.

		(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.
		(6) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.
<b>Project Bank Account</b>	Y1.2	The <i>Contractor</i> establishes the Project Bank Account with the <i>project bank</i> within three weeks of the Contract Date.
	Y1.3	Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
	Y1.4	The <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The <i>Contractor</i> provides to the <i>Project Manager</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
<b>Named Suppliers</b>	Y1.5	The <i>Contractor</i> includes in <del>its</del> his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
	Y1.6	The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Project Manager</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The <i>Employer</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.
<b>Payments</b>	Y1.7	On or before each assessment date, the <i>Contractor</i> submits to the <i>Project Manager</i> an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.
	Y1.8	Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract, the <i>Employer</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract and the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Employer</i> has notified the <i>Contractor</i> <del>it</del> <del>he</del> intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
	Y1.9	The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Contractor</i> for the balance of the payment due under the contract. After signing the Authorisation, the <i>Contractor</i> submits it to the <i>Project Manager</i> no later than four days before the final date for payment. The <i>Employer</i> signs the Authorisation and submits it to the <i>project bank</i> no later than one day before the final date for payment.
	Y1.10	The <i>Contractor</i> and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
	Y1.11	A payment which is due from the <i>Contractor</i> to the <i>Employer</i> is not made through the Project Bank Account.
<b>Effect of payment</b>	Y1.12	Payments made from the Project Bank Account are treated as payments from the <i>Employer</i> to the <i>Contractor</i> in accordance with this contract or from the <i>Contractor</i> or <i>Subcontractor</i> to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the <i>Contractor</i> to comply with the requirements of this clause is not treated as late payment under this contract.

<b>Trust Deed</b>	Y1.13	The <i>Employer</i> , the <i>Contractor</i> and <i>named suppliers</i> sign the Trust Deed before the first assessment date.
<b>Termination</b>	Y1.14	If the <i>Project Manager</i> issues a termination certificate, no further payment is made into the Project Bank Account.

● **Trust Deed**

This agreement is made between the *Employer*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between . . . and . . . . . for . . . . . (the *works*).

● **Background**

The *Employer* and the *Contractor* have entered into a contract for the *works*. The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*. The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

**Agreement**

The parties to this deed agree that sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account, further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *Contractor*. The agreement of the *Employer* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed, this deed is subject to the law of the contract for the *works*, the benefits under this deed may not be assigned.

**Executed as a deed on** . . . . .

**by**

. . . . . (*Employer*)

. . . . . (*Contractor*)

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

(Named Suppliers)

- **Joining Deed**

This agreement is made between the *Employer*, the *Contractor* and . . . . .  
(the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between . .  
. . . . . and . . . . . for . . . . . (the *works*).

- **Background**

The *Employer* and the *Contractor* have entered into a contract for the *works*.

The Named Suppliers have entered into contracts with the *Contractor* or a  
Subcontractor in connection with the *works*.

The *Contractor* has established a Project Bank Account to make provision for  
payment to the *Contractor* and the Named Suppliers.

The *Employer*, the *Contractor* and the Named Suppliers have entered into a deed  
as set out in Annex 1 (the Trust Deed), and have agreed that the Additional  
Supplier may join that deed.

- **Agreement**

The Parties to this deed agree that

the Additional Supplier becomes a party to the Trust Deed from the date set  
out below,

this deed is subject to the law of the contract for the *works*,

the benefits under this deed may not be assigned.

**Executed as a deed on** . . . . .

**by**

. . . . . (*Employer*)

. . . . . (*Contractor*)

. . . . . (Additional Supplier)

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

### Definitions

**Note: incorporated in Schedule 2 and 12.6**

Z1.54.1

### Y(UK)2

Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

(2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

### Dates for payment

Y2.2 ~~The date on which a payment becomes due is seven days after the assessment date.~~

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

~~The *Project Manager's* certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.~~

### Notice of intention to withhold payment

Y2.3 ~~If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated.~~

~~A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.~~

### Z1.54.2 Suspension of performance

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

### Payment Y1

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

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

### Y(UK)3

### Third Party Rights

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

## Option Z: Additional conditions of contract

### Additional conditions of contract

Z1.55.1

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

## SHORTER SCHEDULE OF COST COMPONENTS

### Z1.57.1

- An amount is included only in one cost component and only if it is incurred in order to Provide the Works.
- People** 1 The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas,
  - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
  - people who are not directly employed by the *Contractor* but are paid for by ~~it him~~ according to the time worked while they are within the Working Areas.
- 11 Amounts paid by the *Contractor* including those for meeting the requirements of the law (**save for employer's liability insurance**) and for pension provision.
- Equipment** 2 The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
- 21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
- 22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- 23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
- 24 Unless the item is in the published list and the rate includes the cost component, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
  - erecting and dismantling Equipment and
  - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
- 26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
- 27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

- Plant and Materials** 3 The following components of the cost of Plant and Materials.
- 31 Payments for
- purchasing Plant and Materials,
  - delivery to and removal from the Working Areas,
  - providing and removing packaging and
  - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
- Charges** 4 The following components of the cost of charges paid by the *Contractor*.
- 41 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of
- payments for the provision and use in the Working Areas of water, gas and electricity,
  - payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
  - payments for the provision and use of equipment, supplies and services (excluding accommodation) for catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
- 42 Payments for cancellation charges arising from a compensation event.
- 43 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 44 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.
- 45 Specialist services.
- 46 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials, which are
- wholly or partly designed specifically for the *works* and
  - manufactured or fabricated outside the Working Areas.
- 51 Amounts paid by the *Contractor*.
- Design** 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance** 7 The following are deducted from cost
- costs against which this contract required the *Contractor* to insure ~~and~~
  - other costs paid to the *Contractor* by insurers **and**
  - **the cost of excess payments or deductibles.**

## SUPPLEMENTARY NOTES TO SHORTER SCHEDULE OF COST COMPONENTS

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

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

### Part A Notes

#### Section 1 : People

##### *Wages, salaries and amounts paid by the Contractor*

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

##### *Payments made to people for bonuses and incentives:*

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

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

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

#### Section 7: Insurance

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

### Part B Notes

#### 1 - Reasonably Incurred Costs

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

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

#### 3 - Cost Verification

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

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

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

## SCHEDULE 2

### Additional Definitions

The following defined terms apply to this contract:

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

**Anti-Slavery Policy** means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.

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

**Background IPR** means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause Z2.7.1.

**BCV Contract** means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms.

**CCSL** means the Centre for Civil Society Limited or any relevant replacement organisation as notified by the *Employer* from time to time.

**Certified Ethical Labour Provider** means a labour provider who meets the qualifying requirements of a Certified Ethical Labour Scheme and who is verified and/or certified (as the case may be), at or within six months (or such longer period as the *Employer* may agree, acting reasonably) of the *starting date* and thereafter as required pursuant to the terms of the relevant Certified Ethical Labour Scheme in order to maintain or renew the validity of the verification and/or certification (as the case may be), by a competent and independent third party as meeting such qualifying requirements.

**Certified Ethical Labour Scheme** means any of the following:

- the BRE Ethical Labour Sourcing standard BES 6002 (“**BRE Standard**”),
- the Clearview Global Labour Provider Certification Scheme (“**Clearview Scheme**”), or
- an alternative standard or scheme which, in the reasonable opinion of the *Employer*, is an acceptable substitute to the BRE Standard or Clearview Scheme (“**Alternative Labour Scheme**”),

and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time.

**Change of Control** means a change of ownership of the *Contractor* (or *parent company* if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or *parent company* as the case may be).

**Conflict Avoidance Panel** means an independent person or persons appointed from time to time in accordance with clause Z2.10.

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

**Construction Industry Scheme** means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005.

**Contract Information** means, for the purposes of Z2.16, (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.

**Controller** has the meaning given to it in Data Protection Legislation.

**Corporate IPRs** are those trademarks, trade names and other IPRs listed in Schedule 28 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards.

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.

**Data Protection Legislation** means:

- (a) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including, but not limited to, the UK General Data Protection Regulation, the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and
- (b) any statutory codes of practice issued by the Information Commissioner in relation to such legislation.

**Data Protection Officer** means a person duly appointed by the *Contractor* from time to time in accordance with and to perform the relevant requirements of the Data Protection Legislation.

**Data Subject** has the meaning given to it in Data Protection Legislation.

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

**Dispute Resolution Procedure** means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 20.

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

**Employer Data** means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.

**Employer Personal Data** means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor or sub-subcontractor of any tier) on behalf of the *Employer*, pursuant to or in connection with this contract as set out in the Processing Statement.

**End User** has the meaning given to it in Article 2 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.

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

**EUWA** means the European Union (Withdrawal) Act 2018.

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

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

**GLA Act** means the Greater London Authority Act 1999.

**Greater London** means that term as it is used in the GLA Act.

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

**Information Request** means a request for any Information under the FOI Legislation.

**Infraco** means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns.

**Infrastructure Manager** has the meaning as ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

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

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

**JNP Contract** means the contract between Tube Lines Limited and the *Employer* for the provision of infrastructure maintenance services dated 31 December 2002 as amended from time to time in accordance with its terms.

**London Living Wage** means the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk)).

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

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

**LUL Nominee BCV** means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee.

**LUL Nominee SSL** means LUL Nominee SSL Limited (No. 06242508) or its successor in title or assignee.

**LUL Standards** means the individual LUL standards as specified in section WI 200 of the Works Information.

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

**Mayor** means the person from time to time holding the office of Mayor of London as established by the GLA Act.

**Minimum Records** means:

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

**Operator** means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway.

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

**Personal Data** has the meaning given to it in Data Protection Legislation.

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

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

**PPP Contracts** means the BCV Contract, the JNP Contract and the SSL Contract and **PPP Contract** means any one of them or, as the context requires, a particular one of them.

**Processor** has the meaning given to it in Data Protection Legislation.

**Processing** has the meaning given to it in Data Protection Legislation and “**Process**”, “**Processes**” and “**Processed**” will be construed accordingly.

**Processing Statement** is in the form set out in Schedule 29 of this contract.

**Prohibited Act** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
- for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
  - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;
- (b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on its behalf or to its knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;
- (c) committing any offence:
- under the Bribery Act 2010,
  - under the Criminal Finance Act 2017,
  - under any law or legislation creating offences in respect of fraudulent acts, or
  - at common law in respect of fraudulent acts
- in relation to this contract or any other contract with the *Employer*; or
- (d) defrauding or attempting to defraud the *Employer*,

**Project** means the Station Fire Hydrants Tranches 1- 4 Replacement to carry out and complete the *works*.

**Relevant Individual** means, for the purposes of Z2.20, any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.

**Relevant Conviction** means, for the purposes of Z2.20, any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

**Responsible Procurement Policy** means the document entitled “GLA Group Responsible Procurement Policy” dated ~June 2017, and as may be further updated from time to time.

**Restricted Countries** means any country outside the European Economic Area as may be constituted from time to time or the UK.

**RICS** means the Royal Institution of Chartered Surveyors.

**Reverse Charge Order** means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892.

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

**Sensitive Personal Data** means sensitive or special categories of Personal Data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this contract.

**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.

**Standard on Electronic Invoicing** means the European standard and any of the syntaxes published in the Commission Implementing Decision (EU) 2017/1870 as retained by the EUWA and amended by the Public Procurement (Amendment etc.) EU Exit Regulations 2020.

**Standards** means the following standards listed in order of priority with a lower ranking standard only applicable where a higher ranking standard is not applicable:

- First: LUL Standards;
- Second: European Standards;
- Third: International Standards and associated codes of practice.

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

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

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

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

**Subject Request** means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to Data Protection Legislation including the right (i) to be informed, (ii) of access, (iii) to rectification, (iv) to erasure, (v) to restrict processing, (vi) to data portability, (vii) to object, and (viii) to automated decision making, including profiling.

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

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

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

**Transparency Commitment** Means, for the purpose of Z2.16, the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received.

**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".

**VAT** means value added tax.

**VATA** means the Value Added Tax Act 1994.

**SCHEDULE 3**  
**Technical Requirements Specification (TRS)**  
**& Works Information**  
**(See Appendix 2)**

## SCHEDULE 4 Activity Schedule and Price List

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

## SCHEDULE 5

### Rates for Compensation Events ((Parts A & B)

#### PART A

<b>Title: STATION FIRE HYDRANTS TRANCHES 1-4 Replacement Works</b>	
<b>Company:</b>	<b>L B Foster</b>

<b>WORKS &amp; SERVICES</b>	
<b>PRICE LISTS TO SUPPORT THE PAYMENT MECHANISM</b>	
<b>A: RATE CARD</b>	<b>#REF!</b>
<b>NOTES</b>	
1	The labour rates included under this matrix shall be those used as a basis for Task Order Price Lists when the works are awarded on a cost reimbursable basis. In addition, the labour rates may be used in the assessment of Compensation Events.
2	The Tenderer is to complete ALL boxes highlighted thus: -
3	Notwithstanding 2 above, the Tender must enter "N/A" in any boxes which are not relevant to the Tenderer's work.
4	For key personnel only, the Tenderer is to add any other Names and/or Roles not defined in the schedule below, which they have not included in the Overhead Costs and would seek reimbursement for where they are working solely on works instructed on a Task Order under this Term Contract. An example of this would be where the Contractor employs a HSE Manager.
5	In accordance with Clause 104 of the Conditions of Contract, the Tenderer is to ensure that none of his employees are paid less than the London Living Wage. The Tenderer will ensure any rates entered below
6	Refer to Section B and Section 7 (Payment Mechanism): Cost Components for details of what is deemed included in the rates.
7	Rates shall be populated on a "per shift" basis for the base shift, and the overtime hourly rate shall be the rate to be paid for any hours over the base shift.
8	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). For the purpose of planning, please assume this a shift of 8 hours duration from 10:00 hours to 06:00 hours, however local variations will be identified in the Task Order and associated Access Plan.
9	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) For the purpose of planning this could be any continuous 8 hour working shift (excluding breaks) between the hours of 06:00 and 22:00 hours albeit that any local variations to this will be identified in the Task Order and
10	Definition of 'Regularly Employed Staff': - Personnel (including staff and operatives) who are either directly employed by the Company, or who are self employed or employed by others and regularly used by the Company for this specific Trade and who are managed on site by staff who are either directly employed by the Company, or who are self employed and regularly used by the Company for this specific Trade. Evidence of the regular use by the Company of
11	Definition of 'Staff': - Management, supervision and operatives however employed i.e. permanent, non permanent, part / full time, agency, regularly employed.
12	The Tenderer is also required to complete the schedules in Sections C and D of these Price Lists to Support the Payment Mechanism.

**QUESTION B1a**

	Engineering / Closed Station Hours			
<b>Minimum hours of working</b>				
<b>Job / Grade</b>				
<b>Ops management</b>				
Contract Manager				
Operational Manager				
Construction Manager				
QS				
Planner				
Other (HSQE Manager)				
<b>Design Team</b>				
Design Manager				
Designer				
Design Engineer				
CAD operator				
<b>On Site Supervision</b>				
Foreman (Site Manager)				
Working Supervisor/SPC				
Senior Supervisor				
<b>On Site Labour</b>				
SPIC / Foreman				
Craftsman				
Technician				
Advanced Operative				
Labourer				
Apprentice				

**QUESTION B1a (cont'd)**

Minimum hours of working	Traffic Hours					
	Weekday		Weekend		Bank Holidays	
	8 hours	1 hour	8 hours	1 hour	8 hours	1 hour
Job / Grade	Hourly Rate £	Overtime Rate £/Hour	Hourly Rate £	Overtime Rate £/Hour	Hourly Rate £	Overtime Rate £/Hour
<b>Ops management</b>						
Project Manager						
Fire Engineer						
Construction Manager						
Planner						
Commercial Manager						
HSE						
Doc Control						
<b>Design Team</b>						
Design Manager						
Designer						
Design Engineer						
CAD operator						
<b>On Site Supervision</b>	Shift Rate £	Overtime Rate £/Hour	Shift Rate £	Overtime Rate £/Hour	Shift Rate £	Overtime Rate £/Hour
Foreman (Site Manager)						
Working Supervisor/SPC						
Senior Supervisor						
<b>On Site Labour</b>						
SPIC / Foreman						
Craftsman						
Technician						
Advanced Operative						
Labourer						
Apprentice						

**QUESTION B1b**

**IMPORTANT:** The Tenderer is to ensure the percentages below are as per the completed Section 4.0 Contractor's Contract Data (which is also to be submitted with the Tender)


**PART B**

<b><u>WORKS &amp; SERVICES</u></b>			
<b><u>PRICE LISTS TO SUPPORT THE PAYMENT MECHANISM</u></b>			
<b><u>B: COST COMPONENTS</u></b>			
<b>Note:</b>	This list details what is deemed to be included in the rates in Part A		
<b>Ref</b>	<b>Cost Component</b>	<b>In rate</b>	<b>Separate item</b>
<b>a</b>	<b>LABOUR RATES</b>		
	Payments to People for:-		
	Wages and salaries	✓	
	Out of pocket expenses	✓	
	Other contributions, levies or taxes imposed by statute	✓	
	Bonuses (personal performance related)	✓	
	Bonuses (profit / company financial related)	✓	
	Working in special circumstances	✓	
	Special allowances	✓	
	Normal absence due to holidays	✓	
	Sickness	✓	
	Other authorised absences e.g. Jury Service, Maternity, Paternity Payments (> 4 weeks)	✓	
	Unauthorised absences	✓	
	Redundancy / severance of Contractor's operatives	✓	
	Redundancy / severance of Contractor's supervisory, administrative, financial or secretarial staff, related to work on the contract	✓	
	Other costs:-		
	Cost to the Contractor of providing Site / Working Area based Training Courses for People	✓	
	Costs allocated to attending Site / Working Area Based Training Courses	✓	
	Cost to the Contractor of providing Non Site / Working Area Based Training Courses for Staff and Labour (e.g. at Head Office)	✓	
	People costs allocated to attending Non Site / Working Area Based Training Courses (except expenses)	✓	
	Out of pocket expenses of People attending Non Site/Working Area Based Training Courses	✓	
	Time charges for on the job training e.g. apprentices	✓	
	Payments made in relation to People for:-		
	Travelling to, from, or in relation to the Site	✓	
	Subsistence and lodging	✓	
	Protective clothing required for the works	✓	
	Contractor's National Insurance Liability (including liability on allowable benefits in kind)	✓	
	Cars / vans / travel allowances	✓	
	Company cars / vans including insurance, tax, depreciation, maintenance, fuel, oil and grease	✓	
	Contractor's pension contributions	✓	
	Life assurance cover	✓	
	Mobile phone charges- business related calls only	✓	
	Lump sum payments by Contractor as top up payments to under-funded pension schemes	✓	
	Relocation	✓	

	Recruitment Fees and / or joining fees	✓		
	Health insurance	✓		
	Medical examinations	✓		
	Passports and visas	✓		
	Items relating to a spouse or dependents	✓		
	Professional subscriptions	✓		
	Other Payroll Burden payments imposed by statute	✓		
	Any time spent by People working within the Site on other client work i.e. preparing tender documents	✓		
	Payments on behalf of people by the Contractor as CITB levy	✓		
	Consumables associated with works eg but not limited to brushes, fuel, ppe, safety equipment, extinguishers,task lighting ,torches,m gas monitors etc	✓		
	Small hand tools and plant including points etc,sharpening, fuel and consumables	✓		
	Access equipment up to 1200mm high or all portable equipment not requiring certified erection	✓		
<b>b</b>	<b>MATERIALS SUPPLY PERCENTAGE</b>			
	The following components of the cost of Materials Supply			
	Invoice cost of Materials		✓	
	Purchasing resource for Materials	✓		
	Delivery to and removal from the Site	✓		
	Providing and removing packaging	✓		
	Samples and tests.	✓		
	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.	✓		
	Payments for material and plant internally manufactured	✓		
	Credits for payment discounts received, rebates etc	✓		
	Credits for unused materials and plant returned to suppliers	✓		
	Credits for any scrap material and plant	✓		
	Payments for licences, duty and tax	✓		
	Payments for pre-agreed spare parts	✓		
<b>c</b>	<b>PERCENTAGE FOR O/H &amp; P ON RESOURCES</b>			
	The fee includes for			
	Administration and financial support	✓		
	IT network charges, equipment, software and licenses	✓		
	Computer consumables	✓		
	Telephone, fax, mobile phones for the contract	✓		
	Postage	✓		
	External printing for the contract	✓		
	Local printing, stationery and office supplies for the contract	✓		
	Non-specialist equipment for the running of the Local Office	✓		
	Training charges and associated costs for staff on this contract	✓		
	Archiving and storage (Contractor, not client)	✓		
	Company subscription to trade and professional bodies	✓		
	Non personal vehicles, maintenance and insurance	✓		
	Staff recruitment and relocation costs	✓		



**SCHEDULE 6**  
**Works Information QUENSH**



**F0780 A18 Contract Menu**

This Contract Menu must be used in conjunction with Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

**Contract Menu**

Contract No: WS1940672231  
Contract Name: Station Fire Hydrants  
Client: London Underground Limited  
Supplier: LB Foster (Tew Plus Ltd)

Principal Contractor: Yes  No



## Guidance

The menu is a tool which is used by the Client to identify conditions that apply to specific contracts and communicate these conditions to the Supplier.

### How to complete the menu

- 1) The Client evaluates the scope of work and enters 'Y' or 'N' in the 'Identified by the Client' column of the menu against each condition selected as applicable or not applicable to the Contract. In the 'Other documents / comments' column the Client can make references to other documents which are supplementary information which is available although not contained within the QUENSH manual but should be considered by the Supplier when they review the conditions. Copies of any additional documents identified in the menu shall be made available to the Supplier. All documents referenced in the Menu shall be current issue, unless otherwise advised. This column can also be used to communicate information (comments) to the Supplier which may be of use to the Supplier when reviewing the conditions.
- 2) The Client fills in 'Client menu (Invitation to Tender)' section on the last page of the menu and issues the menu as part of the ITT.
  - a) The Supplier receives the ITT, evaluates the scope of work and, as a requirement of the tendering process, inserts 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable. These selections may be different from those identified by the Client. Where the Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the Supplier. A reference to these explanations shall be put in the 'Reference to explanation' column on the menu.
  - b) The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.
  - c) Differences in the Client and Supplier menu selections will be discussed and resolved with the Client at subsequent tender review meetings. The agreed final version of the menu selections shall form a mandatory part of the Contract and shall be complied with by all Suppliers and their sub-contractors.
  - d) The menu shall be subject to project version and document control.

### Queries on the menu

Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative, see contact details/address on last page of the menu.

## Contract menu

### Requirements in QUENSH

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
4	Agreement of the applicable QUENSH contract conditions				
5	Supplier's selection of sub-contractors		Y	Y	
6	Identification of Safety Critical Activities		Y	Y	
7	Works Environmental Management		Y	Y	
8	Emergency Plan		Y	Y	
9	Method Statements		Y	Y	
10	Health, Safety and Environment File		Y	Y	
11	Pre-start LU Health, Safety and Environment Meeting		Y	Y	
12	Supplier's site induction		Y	Y	
13	Site Person in Charge		Y	Y	
14	<b>Staff requirements</b>				
14.1	<b>Behaviours</b>				
14.1.1	Alcohol and drugs		Y	Y	
14.2	<b>Control of hours worked</b>				
14.2.1	Working Time Regulations		Y	Y	
14.2.2	Fatigue		Y	Y	
14.3	<b>Knowledge</b>				
14.3.1	English language		Y	Y	
14.3.2	Access Card and Worksite Briefing		Y	Y	
14.3.3	Visitors to sites		Y	Y	
14.4	<b>General competence</b>				
14.4.1	Evidencing competence of safety critical staff		Y	Y	
14.4.2	Identification of safety critical staff		Y	Y	
14.4.3	Competent external safety critical personnel		Y	Y	



Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
14.4.4	Training		Y	Y	
14.4.5	Asset specific competence		Y	Y	
14.5	<b>Medical requirements</b>		Y	Y	
14.6	<b>Identification of Suppliers staff</b>		Y	Y	
14.7	<b>Clothing</b>		Y	Y	
15	<b>Permits and licences</b>				
15.1	LU specific permits and licences		Y	Y	
15.2	Permits, licences and certificates for Supplier's staff		Y	Y	
16	<b>The Principles of Access</b>				
16.1	Introduction		Y	Y	
16.2	Access to Stations		Y	Y	
16.3	Access to Track		N	Y	Access to Track will be required to install pipework as per CDS
16.4	Access to depots		N	N	
17	<b>Applying for Planned Access</b>				
17.1	Introduction		Y	Y	
18	<b>Applying for General Access</b>		Y	Y	
18.1	Constraints that apply to Generic Access		N	N	
19	Access for fault repair		Y	Y	
20	Operational Assurance		Y	Y	
21	<b>Closures and possessions</b>				
21.1	Requirements for closures		Y	Y	
21.2	Requirements for possessions		Y	Y	
22	<b>Controls at point of access</b>				
22.1	Publication of works		Y	Y	
22.2	Checks at point of access		Y	Y	



Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
22.3	Signing-on with the Station Supervisor		Y	Y	
<b>22.4</b>	<b>Track specific requirements</b>				
22.4.1	Person providing protection		Y	Y	
22.4.2	Possessions		Y	Y	
23	Removal of supplier's personnel from LU Premises		Y	Y	
24	Incidents		Y	Y	
25	Notification of regulatory concern or action		Y	Y	
26	Confidential Incident Reporting and Analysis System (CIRAS)		Y	Y	
<b>27</b>	<b>Monitoring</b>				
27.1	LU inspections		Y	Y	
27.2	Monitoring the supply chain		Y	Y	
27.3	Health, safety and environmental surveillance by the supplier's personnel		Y	Y	
27.4	Work location inspection and audit		Y	Y	
27.5	Timescales for rectifying non-compliances		Y	Y	
28	Radio transmitters and transceivers		Y	Y	
29	Mobile phones		Y	Y	
30	LU Approved Knives		Y	Y	
31	Site Health, Safety and Environment Committee		N	N	
32	Site housekeeping and security		Y	Y	
33	Accidental damage, obstruction or interference with assets		Y	Y	
34	Delivery of materials		Y	Y	
<b>35</b>	<b>Conveyance of loads</b>				
35.1	Conveyance of loads on lifts and escalators		Y	Y	
35.2	Conveyance of hazardous materials and substances		Y	Y	
36	Asbestos (non asbestos removal projects)		Y	Y	
37	Working in or near lifts and escalators		Y	Y	



Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
38	Work on or adjacent to utilities and High Voltage cables (buried services)		Y	Y	
39	Working on or about the track		Y	Y	
40	Access to electrical sub-stations, working equipment, relay and other secure rooms		Y	Y	
41	Entering areas with gaseous fire suppression systems		Y	Y	
42	<b>Fire prevention</b>				
42.1	General requirements		Y	Y	
42.2	Temporary fire points		Y	Y	
42.3	Timber		N	N	
42.4	Composites		N	N	
42.5	Sheeting materials		N	N	
42.6	<b>Gas cylinders</b>				
42.6.1	Use of gas cylinders in below ground locations		N	N	
42.6.2	Storage of gas cylinders (above ground)		N	N	
42.7	<b>Flammable and highly flammable materials</b>				
42.7.1	Use of flammable and highly flammable materials below ground		N	N	
42.7.2	Storage of flammable and highly flammable materials below ground		N	N	
43	<b>Hot work and fire hazards</b>				
43.1	Hot work		N	Y	There is a high chance we will require Hot works to complete works
43.2	Reasonable notice of works		Y	Y	
43.3	<b>Precautions</b>				
43.3.1	Buildings and assets		Y	Y	
43.3.2	Gas cylinders		N	N	
43.3.3	Gas detection		N	N	
44	<b>Storage</b>				

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Use in conjunction with [S1552](#)

TfL RESTRICTED



Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
44.1	General requirements for storage		Y	Y	
44.2	Trackside storage		N	N	
44.3	Hazardous materials and substances		N	N	
44.4	Allocation of space on operational property		Y	Y	
45	Plant and equipment		Y	Y	
46	Clearance approvals		Y	Y	
47	Access equipment		Y	Y	
48	Temporary works		Y	Y	
49	Temporary fences and hoardings		Y	Y	
50	<b>Temporary lighting and power supplies</b>				
50.1	General requirements		Y	Y	
50.2	Lighting in tunnels and shafts		Y	Y	
51	Screening of lights and positioning		N	N	
52	<b>Environmental requirements</b>				
52.1	General environmental requirements		Y	Y	
52.2	Environmental nuisance		Y	Y	
52.3	Water		N	N	
52.4	Waste management		Y	Y	
52.5	Noise and vibration		Y	Y	
52.6	Archaeology, historical interest and listed buildings		N	N	
52.7	Wildlife and Habitats		N	N	
52.8	Resource Use		N	N	
52.9	Pest control		N	N	
52.10	Land and water pollution prevention		N	N	
53	<b>Quality requirements</b>				
53.1	Records		Y	Y	
53.2	Retention period		Y	Y	
53.3	Availability of records for inspection		Y	Y	

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Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
53.4	Statistical process control, audit and inspection procedures		Y	Y	
53.5	General quality requirements		Y	Y	
53.6	Quality Plan		Y	Y	
53.7	Testing and inspection		Y	Y	
53.8	Certification of conformity		Y	Y	
53.9	Quarantine		Y	Y	
53.10	Traceability		Y	Y	
53.11	Maintenance and servicing		Y	Y	
53.12	Design		Y	Y	
53.13	Computer aided design		Y	Y	
53.14	Asset commissioning and handover		Y	Y	



**Other requirements / comments**



### Client/Supplier approval

#### Client Menu (Invitation to Tender)

Prepared by: [Redacted] Signature: [Redacted]

Approved by (the Client's representative): [Redacted] Signature: [Redacted]

Title: Project Manager

Address: 5<sup>th</sup> Floor, 197 Blackfriars Road, London, SE1 8NJ

Phone No: [Redacted]

Email: [Redacted]

Revision of this menu: QUENSH A18

#### Supplier Menu (Tender)

Approved by (the Supplier's): [Redacted] Signature: [Redacted]

Title: Fire Pre-Construction Manager

Address: LB Foster (TEW Plus), 1st Floor, 44-46 Sekforde Street, Farringdon, London, EC1R 0HA

Phone No: [Redacted]

Email: [Redacted]

Revision of this menu: QUENSH A18

#### Contract Menu (Final Approval of Menu)

Evidence shall be recorded of any amendments to the Client's menu which were agreed in establishing the Contract Menu.

Client's representative approval: \_\_\_\_\_ Signature: \_\_\_\_\_

Supplier's representative acceptance: \_\_\_\_\_ Signature: \_\_\_\_\_



## **SCHEDULE 7**

### **Health, Safety and Environment Pre-Construction Information**



**SCHEDULE 8**  
**Contractor's Programme**  
**(updated programme to be attached)**



## Transport for London



Note that you are required to accept The Draft Contract in order for your tender to be compliant. By signing this Form of Tender you confirm your acceptance of The Draft Contract. If we offer you a contract in the belief that your tender is compliant and you then attempt to negotiate alternative terms and conditions we WILL withdraw our offer.

Please complete the following:

I confirm and accept the terms of this Form of Tender

Signed	[REDACTED]	Date	11/04/2025
Position	[REDACTED]		
For and on behalf of:	LB Foster (Tew Plus)		



**NON-COLLUSION DECLARATION**

**Refusal to give this declaration and undertaking will mean that this ITT submission will not be considered.**

**Declaration**

Expression of interest for: WS1940672231 TfL Station Fire Hydrants Tranches 1 – 4 Replacement Works

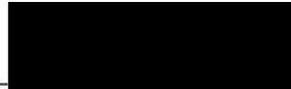
I / We declare that:

We have submitted a bona fide response to TfL's ITT and that I / We have not fixed or adjusted any responses or information provided in accordance with any agreement with any other person.

I / We have not done, and I / we undertake that I/ we will not do at any time before the contract is awarded:

- Communicate to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tenders;
- Enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted; or
- Offer or pay or give or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for WS1940672231 TfL Station Fire Hydrants Tranches 1 – 4 Replacement Works
- Any act or thing of the sort described above.

I/ We agree that the terms of the above declaration will form part of any contract with TfL, their servants or agents resulting from the acceptance of my / our tender and that any breach of this declaration and undertaking will be deemed to be a breach of that contract entitling TfL, their servants or agents to determine my / our employment under that contract.

Signed		Date	06/09/2024
Position			
For and on behalf of:	LB Foster (Tew Plus)		



**CONFLICT OF INTEREST DECLARATION**

In responding to the questions below the signatory is to include in its consideration of any matters, private interests or relationships which could or could be seen to influence any decisions taken or to be taken, or the advice you are giving to Transport for London, or that may result in an adverse impact on competition for the purposes of this procurement.

The types of interests and relationships that may need to be disclosed include investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could, or could be seen to impact upon your responsibilities and existing or previous involvement that could create a potential, actual or perceived conflict.

If response is yes to any of the questions below please provide full details as a separate attachment

Questions	Yes / No
Are you affiliated or otherwise connected (e.g. in joint venture whether incorporated or unincorporated, partnership, alliance or as a sub-contractor/sub-consultant) with any firm that supplies products, works or services to TfL or is currently tendering to do so?	No
In the past 12 months, to the best of your knowledge, has any member of your organisation or your supply chain had any direct or indirect involvement (by way of trading, sharing information, participating in industry for or jointly delivery goods/works/services) with any other company acting as a supplier to TfL?	No
At any time in the past 12 months, to the best of your knowledge, has any member of your organisation or supply chain received any gift (other than promotional items) or hospitality from a supplier or employee to TfL?	No
At any time in the past twelve months, have you or anyone from your organisation or supply chain given any gift (other than promotional items) or hospitality to an employee of TfL?	No
Is there any occasion where you or members of your organisation or supply chain may use TfL resources (equipment, space, supplies or paid individuals) in performing paid or unpaid activities for organisations other than TfL?	No
Are there any other activities not reported under the previous questions that may give rise to a conflict of interest with respect to their work with	No

## Transport for London



TfL e.g. through personal or working relationships with current or former employees or through prior employment with TfL or third-party suppliers or in connection with WS1940672231 TfL Station Fire Hydrants Tranches 1 – 4 Replacement Works	
---	--

I, as representative of all companies associated with the Applicants submission, hereby confirm that I have read and understood the above statements and that I will make full disclosure of interests, relationships and holdings that could potentially result in a conflict of interest.

I agree that if I become aware of any information that might indicate that this disclosure is inaccurate, I will notify TfL promptly and no later than [28 days] of becoming aware of such information and undertake to take such action as TfL may reasonably direct.

Signature:	[Redacted]
Name:	[Redacted]
Designation:	[Redacted]
Company:	LB Foster (Tew Plus)
Date:	06/09/2024

**SCHEDULE 10**  
**Payment Schedule**

## SCHEDULE 11

### Details of Key Personnel

Transport for London  
**London Underground Limited**



**Appendix 11**  
**CONTACT DETAILS OF KEY PERSONNEL**

The tenderer is to state the name and address of the Key Personnel representing the supplier with whom LUL will deal in respect of the Contract are as follows.

Name	Position/ Area of Responsibility	Address	Contact numbers
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **SCHEDULE 12**

### **Contractors Risk Assessment, Health & Safety Hazards**

## SCHEDULE 13

### WRRR Self Certificate



### Self-Certification Form

Supplier Name:

Contact details:

Contract name:  Contract Ref. No. :

**WRRR compliance status - Tier 1 supplier (please tick):**

- Fully compliant with the WRRR Requirements as indicated below
- Partially compliant with the WRRR Requirements as indicated below
- Not compliant with the WRRR Requirements as indicated below
- Not applicable  Not applicable at tier 1 - applicable to sub contractors

**IMPORTANT:** The WRRR Requirements apply to all direct suppliers of TfL and to all subcontracted fleet/freight operations – see Notes (overleaf)

**Part 1: WRRR Requirements - Tier 1 supplier**

FORS expiry date:

FORS status: Registered  Bronze  Silver  Gold  None

**Number of drivers serving TfL contracts:**

All drivers have received Vulnerable Road User (VRU) training during the previous five years that includes on-road experience from a cyclist's perspective, such as the Safe Urban Driving or Van Smart Courses Number of drivers trained:

All drivers have completed a FORS e-learning module, or other TfL-approved training, in the previous 12 months Number of drivers trained:

An appropriate system is in place for collision reporting, such as FORS Collision Manager Name of system:

All drivers have licence checks at regular intervals through DVLA Name of service provider:

**Number of trucks<sup>1</sup> serving TfL contracts:**  **Number of vans<sup>2</sup> serving TfL contracts:**

Equipment for eliminating/minimising blindspots, to be fitted to trucks (cameras & side sensors) Number of trucks fitted:

Audible equipment fitted that warns other road users of truck's left manoeuvre Number of trucks fitted:

Sideguards fitted to exempt trucks Number of trucks fitted:

Prominent blindspot warning signage on back of trucks Number of trucks fitted:

1: > 3.5 tonnes gross vehicle weight 2: Including car derived vans

*continued overleaf...*

**Direct Vision Standard for HGV's (DVS)**

DVS applies: Yes  No

Minimum DVS rating of vehicles used on relevant contracts:

**Part 2: Subcontractor(s) details**

Name	FORS Status	FORS ID	Full/Part/Non Compliant
N/A	N/A	N/A	N/A

**Comments/ Continuation:**

**Declaration**

I confirm that the information contained within this supplier checklist is accurate to the best of my knowledge. I understand that any vehicle or driver found non-compliant with the TfL WRRR Requirements may be refused access to site, which will be recorded as a failed delivery, or that other action may be taken as deemed fit.

Name:  Job Title:   
 Signed:  Date:

**Notes**

- Part one of this form is used for the supplier to respond to questions regarding its own fleet.
- Part two of this form is used for the supplier to respond on the compliance of their sub contractors. They shall provide the name of the company, FORS ID, FORS accreditation, and their assessment of the compliance of relevant operators.
- Where the supplier does not operate its own vehicles, but subcontracts its freight/fleet operations, they are to mark their compliance status as 'not applicable at tier 1' and complete part two as described above.
- The supplier shall ensure that each of its subcontractors who operate fleet/freight vehicles on contracts to which the WRRR requirements apply shall comply with the TfL WRRR requirements as if those subcontractors were a party to the contract.

## SCHEDULE 14

### Insurance & Indemnity Questionnaire

#### Insurance & Indemnity

*(Questionnaire to be completed by Tenderers Insurance Brokers or Insurers)*

Tenderers are required to complete the Insurance & Indemnity Questionnaire providing supporting documents where requested.

**Note:** Suppliers are to ensure the scope of the insurance provided by them complies with the relevant obligations as detailed in the draft contract. Any inner policy limits for rail related work are to be specified below. Please provide the following information:

Tfl Reference:	WS1940672231
Title:	TfL Station Fire Hydrants Tranches 1 – 4 Replacement Works.
[Redacted]	[Redacted]

TfL CONFIDENTIAL

	[Redacted]
[Redacted]	[Redacted]

Signed: [Redacted]

Date 20/03/2025

Name: [Redacted]

Position [Redacted]



[REDACTED]

**Lockton Companies LLP**

A limited liability partnership registered in England & Wales at The St Botolph Building,  
138 Houndsditch, London EC3A 7AG. Company number OC353198

A list of the designated members and individual members of Lockton Companies LLP is available for inspection at the registered office  
Authorised and regulated by the Financial Conduct Authority and a Lloyd's Broker

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[www.locktoninternational.com](http://www.locktoninternational.com)

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Without prejudice to the foregoing no assurance is given by us to the adequacy or otherwise of the sums insured /limit of liability/indemnity (as the case may be) under the insurance policies. Nor do we express any view or assume any liability as to the solvency or future ability to pay of any of the insurance companies with whom the insurance policies have been placed. In each case you must rely upon your own assessment of such matters. We cannot comment as to whether the client has done or omitted to do anything which has rendered or may render any policy of insurance (including the insurance policies noted in this document) taken out by it or by any other person in relation to any of the client’s assets or liabilities void or voidable and you must similarly rely upon your own enquiries in this respect.

Lockton does not accept any liability or responsibility to any Third Party (including, but not limited to, any person to whom this document is addressed) in respect of the information provided nor do Lockton have any obligation to advise any changes to or cancellation of the insurances described.

This letter shall be governed by and shall be construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction.

We trust that this information is sufficient for your purposes however, should you require additional detail this can be provided upon agreement from our client.

SIGNED..... [Redacted] ..... DATED: 17<sup>th</sup> December 2024

PRINT NAME: [Redacted]

SIGNED..... [Redacted] ..... DATED: 17<sup>th</sup> December 2024

PRINT NAME: [Redacted]

## SCHEDULE 15

### General Key Performance Indicators

Station Fire Hydrants GENERIC KPI'S	KPI METRICS	EXAMPLE RED	EXAMPLE AMBER	EXAMPLE GREEN	FREQUENCY OF REPORTING (I.e. Weekly, Periodically / Monthly / Quarterly)	Data Source - Enter the origin of the data to measure each KPI (i.e. system / report)	Owner - name who owns the reporting of each KPI
Innovation	No. of actual savings achieved as a result of value engineering improvement [ by the supplier versus to be achieved within scope timeframe.	< 1 % savings achieved	2.5% % savings achieved	> 5 %savings achieved	Quarterly		TBC
Customer Satisfaction	No. of valid complaints [ it is factual, timely, relevant, and reasonable] received regarding the contractors service provision to TfL to be less than 3 in the period - customers, residents and operative staff on the network.	> 3 valid complaints in the period received regarding [insert supplier's service provision to TfL]	3 valid complaints in the period received regarding [insert supplier's service provision to TfL]	< 3 valid complaints in the period received regarding [insert supplier's service provision to TfL]	Periodically		TBC
Delivery	Supplier has submitted an acceptable programme (including a one revised) this period/for the last 13 rolling periods (Financial Year)	R =more than 5% programmes rejected	No amber	G: 95% programmes accepted	Annually		TBC
Delivery	Project Schedule Variance (PSV) = SCT (Scheduled Completion Time) - ACT (Actual Completion Time) (Project Schedule Variance is a measure of the extent to which projects are delivered on schedule)	Variance is > 5 %	Variance is between 2.5% and 5%	Variance is <= 2.5%	Quarterly		TBC
Finance	Project Cost Variance (PCV) = SPC (Scheduled Project Costs) - APC (actual Project Costs) (Project Cost Variance is an indicator of the extent to which projects are delivered within budget)	Variance is > 5 %	Variance is between 2.5% and 5%	Variance is <= 2.5%	Quarterly		TBC
Audits / Inspections	Audit/inspections / assurance exercises due in the year passed threshold / target score	Fail	No amber	Pass	Annually		TBC
Audits / Inspections	Contractor to complete a minimum of 1 Planned General Inspection a Period	Fail	No amber	Pass	Periodically		TBC
ENVIRONMENTAL	No. Of environmental incidents in period	>0	No Amber	0	Periodically		TBC
Install Quality	No. of acceptance tests that meet the threshold criteria (insert threshold criteria as applicable)	< 75 % of acceptance tests meeting threshold criteria	76-84%	> 85 % of acceptance tests meeting threshold criteria	Half way point within handover.		
	Asset performance availability: Fire Hydrants to be available - i.e. 24/7, being on site, able to undertake certain tasks and activities once install and testing is complete	80% of assets installed (rest to be rectified)	90 % of assets installed (rest to be rectified)	95% of assets installed (rest to be rectified)	Periodically / Quarterly / Annually [delete as applicable]	Supplier to provide data on a periodic / quarterly / annual basis [delete as applicable]	[Insert name]

**SCHEDULE 16**  
**Contract Exclusions & Assumptions**  
**(See Appendix 3)**

## SCHEDULE 17

### Form of Performance Bond

To: [...] (the “**Beneficiary**”)

**Performance Bond No** [ ]

1. We have been informed that our customer, [ ] of [ ] (the “**Contractor**”), and you, the Beneficiary have entered into a contract dated [...] for the [...] (“**Contract**”).
2. The terms of the Contract require that the obligations of the Contractor under the Contract are supported by this Performance Bond in your favour.
3. In consideration of the aforesaid, we, [...], hereby irrevocably undertake as a primary obligation to pay to you any amount you may claim from us upon receipt of your first demand in writing and substantially in the form set out in Annex 1 (“**Demand**”) but not exceeding £ [...] (the “**Guaranteed Amount**”) and provided that:
  - (a) our liability under this Performance Bond is limited to an amount or amounts in aggregate not exceeding the Guaranteed Amount;
  - (b) any claim hereunder shall be accompanied by your statement that the amount claimed is due by reason of any breach by the Contractor of the terms of the Contract, or any event of insolvency of the Contractor (as defined in clause 91.1 of the Contract), the termination or expiry of the Contract or any non-payment by the Contractor of sums due to the Beneficiary under the terms of the Contract;
4. This Performance Bond shall be valid for Demands received in accordance with this Performance Bond until [...] (the “**Expiry Date**”) whereupon you shall return this Performance Bond to the Contractor. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this Performance Bond is returned to us.
5. It is a condition of this Performance Bond that the Contractor shall provide a replacement Performance Bond to you in the amount equal to the Guaranteed Amount by no later than 7 banking days prior to the Expiry Date. This Performance Bond shall be returned to the Contractor upon receipt by the Beneficiary of the replacement Performance Bond. In the event that the Contractor fails to provide the aforementioned replacement Performance Bond by no later than 7 banking days prior the Expiry Date, we hereby irrevocably undertake to pay you any amount you may claim up to the Guaranteed Amount upon receipt of your first demand in writing made within 7 banking days prior to the Expiry Date stating that the Contractor has failed to provide the replacement Performance Bond.
6. We shall make payment to you within 5 banking days upon service of your Demand:
  - (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand which, as between ourselves and you, shall be conclusive; and
  - (b) notwithstanding any dispute between the Contractor and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of

your Demand without any rights on our part to raise any objections, irrespective of the validity and/or the effectiveness of the Contract and the obligations arising there under and irrespective of the underlying facts or their significance under the Contract.

7. All sums payable under this Performance Bond shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
8. This Performance Bond shall not be affected by:
  - (i) any change in the constitution of the Contractor and/or you and/or ourselves; and/or
  - (ii) the granting of any time by you to the Contractor and/or any forbearance or
  - (iii) indulgence on any account shown by you to the Contractor; and/or
  - (iv) any change in the terms and conditions of the Contract; and/or
  - (v) any other circumstances which might operate to release a guarantor at law or in equity.
9. This Performance Bond may be assigned or charged without our consent to any member of TfL Group. Any other assignment of this Performance Bond shall require our consent, which consent not to be unreasonably withheld or delayed.
10. Until the full Guaranteed Amount and all amounts which may be or become due and payable in respect of the Guaranteed Amount have been unconditionally and irrevocably paid in full and unless the Beneficiary otherwise directs, we shall not exercise any rights which we may have by reason of performance by us of this Performance Bond or by reason of any amount being payable, or liability arising, under this Performance Bond to:
  - (a) be indemnified by the Contractor;
  - (b) claim any contribution from any other guarantor of the Contractor's obligations;
  - (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary or of any other guarantee or security taken by the Beneficiary; and/or
  - (d) claim, rank, prove or vote as a creditor of the Contractor or in its estate in competition with the Beneficiary

and if we receive any benefit, payment or distribution in relation to such rights, we shall hold that benefit, payment or distribution to the extent necessary to enable all the Guaranteed Amounts to be paid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct for application.
11. Words and phrases defined in the Contract shall have the same meanings in this Performance Bond unless inconsistent with the context.
12. This Performance Bond shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Performance Bond and any matter arising from it.

Executed as a deed by the parties and delivered on the date of this Performance Bond.

**EXECUTED AND DELIVERED AS  
A DEED for and on behalf of  
[THE GUARANTOR]**

acting by:

Signature of Authorised Signatory .....

Print name of Authorised Signatory .....

Signature of Authorised Signatory .....

Print name of Authorised Signatory .....

**EXECUTED AND DELIVERED AS A DEED BY  
[Insert name of the TfL Group]  
acting by its attorney [NAME OF ATTORNEY]  
in the presence of:**

.....  
[name of TfL Group] by its  
attorney

Signature of witness .....

Name: (in block capital letters) [NAME OF WITNESS]

Address: [ADDRESS OF WITNESS]

**Annex 1****Form of Demand from the Employer to *[insert name of Guarantor]***

Dear Sirs

***[Contract No [insert contract number]] or [Contract dated [insert contract date]] with [insert name of Contractor] in respect of [insert brief description of Works]***

We refer to the Performance Bond given by you to us dated *[insert Performance Bond date]*.

We hereby demand from you the sum of £*[insert demand amount – up to maximum amount of the Performance Bond]* under your Performance Bond. The amount claimed is due by reason of *[insert details]*.

Please make payment by transferring funds in sterling to *[insert name of Employer]* at the following account:

**[●] Bank plc**

Address:

Account Number:

Sort Code:

Account Name:

Yours faithfully

On behalf of *[insert name of Employer]*

## Schedule 18

### Form of Parent Company Guarantee

**THIS DEED OF GUARANTEE** is effective as of the 19 day of September 2025

**BETWEEN:**

- (1) **L.B FOSTER RAIL TECHNOLOGIES (UK) LIMITED**, a company incorporated in England with registered number 03939427 and having its registered office at 5 Osborne Terrace, Jesmond, Newcastle Upon Tyne, NE2 1SQ (the "**Guarantor**");
- (2) **TEW PLUS LIMITED**, a company incorporated in England with registered number 05858025 and having its registered office at 5 Osborne Terrace, Jesmond, Newcastle Upon Tyne, NE2 1SQ (the "**Contractor**");
- (3) **LONDON UNDERGROUND LIMITED**, a company incorporated in England with registered number 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the "**Company**").

**WHEREAS:**

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

**NOW IT IS HEREBY AGREED** as follows:

**1. Definitions and Interpretations**

In this Guarantee:

**"Contractor's Obligations"**: shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;

references to Clauses are, unless otherwise stated, to clauses of this Guarantee;

references to "**Contractor**", "**Guarantor**" and/or "**Company**" shall include their respective transferees, successors and assigns whether immediate or derivative;

the headings to Clauses are for convenience only and have no legal effect;

references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;

the expression "person" shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and

unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.

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

### **Guarantee and Indemnity**

The Guarantor irrevocably and unconditionally:

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

undertakes with the Company that whenever the Contractor:

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

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

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

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

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

As between the Guarantor and the Company, the Guarantor shall remain liable under clause 2.1 as if it was the sole principal obligor and not merely a guarantor provided that nothing in this Guarantee set out herein shall render the Guarantor liable in respect of any provision of the Contract that is illegal, invalid or unenforceable.

### **Continuing Guarantee**

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

### **Reinstatement**

Where any discharge (whether in respect of the Contractor's Obligations or any security for such obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.

The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **Waiver of Defences**

The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):

any time or waiver granted to, or composition with, the Contractor or any other person;

any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;

the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;

any variation (however fundamental) or replacement of the Contract or any other document or security so that references to such documents in this Guarantee shall include each variation or replacement;

any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity; or

any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any

law, regulation or order so that each such obligation shall for the purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

#### **Immediate Recourse**

The Guarantor:

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

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

#### **Appropriations**

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

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

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

#### **Non-Competition**

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

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

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

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

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

#### **Additional Security**

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

**Assignment**

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

**Notices**

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

**Guarantor:**

Address: LB Foster Rail Technologies (UK) Limited, Stamford Street, Sheffield, S9 2TX

[REDACTED]

**Company:**

Address: London Underground Limited, 5 Endeavour Square, London E20 1JN

[REDACTED]

with a copy to

Address: Transport for London, 5 Endeavour Square, London E20 1JN

**Miscellaneous**

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

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

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

The Company acknowledges and agrees that it will notify the Guarantor within five (5) Business Days of any claim made against the performance bond provided pursuant to the Contract.

**Counterparts**

This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**Governing Law and Jurisdiction**

This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.

If any dispute or difference arises between the Guarantor and the Company in connection with this Guarantee or any non-contractual obligation arising out of or in connection with this Guarantee which cannot be resolved by mutual agreement, it shall be referred to the jurisdiction of the English Courts.

**Legal Opinion**

If the Guarantor is not a company registered in England and Wales, the Guarantor provides to the Company a legal opinion in the form appended at Schedule 18 of the Contract on the Guarantor's execution of this Guarantee.

**IN WITNESS** whereof this Guarantee has been executed as a deed and delivered by the Guarantor and the Company the day and year first before written.

**EXECUTED AS A DEED** by  
L.B. Foster Rail Technologies (UK) Limited  
on being signed by two  
duly authorised officers

)  
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)  
)

Date: 19 September 2025

**EXECUTED AND DELIVERED AS A DEED BY  
LONDON UNDERGROUND LIMITED**  
acting by its attorney  
in the presence of:

LUL 7692

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)  
)  
)  
)

)  
)  
)  
)  
)

Signature of witness  
Name: (in block capital letters)  
Address:

)  
)  
)  
)  
)

Palestra  
197 Blackfriars Road  
London  
SE1 8NJ

## SCHEDULE 19

### Form of Retention Bond

Retention Bond No [                    ]

To: [....] (the "**Beneficiary**")

1. We have been informed that our customer, [ ] of [ ] (the "**Contractor**"), and you, the Beneficiary have entered into a contract dated [...] for the [...] ("**Contract**").
2. The terms of the Contract require that the obligations of the Contractor under the Contract are supported by this Retention Bond in your favour.
3. In consideration of the aforesaid, we, [...], hereby irrevocably undertake as a primary obligation to pay to you any amount you may claim from us upon receipt of your first demand in writing and substantially in the form set out in Annex 1 ("**Demand**") but not exceeding £ [...] (the "**Retention Amount**") and provided that:
  - (a) our liability under this Retention Bond is limited to an amount or amounts in aggregate not exceeding the Retention Amount;
  - (b) any claim hereunder shall be accompanied by your statement that the amount claimed is due by reason of any breach by the Contractor of the terms of the Contract, or any event of insolvency of the Contractor (as defined in clause 91.1 of the Contract), the termination or expiry of the Contract or any non-payment by the Contractor of sums due to the Beneficiary under the terms of the Contract;
4. This Retention Bond shall be valid for Demands received in accordance with this Retention Bond until the issue of the Defects Certificate under the Contract (the "**Expiry Date**") whereupon you shall return this Retention Bond to the Contractor. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this Retention Bond is returned to us.
5. We shall make payment to you within 5 banking days upon service of your Demand:
  - (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand which, as between ourselves and you, shall be conclusive; and
  - (b) notwithstanding any dispute between the Contractor and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of your Demand without any rights on our part to raise any objections, irrespective of the validity and/or the effectiveness of the Contract and the obligations arising there under and irrespective of the underlying facts or their significance under the Contract.
6. All sums payable under this Retention Bond shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or

condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.

7. This Retention Bond shall not be affected by:
  - (i) any change in the constitution of the Contractor and/or you and/or ourselves; and/or
  - (ii) the granting of any time by you to the Contractor and/or any forbearance or
  - (iii) indulgence on any account shown by you to the Contractor; and/or
  - (iv) any change in the terms and conditions of the Contract; and/or
  - (v) any other circumstances which might operate to release a guarantor at law or in equity.
8. This Retention Bond may be assigned or charged without our consent to any member of TfL Group. Any other assignment of this Retention Bond shall require our consent, which consent not to be unreasonably withheld or delayed.
9. Until the full Retention Amount and all amounts which may be or become due and payable in respect of the Retention Amount have been unconditionally and irrevocably paid in full and unless the Beneficiary otherwise directs, we shall not exercise any rights which we may have by reason of performance by us of this Retention Bond or by reason of any amount being payable, or liability arising, under this Retention Bond to:
  - (a) be indemnified by the Contractor;
  - (b) claim any contribution from any other guarantor of the Contractor's obligations;
  - (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary or of any other guarantee or security taken by the Beneficiary; and/or
  - (d) claim, rank, prove or vote as a creditor of the Contractor or in its estate in competition with the Beneficiary

and if we receive any benefit, payment or distribution in relation to such rights, we shall hold that benefit, payment or distribution to the extent necessary to enable all the Retention Amount to be paid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct for application.
10. Words and phrases defined in the Contract shall have the same meanings in this Retention Bond unless inconsistent with the context.
11. This Retention Bond shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Retention Bond and any matter arising from it.

Executed as a deed by the parties and delivered on the date of this Retention Bond.

**EXECUTED AND DELIVERED AS  
A DEED for and on behalf of  
[THE GUARANTOR]**

acting by:

Signature of Authorised Signatory .....

Print name of Authorised Signatory .....

Signature of Authorised Signatory .....

Print name of Authorised Signatory .....

**EXECUTED AND DELIVERED AS A DEED by  
[Insert name of the TfL Group]  
acting by its attorney [NAME OF ATTORNEY]  
in the presence of:**

.....  
[name of TfL Group] by its  
attorney

Signature of witness .....

Name: (in block capital letters) [NAME OF WITNESS]

Address: [ADDRESS OF WITNESS]

**Annex 1****Form of Demand from the Employer to *[insert name of Guarantor]***

Dear Sirs

***[Contract No [insert contract number]] or [Contract dated [insert contract date]] with [insert name of Contractor] in respect of [insert brief description of Works]***

We refer to the Retention Bond given by you to us dated *[insert Retention Bond date]*.

We hereby demand from you the sum of £*[insert demand amount – up to maximum amount of the Retention Bond]* under your Retention Bond. The amount claimed is due by reason of *[insert details]*.

Please make payment by transferring funds in sterling to *[insert name of Employer]* at the following account:

**[●] Bank plc**

Address:

Account Number:

Sort Code:

Account Name:

Yours faithfully

On behalf of *[insert name of Employer]*

## SCHEDULE 20

### Dispute Resolution Procedure

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

**“Adjudicator”** means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 20.

**“Nominating Authority”** means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

**“Notice of Adjudication”** means any notice given by a Party to the Dispute to the other Party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- the clauses in the contract to be relied on;
- details of where and when the Dispute arose;
- the nature of the redress which is sought (including the quantum of any monetary relief); and
- the names and addresses of the Parties to the contract (including, where appropriate, the addresses which the Parties have specified for the giving of notices);

**“Referral Notice”** means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

**“Senior Representative”** means a representative of a Party at senior executive level;

W2.A The *Employer, Contractor* and the *Project Manager* follow the procedure set out in Z2.10 (if used), W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring Party’s Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party’s Senior Representative.

W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

- W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.
- W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.
- W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.
- W2.1A The language of any adjudication under this Schedule 20 shall be English.
- W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.
- In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring Party requests the Nominating Authority to select a person to act as the Adjudicator.
- The Nominating Authority communicates the selection of the Adjudicator to the parties within 4 days of receiving a request to do so.
- W2.2A More than one Notice of Adjudication may be given in relation to disputes arising out of the same contract. An Adjudicator may act in more than one adjudication under the same contract at the same time.
- W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:
- is a natural person acting in their personal capacity;
  - is not an employee, agent or consultant of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute; and
  - does not act or continue to act in the face of a conflict of interest.
- W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the

Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring Party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every party to the Dispute of the date that it was received.

W2.6 The Referral Notice includes:

- the facts relied upon by the referring Party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring Party relies.

W2.6A The scope of the adjudication shall be the Dispute identified in the Notice of Adjudication, together with any further dispute which the Parties agree should be within the scope of the adjudication.

W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.

W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of their decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for the Adjudicator's decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of their death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.

W2.8A The Nominating Authority and its employees and agents are not liable to any party for any act or omission unless the act or omission is in bad faith. The parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.

- W2.9 The referring Party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party or parties at the same time as it sends them to the Adjudicator.
- W2.10 The Party or parties not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party or parties, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches their decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to the Adjudicator.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on their own initiative or on the application of a party correct the decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within 7 days of the delivery of the decision to the parties. As soon as possible after correcting a decision in accordance with this clause, the Adjudicator must deliver a copy of the corrected decision to each of the parties. Any correction of a decision forms part of the decision. The Adjudicator may in the decision allocate their remuneration and expenses between the parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.14 The Adjudicator:
- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching their decision;
  - considers any relevant information submitted by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching their decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
  - reaches their decision in accordance with the law of the contract;
  - may take the initiative in ascertaining the facts and the law in relation to the Dispute;
  - may open up, review and revise any decision (other than that of an Adjudicator, unless agreed by the parties), certificate, statement, opinion, instruction, direction, action, in-action, assessment, or valuation made in connection with the contract and which is relevant to the Dispute being adjudicated (except any final certificate or final statement);

- may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted;
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
- may rule upon their own substantive jurisdiction; and
- may in any decision, direct the payment of such interest from such dates and at such rates as permitted by the contract or if no such rate is set out in the contract the Adjudicator may apply a commercially reasonable rate.

W2.15 The Adjudicator decides in their discretion on the procedure to be followed in the adjudication. In particular the Adjudicator may, but is not obliged to:

- make directions for the conduct of the adjudication;
- review and revise any of their previous directions;
- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as the Adjudicator requires;
- require the parties to the Dispute to provide such information, including written statements of case, and other facilities as the Adjudicator reasonably requires for the determination of the Dispute;
- draw such inference from any failure to produce any documents (other than documents which would be privileged from production to a court) as the Adjudicator considers appropriate;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract or this Schedule 20 and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- inspect any part of the Underground Network and carry out any tests or experiments, provided the same can reasonably be arranged within the timetable for the adjudication;
- limit the length of any written or oral submission;
- reach their decision with or without holding an oral hearing, and with or without having endeavoured to facilitate agreement between the parties;

- proceed with the adjudication and reach a decision even if a party fails to comply with a request or direction with which it has been given the opportunity to comply; and
  - adopt any other procedures (including any variation of the procedures provided for under this clause W2.15) which may be agreed between the parties for determination of the Dispute.
- W2.15A The Adjudicator may not:
- require any advance payment of or security for their fees;
  - receive any written submissions from one party that are not made available to the other parties; and
  - hear oral submissions from or meet with one party, unless the other parties have been given a reasonable opportunity to attend.
- W2.16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of their functions as adjudicator unless the act or omission is in bad faith. The parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.
- W2.17 All meetings are private and save as required by law the Adjudicator and the parties keep confidential the Dispute, all information of whatever nature provided to them by or on behalf of any party and the Adjudicator's decision.
- W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for the decision.
- W2.18A Any decision of the Adjudicator shall include a copy of any advice the Adjudicator has received from any legal or technical adviser.
- W2.19 The parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator that has been replaced.

- W2.21 After the giving of a Notice of Adjudication, the parties may seek to agree how the Adjudicator allocates the costs and fees excluding remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the parties. If such an agreement is reached between the parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings or by arbitration (if the parties otherwise agree to arbitration) or by agreement.
- W2.22 Subject to any agreement of the parties, the Adjudicator allocates payment of remuneration and expenses as between the parties. Unless the parties otherwise agree, the Adjudicator awards the payment of remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of the remuneration or expenses. The parties agree to be bound by the Adjudicator's allocation of payment of the remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings or by arbitration (if the parties otherwise agree to arbitration) or by agreement.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by email or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other parties. Copies by way of confirmation of all communications by email between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original email.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously or (where copying is not practicable) the other party or parties shall be entitled to inspect it.
- W2.25 Any court, tribunal (if the parties otherwise agree to arbitration) or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If any party to a Dispute is dissatisfied with the Adjudicator's decision, then any party may, within three (3) months after the date on which it received notice of such decision, commence court proceedings for the final determination of the Dispute (or arbitration proceedings if the parties otherwise agree to arbitration). Court or arbitral proceedings may not be commenced unless commenced within three (3) months after receipt of the Adjudicator's decision.

## SCHEDULE 21

### Liquidated Damages For Disruption

1. In this Schedule, the following terms have the following meanings:
  - (a) “**LCH**” or “**Lost Customer Hours**” means the total additional journey time measured in hours, applying planned or unplanned NACHs as appropriate, experienced by Customers as a result of a planned or unplanned Service Disruption;
  - (b) “**NACHs**” or “**Nominally Accumulated Customer Hours**” means the system of weights used to estimate the cumulative additional perceived journey time encountered by Customers as a result of planned or unplanned Service Disruptions, as the case may be, as the same is set out in the NACHs Tables 2014 contained in the Works Information.
  - (c) “**Service Disruption**” means any disruption to customer services on the Underground Network comprising an interruption to train services or station services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures, escalator failures (either partial or total failures, that add to each passengers’ overall journey time) and lift downtimes.
2. In the event of a Service Disruption resulting from a failure on the part of the *Contractor* to comply with its obligations under this contract the *Contractor* shall pay on demand and/or the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 21. The duration of any Service Disruption is measured using a network-based database known as CuPID (Contract Performance Information Database).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by multiplying (a) the relevant Lost Customer Hours attributable to the applicable Service Disruption by (b) X

where:

- (i) “X” equals [REDACTED] indexed as provided for in paragraph 4; and
  - (ii) the applicable NACHs table is the unplanned [NACHs Tables 2014] for the first seven (7) days of such Service Disruption and the planned [NACHS Tables 2014] for any subsequent days of the same Service Disruption.
4. The value of ‘X’ (as defined in paragraph 3) is revised as at 1 April in each year according to the following calculation:

$$X_{cy} = \frac{r_n}{r_o} \times X$$

where:

- $X_{cy}$  = value of X for the year commencing on the applicable 1 April;
- $r_n$  = RPIX published for the month of August immediately preceding the applicable 1 April; and
- $r_o$  = RPIX published for February [2012].

5. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.

## SCHEDULE 22

### Form of Deed of Novation for use with Option X22

**THIS AGREEMENT** is made ● day of ● 202●

**BETWEEN:**

- (1) [● of ●] (the "**Employer**" which expression includes its successors in title and assigns);
- (2) [INSERT NAME OF CONTRACTOR] whose registered office is situated at [INSERT REGISTERED ADDRESS OF CONTRACTOR] (the "**Contractor**"); and
- (3) [INSERT NAME OF ASSOCIATED CONTRACTOR] whose registered office is at [INSERT REGISTERED ADDRESS OF ASSOCIATED CONTRACTOR] (the "**Associated Contractor**").

**WHEREAS:**

- (A) The Employer has appointed the Associated Contractor to [INSERT DESCRIPTION OF THE WORKS AND/OR THE SERVICES] (the "**Services**") by an agreement dated ● (the "**Associated Contract**").
- (B) The Employer has appointed the Contractor under a contract (the "**Contract**") to design and construct certain works as therein described (the "**Works**").
- (C) The Parties novate the Associated Contract from the Employer and the Associated Contractor to the Contractor and the Associated Contractor on the terms of this deed.

**NOW IT IS HEREBY AGREED** as follows:

**1. NOVATION**

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

Associated Contract in lieu of the Employer. The Contractor agrees that it will not hereafter terminate the Associated Contractor's engagement under the Associated Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

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

## 2. SERVICES FOR THE EMPLOYER

- 2.1 The Associated Contractor agrees that, notwithstanding the novation of the Associated Contract pursuant to this Agreement, it will perform the services ("**Further Services**") set out in Annex 2 to this Agreement for the Employer for the remuneration referred to in Annex 3 hereof.
- 2.2 The Associated Contractor warrants to the Employer that:
  - (a) it will perform the Further Services using the reasonable skill, care and diligence to be expected of an appropriately qualified **[insert profession]** holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms set out in the Associated Contract as if they were set out in this Agreement; and
  - (b) it will have in place professional indemnity insurance on the terms set out in the Associated Contract in respect of such Further Services.

3. **PROPER LAW AND JURISDICTION**

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

4. **CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999**

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

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

**EXECUTED AND DELIVERED AS A DEED by**  
**[Insert name of the TfL Group]**  
**acting by its attorney [NAME OF ATTORNEY]**  
**in the presence of:**

.....  
[name of TfL Group] by its  
attorney

Signature of witness  
Name: (in block capital letters) [NAME OF WITNESS]  
Address: [ADDRESS OF WITNESS]

.....

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

**SCHEDULE 23 (Not Used)**  
**Form of Warranty from Contractor**

**SCHEDULE 24 (Not Used)**  
**Form of Warranty from Subcontractor**

**SCHEDULE 25 (Not Used)**  
**Form of Warranty from Subconsultant**

## SCHEDULE 26

### Legal Opinion

TO: [insert recipient details]

Dear Sirs

I am the legal adviser to [ ] and I am giving this legal opinion in connection with the making by [ ] of the Document (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the “**Document**”) dated [ ] made between the [ ] (the “**Guarantor**”), [ ] (the “**Contractor**”) and [insert recipient name] (the “**Company**”). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of [ ] I am pleased to advise that in my opinion:
  - (a) the Guarantor was incorporated in [ ] on [ ] for an indefinite period as *[a limited company]* and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
  - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in [ ] has been taken to enable the Guarantor to:
    - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder;
    - (ii) guarantee the Company in respect of the obligations to the Guarantor under the Documents;

and implementation by the Guarantor of the foregoing will not cause:

- (iii) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
  - (iv) any law or order to be contravened;
  - (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Guarantor is a party or by which it or any of its assets is bound;
- (c) the Document has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Guarantor under the laws of [ ] and in the courts of [ ];
- (e) it is not necessary or advisable under the laws of [ ] in order to ensure the validity, enforceability and priority of the obligations of the Guarantor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
- (f) the obligations of the Guarantor under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Guarantor;
- (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Guarantor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in [ ];
- (h) there are no registration, stamp or other taxes or duties of any kind payable in [ ] in connection with the signature, performance or enforcement by legal proceedings of the Document;
- (i) the Company will not violate any law or regulation in [ ] nor become liable to tax in [ ] by reason of entering into the Document or performing its obligations

thereunder. It is not necessary to establish a place of business in [ ] in order to enforce any provisions of the Document;

- (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the [ ] Courts;
- (k) the consent to the jurisdiction by the Guarantor contained in the Document is valid and binding on the Guarantor and not subject to revocation;
- (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Guarantor would be recognised and accepted by the [ ] Courts without re-trial or examination of the merits of the case.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of [ ] and accordingly express no legal opinion herein based upon any law other than the laws of [ ].

Signed [ ]

.....

Name and position

**SCHEDULE 27**  
**Escrow (Not Used)**

## **SCHEDULE 28**

### **Corporate IPR**

## **SCHEDULE 29**

### **Processing Statement**

Employer Personal Data

1. The Employer Personal Data to be Processed by the Contractor (if any) concerns the following categories of Data Subject:

[List the relevant categories of Data Subject, e.g. staff, customers, members of the public.]

2. The Employer Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:

[List the relevant types of Personal Data, e.g. names, email or postal addresses, telephone numbers, images, other unique identifiers.]

3. The Employer Personal Data is to be Processed for the following purpose(s):

[List and summarise the relevant purpose(s).]

4. The Employer Personal Data is to be Processed in the following Restricted Countries:

[List if applicable]