

**Procedures on  
termination 92**

Z1.39 92.1 On termination, the *Employer* may complete the *works* and may use any Plant and Materials to which he has title (P1)

Z1 39.1 92 2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.

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

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

P4 The *Contractor* leaves the 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 request that the *Contractor* duly executes and delivers to the *Employer* within 21 days deeds of warranty in the appropriate form attached at Schedule 4 in favour of any member of the TfL Group or the Connect Contractor.

Z2.1.2

Not used.

### Subcontractors' Warranties

Z2.2

Z2.2.1

This clause applies to Subcontractors for subcontract design packages identified in the Contract Data as key subcontractors. The *Contractor* uses his best endeavours to procure that the Subcontractors (identified in the Contract Data as key subcontractors) 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 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of any member of the TfL Group,

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

Z2.3

Not used

### Warranties and Undertakings

Z2.4

Z2.4.1

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the works, or any computer product, application or system forming part of the works, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,

- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

## **Accounts and Records**

### **Z2.5**

Z2.5.1 The *Contractor* maintains and retains (and procures that his 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 his Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and his 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 the 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 Not used.

## Intellectual Property Rights

### Z2.7

#### Z2.7.1 Licencing of New 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 *Contractor*. The *Contractor* grants to the *Employer* (and procures the grant of in respect of Subcontractors and suppliers of any tier) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to use IPR newly generated in the *works* for the purpose of understanding, operating, maintaining, modifying and maintaining the *works*.

#### Z2.7.2 Background IPR

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

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

Z2.7.2A The granting of licences at clause Z2.7.1 and Z2.7.2 is with the provisos that:

(i) The *Employer* has no right to decompile any computer software which forms part of the IPR licenced to the *Employer* under this contract nor shall the *Employer* attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub- licensee of that computer software.

(ii) Notwithstanding any of the foregoing provisions of this clause no license shall be granted to the *Employer* under this contract to reproduce or have reproduced the *works* in part or in whole; and neither shall any license be granted to the *Employer* to make or have made components or spare parts which are protected by intellectual property rights vested in the *Contractor* or any of its Subcontractors or suppliers.

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 (including but not limited to the right to conduct proceedings or action and to negotiate settlement of Claims) 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 his Subcontractors to use, the Corporate IPRs at Schedule 7 for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.
- (b) The *Contractor* uses, and procures that his Subcontractors use, the Corporate IPRs in compliance with any relevant Standards and applicable law.
- (c) The *Contractor* does not use, and procures that his Subcontractors do not use, the Corporate IPRs in combination with any other trade marks without the *Employer's* prior written consent.
- (d) On written request by the *Project Manager*, the *Contractor* supplies to the *Project Manager* copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the *Project Manager* reasonably determines that any use of the Corporate IPRs falls below the Standards, the *Project Manager* gives the *Contractor* written notice of that fact and the *Contractor* corrects the use so as to comply with the Standards taking into account the *Project Manager's* instructions.
- (e) The *Contractor* is not entitled to bring any action against any third party for infringement relating to the Corporate IPRs and the *Employer* is not obliged to bring or extend any proceedings relating to the Corporate IPRs if it decides in his sole discretion not to do so
- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, the *Contractor* and his Subcontractors remove the Corporate IPRs from or (where removal is not reasonably practical) destroy or, if the *Project Manager* so elects, deliver to the *Project Manager* or any other UK company or person designated by the *Project Manager*, all items and documents which the *Project Manager* does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

#### **Assignment**

##### **Z2.8**

- Z2.8 1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it) but may assign, transfer or novate this contract to another member of the *Contractor's* Group with the prior written consent of the *Employer* such consent not be unreasonably withheld or delayed.
- 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 another member of the TFL Group without the prior written consent of the *Contractor*.

#### **Confidentiality**

##### **Z2.9**

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

or documents concerning this contract to any other person.

- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) 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 Connect Contract 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 Clauses Z2.9.1 and Z2.9.10 do 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.
- Z2.9.10 Without prejudice to the *Employer's* obligations under legislation, including Freedom of Information and to Z2.15 the *Employer* will treat all information belonging to, or relating to the business, systems, products or processes of the *Contractor* or the Contractor's Group (as subcontractors of any tier) which could reasonably be considered as commercially sensitive obtained under, arising from or in connection with this contract and/or the Project as confidential.

#### **Conflict Avoidance Panel**

- Z2.10 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.
- Z2.10.1
- 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 his personal capacity and (b) is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute

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 he relies. The referring party provides the responding party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.

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 he relies. The responding party provides the referring party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.

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 at Schedule 8 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* hand back possession of a worksite for traffic hour running due to a cause which is a *Contractor* risk.

**Responsible Procurement**

Z2.13

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

**Crime and Disorder**

Z2.14

- Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 to
- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
  - where appropriate, identify actions to reduce levels of crime and disorder,
  - without prejudice to any other obligation imposed on the *Employer*, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

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

**London Living Wage**

Z2.15

- Z2.15.1 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* and his Subcontractors (if any) :
- (a) ensure that none of his employees engaged in the performance of the works in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
  - (b) ensure that none of his employees engaged in the performance of the works is paid less than the amount to which they are entitled in their respective contracts of employment, and



- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

**Data Transparency**  
Z2.16

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1 but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor* including any price breakdown. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z2.17 Not used.

**Conflict of Interest**  
Z2.18

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

Z2.18.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the works from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* 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 his obligations under the FOI Legislation, and
- may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*

but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor*.

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

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the works or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information

Request; and

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

Z2.19.3 The *Employer* (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* does not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.

Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor* but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to 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 he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has 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 he 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 his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.1

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 his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to his rights under Clause Z2 5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22 4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

#### **Data Protection**

- Z2.23  
Z2.23.1 The parties acknowledge that, for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is a Processor. The only processing that the *Contractor* is authorised to do is that permitted by Data Protection Legislation in order to *Provide the Works* under this contract
- Z2.23.2 The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer's* instructions infringe the Data Protection Legislation.
- Z2.23.3 The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to the commencement of any processing. Such assistance may, at the discretion of the *Employer*, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing

operations in relation to the works;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risk, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z2.23.4 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under this contract:

- (a) process that Personal Data only in accordance with the performance of the works under this contract, unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:
- (c) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the *Contractor's* duties under this clause;
    - (ii) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:
  - the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Employer*;
  - the Data Subject has enforceable rights and effective legal remedies;
  - the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Employer* in meeting its obligations); and
  - the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;

- (e) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the contract unless this *Contractor* is required by Law to retain the Personal Data.

Z2.23.5 Subject to clause Z2.23.6, the *Contractor* shall notify the *Employer* immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) becomes aware of a Data Loss Event

Z2.23.6 The *Contractor's* obligation to notify under clause Z2.23.5 shall include the provision of further information to the *Employer* in phases, as details become available

Z2.23.7 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause Z2.23.5 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing

- (a) the *Employer* with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the *Employer* to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the *Employer* following any Data Loss Event;
- (e) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

Z2.23.8 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z2.23.8. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:

- (a) the *Employer* determines that the processing is not occasional;
- (b) the *Employer* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

- (c) the *Employer* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z2.23.9 The *Contractor* shall allow for audits of its data processing activity by the *Employer* or the *Employer's* designated auditor.

Z2.23.10 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.

Z2.23.11 Before allowing any sub-processor to process any Personal Data related to this contract, the *Contractor* must:

- (a) notify the *Employer* in writing of the intended sub-processor and processing;;
- (b) obtain the written consent of the *Employer*;
- (c) enter into a written agreement with the sub-processor which give effect to the terms set out in this clause Z2.23 such that they apply to the sub-processor; and
- (d) provide the *Employer* with such information regarding the sub-processor as the *Employer* may reasonably require.

Z2.23.12 The *Contractor* shall remain fully liable for all acts or omissions of any sub-processor.

Z2.23.13 The *Employer* may, at any time on not less than 30 working days' notice, revised this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when incorporated by attachment to this contract)

Z2.23.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on not less than 30 working days' notice to the *Contractor* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Anti-Slavery and Human Trafficking**

Z2.24

Z.24.1 The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the *Employer's* anti-slavery policy

Z2.24.2 In *Providing the works*, the *Contractor* shall

- (a) comply with all applicable anti-slavery and human trafficking Law from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) have and maintain throughout the currency of this agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
- (d) include in its sub-contracts and supply chain contracts anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause Z.24 and shall procure that each Subcontractor and supplier complies with all applicable anti-slavery and human trafficking Law.

Z2.24.3 The Contractor shall notify the Employer as soon as it becomes aware of any breach or potential breach of the Modern Slavery Act 2015 or any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract.

Z2.24.4 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any breach of the Modern Slavery Act 2015, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.



## DISPUTE RESOLUTION

Option W1 - Not used

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

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation

Defined terms	X1	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> . (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due. (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
Price Adjustment Factor	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.  The Price Adjustment Factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating price adjustment after this date.
Compensation events	X1.3	The Defined Cost for compensation events is assessed using the <ul style="list-style-type: none"><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>
Price adjustment Options A and B	X1.4	Each amount due includes an amount for price adjustment which is the sum of <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

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

## Option X3: Multiple currencies

Multiple currencies	X3
	X3.1 The <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.
	X3.2 Payments to the <i>Contractor</i> in currencies other than the <i>currency of this contract</i> do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the <i>currency of this contract</i> .

## Option X4: Parent company guarantee

Parent company Guarantee	X4
Z1.41.1	X4.1 If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the <i>parent company</i> of the <i>Contractor's</i> performance in the form attached at Schedule 2. Unless a guarantee has already been given which covers this contract, the guarantee is given within four weeks of 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
Z1.41.2	X4.2 Not used.
Z1.41.3	X4.3 Not used.
Z1.41.4	X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion substantially in the form set out at Schedule 3 on the guarantor's execution of any such guarantee.
Z1.41.5	X4.5 Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

## Option X5: Sectional Completion

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

## Option X6: Bonus for early Completion

### Bonus for early Completion X6

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

## Option X7: Delay damages

### Delay damages X7

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

## Option X12: Partnering

### Identified and defined terms X12

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

### Actions

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

(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 he needs to carry out the work in his Own Contract and the other Partner provides it, subject to any obligations of confidentiality owed by that Partner under his Own Contract.

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

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

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

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

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

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

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

**Incentives**

X12.4

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

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

## Option X13: Performance bond

	Performance bond	X13
		X13.1
Z1.43.1		X13.1 Not used.
Z1.43.2		X13.2 Not used.
Z1.43.3		X13.3 Not used.

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

Advanced payment	X14
	X14.1 Not used.
	X14.2 Not used.
	X14.3 Not used.

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

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

## Option X16: Retention

Retention	<b>X16</b>	
	X16.1	After the Price for Work Done to Date has reached the <i>retention free amount</i> , an amount is retained in each amount due. Until the earlier of <ul style="list-style-type: none"> <li>• Completion of the whole of the <i>works</i> and</li> <li>• the date on which the <i>Employer</i> takes over the whole of the <i>works</i></li> </ul> the amount retained is the <i>retention percentage</i> applied to the excess of the Price for Work Done to Date above the <i>retention free amount</i> .
	X16.2	The amount retained is halved <ul style="list-style-type: none"> <li>• in the assessment made at Completion of the whole of the <i>works</i> or</li> <li>• in the next assessment after the <i>Employer</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i></li> </ul> 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 a form acceptable to the <i>Employer</i> 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: <ul style="list-style-type: none"> <li>• 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,</li> <li>• 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.</li> </ul>

## Option X17: Low performance damages

Low performance Damages	<b>X17</b>	
	X17.1	Not used.

## Option X18: Limitation of liability

Limitation of liability	X18
Z1.46.1	X18.1 The Contractor's liability pursuant to this Contract for loss of profit, indirect or consequential loss, any loss of use, downtime costs, disruption to operations or increase in operating costs or any form of financial or economic loss is limited to the amount stated in the Contract Data (provided that this does not exclude or limit the Contractor's liability to pay liquidated damages clause Z2.12 and/or under X7).
Z1.46.1A	X18.1A The Contractor's liability to the Employer for delay damages under X7 is limited to the amount stated in the Contract Data.
Z1.46.1B	X18.1B The Contractor's liability to the Employer for liquidated damages under Z2.12 for disruption 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 (other than the works) arising out of or caused by the carrying out of the works by the Contractor and caused by default of the Contractor or anybody for whom the Contractor is responsible is limited to the amount stated in the Contract Data.
Z1.46.2	X18.3 The Contractor's liability to the Employer for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
Z1.46.3	X18.4 The Contractor's total liability pursuant to this Contract (including any collateral warranty provided by the Contractor pursuant to this Contract) for all matters arising under or in connection with this contract, including the Contractor's liability to pay liquidated damages under clause Z2.12 and/or X7 any losses arising from any nuisance or interference referred to in clause Z2.6, and loss of or damage to property real or personal other than to the works other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort (including but not limited to negligence), for breach of warranty, by way of indemnity (other than the indemnities at clause 83) 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 <ul style="list-style-type: none"> <li>• loss of or damage to the Employer's property arising out of or caused by the carrying out of the works by the Contractor and caused by the default of the Contractor or anybody for whom the Contractor is responsible, and</li> <li>• the matters listed in X18.6.</li> </ul>
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.
Z1.46.5	X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for: <ul style="list-style-type: none"> <li>• Losses caused by fraudulent acts or acts of a criminal nature;</li> <li>• Losses against which the Contractor is entitled to an indemnity under any policy of insurance; or</li> <li>• any other Losses against which the Employer is entitled to an indemnity under clause 83.</li> </ul>
Z1.46.6	X18.7 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.
Z1.46.7	X18.8 Clause X18 shall survive termination or expiry of the contract regardless of cause.

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

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|-------------------|--|
| <b>Incentives</b> | <p>X20.1 A Key Performance Indicator is an aspect of performance by the <i>Contractor</i> for which a target is stated in the Incentive Schedule. The Incentive Schedule is the <i>incentive schedule</i> unless later changed in accordance with this contract.</p> <p>X20.2 From the <i>starting date</i> until the Defects Certificate has been issued, the <i>Contractor</i> reports to the <i>Project Manager</i> his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.</p> <p>X20.3 If the <i>Contractor's</i> forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the <i>Project Manager</i> his proposals for improving performance.</p> <p>X20.4 The <i>Contractor</i> is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.</p> <p>X20.5 The <i>Employer</i> may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.</p> |
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## Option X21: Single Point Design Responsibility

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|---|-------------------|
| <b>Single Point Design Responsibility</b> | <p><b>X21</b></p> |
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- |       |  |
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| Z1.47 | <p>X21.1 In this Option, "<b>Employer's Design Information</b>" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the <i>Employer</i> and included in the Works Information.</p> <p>X21.2 The <i>Contractor</i> is responsible for the design of the <i>works</i> and for the accuracy of such <i>Employer's Design Information</i> listed in the Contract Data as being the responsibility of the <i>Contractor</i> except as stated in clause X21.3 below.</p> <p>X21.3 Subject to X21.2 the <i>Contractor</i> is not responsible for any error, inaccuracy or omission of any kind in the <i>Employer's Design Information</i> as originally included in the contract.</p> <p style="padding-left: 20px;">The <i>Employer</i> is responsible for the correctness of the following elements of the <i>Employer's Design Information</i>:</p> <ul style="list-style-type: none"> <li>(a) data and information stated in the Works Information as being the responsibility of the <i>Employer</i>,</li> <li>(b) definitions of intended purposes of the <i>works</i> or any part thereof, and</li> <li>(c) criteria for the testing and performance of the completed <i>works</i>.</li> </ul> <p>X21.4 Where either party discovers a mistake, inaccuracy or discrepancy in or omission from the <i>Employer's Design Information</i>, it shall inform the other party in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the <i>Project Manager</i> may confirm the proposed amendment or comment in writing on such an amendment provided that the <i>Project Manager</i> does not unreasonably withhold his consent to a proposed amendment. The <i>Contractor</i> takes account of such comments and confirms or resubmits the proposed amendment to the <i>Project Manager</i>. Such process is repeated until the <i>Project Manager</i> accepts the proposed amendment.</p> <p>X21.5 Anything which is the <i>Contractor's</i> responsibility as set out in Option X21.2 does not give rise to a compensation event.</p> |
|-------|--|



Option X23: Key Person Succession Plan

Key Person Succession Plan	X23
Z1.49	<div><div>X23.1</div><div>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.</div></div> <div><div>X23.2</div><div>The Contractor submits his key person succession plan to the Project Manager for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.</div></div> <div><div>X23.3</div><div>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:<div><div><div>•</div><div>ceases to be employed to do the job stated in the Contract Data; and/or</div></div><div><div>•</div><div>the Contractor fails to comply with an accepted key person succession plan,</div></div></div><div>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.</div></div></div>

Option X24: Fee Cap

Fee Cap	X24	Not used with Option A
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## Option X25: Escrow Agreement

### 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 form of escrow agreement substantially in the then current NCC form to be reasonably agreed between the *Employer* and the *Contractor*

**"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 Where the Contract Data specifies that this Option is to apply, 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 *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.

## OPTION Y

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

Not used.

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

### Definitions

**Note: incorporated in Schedule 1 and 12.6**

Z1.54.

### 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.

Y2.2 Not used

Y2.3 Note used

### Suspension of performance

Y2.4 If the *Contractor* exercises 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 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 him according to the time worked while they are within the Working Areas.

- Equipment**      **2**      Amounts paid by the *Contractor* including those for meeting the requirements of the law (save for employer's liability insurance) and for pension provision
- 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

		<ul style="list-style-type: none"> <li>• payments for the provision and use in the Working Areas of water, gas and electricity,</li> <li>• 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</li> <li>• 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.</li> </ul>
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i>
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office
	45	Specialist services.
	46	Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
<b>Manufacture and fabrication</b>	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> <li>• wholly or partly designed specifically for the <i>works</i> and</li> <li>• manufactured or fabricated outside the Working Areas.</li> </ul>
	51	Amounts paid by the <i>Contractor</i> .
<b>Design</b>	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
<b>Insurance</b>	7	The following are deducted from cost <ul style="list-style-type: none"> <li>• costs against which this contract required the <i>Contractor</i> to insure</li> <li>• other costs paid to the <i>Contractor</i> by insurers and</li> <li>• the cost of excess payments or deductibles.</li> </ul>

## 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 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 are not included within the Contractor's Fee or overhead percentages.

#### 3 - Cost Verification

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





**Siemens Mobility Limited**

## **FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**

**Appendix D**

**CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION E**

**This amended contract is based on the NEC family of contracts (2013 edition), the copyright of which belongs to the Institution of Civil Engineers.**

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Consolidated Conditions of Contract





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## 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.
		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 he is to do 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.
Z1.1.1			(4) The Contract Date is the date of this contract.
Z1.1.2			(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</li><li>• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law, any applicable Standards or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.</li></ul>
Z1.1.3			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> . (8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.4			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the <i>Adjudicator</i> , the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1.1.5			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns), the <i>Contractor</i> , and a member of the Contractor's Group to which the contract has been assigned, transferred or novated with the prior written consent of the <i>Employer</i> , such consent not to be unreasonably withheld or delayed. (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires.

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

(23) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
  - retention,
  - [payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,]<sup>1</sup>
  - [the correction of Defects after Completion,]<sup>2</sup>
  - payments to Others and
  - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract

and

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

less Disallowed Cost.

Z1.1.6

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

- is not justified by the *Contractor's* accounts and records or has not been reasonably incurred,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
  - follow an acceptance or procurement procedure stated in the Works Information or
  - give an early warning which this contract required him to

<sup>1</sup> To be agreed on a contract by contract basis

<sup>2</sup> To be agreed on a contract by contract basis

give

and the cost of

- [correcting Defects after Completion],<sup>3</sup>
- correcting Defects caused by the *Contractor* not complying with a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and
- a key person not appointed in accordance with this contract,
- preparation for and conduct of an adjudication or proceedings of the tribunal, and
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement.

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

(32) The Prices are the Defined Cost plus the Fee.

Z1.2 11.3 Additional defined terms are included in Schedule 1.

**Interpretation and  
the law**

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:  
(c) "including" means "including without limitation", and  
(d) "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 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.

<sup>3</sup> To be agreed on a contract by contract basis  
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- 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 his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.

Z1.3.8 12.8 Not used.

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.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

Z1.5	<b>The Project Manager and the Supervisor</b>	<b>14</b>	
		14.1	The <i>Project Manager's</i> or the <i>Supervisor's</i> acceptance of a communication from the <i>Contractor</i> or of his work does not change the <i>Contractor's</i> responsibility to Provide the Works or his liability for his design.
		14.2	The <i>Project Manager</i> and the <i>Supervisor</i> , after notifying the <i>Contractor</i> , may delegate any of their actions and may cancel any delegation. A reference to an action of the <i>Project Manager</i> or the <i>Supervisor</i> in this contract includes an action by his delegate.
		14.3	The <i>Project Manager</i> may give an instruction to the <i>Contractor</i> which changes the Works Information or a Key Date.
		14.4	The <i>Employer</i> may replace the <i>Project Manager</i> or the <i>Supervisor</i> after he has notified the <i>Contractor</i> of the name of the replacement.
Y2.1/Z1.5.1		14.5	The <i>Project Manager</i> is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.
	<b>Adding to the Working Areas</b>	<b>15</b>	
		15.1	The <i>Contractor</i> may submit a proposal for adding an area to the Working Areas to the <i>Project Manager</i> 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.
Z1.7	<b>Early warning</b>	<b>16</b>	
Z1.7.1		16.1	<p>The <i>Contractor</i> and the <i>Project Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> <li>• increase the total of the Prices,</li> <li>• delay Completion,</li> <li>• delay meeting a Key Date,</li> <li>• impair the performance of the works in use,</li> <li>• adversely affect the work of Others, or</li> <li>• adversely affect the <i>Employer</i> (including by increasing the monies payable by the <i>Employer</i> to Others engaged on the Project) and/or cause any disruption to the operation of the Underground Network.</li> </ul> <p>In the notification the <i>Contractor</i> and the <i>Project Manager</i> state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.</p> <p>The <i>Contractor</i> may give an early warning by notifying the <i>Project Manager</i> of any other matter which could increase his total cost. The <i>Project Manager</i> 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.</p>
		16.2	Either the <i>Project Manager</i> or the <i>Contractor</i> may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
		16.3	<p>At a risk reduction meeting, those who attend co-operate in</p> <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>
		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 he issues the revised Risk Register.

**Ambiguities and Inconsistencies 17**

17.1

The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

**Illegal and impossible requirements 18**

18.1

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

**Prevention 19**

19.1

If an event occurs which

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

and which

- 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,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.



## 2 The Contractor's main responsibilities

<b>Providing the Works 20</b>	
Z1.8	
Z1.8.1	20.1 The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.2 Not used (not an Option E clause)
	<b>20.3 The <i>Contractor</i> advises the <i>Project Manager</i> on the practical implications of the design of the works and on subcontracting arrangements.</b>
Z1.8	<b>20.4 The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the works in consultation with the <i>Project Manager</i> and submits them to the <i>Project Manager</i>. Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works. Each forecast is in a format prescribed in the Works Information. An explanation of the changes made since the previous forecast is submitted with each forecast.</b>
	20.5 Not used (not an Option E clause)
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> both before and after the Contract Date.
<b>The Contractor's design 21</b>	
Z1.9	
Z1.9.1	21.1 The <i>Contractor</i> is responsible for the design of all of the works which the Works Information states he is to design and for the integration of the works into the Systems but for the avoidance of doubt the <i>Contractor</i> is not responsible for a defect in the design of the Systems.
Z1.9.2	21.2 The <i>Contractor</i> submits the particulars of his design as the Works Information requires to the <i>Project Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with the Works Information, applicable Standards or the applicable law.  The <i>Contractor</i> does not proceed with the relevant work until the <i>Project Manager</i> has accepted his design.
	21.3 The <i>Contractor</i> may submit his design for acceptance in parts if the design of each part can be assessed fully.
<b>Using the Contractor's Design 22</b>	
Z1.10	
Z1.10.1	22.1 The <i>Employer</i> may use and copy the <i>Contractor's</i> design for any purpose specified in clause Z2.7.
<b>Design of Equipment 23</b>	
	23.1 The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs him to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with <ul style="list-style-type: none"> <li>the Works Information,</li> <li>the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted or</li> <li>the applicable law.</li> </ul>

## People 24

- Z1.11  
Z1.11.1
- 24.1 The *Contractor* complies with Option X23 (where applicable) and the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced
- Z1.11.2
- 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control who has misconducted himself, been incompetent, negligent or in breach of health and safety requirements. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

## Working with the Employer and Others 25

- Z1.12.1
- 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others and shares the Working Areas with them as stated in the Works Information.
- 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.
- Z1.12.2
- 25.3 [If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either
- in carrying out work or
  - by paying an additional amount to Others in carrying out work
- on the same project the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost 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.]<sup>4</sup>

## Subcontracting 26

- Z1.13  
Z1.13.1
- 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted and he complies with the provisions of the Works Information. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.
- 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 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 him.
- Z1.13.2
- 26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required;
- The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted

<sup>4</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option E  
Consolidated Conditions of Contract

them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Works,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- they contain payment terms that do not comply with the Public Contracts Regulations 2015 or
- where required by Z2.2.1 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.

**26.4** Not used

**Other responsibilities 27**

Z1.14

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

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

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

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

Z1.14.1

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

### 3 Time

Starting, Completion and Key Dates	30	
Z1.15	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.15.1	30.1A	The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information. The <i>Supervisor</i> may attend the inspection.
Z1.15.2	30.2	The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
Z1.16	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.16.1	31.2	<p>The <i>Contractor</i> shows on each programme which he submits for acceptance</p> <ul style="list-style-type: none"> <li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li> <li>• planned Completion,</li> <li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li> <li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li> <li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li> <li>• provisions for <ul style="list-style-type: none"> <li>• float,</li> <li>• time risk allowances,</li> <li>• environmental and health and safety requirements and</li> </ul> </li> <li>• the procedures set out in this contract,</li> <li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> <li>• any access in accordance with the access requirements in the Works Information and access to a part of the Site if later than its <i>access date</i>,</li> <li>• acceptances,</li> <li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li> <li>• information from Others,</li> </ul> </li> <li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and</li> <li>• other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.</li> </ul>

	31.3	Within two weeks of the <i>Contractor</i> submitting a programme to him for acceptance, the <i>Project Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting a programme is that <ul style="list-style-type: none"> <li>the <i>Contractor's</i> plans which it shows are not practicable,</li> <li>it does not show the information which this contract requires,</li> <li>it does not represent the <i>Contractor's</i> plans realistically or</li> <li>it does not comply with the Works Information.</li> </ul>
Revising the programme	32	
	32.1	The <i>Contractor</i> shows on each revised programme <ul style="list-style-type: none"> <li>the actual progress achieved on each operation and its effect upon the timing of the remaining work,</li> <li>the effects of implemented compensation events,</li> <li>how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and</li> <li>any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.</li> </ul>
	32.2	The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance <ul style="list-style-type: none"> <li>within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to,</li> <li>when the <i>Contractor</i> chooses to and, in any case,</li> <li>at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i>.</li> </ul>
Access to and use of the site	33	
Z1.17		
Z1.17.1	33.1	Subject to the provisions of the Works Information regarding access, the <i>Employer</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in this contract. Access and use is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.
Z1.17.2	33.1A	The <i>Employer</i> 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 but shall be sufficient to enable delivery of the <i>works</i> in accordance with the Works Information and the Accepted Programme.
Instructions to stop or not to start work	34	
	34.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.
Take over	35	
Z1.18	35.1	The <i>Employer</i> need not take over the <i>works</i> before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the <i>Employer</i> takes over the <i>works</i> not later than two weeks after Completion.
Z1.18.1	35.2	The <i>Employer</i> may use or permit Others to use any part of the <i>works</i> before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the <i>works</i> when he (or Others) begins to use it; <ul style="list-style-type: none"> <li>for a reason stated in the Works Information,</li> <li>to suit the <i>Contractor's</i> method of working or</li> </ul>

- in accordance with the Accepted Programme.

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

#### **Acceleration 36**

- Z1.19 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.
- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- 36.3 **Not used (as not an Option E clause).**
- Z1.19.1 36.4 **When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, 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 his own assessment of the compensation event.**

## 4 Testing and Defects

### Tests and inspections 40

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

### Testing and inspection before delivery 41

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

### Searching for and notifying Defects 42

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

### Correcting Defects 43

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* 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.

- 43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.
- Accepting Defects 44**
- 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.
- Uncorrected Defects 45**
- 45.1 If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.
- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.



## 5 Payment

<b>Assessing the amount due</b>		<b>50</b>	
Z1.20	50.1	<p>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	50.1A	<p>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 him at the payment due date and the basis on which that sum is calculated.</p>	
	50.2	<p>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>	
	50.3	<p>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	50.3A	<p>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	50.4	<p>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. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.</p>	
	50.5	<p>The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.</p>	
	50.6	<p><b>Not used (not an Option E clause).</b></p>	
	50.7	<p><b>Payments of Defined Cost made by the <i>Contractor</i> in a currency other than the currency of this contract are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the currency of this contract in order to calculate the Fee using the exchange rates.</b></p>	
Z1.20.4	50.8	<p>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	50.9	<p>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 the <i>Employer</i> may withhold the sum stated in the Contract Data which is not payable to the <i>Contractor</i> until such warranty is delivered.</p>	

Z1.20.6	50.10	If where the Contract Data states that this clause is to apply 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 <i>Contractor</i> until such Management Plan is delivered.
Z1.20.7	50.11	<p>If the <i>Contractor's</i> employment is terminated under clause 91.1 because the <i>Contractor</i> has become insolvent within the meaning of section 113 of the Act (R10A), the <i>Employer</i> need not pay any sum due to the <i>Contractor</i> other than any amount due to him under clause 90.4 either:</p> <ul style="list-style-type: none"> <li>• where the <i>Contractor</i> becomes insolvent prior to the prescribed period before the final date for payment, provided that the <i>Employer</i> or <i>Project Manager</i> issues a Pay Less Notice notifying the <i>Employer's</i> intention not to pay such sum, or</li> <li>• in any event, if the <i>Contractor</i> becomes insolvent after the prescribed period before the final date for payment.</li> </ul>

#### Payment 51

Y1.1.1	51.1	The <i>Project Manager</i> certifies a payment within 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 <i>Contractor</i> to the <i>Employer</i> if the change reduces the amount due. Other payments are made by the <i>Employer</i> to the <i>Contractor</i> . Payments are in the <i>currency of this contract</i> unless otherwise stated in this contract. If a certificate is not issued by the <i>Project Manager</i> in accordance with this clause 51.1, the sum to be paid by the <i>Employer</i> is the sum stated as due in the <i>Contractor's</i> 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 <i>Project Manager's</i> certificate is the <i>Employer's</i> notice of payment to the <i>Contractor</i> 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 <i>Contractor</i> delivers to the <i>Employer</i> (copied to the <i>Project Manager</i> ) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The <i>Contractor</i> issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
Y1.1.3	51.2	Each certified payment is made within 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 <i>Project Manager</i> does not issue a certificate which he should issue, 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 <i>Contractor</i> is less than the amount to be paid by or retained from the <i>Contractor</i> , the difference is recoverable from the <i>Contractor</i> as a debt due on demand.
Y1.1.4	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. In the case of the <i>Employer</i> , the notice may be given on his behalf by the <i>Project</i>

*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.

**Defined Cost 52**

- 52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

**52.2 The Contractor keeps these records**

- **accounts of payments of Defined Cost,**
- **proof that the payments have been made,**
- **communications about and assessments of compensation events for Subcontractors and**
- **other records as stated in the Works Information.**

- 52.3 The Contractor allows the Project Manager to inspect at any time within working hours the accounts and records which he is required to keep.**

53 **Not used (not an Option E clause)**

54 **Not used (not an Option E clause)**

55 **Not used (not an Option E clause)**

Z1.21.1

- 56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
  - any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*

subject to issue of a Pay Less Notice by or on behalf of the *Employer* the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.22.1

- 57 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the *Contractor* complies with the provisions of the Works Information regarding the Construction Industry Scheme.

## 6 Compensation events

### Compensation events 60

Z1.23

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

(2) Subject to the requirements of the Works Information regarding access and 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 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 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]<sup>5</sup>
- 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.

<sup>5</sup> To be agreed on a contract by contract basis

(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 he has stated about a compensation event.

(18) A breach of contract or act of prevention on the part of 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.

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.

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 Events 61

Z1.24

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. 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

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

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

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

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

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

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

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs 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 he does not accept the decision and at the same time of his 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 eight weeks of notification of the *Project Manager's* decision, he is treated as having accepted the *Project Manager's* decision.

If the *Project Manager* does not notify his decision, the *Contractor* may notify the *Project Manager* of 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.

Z1.24.2

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

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

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

## **Quotations for compensation events**

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 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 his assessment in accordance with the requirements of the Works Information with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

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

weeks of the submission. His reply is

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

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

### Assessing compensation Events

Z1.26

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 *Contractor* shall not be entitled to an addition to the Prices for any period of delay caused by a concurrent *Contractor's* risk.

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.

Z1.26.3

63.5 If the *Project Manager* has notified the *Contractor* of 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.

Z1.26.4

63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time for matters which have a

significant chance of occurring and are at the *Contractor's* risk under this contract. 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- Not used (not Option E clauses).**
- 63.13**
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.**
- 63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.**

#### **The *Project Manager's* Assessments**

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



<b>Implementing compensation events</b>	<b>65</b>	
Z1.28	65.1	<p>A compensation event is implemented when</p> <ul style="list-style-type: none"> <li>the <i>Project Manager</i> notifies his acceptance of the <i>Contractor's</i> quotation,</li> <li>the <i>Project Manager</i> notifies the <i>Contractor</i> of his own assessment or</li> <li>a <i>Contractor's</i> quotation is treated as having been accepted by the <i>Project Manager</i>.</li> </ul>
	65.2	<p>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.</p>
	<b>65.3</b>	<p><b>The changes to the forecast amount of the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.</b></p>
	<b>65.4</b>	<p><b>Not used (not an Option E clause)</b></p>
Z1.28.1	65.5	<p>The <i>Contractor</i> notifies the <i>Project Manager</i> if he does not accept the <i>Project Manager's</i> assessment and at the same time of his reasons for not accepting the <i>Project Manager's</i> assessment. If the <i>Contractor</i> does not provide this notification within eight weeks of notification of the <i>Project Manager's</i> assessment, he is treated as having accepted the <i>Project Manager's</i> assessment.</p>

## 7 Title

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

- |                  |      |   |
|------------------|------|---|
| Z1.29<br>Z1.29.1 | 70.1 | Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> has delivered them to site or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> . |
|                  | 70.2 | Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.  |
| Z1.29.2          | 70.3 | If requested by the <i>Project Manager</i> , in advance of the payment assessment, the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.  |

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

#### **71**

- |      |   |
|------|---|
| 71.1 | The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none"> <li>• this contract identifies them for payment and</li> <li>• the <i>Contractor</i> has prepared them for marking as the Works Information requires.</li> </ul> |
|------|---|

### **Removing Equipment**

#### **72**

- |      |  |
|------|--|
| 72.1 | The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works. |
|------|--|

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

#### **73**

- |      |  |
|------|--|
| 73.1 | The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions. |
| 73.2 | The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.   |

## 8 Risks and insurance

### **Employer's risks**

Z1.30

80

80.1 The following are *Employer's risks*.

- Claims, proceedings, compensation and costs payable which are due to
  - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
  - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or
- a fault of the *Employer*.
- 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.

Z1.30.1

### **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**

Z1.31

Z1.31.1

**83**

83.1 Each Party is responsible for and indemnifies the other, its employees and agents (and the *Contractor* indemnifies the *Employer* in respect of members of the TfL Group) against claims, proceedings, compensation and costs due to personal injury to or death of any person due to an event at the indemnifying Party's risk.

Z1.31.2

83.2 The *Contractor* indemnifies the *Employer* 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 as set out at clause Z2.7.4(b).

Z1.31.3

83.3 The indemnities under clauses 83.1 and 83.2 remain in force for the duration of this contract and continue to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to them.

**Remedies**

Z1.32

Z1.32.1

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

(b) delay damages pursuant to Option X7 is without prejudice to the *Employer's* right to liquidated damages for disruption pursuant to clause Z2.12.

**Insurance cover**

Z1.33

Z1.33.1

**84**

84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.33.2

84.2

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

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*

**Public liability insurance**

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*

Not less than

██████████ per occurrence or as otherwise stated in the Contract Data.

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.

**Employer's liability insurance**

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

*Contractor*

Not less than

██████████ per occurrence or as otherwise stated in the Contract Data, whichever is the greater

**Contractor's Equipment loss insurance**

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

*Contractor*

The replacement cost

**Professional Indemnity Insurance**

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

*Contractor*

██████████ for each and every claim and the annual aggregate or as otherwise stated in the Contract Data

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 his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
- the *Contractor* bears the cost of all premiums, which 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 he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.

Z1.33.4	84.4	The <i>Contractor</i> does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
Z1.33.5	84.5	The <i>Contractor</i> procures that his Subcontractors (and sub-subcontractors of any tier) maintain employer's liability (and where appropriate) motor liability insurances as required by law.
Z1.33.6	84.6	The insurances provided pursuant to this contract do not relieve the <i>Contractor</i> from any of his obligations and liabilities under this contract
<b>Insurance policies</b>	<b>85</b>	
Z1.34		
Z1.34.1	85.1	Before the <i>starting date</i> and on each renewal of the insurance policy until the <i>defects date</i> , the <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the <i>Contractor's</i> insurer or insurance broker (which may be the <i>Contractor's</i> internal insurance broker). A reason for not accepting the certificates is that: <ul style="list-style-type: none"> <li>• they do not comply with this contract,</li> <li>• the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom, or</li> <li>• the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the <i>works</i>, of sufficient financial strength.</li> </ul>
Z1.34.2	85.2	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 <i>Employer</i> for events which are at his risk and by the <i>Contractor</i> for events which are at 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.
<b>If the <i>Contractor</i> does not insure</b>	<b>86</b>	
Z1.35		
Z1.35.1	86.1	The <i>Employer</i> may insure a risk which this contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the <i>Employer</i> in respect of taking out such insurance) to the <i>Employer</i> is paid by the <i>Contractor</i> . If the <i>Employer</i> insures a risk which this contract requires the <i>Contractor</i> to insure, this is without prejudice to any of the <i>Employer's</i> other rights, powers or remedies under this contract.
<b>Insurance by the <i>Employer</i></b>	<b>87</b>	
Z1.36		
	87.1	The <i>Project Manager</i> submits policies and certificates for insurances provided by the <i>Employer</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the policies and certificates if they comply with this contract.
	87.2	The <i>Contractor's</i> acceptance of an insurance policy or certificate provided by the <i>Employer</i> does not change the responsibility of the <i>Employer</i> to provide the insurances stated in the Contract Data.
	87.3	The <i>Contractor</i> may insure a risk which this contract requires the <i>Employer</i> to insure if the <i>Employer</i> does not submit a required policy or certificate. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Employer</i> .
Z1.36.1	87.4	The <i>Contractor</i> co-operates with the <i>Employer</i> 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 <i>Contractor</i> complies, and ensures that its Subcontractors comply, with the requirements of the <i>Employer's</i> claims handling procedures, such procedure to be provided to the <i>Contractor</i> by the <i>Employer</i> .  |
| Z1.36.3 | 87.6 | The <i>Contractor</i> does not compromise, settle or waive any claim which the <i>Contractor</i> may have under the <i>Employer's</i> insurances without the prior written consent of the <i>Employer</i> .   |
| Z1.36.4 | 87.7 | The insurances provided by the <i>Employer</i> are in effect for the duration of the <i>works</i> at the Site and any associated compounds storage and transit locations and other places accepted by the <i>Project Manager</i> and used solely for the purposes of carrying out of the physical works within the United Kingdom.  |
| Z1.36.5 | 87.8 | The <i>Contractor</i> ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the <i>Employer</i> while the Subcontractor is engaged in carrying out the <i>works</i> at the Site and any associated compounds storage and transit locations and other places accepted by the <i>Project Manager</i> and used solely for the purposes of carrying out the physical works within the United Kingdom. |

## 9 Termination

### Termination 90

Z1.37

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

**TERMINATION TABLE**

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	R25A and a reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A or R18.	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, 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 his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
  - had a winding-up order made against it (R5),
  - had a provisional liquidator appointed to it (R6),
  - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
  - had an administration order made against it (R8),
  - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
  - made an arrangement with its creditors (R10).
- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.

- Substantially failed to comply with his obligations (R11).
- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).

Z1.38.2

91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.

- Substantially hindered the *Employer* or Others (R14).
- Substantially broken a health or safety regulation or requirement of this contract (R15).

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount 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 his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.18 (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 unless approved in writing by the *Employer* (R25A).

Z1.38.5

91.9 In the event that either:

- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union; or
- this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016; 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; or
- to the extent not already provided for in this clause 91.9, the *Employer* may terminate if it determines that the contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement 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.

**Procedures on termination 92**

Z1.39

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

Z1.39.1

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

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

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

P4 The *Contractor* leaves the 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 first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.

## 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 request that the *Contractor* duly executes and delivers to the *Employer* within 21 days deeds of warranty in the appropriate form attached at Schedule 4 in favour of any member of the TfL Group or the Connect Contractor.

Z2.1.2 Not used.

### Subcontractors' Warranties

#### Z2.2

Z2.2.1 This clause applies to Subcontractors for subcontract design packages identified in the Contract Data as key subcontractors. The *Contractor* uses his best endeavours to procure that the Subcontractors (identified in the Contract Data as key subcontractors) 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 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of any member of the TfL Group.

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

Z2.3 Not used

### Warranties and Undertakings

#### Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including

software) necessary for the operation and maintenance of the works as specified in the Works Information, and

- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the works and for no other purpose.

## **Accounts and Records**

### **Z2.5**

- Z2.5.1 The *Contractor* maintains and retains (and procures that his 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 his Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and his 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 the Data Protection Act 1988 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 Not used.

## Intellectual Property Rights

### Z2.7

#### Z2.7.1 Licensing of New 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 *Contractor*. The *Contractor* grants to the *Employer* (and procures the grant of in respect of Subcontractors and suppliers of any tier) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to use IPR newly generated in the *works* for the purpose of understanding, operating, maintaining, modifying and maintaining the *works*.

#### Z2.7.2 Background IPR

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

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

Z2.7.2A The granting of licences at clause Z2.7.1 and Z2.7.2 is with the provisos that:

(i) The *Employer* has no right to decompile any computer software which forms part of the IPR licenced to the *Employer* under this contract nor shall the *Employer* attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub-licensee of that computer software.

(ii) Notwithstanding any of the foregoing provisions of this clause no license shall be granted to the *Employer* under this contract to reproduce or have reproduced the works in part or in whole; and neither shall any license be granted to the *Employer* to make or have made components or spare parts which are protected by intellectual property rights vested in the *Contractor* or any of its Subcontractors or suppliers.

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 his Subcontractors to use, the Corporate IPRs at Schedule 7 for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.
- (b) The *Contractor* uses, and procures that his Subcontractors use, the Corporate IPRs in compliance with any relevant Standards and applicable law.
- (c) The *Contractor* does not use, and procures that his Subcontractors do not use, the Corporate IPRs in combination with any other trade marks without the *Employer's* prior written consent.
- (d) On written request by the *Project Manager*, the *Contractor* supplies to the *Project Manager* copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the *Project Manager* reasonably determines that any use of the Corporate IPRs falls below the Standards, the *Project Manager* gives the *Contractor* written notice of that fact and the *Contractor* corrects the use so as to comply with the Standards taking into account the *Project Manager's* instructions.
- (e) The *Contractor* is not entitled to bring any action against any third party for infringement relating to the Corporate IPRs and the *Employer* is not obliged to bring or extend any proceedings relating to the Corporate IPRs if it decides in his sole discretion not to do so.
- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, the *Contractor* and his Subcontractors remove the Corporate IPRs from or (where removal is not reasonably practical) destroy or, if the *Project Manager* so elects, deliver to the *Project Manager* or any other UK company or person designated by the *Project Manager*, all items and documents which the *Project Manager* does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

#### **Assignment Z2.8**

- Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it) but may assign, transfer or novate this contract to another member of the *Contractor's* Group with the prior written consent of the *Employer* such consent not be



unreasonably withheld or delayed.

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 another member of the TfL Group without the prior written consent of the Contractor.

## Confidentiality

### Z2.9

- Z2.9.1 The *Contractor* treats, and ensures that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the Project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.
- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) 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 PFI Connect Contract 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 and Z2.9.10 do 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.
- Z2.9.10 Without prejudice to the *Employer's* obligations under legislation, including Freedom of Information and to Z2.15 the *Employer* will treat all information belonging to, or relating to the business, systems, products or processes of the *Contractor* or the *Contractor's* Group (as subcontractors of any tier) which could reasonably be considered as commercially sensitive obtained under, arising from or in connection with this contract and/or the Project as

confidential.

## 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 his personal capacity and (b) is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.
- 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 he relies. The referring party provides the responding party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.
- 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 he relies. The responding party provides the referring party with a copy of any documents which he provides to the Conflict Avoidance Panel at the same time as he provides them to the Conflict Avoidance Panel.
- 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 at Schedule 8 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* hand back possession of a worksite for traffic hour running due to a cause which is a *Contractor* risk.

#### **Responsible Procurement**

- Z2.13  
Z2.13.1 The *Contractor* has regard to the Responsible Procurement Principles and complies at all times with the obligations with regard to the Responsible Procurement Principles set out in the Works Information. Compliance with such obligations does not constitute a compensation event unless the *Project Manager* issues an instruction and states in his instruction that it constitutes a compensation event.

## Crime and Disorder

### Z2.14

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

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

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

## London Living Wage

### Z2.15

Z2.15.1 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* and his Subcontractors (if any) :

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

## Data Transparency

### Z2.16

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1 but the *Employer* will take reasonable steps to consult the *Contractor* where disclosure would include commercially sensitive information belonging to the *Contractor* including any price breakdown. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z2.17 Not used

## Conflict of Interest

### Z2.18

- Z2.18.1 The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.
- Z2.18.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the works from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* 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 his obligations under the FOI Legislation, and
  - may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*.
- Z2.19.2 Without prejudice to the generality of Clause Z2.19.1, the *Contractor* agrees and procures that his Subcontractors will agree to:
- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the works or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
  - in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.
- Z2.19.3 The *Employer* (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* does not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.
- Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor* but the *Employer* will take reasonable steps to consult with the *Contractor* where disclosure would include commercially sensitive information belonging to 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 he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has 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 he 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 his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.1.
- 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 his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2** Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3** If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22.4** If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

## **Data Protection**

### **Z2.23**

- Z2.23.1** The parties acknowledge that, for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is a Processor. The only processing that the *Contractor* is authorised to do is that permitted by Data Protection Legislation in order to *Provide the Works* under this contract.
- Z2.23.2** The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer's* instructions infringe the Data Protection Legislation.
- Z2.23.3** The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to the commencement of any processing. Such assistance may, at the discretion of the *Employer*, include:
- (e) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (f) an assessment of the necessity and proportionality of the processing operations in relation to the works;
  - (g) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (h) the measures envisaged to address the risk, including safeguards,

security measures and mechanisms to ensure the protection of Personal Data.

Z2.23.4 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under this contract:

- (f) process that Personal Data only in accordance with the performance of the works under this contract, unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;
- (g) ensure that it has in place Protective Measures, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:
  - nature of the data to be protected;
  - harm that might result from a Data Loss Event;
  - state of technological development; and
  - cost of implementing any measures;
- (h) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (v) are aware of and comply with the *Contractor's* duties under this clause;
    - (vi) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (vii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and
    - (viii) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (i) ensure that:
  - its employees and subcontractors do not process Personal Data except in accordance with this contract;
  - it takes all reasonable steps to ensure the reliability and integrity of any of its employees and subcontractors who have access to the Personal Data and ensure that they:
    - (ix) are aware of and comply with the *Contractor's* duties under this clause;
    - (x) are subject to appropriate confidentiality undertakings with any Sub-processor;
    - (xi) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing

to do so by the *Employer* or as otherwise permitted by this contract; and

- (xii) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (j) not transfer Personal Data outside of the EU unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:
  - the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Employer*;
  - the Data Subject has enforceable rights and effective legal remedies;
  - the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Employer* in meeting its obligations); and
  - the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;
- (k) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the contract unless this *Contractor* is required by Law to retain the Personal Data.

Z2.23.5 Subject to clause Z2.23.6, the *Contractor* shall notify the *Employer* immediately if it:

- (g) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (h) receives a request to rectify, block or erase any Personal Data;
- (i) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (j) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
- (k) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (l) becomes aware of a Data Loss Event.

Z2.23.6 The *Contractor's* obligation to notify under clause Z2.23.5 shall include the provision of further information to the *Employer* in phases, as details become available.

Z2.23.7 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause Z2.23.5 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:

- (f) the *Employer* with full details and copies of the complaint,

communication or request;

- (g) such assistance as is reasonably requested by the *Employer* to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (h) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- (i) assistance as requested by the *Employer* following any Data Loss Event;
- (j) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

Z2.23.8 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause Z2.23.8. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:

- (d) the *Employer* determines that the processing is not occasional;
- (e) the *Employer* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (f) the *Employer* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z2.23.9 The *Contractor* shall allow for audits of its data processing activity by the *Employer* or the *Employer's* designated auditor.

Z2.23.10 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.

Z2.23.11 Before allowing any sub-processor to process any Personal Data related to this contract, the *Contractor* must:

- (e) notify the *Employer* in writing of the intended sub-processor and processing;;
- (f) obtain the written consent of the *Employer*;
- (g) enter into a written agreement with the sub-processor which give effect to the terms set out in this clause Z2.23 such that they apply to the sub-processor; and
- (h) provide the *Employer* with such information regarding the sub-processor as the *Employer* may reasonably require.

Z2.23.12 The *Contractor* shall remain fully liable for all acts or omissions of any sub-processor.

Z2.23.13 The *Employer* may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certificate scheme (which shall apply when incorporated by attachment to this contract).

Z2.23.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on not less than 30 working days' notice to the *Contractor* amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Anti-Slavery and Human  
Trafficking**

**Z2.24**

**Z.24.1** The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the *Employer's* anti-slavery policy.

**Z2.24.2** In *Providing the works*, the *Contractor* shall:

- (e) comply with all applicable anti-slavery and human trafficking Law from time to time in force including but not limited to the Modern Slavery Act 2015;
- (f) have and maintain throughout the currency of this agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;
- (g) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
- (h) include in its sub-contracts and supply chain contracts anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause Z.24 and shall procure that each Subcontractor and supplier complies with all applicable anti-slavery and human trafficking Law.

**Z2.24.3** The *Contractor* shall notify the *Employer* as soon as it becomes aware of any breach or potential breach of the Modern Slavery Act 2015 or any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract.

**Z2.24.4** If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any breach of the Modern Slavery Act 2015, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

## DISPUTE RESOLUTION

Option W1 - Not used

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

## SECONDARY OPTION CLAUSES

Option X2: Changes in the law

Changes in the law	X2
Z1.40A.1	X2.1 A change in the law of the country in which the Site is located or applicable Standards is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law or applicable Standards and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X3: Multiple currencies

Multiple currencies	X3
	X3.1 The <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.
	X3.2 Payments to the <i>Contractor</i> in currencies other than the <i>currency of this contract</i> do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the <i>currency of this contract</i> .

Option X4: Parent company guarantee

Parent company Guarantee	X4
Z1.41.1	X4.1 If a parent company owns the <i>Contractor</i> , the <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the <i>parent company</i> of the <i>Contractor's</i> performance in the form attached at Schedule 2. Unless a guarantee has already been given which covers this contract, the guarantee is given within four weeks of 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.
Z1.41.2	X4.2 Not used.
Z1.41.3	X4.3 Not used.
Z1.41.4	X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the <i>Employer</i> a legal opinion substantially in the form set out at Schedule 3 on the guarantor's execution of any such guarantee.
Z1.41.5	X4.5 Upon any novation of this contract the <i>Contractor</i> gives to the <i>Employer</i> further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.