

GREATER LONDON AUTHORITY

GLA 81712 THE CRYSTAL RE-FIT WORKS CONTRACT

(NEC 3rd EDITION FORM OF CONTRACT)

OPTION A

Relating to a Contract between

Greater London Authority (The Employer)

and

ISG Fit Out Limited (The Contractor)

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FORM OF AGREEMENT

Amendments to NEC Third Edition: Option A

THIS CONTRACT AGREEMENT is made the 23rd **day of** March **2021**

BETWEEN

1. **Greater London Authority of City Hall, The Queens Walks, London SE1 2AA** (hereinafter called "the *Employer*") which expression shall include its successors in title and permitted assignees, and
2. **ISG Fit Out Limited**, a company incorporated in and in accordance with the laws of **ENGLAND AND WALES** having as its registered number **06954059** and its registered office at **Aldgate House, 33 Aldgate High Street, London EC3N 1AG** (hereinafter called "the *Contractor*").

RECITALS

- (A) The *Employer* wishes to appoint the *Contractor* to carry out *works* being refurbishment construction works at The Crystal, Royal Victoria Dock, One Siemens Brothers Way, Royal Docks, London E16 1GB for which the *Employer* has submitted to the *Contractor* his invitation to tender.
- (B) The *Contractor* has submitted his tender offer dated 22 January 2021 in response to the *Employer's* invitation to tender. The *Employer* has examined the *Contractor's* said tender and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *works* in accordance with this contract.

OPERATIVE PROVISIONS

1. In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Engineering and Construction Contract Option A: Priced Contract with Activity Schedule (Third edition June 2005 with amendments June 2006) together with and as amended by Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, Y(UK)2 (with amendments dated September 2011) and Z (being the amendments set out in Schedule 1).
3. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract
 - 3.1 the *conditions of contract* (including, for the avoidance of doubt, the Option Z clauses set out in Schedule 1 to this document),
 - 3.2 the Contract Data Part One,
 - 3.3 the Contract Data Part Two,
 - 3.4 the Works Information, and

3.5 the Site Information.

- 4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Contract Agreement.
- 5. The Contractor Provides the Works in accordance with this contract.
- 6. The Employer pays the Contractor for complying with his obligations to Provide the Works the amount due in accordance with this contract.
- 7. This Contract Agreement may be executed, without limitation:
 - a. by electronic application of a party’s authorised signatory’s or signatories’ signature(s) and provision of an electronic copy of the same, and
 - b. in any number of counterparts and each counterpart will when executed be an original and all counterparts together will constitute one instrument.

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

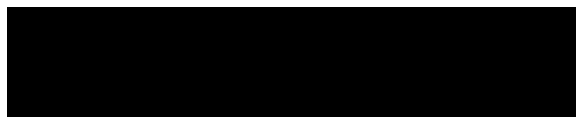
EXECUTION BY ISG

SIGNED as a Deed by) [Redacted]
as attorney for)
ISG FIT OUT LIMITED)
)
Power of Attorney dated 01 October 2019
)
In the presence of) [Redacted]
Name, address & occupation)
of witness) [Redacted]
[Redacted]

**Executed and Delivered for and on behalf of
The Greater London Authority by:**

A solid black rectangular box used to redact a signature.

Name and position of authorised signatory

A solid black rectangular box used to redact a signature.

Name and position of authorised signatory

CONTRACT DATA

Part one - Data provided by the *Employer*

Statements given in all contracts

- 1 General
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X4, X5, X7, X8, X16, X18, X20 and Z of the NEC3 Engineering and Construction Contract (June 2005 with amendments June 2006)

- The *works* are

The construction works related to the fit-out of The Crystal, Royal Victoria Docks, One Siemens Brothers Way, Royal Docks, London E16 1GB as described in the Works Information

- The *Employer* is

Name Greater London Authority

Address City Hall, The Queens Walks, London SE1 2AA

- The *Project Manager* is

Name Gerald Eve

Address 72 Welbeck Street, London W1G 0AY

- The *Supervisor* is

Name Gerald Eve

Address 72 Welbeck Street, London W1G 0AY

- The *Principal Contractor* is

Name ISG Fit Out Limited.

Address [REDACTED]

- The *Principal Designer* is

Name Gerald Eve

Address 72 Welbeck Street, London W1G 0AY

- The *Adjudicator* is The President or Vice President or an independent person appointed by them

to act as an adjudicator in accordance with

clause W2.2

- The Works Information is in

Section 4.0 – Works Information and includes all documents referred to therein

- The Site Information is in

Section 3.0 – Site Information and includes all documents referred to therein

- The *boundaries of the site* are Illustrated on drawing: City Hall relocation – Site Areas Diagram 02032021 included within Section 3.0 – Site Information

- The *language of this contract* is English

- The *period for reply* is one week

- The *Adjudicator nominating body* is _____
the London Court of International Arbitration
- The *tribunal* is _____ The courts of England and Wales
- The following matters will be included in the Risk Register
Refer to the Risk Register included in Section 3.0 – Site Information
- 2 Time
 - The *starting date* 15th March 2021 is _____
 - The *access date* is 12th April 2021
 - The *Contractor* submits revised programmes at intervals no longer than 4 weeks
- 4 Testing and Defects
 - The *defects date* is 52 weeks after Completion of the whole of the *works*
 - The *defect correction period* is 2 weeks except that
The defect correction period for MEPH works impacting upon the standard building operations is one day
- 5 Payment
 - The *currency of this contract* is the ~~local currency of the Employer~~ (GBP)
 - The *assessment interval* is 4 weeks (not more than five)
 - The *interest rate* is 2% per annum (not less than 2) above the base rate of the ~~central~~ bank (i.e. BoE)
 - The *Contractor* submits invoices ~~electronically~~
 - For the purpose of clause 50.8A, the *Employer* is an End User
- 6 Compensation events

Optional statements

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

- The *completion date* for the whole of the works is 13th September 2021

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

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

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

- The *Contractor* is to submit a first programme for acceptance within one week of the Contract Date

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

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

<i>condition</i> to be met	<i>key date</i>
1 Construction and completion of all comms rooms, and TV broadcast rooms (ready for installation of specialist equipment by the <i>Employer</i>)	9 July 2021

~~If the period in which payments are made is not three weeks and Y(UK)2 is not used~~

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

~~If there are additional *Employer's* risks~~

~~If Option X1 is used~~

~~If Option X3 is used~~

If Option X5 is used

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

<i>section</i>	Description	<i>completion date</i>
1	all comms rooms, and TV broadcast rooms (ready for installation of specialist equipment by the Employer)	9 July 2021
2	All remaining works	13 th September 2021

~~If Option X5 and X6 are used together~~

If Option X5 and X7 are used together

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

<i>section</i>	Description	amount per day
1	all comms rooms, and TV broadcast rooms (ready for installation of specialist equipment by the Employer)	
2	Remainder of the <i>works</i>	

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

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

~~If Option X12 is used~~

~~If Option X13 is used~~

~~If Option X14 is used~~

Option X15 is not to be used (refer to Z1 Clause 21.4)

If Option X16 is used

- The *retention percentage* is 5 %

~~If Option X17 is used~~

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to GBP [REDACTED] for each and every claim
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to GBP [REDACTED]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to GBP [REDACTED]
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to [REDACTED]
- The end of liability date is 12 years after the Completion of the whole of the *works*

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

- The *incentive schedule* for Key Performance Indicators is included in Schedule 3
- A report of performance against each Key Performance Indicator is provided at intervals of one month

~~If Option Y(UK)3 is used~~

If Option Z is used

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

Part two - Data provided by the Contractor

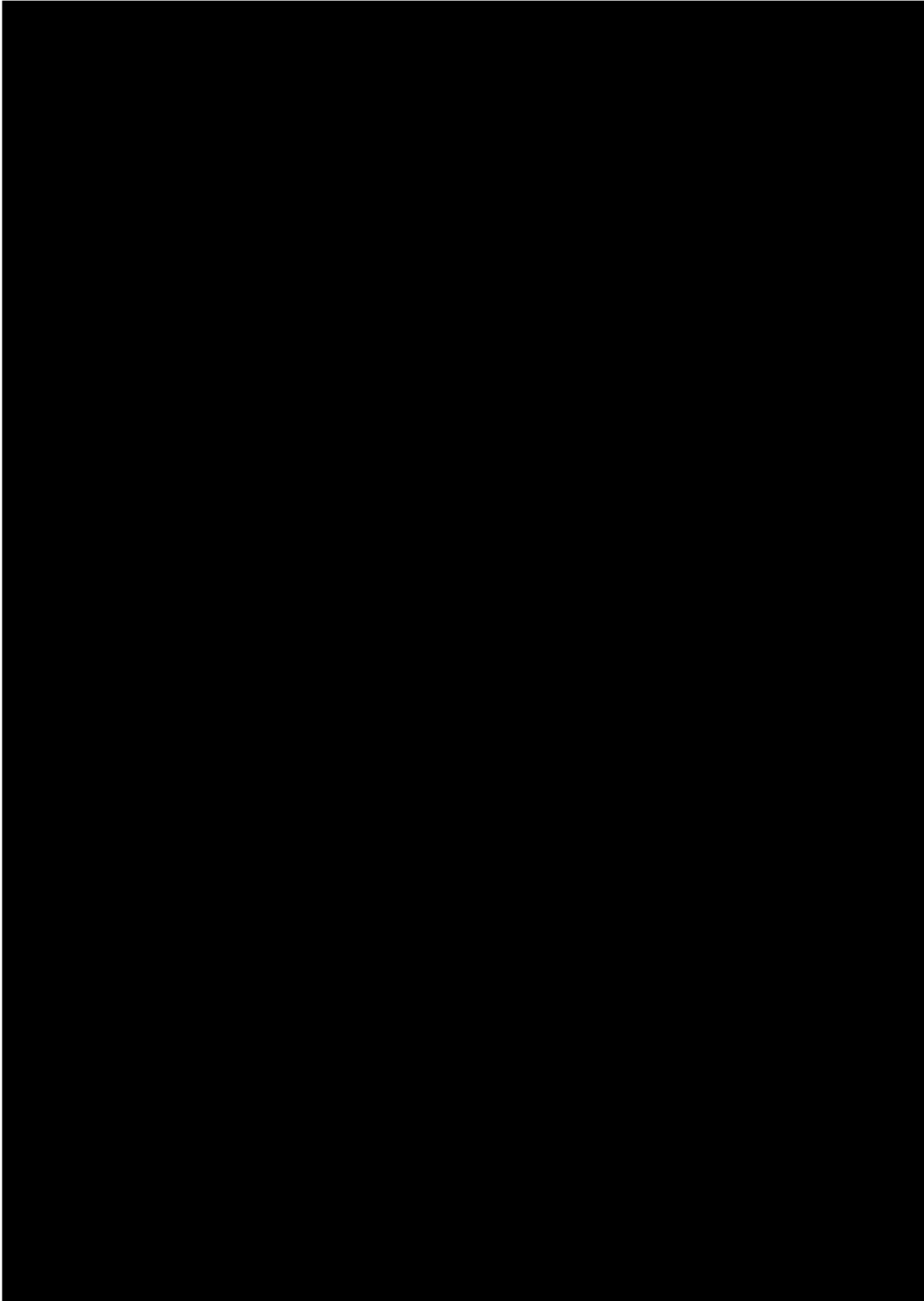
Statements given in contracts

- The Contractor is

Name ISG Fit Out Limited

Address [REDACTED]
[REDACTED]

- The direct fee percentage is [REDACTED]
- The subcontracted fee percentage is [REDACTED]
- The working areas are the Site and [REDACTED]
[REDACTED], [REDACTED]
[REDACTED]
[REDACTED] plus any other offsite location where design, manufacturing, storage or fabrication of works for the project are being completed
- The key people are included as per the organogram overleaf:



- The following matters will be included in the Risk Register

Those Key Risks/Benefits included within Section 13 of the ISG Crystal Building Technical Submission Document

Optional statements

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

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

ISG Crystal Building Technical Submission Document and ISG Crystal Building Site Logistics Diagrams Rev 1

-

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

- The *completion date* for the whole of the works is 13th September 2021

If Option A or C is used

- The *activity schedule* is GLA Relocation - Main Contractor Activity Schedule

If Option A, B, C or D is used

- The tendered total of the Prices is £12,927,049.27 ~~± VAT~~

If Option A or B is used

**Data for the Shorter
Schedule of Cost
Components**

- The percentage for people overheads is ██████
- The published list of Equipment is the last edition of the list published by RICS BCIS Schedule of Rates
- The percentage for adjustment for Equipment in the

published list is [REDACTED]

- The rates for other Equipment are noted within GLA Relocation - Main Contractor Activity Schedule
- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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

SCHEDULE 1 - THE "Z" CLAUSES

Z1 Amendments to Core clauses and Main Option clauses

Z1.2 The Core clauses, Main Option A clauses and the Secondary Option clauses are amended as follows

- | | |
|-----------------|--|
| Clause 11.2(1) | At the end insert: "Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Works Information". |
| Clause 11.2(4) | <p>Delete and substitute:</p> <p>"The Contract Date is the date of the Contract Agreement."</p> |
| Clause 11.2(5) | <p>At the end of first bullet point insert: "the <i>Contractor's</i> obligations under this contract or".</p> <p>In the second bullet point after "the applicable law" insert the words "or all applicable licences and approvals".</p> |
| Clause 11.2(11) | After <i>Employer</i> insert "(which expression includes its successors in title and permitted assigns)". |
| Clause 11.2(17) | <p>In the first sentence, after "organisation" insert "including, without limitation any sub-consultant"</p> <p>In the first bullet point, after "install" insert "or design".</p> |
| Clause 11.2(19) | <p>In the first line delete the word "either".</p> <p>In the first bullet point after <i>works</i> delete "or" and insert "and/or".</p> |
| Clause 11.2 | Insert the following new definitions |
| (34) | Brexit means the formal withdrawal of the United Kingdom from the European Union pursuant to the Withdrawal Agreement, regardless of which countries comprise the United Kingdom at such date. |
| (35) | CDM Regulations are the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and related code of practice together with any requirements issued from time to time by the Health and Safety Executive. |
| (36) | <p>Cessation Plan means a plan agreed between the Parties or determined by the <i>Employer</i> pursuant to:</p> <ul style="list-style-type: none"> • clause 94 to give effect to a Declaration of Ineffectiveness, or |

- clause 95 to give effect to a Public Procurement Termination Event.

- (36A) The Construction Leadership Council is the organisation described as such as referred to at <https://www.constructionleadershipcouncil.co.uk/>
- (37) Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme Regulations 2005/2045.
- (38) The Contract Agreement is the document executed by the *Employer* and the *Contractor* under which the *Contractor* has agreed to Provide the Works.
- (39) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to this contract) and (ii) data extracted from invoices submitted by the *Contractor* which consists of the *Contractor's* name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.
- (39A) Coronavirus means the virus strain known or previously known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and any mutations thereof.
- (40) Data Controller has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Controller.
- (41) Data Processor has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Processor".
- (42) Data Protection Impact Assessment means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.
- (43) Data Protection Legislation means:
- any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
 - from 25 May 2018 only, the General Data Protection

Regulation;

- any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and
- any statutory codes of practice issued by the Information Commissioner in relation to such legislation.

- (44) Data Subject means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.
- (45) Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a) of the Utilities Contracts Regulations 2016 (as amended).
- (46) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.
- (46A) End User has the meaning given to it in Article 2 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.
- (47) General Data Protection Regulation means the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data.
- (48) Employer Data means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.
- (49) Employer Personal Data means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor and Indirect Subcontractor) on behalf of the *Employer*, pursuant to or in connection with this contract as set out in the Processing Statement.
- (49A) GLAP means GLA Land & Property Limited, who owns the freehold

interest of the Site or part thereof.

- (49B) The Health Guidance is any statute, statutory instrument, regulation, rule, guidance, direction or notice published by any ministerial department or other executive agency of the government of the United Kingdom of Great Britain and Northern Ireland and/or any local authority and/or any officer of any local authority and/or any local government body having any jurisdiction with regard to the *works* and arising as a direct consequence or result of Coronavirus to the extent such guidance affects or relates to the ability of the *Contractor* to Provide the Works.
- (50) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as defined by Section 1124 of the Corporation Tax Act 2010.
- (51) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works*.
- (52) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an arrangement with his creditor.
- (53) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

- (54) Notice of Adjudication means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the *Adjudicator* in accordance with clause W2.1. The Notice of Adjudication includes
- the nature and a brief description of the Dispute,
 - details of where and when the Dispute arose, and
 - the nature of the redress which is sought.
- (55) Prevention Event has the meaning ascribed to that term in clause 19.1.
- (56) Personal Data has the meaning given to it in the Data Protection Legislation.
- (57) Processing has the meaning given to it in the Data Protection Legislation.
- (58) Processing Statement is in the form set out in Appendix 5 of this contract.
- (58A) Proprietary Materials means all information and documentation (including without limitation, drawings, details, plans, specifications, schedules, reports and calculations (in printed, electronic or other format) and any designs contained therein prepared by the *Contractor* or by a Subcontractor, Indirect Subcontractor or other third party on behalf of the *Contractor* in the course of or as a result of Providing the Works.
- (59) Restricted Countries means any country outside the European Economic Area as may be constituted from time to time or the UK.
- (59A) Reverse Charge Order means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892.
- (59B) Schedule of Allowances is the document included in the Works Information and identified as the 'Schedule of Allowances'.
- (60) Senior Representative means a representative of a Party at senior executive level.
- (61) Sensitive Personal Data means sensitive or special categories of Personal Data including criminal allegations, offences and outcomes data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this contract.
- (61A) A Site Closure is when the Site is closed pursuant to Health Guidance and/or when the Site is closed because the *Contractor* is of the

reasonable opinion (and can reasonably evidence) that closure of the Site is necessary due to Coronavirus for reasons of health and/or safety and/or the *Contractor* (acting reasonably) agrees to a request from the *Employer* or the *Project Manager* (on behalf of the *Employer*) issues an instruction to close the Site due to Coronavirus.

(61B) The Site Operating Procedures are the site operating procedures as published by the Construction Leadership Council.

(61C) Specified Perils mean fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, air craft and aerial device or article drops therefrom, riot and civil commotion.

(61D) Standard on Electronic Invoicing is the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

(62) A Statutory Requirement is

- any Act of Parliament
- any instrument, rule or order made under any Act of Parliament
- any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and
- any decisions of a relevant authority under the statutory provisions which control the right to develop the site on which the *works* are to be provided (including, without limitation, any planning permission).

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

- which has any jurisdiction with regard to the *works* including without limitation any jurisdiction to control development of the site or any part of it
- with whose requirements the *Employer* is required to comply or

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

(64) Subject Access Request means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted

in Data Protection Legislation.

- (65) TfL Group means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.
- (66) TfL Premises are any premises owned, leased or under the control of any member of the TfL Group, the *Employer* or GLAP.
- (66A) Third Party Agreement means any agreement between the *Employer* and Others relating to or affecting the carrying out and completion of the *works* and includes (without limitation):
- Planning Decision Notice referenced 20/02288/Ful, dated 15 December 2020, and
 - Section 106 Agreement dated 15 December 2020 between (1) London Borough of Newham, (2) GLAP and (3) the *Employer*.
- (67) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL and the Greater London Authority is committed to publishing its contracts, tender documents and data from invoices received.
- (67A) Withdrawal Agreement means the agreement between the United Kingdom and the European Union under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the European Union (as that agreement is modified from time to time in accordance with any provision of it).
- (68) The Workplace Policy is the *Employer's* "Workplace Harassment Policy", as updated from time to time, copies of which are available on request from the *Employer*.
- (68A) VATA means the Value Added Tax Act 1994."
- Clause 12.2 Delete the current wording in clause 12.2 and replace with "This contract is governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts."
- Clause 12.4 Delete the existing wording and replace with
- "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."

Clause 12.5 Insert a new clause:

"12.5 Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled."

Clause 12.6 Insert a new clause:

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

Clause 12.7 Insert a new clause:

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

Clause 12.8 Insert a new clause:

"12.8 The headings to the sections, clauses and sub-clauses of these *conditions of contract* are for convenience only and do not affect their construction or interpretation."

Clause 12.9 Insert a new clause:

"12.9 A reference in these *conditions of contract* to any applicable law or Statutory Requirement includes

- that law or Statutory Requirement as from time to time

amended, re-enacted or substituted and

- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement."

Clause 12.10 Insert a new clause:

"12.10 Notwithstanding the Contract Date, the conditions of this contract cover all work carried out by the *Contractor* from the date when he first commenced performance of the *works* and this contract and the warranties and undertakings in this contract are deemed to apply to all work performed by the *Contractor* both before and after the Contract Date."

Clause 12.11 Insert a new clause:

"12.11 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement."

Clause 13.3 At the end insert:

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

Clause 14.1 Delete and substitute:

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

Clause 16.2 Delete "Either the *Project Manager* or the *Contractor* may instruct the other" and substitute "*The Project Manager* may instruct the *Contractor* or the *Contractor* may request the *Project Manager* (such

request not to be unreasonably refused)".

Clause 16.4 Add at the end of the clause:

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

Clause 17.2 Insert a new clause:

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

Clause 17.3 Insert a new clause:

"17.3 Where there is a discrepancy or conflict between or within the documents forming this contract, the provisions of the *conditions of contract* prevail over all other documents and the Z clauses prevail over all other parts of the *conditions of contract*."

Clause 17.4 Insert a new clause:

"17.4 The *Contractor* accepts entire responsibility for the *Contractor's* design and for any mistake, inaccuracy, discrepancy or omission contained in the same".

Clause 17.5 Insert a new clause:

"17.5 The *Contractor* shall be deemed to have verified the accuracy of any information provided by the *Employer*, the *Project Manager* and/or the *Supervisor*."

Clause 18.1 After "impossible" insert "or to carry out works which if completed in accordance with this contract will result in the *works* not being in accordance with the Statutory Requirements".

Clause 19.1 Insert after "and which" in the second paragraph:

"is not

- a shortage of staff whether caused by local market

fluctuations or otherwise

- an event of Insolvency of the *Contractor* or any Subcontractor, Indirect Subcontractor or supplier or
- an event attributable to any negligence, omission or default of the *Contractor* or any of his employees or agents or any Subcontractor or Indirect Subcontractor or any of their employees or agents

and which"

and after the fourth bullet point insert:

"and

- the *Contractor* can demonstrate that he did not allow for it in his tender then this is a "Prevention Event" and"

Clause 20.1 At the end insert: "and the Statutory Requirements, and the *Contractor* ensures that the *works* will, when completed, comply with the Works Information and satisfy any requirement identified in the Works Information and this contract."

Clause 20.6 Insert a new clause:

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

- he has examined the Works Information and all other documents forming this contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of his work in accordance with this contract,
- he has all the resources including financial, technical and human resources as are required to carry out and complete his work in accordance with this contract,
- his work and those parts of the *works* for which the *Contractor* is responsible will be designed and specified using the best modern engineering principles and practices at the time of preparing the design and in accordance with good industry practice, and
- the proceeds of a claim made in connection with this contract under insurance taken out by the *Contractor* pursuant to clause 81 of the *conditions of contract* will be used solely for

the purposes of the *works* and for no other purpose.”

- | | |
|-------------|--|
| Clause 21.1 | Delete and insert: “The <i>Contractor</i> is responsible for the design of all of the <i>works</i> ” |
| Clause 21.2 | <p>Delete the second sentence and replace with “Reasons for not accepting the <i>Contractor’s</i> design are that</p> <ul style="list-style-type: none"> • it does not comply with the Works Information, applicable law or Statutory Requirements, • it does not comply with this contract.” |
| Clause 21.4 | Insert new clauses: |
| “21.4 | <p>(1) The <i>Contractor</i> warrants to the <i>Employer</i> that it has exercised and exercises in the design of the <i>works</i> all reasonable skill, care and diligence as may be expected of a properly qualified professional designer of the appropriate discipline(s) for such design, experienced in carrying out works of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the <i>works</i></p> <p>(2) The <i>Contractor</i> warrants to the <i>Employer</i> that it uses the reasonable skill, care and diligence set out in clause 21.4(1) to see that the <i>works</i> comply with any performance specification or requirement included or referred to in the Works Information or the <i>Contractor’s</i> design (including any changes to the Works Information) and comply with all Statutory Requirements.</p> <p>(3) Notwithstanding any other provision of and/or obligation imposed by this contract, the parties agree that nothing in this contract (whether express or implied) shall impose an obligation on the <i>Contractor</i> in respect of the design of the <i>works</i> to exercise a duty of care that is greater than the duty of care required by clause 21.4(1).</p> |
| 21.5 | <p>(1) Subject to the Works Information and any changes to it the <i>Contractor</i> warrants that to the extent the <i>Contractor</i> either is obliged to specify or approve products or materials for use in the <i>works</i> or does so specify or approve, the <i>Contractor</i> does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with</p> |

- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report,
- (b) relevant British or European Standards or Codes of Practice, or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

- (2) If in the performance of its duties under this contract, the *Contractor* becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the *Contractor* notifies the *Project Manager* in writing immediately. This clause does not create any additional duty for the *Contractor* to inspect or check the work of others which is not required by this contract."

Clause 21.6

Insert a new clause:

"21.6

The *Contractor* ensures that, prior to Completion and wherever necessary during the course of the *works*, the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that the same are renewed whenever necessary or appropriate."

Clause 22

Delete and replace with:

"22

Intellectual Property Rights

22.1

Subject to the provisions of this clause 22, the parties agree that the IPR in all Proprietary Materials vests in the *Contractor*.

22.2

The *Contractor* grants a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Proprietary Materials and the IPR in the Proprietary Materials for all purposes, including (without limitation) for the purposes of

- understanding the *works*,
- completing, operating, maintaining, repairing, modifying,

altering, enhancing, re-figuring, correcting and replacing the *works*,

- extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others, and
- enabling the carrying out, operation, maintenance, repair, renewal and enhancement of the existing structure.

- 22.3 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the Proprietary Materials and the IPR in the Proprietary Materials for all purposes, including (without limitation) for the purposes listed in clause 22.2.
- 22.4 The *Contractor* indemnifies the *Employer* and GLAP against all losses arising out of any use by the *Employer* of the Proprietary Materials and the IPR in the Proprietary Materials, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 22.2 infringes the intellectual property rights or other rights of any third party.
- 22.5 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer* or GLAP.
- 22.6 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *works*.
- 22.7 IPR in all items supplied and owned by the TfL Group, the *Employer* or GLAP to the *Contractor* remains the property of the TfL Group, the Employer or GLAP (as applicable).
- 22.8 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the Works. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.
- 22.9 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same)

which affects or may affect the provision of the *works*.

- 22.10 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.
- 22.11 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim, demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action."
- Clause 23.1 Insert an additional bullet point between the first and second bullet points:
- "• this contract"
- Clause 24.1 Add at the end of the clause:
- "The *Contractor* does not remove any key person from the contract for more than twenty one (21) consecutive days without the prior written consent of the *Project Manager*, save where such key person is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the *Contractor's* employment".
- Clause 24.2 In the first sentence delete "an employee" and replace with "any person under the control of the *Contractor*."
- In the second sentence delete "the employee" and replace with "such person".
- Clause 26.3 Insert a further bullet point after the bullet "they do ... co-operation":
- " • in the opinion of the *Project Manager* they are not consistent with the terms of this contract".
- Clause 26.5 Insert a new clause:
- "26.5 Where the *Contractor* has proposed a Subcontractor in Contract Data Part Two for part of the *works*, acceptance of Contract Data Part Two by

the *Employer* without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the *Project Manager* under clause 26.2, provided that the Contractor has complied with clause 26.3. Any such Subcontractor is not removed by the *Contractor* from the part of the *works* for which he has been proposed without the prior written consent of the *Project Manager*."

Clause 26.6 Insert a new clause:

"26.6 Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the *Project Manager* relieves the *Contractor* of any liability or obligation under this contract."

Clause 26.7 Insert a new clause:

"26.7 On or before the *starting date* the *Contractor* notifies the *Employer* of the name, contact details and details of the legal representatives of each Subcontractor and Indirect Subcontractor, to the extent that such information has not already been provided by the *Contractor* to the *Employer* under this contract."

Clause 26.8 Insert a new clause

"26.8 The *Contractor* promptly notifies the *Employer* of any change to the information notified under clause 26.7 and provides the name, contact details and details of the legal representatives of any Subcontractor or Indirect Subcontractor who is engaged after the *starting date*."

Clause 26.9 Insert a new clause

"26.9 The Contractor shall ensure that each subcontract with a Subcontractor or between a Subcontractor and an Indirect Subcontractor complies with regulation 113 of the Public Contracts Regulations 2015."

Clause 27.5 Insert a new clause:

"27.5 The terms and conditions of this contract and the warranties and undertakings which it contains apply to all *works* performed and to be performed by the *Contractor* in relation to the project to which the *works* relate both before and after the Contract Date."

Clause 27.6 Insert a new clause:

"27.6 "The *Employer* may assign the benefit of and its rights under this contract without the consent of the *Contractor* being required. The *Contractor* shall not assign the benefit of and its rights under this contract without the prior written consent of the *Employer*".

Clause 27.7

Insert a new clause:

"27.7

- (1) The *Contractor* takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations.
- (2) The Contractor warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations.
- (3) The *Contractor* throughout the progress of the *works* and while the *Contractor* has access to the Site in accordance with this contract has full regard for the safety of all persons entitled to be upon the Site and keeps the Site (so far as the same is under his control) and the *works* (so far as the same have not been handed over to or occupied by the *Employer*) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with the *works*, provides and maintains at his own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of the *works* or for the safety and convenience of the public or Others.
- (4) Where the *Contractor* is the *Principal Contractor* and/or the *Principal Designer*, the *Contractor* performs all the functions and duties of and exercises the powers of the "principal contractor" and/or the "principal designer" as defined in the CDM Regulations.
- (5) Where the *Contractor* is not the *Principal Contractor* and/or the *Principal Designer*, the *Contractor* performs all the functions and duties of a "contractor" and (where the *Contractor* is responsible for design) a "designer" as defined in the CDM Regulations.
- (6) The Contractor warrants to the Employer that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of "principal contractor", "principal designer", "contractor" and "designer" (as applicable) as defined in the CDM Regulations.
- (7) The Contractor at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site, including the

Principal Contractor and the *Principal Designer* (where these roles are not being performed by the *Contractor*) for the effective discharge of those responsibilities.

- (8) The *Contractor* shall procure that each Subcontractor and Indirect Subcontractor complies fully with the requirements of the CDM Regulations.
- (9) Before the commencement of work on Site the *Contractor* provides the *Project Manager* with a copy of his Statement of Health and Safety Policy, and that of any Subcontractor prior to such Subcontractor commencing work on the Site.
- (10) The *Contractor* to the extent that he is in control of the Site or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Site, its access and egress, safe and without risk to the health of persons using it."

Clause 27.8

Insert a new clause:

"27.8

The *Contractor* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to

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

and in the performance of this contract, the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty."

Clause 27.12

Insert a new clause:

"27.12

The *Contractor* gives notice to the *Employer* within 10 days where

- there is any change in ownership of the *Contractor* where such change relates to fifty percent (50%) or more of the issued share capital of the *Contractor*; and
- there is any change in ownership of the Holding Company where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company; and
- (in the case of an unincorporated *Contractor*) there is any change in the management personnel of the *Contractor*, which alone or taken with any other change in management personnel not previously notified to the *Employer*, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the *Contractor*."

Clause 30.4 Insert a new clause:

"30.4 The *Contractor* proceeds regularly and diligently to Provide the Works in accordance with this contract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the *works*."

Clause 31.2 In the sixth bullet point add "environmental and" before "health and safety requirements".

Clause 35 *Take Over*

Clause 33.1 Delete existing clause and replace with:

"The *Contractor* arranges for access to and use of the Site which is necessary for work included in this contract."

Clause 35.2 In the first sentence after "the *Employer*" insert "and Others". Delete second sentence and replace with the following "If he does so, he does not take over the part of the *works* when he begins to use it and the *Contractor* remains responsible for the *works* until the *Project Manager* issues a certificate in accordance with clause 30.2 unless the *Project Manager* issues a certificate in accordance with clause 35.3."

Clause 35.3 Delete existing clause and replace with:

"If the *Employer* wishes (in its absolute discretion) to take over any part of the *works* prior to the date of issue of a certificate of Completion pursuant to clause 30.2 then on the *Employer's* written instruction the *Project Manager* shall certify the

date on which the *Employer* has taken over such part of the *works* and the extent of the *works* taken over by the *Employer*."

Clause 35.4 Insert a new clause:

"Notwithstanding any other clause in this contract, for the avoidance of doubt, the *Employer* shall not be regarded as having taken over the *works*, or any part of the *works*, during any period when the *works* are being used by the *Employer* and/or Others and unless the *Project Manager* issues a certificate in accordance with clause 35.3."

Clause 43.4 Delete first sentence and replace with:

"The *Contractor* arranges for access to and use of the *works* if it is needed for correcting a Defect."

Clause 60.1(2) Delete.

Option X7 In clause X7.3 add at the end of the clause:

"Notwithstanding any other provision of this contract, the *Employer* does not take over a part of the *works* before Completion for the purposes of this clause during any periods when the *works* are being used by the *Employer* and/or Others and unless the *Project Manager* issues a certificate in accordance with clause 35.3."

Clause 36.5 Insert new clause:

"36.5 If the *Contractor* does not submit a quotation within the *period for reply* or if the *Project Manager* decides that the *Contractor* has not assessed the quotation for an acceleration correctly then the *Project Manager* may instruct the *Contractor* to achieve Completion before the Completion Date. If the *Project Manager* instructs the *Contractor* to achieve Completion before the Completion Date the *Project Manager* assesses the change to the Prices, the Completion Date and the Key Dates and informs the *Contractor* of any changes."

Clause 45.3 Insert a new clause:

"45.3 For the avoidance of doubt, the *Contractor* continues to be liable for Defects (including Defects listed in the Defects Certificate and latent

or inherent Defects) after

- the issue of the Defects Certificate
- the operation of this section 4 and
- the termination of this contract for any reason (including breach by the *Employer*)

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

Clause 50.1A Insert a new clause:

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

Clause 50.4 In line two delete "on or before the assessment date" and substitute "in accordance with clause 50.1A".

Clause 50.8 Insert a new clause:

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

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

Clause 50.8A Insert a new clause:

“50.8A

The parties acknowledge that the Reverse Charge Order will enter into force on 1 March 2021 and is expected to have effect for supplies made on or after that date.

The *Employer* is an End User for the purposes of this contract if stated in the Contract Data.

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

- services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract are expected to include "specified services" (within the meaning of article 4 of the Reverse Charge Order) and will be "excepted supplies" (within the meaning of article 8 of the Reverse Charge Order) on the basis that the *Employer* is an End User in respect of such specified services and
- accordingly the Reverse Charge Order will not apply and the *Employer* will not be required to account for VAT to HM Revenue & Customs in respect of such supplies under section 55A of VATA.

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

- the Parties acknowledge that services provided by the *Contractor* to the *Employer* on or after 1 March 2021 pursuant to this contract will include "specified services" (within the meaning of article 4 of the Reverse Charge Order) and are expected to be subject to the Reverse Charge Order on the basis that the *Employer* is not an End User,
- accordingly, the Parties acknowledge that the *Employer* will be required to account for VAT to HM Revenue & Customs in respect of such supplies from the *Contractor* under section 55A of VATA and
- the *Contractor* will deliver an invoice to the *Employer* in accordance with clause 51.1A stating that the Reverse Charge Order applies or any other appropriate language as suggested by HM Revenue & Customs in their relevant guidance

In any event the *Contractor* indemnifies the *Employer* on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the *Employer* at any time in respect of the *Contractor's* failure to account for or to pay any VAT relating to payments made to the *Contractor* under this contract. Any amounts due under this clause 50.8A are paid in cleared funds by the *Contractor* to the *Employer* not less than five (5) days before the date upon which the tax or other liability is payable by the *Employer*.

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

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

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

Clause 50.9

Insert a new clause:

"50.9

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

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

Clause 50.10

Insert a new clause:

"50.10

In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever

- under this contract any sum of money is recoverable from or payable by the *Contractor* or
- any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer* arising out of or attributable to this contract

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

Clause 51.1A

Insert a new clause:

"51.1A As soon as reasonably practicable and in any event not later than five days after receipt of a certificate in accordance with clause 51.1 the *Contractor* issues a valid VAT invoice for the amount stated on the certificate. The *Contractor* issues invoices in the manner and format required by the Contract Data and/or the Works Information."

Clause 51.4 At the end of the clause add:

"The parties agree that the provisions in this contract for the payment of interest constitute a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998."

Clause 60.1 Amend as set out below:

60.1(5) In the first line, after "Others" insert "(excluding Statutory Undertakers)".

60.1(5A) [Redacted]

60.1(12) [Redacted]

(12) [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

60.1(13) Delete.

60.1(18) After "of contract by" insert "or act of prevention on the part of". After "*Employer*" insert "(except to the extent that it is caused or contributed to by the *Contractor* any Subcontractor or Indirect Subcontractor or any person for whom those parties are

responsible)".

60.1(19) Delete the existing wording and substitute:

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

60.1(20) [Redacted]

(20) [Redacted]
[Redacted]
[Redacted]
[Redacted]

60.1(21) [Redacted]

(21) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

60.1(22) [Redacted]

(22) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

60.1(23) [Redacted]

(23) [Redacted]
[Redacted]

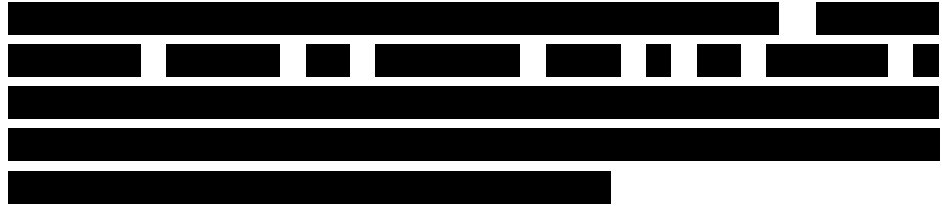
60.1(24) Insert a new sub-clause 60.1(24):

(24) [Redacted]
[Redacted]
[Redacted]

60.1(25) [Redacted]

[Redacted]

(25)



Clause 60.2

Delete and replace with:

60.2

"In judging the physical conditions for the purposes of assessing a compensation event, the Contractor is assumed to have taken account

- the Site Information
- publicly available information referred to in the Site Information, and
- information obtained from the visual inspection of the Site undertaken by or on behalf of the *Contractor* at the Contract Date."

Clause 60.3

Delete and replace with:

"60.3

If there is an ambiguity, inconsistency, inaccuracy, omission or error 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 do doing the work."

Clause 61.3

In the second paragraph replace "becoming" with the words "when he becomes aware or ought reasonably to have become".

At the end of the second paragraph include the words "The *Employer* may, in his absolute discretion, assess a change to the Completion Date or a Key Date (but not a change to the Prices) in the absence of a notice from the *Contractor* in accordance with this sub-clause."

Clause 61.4

After "fault of the *Contractor*" insert in the first bullet point:

- "including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any Subcontractor Indirect Subcontractor or supplier or any of their employees or agents unless the event notified by the *Contractor* is loss of or damage to the *works*, Plant and Materials, the existing structure or its contents due to any of the Specified Perils".

After "to submit quotations" at end of second sentence insert "including sufficient supporting information".

In the first bullet point in the third sentence replace "one week" with "two weeks".

- Clause 61.7 At the end insert:
- “No change in Prices is made in respect of any compensation event notified after the *defects date*”.
- Clause 62.2 After “details of his assessment” in the second sentence include “including a detailed breakdown of any changes to the Prices and the measures to be taken in respect of Subcontractors and Indirect Subcontractors (where relevant) with regards to the *works* and any planned *works* by Others”.
- At the end of clause 62.2 include the following words:
- “If the quotations comprise or include delays, the details of the *Contractor’s* assessment include sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.”
- Clause 63.3 At the end of the second sentence insert:
- “For the avoidance of any doubt, the *Employer* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.”
- Clause 63.4 At the end of the clause delete the full stop and insert:
- “and the *Employer* has no financial liability to the *Contractor* other than amounts claimable and recoverable under this contract.”
- Clause 63.6 After “event includes” insert the words “reasonable and proportionate”.
- Clause 63.7 At the end insert:
- “Where the *Employer* decides that the *Contractor* has failed to act in accordance with the assumptions in this clause the failure is taken into account when making the assessment”.
- Clause 63.8 Insert after “ambiguity or inconsistency” the words “which (in accordance with sub-clauses 17.1 and 17.2) is a compensation event.”
- Clause 64.1 Insert at the end of the first bullet point “including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subcontractor and Indirect Subcontractor and with regard to the *works* and planned works by Others.”
- Clause 70.1 Delete and substitute:

"70.1 No payment is made to the *Contractor* on account of Plant and Materials which are outside the Working Areas unless immediately on payment and without any further act being necessary title passes to the *Employer* and the *Contractor* ensures that the Plant and Materials are clearly tagged, identified as the *Employer's* and set aside for the *Employer*. Risk in such Plant and Materials does not pass on payment."

Clause 70.2 At the end insert:

"Notwithstanding the first sentence of clause 70.2, title passes to the *Employer* on payment being made by the *Employer* to the *Contractor* for Plant and Materials outside the Working Area."

Clause 80.1

A horizontal bar chart titled 'U.S. should take action to address climate change' showing the percentage of respondents who believe the U.S. should take action to address climate change, broken down by age group. The y-axis lists age groups: 18-29, 30-49, 50-69, 70+, and Overall. The x-axis represents the percentage, ranging from 0 to 100. The bars are black. The data is as follows:

Age Group	Percentage
18-29	88%
30-49	82%
50-69	92%
70+	78%
Overall	85%

[illegible]

Clause 82.1 Add at the end of the clause after "Plant and Materials":

"and (when required) undertakes the removal and disposal of debris. The *Contractor* bears the cost of dismantling and replacing any Plant necessary to affect such replacements or repairs. The *Employer* in his sole and absolute discretion is entitled to decide not to replace and/or repair any loss and/or damage to the *works*, Plant & Materials."

Clause 83.1

1. [REDACTED]
 2. [REDACTED]
 3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

- [illegible]

[illegible]

Delete clause 83.2 and replace with the following new clause:

Without prejudice to the survival of any other clauses or schedules, the clauses or schedules of this contract necessary to give effect to the *Contractor's* liability under clause 83.1 also survive expiry or

termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract.

Clause 83.3 Add new clause 83.3 as follows:

"83.3 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents."

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
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[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
■	[REDACTED] [REDACTED] [REDACTED]

The image displays a horizontal bar chart with 12 distinct groups of bars. Each group consists of two black bars: a shorter one on the left and a longer one on the right. The groups are arranged in a descending staircase pattern from the top-left towards the bottom-right. The bars are solid black and have uniform thickness. The background is white, and there are no labels, titles, or axes visible.

Clause 90.2 In the "Termination Table" in the *Employer's* "Reason" column, after the words "A reason other than" delete "R1-R21" and substitute "the reasons listed in this Termination Table".

In the "Termination Table" in the *Employer's* "Reason" column, after "R1-R15 or R18" add "or R22 or R24 or R26 - 27".

In the "Termination Table" in the *Employer's* "Reason" column, after

"R17 or R20" add "or R23 or R25 or R28".

Clause 91.1 In R7 add after "amalgamate or reconstruct" the words "without insolvency".

Clause 91.2 Add a new paragraph at the end of the clause:

"The *Employer* may also terminate if the *Project Manager* notifies that the *Contractor* has defaulted in one of the ways listed at R11-R13 on two occasions within a period of eight (8) weeks whether or not the *Contractor* has remedied the default within four (4) weeks of the second notification by the *Project Manager*."

Clause 91.4 Add at the start of the clause: "Save when the *Employer* has complied with Option Y (UK) 2 clause Y2.3,"

Add at the end of the clause: "provided always that the *Contractor* has given written notification to the *Employer* of such intention to terminate at least five (5) weeks prior to any such termination and the *Employer* has not paid the amount due within that period."

Clause 91.6 Add at the start of the second bullet point: "providing the *Contractor* has given written notification to the *Employer* of an intention to terminate at least five (5) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period."

Add at the start of the third bullet point: "providing written notification of an intention to terminate is given to the other Party at least four (4) weeks prior to such termination and no instruction allowing the *works* to restart or start has been given within that period."

Clause 91.7 In the fourth bullet point after "experienced" insert "and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a"

Clause 91.8 Add a new clause:

"91.8 The *Employer* may terminate the contract if the *Contractor* is in breach of clauses Z5.1 to Z5.14 (inclusive) (Data Protection) and/or clause Z8 (Conflict of Interest) and/or clause Z11 (Corrupt Gifts and Payments) and/or clauses Z19 (Equality and Diversity compliance) and/or clause Z24 (Equality and Diversity) and/or clause Z25 (SLNT) , or if any of the events referred to in clause 27.12 occur (regardless of whether or not the notice required by clause 27.12 is given by the *Contractor*) (R22)".

Clause 91.9 Add a new clause:

"91.9 The *Employer* may terminate this contract in the event that 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 (R23).

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

Clause 91.10 Add a new clause:

"91.10 Without prejudice to the *Employer's* rights of termination implied into this contract by regulation 73(3) of the Public Contracts Regulations 2015 or regulation 89(3) of the Utilities Contracts Regulations 2016, the *Employer* may terminate this contract if

- this contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72 of the Public Contracts Regulations 2015 or regulation 88 of the Utilities Contracts Regulations 2016 where the modification is due to a default by the *Contractor* (R24) or where the modification is due to any other reason (R25),
- at the Contract Date the *Contractor* has been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure (R26), or
- in a procedure under Article 258 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union declares that this contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive or Utilities Contracts Directive where the infringement is due to a default by the *Contractor* (R27) or where the infringement is due to any other reason (R28)."

- Clause 92.1 Add a new sentence at the end of the clause "The *Contractor* makes available to the *Employer* within seven (7) days all information prepared in relation to the works in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format".
- Clause 92.2 In procedure P2 after "assign the benefit of" insert "and/or enter into a novation of (in such format as the *Employer* may reasonably require)".
- Clause 94 Insert a new clause:
- "94 **Ineffectiveness and cessation**
- 94.1 Without prejudice to the *Employer's* right to terminate the *Contractor's* obligation to Provide the Works under clauses 90 to 93 or at common law, the *Employer* may terminate the *Contractor's* obligations to Provide the Works at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 94.
- 94.2 In the event that a court makes a Declaration of Ineffectiveness, the *Employer* promptly notifies the *Contractor*. The Parties agree that the provisions of clause 94 shall apply as from the date of receipt by the *Contractor* of the notification of Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 94 or the Cessation Plan, the provisions of this clause 94 and the Cessation Plan prevail.
- 94.3 The Declaration of Ineffectiveness does not prejudice or affect any right, liability or remedy which has accrued or accrues to either Party prior to or after such Declaration of Ineffectiveness.
- 94.4 As from the date of receipt by the *Contractor* of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) agree or, in the absence of such agreement, the *Employer* reasonably determines an appropriate Cessation Plan with the object of achieving
- an orderly and efficient cessation of the *works* or (at the *Employer's* request) a transition of the *works* to the *Employer* or such other entity as the *Employer* may specify, and
 - minimal disruption or inconvenience to the *Employer* or to public passenger transport services or facilities, in accordance with the provisions of this clause 94 and to give effect to the terms of the Declaration of Ineffectiveness.
- 94.5 Upon agreement, or determination by the *Employer*, of the Cessation Plan, the Parties comply with their respective obligations under the

Cessation Plan.

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

Clause 95 Insert a new clause 95

"95 For the purpose of this clause 95, Public Procurement Termination Event shall mean if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 has occurred.

95.1 Without prejudice to the *Employer's* right to terminate the *Contractor's* obligation to Provide the Works under clauses 90 to 94 or at common law and the *Employer's* rights of termination implied into this contract by regulation 73(3) of the Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, the *Employer* shall promptly notify the *Contractor* and the Parties agree that the provisions of clauses 90 to 93 and this clause 95 shall apply as from the date of receipt by the *Contractor* of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 95 or the Cessation Plan, the provisions of this clause 95 and the Cessation Plan shall prevail.

95.2 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.

95.3 As from the date of receipt by the *Contractor* of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the *Employer* shall reasonably determine, an appropriate Cessation Plan with the object of achieving:

- an orderly and efficient cessation or (at the *Employer's* election) a transition to the *Employer* or such other entity as the *Employer* may specify of: (i) the works; or (at *Employer's*

election), (ii) the part of the *works* which are affected by the Public Procurement Termination Event; and

- minimal disruption or inconvenience to the *Employer* or to public passenger transport services or facilities,

in accordance with the provisions of this clause 95 and to give effect to the terms of the Public Procurement Termination Event.

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

95.5 The *Employer* pays the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the *Employer*, provided that the *Employer* is not liable to the *Contractor* for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the Works pursuant to this clause 95."

Dispute Resolution

Option W2

Delete option W2 and replace with:

"W2.1

- The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this contract.
- In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- A Party may refer a Dispute to the *Adjudicator* at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- Within fourteen (14) days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- Within a further fourteen (14) days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

W2.2

- The Parties appoint the *Adjudicator*.
- The *Adjudicator* acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the *Adjudicator nominating body* to choose an adjudicator. Such joint appointment or referral to the *Adjudicator nominating body* shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of *Adjudicator* falling vacant.

- The *Adjudicator nominating body* chooses an adjudicator within four (4) days of the request. The chosen adjudicator becomes the *Adjudicator*.
- A replacement *Adjudicator* has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.
- The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

W2.3

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

- that he is able to decide the Dispute in accordance with the contract or

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

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

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

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

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

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

If this contract is a subcontract and the main contract provides for joint adjudication of disputes, the following procedure applies.

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

The *Employer* may then

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

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

- The *Adjudicator* may

- make directions for the conduct of the Dispute
 - review and revise any action or inaction of the *Employer* related to the Dispute and alter a quotation which has been treated as having been accepted
 - take the initiative in ascertaining the facts and the law related to the Dispute
 - instruct a Party to provide further information related to the Dispute within a stated time and
 - instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make his decision based upon the information and evidence he has received.
 - The *Adjudicator* shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
 - A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
 - Save as required by law, the Parties and the *Adjudicator* keep information relating to the Dispute confidential.
 - If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.
 - The *Adjudicator* decides the Dispute and notifies the Parties of his decision and his reasons within twenty-eight (28) days of the Dispute being referred to him. This period may be extended by up to fourteen (14) days with the consent of the Parties or by any other period agreed by the Parties.
 - After the giving of a Notice of Adjudication, the Parties may seek to agree how the *Adjudicator* allocates the costs and expenses of the adjudication, excluding the *Adjudicator's* own remuneration and expenses, as between the Parties.

- Subject to any agreement of the Parties, the *Adjudicator* allocates payment of his own remuneration and expenses as between the Parties.
- Unless and until the *Adjudicator* has notified the Parties of his decision the Parties proceed as if the matter disputed was not disputed.
- If the *Adjudicator* does not make his decision and notify it to the Parties within the time provided by this contract the Parties and the *Adjudicator* may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.
- The *Adjudicator's* decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the time required by this contract that he is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the courts.
- The *Adjudicator* may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the *Adjudicator* must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision
- If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.

W2.4

- Unless the Parties agree otherwise, a Party does not refer any Dispute under or in connection with this contract to the courts unless it has first been decided by the *Adjudicator* in accordance with this contract.
- If, after the *Adjudicator* notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the *Adjudicator's* decision.
- The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the *Adjudicator*.
- A Party does not call the *Adjudicator* as a witness in court proceedings."

**Option Y(UK)2 the Housing Grants, Construction and Regeneration Act 1996
(with amendments dated September 2011)**

Clause Y(UK) 2.1

Insert new paragraph (3) in Y2.1:

"(3) Pay Less Notice means the notice referred to in clause Y2.3."

Insert the following clauses Y2.1.1-Y2.1.4:

**Assessing the
amount due**

Y2.1.1 Insert new clause 50.11:

"If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of Section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:

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

Payment

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

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

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

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

Y2.1.4 Insert new clause 51.1B:

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

Dates for

payment

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

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

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

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

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

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

Suspension of Performance

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

Insert new clauses Y2.5 and Y2.6:

The *Project Manager* and the *Supervisor*

Y2.5 Insert new clause 14.5:

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

Termination

Y2.6.1 In the Termination Table in clause 90.2:

Insert 'or R10A' after 'R1-R15'

Insert 'R10A,' after 'R1-R10'

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

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

SECONDARY OPTION CLAUSES

Option X4 (Parent Company Guarantee) Delete the reference to "the Works Information" and replace with "Schedule 1A of the Contract Agreement".

Delete "If the guarantee ... within four weeks of the Contract Date" and replace with "If the guarantee was not given before the Contract Date, it is given to the *Employer* upon the execution by the *Contractor* of the Contract Agreement"

Option X16 (Retention) Delete and replace with:

X16.1 An amount is retained in each amount due. The amount retained is the retention percentage applied to the Price for Work Done to Date.

X16.1A The amount retained is halved

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

The amount retained remains at this amount until the Defects Certificate is issued unless adjusted in accordance with clauses X16.1B and x16.2.

X16.1B From the *starting date* until Completion of the whole of the *works* the *Project Manager* assesses the *Contractor's* performance against each of the key performance indicators ("**KPIs**") identified in Schedule 3 of this contract, at the frequency set out in such schedule, with a view to the *Contractor* maintaining an exceptional level of performance against such KPIs throughout Providing the Works. Within four weeks after the earlier of

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

the *Project Manager* makes a final assessment of the *Contractor's* performance against each of the KPIs (and in accordance with the measures and weightings) identified in Schedule 3 of this contract and reports such assessment to the *Contractor* within one week of such assessment.

X16.2 To the extent that the *Project Manager* assesses under clause X16.1B that the KPI's have been achieved in accordance with the requirements of Schedule 3, the amount retained is adjusted in accordance with Schedule 3

- in the next assessment made following 26 weeks after Completion of the whole of the *works* or

- in the next assessment following 26 weeks after the Employer has taken over the whole of the works if this is before Completion of the whole of the works.

("First KPI Related Assessment").

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 or if at the final assessment of the KPIs under clause X16.1B the *Project Manager* assesses that the *Contractor* has scored an 'exceptional' in respect of all of the KPIs in accordance with Schedule 3, then no amount is retained in the assessments made after the First KPI Related Assessment.

X16.3

The *Employer* has the full beneficial interest in the amount retained, without any fiduciary obligation, and the relationship of the *Employer* and *Contractor* with regard to the amount retained is solely that of debtor and unsecured creditor, subject to the terms of this contract.

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Z2 Warranties

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

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

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

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

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

Z2.3 The *Employer* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Employer*, then as between the *Contractor* and the *Employer*, upon such recipient of the collateral warranty serving the requisite notice, the *Contractor* treats the said recipient as standing in substitution for the *Employer* and the *Employer* raises no objection to such substitution. Without prejudice to the obligations of the *Contractor* to the *Employer* and to the rights of the *Employer*, the *Employer* is not obliged to make any payment to the *Contractor* if (and for so long as) the *Contractor* fails within the time limit specified above to deliver such warranties duly executed provided always that the *Employer* notifies the *Contractor* of the identity of the relevant beneficiaries.

Z3 Employer's business

The *Contractor* acknowledges that it

- has sufficient information about the *Employer* and the *works*, and
- is aware of the *Employer's* processes and business, and
- has made all appropriate and necessary enquiries to enable it to Provide the Works in accordance with this contract, and

- is aware of the purposes for which the *works* are required, and
- shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *works*.

Z4 Best value

The *Contractor* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the *works* reasonably requested by the *Employer* from time to time. The *Contractor* negotiates in good faith (acting reasonably) any changes to this contract in order for the *Employer* to achieve best value.

Z5 Data Protection, Freedom of Information and Data Transparency

Z5.1 The *Contractor* complies with all of its obligations under Data Protection Legislation and, if Processing Personal Data on behalf of the *Employer*, only carries out such Processing to Provide the Works and in accordance with this contract. With respect to the Parties' rights and obligations under this contract, the Parties acknowledge that the *Employer* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor.

Z5.2 Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place.

Z5.3 The *Contractor*:

- (a) Processes the Employer Personal Data only in accordance with documented instructions from the *Employer* to perform its obligations under this contract;
- (b) uses its reasonable endeavours to assist the *Employer* in complying with its obligations under Data Protection Legislation and does not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (c) notifies the *Employer* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Employer* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

- (d) maintains, and makes available to the *Employer* on its request, documentation which describes the Processing operations for which it is responsible under this contract including:
- the purposes for which Employer Personal Data is Processed,
 - the types of Personal Data and categories of Data Subject involved,
 - the source(s) of the Personal Data,
 - any recipients of the Personal Data,
 - the location(s) of any overseas Processing of Employer Personal Data,
 - retention periods for different types of Employer Personal Data, and
 - where possible a general description of the security measures in place to protect Employer Personal Data;
- (e) where requested to do so by the *Employer*, or where Processing Employer Personal Data presents a specific risk to privacy, carries out or assists the *Employer* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Employer*;
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, takes appropriate technical and organisational security measures that are satisfactory to the *Employer* from time to time, against unauthorised or unlawful Processing of Employer Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data;
- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provides the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor and Indirect Subcontractor) with clauses Z5.3(f) and Z5.3(h), including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer*;
- (h) notifies the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause Z5, including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;
- (i) having notified the *Employer* of a breach in accordance with clause Z5.3(h), keeps the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer*;
- (j) fully cooperates as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems,

records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);

(k) notifies the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor or Indirect Subcontractor), receives:

- from a Data Subject (or third party on their behalf):
 - a Subject Access Request (or purported Subject Access Request),
 - a request to rectify, block or erase any Employer Personal Data or
 - any other request, complaint or communication relating to the Employer's obligations under Data Protection Legislation;
- any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or
- a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;

(l) provides the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer*) in relation to any complaint, communication or request made as referred to in clause Z5.3(k), including by promptly providing:

- the *Employer* with full details and copies of the complaint, communication or request;
- where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
- where applicable, such assistance as is reasonably required by the *Employer* to enable it to comply with a request from a Data Subject to rectify, block or erase any Employer Personal Data.

(m) when notified in writing by the *Employer*, supplies a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;

(n) prepares and securely maintains a record of all categories of Processing activities carried out on behalf of the *Employer* in relation to the

Employer Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if appointed) or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Employer*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in this clause Z5; and (v) the same information in relation to any Subcontractor and Indirect Subcontractor, together with its name and contact details and when notified in writing by the *Employer*, complies with any agreement between the *Employer* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;

- (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer; and
- (p) makes available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in this clause Z5.

Z5.4 The *Contractor* does not share Employer Personal Data with any Subcontractor or Indirect Subcontractor without prior written consent from the *Employer* and only where there is a written contract in place between the *Contractor* and the Subcontractor or Indirect Subcontractor (as applicable) which requires the Subcontractor or Indirect Subcontractor (as applicable) to:

- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and
- (b) comply with the same obligations which the *Contractor* is required to comply with under this clause Z5 (and clauses Z7 and Z10).

The *Contractor* remains responsible and liable to the *Employer* for all acts and omissions of any Subcontractor and Indirect Subcontractor as if they were its own.

Z5.5 The *Contractor* itself, and procures that any Subcontractor and Indirect Subcontractor:

- (a) only Processes Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and as reasonably necessary to perform this contract in accordance with its terms;
- (b) does not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer*;
- (c) does not Process Employer Personal Data in such a way as to:
 - place the *Employer* in breach of Data Protection Legislation,
 - expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects,
 - expose the *Employer* to reputational damage including adverse publicity;

- (d) the *Contractor* does not allow its personnel to access Employer Personal Data unless such access is necessary to Provide the Works;
- (e) the *Contractor* takes all reasonable steps to ensure the reliability and integrity of the *Contractor's* employees, directors, contractors, agents, Subcontractors, Indirect Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters who can access Employer Personal Data;
- (f) the *Contractor* ensures that all Connected Persons who can access Employer Personal Data:
 - are informed of its confidential nature,
 - are made subject to an explicit duty of confidence,
 - understand and comply with any relevant obligations created by either this contract or Data Protection Legislation, and
 - receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;
- (g) does not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
- (h) without prejudice to clause Z5.3, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensures that each such device encrypts Employer Personal Data; and
- (i) complies during the course of this contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time.

Z5.6 The *Contractor* does not, and procures that any Subcontractor or Indirect Subcontractor does not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*).

Z5.7 If, after the Contract Date, the *Contractor* (including any Subcontractor and Indirect Subcontractor) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:

- (a) the *Contractor* submits a written request to the *Employer* setting out details of the following:
 - the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,
 - the Restricted Countries which the Employer Personal Data will be transferred to and/or Processed in,
 - any Subcontractor or other third parties who will be Processing and/or receiving Employer Personal Data in Restricted Countries,
 - how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Employer Personal Data

that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Employer's* compliance with Data Protection Legislation,

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

Z5.8 The *Contractor* and any Subcontractor and Indirect Subcontractor (if any), acknowledges:

- (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer's* instructions and this contract;
- (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this contract or negligence in relation to Employer Personal Data;
- (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non- performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with his obligations;
- (d) notwithstanding clause 91.2, if the *Contractor* has committed a material breach under clause Z5.8(c) on two or more separate occasions, the *Employer* may at its option:
 - withdraw authorisation for Processing by a specific Subcontractor or Indirect Subcontractor by immediate written notice; or
 - terminate the *Contractor's* obligation to Provide the Works in whole or part with immediate written notice to the *Contractor*.

Z5.9 Compliance by the *Contractor* with this clause Z5 is without additional charge to the *Employer* and compliance with this clause is not a compensation event.

Z5.10 Following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works, in each case howsoever arising, the *Contractor*:

- (a) may Process the Employer Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with clause Z5.10(b));
- (b) subject to clause Z5.10(a)
 - on written instructions from the *Employer* either securely destroys or securely and promptly returns to the *Employer* or a recipient nominated by the *Employer* (in such usable format as and to the extent the *Employer* may reasonably require) the Employer Personal Data or
 - in the absence of instructions from the *Employer* after 12 months from the expiry or termination of this contract or termination of the *Contractor's* obligation to Provide the Works securely destroys the Employer Personal Data.

Z5.11 Employer Personal Data may not be Processed following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works save as permitted by clause Z5.10.

Z5.12 For the avoidance of doubt, and without prejudice to clause Z5.10, the obligations in this clause Z5 apply following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works to the extent the Party concerned retains or Processes Employer Personal Data.

Z5.13 The *Contractor* takes reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.

Z5.14 The *Contractor* is responsible for and indemnifies the *Employer*, GLAP and members of the TfL Group from and against any and all fines, court awards, settlements, legal costs, expenses, liabilities, losses, claims and proceedings whatsoever resulting from any breach by the *Contractor* or any Subcontractor or any Indirect Subcontractor of the Data Protection Legislation or clauses Z5.1 to Z5.14 (inclusive). Without prejudice to clause X18.6, the *Contractor's* liability in respect of any breach of clauses Z5.1 to Z5.14 (inclusive) insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

Z5.15 The *Contractor* acknowledges that the *Employer* is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under such legislation including providing to the *Employer* such information as the *Employer* may reasonably request concerning this contract within two (2) days of a request from the *Employer*. The *Contractor* further acknowledges that the *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Contractor*. Without prejudice to the generality of the foregoing the *Contractor* shall transfer to the *Employer* any request for information under the Act that it receives as soon as reasonably practicable. The *Contractor* shall

not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the *Employer*. This clause shall survive the expiry or termination of this contract.

Z5.16 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Notwithstanding clause Z5.15 and clause Z7, the *Contractor* gives its consent for the *Employer* to publish the Contract Information to the general public.

Z5.17 The *Employer* may in its absolute discretion redact all or part of the Contract Information prior to its publication. In doing so and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Act 2000 and all subordinate legislation made under it, the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z5.16. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z6 Access to Premises

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

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

Z6.2 Nothing in this clause Z6 shall create or be deemed to create the relationship of

landlord and tenant in respect of any TfL Premises between the *Contractor* and any member of the TfL Group, the *Employer* or GLAP (as applicable).

- Z6.3** The *Employer* shall be under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to the *Contractor* except as may be specified in the Works Information.
- Z6.4** The *Employer* is responsible for maintaining the security of TfL Premises in accordance with its standard security requirements. The *Contractor* shall comply with all of the *Employer's* security requirements while on TfL Premises, and shall ensure that all of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them comply with such requirements. Upon request, the *Employer* shall provide the *Contractor* with details of the *Employer's* security procedures.
- Z6.5** The *Employer* reserves the right under this contract to refuse to admit to any TfL Premises any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them who fail to comply with any of the *Employer's* policies and standards referred to in this contract.
- Z6.6** The *Employer* reserves the right under this contract to instruct any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them personnel to leave any TfL Premises at any time for any reason and such personnel shall comply with such instructions immediately.
- Z6.7** Where the *Contractor* is required to access (with appropriate permission and approval of the *Employer*) any areas under the control of any of the *Employer's* PPP or PFI contractors, the *Contractor* must comply (and ensure that any Subcontractor's and Indirect Subcontractors comply) with all of their rules, regulations and standards as appropriate.

Z7 Confidentiality and Publicity

- Z7.1** The *Contractor* acknowledges that during the course of this contract it may receive, obtain, prepare or create confidential information. The *Contractor*
- Z7.1(1)** receives and/or maintains the confidential information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature,
 - Z7.1(2)** does not use the confidential information for any purposes whatsoever (and in particular does not use the confidential information to the detriment of the *Employer*) other than to Provide the Works,
 - Z7.1(3)** does not disclose the confidential information to any third party without the prior written consent of the *Project Manager* except that the *Contractor* is entitled to the extent strictly necessary to disclose the confidential information
 - Z7.1(3)(a)** to such of the *Contractor's* Subcontractors, Indirect

Subcontractors and personnel who need to know the confidential information in order to Provide the Works provided that the *Contractor* is responsible for any breach of its obligations occasioned by any act or omission of such Subcontractors, Indirect Subcontractors or personnel, or

Z7.1(3)(b) to the *Contractor's* auditors and any other person or body having a legal right or duty to know the confidential information in connection with the *Contractor's* business provided that prior to such disclosure the *Contractor* consults with the *Project Manager* as to the proposed form of such disclosure,

Z7.1(4) informs each of the persons referred to in clauses Z7.1(3)(a) and Z7.1(3)(b) to whom confidential information is disclosed of the restrictions as to use and disclosure of the confidential information and uses its best endeavours to ensure that each of them observe such restrictions,

Z7.1(5) at the *Employer's* request and in any event upon the termination or expiry of the contract, promptly delivers to the *Employer* or destroys as the *Employer* directs all documents and other materials in its possession, custody or control (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 *Project Manager* in writing, removes all electronically held confidential information, including (without limitation) the purging of all disk-based confidential information and the reformatting of all disks, and

Z7.1(6) does not, except where provided in clause Z7.1(3), or without the prior written consent of the *Project Manager*, disclose to any third party the nature or content of any discussions or negotiations relating to the confidential information.

Z7.2 The obligations set out in clause Z7.1 do not apply to any confidential information which

Z7.2(1) the *Contractor* shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Contractor* by the *Employer*, or

Z7.2(2) is lawfully disclosed to the *Contractor* without any obligations of confidence, by a third party who has not derived it directly or indirectly from the *Employer*, or

Z7.2(3) is or has come into the public domain through no fault of the *Contractor* or its personnel, or

Z7.2(4) is required by law or by order of a court of competent jurisdiction to be

disclosed.

- Z7.3** The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of clause Z.7.1 and that (without prejudice to all other remedies which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages is necessary for the enforcement of the provisions of this clause.
- Z7.4** The *Contractor* does not advertise or announce this contract or that it is to Provide the Works without the prior written consent of the *Project Manager* and the *Project Manager* on behalf of the *Employer* has the right to approve any advertisement or announcement before it is made.
- Z7.5** Neither the *Contractor* nor anyone employed by him or acting on his behalf shall give information concerning the *works* for publication in the press or on radio, television, screen or any other media without the prior written consent of the *Project Manager* and, if such consent is given, shall provide to the *Project Manager* a full copy of the information to be released and shall not release any such information until the *Contractor* has received the *Project Manager's* prior written consent as to the content of the information to be released. The *Contractor* shall not, without the prior written approval of the *Project Manager*, take or permit to be taken any photographs of the *works* for use in any publicity or advertising.

Z8 Conflict of Interest

- Z8.1** The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the *works* or any member of the TfL Group or the *Employer* or GLAP, save to the extent fully disclosed to and approved in writing by the *Employer*.
- Z8.2** The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the *works* under this contract or any member of the TfL Group or the *Employer* or GLAP and shall work with the *Employer* to do whatever is necessary (including the separation of staff working or, and data relating to, the *work* from the matter in question) to manage such conflict to the *Employer's* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

Z9 Compliance with Policies

- Z9.1** The *Contractor* notifies its personnel Subcontractors and Indirect Subcontractors and the *Employer* of any health and safety hazards that exist or that may arise in connection with the provision of the *works* of which the *Contractor* is aware or ought reasonably to be aware.
- Z9.2** The *Contractor* undertakes that all its personnel and those of its Subcontractors and

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

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

- preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
- enhance the environment and have regard to the desirability of achieving sustainable development,
- conserve and safeguard flora, fauna and geological or physiological features of special interest, and
- sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Z10 Records, Audit and Inspection

Z10.1 In this clause Z10

"Records" means

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

- compensation event files (including documentation covering negotiated settlements),
- schedules including capital works costs, timetable and progress towards Completion,
- general ledger entries detailing cash and trade discounts and rebates,
- commitments (agreements and leases) greater than £5,000 (five thousand pounds),
- detailed inspection records,
- such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*, and
- accounts and records of the Price for Works Done to Date and all other amounts to be paid to the *Contractor* under this contract.

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

Z10.3 The *Contractor* undertakes and procures that his Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of Personal Data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or his Subcontractors and Indirect Subcontractors including, without limitation, the Records.

Z10.4 The *Contractor* promptly provides (and procures that his Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by

- granting or procuring the grant of access to any premises used in the

Contractor's performance of this contract, whether the *Contractor's* own premises or otherwise,

- granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
- making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
- providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* and/or any novated *Employer's* auditor and/or granting copying facilities to the *Employer's* and/or any novated *Employer's* auditor for the purposes of making such copies, and
- complying with the *Employer's* and/or any novated *Employer's* reasonable requests for access to senior personnel engaged by the Contractor in the performance of this contract and/or the *works*.

Z11 Corrupt Gifts, Fraud and the Payment of Commission

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

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

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

TfL Group or GLAP immediately.

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

Z12 Quality Statement

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

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

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

Z13 Quality Management System

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

Z14 Responsibility for Statutory Undertakers

Z14.1 The *Contractor* on behalf of the *Employer*

- identifies those measures which need to be taken as a consequence of or in order to facilitate the *works* with any Statutory Undertaker,
- agrees a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Undertaker,
- co-ordinates the taking of those measures and the execution of the *works* with the Statutory Undertaker,

and the *Employer* as the *Contractor's* principal pays the Statutory Undertaker's allowable costs.

Z14.2 The *Contractor* allows in any programme required under this contract, any notice period required by a Statutory Undertaker in relation to any matter which is the subject of clause Z14.1 and for all periods required in the taking of measures which are the subject of clause Z14.1.

Z15 Nuisance

Z15.1 The *Contractor* at all times, using all reasonable endeavours, prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under clause 43 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

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

Z16 Construction Industry Scheme

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

Z17 Use of Existing Services

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

Z18 2012 London Games

The *Contractor* shall not (without the prior written approval of the London Organising Committee of the Olympic Games Limited ("LOCOG") in each case) represent that any products or services provided under this contract have been endorsed or approved by the *Employer*, the British Olympic Association, the British Paralympics Association, LOCOG or any other official Olympic or Paralympic body, or that the *Contractor* (including any of its products or services) are in any way associated with those organisations, the Olympic Games and/or Paralympic Games, or London 2012, including by publishing or issuing any statement (factual or otherwise) about the *Contractor's* provision of the *works* for the *Employer*.

Z19 Equality & Diversity Compliance

Z19.1 Without limiting the generality of any other provision of the contract, the *Contractor* has due regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 in the exercise of its functions and additionally:

- does not unlawfully discriminate,
- procures that its personnel do not unlawfully discriminate, and
- uses reasonable endeavours to procure that its Subcontractors and any Indirect Subcontractors do not unlawfully discriminate when providing the works

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

Z19.2 The *Employer's* Workplace Policy requires the *Employer's* own staff and those of its Subcontractors and Indirect Subcontractors to comply fully with the Workplace Policy to eradicate harassment in the workplace. The *Contractor*

- ensures that its staff, and those of its Subcontractors and Indirect Subcontractors who are engaged in the performance of the contract are fully conversant with the requirements of the Workplace Policy,
- fully investigate allegations of workplace harassment in accordance with the Workplace Policy, and
- ensures that appropriate effective action is taken where harassment is found to have occurred.

Z19.3 The *Contractor* assists and co-operates with the *Employer* and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate where possible with the *Employer's* compliance with its duties under section 1 of the Equality Act 2010 as and when section 1 comes into force, including any amendment or re-enactment of section 1, and any guidance, enactment, order, regulation or instrument made pursuant to this section.

Z19.4 In performing his obligations under this contract, the *Contractor* complies, and ensures that his Subcontractors and Indirect Subcontractors comply, with the Modern Slavery Act 2015 and complies with the Anti-Slavery Policy. For the purpose of this clause Z19.4, Anti-Slavery Policy means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.

Z20 Considerate Constructor Scheme

The *Contractor*

- registers the Site under the Considerate Constructor Scheme
- complies with the Considerate Constructor Scheme's Code of Considerate Practice when he Provides the Works.

Z21 Design Check Certificate

All design prepared by the *Contractor* and submitted to the *Project Manager* is supported by a design check certificate or equal approved in a format as indicated in the design reports included within the Works Information.

Z22 Goods vehicles operator's licence

Each goods vehicle used by the *Contractor* or his Subcontractors in connection with this contract displays the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle carries documentation giving the operator's licence number, name and address.

Z23 Computer Equipment

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

- is Euro compliant, and
- is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk, and
- does not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system, and
- does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the *Employer* and/or any other member of the TfL Group and/or GLAP on which it is used or with which it interfaces

or comes into contact, and

- any variations, enhancements or actions undertaken by the *Contractor* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Contractor's* compliance with this warranty.

Z24 Equality & Diversity

Z24.1 Strategic Equality & Diversity Plan

Z24.1.1 For the duration of this contract, the *Contractor* shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the contract which is at least as extensive in scope as that agreed with the *Employer* and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this contract the expression "Agreed Strategic Equality & Diversity Plan" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to the contract as a Schedule headed "Agreed Strategic Equality & Diversity Plan".

Z24.1.2 Where any Subcontractor has, pursuant to Clause Z24.1.1 or otherwise, adopted a Strategic Equality & Diversity Plan, the *Contractor* shall procure that each Subcontractor:

- provides; and
- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the *Employer* or its nominee as soon as reasonably practicable.

Z24.2 Diversity Training

Z24.2.1 For the duration of this contract, the *Contractor* shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of the contract. For the purposes of this contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached to the contract as a Schedule headed "Agreed Training Plan". The *Contractor* shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of the contract which is at least as extensive in scope as the Agreed Training Plan.

Z24.2.2 Where a Subcontractor has, pursuant to Clause Z24.2.1 or otherwise, adopted a diversity training plan, the *Contractor* shall procure that each of its Subcontractors:

- provides; and
- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide;

a copy of its diversity training plan (and any amendments thereto) to the *Employer* or its nominee as soon as reasonably practicable.

Z24.3 Supplier Diversity

Z24.3.1 For the duration of this contract the *Contractor* shall at all times comply with the "Agreed Supplier Diversity Plan". For the purposes of this contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached to the contract as a Schedule headed "Supplier Diversity Plan". The *Contractor* shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement,

a supplier diversity plan in relation to the performance of this contract which is at least as extensive as the Agreed Supplier Diversity Plan.

Z24.3.2 Where a Subcontractor has, pursuant to Clause Z24.3.1 or otherwise, adopted a supplier diversity plan, the *Contractor* shall procure that each of its Subcontractors:

- provides; and
- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to the *Employer* or its nominee as soon as reasonably practicable.

Z24.4 Communications Plan

Z24.4.1 For the duration of this contract and in all dealings with the Local Community, the *Contractor* shall comply with the Agreed Communications Plan. For the purposes of this contract the expression "Agreed Communications Plan" means the communications plan agreed and attached to the contract as a Schedule headed "Agreed Communication Plan" and the expression "Local Community" means those areas of London affected by the works from time to time.

Z24.5 Monitoring and Reporting

Z24.5.1 Subject to Clause Z24.5.2, the *Contractor* shall use reasonable endeavours to provide the *Employer* on the date of this contract and subsequently every 12 months from the date or such other frequency as the *Employer* may reasonably request of this contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in clauses Z24.1 to Z24.4. The annual report should set out:

- the performance of the *Contractor* over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with the forth bullet point below
- the proportion of its employees engaged in the performance of the contract and, to the extent reasonably possible, the employees of its Subcontractors or Indirect Subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the contract who are:
 - female;
 - of non-white British origin or who classify themselves as being non-white British;
 - from the Local Community;
 - disabled
- the proportion of its Subcontractors or Indirect Subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.
- a plan of action for the forthcoming 12 months showing what the *Contractor* plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the TfL Supplier Diversity Definitions (which are included with the Works Information).

Z24.5.2 The *Contractor* shall ensure at all times that it complies with the

requirements of the Data Protection Legislation (as may be amended) in the collection and reporting of the information to the *Employer* pursuant to clause Z24.5.1.

Z24.6 Equality and Diversity Infractions

Z24.6.1 If the *Contractor* or any of its Subcontractors commits an Equality & Diversity Infraction, the *Employer* shall be entitled (but not obliged) to act as follows:

- (A) if an Equality & Diversity Infraction is committed by the *Contractor* then the *Employer* may serve written notice upon the *Contractor* identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the *Contractor* shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (B) if the Equality & Diversity Infraction is committed by a Subcontractor of the *Contractor*, the *Employer* may serve written notice upon the *Contractor* identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the *Contractor* shall procure that the Subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the *Contractor* of such notice (or such longer period as may be specified in the notice). If the *Contractor* fails to procure the remedy of the Diversity Infraction, the *Employer* may serve a further written notice upon the *Contractor* and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the *Contractor* shall terminate, at its own cost, the relevant subcontract with its Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in clauses Z24.1 to Z24.5 of this contract.

Z24.6.2 It shall be a fundamental term and condition of the contract that the *Contractor* complies with its obligations under clauses Z24.6.1 (A) and (B). Where, following receipt of a notice given pursuant to clause Z24.6.1 (A) or (B), the *Contractor* fails to remedy a Diversity Infraction to the satisfaction of the *Employer* or in the case of clause Z24.6.1 (B) fails to terminate the subcontract with a defaulting Subcontractor and procure performance by another person on the terms specified in clause Z24.6.1 (B), the *Contractor* will be in breach of the contract and the *Employer* shall be entitled (but not obliged) to terminate the contract, without further notice to the *Contractor*, in accordance with clause 91.8.

Z24.6.3 For the purposes of this clause Z24.6 "Equality & Diversity Infraction" means any breach by the *Contractor* of its obligations specified in clauses Z24.1 to Z24.5 of this contract and/or any failure by a Subcontractor to

adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in clauses Z24.1 to Z24.3 of this Contract.

Z24.7 Equality and Diversity Audit

Z24.7.1 The *Employer* or its nominee may from time to time undertake any audit or check of any and all information regarding the *Contractor's* compliance with clauses Z24.1 to Z24.5. The *Employer's* rights pursuant to this clause shall include any and all documents and records of the *Contractor* and its Subcontractors and, where applicable, subject to the provisions of clauses Z24.1 to Z24.3, Indirect Subcontractors and shall include the Minimum Records.

Z24.7.2 The *Contractor* shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the contract with respect to all matters in respect of the performance of and compliance with clauses Z24.1 to Z24.5. The *Contractor* shall procure that each of its Subcontractors and, where applicable subject to the provisions of clauses Z24.1 to Z24.3, Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the contract with respect to all matters in respect of the performance of and compliance with clauses Z24.1 to Z24.5. The *Contractor* shall procure that each subcontract between it and its Subcontractors and, where applicable, subject to the provisions of clauses Z24.1 to Z24.3, each subcontract between its Subcontractors and any Indirect Subcontractors of the *Contractor* shall contain rights of audit in favour of and enforceable by the *Employer* substantially equivalent to those granted by the *Contractor* pursuant to clause Z24.7.1.

Z24.7.3 The *Employer* shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the *Contractor* and each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the contract and/or relevant subcontract (as the case may be).

Z24.7.4 The *Contractor* shall promptly provide, and procure that its Subcontractors and, where applicable subject to the provisions of clauses Z24.1 to Z24.3, Indirect Subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- granting or procuring the grant of access to any premises used in the *Contractor's* performance of the contract or in the relevant Subcontractor or Indirect Subcontractor's performance of its subcontract, whether the *Contractor's* own premises or otherwise;
- granting or procuring the grant of access to any equipment (including all computer hardware and software and databases)

used (whether exclusively or non-exclusively) in the performance of the *Contractor's* or the relevant Subcontractor or Indirect Subcontractor's obligations specified in clauses Z24.1 to Z24.5, wherever situated and whether the *Contractor's* own equipment or otherwise; and

- complying with the *Employer's* reasonable requests for access to senior personnel engaged in the *Contractor's* performance of the contract or the relevant Subcontractor or Indirect Subcontractor's performance of its subcontract.

Z24.7.5 For the purposes of this clause Z24.7 the expression Minimum Records means all information relating to the *Contractor's* performance of and compliance with clauses Z24.1 to Z24.5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each Subcontractor and, where applicable, subject to the provisions of clauses Z24.1 to Z24.3, Indirect Subcontractor of the *Contractor*.

Z25 Strategic Labour Needs and Training

Recruitment of Local Residents

In this clause Z25, capitalised terms not defined in this contract shall bear the meaning given to them in the Section 106 Agreement, which the *Employer* entered into as part of the planning permission for the *works*, and which includes obligations with regard to the employment of local labour, as set out in Part 2 of Schedule 4 of such agreement.

Without prejudice to clause 83.1A of this contract, the *Contractor* complies with the obligations set out in Part 2 of Schedule 4 of the Section 106 Agreement where these relate to activities or to information for which the *Contractor* responsible. This includes (without limitation):

- attending an inception meeting with Workplace and the *Employer* to consider potential opportunities arising from the *works* for the effective delivery of the requirements of the local labour provisions as set out below,
- using Reasonable Endeavours to:
 - (i) achieve a target of 35% employment of Local Residents for Construction Phase Jobs,
 - (ii) procure the advertisement of all new Construction Phase Jobs, Apprenticeships and internships for the Construction Phase that become available once the *works* comprising that phase have commenced via Workplace at the earliest possible opportunity in advance of advertising externally PROVIDED THAT following the *starting date*, this obligation shall only apply to new vacancies created where the *Contractor* is unable to fill those vacancies using its own supply chain,
 - (iii) in complying with sub-paragraph (ii) directly above, undertake recruitment for those jobs to be advertised with Workplace as defined by sub-paragraphs (ii) through the following processes:
 - (A) provide notice to Workplace of the quantum and range of such jobs and any Apprenticeship Opportunities as soon as the information is available,
 - (B) work with Workplace to agree which such jobs are labouring and which are specialist and recruited elsewhere and thereafter to place individuals accordingly,
 - (C) work with Workplace to identify appropriate training to prepare Local Residents for such job opportunities which become available where such training can reasonably be carried out within the constraints of completing the *works* by the Completion Date, and
 - (E) support the principles outlined in the Community Wealth Building Pledge,
- providing a named person who shall liaise with Workplace and the *Employer*

and facilitate regular meeting slots for onsite meetings to enable Workplace to promote their service to onsite contractors,

Supply chain opportunities for Newham businesses

- in respect of supply chain opportunities, using Reasonable Endeavours to provide:
 - (i) advance notice to the London Borough of Newham of the quantum and range of supply chain opportunities arising from the *works* to enable Borough officers to alert local businesses to the forthcoming opportunities,
 - (ii) a named person to liaise with the London Borough of Newham and *Employer* in respect of supply chain opportunities, and
 - (iii) information on the number of contractors being used for the *works* and details of those based in the London Borough of Newham and neighbouring Boroughs of Barking & Dagenham, Hackney, Tower Hamlets and Waltham Forest, such information to include:
 - (A) the name and postcode of the contractor/supplier; and
 - (B) basic details and value of contract (e.g. supply of concrete - £1,000),

to the extent that the *Employer* or GLAP is not prevented from doing so by a rule of law whether domestic or international,

Monitoring of employment

- upon reasonable request by the, producing an annual monitoring report to the London Borough of Newham's nominated officer in the form previously advised by the Borough for matters set out in Part 2 of Schedule 4 of the Section 106 Agreement, and
- upon reasonable request by Workplace, providing Workplace with quarterly monitoring information as detailed below:
 - (i) overall number of people employed to work at the Site in respect of the *works* at that time,
 - (ii) number and percentage of Local Residents employed to work at the Site in respect of the *works* at that time;
 - (iii) for those Local Residents referred to in the sub-paragraph directly above, data to include the following:
 - (A) percentage of those that were previously unemployed, broken down as follows:
 - (aa) unemployed for less than 6 months;
 - (bb) unemployed for between 6 and 12 months; and

- (cc) unemployed for more than 12 months;
- (B) length of residency in the London Borough of Newham, broken down as follows:
 - (aa) resident in such Borough for less than 6 months;
 - (bb) resident in such Borough for between 6 and 12 months;
 - (cc) resident in such Borough for between 13 months and 5 years; and
 - (dd) resident in such Borough for more than 5 years;
- (C) ethnicity;
- (D) gender;
- (E) disability; and
- (F) sexual orientation,

PROVIDED THAT this paragraph shall only require the *Contractor* to provide information to the London Borough of Newham where such information was provided voluntarily by the Local Residents concerned and this obligation shall not apply where it would be unlawful for the *Contractor* to provide, procure or process the information.

Z26 Sustainable Timber

Z26.1 For the purposes of this clause unless the context indicates otherwise, the following expressions shall have the following meanings-

Z26.1.1 "Legal Timber"

Means Timber in respect of which the organisation that felled the trees and/or provided the Timber from which the wood supplied under the contract derived

- (a) had legal rights to use the forest,
- (b) holds a register of all local and national laws and codes of practice relevant to forest operations, and
- (c) complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.

Z26.1.2 "Recycled Timber" and "Reclaimed Timber"

Means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms 'recycled' and 'reclaimed' are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. recycled or

reclaimed Timber must be capable of being evidenced as such to the *Employer's* satisfaction in order to satisfy this definition.

Z26.1.3 "Sustainable Timber"

Means Timber, which in order to meet the *Employer's* criteria for sustainable timber, must be

- (a) Recycled Timber, or
- (b) Sustainably Sourced Timber, or
- (c) a combination of (a) and (b).

Z26.1.4 "Sustainably Sourced Timber"

Means Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council (FSC) or equivalent. Where it is not practicable to use Forest Stewardship Council (FSC) standard accredited timber, the *Employer* will accept Timber accredited through other schemes approved by the Central Point of Expertise on Timber (CPET), as listed below

- (a) Canadian Standards Association (CSA),
- (b) Programme for the Endorsement of Forest Certification (PEFC), or
- (c) Sustainable Forestry Initiative (SFI),

or such other source as the *Contractor* may demonstrate to the *Employer's* satisfaction is equivalent.

Z26.1.5 "Timber"

Means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element, (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber.

Z26.1.6 "Virgin Timber"

Timber supplied or used in performance of this contract that is not Recycled Timber.

Z26.1.7 "Independent Report"

Means an independent report by an individual or body

- (a) whose organisation, systems and procedures conform to,
 - (i) ISO Guide 65:1996 (EN 45011:1998), and
 - (ii) general requirements for bodies operating product

certification systems, and

- (b) who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.

Z26.2 Contractor's Obligations and the Employer's Rights

- Z26.2.1** The *Contractor* shall ensure that all Timber supplied or used in the performance of this contract shall be Sustainable Timber. If it is not practicable for the *Contractor* to meet this condition the *Contractor* must inform the *Employer* in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The *Employer* reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Alternatively the *Employer* has the right to reject the proposed Timber. Where the *Employer* exercises its right to reject any Timber, the provisions of clause Z26.2.4 shall apply.
- Z26.2.2** Without prejudice to clauses Z26.2.1 and Z26.4.2, all Virgin Timber procured by the *Contractor* for supply or use in performance of the contract shall be Legal Timber.
- Z26.2.3** The *Contractor* shall ensure that Virgin Timber it procures for supply or use in performance of the contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.
- Z26.2.4** The *Employer* reserves the right to reject at any time any Timber that does not comply with the conditions of contract or the Works Information. Where the *Employer* exercises its right to reject any Timber, the *Contractor* shall supply contractually compliant alternative Timber, at no additional cost to the *Employer* and without causing delay to the performance of this contract.
- Z26.2.5** The *Contractor* shall maintain records of all Timber supplied and used in the performance of the contract. Such information shall be made available to the *Employer* promptly if requested at any time.

Z26.3 Employer's Reporting Requirements

- Z26.3.1** Unless the *Employer* has given its written approval in accordance with clause Z26.2.1 that Timber that is not Sustainable Timber may be used, then, if requested, the *Contractor* shall promptly provide evidence to the *Employer's* satisfaction that the Timber is Sustainable Timber.
- Z26.3.2** Upon a request by the *Employer* referred to in clause Z26.3.1, in the event

that the *Contractor* does not promptly provide such evidence, or the evidence provided does not satisfy the *Employer's* requirements, then (and without prejudice to clause Z26.4.1), the *Employer* reserves the right to retain 25% of any monies payable to the *Contractor* under this contract until such date as the *Employer* is in receipt of such evidence and the *Employer* is satisfied that the evidence establishes that the Timber is Sustainable Timber.

Z26.3.4 The *Contractor* shall report on the amount of Timber that has been supplied to the *Employer* in accordance with clause Z26.2.1 which is not Sustainable Timber.

Z26.4 Verification

Z26.4.1 Evidence of Sustainable Timber

The *Employer* reserves the right to determine whether the evidence supplied by the *Contractor* is sufficient to satisfy it that the Works Information and the contract have been fully complied with. In the event that the *Employer* is not so satisfied, the *Contractor* shall, on written request by the *Employer*, commission and meet the costs of an Independent Report to

- (a) verify the source of the Timber, and
- (b) assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

Z26.4.2 Evidence of Legal Timber

Z26.4.2.1 The *Contractor* shall, before delivering any Virgin Timber under this contract, obtain documentary evidence to the *Employer's* satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the *Employer*, the *Contractor* shall submit such documentary evidence to the *Employer* either prior to delivery or at such other times as the *Employer* may require. For the avoidance of doubt, the *Contractor* shall identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

Z26.4.2.2 The *Employer* reserves the right at any time during the execution of the contract and for a period of 6 years from final delivery of any Timber under this contract to require the *Contractor* to produce the evidence required for the *Employer's* inspection within 14 days of the *Employer's* written request.

Z27 London Living Wage

For the purposes of this clause Z27:

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

and

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

Z27.1 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act, has directed the *Employer* to ensure that the London Living Wage is paid to anyone engaged by the *Employer* who is required to discharge contractual obligations (whether as a direct contractor or a subcontractor (of any tier) of that direct contractor) on the *Employer's* estate in the circumstances set out in sub-clause Z27.2(a).

Z27.2 Without prejudice to any other provision of this contract, the *Contractor*:
(a) ensures that his employees and procures that the employees of his Subcontractors and Indirect Subcontractors engaged in the performance of the *works*:

- for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year and
- on the *Employer's* estate including (without limitation) the Site and premises and land owned or occupied by the *Employer*,

is paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage,

(b) ensures that none of:

- his employees nor
- the employees of his Subcontractors or Indirect Subcontractors,

engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment,

(c) provides to the *Employer* such information concerning the London Living Wage as the *Employer* or his nominees may reasonably require from time to time, including (without limitation):

- all information necessary for the *Employer* to confirm that the *Contractor* is complying with his obligations under this clause Z27 and
- reasonable evidence that sub-clause Z27.2(a) is implemented,

(d) in connection with sub-clause Z27.2(c),

- acknowledges and agrees that CCSL may contact and meet with any trade unions representing the *Contractor's* employees and the employees of his Subcontractors and Indirect Subcontractors in order to establish that the obligations in sub-clause Z27.2(a) have been complied with and

- liaises and cooperates with the *Employer* and the CCSL in order to establish that the obligations in sub-clause Z27.2(a) have been complied with,

(e) disseminates on behalf of the *Employer* to:

- his employees and
- the employees of his Subcontractors and Indirect Subcontractors,

engaged in the performance of the *works* such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the *Employer* responses to such questionnaires, and

(f) co-operates and provides all reasonable assistance in monitoring the effect of the London Living Wage.

Z27.3 For the avoidance of doubt the *Contractor*:

(a) implements the annual increase in the rate of the London Living Wage and

(b) procures that his Subcontractors and Indirect Subcontractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

Z27.4 The *Employer* reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Contractor's employees and the employees of his Subcontractors and Indirect Subcontractors.

Z27.5 Any breach by the *Contractor* of the provisions of this clause Z27 is treated as the *Contractor* having substantially failed to comply with his obligations for the purpose of Clause 91.2 of this contract.

Z28 Work Related Road Risk

Z28.1 For the purposes of this Clause Z28 of this Contract, the following expressions shall have the following meanings:

"Approved Progressive Driver Training"	An ongoing programme of Drivers' training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment (including on-road experience from a cyclist's perspective), which is required to be completed at least once every 5 years;
"Category N2 HGV"	means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
"Category N3 HGV"	means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms
"Car-derived Van"	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
"CLOCS Standard"	means the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: www.clocs.org.uk
"Collision Report"	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

"Delivery and Servicing Vehicle"	a HGV, a Van or a Car-derived Van;
"Driver"	any employee of the Service Provider (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Service Provider while delivering the Services;
"DVLA"	Driver and Vehicle Licensing Agency;
"Direct Vision Standard" or "DVS"	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: www.tfl.gov.uk ;
"FORS"	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating commercial vehicles including vans, HGV, coaches and P2W. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
"FORS Standard"	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
"Gold Accreditation"	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"HGV"	a vehicle with an MAM exceeding 3,500 kilograms;

"MAM" the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

"Silver Accreditation" the minimum level of accreditation within the FORS Standard acceptable for the contract schedule, the requirements of which are more particularly described at: www.fors-online.org.uk

"Van" a vehicle with a MAM not exceeding 3,500 kilograms.

(a)

(b) **Fleet Operator Recognition Scheme Accreditation**

Z28.2 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Contract Commencement Date:

Z28.2.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to FORS (the **"Alternative Scheme"**); and

Z28.2.2 (unless already accredited) have attained the standard of Silver Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Silver Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent audit in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Service Provider has attained Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Features on HGVs

Z28.3 The Service Provider shall ensure that every HGV, which it uses to provide the Services, shall be fitted with safety features consistent with the FORS Silver Accreditation.

Construction Logistics and Community Safety (CLOCS)

Z28.4 Not used

Direct Vision Standard (DVS)

Z28.5 Not used

Driver Training

Z28.6 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services the Service Provider shall ensure that each of its Drivers attend the Approved Progressive Training throughout the Term of the Contract.

Collision Reporting

Z28.7 Where the Service Provider operates Delivery and Servicing Vehicles to deliver the contract, the Service Provider shall:

Z28.7.1 within 15 days of the Commencement Date, provide to the Authority a Collision Report. The Service Provider shall provide to the Authority an updated Collision Report within five working days of a written request from the Authority at anytime.

Self-Certification of Compliance

Z28.8 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Service Provider shall make a written report to the Authority detailing its compliance with this Clause Z28 of this Contract (the "**WRRR Self-Certification Report**"). The Service Provider shall provide updates of the WRRR Self-Certification Report to the Authority on each six month anniversary of its submission of the initial WRRR Self-Certification Report.

Obligations of the Service Provider Regarding Subcontractors

Z28.9 The Service Provider shall ensure that those of its sub-contractors who operate Category N2 HGVs, Category N3 HGVs, Vans and/or Car-derived Vans to provide the Services shall comply with the corresponding provisions of this Contract:

Z28.9.1 Clauses Z28.2, Z28.6, Z28.7, Z28.8; and

Z28.9.2 for Category N2 HGVs – Clauses Z28.3; and

Z28.9.3 for Category N3 HGVs – Clauses Z28.3, and, where applicable Z28.4 and Z28.5;

as if those sub-contractors were a party to this Contract.

Failure to Comply

Z28.10 Without limiting the effect of any other clause of this Contract relating to termination, if the Service Provider fails to comply with Clauses Z28.2, Z28.3 (where applicable), Z28.4 (where applicable), Z28.5 (where applicable), Z28.6, Z28.7, Z28.8 and Z28.9;

Z28.10.1 the Service Provider has committed a material breach of this Contract; and

Z28.10.2 the Authority may refuse the Service Provider, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Authority for any purpose (including but not limited to deliveries).

Z29 Sectional Completion

Z29.1 In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to:

- the works,
- Completion and
- Completion Date

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