



# **Traffic Control Equipment Maintenance and Related Services Contract**

## **Schedule 6**

### **PART A (Schedule of Amendments - NEC Engineering and Construction Contract (3rd Edition))**

## SCHEDULE 6

### PART A

(Schedule of Amendments - NEC Engineering and Construction Contract (3rd Edition))

#### 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(2) Delete the second bullet point and substitute

- “corrected all notified Defects”

Clause 11.2(4) Delete and substitute:

“The Contract Date is the date of the Works Instruction.”

Clause 11.2(5) At the end of first bullet point insert: “the *Contractor*’s obligations under this contract or”.

In the second bullet point after “the applicable law” insert the words “or all applicable licences and approvals”.

Clause 11.2(11) After *Employer* insert “(which expression includes its successors in title and permitted assigns)”.

Clause 11.2(17) In the first sentence, after “organisation” insert “including, without limitation any sub-consultant”

In the first bullet point, after “install” insert “or design”.

Clause 11.2(19) In the first line delete the word “either”.

In the first bullet point after “*works*” delete “or” and insert “and/or”.

Clause 11.2

Insert the following new definitions:

- (34) CDM Regulations are the Construction (Design and Management) Regulations 2007 and any amendment, consolidation, revision and/or replacement thereto and the related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.
- (35) Commissioned means completion of Commissioning of the *works* in accordance with the Works Information to enable the *Project Manager* to certify that the *works* are Commissioned, provided that the *works* can never be certified Commissioned where use of any part of the *works* is unsafe.
- (36) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works*.
- (37) Interfacing Others means Others identified or referred to in the Works Information with whom the *Contractor* is to interface.
- (38) Prevention Event has the meaning ascribed to that term in clause 19.1.
- (39) Public Highway means land which is in the ownership or control of Transport for London, the Boroughs, the Royal Parks or the Highways Agency.
- (40) A Statutory Requirement means Applicable Laws and
- 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).

- (41) 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.
- (42) Target Commissioning Date means the date by which the *works* should be Commissioned and is the *target commissioning date* unless changed in accordance with this contract.
- (43) TCMS Agreement means the overarching agreement pursuant to which the Works Instruction is issued.
- Clause 12.2 Delete and insert “Not used”.
- Clause 12.4 Delete and insert “Not used”.
- 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 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 12.7 Insert a new clause:
- “12.7 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 13.1 In line 3 after “recorded” insert “or is available for access on a nominated hosted web server and/or nominated file transfer platform as set out in the Works Information (save in the case of the notification of a dispute which shall be notified in both electronic and hard copy)”.

Clause 13.2 At the end insert: “Alternatively, an electronic communication has effect when it is posted on a nominated hosted web service and/or nominated file transfer platform as set out in the Works Information. Communications relating to the notification of a dispute shall have no effect under this contract unless served in hard copy.”

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 16.1 After the first bullet point insert:

- “delay the Target Commissioning Date,”

At the end of the list of bullet points insert:

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

Clause 16.2 Delete “Either the *Project Manager* or the *Contractor* may instruct the other” and substitute “*The Project Manager* may instruct the *Contractor*”.

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 17.1A Insert a new clause:

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

Clause 17.1 Add at the end of the clause:

“Such instruction is not a compensation event where the *Project Manager* assesses:

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

Clause 17.2 Insert a new clause:

“17.2 The *Contractor* accepts entire responsibility for the *Contractor’s*

design and for any mistake, inaccuracy, discrepancy or omission contained in the same”.

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 Insolvency Event 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 Quotation or Proposal (as applicable) 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, and
- 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.”

Clause 21.1      Insert at the end of the clause: “The *Contractor* integrates and coordinates his design (if any) with the designs of the *Employer*, Others and in accordance with the Works Information and the instructions of the *Project Manager*.”

Clause 21.2      Delete the second sentence and replace with “Reasons for not accepting the *Contractor’s* design are that

- it does not comply with the Works Information, applicable law or Statutory Requirements,
- it is not integrated and coordinated with the designs of Others where the *Contractor* is required by the Works Information or the instructions of the *Employer* to integrate and/or coordinate his design with the designs of Others or such integration is necessary for the *Contractor* to Provide the Works,
- it does not comply with this contract.”

and at the start of the final paragraph delete the word “The” and replace with “Unless otherwise stated in the Works Information, the”

Clause 21.4      Insert a new clause:



- “21.4
- (1) Without prejudice to clause 21.4(3), the *Contractor* warrants to the *Employer* that insofar as it is responsible for the design of the *works*, it has exercised and exercises in the design of the *works* all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the *works*.
- (2) Subject to clause 21.4(3), the *Contractor* warrants to the *Employer* that it uses the reasonable skill, care and diligence set out in clause 21.4(1) to see that the *works* comply with any performance specification or requirement included or referred to in the Works Information or the *Contractor's* design (including any changes to the Works Information) and comply with all Statutory Requirements. The *Contractor* warrants that any part of the *works* designed by the *Contractor* will interface and integrate fully with any design prepared by, or on behalf, of the *Employer*.
- (3) The *Contractor* warrants to the *Employer* that
- the *works* comply with any performance specification or requirements included or referred to in Schedule 3 of the TCMS Agreement (the Statement of Requirements) and which are applicable to the *works* and
  - the *works* will on Completion be fit for their intended purpose set out or referred to in Schedule 3 of the TCMS Agreement (the Statement of Requirements).”

Clause 21.5      Insert a new clause:

“21.5      The *Contractor* obtains from and/or gives to Others all licences, consents, notices and approvals necessary or appropriate to enable him to Provide the Works other than those which the

Works Information states will be obtained or given by the *Employer* or Others. 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 22.1 Delete and replace with “Clause 44 of the TCMS Agreement applies.”

Clause 23.1 Insert an additional bullet point between the first and second bullet points:

“• this contract”

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 25.1 In the first sentence after the words “co-operates with” insert the words “the *Project Manager* and”.

In the second sentence after the words “in connection with” insert the words “their work and”.

In the second sentence after the words “He co-operates with Others” insert the words “, co-ordinates his activities with them”.

At the end of the clause insert the words “The *Contractor* permits the carrying out of work by Others and concurrently with the execution of the *works*.”

Clause 25.4 Insert a new clause:

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

Clause 25.5	Insert a new clause:
"25.5	In the event that the <i>works</i> cause delay or disruption to the <i>Employer</i> and/or Others, the <i>Contractor</i> takes all reasonable steps to mitigate and minimise such delay or disruption."
Clause 25.6	Insert a new clause:
"25.6	Without prejudice to clause 25.1, the <i>Contractor</i> liaises with Interfacing Others and as often as may be required to ensure that any programme produced by the <i>Contractor</i> in accordance with clause 31 is developed to ensure that the <i>works</i> are co-ordinated and interfaced with the works to be undertaken by Interfacing Others and the <i>Contractor</i> Provides the Works in accordance with any such co-ordinated and interfaced programme. If the <i>Contractor</i> fails to properly coordinate and interface the <i>works</i> with the works to be undertaken by Interfacing Others the <i>Contractor</i> is not entitled to: a compensation event pursuant to clause 60.1; a change in the Prices; a change to the Target Commissioning Date, Completion Date; or a change to any Key Date."
Clause 26.3	Insert a further bullet point after the bullet "they do ... co-operation":  " • in the opinion of the <i>Project Manager</i> they are not consistent with the terms of this contract".
Clause 26.5	Insert a new clause:
"26.5	Where the <i>Contractor</i> has proposed a Subcontractor in Contract Data Part Two for part of the <i>works</i> , acceptance of Contract Data Part Two by the <i>Employer</i> without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the <i>Project Manager</i> under clause 26.2. Any such Subcontractor is not removed by the <i>Contractor</i> from the part of the <i>works</i> for which he has been proposed without the prior written consent of the <i>Project Manager</i> ."
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 27.5 Insert a new clause:

- “27.5
- (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* 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.
  - (3) Where the *Contractor* is responsible for design the *Contractor* performs all the functions and duties of a “designer” and where it is stated in the Contract Data that the *Contractor* is the principal contractor the *Contractor* performs all the functions and duties of and exercises the powers of the “principal contractor” as defined in the CDM Regulations. Where it is stated in the Contract Data that another party is principal contractor for the purposes of the CDM Regulations the *Contractor* co-operates with, assists and (where relevant) complies with the directions of the party named as principal contractor in connection with the CDM Regulations. The *Contractor* warrants that it is fully conversant with the Approved Code of Practice

published by the Health and Safety Executive in relation to the CDM Regulations.

- (4) The *Contractor* warrants to the *Employer* that to the extent it is responsible for design it is fully aware of the provisions of Regulation 11 (“Duties of designers”) of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 11.
- (5) 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.
- (6) 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.
- (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 for the effective discharge of those responsibilities.”

#### Clause 27.6

Insert a new clause:

#### “27.6

Unless the Works Instruction states that the relevant *works* are a Type C Scheme, the *Contractor* shall be deemed to be fully acquainted with the physical conditions (including the sub-surface conditions and any Major Civil Engineering Works) and other conditions of or affecting the Site of the *works* before the Contract Date and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the *works*. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to a compensation event and/or any additional payment (whether by way of an addition to the Prices or otherwise) or to any change to

the Target Commissioning Date, Completion Date and/or Key Dates. Regardless of whether the Works Instruction states that it is a Type C Scheme Request or otherwise, as between the *Contractor* and the *Employer*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Employer* regarding any such matter as is referred to in this clause or as set out in the Works Information and/or Site Information and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.”

Clause 27.7                      Insert a new clause:

“27.7                              Unless otherwise stated in the Works Information, the *Contractor* identifies restrictions on his ability to Provide the Works which will be imposed by a Highways Authority in order to control noise arising from the *Contractor* Providing the Works. If such restrictions are more onerous than those which it would have been reasonable for an experienced contractor to have allowed for at the Contract Date then the *Contractor* notifies the *Employer*. The *Contractor* and the *Employer* discuss different ways to deal with the restrictions and the *Contractor* takes every practicable step to work with the Highways Authority and Others to find alternative methods of working to avoid any increase to the total of the Prices and any delay to the Target Commissioning Date, a Key Date or the Completion Date.”

Clause 30                        Insert

“30.1                              At the end of the clause insert:

“and, if earlier, so that the *works* are Commissioned on or before the Target Commissioning Date”.

Clause 30.1A                    After clause 30.1 insert a new clause:

“30.1A                            The *Project Manager* decides the date on which the *works* are Commissioned. The *Project Manager* certifies that the *works* are

Commissioned within one week of the date on which the *works* are Commissioned. Such certificate sets out any Defects to be corrected and further works required to achieve Completion.”

Clause 30.1B Insert a new clause:

“30.1B The *Contractor* notifies the *Project Manager* when in his opinion the *works*

- can be certified Commissioned and
- will have been completed

in accordance with this contract, and in each case requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* and any other person(s) identified by the *Project Manager* may attend such inspection. Without prejudice to Option X7 (if applicable), if the *Project Manager* does not certify that the *works* are Commissioned or does not certify Completion (as appropriate) in respect of such inspection, the *Contractor* pays **REDACTED** toward the cost of the inspection.”

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 reasonable endeavours and takes all reasonably practicable steps to prevent and/or reduce any delay in the progress of the *works*.”

Clause 31.2 In the first bullet point after “Key Dates” add “, Target Commissioning Date”.

In the second bullet point after “planned Completion” add “and planned Target Commissioning Date”.

In the sixth bullet point add “environmental and” before “health and safety requirements”.

Clause 33.1 Delete existing clause and replace with:

- “33.1                    “The *Contractor* arranges for access to and use of the Site which is necessary for work included in this contract.”
- Clause 33.2            Insert a new clause:
- “33.2                    The *Contractor* notifies the *Project Manager* immediately if he becomes aware that any part of the Site is not on a Public Highway (other than those parts of the Site which the Works Information and/or the Site Information indicates are not on a Public Highway) and the *Project Manager* instructs the *Contractor* how to proceed.”
- Clause 33.3            Insert a new clause:
- “33.3                    The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.”
- 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, and notwithstanding any certificate confirming that the *works* are Commissioned in accordance with clause 30.1A, 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 and in particular the issuing of a certificate confirming that the *works* are



Commissioned, 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 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 40.5            Delete and substitute:

“The *Supervisor* does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful.”

Clause 42.1            In the first line delete the words “the *defects date*” and substitute “Completion”.

Clause 42.2            Delete and substitute:

“Following issue of a certificate confirming that the *works* are Commissioned the *Contractor* corrects any Defects notified to him and completes the *works*.”

Clause 43              Delete and insert “Not Used”.

Clause 45              Delete and insert “Not Used”.

Clause 50.1            In the first bullet point delete “four weeks after the *Supervisor* issues the Defects Certificate and” and substitute “Completion,”.

Insert a new bullet point after the first bullet point:

“at the date on which the *works* are Commissioned and”.

Clause 50.1A Insert a new clause:

“50.1A If an amount will become due at an assessment date, 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 50.2 Delete and replace with:

“50.2 The amount due is

- on certification that the *works* are Commissioned, 60% of the Price for Work Done to Date,
- on Completion, 100% of the Price for Work Done to Date,
- on assessment of an amount due under clauses 50.8 or 93.1 (if applicable), the Price for Work Done to Date,

in each case

- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

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

For the avoidance of doubt no amount is due save as provided above.”

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 Project Manager may, in his absolute discretion, assess an

amount due before the *works* are certified Commissioned and before Completion.”

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 60.1      Amend as set out below:

60.1(2)          Delete and substitute

“The *Project Manager* gives an instruction under clause 33.2.”

60.1(2A)        Insert a new sub-clause:

“60.1(2A)        This sub-clause 60.1(2A) applies only if so stated in the Contract Data. The *Contractor* cannot gain access to the Site to Provide the Works, provided that the *Contractor* has taken all practicable steps to arrange access to and use of the Site in accordance with the provisions of this contract. The *Contractor* is not entitled under this sub-clause 60.1(2A) to any change to the Prices.”

60.1(5)          After “Others” insert “(which for these purposes does not include any Statutory Undertaker)”.

At the end of the second bullet point delete “or” and insert a full stop.

Insert a new paragraph at the end of 60.1(5):

“It is not a compensation event where any event arises from or is in any way attributable to an act or omission of an Other which is an entity related to the *Contractor* or a Holding Company of the *Contractor* or in a joint venture, alliance or state of co-operation with the *Contractor* or the Holding Company.”

Delete the third bullet point.

60.1(5A)	Insert a new sub-clause:
"60.1(5A)	<p>Subject to clause Z2, Statutory Undertakers</p> <ul style="list-style-type: none"> <li>• do not work within the times shown on the Accepted Programme or</li> <li>• do not work within the conditions stated in the Works Information</li> </ul> <p>provided that the <i>Contractor</i> is not entitled under this sub-clause 60.1(5A) to any change to the Prices.</p>
60.1(6)	Delete.
60.1(11)	Delete.
60.1(12)	At the start of the sub-clause insert the words "This sub-clause 60.1(12) applies only if the relevant Works Instruction states that the <i>works</i> are a Type C Scheme."
60.1(13)	At the end of the sub-clause insert a new sentence "The <i>Contractor</i> is not entitled under this sub-clause 60.1(13) to any change to the Prices."
60.1(15)	Delete.
60.1(18)	After "of contract by" insert "or act of prevention on the part of". After " <i>Employer</i> " insert "(except to the extent that it is caused or contributed to by the <i>Contractor</i> 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 <i>Contractor</i> and is not one of the other compensation events stated in this contract provided that the <i>Contractor</i> is not entitled under this sub-clause 60.1(19) to any change to the Prices."
60.1(20)	Insert a new sub-clause:

- “(20) Notwithstanding clause 27.6, the *Contractor* encounters ducting which
- is within the Site, and
  - is
    - blocked,
    - not in accordance with the relevant PRO drawing for the Site, and/or
    - is such that it prevents the *Contractor* from physically installing the whole or part of the *works* in accordance with the Works Instruction and
  - necessitates works (which are not already within the scope of the *works* or otherwise identified in the Works Information) to be carried out by the *Contractor* or by Others, and
  - is not identified,
  - in any duct survey undertaken by the *Contractor* (whether instructed by the *Employer* or otherwise) prior to commencing the *works*, or
  - as part of a Visual Inspection (where such inspection has been undertaken by the *Contractor* prior to commencing the *works*), or
  - in any publicly available information referred to in the Site Information,
- provided that the *Contractor* is not entitled under this sub-clause 60.1(20) to any change to the Prices.”

60.1(21) Insert a new sub-clause:

“(21) Subject to clause 27.7 of the *conditions of contract*, restrictions on the *Contractor's* ability to Provide the Works are imposed by a Highways Authority to control noise which are more onerous than those which it would have been reasonable for an experienced contractor to have allowed for at the Contract Date.”

Clause 60.2 At the start of the sub-clause delete the word “In” and insert “If sub-clause 60.1(12) applies, in”.

Clause 60.3 Delete.

Clause 61.3 In the second paragraph replace “becoming” with the words

“when he becomes aware or ought reasonably to have become”.

In the second paragraph, before “Completion Date” insert “Target Commissioning Date.”

At the end of the second paragraph include the words “The *Employer* may, in his absolute discretion, assess a change to the Target Commissioning Date, 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”.

In the third bullet point before “Completion” insert “Target Commissioning Date,”.

In the paragraph after the fourth bullet point, before “Completion Date” insert “the Target Commissioning Date,”.

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

Delete and substitute:

“A compensation event is not notified after Completion. No change is made to the Prices, the Target Commissioning Date, the Completion Date nor any Key Date in respect of any compensation event notified after Completion”.

Clause 62.2

In the second line before “Completion Date” insert “Target Commissioning Date, the”

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 Target Commissioning Date, the Completion Date or a Key Date.”

Clause 63.1A      Insert new clauses before clause 63.1:

“63.1A      To the extent that a compensation event affects either work done or work not yet done the change to the Prices for a compensation event is assessed

- using the appropriate rates and lump sums in the Activity Schedule,
- to the extent that there is no appropriate rate or lump sum in the Activity Schedule by using other appropriate rates and lump sums in the Schedule of Capital Works Rates,
- to the extent that there is no appropriate rate or lump sum in the Schedule of Capital Works Rates, by using the rates or lump sums in the Schedule of Capital Works Rates for works of a similar character and executed under similar conditions to the compensation event,
- to the extent that there is no rate or lump sum in the Schedule of Capital Works Rates for works of a similar character and executed under similar conditions to the compensation event, in accordance with clause 63.1.”

“Clause 63.1B      The following are deducted from the assessment at clause 63.1A:

- costs against which this contract required the *Contractor* to insure; and

- other costs paid to the *Contractor* by insurers.”

Clause 63.1 At the start of the clause delete “The” and insert “Where stated in Clause 63.1A, the”

Clause 63.3 At the end of the second sentence insert:

“A delay to the Target Commissioning Date is assessed as the length of time that, due to a compensation event, the planned Target Commissioning Date is later than the planned Target Commissioning Date shown on the Accepted Programme. Provided always that any delay is only assessed as giving rise to a change in the Target Commissioning Date, Completion Date or a Key Date if and to the extent

- that the compensation event (either on its own or with any other compensation event) is the sole, principal or dominant cause of the delay, and
- there is sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Target Commissioning Date, Completion Date or a Key Date.

For the avoidance of any doubt, the *Employer* may assess and fix an earlier Target Commissioning Date, Completion Date or Key Date if the effect of the compensation event is to reduce the time required for achieving Commissioning, Completion or meeting a Key Date.”

Clause 63.4 Before Completion Date insert “Target Commissioning Date,”. 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-clause 17.1) is a compensation event.”

Before “Completion Date” insert “Target Commissioning Date, the”.

Clause 63.10      In the first sentence delete the words “total Defined Cost” and replace with the words “cost to the *Contractor*”.

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 65.4      Before “Completion Date” insert “Target Commissioning Date”.

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      In the fourth main bullet point delete “Defects Certificate” and insert “certificate of Completion”.

Add to the end of the clause a new bullet point:

- “Loss of or wear and damage to the part of the *works* certified Commissioned, except loss, wear or damage

occurring before Completion which is due to:

- a Defect which existed at the date on which the *works* were certified Commissioned,
- an event occurring before the date on which the *works* were certified Commissioned which was not itself an Employer's Risk, or
- the activities of the *Contractor* on the site after the date on which the *works* were certified Commissioned."

Clause 81.1 Delete "the Defects Certificate has been issued" and insert "Completion".

Clause 82.1 Delete "Until the Defects Certificate has been issued" and insert "Until Completion and in respect of any part of the *works* not having been certified as Commissioned".

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 and Materials 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 and Materials."

Clause 83.1 Delete clause 83.1 and replace with the following new clause:

"83.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever ("**Losses**") incurred in respect of

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible), and
- any other loss damage (other than the *works*) cost or

expense including but not limited to that incurred or suffered by the *Employer* due to losses arising under its contracts with Others which may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part performance of this contract,

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission, or default by the *Contractor*, his employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are at the *Contractor's* risk.”

- Clause 83.2 Delete clause 83.2 and replace with the following new clause:
- “83.2 The *Contractor's* indemnity under sub-clause 83.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract. 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* indemnity 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.”
- Clause 84 Delete and insert “Clause 22 of the TCMS Agreement applies”.
- Clause 85 Delete and insert “Not used.”
- Clause 86 Delete and insert “Not used.”
- Clause 87 Delete and insert “Not used.”
- Clause 90.2 In the “Termination Table” in the *Employer's* “Reason” column, after “R1-R15 or R18” add “or R22”.
- 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 if any circumstances arise which entitle the *Employer* to terminate the TCMS Agreement, save that the *Employer* is not entitled to terminate the *Contractor’s* obligation to Provide the Works pursuant to this clause by reason of Clause 32.3 of the TCMS Agreement but for the avoidance of doubt this proviso does not limit or restrict the *Employer’s* right to terminate

the *Contractor's* obligation to Provide the Works for any reason under clause 90.2 of the *conditions of contract* (R22)".

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)".

Delete procedure P4 and replace with:

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

Clause 93.1      Delete and substitute:

"93.1              The amount due on termination includes (A1)

- an amount due assessed pursuant to sub-clause 50.2 but excluding any amount for Plant and Materials,
- an amount assessed under sub-clause 93.1A for Plant and Materials properly incorporated into the *works* and to which the Employer has title,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *works*, excluding any costs for Plant and Materials,
- any amounts retained by the *Employer*, and
- a deduction of any un-repaid balance of an advanced payment."

Clause 93.1A      Insert a new clause:

"93.1A              The amount due on termination for Plant and Materials properly

incorporated into the *works* is assessed

- using the appropriate rates and lump sums in the Activity Schedule,
- to the extent that there is no appropriate rate or lump sum in the Activity Schedule by using other appropriate rates and lump sums in the Schedule of Capital Works Rates,
- to the extent that there is no appropriate rate or lump sum in the Schedule of Capital Works Rates, by using the rates or lump sums in the Schedule of Capital Works Rates for plant and materials of a similar character to the Plant and Materials,
- to the extent that there is no rate or lump sum in the Schedule of Capital Works Rates for plant and materials of a similar character to the Plant and Materials, using Defined Cost for Plant and Materials.”

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.”

## Dispute Resolution

Option W2 Delete and substitute: "The Parties follow the procedure set out in Clause 66 of the TCMS Agreement for the avoidance and resolution of any Dispute arising under or in connection with this contract."

## 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: "five days"

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 X5                      If the Contract Data indicates that Secondary Option X5 applies, in clause X5.1 after the first bullet point insert a new bullet point:

- “the Target Commissioning Date,”

Option X7                      If the Contract Data indicates that Secondary Option X7 applies, 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. A certificate certifying that the *works* are Commissioned is not take over.”

Option                      X13    If the Contract Data indicates that Secondary Option X13 applies:

(Performance  
Bond)

In line 3 delete the words “in the form set out in the Works Information” and replace with “in the relevant form set out in Schedule 19 of the TCMS Agreement with such amendments as the Authority may agree with the Contractor (with both Parties acting reasonably).”

Delete “If the bond ... within four weeks of the Contract Date” and replace with “If the bond was not given before the Contract Date, it is given to the *Employer* within 14 days of receipt of the Works Instruction”.

## Shorter Schedule of Cost Components

At the end of the first sentence insert “if such component is partially incurred in relation to the other matters or is a head office or overhead the cost such amount is not included”.

## **Z2 Responsibility for Statutory Undertakers**

**Z2.1A** Without prejudice to the generality of Paragraph 1 of the Special Conditions of the TCMS Agreement and to the extent of any conflict the following provisions of Z2 apply.

**Z2.1** 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,
- liaises with the *Employer* regarding the orders which need to be placed by the *Employer* with Statutory Undertakers in connection with those measures which have been identified or any other measures or requirements which become necessary as a consequence of or to facilitate the *works*,
- manages delivery of any measures to be undertaken by the Statutory Undertakers and co-ordinates with all Statutory Undertakers the taking of those measures and the execution of the *works*,

and the *Employer* as the *Contractor's* principal pays the Statutory Undertaker's allowable costs in respect of these measures.

The *Contractor*

- is responsible (at no cost to the *Employer*) for ensuring the Statutory Undertaker's compliance with any agreement or arrangement entered into under clause Z2
- indemnifies and keeps indemnified the *Employer* against
  - all claims demands actions and proceedings
  - costs charges and expenses arising therefrom
  - loss or damage to any property
  - increased costs of working or
  - business interruption

which may be brought or made by any Statutory Undertaker in connection with

such an agreement including but not limited to the negligence or default of the *Contractor*.

**Z2.2** 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 Z2.1 and for all periods required in the taking of measures which are the subject of clause Z2.1.

**Z3      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.

**Z4      Considerate Constructor Scheme**

If required by the Works Information the *Contractor*

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

## ANNEX 1

### CONTRACT DATA

#### Part one - Data provided by the *Employer*

##### Statements given in all contracts

- 1 General
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2, such of secondary Options X5, X7 and X13 as are stated in the Build Brief to apply (if any), Option Y(UK)2 (with amendments dated September 2011) and Option Z of the NEC3 Engineering and Construction Contract (June 2005 with amendments June 2006)
  - The *works* are  
  
as described in the Build Brief  
.....
  - The *Employer* is  
  
Name TfL  
.....  
Address Windsor House, 42-50 Victoria Street  
.....  
London, SW1H 0TL  
.....  
unless otherwise stated in the Build Brief
  - The *Project Manager* is the Engineer identified in the Build Brief
  - The *Supervisor* is the Engineer identified in the Build Brief
  - The *Adjudicator* is ..... an independent person appointed  
.....  
to act as an adjudicator in accordance with  
.....  
Clause 66 of the TCMS Agreement  
.....

- The Works Information is contained in Annex C21 of Schedule 3, Part 2: Capital Works as supplemented by any additional information identified in and/or annexed to the Build Brief which is identified as forming part of the Works Information
  - The Site Information is as set out or referred to in the Build Brief
  - The *boundaries of the site* as stated in the Build are \_\_\_\_\_ Brief
  - The *language of this contract* is \_\_\_\_\_ English
  - The *period for reply* 1 week unless is \_\_\_\_\_ otherwise stated in the Build Brief
  - The *tribunal* The courts of England and Wales is \_\_\_\_\_
  - The following matters will be included in the Risk Register  
None, unless otherwise stated in the Build Brief
  - The principal contractor for the purposes of the CDM Regulations is:  
The *Contractor* unless otherwise stated in the Build Brief
  - Sub-clause 60.1(2A) does not apply unless otherwise stated in the Build Brief
- 3 Time
- The *starting date* is as stated in the Build Brief
  - The *access dates* are as stated in the Build Brief

- The *Contractor* submits revised programmes at intervals no longer than 4 weeks or at such shorter intervals as the *Employer* may state in the Build Brief (having regard to the duration of the *works*).

#### 5 Payment

- The *currency of this contract* is pounds sterling
- The *assessment interval* is reporting period as defined in TCMS Agreement
- The *interest rate* is 2% per annum (not less than 2) above the base rate of the HSBC bank
- The *Contractor* submits invoices in hard copy unless otherwise stated in the Build Brief

#### 6 Compensation events

- The place where weather is to be recorded is

London City Airport

- 
- The *weather measurements* to be recorded for each calendar month are
    - the cumulative rainfall (mm)
    - the number of days with rainfall more than 5mm
    - the number of days with minimum air temperature less than 0 degrees Celsius
    - the number of days with snow lying at 09:00 hours GMT
    - The *weather measurements* are supplied by The Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB, United Kingdom
    - The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at London City Airport and which are available from The Met Office



### **Where no recorded data are available**

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

### **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 as stated in the Build Brief
- The *target commissioning date* is as stated in the Build Brief
- If Option X5 applies the *target commissioning date* for each section of the *works* is as stated in the Build Brief

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

- Not applicable

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

- The *Contractor* is to submit a first programme for acceptance within 1 week or within such longer or shorter period as may be agreed with the *Employer*

#### **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 as set out in the Build Brief

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

- Not applicable

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

- The period for payment 28 days is
- 

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

- These are additional *Employer's* risks

1 There are none

---

**If Option X1 is used**

- Not applicable

**If Option X3 is used**

- Not applicable

**If Option X5 is used**

- The *completion date* for each *section* of the *works* is as set out in the Build Brief

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

- Not applicable

**If Option X5 and X7 are used together**

- Delay damages for each *section* of the *works* are as set out in the Build Brief

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

- Not applicable

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

- Delay damages for Completion of the whole of the *works*  
  
are as stated in the Build Brief

**If Option X12 is used**

- Not applicable

**If Option X13 is used**

- The amount of the performance bond is 10% of the total of the Prices unless otherwise stated in the Build Brief

**If Option X14 is used**

- Not applicable

**If Option X16 is used**

- Not applicable

**If Option X17 is used**

- Not applicable

**If Option X18 is used**

- Not applicable

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

- Not applicable

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

- Not applicable

**If Option Z is used**

- The *additional conditions of contract* are those set out in Schedule 6 Part A of the TCMS Agreement

## Part two - Data provided by the *Contractor*

### Statements given in contracts

- The *Contractor* is

Name Siemens Plc (registered number 727817)

Address Faraday House, Sir William Siemens Square,  
Frimley, Camberley, GU16 8QD

- The *direct fee percentage* is 22%
- The *subcontracted fee percentage* is 15%
- The *working areas* are the Site and, subject to Clause 7.12 of the TCMS Agreement, the area(s) proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction
- The key people are, subject to Clause 7.12 of the TCMS Agreement, the people proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

(1) Name

Job

Responsibilities

Qualifications

Experience

(2) Name

Job

Responsibilities

.....

Qualifications

.....

Experience

.....

.....

- The following matters will be included in the Risk Register

none, unless otherwise stated in the Build Brief

.....

.....

.....

**Optional statements**

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

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

the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

.....

.....

.....

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

- The programme identified in the Contract Data is provided with the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

**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 as stated in the in the Build Brief
- The *target commissioning date* is proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction
- If Option X5 applies the *target commissioning date* for each section of the *works* is proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

**If Option A or C is used**

- The *activity schedule* is, subject to Clause 7.12 of the TCMS Agreement, proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

**If Option A, B, C or D is used**

- The tendered total of the Prices is, subject to Clause 7.12 of the TCMS Agreement, proposed in the Quotation or Proposal (as applicable) and confirmed in the relevant Works Instruction

**If Option A or B is used**

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

- The percentage for people overheads is 18%
- The published list of Equipment is the last edition of the list published by CECA (i.e. Civil Engineering Contractors Association)
- The percentage for adjustment for Equipment in the published list is 0% (state plus or minus)

- The rates for other Equipment are - none

Equipment	size or capacity	rate
.....	.....	.....
.....	.....	.....
.....	.....	.....

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

category of employee	hourly rate
Senior Engineer (5+ years of experience)	£66.61
Engineer (<5 years of experience)	£62.45
.....	.....

- The percentage for design overheads is 18%
- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are - none