



# **Bank Station Capacity Upgrade Project**

## **Invitation to Participate (ITP)**

**April 2012**

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## **Table of Contents**

|                   |   |
|-------------------|---|
| <b>Section 1</b>  | <b>Introduction</b>                               |
| <b>Section 2</b>  | <b>Intent of Innovative Contractor Engagement</b> |
| <b>Section 3</b>  | <b>Procurement Process</b>                        |
| <b>Section 4</b>  | <b>Instructions and Information to Bidders</b>    |
| <b>Section 5</b>  | <b>Contract Terms (illustrative)</b>              |
| <b>Section 6</b>  | <b>Project Requirement Statement (PRS)</b>        |
| <b>Section 7</b>  | <b>Information Agreement</b>                      |
| <b>Appendix A</b> | <b>Innovative Contractor Engagement timeline</b>  |

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**Section 1**

## **1. Introduction**

- 1.1. This Invitation To Participate (ITP) is being issued to bidders who have been shortlisted to tender for the award of a design and build (D&B) contract for the Bank Station Capacity Upgrade (SCU) Project (referred to as the Project) as advertised in the Official Journal of the European Union under Contract Notice 2011/S 224-363980. For this procurement process, LUL is following the Negotiated Procedure in accordance with the Utilities Contract Regulations 2006.
- 1.2. As part of the procurement process, London Underground Limited (LUL) has developed the Innovative Contractor Engagement (ICE) approach to allow for dialogue between LUL and each bidder in advance of the Invitation To Tender (ITT) being issued.
- 1.3. This ITP sets out the intent of the ICE approach in Section 2, an overview of the procurement process in Section 3, the instructions and information to bidders in Section 4, illustrative contract terms in Section 5, the Project Requirement Statement (PRS) in Section 6, and the Information Agreement in Section 7.
- 1.4. This ITP is issued to the four shortlisted bidders (referred to as the bidders) subject to the conditions set out in this document and the Information Agreements to be entered into between LUL and each bidder.

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**Section 2**

## **2. The Intent of Innovative Contractor Engagement (ICE)**

### **2.1. The Innovative Contractor Engagement procurement approach adopted by LUL is intended to:**

- engage the market early in the project life cycle to leverage maximum benefit from innovation;
- enter into a dialogue against a Project Requirement Statement (PRS), prior to finalising the ITT, to enable bidders to propose and discuss innovative ideas that identify and deliver significant cost, risk, programme and other benefits for the Project;
- establish an information agreement that protects bidders' competitive advantage resulting from their intellectual capital and innovation;
- treat innovative ideas brought forward as confidential and for them not to be shared with other bidders;
- include dialogue on commercial aspects such as optimising risk share and payment incentivisation;
- make any necessary amendments to the PRS and ITT documentation to accommodate the innovative ideas that can bring significant benefits to the Project;
- make any necessary amendments to the PRS and ITT documentation to allow for constraint removal where conflicts exist;
- contribute a fee towards the bidding costs in bringing forward innovative ideas;
- equitably reward all bidders for the value of the innovative ideas adopted as a result of the procurement process
- assist bidders in understanding the objectives of the Requirement Statement and the criteria by which innovative ideas will be evaluated;
- assist bidders in understanding the development of the design to date;
- allow for the award of a contract in advance of making a Transport and Works Act (TWA) Order application, so that the innovative ideas and design can be included as necessary in the TWA Order application made by LU;, and
- assist early development of a structured management approach to facilitate teamwork and a shared understanding of the delivery stage, prior to contract award.

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**Section 3**

### **3. The Innovative Contractor Engagement Procurement Process**

- 3.1. LUL has structured the Innovative Contractor Engagement as a single seamless procurement process made up of three distinct stages.

#### Dialogue

- 3.2. The dialogue on technical, commercial, and other aspects of the Project shall commence with the issue of this ITP, where with LUL each bidder will identify and develop their innovative ideas that may deliver significant benefits for the Project.
- 3.3. LUL will need to treat all bidders fairly and equitably in the time given to additional dialogue. Any requests for additional dialogue time will in any event be subject to the availability of LUL resources and the overall procurement timetable.
- 3.4. On completion of the dialogue, at LUL's request, each bidder will produce a Request to Proceed (RTP) statement including their innovative ideas that meet the PRS.
- 3.5. The arrangements for protecting the confidentiality of the unique and innovative ideas of each bidder contained in their RTP are set out in the Information Agreement. The intention is that each bidder will be able to employ these ideas when responding to the ITT.
- 3.6. It is a key part of the ICE approach that innovative ideas and in particular ideas that could affect land take, the TWA Order application, and the consents required for the Over Site Development (OSD) are brought forward in this dialogue phase. If they are brought forward subsequently, they may be considered non-compliant with the ITT requirements when evaluated.

#### Invitation to Tender

- 3.7. LUL will issue an ITT taking account of the dialogue and RTP statements from each bidder, and bidders will respond to the ITT. The ITT will include the detailed evaluation criteria and scoring to be applied to bidders proposals
- 3.8. The conclusion of the ITT evaluation will be a recommendation that the Project team seek to finalise a contract with a preferred bidder, or to seek Best and Final Offers (BAFO) from two or more bidders followed by a preferred bidder stage, or not to award a contract at all.

#### Integration

- 3.9. Once a preferred bidder has been identified, LUL will seek to finalise contractual terms and agree all the pre-mobilisation arrangements including KPIs in advance of contract award to the successful bidder.

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**Section 4**

#### **4. Instructions and Information to Bidders**

- 4.1. The following section sets out the instructions and information to the bidders in respect of this Invitation to Participate.

##### Engagement with Bidders

- 4.2. There is a briefing day on 20 April 2012 with all bidders together at the start of the ICE, to give an overview of its requirements, the development of the current design, and the procurement objectives and governance.
- 4.3. A closed confidential briefing day with each bidder will be held between 14 and 18 May 2012, where LUL will provide further detail on design development and respond to bidders questions when they have had time to review the project documentation
- 4.4. The ITP (including the Information Agreement) is issued in draft at the briefing day on 20 April. Bidders will need to confirm their acceptance of the ITP terms and provide a signed final Information Agreement to LUL by 11 May 2012, in advance of these confidential briefing days.
- 4.5. Following these briefings, two further closed confidential meetings will be held where LUL and each bidder will be able to discuss key issues from both parties and develop their innovative ideas.
- 4.6. LUL will also arrange a confidential meeting with each bidder to discuss commercial terms.
- 4.7. Each bidder will be able to request further confidential meetings with LUL on technical, commercial, or other topics they would like to develop their innovative ideas on.
- 4.8. In advance of any meetings, LUL and the respective bidder will establish the agenda items to be discussed so that both parties can best deploy the necessary individuals and resources required.

##### Evaluation Criteria and Scoring

- 4.9. Bidders' proposals as part of the dialogue will not be evaluated separately but as part of the overall proposal submitted in response to the final ITT. Detailed evaluation criteria and scoring weights will be included in the ITT.
- 4.10. LUL's requirements on evaluation criteria, weightings and scoring method may change during the dialogue phase and LUL reserves the right to alter its requirements in the ITT.

## Key Dates

4.11. The key dates for the procurement process are shown below. These key dates are provided for guidance only and are subject to change.

| <b>Procurement Activity</b>  | <b>Timeframe Guide</b> |
|--|------------------------|
| Bidder Briefing Day  | 20 April 2012          |
| Issue of draft Invitation to Participate including Information Agreement | 20 April 2012          |
| Bidders confirm ITP terms and signed Information Agreement               | 11 May 2012            |
| Confidential Bidder Briefing Day   | 14 to 18 May 2012      |
| Request to Proceed return  | 22 August 2012         |
| Issue ITT  | October 2012           |
| ITT Submission   | January 2013           |
| Tender Evaluation complete   | April 2013             |
| Best & Final Offer (if required)   | May 2013               |
| Approvals complete   | June 2013              |
| Contract Award   | July 2013              |

4.12. Bidders should not make any public reference to the Project or their participation in this procurement without written agreement from LUL.

## Bid Costs

4.13. Except as expressly provided below, LUL will not be liable to any bidder for any costs howsoever incurred in participating in this ITP, the preparation of bids, and responding to the ITT.

4.14. LUL will make a contribution of £200,000 towards each bidder's costs – half to be paid after the ITP terms are accepted and the Information Agreement is signed, and half following receipt of a Request To Proceed statement at the end of the dialogue.

## Communications

4.15. All communication with LUL with reference to the submission of technical queries or requests for information must be via the remote SharePoint or Livelink access to the Bank SCU Project Data Room.

4.16. Any other communications should be made to:

**Paul Wiltshire**  
**Commercial Manager – Stations**  
**Commercial Directorate Rail & Underground**  
**London Underground Limited**  
**8<sup>th</sup> Floor**  
**Albany House**  
**London SW1H 9EA**

**Tel:** [REDACTED]  
**Email:** [BankSCUProjectProcurement@tfl.gov.uk](mailto:BankSCUProjectProcurement@tfl.gov.uk)

4.17. Any other communications regarding this ITP may not be considered or responded to.

4.18. To support LUL's stakeholder management undertakings, bidders shall not or make any attempt to access any buildings in the Bank area in connection with this ITP without LUL's agreement. Any information required in relation to buildings or otherwise should be directed to LUL.

#### Changes to Requirements

4.19. Bidders' attention is drawn to the fact that LUL's requirements as stated in the Project Requirement Statement (Section 5) may change during the dialogue phase, both as a result of the dialogue, and due to internal or external factors. LUL reserves the right to introduce, modify or remove its requirements during the dialogue phase.

#### Freedom of Information

4.20. Bidders should be aware that this ITP and any response to this ITP may be disclosed under the Freedom of Information Act 2000 (FOIA).

4.21. In relation to this ITP bidders shall provide all assistance reasonably requested by LUL to ensure that LUL complies with its obligations under the FOIA and all related or subordinate legislation.

4.22. LUL is obliged by law under the FOIA to supply the public with information relating to all areas of its work and is under a duty to operate with openness a transparency unless an exemption applies.

4.23. LUL shall be responsible for determining whether information is exempt under the FOIA and for determining what information will be disclosed. Further information is available from:

[www.tfl.gov.uk/tfl/foi](http://www.tfl.gov.uk/tfl/foi).

4.24. All bidders must, in response to this ITP and in any subsequent discussion, notify LUL of any information which they consider to be eligible for exemption from disclosure under the FOIA. Such information

must be referred to as “Reserved Information” and identified in the bidders responses. Reserved Information may be made available by LUL on request. Even information identified as Reserved Information may have to be disclosed.

4.25. LUL will require bidders to supply additional information and/or provide assistance pursuant to any FOIA request received by LUL.

#### Responsible Procurement Policy

4.26. Bidders should be aware that the Greater London Authority (GLA) has developed a Responsible Procurement Policy (RPP), through which it aims to improve London’s sustainability across the following themes:

- Encouraging a diverse base of suppliers
- Promoting fair employment practices
- Promoting greater environmental sustainability
- Promoting community benefits
- Encouraging ethical sourcing practices
- Meeting strategic labour needs and enabling training opportunities
- Promoting workforce welfare

4.27. The seven themes are set out in more detail in the GLA and TfL public websites which may be accessed using the following link:

[www.tfl.gov.uk/businessandpartners/sellingtotfl/1337.aspx](http://www.tfl.gov.uk/businessandpartners/sellingtotfl/1337.aspx)

#### Disclaimer

4.28. The receipt of this ITP shall not be taken as constituting a contract for the Project.

4.29. Information provided does not purport to be comprehensive. LUL does not accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in this ITP.

4.30. No representation or warranty, expressed or implied, is or will be given by LUL or any of its officers, employees, servants, agents or advisers with respect to the information or opinions contained in this ITP or on which this ITP is based. Any liability in respect of such representations or warranties, howsoever arising, is hereby expressly disclaimed but nothing in this ITP shall exclude or restrict liability for fraudulent misrepresentations.

4.31. No information in this document is, or should be relied upon, as an undertaking or representation as to any ultimate decision of LUL’s in relation to the Project. LUL reserves the right without prior written notice to change the procurement process detailed in the ITP or to amend the

information provided, including without limitation changing the timetable, the scope and nature of the procurement, and/or the procurement process. In particular, LUL reserves the right to issue circulars to bidders providing further information or supplementing and/or amending the procurement process for this ITP. In no circumstances shall LUL incur any liability in respect of any changes.

- 4.32. Direct or indirect canvassing of the Mayor of London, any members of the Greater London Authority, employees, directors, board members, agents and advisers of LUL / Transport for London by any person concerning the contract or any related procurement process, and the attempt to procure information from any of the foregoing covering the contract may result in disqualification of the person and/or the relevant organisation from consideration for the contract.
- 4.33. LUL reserves the right to award the contract in whole or part or not at all as a result of this ITP.

#### Good Faith

- 4.34. In responding to this ITP, the bidder undertakes to respond in good faith and that it will not at any time communicate with any person (other than LUL, its advisers or third parties directly concerned with the preparation or submissions of its response) any details of its response.
- 4.35. Bidders are required to confirm that the principles described in this section have been or will be brought to the attention of all consortium members, sub-contractors and associated companies which are or will be providing services or materials connected with their response.

#### Accuracy of Information

4.36. Bidders are required to confirm that:

- All information contained in any response at any time in relation to this ITP is true, accurate and not misleading and that all opinions stated in any part of a response are honestly held and that there are reasonable grounds for holding such opinions; and
- Any matter that arises that renders any of such information untrue, inaccurate or misleading will be brought to the attention of LUL immediately.

4.37. The bidder's response to the ITT shall take precedence over all previous proposals, discussions and correspondence.

#### Intellectual Property Rights

4.38. All intellectual property rights in this ITP and in the information contained or referred to in it shall remain the property of LUL and/or third parties and bidders shall not obtain any right, title or interest therein.

### Changes in Circumstances

- 4.39. Each bidder (including for this purpose, each participant in any joint venture, consortium arrangement) is required to inform LUL promptly, and in any case no later than seven (7) days after the occurrence of:
- any change to its corporate structure from that set out in its response to the Prequalification Questionnaire;
  - any change to any other information provided to LUL as part of the pre-qualification process; or
  - any other change to its circumstances, or basis of its response to the Prequalification Questionnaire, which may be expected to influence LUL's decision on its suitability for receipt of this ITP or to be selected as the successful tenderer.
- 4.40. LUL reserves the right to approve or reject the changes referred to above (including any changes to the basis on which the bidder pre-qualified to receive this ITP). A rejection by LUL of the changes may result in the bidder being excluded from further participation in this procurement process.
- 4.41. LUL reserves the right, and may in certain cases be required under the procurement governance, to disqualify any bidder that has been selected to receive this ITP where the composition of the bidder's bid vehicle, joint venture or consortium has changed after the announcement of those bidders who prequalified to receive this ITP. Bidders are therefore advised to discuss any proposed changes of this nature with LUL before they are put into effect.
- 4.42. Where, following notification to LUL by a bidder at any stage of a material change in any information provided in the bidder's response to the Prequalification Questionnaire (or failure to give such notification), LUL is of the opinion that the bidder does not have, or is unlikely by the date of commencement of the works under the D&B contract to have, an appropriate financial position, technical capability or managerial competence LUL reserves the right to disqualify the bidder from further participation in this procurement process.

### Conflict of Interest

- 4.43. If any conflict of interest or potential conflict of interest between a bidder, its advisers, TfL's advisors or any combination thereof becomes apparent to that bidder, it shall inform LUL immediately. In such circumstances, LUL shall at its absolute discretion, decide on the appropriate course of action. If LUL becomes aware of any conflict of interest that the bidder has not declared to LUL, the bidder may be disqualified from further participation in this procurement process.

Information confidentiality

4.44. The arrangements for keeping information exchanged between LUL and the bidders are set out in the Information Agreement in Section 7 of this document.

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**Section 5**

## **5. Contract terms (illustrative)**

- 5.1. LUL has recently reviewed and revised parts of the NEC3 contract terms it wishes to use, including Z clauses and Works Information. The revised NEC3 ECC Option C contract terms and Contract Data Part 1 are included here for information purposes only to give bidders an understanding of the format and detail that could be included in an ITT, and as a basis for bidders to engage with LUL in the dialogue phase.
- 5.2. Text in red indicates the Z clauses and square brackets indicate optional statements.
- 5.3. Bidders' attention is drawn to the fact that LUL's requirements may change during the dialogue phase, both as a result of the dialogue, internal and external factors. LUL reserves the right to introduce, modify or remove requirements during the dialogue phase.
- 5.4. Any formal Invitation to Tender issued, including any contract terms, will be an Invitation to Tender letter from the Commercial Director – Rail & Underground or their delegated/nominated representative.

## CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION C

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006 and 2011 amendments to the NEC3 suite of contracts)

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## CONTENTS

|  |        |   |         |
|--|--------|---|---------|
| <b>Core clauses</b>                        | 1      | General   | 1       |
|  | 2      | The <i>Contractor's</i> main responsibilities   | 9       |
|  | 3      | Time  | 12      |
|  | 4      | Testing and Defects   | 15      |
|  | 5      | Payment   | 16      |
|  | 6      | Compensation events   | 20      |
|  | 7      | Title   | 26      |
|  | 8      | Risks and insurance   | 27      |
|  | 9      | Termination   | 32      |
| <b>Main Option clauses</b>                 | C      | Target contract with activity schedule  | Various |
| <b>Dispute resolution Note</b>             | W      | Option W2 is not used<br>Option W1 is not used  | 47      |
| <b>Secondary Option clauses</b>            | X1     | Price adjustment for inflation  | 47      |
|  | X2     | Changes in the law  | 48      |
|  | X4     | Parent company guarantee  | 48      |
|  | X5     | Sectional Completion  | 48      |
|  | X6     | Bonus for early Completion  | 48      |
|  | X7     | Delay damages   | 49      |
|  | X12    | Partnering  | 49      |
|  | X13    | Performance bond  | 50      |
|  | X14    | Advanced payment to the <i>Contractor</i>   | 51      |
|  | X15    | Limitation of the <i>Contractor's</i> liability for his design to reasonable skill and care | 51      |
|  | X16    | Retention   | 52      |
|  | X17    | Low performance damages   | 52      |
|  | X18    | Limitation of liability   | 52      |
|  | X20    | Key Performance Indicators  | 53      |
|  | X21    | Single Point Design Responsibility  | 53      |
|  | X22    | Novation of Associated Contracts  | 54      |
|  | X23    | Key Person Succession Plan  | 54      |
|  | X24    | Fee Cap   | 55      |
|  | X25    | Escrow Agreement  | 55      |
|  | Y(UK)2 | The Housing Grants, Construction and Regeneration Act 1996                                  | 56      |
|  | Z      | Additional conditions of contract   | 56      |
| <b>Note</b>                                |        | Options X8 to X11, X19, Y(UK)1 and Y(UK)3 are not used                                      |         |
| <b>Schedule of Cost Components</b>         |        | Not used  | 57      |
| <b>Shorter Schedule of Cost Components</b> |        |   | 57      |
| <b>Supplementary Notes</b>                 |        |   | 59      |



## CORE CLAUSES

### 1 General

|         |                                     |  |
|---------|-------------------------------------|--|
|         | <b>Actions</b>                      | <b>10</b>  |
|         |                                     | 10.1 The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.   |
|         | <b>Identified and defined Terms</b> | <b>11</b>  |
| Z1.1    |                                     | 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.  |
|         |                                     | 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes.  |
| Z1.1.1  |                                     | (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none"><li>done all the work which the Works Information states he is to do by the Completion Date <del>and</del></li><li>done all the work necessary for the works to be Available and</li><li>corrected notified Defects which would have prevented the <i>Employer</i> from using the works and Others from doing their work.</li></ul> |
|         |                                     | If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the works and for Others to do their work.   |
| Z1.1.2  |                                     | (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.   |
| Z1.1.3  |                                     | (4) The Contract Date is the date <del>when this contract came into existence</del> of this contract.  |
| Z1.1.4  |                                     | (5) A Defect is <ul style="list-style-type: none"><li>a part of the works which is not in accordance with the Works Information or the requirements of this contract, or</li><li>a part of the works designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted.</li></ul>                                   |
| Z1.1.5  |                                     | (6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none.   |
|         |                                     | (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the works.  |
| Z1.1.5A |                                     | (8) The Fee is the sum of the amounts calculated by applying the <del>subcontracted fee percentage</del> to the Defined Cost of both subcontracted work and <del>the direct fee percentage to the Defined Cost of other work.</del>  |
|         |                                     | (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.   |
| Z1.1.6  |                                     | (10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , <del>the Adjudicator</del> , the <i>Adjudicator</i> , the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .   |
|         |                                     | (11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns) and the <i>Contractor</i> .   |
|         |                                     | (12) Plant and Materials are items intended to be included in the works.   |

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

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

(23) Defined Cost is

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

and

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

less Disallowed Cost.

Z1.41.1

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

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
  - ~~follow an acceptance or procurement procedure stated in~~ comply with the requirements of the Works Information or
  - give an early warning which this contract required him to give
- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- results from paying a Subcontractor more for a compensation event than

is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,

- is attributable to a compensation event under a subcontract which is not also a compensation event under this Contract,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2).

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with **Standards** or a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested ~~and~~
- costs incurred by the *Contractor* through providing a replacement person as described in clauses 24.1A and 24.1B,
- preparation for and conduct of an adjudication or proceedings of the ~~tribunal~~-courts,
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,
- strikes, riots and civil commotion confined to the *Contractor's* employees and/or any Subcontractor's employees, and
- profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor, [and
- profit payable between each party comprising the *Contractor*.]<sup>1</sup>

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

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

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

## Interpretation and the law

Z1.3

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

Z1.3.1 12.1AReferences to "this contract" mean the contract between the *Employer* and the *Contractor* including the documents listed as forming the contract in the Form of Agreement.

Z1.3.1A 12.1BIn this contract, unless the context otherwise requires, references to:

- (a) "including" mean "including without limitation", and
- (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).

Z1.3.2 12.2 This contract is governed by and shall be construed in accordance with the law of ~~the contract~~ and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

<sup>1</sup> Delete wording in square brackets if the *Contractor* is a joint venture

|         |  |   |
|---------|--|---|
| Z1.3.3  | 12.3A  | Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.   |
| Z1.3.4  | 12.4   | <del>This contract is the entire agreement between the Parties</del> supersedes any previous agreement, arrangement or understanding between the <i>Employer</i> and the <i>Contractor</i> in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the <i>Employer</i> and the <i>Contractor</i> in relation to such matters. The <i>Employer</i> and <i>Contractor</i> acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.  |
| Z1.3.5  | 12.5   | The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the <i>conditions of contract</i> .   |
| Y2.1(2) | 12.6   | A period of time stated in days is a period calculated in accordance with Section 116 of the Act.   |
| Z1.3.6  | 12.7   | References in this contract to “applicable law” are deemed to include Statutory Requirements and include: <ul style="list-style-type: none"> <li>• that law as from time to time amended, re-enacted or substituted and</li> <li>• any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.</li> </ul> <p>In performing his obligations under this contract, the <i>Contractor</i> complies with the <i>law of the contract</i>, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the <i>Contractor</i>. Laws are regarded as applicable to the <i>Contractor</i> where they impose duties, obligations or restrictions on the <i>Employer</i> or TfL in relation to the Underground Network and/or its operation, and the <i>Contractor</i> performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the <i>Contractor</i>.</p> |
| Z1.3.7  | 12.8   | (a) Subject to sub-clause 12.8(b), the <i>Employer</i> and the <i>Contractor</i> do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this contract.<br><br>(b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the <i>Contractor</i> where such provision confers any benefit or purports to confer a benefit on such member.   |
| Z1.3.8  | 12.9   | Failure by the <i>Employer</i> 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 <i>Contractor</i> 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.  |
| Z1.3.9  | 12.10  | If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.   |
|         | <b>Contract Administration Management System</b> |   |
| Z1.3A   | 12A.1  | Notwithstanding clauses 13.1 – 13.2: <ul style="list-style-type: none"> <li>• the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information (“CAMS”);</li> <li>• all communications provided for in the contract are to be made exclusively through the CAMS (“CAMS Communications”) except for any categories of communications which the <i>Project Manager</i> notifies the <i>Contractor</i> from time to time are not to be made exclusively through CAMS; and</li> <li>• unless the <i>Project Manager</i> gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the parties following any procedure necessary to give</li> </ul>   |

effect to the CAMS.

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

## Communications 13

### Z1.4

#### Z1.4.1

- 13.1 If and to the extent that clause 12A is not applicable to the contract, each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

## The Project Manager and the Supervisor 14

### Z1.5

#### the Supervisor

#### Z1.5.1

- 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work ~~does not~~ changes the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.

#### Y2.1/Z1.5.2

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

## The Contractor's Representative

### Z1.5A.1

- 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor's Representative*. The *Contractor's Representative* acts on behalf of the *Contractor* under this contract. The

*Contractor's Representative* may, after notifying the *Employer* and the *Project Manager*, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor's Representative* in this contract includes an action by his delegate. The *Contractor's Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor's Representative* in accordance that clause.

**Adding to the Working** 15

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

**Early warning** 16

Z1.6

Z1.6.1

16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date, or
- impair the performance of the works in use
- change the Accepted Programme,
- adversely affect the work of Others,
- constitute a Defect,
- adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
- result in a breach of this contract or any subcontract,
- lead to the *Contractor* terminating or suspending any subcontract,
- cause a change to the Subcontractor Procurement Plan, or
- cause a breach of any applicable law.

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

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

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.

16.3 At a risk reduction meeting, those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with this contract, will take them and
- deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.

**Ambiguities and** 17

Z1.7

**Inconsistencies**

17.1 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.

Z1.7.1

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

**Illegal and impossible requirements 18**

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

**Prevention 19**  
Z1.8  
Z1.8.1

19.1 If an event occurs which

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

and which is not

- an event of insolvency identified in clause 91.1 of the *Contractor* or any Subcontractor or supplier;
- a shortage of labour, Plant, Materials or Equipment; or
- an event attributable to any fault of the *Contractor* or any of his employees or agents or any Subcontractor or supplier or any of their employees or agents

and which

- neither Party could prevent and
- a prudent and experienced contractor familiar with works similar to the works and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- the *Contractor* can demonstrate that he did not allow for it in his tender;

then this is a "Prevention Event" and the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

## 2 The Contractor's main responsibilities

|                                      |  |
|--------------------------------------|--|
| <b>Providing the Works</b>           | <b>20</b>  |
| Z1.9                                 |  |
| Z1.9.1                               | 20.1 The <i>Contractor</i> Provides the Works in <b>a regular and diligent manner and in accordance</b> with the Works Information.  |
|                                      | 20.2 <b>Not used (as not an Option C clause)</b>   |
|                                      | 20.3 The <i>Contractor</i> advises the <i>Project Manager</i> on the practical implications of the design of the works and on subcontracting arrangements.   |
| Z1.41.1A                             | 20.4 The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the works in consultation with the <i>Project Manager</i> and submits them to the <i>Project Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works <b>(or, if no interval is stated in the Contract Data, at 4 weekly intervals)</b> . Each forecast is in a format prescribed in the Works Information and contains an <b>An</b> explanation of the changes made since the previous forecast is submitted with each forecast.   |
|                                      | 20.5 <b>Not used (as not an Option C clause)</b>   |
| Z1.9.2                               | 20.6 These <i>conditions of contract</i> and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the <i>Contractor</i> both before and after the Contract Date.   |
| <b>The Contractor's design</b>       | <b>21</b>  |
| Z1.10                                |  |
| Z1.10.1                              | 21.1 The <i>Contractor</i> designs the parts of the works which the Works Information states he is to design <sup>2</sup> .  |
| Z1.10.2                              | 21.2 The <i>Contractor</i> submits the particulars of his design as the Works Information requires to the <i>Project Manager</i> for acceptance. <b>A reason</b> Reasons for not accepting the <i>Contractor's</i> design is that it does not comply with either the Works Information, <b>this contract</b> or the applicable law: <b>or that</b> <ul style="list-style-type: none"><li>• <b>it is such that it will not allow the works to be constructed,</b></li><li>• <b>it is such that if constructed the works will not be capable of being used for their intended purpose.</b></li></ul> The <i>Contractor</i> does not proceed with the relevant work until the <i>Project Manager</i> has accepted his design. |
|                                      | 21.3 The <i>Contractor</i> may submit his design for acceptance in parts if the design of each part can be assessed fully.   |
| <b>Using the Contractor's Design</b> | <b>22</b>  |
| Z1.11                                |  |
| Z1.11.1                              | 22.1 The <i>Employer</i> may use and copy the <i>Contractor's</i> design for any purpose <del>connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information</del> <b>specified in clause Z2.7.</b>  |
| <b>Design of Equipment</b>           | <b>23</b>  |
|                                      | 23.1 The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs him to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with <ul style="list-style-type: none"><li>• the Works Information,</li><li>• the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted or</li><li>• the applicable law.</li></ul>  |

<sup>2</sup> Where Option X21 (Single Point Design Responsibility) is selected delete the text of clause 21.1 and replace with "The *Contractor* is responsible for the design of all of the works".

## People 24

- Z1.12  
Z1.12.1
- 24.1 Subject to the provisions of Option X23 (if applicable), ~~the Contractor~~ either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- Z1.2.2
- 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:
- ceases to be employed to do the job stated in the Contract Data; and/or
  - (where Option X23 applies), the *Contractor* fails to comply with an accepted key person succession plan,
- then, subject to clause 24.1B, the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* agrees to reduce or waive this requirement.
- Z1.12.3
- 24.1B If the key person who ceases to be employed has not remained available for the duration of the *handover period* and/or has failed to properly instruct his replacement so as to avoid any repeated or sub-standard work being performed by the replacement key person (either during or after the *handover period*) and/or failed to comply with the handover requirements of the key person succession plan (if applicable), then the amount treated as Disallowed Cost for the purposes of clause 24.1A is multiplied (subject to the *Project Manager's* discretion to reduce or waive the increase) by a factor of 2. The *Project Manager's* assessment of the amount of Disallowed Cost pursuant to clauses 24.1A and 24.1B is without prejudice to any other rights and remedies the *Employer* may have arising from the replacement of a key person.
- Z1.12.4
- 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove ~~an employee~~ any person under his control. The *Contractor* then arranges that, after one day, ~~the employee~~ such person has no further connection with the work included in this contract.
- Working with the 25**
- Z1.13  
Employer and Others
- Z1.13.1
- 25.1 The *Contractor* co-operates with the *Project Manager* and Others in obtaining and providing information which they need in connection with their work and the works. He co-operates with Others, co-ordinates his activities with them and shares the Working Areas with them as stated in the Works Information.
- 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.
- Z1.13.2
- 25.3 If the *Project Manager* decides that the work does not or will not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs or will incur additional cost either
- in carrying out work or
  - by paying an additional amount to Others in carrying out work
- on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of as soon as practicable after the date when the Condition for the Key Date is met. ~~The *Employer's* right to recover the additional cost is his only right in these circumstances. The~~

*Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

Z1.13.3 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.

Z1.13.4 25.5 In the event that the works cause delay or disruption to the *Employer* and/or Others, the *Contractor* takes all reasonable steps to mitigate and minimise such delay or disruption.

## Subcontracting 26

Z1.14 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

Z1.14.1 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. **Reasons** A reason for not accepting the Subcontractor **include**is:

- that his appointment will not allow the *Contractor* to Provide the Works,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the proposed Subcontractor does not have an acceptable health and safety track-record on other projects.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.

Z1.14.2 26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless

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

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

- they will not allow the *Contractor* to Provide the Works, or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation-
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract;
- the proposed subcontract works represent too large a proportion of the total works,
- the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Works Information,
- the proposed subcontract does not oblige the Subcontractor to provide a Form of Warranty in favour of the *Employer* or other stated beneficiaries within 21 days of their appointment on the terms set out in Schedule 5 or 6 (as appropriate).

26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if

- an NEC contract is proposed and
- the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use

will not allow the *Contractor* to Provide the Works.

**Other responsibilities 27**

Z1.15

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

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

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

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

Z1.15.1

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

### 3 Time

| Starting, Completion and | 30   |
|--------------------------|--|
| Z1.16                    | <b>Key Dates</b>   |
|                          | 30.1 The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.  |
| Z1.16.1                  | 30.1A The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The <i>Supervisor</i> may attend the inspection.  |
| Z1.16.2                  | 30.2 The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he <del><i>Project Manager</i></del> decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.  |
|                          | 30.3 The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.  |
| Z1.17                    | <b>The programme</b> 31  |
|                          | 31.1 If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.  |
| Z1.17.1                  | 31.2 The <i>Contractor</i> shows on each programme which he submits for acceptance <ul style="list-style-type: none"><li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li><li>• planned Completion,</li><li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li><li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li><li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li><li>• provisions for<ul style="list-style-type: none"><li>• float,</li><li>• time risk allowances,</li><li>• <b>environmental and</b> health and safety requirements and</li></ul></li><li>• the procedures set out in this contract,</li><li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none"><li>• access to a part of the Site if later than its <i>access date</i>,</li><li>• acceptances,</li><li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li><li>• information from Others,</li></ul></li><li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use, <del>and</del></li><li>• <b>for each operation, a cost-loaded programme showing the forecast resources required for that operation,</b></li></ul> |

|         |           |   |
|---------|-----------|---|
|         |           | <ul style="list-style-type: none"> <li>• its access requirements in accordance with the Works Information, and</li> <li>• other information which the Works Information requires the Contractor to show on a programme submitted for acceptance.</li> </ul>   |
|         | 31.3      | <p>Within two weeks of the Contractor submitting a programme to him for acceptance, the Project Manager either accepts the programme or notifies the Contractor of his reasons for not accepting it. A reason for not accepting a programme is that</p> <ul style="list-style-type: none"> <li>• the Contractor's plans which it shows are not practicable,</li> <li>• it does not show the information which this contract requires,</li> <li>• it does not represent the Contractor's plans realistically or</li> <li>• it does not comply with the Works Information.</li> </ul> |
|         | 31.4      | <b>The Contractor provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.</b>  |
|         | <b>32</b> | <b>Revising the programme</b>   |
| Z1.18   |           |   |
| Z1.18.1 | 32.1      | <p>The Contractor shows on each revised programme</p> <ul style="list-style-type: none"> <li>• the actual progress achieved on each operation and its effect upon the timing of the remaining work,</li> <li>• the effects of implemented compensation events,</li> <li>• the effects of decisions reached and approved by the Project Manager at risk reduction meetings,</li> <li>• how the Contractor plans to deal with any delays and to correct notified Defects and</li> <li>• any other changes which the Contractor proposes to make to the Accepted Programme.</li> </ul> |
|         | 32.2      | <p>The Contractor submits a revised programme to the Project Manager for acceptance</p> <ul style="list-style-type: none"> <li>• within the period for reply after the Project Manager has instructed him to,</li> <li>• when the Contractor chooses to and, in any case,</li> <li>• at no longer interval than the interval stated in the Contract Data from the starting date until Completion of the whole of the works.</li> </ul>  |
|         | <b>33</b> | <b>Access to and use of the Site</b>  |
| Z1.19   |           |   |
| Z1.19.1 | 33.1      | <p>Subject to the provisions of the Works Information regarding access, the Employer allows access to and use of each part of the Site to the Contractor which is necessary for the work included in this contract. Access and use is allowed on or before the later of its access date and the date for access shown on the Accepted Programme.</p>  |
| Z1.19.2 | 33.1A     | <p>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.</p>  |
|         | <b>34</b> | <b>Instructions to stop or not to start work</b>  |
|         | 34.1      | <p>The Project Manager may instruct the Contractor to stop or not to start any work and may later instruct him that he may re-start or start it.</p>  |
|         | <b>35</b> | <b>Take over</b>  |
| Z1.20   |           |   |
|         | 35.1      | <p>The Employer need not take over the works before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the Employer takes over the works not later than two weeks after Completion.</p>  |
| Z1.20.1 | 35.2      | <p>The Employer may use or permit Others to use any part of the works before Completion has been certified. If he does so, he does not take over, and is not treated as having taken over, the part of the works when he (or Others) begins to use it and the Contractor remains</p>  |

responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or *Others* until take over is certified by the *Project Manager* in accordance with clause 35.3. ~~except if the use is~~

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

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

#### **Acceleration 36**

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

36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.

Z1.41.1B

36.3 **When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, then the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction.**

36.4 **Not used (as not an Option C clause).**

## 4 Testing and Defects

### Tests and inspections 40

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

### Testing and inspection before delivery 41

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

### Searching for and notifying Defects 42

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

- Z1.21.1 42.2 **Subject to sub-clause 46, u**Until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

### Correcting Defects 43

Z1.22

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.

Z1.22.1

- 43.2 **Subject to sub-clause 46, the**~~The~~ *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.

- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified

are not affected by the issue of the Defects Certificate.

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

#### Accepting Defects 44

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

#### Uncorrected Defects 45

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

#### Critical Defects 46

Z1.23

The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

## 5 Payment

#### Assessing the amount due 50

Z1.24

- 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur
- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
  - at Completion of the whole of the *works*.

Z1.24.1

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

- 50.2 The amount due is
- the Price for Work Done to Date,
  - 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.

- 50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.
- Z1.24.2 50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.
- Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A ~~on or before the assessment date~~. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of this contract* are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate the Fee and any *Contractor's* share using the exchange rates.
- Z1.24.4 50.7 Not used (as not an Option C clause).
- 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such documents have been delivered.
- Z1.24.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.24.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.24.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to 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 51

- Y1.1.1 51.1 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* ~~within one week of each assessment date~~. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other

payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.

- Y1.1.2 51.1A The date on which payment becomes due is ~~seven days after the assessment date~~ 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 ~~fourteen days or a different period for payment if state in the Contract Data~~ twenty eight days after the date on which payment becomes due.

- Y1.1.2A 51.1B The *Project Manager's* certificate is the *Employer's* notice of payment to ~~the Contractor~~ specifying the amount due at the payment due date (the notified sum) and stating the basis on which ~~the amount that sum~~ is calculated.

- Y1.1.2B 51.1C Not later than five days after receipt of the payment certificate the *Contractor* delivers to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.

- Y1.1.3 51.2 ~~Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the Project Manager does not issue a certificate which he should issue, Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.~~

- Y1.1.3A 51.2A If 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 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

- Y1.1.4 51.2B If either Party intends to pay less than the notified sum, he notifies the other Party not later than ~~seven days~~ one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

- Z1.25.1 51.3 If an amount due is corrected in a later certificate either
- by the *Project Manager* in relation to a mistake or a compensation event or
  - following a decision of the *Adjudicator* or the ~~tribunal~~ courts,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

- Z1.25.2 51.4 Interest is calculated on a daily basis at the *interest rate* and is ~~compounded annually~~ simple interest.

## Defined Cost 52

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

deductions for all discounts, rebates and taxes which can be recovered.

Z1.41.2

52.2 The *Contractor* keeps these records

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

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

The *Contractor's* share 53

53.1 The *Project Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

53.2 If the Price for Work Done to Date is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the *Contractor* pays his share of the excess.

53.3 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the whole of the *works* using his forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the *works*.

53.4 The *Project Manager* makes a final assessment of the *Contractor's* share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.

Z1.41.3

53.5 Without limiting sub-clauses 53.1 to 53.4 and 93, if at any time prior to Completion:

- the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from compensation events which have not yet been implemented); and
- the *Project Manager* assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices

then the *Project Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* reasonable assessment of the likely *Contractor's* share of the excess. Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4, or if applicable, 93.

The Activity Schedule 54

54.1 Information in the Activity Schedule is not Works Information or Site Information.

54.2 If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.

54.3 A reason for not accepting a revision of the Activity Schedule is that

- it does not comply with the Accepted Programme,
- any changed Prices are not reasonably distributed between the activities or

- the total of the Prices is changed.

55 Not used (as not an Option C clause).

Z1.26.1

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

- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
- any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.27.1

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

## 6 Compensation events

### Compensation events 60

Z1.28

Z1.28.1

60.1 The following are compensation events, but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event [and provided only to the extent that they are not attributable to the Olympic Embargo]<sup>3</sup>.

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

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

(2) ~~The *Employer*~~ Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its access date and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others (not being Statutory Undertakers)

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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<sup>3</sup> Shaded text to be deleted from contracts awarded after 2012 Olympics.

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

(13) A *weather measurement* is recorded

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

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

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

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

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

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

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

(18) A breach of contract or act of prevention on the part of ~~by the Employer-~~(except to the extent caused or contributed to by the *Contractor* or any *Subcontractor* or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.-

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

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

and which

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

Z1.28.2

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

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

Z1.28.3

60.3 **Subject to clause 17.1**, if there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

## Notifying 61 compensation

**Events** 61.1 For compensation events which arise from the *Project Manager* or the *Supervisor* giving an instruction or changing an earlier decision, the *Project Manager* notifies the *Contractor* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The

*Contractor* puts the instruction or changed decision into effect.

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

Z1.28A.1

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

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

If the *Contractor* does not notify a compensation event within ~~eight weeks of becoming aware~~ **four weeks of when he becomes aware, or ought reasonably to have become aware** of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not. **The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.**

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

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

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

If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

If the *Project Manager* does not notify his decision to the *Contractor* within either

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

the *Contractor* may notify the *Project Manager* to this effect. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

Z1.28A.2

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

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

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

## Quotations for compensation events 62

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

Z1.28B.1

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

compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

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

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

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

## Assessing compensation 63

Z1.29

### Events

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

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

The date when the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations divides the work already done from the work not yet done.

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

Z1.29.1

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

- **that the compensation event is the principal cause of the delay; and**
- **the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.**

**The *Project Manager* 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.

Z1.29.2

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

Z1.29.3

63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor*:

- did not give an early warning of a compensation event which an experienced contractor could have given, or
- did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,

the event is assessed as if the *Contractor* had given early warning at the appropriate time.

Z1.29.4

63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract.

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

63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.

63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.

**63.10 Not used (as not an Option C clause).**

63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is

- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted or
- a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event,

the Prices are reduced.

63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.

**63.13 Not used (as not an Option C clause).**

**63.14 Not used (as not an Option C clause).**

63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.

The *Project Manager's* 64

Z1.29A

Assessments

64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the

- time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
  - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- 64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme or
  - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- 64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.
- Z1.29A.2 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within ~~two~~four weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.
- Z1.29A.3 64.5 The *Project Manager* may extend the time allowed for the following actions:
- notification of a decision and/or instruction (cl. 61.4);
  - reply to a quotation (cl. 62.3); or
  - assessment of a compensation event (cl. 64.3 and cl. 64.4)
- provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.
- Implementing 65**  
**compensation events 65.1**
- 65.1 A compensation event is implemented when
- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
  - the *Project Manager* notifies the *Contractor* of his own assessment or
  - a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.
- 65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
- 65.3 Not used (as not an Option C clause).**
- 65.4 The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.

## 7 Title

|   |             |  |
|---|-------------|--|
| <b>The Employer's title to</b>  | <b>70</b>   |  |
| <b>Z1.30</b>  |             |  |
| <b>Plant and Materials</b>  | <b>70.1</b> | Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier – if the <i>Supervisor</i> has marked it as for this contract. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> . |
| <b>Z1.30.1</b>  |             |  |
| <b>Z1.30.2</b>  | <b>70.2</b> | Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. Subject to clause 70.1, the title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.   |
| <b>Z1.30.3</b>  | <b>70.3</b> | If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.   |
| <b>Marking Equipment, Plant and Materials outside the Working Areas</b> | <b>71</b>   |  |
|   | <b>71.1</b> | The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none"><li>• this contract identifies them for payment and</li><li>• the <i>Contractor</i> has prepared them for marking as the Works Information requires.</li></ul>   |
| <b>Removing Equipment</b>   | <b>72</b>   |  |
|   | <b>72.1</b> | The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.   |
| <b>Objects and materials within the Site</b>                            | <b>73</b>   |  |
|   | <b>73.1</b> | The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.   |
|   | <b>73.2</b> | The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.   |

## 8 Risks and insurance

|                               |           |   |
|-------------------------------|-----------|---|
| <b>Employer's risks</b>       | <b>80</b> |   |
| Z1.31                         | 80.1      | The following are <i>Employer's</i> risks. <ul style="list-style-type: none"><li>• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none"><li>• use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,</li><li>• negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or</li></ul></li><li>• a fault of the <i>Employer</i> [or a fault in his design] [other than a fault in his design]<sup>4</sup>.</li><li>• Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.</li><li>• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none"><li>• war, civil war, rebellion, revolution, insurrection, military or usurped power,</li><li>• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees and/or any <i>Subcontractor's</i> employees or</li><li>• radioactive contamination.</li></ul></li><li>• Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to<ul style="list-style-type: none"><li>• a Defect which existed at take over,</li><li>• an event occurring before take over which was not itself an <i>Employer's</i> risk or</li><li>• the activities of the <i>Contractor</i> on the Site after take over.</li></ul></li><li>• Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.</li><li>• Additional <i>Employer's</i> risks stated in the Contract Data.</li></ul> |
| Z1.31.1                       |           |   |
| Z1.31.2                       |           |   |
| <b>The Contractor's risks</b> | <b>81</b> |   |
|                               | 81.1      | From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .  |
| <b>Repairs</b>                | <b>82</b> |   |
|                               | 82.1      | Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.   |
| <b>Indemnity</b>              | <b>83</b> |   |
| Z1.32                         | 83.1      | <del>Each Party</del> The <i>Contractor</i> is responsible for and indemnifies the <i>Employer</i> , his employees and agents and members of the TFL Group against all Losses in respect of events or matters the other against claims, proceedings, compensation and costs due to an event which are is at his risk including [subject to any applicable limitation of liability under   |
| Z1.32.1                       |           |   |

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<sup>4</sup> If Secondary Option X21 is not used delete "other than a fault in his design". If Secondary Option X21 is selected delete "or a fault in his design"

Secondary Option X18]<sup>5</sup>:

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

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

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the works or the project, and
- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could not have been avoided by the *Contractor* using all reasonable and practical means.

Z1.32.2 83.2 The *Contractor's* liability of each Party to indemnify the *Employer*, his employees and agents and members of the TfL Group ~~other~~ is reduced if events at the other Party's *Employer's* risk contributed to the Losses claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the *Employer's* ~~other~~ Party's risk contributed, taking into account each Party's responsibilities under this contract. The *Contractor's* indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.

Z1.32.3 83.3 Notwithstanding any other clause in this contract the *Contractor's* liability for damage to existing structures belonging to the *Employer* which do not form part of the works shall be limited to £25,000 per occurrence. The *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* for such Losses.

**Remedies**

Z1.33 83A.1 The Parties acknowledge and agree that the payment or deduction of:

- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7 and/or low performance damages pursuant to Option X17; and
- (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

**Insurance cover 84**

Z1.34 84.1 The Parties provide ~~Contractor provides~~ the insurances stated in the Insurance Table ~~except any insurance which the Employer is to provide as stated in the Contract Data~~. The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.34.2 84.2 The insurances are in the joint names of the Parties and provide cover for events which are at the *Contractor's* risk from the starting date until the Defects Certificate or a termination certificate has been issued.

**INSURANCE TABLE**

| <b>Insurance against</b> | <b>Minimum amount of cover or minimum limit of indemnity</b> |
|--------------------------|--|
|--------------------------|--|

<sup>5</sup> If Secondary Option X18 is not selected, delete “,subject to any applicable limitation of liability under Secondary Option X18”

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

### Insurance Table

| Insurance Against  | Party Responsible for ensuring insurance is in place     | Minimum amount of cover or minimum limit of indemnity |
|--|--|---|
| <p><b>Construction All Risks insurance</b></p> <p>All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the works and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the works), equipment, temporary buildings and property owned by or supplied by the Employer.</p>  | <p>Employer</p> <p>in the joint names of the Parties</p> | <p>The full reinstatement value of the works</p>      |
| <p><b>Public liability insurance</b></p> <p>All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).</p> | <p>Employer</p> <p>in the joint names of the Parties</p> | <p>Not less than £25,000,000 per occurrence</p>       |

### Non-negligence insurance

Any expense, liability, loss claim or proceedings which the *Employer* incurs or sustains by reason of injury, loss of or damage to any property other than the *works*, Site materials or existing property of the *Employer* caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of carrying out the *works* (unless excluded by the terms and conditions of the policy)

*Employer*  
in the joint names of the Parties

Not less than £25,000,000 per occurrence

### Employer's liability insurance

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

*Contractor*

Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

### Contractor's Equipment loss insurance

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

*Contractor*

The replacement cost

### Professional Indemnity Insurance

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

*Contractor*

£2,000,000 for each and every claim or as otherwise stated in the Contract Data

- Z1.34.3      84.3      In respect of the insurances provided by the *Contractor*:
- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
  - the *Contractor* bears the cost of all premiums;
  - if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.
- Z1.34.4      84.4      The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.34.5      84.5      The *Contractor* procures that his Subcontractors (and sub-subcontractors of any tier) maintain:

- employer's liability (and where appropriate) motor liability insurances as required by law; and
  - professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- Z1.34.6 84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.

**Insurance policies 85**

- Z1.35  
Z1.35.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. **Reasons** ~~A reason~~ for not accepting the certificates is include:
- that they do not comply with this contract,
  - the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;
  - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.
- Z1.35.2 85.2 ~~Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud. Not used.~~
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- Z1.35.3 85.4 Any amount not recovered from an insurer (including, **excesses or deductibles**) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- Z1.35.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

**If the Contractor does 86**

- Z1.36  
not insure 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.
- Z1.36.1

**Insurance by the 87**

- Employer* 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.2 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.

- Z1.36.3 87.5 The *Contractor* shall comply, and shall ensure that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.4 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

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## 9 Termination

### Termination 90

Z1.37

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

**TERMINATION TABLE**

Z1.37.1

| Terminating Party     | Reason   | Procedure     | Amount due    |
|-----------------------|--|---------------|---------------|
| The <i>Employer</i>   | A reason other than R1–R24 <del>the reasons listed in this Termination Table</del> | P1 and P2     | A1, A2 and A4 |
|                       | R1–R15, R10A, <del>or</del> R18, R25A  | P1, P2 and P3 | A1 and A3     |
|                       | R17, <del>or</del> R20 or R26  | P1 and P3     | A1 and A2     |
|                       | R21  | P1 and P4     | A1 and A2     |
|                       | R22–R24  | P1, P2 and P3 | A1 and A3     |
|                       | R25  | P1 and P4     | A1 and A2     |
|                       | R26A   | P1, P2 and P3 | A1 and A3     |
|                       | [R27] <sup>6</sup>   | [P1 and P4]   | [A1 and A2]   |
| The <i>Contractor</i> | R1–R10, R10A, R16 or R19   | P1 and P4     | A1, A2 and A4 |
|                       | R17 or R20   | P1 and P4     | A1 and A2     |

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

Z1.37.2

- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment

<sup>6</sup> Only used if *additional termination events* are to be stated in the Contract Data. If not then delete the wording in square brackets.

certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.

90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

**Reasons for termination**

Z1.38  
Z1.38.1

91.1 Either Party may terminate if the other Party has done one of the following or its equivalent in other jurisdictions.

- If the other Party is an individual and has
  - presented his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
  - had a winding-up order made against it (R5),
  - had a provisional liquidator appointed to it (R6),
  - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
  - had an administration order made against it (R8),
  - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
  - made an arrangement with its creditors (R10).
- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

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

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

Z1.38.2

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

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

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).

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

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

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and

- either Party may terminate if the instruction was due to any other reason (R20).
- Z1.38.3 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
  - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,
- and which
- neither Party could prevent and
  - an experienced and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).
- Z1.38.4 91.8 The *Employer* may terminate the *Contractor's* appointment in the event of:
- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
  - a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.12 (R23),
  - any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
  - the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
  - A Change of Control (R25A).
- Z1.38.5 91.9 In the event that 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:
- the *Employer* notifies the *Project Manager* and the *Contractor* in writing as soon as reasonably practicable of the declaration or order;
  - the *Project Manager* issues a termination certificate to both Parties certifying the date the contract became or is to become ineffective or shortened; and
  - the contract is deemed for all purposes to have been terminated by the *Employer* on the date named in the termination certificate (R26).
- Notwithstanding the declaration or order, the provisions of clauses 90-93 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.
- Z1.38.6 91.10 [The *Employer* may terminate the *Contractor's* appointment if an event occurs which is an *additional termination event* (R27).]<sup>7</sup>
- Z1.41.4 91.11 Without limiting sub-clauses 53.1 to 53.5 and 93, the *Employer* may terminate if the *Project Manager* assesses at any time that (having regard to the Price for Work Done to Date and the total of the Prices at the relevant time):
- the final Price for Work Done to Date is likely to exceed the final total of the Prices; and
  - the resulting forecast of the *Contractor's* share of the excess

<sup>7</sup> Only used if *additional termination events* are stated in the Contract Data.

is likely to exceed the *share termination threshold* (R26A).

|                |                      |             |   |
|----------------|----------------------|-------------|---|
|                | <b>Procedures on</b> | <b>92</b>   |   |
| <b>Z1.39</b>   | <b>termination</b>   | 92.1        | On termination, the <i>Employer</i> may complete the <i>works</i> and may use any Plant and Materials to which he has title (P1).   |
| <b>Z1.39.1</b> |                      | 92.2        | The procedure on termination also includes one or more of the following as set out in the Termination Table. <b>In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the <i>Project Manager</i>.</b><br>P2 The <i>Employer</i> may instruct the <i>Contractor</i> to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of <b>and/or enter into a novation</b> of any subcontract or other contract related to performance of this contract to the <i>Employer</i> .<br>P3 The <i>Employer</i> may use any Equipment to which the <i>Contractor</i> has title to complete the <i>works</i> . The <i>Contractor</i> promptly removes the Equipment from Site when the <i>Project Manager</i> notifies him that the <i>Employer</i> no longer requires it to complete the <i>works</i> .<br>P4 The <i>Contractor</i> leaves the <b>Site and removes the Equipment from the Working Areas</b> <del>and removes the Equipment</del> <b>unless otherwise instructed by the <i>Project Manager</i>.</b> |
|                | <b>Payment on</b>    | <b>93</b>   |   |
|                | <b>termination</b>   | 93.1        | The amount due on termination includes (A1) <ul style="list-style-type: none"><li>• an amount due assessed as for normal payments,</li><li>• the Defined Cost for Plant and Materials<ul style="list-style-type: none"><li>• within the Working Areas or</li><li>• to which the <i>Employer</i> has title and of which the <i>Contractor</i> has to accept delivery,</li></ul></li><li>• other Defined Cost reasonably incurred in expectation of completing the whole of the <i>works</i>,</li><li>• any amounts retained by the <i>Employer</i> and</li><li>• a deduction of any un-repaid balance of an advanced payment.</li></ul>  |
|                |                      | 93.2        | The amount due on termination also includes one or more of the following as set out in the Termination Table.<br>A2 The forecast Defined Cost of removing the Equipment.<br>A3 A deduction of the forecast of the additional cost to the <i>Employer</i> of completing the whole of the <i>works</i> .<br><b>Z1.39.2</b> A4 The <del>direct fee</del> <i>percentage</i> applied to <ul style="list-style-type: none"><li>• for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or</li><li>• for Options E and F, any excess of the first forecast of the Defined Cost for the <i>works</i> over the Price for Work Done to Date less the Fee.</li></ul>  |
|                |                      | <b>93.3</b> | <b>Not used (as not an Option C clause).</b>  |
| <b>Z1.41.9</b> |                      | 93.4        | If there is a termination, the <i>Project Manager</i> assesses the <i>Contractor's</i> share after he has certified termination. His assessment uses, as the Price for Work Done to Date, the total of the Defined Cost which the <i>Contractor</i> has paid and which he is committed to pay for work done before termination <b>and the resulting Fee</b> . The assessment uses as the total of the Prices <ul style="list-style-type: none"><li>• the lump sum price for each activity which has been completed and</li><li>• a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.</li></ul>  |

**93.5 Not used (as not an Option C clause).**

**93.6 The *Project Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess.**

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## 2. Additional Conditions of Contract

### Contractor's Warranties

#### Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:

- PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*.

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request made no later than the Completion Date, duly executes and delivers to the *Employer* deeds of warranty in the appropriate form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

### Subcontractors' Warranties

#### Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in the appropriate form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of

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

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

Z2.3 Not used

### Warranties and Undertakings

#### Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-

being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,

- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

## Accounts and Records

### Z2.5

#### Z2.5.1 In this section:

##### Minimum Records means:

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

Z2.5.2 The *Contractor* maintains and procures in each subcontract that each of his Subcontractors (and sub-sub-contractors of any tier) maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Contractor* and his Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the *Employer* and his authorised representatives.

**Z2.5.3** The *Contractor* undertakes and procures that his Subcontractors (and sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and his authorised representatives may, from time to time during the performance of this contract and for 12 years following Completion, 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 any aspect of the *Contractor's* or any Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* rights pursuant to this sub-clause Z2.5.3 include the right to audit and check and to take copies of and extracts from any document or record of the *Contractor* or his Subcontractors including Minimum Records.

**Z2.5.4** The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:

- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
- (b) 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,
- (c) 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,
- (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
- (e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

## **Nuisance** **Z2.6**

**Z2.6.1** The *Contractor* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.

**Z2.6.2** Without prejudice to the *Contractor's* obligations under clause Z2.6.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

## **Intellectual Property Rights** **Z2.7**

### **Z2.7.1 Vesting of IPR**

The Parties agree that the IPR in all Documentation and works that is

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

#### **Z2.7.2 Background IPR**

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

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

In this section, "Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

**Z2.7.2A** The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* immediate access to all Documentation in whatever form requested by the *Project Manager* at any time but at the latest on termination or expiry of this contract.

#### **Z2.7.2B IPR Claims**

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

#### **Z2.7.3 Corporate IPR**

- (a) The *Employer* grants the *Contractor* a non-exclusive, non

transferable, royalty-free licence to the *Contractor* to use, and allow his Subcontractors to use, the Corporate IPRs for the duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.

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

## Assignment

### Z2.8

- Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).
- Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

## Confidentiality

### Z2.9

- Z2.9.1 The *Contractor* shall, and shall ensure that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.
- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.
- Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to

the consenting party in terms satisfactory to the consenting party.

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

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

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

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

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

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

Z2.9.9 Except as provided under deeds of warranty required by the *Employer* under Sub-clause Z2.1, the *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract or the *works* or the project.

Z2.10 Not Used.

#### Dispute Resolution Procedure

Z2.11

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

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

Z2.12

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

## TFL GROUP REQUIREMENTS

## Responsible Procurement

### Z2.13

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

## Crime and Disorder

### Z2.14

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

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

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

## London Living Wage

### Z2.15

- Z2.15.1 In this clause:

|                      |  |
|----------------------|--|
| "GLA Act"            | means the Greater London Authority Act 1999;   |
| "Greater London"     | means that term as it is used in the GLA Act;  |
| "London Living Wage" | means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the <i>Employer</i> ;     |
| "Mayor"              | means the person from time to time holding the office of Mayor of London as established by the GLA Act;  |
| "RPIX"               | means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree; |

- Z2.15.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

- Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:

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

## Data Transparency

### Z2.16

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

Z2.16.2 The Employer may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the Employer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Employer may in his absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The Employer shall make the final decision regarding publication and/or redaction of the Contract Information.

Z2.16.3 In this clause

#### “Contract Information”

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

#### “Transparency Commitment”

means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received

## Data Protection

### Z2.17

Z2.17.1 Without prejudice to sub-clause Z2.5, the Contractor at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Employer from time to time in relation to the processing of data and does not by any act or fault cause the Employer to be in breach of these requirements.

Z2.17.2 The Contractor:

- takes appropriate technical and organisational security measures satisfactory to the Employer against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data,
- provides the Employer and Project Manager with such information as they may reasonably require to satisfy themselves of compliance by the Contractor with the requirements of this clause

- Z2.11, and
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

#### **Conflict of Interest** Z2.18

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

#### **Freedom of Information** Z2.19

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

#### **Criminal Record Declarations**

Z2.20 Z2.20.1 In this section:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to

carry out, any aspects of the works.

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

- Z2.20.2 The Contractor shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (**“Declaration”**) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the works. The Contractor shall confirm to the Employer in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Contractor shall procure that a Relevant Individual notifies the Contractor immediately if he commits a Relevant Conviction throughout the duration of this contract and the Contractor shall notify the Employer in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.3 The Contractor is not permitted to engage or allow to act on behalf of the Contractor or any Subcontractor in the performance of any aspect of the works any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.4 The Employer may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.5 If the Contractor fails to comply with the requirements under Clauses Z2.20.2 and/or Z2.20.3, the Employer may, without prejudice to his rights under Clause 91.8, serve notice on the Contractor requiring the Contractor to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the works unless (in the case of non-compliance with Clause Z2.20.2) within 7 days of receipt of the notice the Contractor confirms to the Employer he has procured all of the Declarations required under Clause Z2.20.2.
- Z2.20.6 A persistent breach of Clause Z2.20.2 and/or Z2.20.3 by the Contractor shall constitute a material breach of this contract and entitles the Employer to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.7 In either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Contractor shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the works.
- Z2.20.8 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the Contractor to the Employer arising under this contract and the Contractor’s obligation to Provide the Works remain in full force and effect and the Contractor cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

#### **Best Value**

- Z2.21
- Z2.21.1 The Contractor acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Employer are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor assists the Employer (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this contract in order for the Employer (and, where appropriate, TfL) to achieve best value.

#### **Prohibited Acts**

- Z2.22
- Z2.22.1 The Contractor does not and uses his reasonable endeavours to procure

that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.

Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

Z2.22.3 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

Z2.22.4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

## DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation

|                                  |      |   |
|----------------------------------|------|---|
| Defined terms                    | X1   |   |
|                                  | X1.1 | (a) The Base Date Index (B) is the latest available index before the <i>base date</i> .<br><br>(b) The Latest Index (L) is the latest available index before the date of assessment of an amount due.<br><br>(c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.  |
| Price Adjustment Factor          | X1.2 | If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.<br><br>The Price Adjustment Factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating price adjustment after this date.  |
| Compensation events              | X1.3 | The Defined Cost for compensation events is assessed using the <ul style="list-style-type: none"><li>• Defined Cost current at the time of assessing the compensation event adjusted to <i>base date</i> by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due and</li><li>• Defined Cost at <i>base date</i> levels for amounts calculated from rates stated in the Contract Data for employees and Equipment.</li></ul>   |
| Price adjustment Options C and D | X1.5 | Each time the amount due is assessed, an amount for price adjustment is added to or deducted from the total of the Prices (as the case may be) which is the sum of <ul style="list-style-type: none"><li>• the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by <math>(PAF/(1 + PAF))</math> where PAF is the Price Adjustment Factor for the date of the current assessment and</li><li>• correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.</li></ul> |

## Option X2: Changes in the law

|                           |             |   |
|---------------------------|-------------|---|
| <b>Changes in the law</b> | <b>X2</b>   |   |
| <b>Z1.40.1</b>            | <b>X2.1</b> | A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the works and exercising the foresight appropriate to such a contractor ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced. |

## Option X4: Parent company guarantee

|                                 |             |   |
|---------------------------------|-------------|---|
| <b>Parent company Guarantee</b> | <b>X4</b>   |   |
| <b>Z1.41.1</b>                  | <b>X4.1</b> | If a parent company owns the <i>Contractor</i> , the [parent company of each party comprising the] <sup>8</sup> <i>Contractor</i> gives to the <i>Employer</i> a guarantee by the parent company of the <i>Contractor's</i> performance in the form set out in the Works Information attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the <i>Employer</i> within <del>four</del> one weeks of the Contract Date. |

## Option X5: Sectional Completion

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

## Option X6: Bonus for early Completion

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

## Option X7: Delay damages

|                      |             |  |
|----------------------|-------------|--|
| <b>Delay damages</b> | <b>X7</b>   |  |
|                      | <b>X7.1</b> | The <i>Contractor</i> pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of <ul style="list-style-type: none"><li>• Completion and</li><li>• the date on which the <i>Employer</i> takes over the works.</li></ul> |
|                      | <b>X7.2</b> | If the Completion Date is changed to a later date after delay damages have been paid, the <i>Employer</i> repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment  |

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<sup>8</sup> Only applicable if *Contractor* is a joint venture

and the date of repayment is an assessment date.

X7.3 If the *Employer* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.

Z1.41A.1

X7.4 [For the avoidance of doubt, any liability of the *Contractor* for the payment of delay damages under this clause X7 will not be reduced or otherwise affected in any way as a result of the Olympic Embargo.]<sup>9</sup>

## Option X12: Partnering

### Identified and defined terms X12

X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.

(2) An Own Contract is a contract between two Partners which includes this Option.

(3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.

(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.

(5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

### Actions

X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.

(2) Each Partner nominates a representative to act for it in dealings with other Partners.

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

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

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

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

Z1.42.1

### Working together

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

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

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

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

Z1.42.2

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<sup>9</sup> Delete shaded text for contracts awarded after 2012 Olympics.

## Partnering Information.

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

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

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

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

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

## Incentives

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

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

## Option X13: Performance bond

### Performance bond Z1.43.1

#### X13

#### X13.1

[Where a performance bond is required regardless of the Contractor's D&B rating, insert:

The Contractor gives the Employer a performance bond, provided by a bank or insurer which the Project Manager has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2 the Works Information. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the Employer within 1 four weeks of the Contract Date.]

[Where a performance bond is required if the Contractor's credit rating falls below the prescribed level of risk, insert:

If the Dun & Bradstreet "Risk Indicator" score for [either]/[the]<sup>10</sup> parent company falls to 3 (slightly greater than average risk) or 4 (significant level of risk), when instructed to do so by the Project Manager, the Contractor gives the Employer a performance bond, provided by a bank or insurer which the Project Manager has accepted, for the amount stated in the Contract Data and in the form set out in ~~the Works Information~~ Schedule 2.<sup>11</sup> A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it The bond is given to the

<sup>10</sup> In the event the Contractor is a joint venture, select "either" (and ensure the Contract Data entry records the parent company of both parent companies. Note that although X13.1 refers to the Dunn & Bradstreet ratings, consideration should be given on a project-by-project basis to whether Standard & Poor's or Moody's ratings are more suitable.

<sup>11</sup> Where the Contractor is a joint venture, Option X13 may need to be amended to require more than one performance bond to be provided.

Employer within ~~four~~ 1 weeks of the [instruction of the Project Manager to do so] Contract Date.

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

##### Advanced payment

##### X14

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

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

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

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

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

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

##### The design

##### Contractor's X15

##### Z1.44.1

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

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

#### Option X16: Retention

##### Retention

##### X16

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

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

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

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or

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

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

- Z1.45.1 X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.

### Option X17: Low performance damages

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

### Option X18: Limitation of liability

- Limitation of liability X18
- Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages pursuant to Z2.12, the *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- Z1.46.1A X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- Z1.46.2 X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate ~~is limited to the amount stated in the Contract Data~~ is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.
- Z1.46.3 X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.
- The excluded matters are amounts payable by the *Contractor* as stated in this contract for
- loss of or damage to the *Employer's* property,
  - liquidated damages for disruption (Z2.12),
  - delay damages if Option X7 applies,
  - low performance damages if Option X17 applies and
  - *Contractor's* share, and
  - the matters listed in X18.6.
- Z1.46.4 X18.5 ~~The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the end of liability date.~~ Not used.
- Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:

- death of bodily injury;
- Losses caused by fraudulent acts or acts of a criminal nature;
- Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance; or
- any other Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under clause 83.

## Option X20: Key Performance Indicators (not used with Option X12)<sup>12</sup>

|                                |   |
|--------------------------------|---|
| <b>Incentives</b>              | <p>X20.1 A Key Performance Indicator is an aspect of performance by the <i>Contractor</i> for which a target is stated in the Incentive Schedule. The Incentive Schedule is the <i>incentive schedule</i> unless later changed in accordance with this contract.</p>  |
| <b>Z1.47.1</b>                 | <p>X20.2 From the <i>starting date</i> until the Defects Certificate has been issued, the <i>Contractor</i> reports to the <i>Project Manager</i> his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator. <i>The Contractor acknowledges that the Employer may provide copies of such reports to members of the TfL Group.</i></p> <p>X20.3 If the <i>Contractor's</i> forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the <i>Project Manager</i> his proposals for improving performance.</p> <p>X20.4 [The <i>Contractor</i> is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.]</p> <p>X20.5 The <i>Employer</i> may add a Key Performance Indicator and associated payment to the Incentive Schedule [but may not delete or reduce a payment stated in the Incentive Schedule].</p>  |
| <b>Single Point Design</b>     | <b>X21</b>  |
| <b>Responsibility</b><br>Z1.48 | <p>X21.1 In this Option, "<b><i>Employer's Design Information</i></b>" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the <i>Employer</i> and included in the Works Information.</p> <p>X21.2 The <i>Contractor</i> is deemed to have scrutinized, prior to the Contract Date, the <i>Employer's Design Information</i>. The <i>Contractor</i> is responsible for the design of the <i>works</i> and for the accuracy of such <i>Employer's Design Information</i> except as stated in clause X21.3 below.</p> <p>X21.3 The <i>Employer</i> is not responsible for any error, inaccuracy or omission of any kind in the <i>Employer's Design Information</i> as originally included in the contract and is not deemed to have given any representation of accuracy or completeness of any data or information, except as stated below.</p> <p>The <i>Employer</i> is responsible for the correctness of the following elements of the <i>Employer's Design Information</i>:</p> <p>(a) data and information stated in the Works Information as being the responsibility of the <i>Employer</i>,</p> <p>(b) definitions of intended purposes of the <i>works</i> or any part thereof, and</p> <p>(c) criteria for the testing and performance of the completed <i>works</i>.</p> <p>X21.4 Where there is a mistake, inaccuracy or discrepancy in or omission from the <i>Employer's Design Information</i>, the <i>Contractor</i> informs the <i>Project</i></p> |

<sup>12</sup> If Key Performance Indicators are not intended to have any financial consequences then delete X20.4 and, in X20.5, the words from "but" until the end of the clause.

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

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

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

**Novation of X22  
Associated Contracts**

Z1.49

X22.1 In this Option:

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

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

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

X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 10 hereto within 14 days of request from the *Employer* to do so.

X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 5 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2.

X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer*. Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold his consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).

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

**Key Person X23  
Succession Plan**

Z1.50

X23.1 If a key person succession plan is stated in the Works Information to be

applicable to the project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.

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

#### Fee Cap

#### X24

Z1.50A

X.24.1 The Parties acknowledge and agree that the Fee is capped at, and shall in no event exceed the fee cap stated in the Contract Data.

#### Escrow Agreement

#### X25

X25.1 In this Secondary Option X25:

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

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

"**Escrow Agreement**" means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 11 provided that the Release Events referred to in clause 6 thereof shall be amended to include:

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

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

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

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

X25.2 The *Contractor* shall no later than the Contract Date procure that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and shall thereafter maintain the agreement for a minimum period of [12 years<sup>13</sup>] from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) shall be borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement then one quarter of the Price for Work Done to Date is retained in

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<sup>13</sup> Insert required period

assessments of the amount due until the *Contractor* has provided the same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

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

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

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

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

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## OPTION Y

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

|   |  |
|---|--|
| <b>Definitions</b><br><i>Note: incorporated in Schedule 1 and 12.6.</i> | <b>Y(UK)2</b><br>Y2.1 (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.<br>(2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.  |
| <b>Dates for payment</b>  | Y2.2 <del>The date on which a payment becomes due is seven days after the assessment date.<br/>The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.<br/>The Project Manager's certificate is the notice of payment to the Contractor specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.</del> |
| <b>Notice of intention to withhold payment</b>                          | Y2.3 <del>If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated.<br/>A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.</del>           |
| <b>Suspension of performance</b><br><b>Payment</b><br>Z1.51.1           | Y2.4 If the Contractor exercises his right under the Act to suspend performance, it is a compensation event.<br><br>Y1<br>Y1.1 <b>NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.</b>   |

### Option Z: Additional conditions of contract

|   |   |
|---|---|
| <b>Additional conditions of contract</b><br>Z1.52.1 | The <del>additional conditions of contract</del> stated in the Contract Data are <del>part of this contract</del> <b>incorporated into these consolidated conditions of contract.</b> |
|---|---|

## SCHEDULE OF COST COMPONENTS

### Z1.53.1

In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

- People** 1 The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas and
  - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas.
- 11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Working Areas.
- 12 Payments to people for
- (a) bonuses and incentives (contract specific)
  - (b) overtime
  - (c) working in special circumstances
  - (d) special allowances
  - (e) absence due to sickness and holidays
  - (f) severance related to work on this contract where such cost arises from a compensation event and has been authorised in writing by the *Project Manager*
- 13 Payments made in relation to people for
- (a) travel
  - (b) subsistence and lodging where such costs are incurred wholly and necessarily in connection with the works and are agreed in advance by the *Project Manager*
  - (c) relocation
  - (d) medical examinations
  - (e) passports and visas
  - (f) travel insurance
  - (g) items (a) to (f) for dependants
  - (h) protective clothing
  - (i) meeting the requirements of the law
  - (j) pensions and life assurance
  - (k) death benefit
  - (l) occupational accident benefits
  - (m) medical aid
  - (n) a vehicle
  - (o) safety training.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.  
Amounts paid by the *Contractor*.
- Equipment** 2 The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for Working Areas overheads).
- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
  - his parent company or
  - by a company with the same parent company
- at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
  - purchased by the *Contractor* under a hire purchase or lease agreement or

- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

at open market rates, multiplied by the time for which the Equipment is required.

23 Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

25 Payments for the purchase price of Equipment which is consumed.

26 Unless included in the hire or rental rates, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

27 Payments for purchase of materials used to construct or fabricate Equipment.

28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

**Plant and Materials** 3 The following components of the cost of Plant and Materials.

31 Payments for

- purchasing Plant and Materials,
- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

**Charges** 4 The following components of the cost of charges paid by the *Contractor*.

41 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.

43 Payments for

- cancellation charges arising from a compensation event
- buying or leasing land
- compensation for loss of crops or buildings
- royalties
- inspection certificates
- charges for access to the Working Areas
- facilities for visits to the Working Areas by Others

- (h) specialist services  
 (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.
- 44 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for
- (a) catering  
 (b) medical facilities and first aid  
 (c) recreation  
 (d) sanitation  
 (e) security  
 (f) copying  
 (g) telephone, telex, fax, radio and CCTV  
 (h) surveying and setting out  
 (i) computing  
 (j) hand tools not powered by compressed air.
- 45 **Payments to a surety for the provision of any advance payment bond required under Option X14.**
- Manufacture and fabrication** 5 The following components of the cost of manufacture and fabrication of Plant and Materials which are
- wholly or partly designed specifically for the *works* and
  - manufactured or fabricated outside the Working Areas.
- 51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.
- Design** 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance** 7 The following are deducted from cost
- the cost of events for which this contract requires the *Contractor* to insure ~~and~~
  - other costs paid to the *Contractor* by insurers and
  - the cost of excess payments.

## SHORTER SCHEDULE OF COST COMPONENTS

This schedule is used by agreement for assessing compensation events. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

|                            |          |   |
|----------------------------|----------|---|
| <b>People</b>              | <b>1</b> | The following components of the cost of <ul style="list-style-type: none"><li>• people who are directly employed by the <i>Contractor</i>, and whose normal place of working is within the Working Areas,</li><li>• people who are directly employed by the <i>Contractor</i>, and whose normal place of working is not within the Working Areas but who are working in the Working Areas and</li><li>• people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas.</li></ul> |
|                            | 11       | Amounts paid by the <i>Contractor</i> including those for meeting the requirements of the law and for pension provision.  |
| <b>Equipment</b>           | <b>2</b> | The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).   |
|                            | 21       | Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.   |
|                            | 22       | Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.   |
|                            | 23       | The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.  |
|                            | 24       | Unless the item is in the published list and the rate includes the cost component, payments for <ul style="list-style-type: none"><li>• transporting Equipment to and from the Working Areas other than for repair and maintenance,</li><li>• erecting and dismantling Equipment and</li><li>• constructing, fabricating or modifying Equipment as a result of a compensation event.</li></ul>  |
|                            | 25       | Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.   |
|                            | 26       | Unless included in the rate in the published list, the cost of operatives is included in the cost of people.  |
|                            | 27       | Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.   |
| <b>Plant and Materials</b> | <b>3</b> | The following components of the cost of Plant and Materials.  |
|                            | 31       | Payments for <ul style="list-style-type: none"><li>• purchasing Plant and Materials,</li><li>• delivery to and removal from the Working Areas,</li><li>• providing and removing packaging and</li><li>• samples and tests.</li></ul>  |
|                            | 32       | Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.  |
| <b>Charges</b>             | <b>4</b> | The following components of the cost of charges paid by the <i>Contractor</i> .   |
|                            | 41       | A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"><li>• payments for the provision and use in the Working Areas of water, gas and electricity,</li><li>• payments for buying or leasing land, compensation for loss of crops or</li></ul>   |

- buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
  - payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
- 42 Payments for cancellation charges arising from a compensation event.
- 43 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 44 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.
- 45 Specialist services.
- 46 Payments to a surety for the provision of any advance payment bond required under Option X14.
- Manufacture and fabrication**
- 5 The following components of the cost of manufacture and fabrication of Plant and Materials, which are
- wholly or partly designed specifically for the *works* and
  - manufactured or fabricated outside the Working Areas.
- 51 Amounts paid by the *Contractor*.
- Design**
- 6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.
- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
- Insurance**
- 7 The following are deducted from cost
- costs against which this contract required the *Contractor* to insure and
  - other costs paid to the *Contractor* by insurers and
  - the cost of excess payments or deductibles.

## **SUPPLEMENTARY NOTES TO THE SCHEDULE OF COST COMPONENTS AND THE SHORTER SCHEDULE OF COST COMPONENTS**

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

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

### **Part A Notes**

#### **Section 1 : People**

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

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

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

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

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

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

##### *Payments made to people for overtime:*

In the absence of express agreement to the contrary, any hours worked:

- in excess of 9.5 hours per day by an individual carrying out physical construction works; or
- in excess of 8 hours per day (up to a maximum of 40 hours per week) by an individual carrying out any other activity

will be deemed to be overtime. Only overtime payments which have been authorised in advance in accordance with these Supplementary Notes will be considered Defined Cost.

##### *Payments made to people for absence due to sickness or holidays:*

Any payments made to people in respect of sickness or holidays will only be considered Defined Cost if the people have worked continually within the Working Areas in excess of a three month time period. Payments to people in respect of absence arising from sickness or holidays lasting for a continuous period in excess of 3 weeks are not included in Defined Cost.

##### *Payments made to people for severance related to work on this contract:*

Only payments made to people representing a genuine pro-rata of time spent on the project against total time spent within the employ of the company will be considered Defined Cost. An example of what is considered an acceptable severance payment cost for a person employed on the project for one year but employed by the *Contractor* for ten years would be 10% of total severance payment cost.

##### *Payments made to people for non-productive time*

Only payments made to people for time spent working on this contract will be considered Defined Cost. Any payments made to people for attending internal company briefings, personnel meetings, appraisals, staff meetings, personal development training or the like is deemed to be included within the Fee.

##### *Payments made to people for training*

Only payments made to people for providing or attending training as a direct requirement of this contract will be considered Defined Cost. Any costs incurred providing training for purposes of personal or company development is deemed to be included within the Fee. Any costs incurred for time receiving or providing personal or company development training is considered allocated within the Fee.

*The following components of the cost of people who are not directly employed by the Contractor but paid by the Contractor according to the time worked whilst they are within the Working Areas.*

Only those people who are paid by the Contractor on a time only basis are included within this cost component, for example specialist consultants, agency staff, consultant or labour only subcontract staff.

An example of "people" who would not meet the criteria would be where the Subcontractor supplies labour and has the added requirement of providing any associated accommodation, equipment, supplies and services for those items listed within item 44 to support the provision of people. This would not be considered a time only cost component.

## **Section 2: Equipment**

*Payments made for overhead to group companies for Equipment*

Only the reasonable equipment overhead cost of group companies subcontracted under this contract shall be considered Defined Cost. The Contractor shall demonstrate that the use of group companies represents best value and is at market rates and in any event overhead costs in excess of 15% of the value of the direct costs shall be deemed a Disallowed Cost.

## **Section 3: Plant and Materials**

*Payments made for overhead to group companies for Plant and Materials*

Only the reasonable plant and materials overhead cost of group companies subcontracted under this contract shall be considered Defined Cost. The Contractor shall demonstrate that the use of group companies represents best value and is at market rates and in any event overhead costs in excess of 15% of the value of the direct costs shall be deemed a Disallowed Cost.

## **Section 4: Charges**

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14 (or in the case of the Shorter Schedule of Cost Components, item 11). The charge includes provision and use of equipment, supplies and services for items 44 (a) through (j) (or in the case of the Shorter Schedule of Cost Components, item 41).

Any costs relating to the provision by the Contractor of a parent company guarantee are deemed to be included in the Fee and are not admissible as Defined Cost.

## **Section 5: Manufacture and Fabrication**

*Payments made for overhead to group companies*

Hourly rates for categories of employee shall represent the cost of employment, exclusive of any overheads and the percentage for manufacture and fabrication overhead shall represent the reasonable cost of local manufacture and fabrication related overheads only on a percentage basis as anticipated from the associated business plan for the facility.

## **Section 6: Design**

*Payments made for overhead to group companies for design:*

Hourly rates for categories of employee shall represent the cost of employment, exclusive of any local and corporate overhead and the percentage for design overhead shall represent the reasonable cost of local design related overheads only on a percentage basis as anticipated from the associated business plan for the facility.

*Design consultants – overhead charge*

Only design undertaken outside the Working Areas by employees of the Contractor will attract the design overhead percentage. Design undertaken outside the Working Areas by consultants/Subcontractors or the like will not attract the design overhead percentage.

## **Section 7: Insurance**

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

## **Part B Notes applicable to all cost components**

## 1 - Properly Incurred Costs

Costs shall only be considered properly incurred in accordance with this contract if they meet all of the following criteria:

- they are in accordance with the applicable Main Option;
- they have been accepted by the *Project Manager* pursuant to the terms of this contract;
- they are in accordance with the Schedule of Cost Components (as amended) or Shorter Schedule of Cost Components (as amended) and these Supplementary Notes;
- (in relation to any time-based charges) they comply with any agreed procedure or system for capturing or allocating time;
- authorisation of overtime will be subject to compliance with a project-specific overtime policy accepted by the *Project Manager*. No overtime will be considered Defined Cost in the absence of such an agreed policy. Overtime costs charged to this contract will not attract the Working Area overheads percentage or design overheads percentage;

Where the *Contractor* is unable to demonstrate that costs have been reasonably and properly incurred by either himself or his Subcontractors such costs shall not be allocated to Defined Cost and shall be deemed to be Disallowed Cost.

The *Employer* is not liable for interest due to any delays in payment caused by the *Contractor's* failure to meet the requirements of these Supplementary Notes in respect of properly incurred costs.

## 2 - Reasonably Incurred Costs

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

- their expenditure was an unavoidable consequence of Providing the Works;
- the *Contractor* can demonstrate that they represented current competitive market rates at the Contract Date;
- they do not fall within the definition of Disallowed Costs;
- they are not included within the *Contractor's* Fee or overhead percentages;
- they have been captured within systems for the collection of data referred to in the Works Information or (where not referred to in the Works Information) accepted by the *Project Manager*.

## 3 - Cost Verification

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

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

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

**MAIN OPTION C**  
**CONTRACT DATA**  
**PART 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 C and secondary Options clauses [X1, X2, X4, X5, X6, X7, X12, X13, X14, X15, X16, X17, X18, X20, X21, X22, X23, X24, X25]<sup>14</sup> and Y(UK)2 and Z clauses of the NEC3 Engineering and Construction Contract June 2005 (incorporating amendments June 2006 and September 2011) as amended or inserted in each case in accordance with secondary Option Z.
- The *works* are [ ]
  - The *Employer* is  
Name: [ ]  
Address: [ ]
  - The *Project Manager* is  
Name: [ ]  
Address: [ ]
  - The *Supervisor* is  
Name: [ ]  
Address: [ ]
  - The *Works Information* is in [ ]
  - The *Site Information* is in [ ]
  - The *boundaries of the site* are [ ]
  - The *language of this contract* is [ ]

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<sup>14</sup> Delete Secondary Options which are not used in the contract.

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- The *law of the contract* is the law of England and Wales<sup>15</sup>
- The *period for reply* is [ ] weeks
- The following matters will be included in the Risk Register:

[ ]

3. Time

- The *starting date* is: [ ]

- The *access dates* are:

| Part of the Site | Date |
|------------------|------|
| 1. [ ]           | [ ]  |
| 2. [ ]           | [ ]  |
| 3. [ ]           | [ ]  |

- The *Contractor* submits revised programmes at intervals no longer than [ ] weeks.

4. Testing and Defects

- The *defects date* is [ ] weeks after Completion of the whole of the *works*.

- The *defect correction period* is [ ] weeks except that

- the *defect correction period* for [ ] is [ ] weeks
- the *defect correction period* for [ ] is [ ] weeks

5. Payment

- The *currency of this contract* is [ ]

- The *assessment interval* is [ ] weeks (not more than five)

- The *interest rate* is [ ] % per annum (not less than two) above the [ ] rate of the [ ] bank.

6. Compensation events

- The place where weather is to be recorded is [ ]

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<sup>15</sup> The *law of the contract* is always to be the law of England and Wales. This entry must not be changed.

---

- The *weather measurements* to be recorded for each calendar month are
  - the cumulative rainfall (mm)
  - the number of days with rainfall more than 5 mm
  - the number of days with minimum air temperature less than 0 degrees Celsius
  - the number of days with snow lying at [ ] hours GMT.
  - and these measurements: [ ]
- The *weather measurements* are supplied by [ ]
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at [ ] and which are available from [ ]

**Where no recorded data are available**

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

8. Risks and insurance

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

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

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

- ***Employer's liability insurance*** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a

minimum limit of indemnity in the amount of [ ]

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

#### 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 [ ]

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**.<sup>16</sup>

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

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

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

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

***condition to be met***

***key date***

---

<sup>16</sup> Delete this entry if the *Employer* is willing to take over the *works* before the **Completion Date**

---

1. [ ] [ ]

2. [ ] [ ]

3. [ ] [ ]

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

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract. <sup>17</sup>

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

- These are the additional *Employer's* risks

1. [ ]

2. [ ]

3. [ ]

**Cover/deductibles for insurances provided by the *Employer*** <sup>18</sup>

1

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

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

The deductibles are:

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

---

<sup>17</sup> This entry must not be changed.

<sup>18</sup> The deductibles must not be changed.

- £5,000 every other occurrence.

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

Cover/indemnity is [ ]

The deductibles are: £10,000 per occurrence

3 **Non-negligence Insurance** (as stated in the Insurance Table)

Cover/indemnity is [ ]

The deductibles are: £10,000 per occurrence

**If additional insurances are to be provided**

- The *Contractor* provides these additional insurances

1. Insurance against [ ]

2. Cover/indemnity is [ ]

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

- These are the *additional termination events*

1. For any reason, the Transport and Works Act Order application process is not completed

2. For any reason, LUL does not commence the construction element of the contract]

3. [ ]

• **If the *Contractor's* liability for liquidated damages under Z2.12 (Schedule 9) is capped:**

The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under Z2.12 (Schedule 9) is [limited to [ ] / unlimited]

- The *Contractor's share percentages* and the *share ranges* are

| <i>share range</i> | <i>Contractor's share percentage</i> |
|--------------------|--------------------------------------|
| less than [ ]%     | [ ]%                                 |
| from [ ]% to [ ]%  | [ ]%                                 |

from [ ]% to [ ]% [ ]%  
greater than [ ]% [ ]%

- The *share termination threshold* is [ ]
- The Contractor prepares forecasts of Defined Cost for the *works* at intervals no longer than [ ] weeks.
- The *exchange rates* are those published in [ ] on [ ](date)

**If Option X1 is used**

- The proportions used to calculate the Price Adjustment Factor are:
  - 0.[ ] linked to the index for [ ]
  - 0.[ ] linked to the index for [ ]
  - 0.[ ] linked to the index for [ ]
  - 0.[ ] linked to the index for [ ]
  - 0.[ ] Non-adjustable element [ ]

Total 1.00

- The *base date* for indices is [ ]
- The indices are those prepared by [ ]

**If Option X5 is used**

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

| section | description | completion date |
|---------|-------------|-----------------|
| 1       | [ ]         | [ ]             |
| 2       | [ ]         | [ ]             |

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

- The bonus for each *section* of the *works* is

| section | description | amount per day |
|---------|-------------|----------------|
|---------|-------------|----------------|

1 [ ] [ ]

2 [ ] [ ]

Remainder of the *works* [ ]

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

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

| <i>section</i> | <i>description</i> | <i>amount per day</i> |
|----------------|--------------------|-----------------------|
|----------------|--------------------|-----------------------|

|   |     |     |
|---|-----|-----|
| 1 | [ ] | [ ] |
|---|-----|-----|

|   |     |     |
|---|-----|-----|
| 2 | [ ] | [ ] |
|---|-----|-----|

Remainder of the *works* [ ]

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

- The bonus for the whole of the *works* is [ ] per day

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

- Delay damages for Completion of the whole of the *works* are [ ] per day

**If Option X12 is used**

- The *Client* is

Name [ ]

Address [ ]

- The *Client's objective* is [ ]

- The Partnering information is in [ ]

**If Option X13 is used**

- The amount of the performance bond is [ ]

**If Option X14 is used**

- The amount of the advanced payment is [ ]

- The *Contractor* repays the instalments in assessments starting not less

than [ ] weeks after the Contract Date.

- The instalments are [ ] (either an amount or a percentage of the payment otherwise due)
- An advance payment bond [is/is not] required

**If Option X16 is used**

- The *retention free amount* is [ ]
- The *retention percentage* is [ ] %

**If Option X17 is used**

- The amounts for low performance damages are

| amount | performance level |
|--------|-------------------|
| [ ]    | for [ ]           |
| [ ]    | for [ ]           |

**If Option X18 is used**

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to [ ]
- For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is [limited to[ ] / unlimited]
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is [limited to[ ] / unlimited]
- 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[ ] / unlimited]

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

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

**If Option X24 is used**

- The *fee cap* is [ ]

**Option Z**

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section [ ] of the contract documents.

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**Section 6**

Station Capacity Programme

Bank Station Capacity Upgrade - UIP 8798

**Project Requirement Statement**

|                    |  | <b>Signature</b> | <b>Date</b> |
|--------------------|--|------------------|-------------|
| <b>Prepared by</b> | Ariella Levine<br>Project Sponsor  | _____            | _____       |
| <b>Prepared By</b> | Howard Bowman<br>Project Sponsor   | _____            | _____       |
| <b>Checked by</b>  | Jenny Hamilton<br>Senior Sponsor   | _____            | _____       |
| <b>Checked by</b>  | Allan Thomson<br>Programme Sponsor   | _____            | _____       |
| <b>Checked by</b>  | Simon Addyman<br>Programme Manager   | _____            | _____       |
| <b>Checked by</b>  | Barry Franklin<br>Operations Representative  | _____            | _____       |
| <b>Checked by</b>  | Andrew Spalding<br>Maintenance Representative  | _____            | _____       |
| <b>Checked by</b>  | I endorse this deliverable as the designated technical authority for the relevant engineering discipline and am <a href="#">accredited</a> to do so in line with the <a href="#">Engineering Governance Framework</a> .<br>Clive Appleyard<br>Design/Engineering Manager | _____            | _____       |
| <b>Checked by</b>  | Begoña de la Cruz<br>SQE Advisor   | _____            | _____       |
| <b>Approved by</b> | I confirm that this deliverable meets the requirements of the relevant and that all consultation comments have been addressed to the satisfaction of consultees.<br>Jenny Hamilton<br>Senior Sponsor   | _____            | _____       |

|                       |                       |                                     |
|-----------------------|-----------------------|-------------------------------------|
| <b>Distributed to</b> | Keith Foley           | Head of Transport Planning          |
| <b>Distributed to</b> | Miles Ashley          | Head of Stations, Capital Programme |
| <b>Distributed to</b> | Ralph Freeston        | Portfolio Manager                   |
| <b>Distributed to</b> | Bank SCU Project Team |                                     |

**The following key stakeholders have been consulted:**

- Steve Hodgson – Senior Project Manager (Walbrook Square Square), Stations, CPD
- Lisa Manson – LU Asset Stabilisation Sponsor, S&SD
- Nick Street – TfL Consents Manager, TfL Group Property
- Robert Niven – Head of Development , DLR – DLR scope to be attached when defined and agreed

**Document History**

| Revision | Date       | Summary of changes  |
|----------|------------|---|
| 1.0      | 01/04/2011 | First Published Issue (Start of RIBA D)                     |
| 2.0      | 20/04/2012 | Published to support Innovative Contractor Engagement (ICE) |

## TABLE OF CONTENTS

|     |   |                   |
|-----|---|-------------------|
| 1   | Background to the station and project and the business driver ..... | 2                 |
| 2   | <a href="#">Project Objectives</a> .....                            | <a href="#">5</a> |
| 2.1 | Exclusions .....  | 3                 |
| 2.2 | Scope Additions .....   | 3                 |
| 3.  | Key Considerations .....  | 5                 |
| 3.1 | Cost Considerations .....   | 3                 |
| 3.2 | Compliance Considerations .....                                     | 3                 |
| 3.3 | Technical Considerations .....                                      | 3                 |
| 3.4 | Operational Considerations .....                                    | 7                 |
| 3.5 | Public Realm and Architectural Considerations .....                 | 7                 |
| 3.6 | Lessons Learnt Considerations .....                                 | 8                 |
| 3.7 | Stakeholder and Media Management .....                              | 6                 |
| 3.8 | TWA Considerations .....  | 8                 |
| 3.9 | Dependencies on/with other projects/organisations .....             | 8                 |
| 4.  | Outcomes and benefits .....   | 7                 |
| 5.  | Project Requirements .....  | 8                 |

## **Background to the station and project and the business driver**

Bank Underground station is located in the heart of the City of London financial district. It is of strategic importance to the UK's economy, being one of the major gateways to the City for employees and visitors. Bank is also a strategic network interchange served by six lines (Northern, Central, Waterloo & City, and the District & Circle at Monument, part of the same station complex), and the DLR, for which Bank is the main central London terminus.

Bank is the fourth busiest station on the Underground network, with 96,000 passengers boarding, alighting and interchanging during the AM peak period (07:00-10:00). Demand has increased significantly since 2003 (when this project commenced) with the station experiencing a 25 per cent increase in entry, 29 per cent in exit and 41 per cent growth in interchange demand.

Possible solutions to relieve this capacity constraint have been explored since 2003 and details of these options can be found in the historical options review report within the support pack that accompanies this requirement statement.

The present reference design has been developed to RIBA D, this meets the requirements detailed in section 5 of this document except for the requirements relating to time - the 2021 delivery date, and cost – to be delivered within £625m.

## **2. Project Objectives**

This document outlines the objectives, required benefits and the success criteria for the Bank Station Capacity Upgrade project.

The primary project requirements are:

1. The project will increase capacity at Bank station, with the aim of reducing journey times and congestion ensuring that passenger density throughout the Bank/Monument station complex for all customers during peak times is such that the need regular station control is avoided (indicative average Fruin level of service C). The studies thus far have concentrated on capacity improvements to Northern line platforms and interchange to and from the Northern line and DLR to other lines within the station. In addition this work has included the provision of a new exit for Northern line customers.
2. The project will provide a step-free route(s) to the Northern line platforms from street and DLR levels, and an accepted means of escape for Persons with Reduced Mobility (PRM) and the ability to provide assistance to PRMs. Studies thus far has focused on platform to street via provision of a new exit.
3. Compliant emergency fire and evacuation protection measures will be provided for passengers, ensuring a place of safety within the limits prescribed in the appropriate standards. Studies thus far have made provision of a new exit with fire fighter access and fire doors to comply with standardised evacuation times.

These three project requirements are joined by additional requirements. A Transport and Works Act Order (TWAO) must be granted before work can be undertaken. The project must be undertaken in a manner that takes full consideration of the TWAO process and timescales. It is also a requirement to

achieve a completion milestone agreed between TfL and DfT for “work to relieve station congestion on Northern line at Bank complete” by the end of 2021. The project must be completed within or less than the estimate of £625m (including land costs, LU internal costs, TWAO costs, risk and inflation) and deliver the benefits as detailed in the ‘benefits management plan’ with a business case benefit:cost ratio of 2.0:1.

## **2.1 Exclusions**

The project will not address Bank/Monument station wide compliance issues. Scope will only include works that are required to deliver the Project Objectives as described in section 2.1.

## **2.2 Scope Additions**

Several items of scope not currently included are subject to further consideration and potential inclusion. Station wide requirements are currently under review and the Business may decide to increase the scope of this project. Detailed requirements will be developed through the design meetings and stakeholder engagement briefings/presentations. This may include:

- Opportunities to integrate Cooling the Tube infrastructure/systems into the design are being investigated. The amount of Cooling the Tube scope to be incorporated into this scheme is currently still unclear, and is therefore currently not budgeted for within this project.
- Any project requirement relating to a crossover/extended head-shunt for the DLR will be considered at a later date.
- Upgrade of the Bank Station Operations Room (SOR) and associated systems. The existing SOR is antiquated and becoming beyond economical repair. The upgrade will give LU confidence in the future operation of Bank in anticipation for the planned Station Capacity Upgrade (DIS 2021) and Waterloo & City line scheme (DIS 2015).

## **3. Key Considerations**

The targets and constraints listed below are to be considered (in conjunction with the budget and the benefits management plan) during design development and implementation. The Sponsor shall be consulted to support this decision making process when required.

### **3.1 Cost considerations**

The Project shall aim to minimise consequential increases in operating and maintenance costs through good planning and design, consistent with best-practice principles of controlling operational risk and customer revenue, and of managing station assets.

### **3.2 Compliance considerations**

The Project shall aim to be delivered in accordance with LU standards, procedures and TfL Policies and shall aim to comply with statute and national standards. In

addition, the ability to constructively challenge where appropriate, standards that appear to offer poor value for money is welcomed.

The Bank Station Capacity Upgrade design will be developed and built in line with relevant legislative and statutory requirements, British and LU Standards, and guidance documents. LU will specify the applicable standards.

### 3.3 Technical considerations

The Project Team shall aim to provide design flexibility for further improvements, thereby safeguarding long term opportunities. During the design progress, the Designer shall propose options (which provide such flexibility) for the Sponsor's consideration.

The main technical considerations, including but not limited to are considered to be as follows:

- Effects of settlement including but not limited to utilities, heritage buildings, LU assets including Circle, District and Central lines – these need to be assessed at an early stage as it can have a bearing on the powers to be sought under the TWA. To do this information about utilities, buildings and LU infrastructure should be obtained at an early stage.
- Monitoring Strategy – should be developed in time to inform what powers need to be sought under the TWA. This should include an understanding of the strategy needed for both settlement and environmental monitoring (including the need for rights to attach equipment to buildings etc).
- Design documentation should detail, *inter alia*, the excavation/support and construction sequences to identify appropriate monitoring measuring (including mitigation measures) during the works for the range of anticipated ground and ground water conditions, and includes the provision of contingency measures.
- The project shall aim to be sustainable and target a CEEQUAL rating of excellence and other environmental performance indicators. The design should consider the existing air flow conditions at the station and the impact of any new element of infrastructure on the ambient temperature/wind speed within the station and seek to inherently address the Bank complex ambient temperature.
- The design must pay attention to the political sensitivities of the buildings surrounding the site including but not limited to Mansion House.
- Planning to minimise disruption to the surrounding environs during construction and ensure that mitigation measures are in place (including noise and vibration).
- Any station extensions and Over Station Development (OSD) should where possible be independent structures.
- The project must consider any increase to its power load requirements (and how to ensure that the power is available to realise project benefits as early as possible).

### 3.4 Operational considerations

- It is imperative that disruption to the station is reduced to ensure that impact to customer journeys is minimised. The following should be considered when designing to the scheme:
- The work shall be planned to ensure that disruption in the area is minimised or mitigated as far as reasonably practical. Any disruption shall be in line with limits detailed in a pending Environmental Statement and limits/requirements set by the operator such that Bank Station and its environs remain operational, and public safety is maintained.
- Any closures of the Underground station and surrounding roads will be planned to minimise impacts to customers, local residents and businesses. All closures will be discussed and agreed with station management and the appropriate authorities prior to commitment of the design and will be publicised well in advance along with alternative travel arrangements.
- The Project shall be constructible whilst allowing Bank station remains operational. It is acknowledged that the preferred option may require temporary NL and DLR closures (which may include but not be limited to the non-stopping of trains), for example, for the breakthroughs between the new and existing S/B Northern line running tunnels. The designer shall propose solutions which balance operational and project requirements. LU closure proposals are to be agreed with the LU Closures Team and shall be in accordance with LU planned closures procedures (details within reference documentation).
- The Project shall consider lessons learnt from the Bank escalator refurbishment programme and consider operational flexibility in its design solution.
- Operational and maintenance plans will be produced to ensure that user and maintainer acceptance is achieved without the need for the project to maintain any assets following Delivery into Service.

### **3.5 Public realm and architectural considerations**

- Integration of high quality public real streetscape and security measures should be an integral part of the design
- The design should seek to design out crime and disorder including within the station complex.
- The Project shall ensure that good wayfinding, including access to the station is an integral part of the design.
- The project shall take into account the historic location, conservation area and be sensitive to CoL requirements.

### **3.6 Lessons learnt considerations**

A review was undertaken of recent TWA applications by TfL. The presentation is included within the supporting documentation.

### **3.7 Stakeholder Management and Media**

- The Project Team has already identified the type of stakeholders (internal and external to the business) who will be consulted throughout the project life. No external consultant shall approach any stakeholder without the explicit permission of the Stakeholder Manager. The stakeholder management plan and consultation strategy are included within the supporting documentation.
- No external consultant shall approach or offer comment to the media without explicit prior permission from the stakeholder manager.

### **3.8 TWAO considerations**

- The project should be aware that all documentation produced may be subject to scrutiny at the public inquiry. All decision making must be recorded and fully auditable to support the selected option and if necessary to rebut any objections including those made on the basis of alternatives.
- Any identification of affected properties shall include those needed for construction purposes including any required for protective works including ground treatment, utilities works, highway diversions, etc.
- It should be noted that 12 Nicholas Lane is Crown Estate and therefore outside the scope of any CPO powers.
- It is imperative that a robust Transport Case is demonstrated in order to achieve a successful TWA application. This must include that there is a compelling case in the public interest that justifies any proposals for compulsory purchase.
- Having regard to the complexity and location of the project, it will be essential to assemble / maintain a team of appropriate calibre and experience, including relevant expert witnesses, to support the TWAO process up to and through a public inquiry should it prove necessary.

### **3.9 Dependencies on/with other projects or organisations**

Success of the Project depends on support of the following key organisations/schemes:

- TfL for Scheme Funding
- DLR support for the scheme and integration management
- Corporation of London for support for the scheme, TWA and property acquisition
- Mayor to approve the TWA submission and associated Funding
- DfT, inter alia to help with the TWA process
- Walbrook new W&C entrance project
- Northern line upgrade
- Station Operations Room upgrade

### **4. Outcomes and benefits**

The primary benefits of the proposal for the scheme are:

- (a) journey time benefits of £24.8m/pa;
- (b) step-free access benefits of £846k pa;
- (c) secondary revenue benefits of £163k pa;
- (d) ambience benefits of £130k/pa;
- (e) removal of speed restriction on Northern line benefits of £395k/pa; and
- (f) avoidance of station closures benefits of £3.4m/pa.

The benefit:cost ratio for the Bank SCU scheme is 2.0:1. This ratio is based on a conservative methodology as a result of difficulties in comprehensively modelling major congestion relief projects. The ratio does not include a number of non-quantifiable benefits and further information is found in the Business Case Narrative and Business Case Assistant as part of the supporting information documents.

**5. Project Requirements**

This section provides a record of the Project Requirements - agreed with key stakeholders within the business - which the project must satisfy/deliver.

|  |                               |
|--|-------------------------------|
| <b>1 - CR1</b> Increase capacity to account for future forecast demand at Bank/Monument Station, principally for the Northern line and DLR area (including interchange routes).  |                               |
| <b>Type:</b> Primary requirement   | <b>Owner:</b> Project Sponsor |
| <p><b>Description:</b></p> <p>The project will increase capacity, with the aim of reducing journey times and congestion ensuring that passenger density throughout the Bank/Monument Station complex for all customers during peak times is such that the need for regular station control is avoided.</p> <p>Principle focus is on the Northern line and DLR areas for both access/egress passengers and interchange as well as taking into account knock-on congestion and the wider station impact. The design will deliver free flowing passenger movement with no blocking or conflict of other flows.</p> <p>Indicative average Fruin level of service C or better is to be achieved at peak times (AM 0700-1000 PM 1600 – 1900) throughout the Bank/Monument Station complex using the design year sensitivity of 2026 + 31% (Railplan 6.2.2) demand forecast for all customers.</p> <p>Trains operations shall be able to maintain scheduled and future expected frequencies at Bank station, without NL and DLR platform passenger densities reaching levels worse than Fruin Level C where station control measures have to be initiated.</p> <p>The design at the sensitivity year of 2026 +31% should have an acceptable level of deterioration and still be able to maintain a safe level of operation.</p> |                               |
| <p><b>Acceptance Criteria:</b> Legion modelling runs of new infrastructure and demand forecast of 2026 + 31% (Railplan 6.2.2) demonstrating that an average Fruin service level C is reached in peak times throughout the Bank/Monument infrastructure for all customers.</p> <p>Note static modelling should be undertaken in the first instance to analyse any solutions.</p> <p>BIM/3D CAD is required and 2D CAD for Legion Modelling.</p>   |                               |
| <p><b>Outcomes:</b></p> <p>Increasing capacity will deliver the following outcomes and benefits:</p> <ul style="list-style-type: none"> <li>▪ Reduced time for passengers (including PRMs) to enter/exit and interchange leads to reduced journey times</li> <li>▪ Reduced accident risk at PTI, escalator, stairways and gateline; improves</li> </ul>  |                               |

passenger safety and reduces staff costs

- New passengers will use the station, improving social equality and inclusion and increasing station ticket revenue
- Increase scope for development in the local area creates a potential for additional development and ticket revenue and enhances TfL's reputation with city planners and developers.
- Reduced congestion increases customer satisfaction
- Passengers who previously avoided the station now return this avoids a revenue cost
- Eliminates the need for operational controls to manage crowd safety which reduces staff cost
- Improve passenger way-finding through use of effective architectural treatment, signage, and publicity

**Supporting Documentation:**

- Train frequencies – refer to 'Northern Line Service Pattern', LUSTN-0008798-MOD-000926 Need also DLR and other train services
- Bank Access and Egress Project Note (LUSTN-0008798-CAL-000310) for details on footfall and model assumptions to be used within the design process o.a. regarding usage of a new 10KWS entrance.
- SPSPG
- Modelling results for RIBA D
- Modelling report for RIBA C+
- Constructability report
- All relevant Cat 1 Standards
- Demand Matrix

|   |                                      |
|---|--------------------------------------|
| <p><b>2 - CR2:</b> Maximise savings in reduction of journey times through both delay due to congestion and walk time for access/egress and interchange routes</p>   |                                      |
| <p><b>Type:</b> Primary requirement</p>   | <p><b>Owner:</b> Project Sponsor</p> |
| <p><b>Description:</b></p> <p>The project shall provide a capacity enhancement solution that maximises journey time savings for both access/egress and interchange passengers moving between the Northern line platforms and their ultimate origins/destinations within the rest of Bank/Monument Station complex.</p> <p>New passenger routes shall be as direct and short as practically possible. The design shall promote intuitive way-finding.</p>  |                                      |
| <p><b>Acceptance Criteria:</b> Achieve or better the journey time savings in the business case. Results should be analysed using Legion modelling and the social cost has to be validated by the LU modelling team.</p>   |                                      |
| <p><b>Outcomes:</b></p> <ul style="list-style-type: none"> <li>• Social benefit through Journey Time Savings.</li> <li>• Acceptable Business case.</li> </ul> <p>Optimising pedestrian routes will result in the following outcomes and benefits:</p> <ul style="list-style-type: none"> <li>• Reduced time for passengers (including PRM's) to enter/exit and interchange leads to reduced journey times</li> <li>• Simpler, quicker routes leads to reduced journey times, where possible</li> <li>• Intuitive route-following allows for logical way-finding.</li> <li>• Reduction in congestion delay</li> <li>• It is noted that due to distances, some walk times may increase</li> <li>• An optimum operational solution in service</li> </ul> |                                      |
| <p><b>Supporting Documentation:</b></p> <ul style="list-style-type: none"> <li>• Business case assistant</li> <li>• Business case narrative</li> <li>• Demand matrix</li> <li>• Non quantifiable benefits</li> </ul>  |                                      |

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|  |                                      |
|--|--------------------------------------|
| <p><b>3 - SFA1:</b> Step-Free Access (SFA) from street to both NL and DLR platforms and interchange between NL and DLR.</p>  |                                      |
| <p><b>Type:</b> Primary requirement</p>  | <p><b>Owner:</b> Project Sponsor</p> |
| <p><b>Description:</b></p> <p>The project shall provide for step free access</p> <ul style="list-style-type: none"> <li>to the Northern Line platforms from street level</li> <li>maintain or improve the DLR route from the street to platform</li> <li>interchange between DLR and NL platforms</li> </ul> <p>In addition the project will provide an accepted means of escape for Persons with Reduced Mobility (PRM)</p>   |                                      |
| <p><b>Acceptance Criteria:</b> SFA provision compliant with relevant standards to provide for the expected demand.</p>   |                                      |
| <p><b>Outcomes:</b></p> <p>SFA from street to NL &amp; DLR platforms and between NL &amp; DLR will result in the following outcomes and benefits for NL and DLR customers:</p> <ul style="list-style-type: none"> <li>Improving passenger safety through a reduction in slips, trips and falls for customers with mobility restrictions or luggage</li> <li>Accessibility for PRM's improves: passenger safety, social equality and inclusion, increased goodwill toward TfL, increased customer satisfaction.</li> <li>Accessibility for PRM's will reduce the time to enter, exit and interchange reducing passenger journey time</li> <li>Accessibility for PRM's will attract new passengers to the station increasing ticket revenues.</li> </ul> |                                      |
| <p><b>Supporting Documentation:</b></p> <ul style="list-style-type: none"> <li>SFA network business case % assumptions for PRMs at Bank</li> <li>Specific Cat 1 standards</li> <li>SPSG</li> <li>BS8300</li> <li>Lift Standards (SMVT/PMVT)</li> </ul>   |                                      |

- Northern line PTI data

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|  |                               |
|--|-------------------------------|
| <b>4 - FEP1: Emergency Fire and Evacuation Protection Measures for NL and DLR passengers</b>   |                               |
| <b>Type:</b> Primary requirement   | <b>Owner:</b> Project Sponsor |
| <p><b>Description:</b></p> <p>The project shall provide for compliant fire and evacuation protection measures for NL and DLR passengers as prescribed in the appropriate standards. This shall include (but is not limited to)</p> <ul style="list-style-type: none"> <li>• Provide a compliant place of safety (within time limit of 6 minutes).</li> <li>• Provide an acceptable means of escape</li> <li>• Provide compliant protected access route for London Fire Brigade (LFB) to NL and DLR areas.</li> </ul> <p>Lifts shall be of evacuation type and compliant with relevant standards.</p> |                               |
| <p><b>Acceptance Criteria:</b> Fire and evacuation protection and safety measures to be compliant with LU Fire and other relevant national, international and industry standards.</p> <p>Acceptance of proposal by London Fire Brigade via a Qualitative Design Review (QDR) and fire strategy.</p>  |                               |
| <p><b>Outcomes:</b></p> <p>The provision of Emergency Fire and Evacuation Protection Measures for NL and DLR passengers will provide a faster emergency response increasing passenger safety including for PRM passengers.</p>   |                               |
| <p><b>Supporting Documentation:</b></p> <ul style="list-style-type: none"> <li>• Demand matrix</li> <li>• Cat 1 standard</li> <li>• Fire strategy (current for RIBA D design)</li> <li>• QDR minutes (in relation to RIBA D fire strategy)</li> </ul>  |                               |

**5 – TIME1:** Meet DfT/TfL milestone of “Ticket Hall Delivery into Service”

**Type:** Primary requirement

**Owner:** Project Sponsor

**Description:**

The project will meet the agreed DfT milestone of “Work to relieve station congestion on Northern line at Bank complete” by the end of 2021 as detailed in a letter between TfL and DfT following the settlement of the Government spending review.

Other project benefits to be delivered as early as practically possible.

Project is currently guided by milestones agreed at the TfL Board of:

| Milestone                                  | Target Date   |
|--|---------------|
| Mayor’s Approval for TWA Application (PMM) | July 2012     |
| Submit for TWA (PMM)                       | October 2012  |
| RIBA D Design Accepted by LU(PAM)          | October 2012  |
| Issue ITT RIBA E/G (PMM)                   | October 2012  |
| TWAO Grant of Powers (PAM)                 | December 2014 |
| Start on Site (PAM)                        | October 2015  |
| Ticket Hall into Service (PAM and TfL)     | December 2021 |
| BIU/Practical Completion (PAM)             | December 2021 |

The programme must take into account TfL’s approach to funding and internal approval governance and plan accordingly.

**Acceptance Criteria:** Logic-linked accepted Primavera programme for undertaking RIBA E-F (including TWAO), enabling works, construction works, testing and commission and bringing into use. This must include all activities longer than one month duration and include key dependencies and the critical path(s).

**Outcomes:**

Achieving the milestone will result in the following outcomes and benefits:

- Reputational integrity of TfL/LU

**Supporting Documentation:**

- DfT letter

**6 – CONSENT1:** Support LU in preparation of all documents necessary to deposit a successful application for a Transport and Works Act Order (TWAO) with the Secretary of State and other necessary consents.

**Type:** Primary requirement

**Owner:** Project Sponsor

**Description:**

The project shall define and justify the land take and property requirements.

Scheme design and construction methodology shall seek to justify land take and minimise impact on surrounding buildings/infrastructure including LUL station infrastructure where practicable.

The Project shall aim to address any potential concerns during TWA through:

- careful consideration of 3<sup>rd</sup> party interface, property impact, land purchasing requirements and required amendments/agreements to land ownership
- supporting the instigation of a rigorous process for consultation and negotiation with the affected parties and working towards limiting objectors.

Provide a level of detail, including limits of deviation, to support LU through the associated consent applications including, but not limited to:

- Deemed planning permission for the operational works
- Conservation area consent prior to the demolition of any building
- Listed building consent for protective works to listed buildings that are potentially affected by the works.

The project shall develop the OSD design taking into account an integrated design solution with the station works, to an appropriate level to provide sufficient confidence to allow a submission for the consents referred to above. This is likely to require an application for full planning permission.

Support LU in the preparation of all evidence required for a successful public inquiry. All decisions must be well-documented.

**Acceptance Criteria:** Provide LU with sufficient confidence to allow submission of draft TWAO and associated consent applications by spring 2014.

Bidders will be assessed on how they demonstrate an understanding of the TWAO process including by reference to relevant experience and expertise and with particular regard to:

- An understanding of the compulsory purchase process.
- The need for a rigorous approach including design development, construction planning and documentation and recognition that the TWAO process is

inherently inflexible.

General understanding of the wider planning process including associated applications for planning permission, listed building consent and conservation area consent.

**Outcomes:**

Achieving the milestone will result in the following outcomes and benefits:

- Ability to construct project
- Understanding mitigation and protection measures required during construction
- Positive relationship with key stakeholders

**Supporting Documentation:**

- Land take document
- Draft EIA/list of witnesses already proposed
- LU Noise and Vibration policy
- Generic list of TWAO submission documents.

|   |                               |
|---|-------------------------------|
| <b>7 – COST1:</b> Design to Cost and meet or better the current benefits:cost ratio   |                               |
| <b>Type:</b> Primary requirement  | <b>Owner:</b> Project Sponsor |
| <p><b>Description:</b></p> <p>The project will be designed to £625 EFC</p> <p>The project will meet or better the current benefits:cost ratio of 2.0:1</p>  |                               |
| <p><b>Acceptance Criteria:</b> Production of robust whole life cost estimate based on a programme that meets the TIME requirement, with a £625 EFC. This is to be reviewed and evaluated by LUL and its consultants.</p>        |                               |
| <p><b>Outcomes:</b></p> <p>Achieving the milestone will result in the following outcomes and benefits:</p> <ul style="list-style-type: none"> <li>• Ability to obtain Mayoral approval for the submission of a TWAO.</li> </ul> |                               |
| <p><b>Supporting Documentation:</b></p> <ul style="list-style-type: none"> <li>• Business Case Assistant</li> <li>• Business Case Narrative</li> <li>• Motts cost estimate</li> <li>• Risk register/summary</li> </ul>          |                               |

**Section 7**

**Information Agreement**

**Between**

**London Underground Limited**

**and**

***[Name of Bidder]***

**THIS AGREEMENT** is made the            day of            2012

**BETWEEN:**

1. **LONDON UNDERGROUND LIMITED**, a company registered in England and Wales (Company Registration Number 01900907) whose registered office is at 55 Broadway, London SW1H 0BD (“**LUL**”); and
2. [            ], a company registered in England and Wales (Company Registration Number [            ]) whose registered office is at [            ] (the “**Bidder**”)

each of them a “**Party**” and together the “**Parties**”.

**THE PARTIES AGREE THAT:**

**1. Definitions**

1.1. In this Agreement, unless the context indicates otherwise:

1.1.1. “**Documentation**” means documents, manuals, specifications, flowcharts, program listings, magnetic tapes, data file printouts and all other related materials in human-readable and/or machine-readable forms;

1.1.2. “**Information**” means all information in connection with the Project (whether commercial, financial, technical or otherwise) relating to a Party (and, in the case of LUL, any member of the TfL Group), including without limitation any information that relates to the business affairs, processes, plans, intentions, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of that Party (and, in the case of LUL, any member of the TfL Group). Information may be contained in any form of Documentation;

1.1.3. “**Intellectual Property Rights**” or “**IPRs**” means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, (including without limitation rights in software and databases) moral right, rights in commercial or technical information or any other intellectual property rights whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;

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- 1.1.4. “**Project**” means the Bank station capacity upgrade project, which is expected to involve (amongst other matters) increasing passenger capacity, provision of step-free access routes and improving emergency evacuation measures on the London Underground as well as works to the Docklands Light Railway;
- 1.1.5. “**Recipient**” means a Party receiving Information from the other Party or on whose behalf its employees, agents or third parties receive such Information;
- 1.1.6. “**Supplier**” means a Party supplying Information to the other Party or on whose behalf its employees, agents or third parties supply such Information; and
- 1.1.7. “**TfL Group**” means Transport for London and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to “any member of the TfL Group” shall refer to Transport for London or any such subsidiary.

## 2. Confidentiality Obligations

- 2.1. Each Party as Recipient acknowledges that in connection with the Project it may receive Information from the other Party as Supplier that is of a proprietary and confidential nature. The Recipient undertakes:
  - 2.1.1. to treat all such Information in strictest confidence, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained;
  - 2.1.2. not without the Supplier’s prior written consent to disclose any part of such Information to any person except to the extent strictly necessary:
    - 2.1.2.1. to directors, officers and employees of the Recipient who are directly connected with the Project;
    - 2.1.2.2. to third parties engaged by the Recipient who are directly connected with the Project; and/or
    - 2.1.2.3. the Recipient's auditors and any other persons or bodies having a legal right or duty to know the Information in connection with the business of the Supplier;
  - 2.1.3. to notify LUL as soon as practicable if it is required to disclose the Information under Clause 2.1.2.3;

- 2.1.4. not to use, circulate, copy or reproduce (in whole or part) the Information within its own organisation except to the extent necessary in connection with the Project or for any other purpose authorised in advance in writing by Supplier;
- 2.1.5. to ensure that all persons and bodies that are listed in Clauses 2.1.2.1 to 2.1.2.3 are made aware, prior to the disclosure of Information to them, (a) of the confidential nature of that Information, (b) that they owe a duty of confidence to the Supplier, and (c) they shall hold that Information in confidence on the same terms as those set out in this Agreement. The Recipient shall use its best endeavours to ensure that such persons and bodies comply with such obligations;
- 2.1.6. to effect and maintain adequate security measures to safeguard the Information from unauthorised access, use and misappropriation;
- 2.1.7. to notify the Supplier promptly of any disclosure, use, circulation, copying or reproduction of Information of which the Recipient becomes aware that is not permitted under the preceding provisions of this Clause 2 and to provide at its own cost (a) all reasonable assistance to the Supplier in remedying the same and (b) all such assistance as the Supplier may reasonably require in connection with any proceedings it may bring, or other steps as the Supplier may take, in relation to such breach of confidence; and
- 2.1.8. to procure that, at the request of the Supplier, any of those persons and bodies referred to in Clauses 2.1.2.1 to 2.1.2.3 sign a separate confidentiality undertaking in such form as the Parties (acting reasonably) may mutually agree prior to disclosure of Information to them.

### **3. Exceptions**

- 3.1. The obligations of confidentiality in Clause 2 shall not apply to Information that:
  - 3.1.1. has come into the public domain through no fault of the Recipient, its employees, agents or sub-contractors;
  - 3.1.2. has been lawfully received from an independent third party without any restriction and without any obligation of confidentiality;
  - 3.1.3. has been independently developed by the Recipient without access to, or knowledge of, or use of, the Information;

- 3.1.4. is required by law or by order of a court of competent jurisdiction to be disclosed;
- 3.1.5. in relation to tender queries and requests for information, is circulated to other bidders in respect of the Project by LUL as part of meeting its statutory obligations to run a fair and equitable procurement process; or
- 3.1.6. constitutes an ITP Output (excluding Unique ITP Outputs) to which Clause 8.5 applies.

#### **4. Intellectual Property Rights**

- 4.1. Subject to Clause 4.2, the Intellectual Property Rights in all Information supplied by or on behalf of a Supplier shall remain the property of the Supplier.
- 4.2. The provisions of Clause 4.1 are without prejudice to the provisions of Clause 7.

#### **5. Freedom of Information**

- 5.1. The Bidder acknowledges that LUL 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 other provisions that replace these) and agrees to assist and co-operate with LUL to enable it to comply with its obligations under such legislation including, without limitation, providing to LUL such information as it may reasonably request concerning the Project.
- 5.2. The Bidder acknowledges that LUL may be obliged under the legislation referred to in Clause 5.1 to disclose information without consulting or obtaining consent from the Bidder.
- 5.3. The provisions of this Clause 5 shall survive any expiry or termination of this Agreement.

#### **6. Records and audit**

- 6.1. The Bidder shall until six (6) years after the termination of this Agreement maintain a complete and correct set of records pertaining to all activities relating to the performance of the Bidder's obligations under this Agreement (the "**Records**"). LUL has the right to audit the Records on giving reasonable notice to the Bidder to ascertain the Bidder's conformance with its obligations under the Agreement and to notify the Bidder of any non-conformance. Upon receipt of such notification, the Bidder shall take all steps necessary to ensure conformance.

- 6.2. Any audit or inspection pursuant to Clause 6.1 shall not relieve the Bidder from any of its obligation under the Agreement or prejudice any of LUL's rights, powers or remedies against the Bidder.

## **7. Invitation to Participate process**

- 7.1. LUL is issuing a document (the "**Invitation to Participate**" or "**ITP**") inviting bidders (including the Bidder) to participate in a dialogue prior to issue of the invitation to tender (the "**ITT**") for the award of a substantive contract or suite of contracts in respect of the design and build of the Project (such contract or suite of contracts being the "**D&B Contract**").
- 7.2. The issue of the ITP to the Bidder is conditional upon the Bidder's entering into this Agreement.
- 7.3. A primary purpose of the ITP process is to elicit from the bidders outputs that may be used to inform the ITT process and bring significant benefits to the delivery of the Project through the D&B Contract, whether by way of schedule, cost or otherwise (each such output being an "**ITP Output**"). Any ITP Output that is both innovative and unique to the Bidder shall be a "**Unique ITP Output**".
- 7.4. At the end of the ITP process, the Bidder (along with other bidders) shall, at LUL's request, give a request to proceed (an "**RTP**") to the ITT stage. In the RTP, the Bidder shall identify:
- (a) ITP Outputs that have been identified by it during the ITP process as envisaged in Clause 7.3;
  - (b) any Unique ITP Outputs in respect of which it is willing to permit LUL to purchase rights as provided for in Clauses 7.7 and 7.8; and
  - (c) any Unique ITP Outputs that fall outside the scope of paragraph (b) above.
- 7.5. Following receipt of the RTP, LUL shall confirm to the Bidder which ITP Outputs it is agreed are Unique ITP Outputs. Either Party may refer any dispute in this respect to be decided by an expert appointed by the President of the Institution of Civil Engineers.
- 7.6. LUL may draft the ITT documentation so as to include express reference to any ITP Outputs except Unique ITP Outputs. LUL may however draft the ITT documentation so that the inclusion of any Unique ITP Outputs in a bidder ITT response would not be non-compliant.

## London Underground Limited

7.7. LUL may at its discretion choose to purchase from the Bidder (on a non-exclusive basis) the rights to use or modify any Unique ITP Output for the purposes of the Project. The purchase price for any Unique ITP Output shall be determined as follows:

7.7.1. The Parties shall seek to agree in good faith the purchase price of the Unique ITP Output. For these purposes, such Unique ITP Output may be valued pursuant to the TfL business case methodology described in documents LUSTN-0008798-DOC-002120 and 002121 in the SharePoint data room. The purchase price shall be no greater than fifty per cent (50%) of such value.

7.7.2. If the Parties do not agree the purchase price of such Unique ITP Output calculated pursuant to paragraph 7.7.1, then either Party may refer the matter to be decided by an expert appointed by the President of the Institution of Civil Engineers.

By way of example, valuation may be by reference to (a) the intrinsic value of the Unique ITP Output or (b) the difference between the cost of the Project using the Unique ITP Output and the cost of the Project not doing so. Other valuation methodologies may be appropriate.

For the avoidance of doubt, LUL shall at no time be obliged to purchase any Unique ITP Output, and any such purchase shall in any event be subject to TfL Group governance.

7.8. In consideration of payment by LUL to the Bidder of the purchase price in respect of a Unique ITP Output, the Bidder hereby grants LUL a worldwide, royalty free, irrevocable, perpetual and non-exclusive licence to use and modify such Unique ITP Output (including any IPRs pertaining thereto) for any purpose in connection with the Project, including without limitation the right to sublicense such rights to any third parties for the purpose set out above. The Bidder shall indemnify LUL against any liabilities arising out of any claim that the IPR in any such Unique ITP Output infringes the IPR of any third party. The Bidder shall provide LUL with all Documentation pertaining to such Unique ITP Output necessary or otherwise reasonably required by LUL to exercise the rights granted under this Clause 7.8.

7.9. LUL's liability in aggregate for any breaches of this Clause 7 shall be limited to the direct costs of the Bidder reasonably incurred in tendering for the D&B Contract.

## 8. General

- 8.1. The Bidder shall not make or permit others to make any reference to this Agreement, the Information, or use the name of any member of the TfL Group in any public announcements, promotional, marketing or sales materials or efforts without the prior written consent of LUL.
- 8.2. The Bidder acknowledges that damages may not be an adequate remedy for any breach of this Agreement and that (without prejudice to any other rights or remedies that LUL may be entitled to as a matter of law), LUL shall be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Agreement and that no proof of special damages shall be necessary for the enforcement of the provisions of this Agreement.
- 8.3. No failure or delay by a Party to exercise any right or remedy to which it is entitled under this Agreement, shall constitute a waiver of such right or remedy. A waiver of any right or remedy is only effective if it is expressly stated to be such.
- 8.4. Save that any member of the TfL Group shall have the right to enforce the terms of the Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999, neither LUL nor the Bidder intends that any of the terms of the Agreement will be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person not party to it.
- 8.5. The termination of this Agreement or the completion of the Project for any reason shall not affect the Parties' rights or obligations that have arisen under this Agreement.
- 8.6. This Agreement contains all of the terms which the parties have agreed relating to the subject matter of this Agreement and it supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever. Nothing in this Clause 8.8 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.
- 8.7. This Agreement shall be governed by and construed in accordance with English law and is subject to the exclusive jurisdiction of the English courts.

**THIS AGREEMENT** has been signed by for and on behalf of the parties on the day and year written above.

**London Underground Limited**

Signed by )  
for and on behalf of )  
**LONDON UNDERGROUND LIMITED** )

**Name:**

**Position:**

Signed by )  
for and on behalf of )  
[*insert name of Bidder*] )

**Name:**

**Position:**

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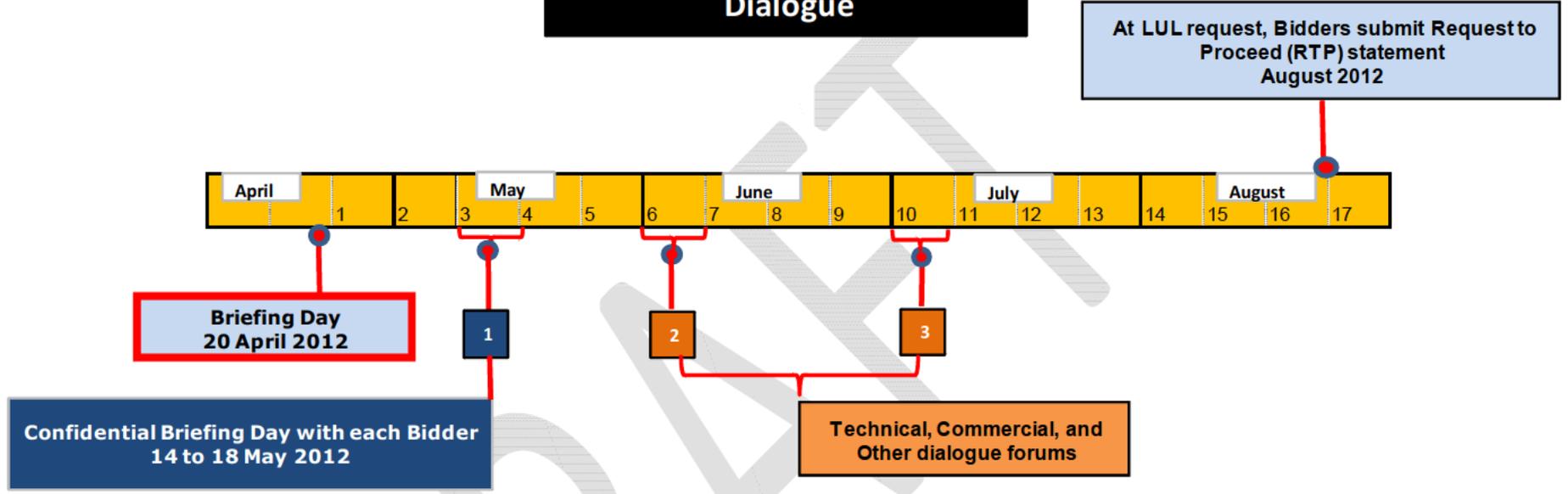
**Appendix A**

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**Appendix A – Innovative Contractor Engagement timeline**

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### Dialogue



### ITT, Integration, Approvals

