



## **CONTRACT C412**

Bond Street Station  
(Main Station Works, Fit-Out and M&E)

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# Main Civils Contract

Target contract with activity schedule

Crossrail Limited

(the *Employer*)

and

Costain Limited

and

Skanska Construction UK Limited

(the *Contractor*)

Contract No. 412

Main Works at Bond Street Station

This amended contract is based on the NEC Engineering and Construction Contract, the copyright in which standard form belongs to the Institution of Civil Engineers.



This agreement is made on the 15<sup>th</sup> day of February 2013

Between **CROSSRAIL LIMITED** of 25 Canada Square, London E14 5LQ

(the *Employer*)

and

**COSTAIN SKANSKA JOINT VENTURE** of Costain House, Vanwall Business Park, Maidenhead, Berkshire, SL6 4UB

an unincorporated joint venture between

**COSTAIN LIMITED** of Costain House, Vanwall Business Park, Maidenhead, Berkshire, SL6 4UB (company registration number 00610201)

and

**SKANSKA CONSTRUCTION UK LIMITED** of Maple Cross House, Denham Way, Maple Cross, Rickmansworth, Hertfordshire, WD3 9SW (company registration number 00191408)

(the *Contractor*)

1. The *Employer* wishes to procure the carrying out of certain main station structure, fit-out and mechanical and electrical works in relation to the Crossrail project, London.
2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with this contract and the conditions of contract at Annexure 1 to this contract ("the conditions of contract").
3. The *Contractor* will Provide the Works in accordance with this contract and the conditions of contract.
4. The contract and the conditions of contract and the documents referred to in them form this contract. References in the conditions of contract to "the contract" are references to this contract. The order of precedence of the contract documents in descending priority is:
  - This form of agreement;
  - The conditions of contract;
  - Contract Data;
  - Works Information and Site Information (which shall have joint precedence).
5. The obligations and liabilities of each party comprising the *Contractor* are joint and several.

Executed as a deed and delivered on the

date above by:



(signed)

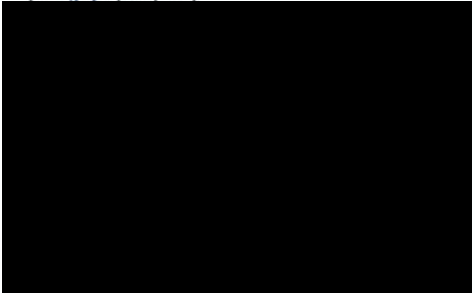
(name of Director)

(signed)

(name of ~~Director or~~ Company Secretary)

On behalf of **CROSSRAIL LIMITED**

(the ~~Employer~~)



(signed)

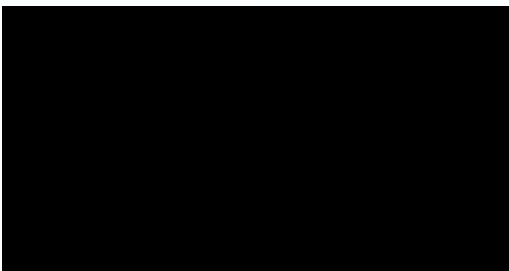
(name of Director)

(signed)

(name of ~~Director or~~ Company Secretary)

On behalf of **COSTAIN LIMITED**

(a party comprising the *Contractor*)



(signed)

(name of Director)

(signed)

(name of Director or ~~Company Secretary~~)

On behalf of **SKANSKA CONSTRUCTION**

**UK LIMITED** (a party comprising the *Contractor*)

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**NEC 3**

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## CORE CLAUSES

### 1 General

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10.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

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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 *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes. Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Works Information.

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

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

(4) Applicable Law means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

(5) Background Rights means in respect of each party the Intellectual Property rights owned by or otherwise in the possession of that party at the date of this contract.

(6) Canary Wharf Works means the permanent and temporary works to be carried out by the CWG SPV (as defined in the PDA) under the CWG Agreement (as defined in the PDA).

(7) Completion is when the *Contractor* has

- done all the work which the Works Information states he is to do by the Completion Date and
- corrected notified Defects which would have prevented the *Employer* from using the *works*

and Others from doing their work.

If the work which the *Contractor* is to do by the Completion Date is not stated in the Works Information, Completion is when the *Contractor* has done all the work necessary for the *Employer* to use the *works* and for Others to do their work.

- (8) The Completion Date is the *completion date* unless later changed in accordance with this contract.
- (9) Confidential Information means any information of whatever kind (whether commercial, technical, financial, operational or otherwise, in whatever form and whether or not recorded in any way) relating to the *Employer* or the Programme.
- (10) Construction Data means Personal Data of employees of the *Contractor* and employees of subcontractors or suppliers of any tier working at construction sites owned or controlled by the *Employer*.
- (11) The Contract Date is the date of execution by the Parties of this contract.
- (12) Contractor Information means information provided or made available to the *Employer* by the *Contractor* and recorded in any form held by the *Employer* or held by the *Contractor* on behalf of the *Employer*.
- (13) Crossrail Data means personal data of which the *Employer* is the Data Controller.
- (14) Crossrail Data Policy means the *Employer's* data protection policy relating to construction sites.
- (15) CWG is Canary Wharf Group plc of One Canada Square, Canary Wharf, London E14 5AB.
- (16) Data Controller shall have the same meaning as in the DPA.
- (17) Data Processor shall have the same meaning as in the DPA.
- (18) Data Subject shall have the same meaning as in the DPA.
- (19) A Defect is
  - a part of the *works* which is not in accordance with the Works Information or
  - a part of the *works* designed by the *Contractor* which is not in accordance with this contract or the Applicable Law or the *Contractor's* design which the *Project Manager* has accepted.



(20) The Defects Certificate is either a list of Defects that the *Supervisor* has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

(21) 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 and
  - payments to Others

and

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

less Disallowed Cost.

Defined Cost does not include

- the cost of taking out any insurances;
- the cost of any subcontract performance bonds, notwithstanding any acceptance by the *Project Manager* of subcontract conditions of contract, unless agreed in advance by the *Project Manager*. In the event that the *Project Manager* agrees that such cost will be Defined Cost, the *Contractor* calls on such bond as and when requested by the *Project Manager* and the proceeds of any call on such bond are shared equally between the *Contractor* and the *Employer*; and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

(22) Depot Works means the permanent and temporary works to be carried out by the Depot Contractor (as defined in the PDA) under the Depot Contract (as defined in the PDA).

(23) DfT is Department for Transport of Great Minster

House, 76 Marsham Street, London SW1P 4DR.

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

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

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with a constraint on how he is to Provide the Works stated in the Works Information,
- correcting Defects before Completion caused by the *Contractor* not complying with the accepted quality plan referred to in the Works Information or this contract,
- correcting Defects notified to the *Contractor* by the *Supervisor* which the *Contractor* failed previously to notify to the *Supervisor* having had the opportunity to notify such Defect,
- 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
- preparation for and conduct of an adjudication or proceedings of the tribunal.

(25) DLR is Docklands Light Railway Limited whose registered office is at Operations and Maintenance Centre, P.O. Box 154, Castor Lane, Poplar, London E14 0DX.

- (26) DPA means the Data Protection Act 1998.
- (27) Equipment is items provided by the *Contractor* and used by him to Provide the Works and which the Works Information does not require him to include in the *works*.
- (28) The Fee is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work.
- (29) FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such legislation.
- (30) Foreground Rights means all Intellectual Property rights developed by either party (and in the case of the *Contractor* any Intellectual Property developed by any subcontractor or supplier of any tier) under or in connection with this contract and/or the *works*, including but not limited to all Intellectual Property rights in the Materials.
- (31) GBR means the *Geotechnical Baseline Report*.
- (32) Group Company is any holding company or subsidiary of an entity (within the meaning of section 1159 of the Companies Act 2006) or a company in which an entity or any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by section 548 of the Companies Act 2006)
- (33) Information Request means a request for information under the FOI Legislation.
- (34) Intellectual Property means any and all patents, trademarks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software (including source codes) and databases, topography rights (in each case whether registered or not and including any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, Know-How, trade secrets and other confidential information, rights in databases and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world.
- (35) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless

later changed in accordance with this contract.

- (36) Know-How means information and know-how whether patentable or not including but not limited to all patented techniques, operating instructions, machinery designs, raw material or product specifications, drawings, blueprints, and any other technical and commercial information relating to design, development, manufacture, assembly, use or sale.
- (37) LUL is London Underground Limited whose registered office is 55 Broadway, London SW1H 0BD.
- (38) Materials means all documents, items information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by the *Contractor* as part of or in connection with the *works* and/or this contract.
- (39) Network Rail is Network Rail Infrastructure Limited whose registered office is at Kings Place, 90 York Way, London N1 9AG.
- (40) New Employer means TfL, DfT or any company which is a holding company or subsidiary (within the meaning of Section 1159 of the Companies Act 2006) of TfL or DfT or is a company in which TfL or DfT or any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by Section 548 of the Companies Act 2006).
- (41) On-Network Works means the Crossrail Project Works (as defined in the PDA) to be undertaken by Network Rail (as defined in the PDA) pursuant to the NR Regulatory Protocol (as defined in the PDA): (i) between Maidenhead in the County of Berkshire and Royal Oak in the City of Westminster; (ii) between Pudding Mill Lane in the London Borough of Newham and Shenfield in the County of Essex; and (iii) between Plumstead and Abbey Wood, both in the London Borough of Greenwich.
- (42) Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, any adjudicator appointed pursuant to clause W2A, the *Contractor* or any employee, subcontractor or supplier of any tier.
- (43) The Parties are the *Employer* and the *Contractor*.
- (44) PDA is the Project Development Agreement between the *Employer*, TfL and the Secretary of

State for Transport dated 3 December 2008.

- (45) Personal Data shall have the same meaning as in the DPA.
- (46) Plant and Materials are items intended to be included in the *works*.
- (47) 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.
- (48) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.
- (49) Processing shall have the same meaning as in the DPA and Process and Processed shall be construed accordingly.
- (50) The Programme means the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements.
- (51) A Prohibited Act means:
  - (a) offering, giving or agreeing to give to any officer or agent of the *Employer*, any gift or consideration of any kind:
    - (i) as an inducement or reward; or
    - (ii) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
    - (iii) for showing or not showing favour or disfavour for any person in relation to this contract or any other contract with the *Employer*; or
    - (iv) for entering into this contract in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge unless before this contract is made, particulars of any such commission and of the terms and conditions of any such agreement for

the payment thereof have been disclosed in writing to the *Employer*; or

- (b) the commission of an offence under the Prevention of Corruption Acts 1889 – 1916;
  - (c) entering into any form of collusion with other suppliers of works similar to the *works* or with other actual or potential bidders for this contract; or
  - (d) the commission of an offence under the Bribery Act 2010.
- (52) The Project means the project for the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements excluding:
- On-Network Works;
  - Canary Wharf Works;
  - Woolwich Works; and
  - Depot Works.
- (53) 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.
- (54) Register of Undertakings and Assurances means the *Employer's* undertakings and assurances register as referred to in the Works Information.
- (55) 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.
- (56) 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.
- (57) Site Information is information which
- describes the Site and its surroundings and

- is in the documents which the Contract Data states it is in.
- (58) The Sponsors' Requirements are set out in the PDA and shall apply as amended from time to time.
- (59) A Subcontractor is a person or organisation who has a contract with the *Contractor* to
- construct or install part of the *works* or
  - provide a service necessary to Provide the Works or
  - supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works* or
  - supply Equipment which has been designed in whole or in part specifically for the *works*.
- (60) TfL is Transport for London of Windsor House, 42-50 Victoria Street, London SW1H 0TL and "**TfL Group**" is Transport for London and all its subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time.
- (61) Third Party Rights means all Intellectual Property rights which are not owned by the *Employer* or the *Contractor* but required either (a) by the *Contractor* to Provide the Works or supply the Materials, or (b) by the *Employer* (or any successors) to use the Materials and/or to implement and/or operate those parts of the Programme which are the subject of this contract whether during the term of this contract or thereafter.
- (62) Woolwich Works means the permanent and temporary works to be carried out by Berkeley Homes (as defined in the PDA) under the Woolwich Station Box Deed (as defined in the PDA).
- (63) 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.
- (64) 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.

## **Interpretation and the law 12**

- 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. Words denoting persons include individuals, partnerships, firms and corporations and their successors and permitted assignees or transferees.
- 12.2 This contract is governed by the *law of the contract*.
- 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.
- 12.4 This contract is the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to the subject matter of this contract and each Party acknowledges that in entering into this contract it has not relied on any representation or undertaking, whether oral or in writing, save such as are expressly incorporated in this contract.
- 12.4A If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect.
- 12.4B In this contract any reference to:
- any enactment, order, regulation or other similar instrument references the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
  - a public organisation references any successor (statutory or otherwise) public organisation which has taken over the functions and duties of such public organisation;



- laws includes any applicable legislation, judgments of a relevant court of law changing a binding precedent and Applicable Law;
- words preceding "include", "includes", "including", and "included" are construed without limitation to the words which follow those words; and
- this contract includes any permitted variation, amendment, or supplement to this contract.

12.4C A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

12.4D The terms and conditions of this contract and the warranties and undertakings which it contains apply to all works performed and to be performed by the *Contractor* in relation to the project to which the *works* relate both before and after the Contract Date.

12.5 Any reference in this contract to subcontractors or suppliers of any tier means all those subcontractors and suppliers that are engaged by the *Contractor*, by Subcontractors or by subsubcontractors within the supply chain of the *Contractor*.

### **Communications 13**

13.1 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 or is available for access on the hosted web server referred to in the Works Information (save in the case of the notification of a Dispute which shall be notified in hard copy only). Writing is in the *language of this contract*. Electronic mail is not a valid means of communication in accordance with this contract.

13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data. Alternatively, an electronic communication has effect when it is posted on the hosted web server referred to in the Works Information. Communications relating to the notification of a Dispute shall have no effect under this contract unless served in hard copy.

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*.
- 13.6A The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *works* for the *period for retention* set out in the Contract Data. The copies are retained in the form stated in the Works Information.
- 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.

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- 14.1 The *Project Manager's* or the *Supervisor's* or the *Employer's* acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction, or any enquiry or inspection which the *Project Manager* or the *Supervisor* or the *Employer* makes or has carried out for its benefit or on its behalf at any time shall not operate to reduce, extinguish, exclude, limit or modify the *Contractor's* duties and obligations under this contract.
- 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.

#### **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

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
- impair the performance of the *works* in use,
- affect the work of the *Employer* or an Other or
- lead to a breach by the *Employer* of any undertaking or assurance contained in the Register of Undertakings and Assurances.

Either the *Project Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the 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. For the avoidance of doubt, the *Contractor's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 and 65.

**Ambiguities and inconsistencies 17**

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

**Illegal and impossible requirements 18**

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

**Prevention 19**

Not used.

## 2 The *Contractor's* main responsibilities

### Providing the Works 20

- 20.1 The *Contractor* Provides the Works in accordance with the Works Information and Applicable Law and such that only materials which at the time of use are not known within the UK civil engineering industry as being deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection of Construction Materials (Ove Arup & Partners) current at the date of use are used in the *works*.
- 20.3 The *Contractor* advises the *Project Manager* on the practical implications of the design of the *works* and on subcontracting arrangements.
- 20.4 The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* and of the Prices in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *works*. An explanation of the changes made since the previous forecast is submitted with each forecast.

### The *Contractor's* design 21

- 21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design.
- 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with the Works Information or
- Applicable Law or
  - the *Contractor's* design which the *Project Manager* has accepted or
  - this contract.

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

- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.
- 21.3A The *Contractor's* obligation in respect of his design of any part of the *works* is to use the standard of skill, care and diligence to carry out and complete such design to be reasonably expected from a properly qualified professional consultant experienced in providing design in respect of works similar in size, scope and complexity to the *works* and for projects similar in size, scope and complexity to the Project. The *Contractor* will use the standard of skill and care set out in this clause 21.3A to

ensure that any part of the *works* designed by the *Contractor* will interface and integrate fully with any design prepared by, or on behalf of, the *Employer*.

**Using the *Contractor's* design** 22

Not used

**Design of Equipment** 23

23.1

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

- the Works Information,
- the *Contractor's* design which the *Project Manager* has accepted,
- Applicable Law or
- this contract.

**People** 24

24.1

The *Contractor* either employs each key person named to do the job stated in the Contract Data for so long as they remain under the *Contractor's* control (unless the *Contractor* is prevented from doing so by circumstances outside the *Contractor's* reasonable control) or employs a replacement person who has been accepted by the *Project Manager* in accordance with this sub-clause 24.1. If any key person (or his replacement) is proposed to be removed in accordance with this sub-clause 24.1, the *Contractor* submits (as soon as reasonably practicable and so as to minimise any adverse effect on the progress of the *works*) 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 the *Employer* or the *Project Manager* believes he is a security risk or that his relevant competency, qualifications and experience are not as good as those of the person who is to be replaced.

24.1A

If a replacement key person is accepted by the *Project Manager*, the *Contractor* arranges for there to be a minimum handover period of 4 weeks during which both the original key person and his replacement perform the job stated in the Contract Data.

24.1B

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 (or his replacement) ceases to be employed to do the job stated in the Contract Data, the *Employer* may deduct the *key person compensation amount* applicable to such key person (or his replacement) from any sum otherwise due or which at any time may otherwise become due to the *Contractor*

under this contract.

- 24.2 The *Project Manager* may instruct the *Contractor* to remove a person. The *Contractor* then arranges that, after one day, the person has no further connection with the work included in this contract.

## **Working with the Employer and Others 25**

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

- 25.1A Where necessary to Provide the Works, the *Contractor* holds or attends meetings with Others. The *Contractor* informs the *Employer* and the *Project Manager* of these meetings beforehand and the *Employer* and the *Project Manager* may attend them.

- 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*.

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

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

the additional cost including that arising in relation to other parts of the Programme or any other project which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met.

## **Subcontracting 26**

- 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 the employees and equipment of a subcontractor or supplier of any tier were the *Contractor's*.

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

him.

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

- the *Employer's* form of NEC subcontract at Annexure 10 (without amendment) is proposed or
- the *Project Manager* has agreed that no submission is required

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

- they will not allow the *Contractor* to Provide the Works or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation or
- they are not consistent with the terms of this contract or
- the subcontract has not been procured at open market or competitively tendered prices with provision for deductions for discounts, rebates and taxes which can be recovered.

Once the subcontract conditions have been accepted by the *Project Manager* the *Contractor* shall not agree to vary or amend the same or terminate the engagement of the Subcontractor unless such variation, amendments or termination has been accepted by the *Project Manager*.

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

- an NEC contract (including the *Employer's* form of subcontract at Annexure 10) 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 or the subcontract has not been procured at open market or competitively tendered prices with provision for deductions for discounts, rebates and taxes which can be recovered.

26.4A The *Contractor* shall procure that it and each Subcontractor shall (unless instructed to the contrary by the *Project Manager* at the date of the *Project Manager's* acceptance pursuant to clauses 26.3 or 26.4) enter into collateral warranties in the form set out in Annexure 6 to



this contract in favour of:

- the *Employer* within 14 days of the date of the subcontract being entered into and
- the other parties specified in the Contract Data within 14 days of the identity of the beneficiary being given to the *Contractor*.

**Other responsibilities 27**

- 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*.
- 27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information.
- 27.4A The *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site for the effective discharge of those responsibilities.
- 27.4B The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant, or occupier or any statutory undertaker arising out of the carrying out of the *works* or of any obligation under clause 43 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. Subject to clause Z22, the *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference.
- 27.4C Without prejudice to the *Contractor's* obligation under clause 27.4B, the *Contractor* ensures that there is no trespass over any adjoining or neighbouring property arising out of the *works* or of any obligation under clause 43. If the carrying out of the *works* or of any obligation under clause 43 is likely to necessitate interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Employer*, obtains the prior written agreement of

such owners and/or occupiers to the work, and such agreement will be subject to the approval of the *Employer* before execution. The *Contractor* complies in every respect with any conditions in any such agreement.

### 3 Time

#### Starting, Completion and Key Dates 30

- 30.1 The *Contractor* does not start work on the Site until the first *access date* and proceeds with the work regularly and diligently so that Completion is on or before the Completion Date.
- 30.2 The *Project Manager* decides the date of Completion. The *Project Manager* certifies Completion within two weeks of Completion.
- 30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

#### The programme 31

- 31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.
- 31.2 The *Contractor* shows on each programme which he submits for acceptance
- the *starting date, access dates, Key Dates* and Completion Date,
  - planned Completion,
  - the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
  - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
  - the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
  - the dates on which necessary consents and approvals are to be obtained (including those to be obtained by the *Employer*),
  - provisions for
    - float,
    - time risk allowances,
    - health and safety requirements and
    - the procedures set out in this contract,
  - the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
    - access to a part of the Site if later than its *access date*,
    - acceptances,

- Plant and Materials and other things to be provided by the *Employer* and
- information from Others,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and
- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.

31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that

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

31.4 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.

## **Revising the programme 32**

32.1 The *Contractor* shows on each revised programme

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

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

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

## **Access to and use of the Site 33**

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

**Instructions to stop or  
not to start work 34**

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

**Take over 35**

35.1 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 three weeks after Completion.

35.2 The *Employer* may use any part of the *works* before Completion has been certified. If he does so, he takes over the part of the *works* when he begins to use it 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 accelerate the *works* to achieve Completion before the Completion Date.

## 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 Equipment, Plant and Materials which the Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection.

### Searching for and notifying Defects 42

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

### **Correcting Defects 43**

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- 43.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.
- 43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.

### **Accepting Defects 44**

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

### **Uncorrected Defects 45**

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

Information is treated as having been changed to accept the Defect.

- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.



## 5 Payment

### Assessing the amount due 50

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 eight weeks after the *Supervisor* issues the Defects Certificate and
- at Completion of the whole of the *works*.

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. If the *Contractor* does not submit a revised programme to the *Project Manager* within the time required by clause 32.2 five percent of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted such revised programme.

50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted on or before the assessment date.

50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.

50.6 For the purpose of assessing the amount due payments of Defined Cost made by the *Contractor* in a currency other than the *currency of this contract* are converted to the *currency of this contract* using the *exchange rates*.

50.6A If the *Contractor* fails to deliver any collateral warranty, parent company guarantee or bond in accordance with this contract the *Employer* may withhold any payment or further payment (as the case may be) which would otherwise be due to the *Contractor* under this contract until such time as such collateral warranty, guarantee, or bond has been so delivered. In the case of a failure to provide a collateral warranty from a Subcontractor in

accordance with this contract, the *Employer* may only withhold such amount of any payment which relates to the part of the *works* which are the subject of the relevant subcontract.

50.6B In addition to any other rights of the *Employer* whether at law or equity or under this contract, whenever

- under any other contract between the *Employer* and:

(i) the *Contractor*; or

(ii) a Group Company of the *Contractor*; or

(iii) a contractor that is a joint venture, consortium, partnership or otherwise which comprises (whether as shareholders of that contractor or otherwise) solely companies which are Group Companies of the companies comprising (whether as shareholders or otherwise) the *Contractor*

any sum of money is recoverable by the *Employer* under such contract or

- (1) the *Employer* is a member of the TfL Group and (2) the *Contractor* has committed an Act of Insolvency and (3) any sum of money is recoverable from or payable by the *Contractor* or a Group Company to any member of the TfL Group under any contract between any such member of the TfL Group and the *Contractor* or a Group Company

then, subject to the *Employer* serving an effective pay less notice in accordance with clause 51.2A the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the *Contractor* under this contract.

Provided always that the *Employer* is only entitled to exercise any right of set-off against the *Contractor* under this contract in relation to any contracts that the *Employer* or the TfL Group have with the companies (or their Group Companies) comprising the *Contractor* where such contracts have been made with an entity which comprises all the companies (or Group Companies of all the companies) comprising the *Contractor*.

## **Payment 51**

51.1 The *Project Manager* certifies a payment within seven days of each assessment date. The *Project Manager's* certificate is the notice of payment to the *Contractor* specifying the amount due (the notified sum) and stating the basis on which the amount was calculated. The first payment is the amount due. Other payments are the

change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract. The date on which a payment becomes due is seven days after the assessment date.

51.2 The final date for payment of each certified payment is sixteen days after the date on which payment becomes due. 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, interest is paid on the late payment. Interest is assessed from the 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.

51.2A If either Party intends to pay less than the notified sum, he notifies the other Party not later than five days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated.

A Party does not pay less than the notified sum unless he has notified his intention to pay less than the notified sum as required by this contract.

51.2B (1) If:

- any payment has not been paid in full by the final date for payment; and
- notification of intention to pay less has not been given in accordance with clause 51.2A

the *Contractor* may suspend his performance under this contract.

(2) The *Contractor* does not exercise his right to suspend his performance under this contract unless he has first given at least seven days' notice in writing to the *Project Manager* of:

- his intention to suspend his performance under this contract and
- the grounds for suspending his performance under this contract.

(3) The right of the *Contractor* to suspend his performance ends when the amount that should be paid to the *Contractor* is paid to him in full.

51.2C If the *Contractor* exercises his right under the Act to suspend his performance, it is a compensation event.

- 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 an adjudicator appointed pursuant to clause W2A or the courts of England and Wales,

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

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

## **Defined Cost 52**

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

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

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

## **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.

53.4A Without limiting clauses 53.3 to 53.4 if the *Project Manager* assesses prior to Completion that the Price for Work Done to Date at Completion is likely to exceed the Prices the *Project Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* assessment of the likely *Contractor's* share of the excess which sum is a proportionate amount having regard to:

- the Price for Work Done to Date at the relevant time,
- the unexpired duration of the contract, and
- any proposals submitted by the *Contractor* for future cost saving.

Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4.

53.4B No Fee is payable on the amount by which the Defined Cost exceeds the total of the Prices excluding the Fee element of the Prices.

**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.

## 6 Compensation events

### Compensation events 60

#### 60.1

The following are compensation events.

- (1) The *Project Manager* gives an instruction changing the Works Information except
  - a change made in order to accept a Defect or
  - a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer* or a change made in order to accept a value engineering proposal under clause Z15.
- (2) The *Employer* does not allow access to and use of a part of the Site 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 stop or not to start any work or to accelerate the *works* to achieve Completion before the Completion Date or to change a Key Date.
- (5) The *Employer* or Others
  - do not work within the times shown on the Accepted Programme,
  - do not work within the conditions stated in the Works Information or
  - carry out work on the Site that is not stated in the Works Information.
- (6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract.
- (7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.
- (8) The *Project Manager* or the *Supervisor* changes a decision which he has previously communicated to the *Contractor*.
- (9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect or acceptance of a proposal which does not comply with this contract) for a reason not stated in this contract.
- (10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave

insufficient notice of doing work obstructing a required test or inspection.

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

(12) The *Contractor* encounters physical conditions which

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

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

(12A) The *Contractor* encounters conditions which:

- are within the Site,
- are of a type referred to in the GBR and
- are more adverse than the conditions set out in the GBR.

Only the difference between the conditions encountered and those set out in the GBR are 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 by the *Employer* which is not one of the other compensation events in this contract.

60.2 In judging the physical conditions for the purpose of assessing a compensation event under 60.1(12), the *Contractor* is assumed to have taken into account

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

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

60.4 The *Contractor* takes all reasonable steps to mitigate the effects of any compensation event.

## **Notifying compensation events 61**

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. The *Project Manager* 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.

61.3 Subject to clause 61.7, 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 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.

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

- arises from or is contributed to by a fault of the *Contractor* or arises by reason of any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any subcontractor or supplier of any tier or any of their employees or agents
- 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 or more information.

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

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

the *Contractor* notifies 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.

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

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations.

Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

61.7 A compensation event is not notified after the *defects date*. No change in Prices is made in respect of any matter 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.

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 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* notifies 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 an acceptance of the quotation by the *Project Manager*.

### **Assessing compensation events 63**

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 (save for the type referred to in clause 60.1(12A)) is to reduce the total Defined Cost

- the Prices are proportionately reduced (save in relation to any value engineering proposals accepted under clause Z15) and
- the *Contractor* shall not be entitled to any payment in respect of loss of profit or loss of opportunity in respect of the same save in relation to any omission pursuant to clause Z16.1 that does not fall into the categories of the omissions referred to in clause Z16.2.

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.

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.

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

*Contractor* had given early warning thereby enabling the *Project Manager* to have taken action to minimise or avoid the effects of such compensation event.

- 63.6 Assessment of the effect of a compensation event includes 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.
- 63.11 Not used.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.
- 63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.

#### **The *Project Manager's* assessments 64**

- 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment within the time allowed,
  - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or

- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* notifies 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 weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

## **Implementing compensation events 65**

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.

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

## 7 Title

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

- 70.1 Whatever title the *Contractor* has to Plant and Materials passes to the *Employer* if it has been brought within the Working Areas. Notwithstanding the foregoing, title passes to the *Employer* on payment being made by the *Employer* to the *Contractor* for Plant and Materials outside the Working Areas. Title to Equipment purchased for work included in this contract passes to the *Employer* on payment being made by the *Employer* to the *Contractor* for such Equipment.
- 70.2 Title to Plant and Materials or Equipment passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission.
- 70.3 No payment is made to the *Contractor* on account of Plant and Materials which are outside the Working Areas unless the *Project Manager* has given his permission and the *Contractor* has provided an on demand form of bond in the full amount of such payment in the form set out in Annexure 5, Part B to this contract provided by a bank or insurer which the *Project Manager* has accepted. If the rating of the provider of the bond as published by Standard & Poors falls below "A" and if the *Employer* so requests, the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted provided always that failure by the *Contractor* to provide to the *Employer* a replacement bond will not of itself constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract. The cost of the provision of any such replacement bond constitutes Defined Cost.
- A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the *Project Manager* agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.
- 70.4 In addition immediately on payment and without any further act being necessary title shall pass to the *Employer* and the *Contractor* shall ensure that the Plant and Materials are clearly tagged, identified as the *Employer's* and set aside for the *Employer*. Risk in such Plant and Materials does not pass on payment.

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

## **Areas**

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

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

## **Removing Equipment 72**

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

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

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

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

## 8 Risks and insurance

### **Employer's risks 80**

80.1 The following are *Employer's* risks.

- Claims, proceedings, compensation and costs payable which are, subject to the *Contractor's* obligations under clause 27.4B and 27.4C, due to
  - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
  - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or
  - a fault of the *Employer* or a fault in his design.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
  - war, civil war, rebellion, revolution, insurrection, terrorism, military or usurped power,
  - strikes, riots and civil commotion not confined to the *Contractor's* employees or
  - radioactive contamination.
- Loss of or wear or damage to the parts of the *works* taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
  - a Defect,
  - an event occurring before take over which was not itself an *Employer's* risk or
  - the activities of the *Contractor* on the Site after take over.
- Loss of or wear or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination.



- Additional *Employer's* risks stated in the Contract Data.

80.2 Except as provided above, the *Employer* carries no risk in relation to Equipment notwithstanding the passing of title to the *Employer* in accordance with this contract.

**The Contractor's risks 81**

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

**Repairs 82**

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

**Indemnity 83**

83.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

83.2 The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

**Insurance cover 84**

84.1 The *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.

84.2A The first and third insurances in the Insurance Table are in the joint names of the Parties and all subcontractors and suppliers of any tier. The second insurance in the Insurance Table is in the joint names of the Parties.

84.2B The insurances provided by the *Contractor* 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.

84.2C The insurance requirements under this contract do not relieve the *Contractor* from any of his other obligations and liabilities under this contract.

84.2D The insurances provided by the *Contractor* are placed with a reputable insurer or insurers which the *Project Manager* has accepted. A reason for not accepting an insurer is that it does not have a rating of "A" (Standard & Poors) or equivalent or is not authorised to underwrite such risks in the European Union.

## INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost subject to the amount stated in the Contract Data
Loss of or damage to Equipment	The replacement cost subject to any amount stated in the Contract Data
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract	The amount stated in the Contract Data for any one occurrence with cross liability so that the insurance applies to the Parties separately
Liability for death of or bodily injury to employees of the <i>Contractor</i> 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
Liability for failure of the <i>Contractor</i> to use the skill and care normally used by professionals providing services similar to the services provided by the <i>Contractor</i> in connection with the <i>works</i>	The amount stated in the Contract Data in respect of each claim without limit to the number of claims

### Insurance policies **85**

- 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 and policies which state that the insurance required by this contract is in force and the terms on which it is held. The certificates and policies are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates and policies is that they do not comply with this contract.
- 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.
- 85.3 The Parties comply and the *Contractor* shall procure that all subcontractors and suppliers of any tier shall comply with the terms and conditions of the insurance policies.
- 85.4 Any amount not recovered from an insurer (including any deductible under an insurance policy provided by the *Employer*) and any loss adjuster fees relating to claims

within any deductible is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

**If the *Contractor* does not insure 86**

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 to the *Employer* is paid by the *Contractor*.

**Insurance by the *Employer* 87**

87.1 The *Project Manager* submits policies 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 if they comply with this contract.

87.2 The *Contractor's* acceptance of an insurance policy 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. The cost of this insurance to the *Contractor* is paid by the *Employer*.

## 9 Termination

### Termination

#### 90

- 90.1 If either Party wishes to terminate the *Contractor's* employment 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**

<b>Terminating Party</b>	<b>Reason</b>	<b>Procedure</b>	<b>Amount due</b>
The <i>Employer</i>	A reason other than R1-R22	P1, P2, P3 and P5	A1, A2 and A4
	R1-R15 or R18 or R22	P1, P2, P3 and P5	A1 and A3
	R17 or R20	P1, P2, P3 and P5	A1 and A2
	R21	P1, P2, P3 and P5	A1 and A2
The <i>Contractor</i>	R1-R10	P1, P4 and P5	A1 and A2
	R16 or R19	P1, P4 and P5	A1, A2 and A4
	R17 or R20	P1, P4 and P5	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment

is made within three weeks of the *Project Manager's* certificate.

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

**Reasons for termination 91**

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

- 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, administrator 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).

any such reason shall be known as an "**Act of Insolvency**" for the purposes of clause 50.6B and Z25.5.

91.2 The *Project Manager* notifies and the *Employer* may terminate (whether or not such notification is provided) if the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of notification of such default by the *Project Manager* or the *Employer*.

- 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).
- 91.3 The *Employer* may terminate immediately if the *Contractor* has defaulted in one of the following ways.
- The *Contractor* commits a Prohibited Act (R22)
  - Broken a health or safety regulation or a health or safety requirement of this contract (R15).
- 91.3A The *Employer* may terminate immediately if the *Contractor* has substantially hindered the *Employer* or Others (R14) and not stopped such hindrance within four weeks of a notification by the *Project Manager* to the *Contractor* of such hindrance.
- 91.4 Save where the *Employer* has complied with clause 51.2A, 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) provided always that the *Contractor* has given written notification to the *Employer* of such intention to terminate at least four (4) weeks prior to any such termination and the *Employer* has not paid the amount due within that period.
- 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),
  - providing the *Contractor* has given written notification to the *Employer* of an intention to terminate at least four (4) weeks prior to expiry of the above 13 weeks and no instruction allowing the work to restart or start has been given within that period, the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
  - providing written notification of an intention to terminate is given to the other Party at least four (4) weeks prior to expiry of the above 13 weeks and no instruction allowing the work to restart or start has been given within that period, either Party may terminate if the instruction was due to any other

reason (R20).

91.7 The *Employer* may terminate if an event occurs which

- stops the *Contractor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

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

## **Procedures on termination 92**

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

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.

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

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

P4 The *Contractor* leaves the Working Areas and removes the Equipment to which the *Contractor* has title.

P5 The *Contractor* gives to the *Employer* or the *Employer's* nominee all information in its possession relating to the *works* or this contract that the *Employer* may request

## **Payment on termination 93**

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials

- within the Working Areas or
- to which the *Employer* has title and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
- any amounts retained by the *Employer* and
- a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table. For the avoidance of doubt the *Contractor* is not entitled to claim any loss of profit (save to the extent such loss might be included in any amount recoverable under A4) or other costs or losses arising from any termination.

A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works* together with the amount of any loss or expense or additional cost incurred or suffered by the *Employer* and arising out of the termination in relation to the event entitling the *Employer* to terminate.

A4 A sum equivalent to 25% of the sum calculated by applying the *direct fee percentage* to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date.

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* 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 *Contractor* has paid and which he is committed to pay for work done before termination. The assessment uses as the total of the Prices

- the lump sum price for each activity which has been completed and
- 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.

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.



## DISPUTE RESOLUTION

### Option W2A

- Dispute Resolution** W2A.1 Any dispute or difference between the Parties as to the construction of this contract or any matter or thing of whatsoever nature arising under this contract or in connection therewith (a "Dispute") shall be resolved pursuant to the terms of this clause W2A.
- Managerial Discussions** W2A.2 Without prejudice to the Parties' rights at any time to refer Disputes to adjudication in accordance with this clause W2A the parties shall each use their reasonable endeavours to resolve any Dispute which may arise by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- Adjudication Procedure** W2A.3 Either party may give notice at any time of its intention to refer to adjudication a Dispute arising out of or in connection with this contract and such adjudication shall be conducted in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011. The adjudicator shall be agreed between the Parties from the *panel of adjudicators* whose identities are referred to in the Contract Data (or such replacements or additional members as are notified to the *Contractor*) or failing which the adjudicator shall be nominated by the President or Vice President of the Institution of Civil Engineers from such panel provided that prior to such nomination either Party shall have the right to identify not more than one member of the panel who is not to be nominated to conduct that adjudication. If the Contract Data does not specify the identities of the *panel of adjudicators* the adjudicator shall be either agreed by the Parties or nominated by the President or Vice President of the Institution of Civil Engineers.
- Joinder** W2A.4 (a) If a Dispute arising under this contract raises issues of fact or law which are the same as, or relate to issues raised in an unresolved dispute between the *Employer* and any Other (a "Related Dispute"):
- (i) the *Employer* may require a representative of the parties in the Related Dispute to meet with the parties under this contract and endeavour to resolve both the Related Dispute and the Dispute; and
  - (ii) the *Employer* may refer the Related Dispute to an adjudicator or court to which the Dispute has been referred under this contract or may refer the Dispute to an adjudicator or court to which the Related Dispute had been referred and the proceedings shall be consolidated, save where the adjudicator or court shall in its absolute discretion determine that it is not

possible to consolidate the proceedings; and

- (iii) any dispute as to whether the Dispute raises issues of fact or law or fact and law which are the same as or related to issues of fact or law in the Related Dispute shall be resolved by the adjudicator or court to which the Dispute and the Related Dispute have been referred, provided that, if the adjudicator or court decides that such issues of fact or law do not arise in the Related Dispute this clause W2A.4 shall cease to apply; and
  - (iv) the adjudicator or court to whom the Dispute and the Related Dispute have been referred shall have power to make such decisions, directions and all necessary orders and awards in respect of the Dispute and the Related Dispute in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him.
- (b) The *Employer* may only refer a Related Dispute to the adjudicator appointed in relation to a Dispute if the adjudicator receives particulars of the Related Dispute within seven days of the referral of the Dispute to the adjudicator under this contract and may only refer a Dispute to the adjudicator appointed in relation to a Related Dispute if the adjudicator receives particulars of the Dispute within seven days of the referral of the Related Dispute to the adjudicator.

**Final and Binding  
Decision**

W2A.5

The Parties may agree that the adjudicator's decision shall be final and binding and shall finally determine any Dispute, or in the absence of such agreement may otherwise refer such Dispute to the courts of England and Wales for further determination

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation

<b>Defined terms</b>	<b>X1</b>	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> .  (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due.  (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
<b>Price Adjustment Factor</b>	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.  The Price Adjustment Factor calculated at the Completion Date for the whole of the <i>works</i> is used for calculating price adjustment after this date.
<b>Compensation events</b>	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>
<b>Price adjustment</b>	X1.5	Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices 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>	
	X2.1	A change in the Applicable Law is a compensation event if it occurs after two years from the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for 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

**Parent company guarantee X4**

- X4.1 If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the ultimate parent company of the *Contractor's* performance in the form set out in Annexure 7 to this contract. The guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.2 If the *Contractor* is an incorporated joint venture, the ultimate parent company of each shareholder in the *Contractor* gives to the *Employer* a guarantee of the *Contractor's* performance in the form set out in Annexure 7 to this contract. The guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.3 If the *Contractor* comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the *Employer* a guarantee by its ultimate parent company of such company's performance in the form set out in Annexure 7 to this contract. The guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor shall provide to the *Employer* a legal opinion in the form set out in Annexure 8 on the guarantor's execution of any such guarantee.
- X4.5 Upon any novation of this contract in accordance with clause Z5 the *Contractor* shall give to the *Employer* further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

**Option X5: Sectional Completion**

**Sectional Completion X5**

- X5.1 In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to
- the *works*,
  - Completion and
  - Completion Date

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

## Option X7: Delay damages

### Delay damages X7

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

## Option X8: Collateral warranty agreements

### Collateral warranty agreements X8

- X8.1 The *Contractor* enters into *collateral warranty agreements* in the forms set out in Annexure 6 to this contract in favour of each of the parties identified in the Contract Data on execution of this contract or within 14 days of the identity of the beneficiary being given to the *Contractor*.

## Option X13: Performance bond

### Performance bond X13

- X13.1 The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Annexure 5, Part A to this contract.
- X13.2 If the bond was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.
- X13.3 After Completion of the whole of the *works* the *Contractor* may give the *Employer* a replacement performance bond

in an amount equivalent to 2.5% of the tendered total of the Prices specified in the Contract Data provided always that such replacement bond shall be in the same form and be provided by the same bank or insurer as the original performance bond. On receipt of such replacement bond the *Employer* shall release the original bond to the *Contractor* provided that the *Employer* may retain the original bond if a Dispute exists on or after Completion of the whole of the works.

X13.4 If the rating of the provider of a performance bond as published by Standard & Poors falls below "A" and if the *Employer* so requests, the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted provided always that failure by the *Contractor* to provide to the *Employer* a replacement bond will not of itself constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract. The cost of the provision of any such replacement bond constitutes Defined Cost.

X13.5 A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the *Project Manager* agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.

## **Option X18: Limitation of liability**

### **Limitation of liability X18**

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

- *Contractor's* share, and
- repayment of Disallowed Cost.

## **Option X20: Key Performance Indicators**

### **Incentives**

X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance

with this contract.

- X20.2 From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* 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.
- X20.3 If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Project Manager* his proposals for improving performance.
- X20.4 The *Contractor* 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.
- X20.5 The *Employer* 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.

## **OPTION Y**

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

#### **Third party rights Y(UK)3**

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

## **OPTION Z**

### **Option Z: Additional conditions of contract**

#### **Additional conditions of contract Z1**

Z1.1 The *additional conditions of contract* stated in the Contract Data are part of this contract.

#### **Training Z2**

Z2.1 The *Employer* is not responsible for the adequacy or otherwise of the training of any staff of the *Contractor* or a subcontractor or supplier of any tier whether or not such staff were trained at any tunnelling academy established by the *Employer*. For the avoidance of doubt the *Employer* is under no obligation to establish any such academy and in the event any such academy is established but is unable to offer adequate training the *Employer* shall have no responsibility for the same.

#### **Equality and diversity Z3**

Z3.1 Without limiting the generality of any other provision of the contract, the *Contractor*:

- complies with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- acknowledges that the *Employer* is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
  - promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - eliminate unlawful discrimination; and
  - promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in Providing the Works, the *Contractor* assists and co-operates with the *Employer* where possible to enable the *Employer* to satisfy its duty; and

- assists and co-operates with the *Employer* where possible to enable the *Employer* to comply with its duties under section 1 and



section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections.

**Crime and disorder Z3.2**

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

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

**Assignment Z4**

The *Contractor* does not assign the contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the *Employer*. The *Employer* may assign the contract or any part thereof or any benefit or interest therein or thereunder.

**Novation Z5**

Z5.1 The *Contractor* shall within fourteen days of the *Employer's* request execute and deliver to the *Employer*:

- any guarantees required by clause X4.5;
- any legal opinions required by clause X4.4 and Z26.2; and
- a deed of novation in the form annexed at Annexure 4 with the *Employer* and any New Employer, or any nominee of such New Employer; and/or
- a deed of novation in the form annexed at Annexure 4 with the *Employer* and a contractor or an operator of any depot or an operator of the railway transport system the subject of the Programme (as the *Employer* directs).

Z5.2 If the *Contractor* does not execute and deliver such deed of novation to the *Employer* within such time period then no further payment is due to the *Contractor* until the *Contractor* has executed and delivered such deed of novation to the *Employer*.

## **Project Bank Account Z6**

- Defined terms** Z6.1 (1) Bank Terms and Conditions means the terms and conditions for the operation of the Project Bank Account as agreed between the *Employer* and the *project bank*.
- (2) Project Bank Account is the account in the name of the *Employer* used for the sole purpose of receiving payments from the *Employer* and making payments of Defined Cost and Fee.
- (3) Trust Deed is an agreement between the *Employer* and the *Contractor* in the form contained in the Works Information relating to the Project Bank Account.

**Project Bank Account** Z6.2 The *Employer* establishes the Project Bank Account with the *project bank* within three weeks of the Contract Date.

Z6.3 Unless stated otherwise in this contract, the *Employer* pays any charges and the *Employer* is paid any interest made by the *project bank*.

Z6.4 The *Contractor* provides to the *Project Manager* copies of communications with the *project bank* in connection with the Project Bank Account.

Z6.5 On or before the final date for payment, the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.

Z6.6 The *Contractor* makes payment to the Project Bank Account of any amount not paid by the *Employer* and required to make payment in full to his subcontractors and suppliers.

Z6.7 The *Contractor* makes payments from the Project Bank Account of Defined Cost and Fee in accordance with the Works Information.

Z6.8 The *Contractor* is responsible for the proper operation of all payments from the Project Bank Account and complies with the Bank Terms and Conditions.

Z6.9 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.

**Effect of payment** Z6.10 Payments made into the Project Bank Account are treated as payments from the *Employer* to the *Contractor* in accordance with this contract.

**Trust Deed** Z6.11 The *Employer* and the *Contractor* sign the Trust Deed before the first assessment date.

**Termination** Z6.12 If the *Project Manager* issues a termination certificate, no further payments are made into the Project Bank Account.

Z6.13 The *Employer* closes the Project Bank Account following the last payment from the Project Bank Account of an amount

due and provides evidence thereof to the *Project Manager*.

**Interface Z7**

The *Contractor* pays to the *Employer* amounts paid by the *Employer* to Others who are engaged or required by the *Employer* to carry out works (other than the *works*), to provide services or from whom consents, licences, or releases are required by the *Employer* on or in connection with the Project or the Programme because of any:-

- default;
- negligence; or
- failure to comply with this contract,

by the *Contractor*.

**The Parties' use of material Z8**

**Background Rights Z8A**

Z8A.1 The Background Rights shall remain the absolute unencumbered property of the owner of such rights at the date of this contract. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background Rights of the other party except under the terms of this contract, and each party acknowledges that nothing contained in this contract shall give it any right, title or interest in or to the Background Rights of the other party save as granted in this contract.

Z8A.2 (a) The *Contractor* confirms that it will be able to Provide the Works without using or incorporating its Background Rights therein and that the *Employer* will be able to use the *works* to develop, implement and operate the Programme both during the term of this contract and thereafter without needing a right to use any such Background Rights.

(b) In the event that the *Employer* consents to the use or incorporation of the *Contractor's* Background Rights to Provide the Works, the *Contractor* grants the *Employer* and its appointee a non-exclusive irrevocable and royalty free licence to copy and use the Background Rights of the *Contractor* for the purposes of the Programme. The licence shall include the right to grant sub-licences without the consent of the *Contractor*. The *Contractor* shall not be liable for any use of the Background Rights other than for their originally intended purpose.

**Foreground Rights and Materials Z8B**

Z8B.1 Except where inconsistent with the *Contractor's* rights under the terms of the Lift and Escalator sub-contracts all

Foreground Rights and Materials shall vest in and be the property of the *Employer* on their creation. To the extent that any such Foreground Rights or Materials vest in the *Contractor* or any subcontractor or supplier of any tier or other third party engaged by the *Contractor* in performing this contract, the *Contractor* hereby:

- (a) assigns to the *Employer* (or shall procure that the *Employer* is granted an assignment of) all such present and future Foreground Rights immediately upon creation; and
- (b) transfers to the *Employer* (or shall procure that the relevant owner transfers) ownership in such present or future Materials immediately upon creation.

Z8B.2 The *Contractor* shall in engaging or employing any Subcontractor enter into an enforceable written contract with such party which provides that:

- (a) all Foreground Rights and Materials created by the Subcontractor and subcontractors or suppliers of any tier pursuant to such contract shall vest in and becomes the property of the *Employer* immediately upon creation;
- (b) upon such vesting, the *Employer* shall become entitled to exclusive perpetual and unrestricted rights of use and ownership of such Foreground Rights and Materials; and
- (c) the *Employer* or its nominee shall be able to enforce the rights of the *Contractor* against such Subcontractor and subcontractors or suppliers of any tier pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999;

Z8B.3 The *Contractor* shall provide a copy of any contract proposed pursuant to clause Z8B.2 to the *Project Manager* for approval and authorisation prior to entry into or execution of the same.

Z8B.4 Except where inconsistent with the *Contractor's* rights under the terms of the Lift and Escalator sub-contracts the *Contractor* agrees to provide to the *Employer* or any person nominated by the *Employer* immediate access to all Materials in whatever form requested by the *Employer* (including without limitation the source code of any software that is not commercially available) at any time but at the latest on termination or expiry of this contract. The *Contractor* shall upon the written request of the *Employer* enter into a deposit and/or source code escrow contract with the *Employer* and a third party nominated by the *Employer* in respect of such Materials in such form as the *Employer* may require.

### **Third Party Rights Z8C**

- Z8C.1 The *Contractor* shall be responsible for obtaining all necessary consents, authorities or approvals required to use any Third Party Rights necessary for performing its obligations under this contract.
- Z8C.2 The *Contractor* shall ensure that the *Employer* has all Third Party Rights necessary to enable the *Employer* to develop, implement and operate those parts of the Programme which are the subject of this contract and/or use Materials during the term of this contract and thereafter.
- Z8C.3 The *Contractor* shall use its best endeavours to ensure that it is a condition of any licence into which the *Contractor* or any subcontractor or supplier of any tier enters with a third party that the *Employer* shall be entitled to a royalty free, irrevocable copyright licence in respect of such Third Party Rights, such licence to be capable of assignment and sub-licence and to allow use of the Third Party Rights for any purpose connected with the development and operation of the Programme.
- Z8C.4 All licences in respect of Third Party Rights used by the *Contractor* in connection with the *works* shall continue for a period of 24 months from expiry or termination of this contract. The *Contractor* shall use its best endeavours to ensure that all licences for Third Party Rights that are not commercially available may be extended at the request of the *Employer* thereafter on the same terms. Where the *Employer* requires an extended right of use of any Third Party Rights used by the *Contractor* in connection with the *works* (or any part thereof) that is not commercially available, the *Employer* shall pay or procure the payment of, in accordance with terms agreed between the parties, a reasonable licence fee for any such use for the extended period. In determining whether or not any licence fee is reasonable regard shall be had to the nature and use made of the Third Party Rights, licence fees charged to the *Contractor* or subcontractors or suppliers of any tier by their licensors for such Third Party Rights, industry practice and the licence fees for the Third Party Rights normally charged by the *Contractor* or subcontractors or suppliers of any tier in similar circumstances.

**Licence from the Z8D  
*Employer***

The *Employer* hereby grants to the *Contractor* for the term of this contract and free of charge a non-exclusive, royalty-free licence to use such of the *Employer's* data, reports, drawings, specifications, plans, software, designs, inventions and/or other material of the *Employer* as are required by the *Contractor* to Provide the Works and to fulfil its other obligations pursuant to this contract and which relate to the *works*. This licence is limited to use of such materials for the purpose of, and solely as necessary for, the *works* during the term of this contract. To the extent that any modifications or enhancements to materials licensed by the *Employer* to the *Contractor* under this

clause Z8D are carried out by or on behalf of the *Contractor* in Providing the Works, the *Contractor* hereby assigns (or shall procure that the *Employer* is granted an assignment of) all present and future Intellectual Property in those modifications and enhancements. By virtue of this clause Z8D all such Intellectual Property rights shall vest in the *Employer* on their creation.

**Warranties and Indemnity Z8E**

Z8E.1 The *Contractor* warrants that:

- (a) it is the beneficial owner of its Background Rights; and
- (b) the *Employer's* use of the *Contractor's* Background Rights or any Foreground Rights developed or supplied by the *Contractor* pursuant to this contract will not infringe Intellectual Property owned by any third party.

Z8E.2 The *Contractor* will indemnify and hold harmless the *Employer* against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the *Employer* (whether direct or consequential) in respect of any claim or action that the *Employer's* use of:

- (a) Intellectual Property rights licensed by the *Contractor* to the *Employer* under this clause Z8; or
- (b) the Foreground Rights developed or supplied by the *Contractor* under this contract;

infringes the Intellectual Property rights of any third party.

**Infringements Z8F**

The *Contractor* shall exercise good commercial discretion in watching for Intellectual Property rights and the publication of any applications for the registration of Intellectual Property rights owned or controlled by third parties which may be relevant to the intentions of the *Employer* and the *Contractor* as expressed in this contract. Should any such Intellectual Property rights of a third party come to the notice of the *Contractor*, then the *Contractor* shall inform the *Employer* promptly and the parties shall decide jointly what action is to be taken. In the event of an agreement not being reached by the *Employer* and the *Contractor*, the *Employer* shall make the final decision. The *Employer* and the *Contractor* shall at all times have regard when making their decision to the Patents Act 1977 and any subsequent amendment or enactment of such legislation and any other Applicable Law.

**Copyright and Publication Z8G**

Z8G.1 The *Employer* shall be the proprietor of the copyright in this contract and any data relating to this contract. The *Employer* reserves the right to determine whether the results of the *works* shall be published and if so on what conditions. The *Contractor* shall provide any reports that the *Employer* shall request and shall enclose with the report the following disclaimer:

*"The authors of this report are employed by [ ].  
The work reported herein was carried out under a deed placed on [date of this contract] by Crossrail Limited and should not be relied upon as authoritative by any third party.*

*This report shall not be copied or reproduced in whole or in part except with the express consent of Crossrail Limited."*

Z8G.2 The following copyright statement shall be included by the *Contractor* on all copyright items intended for reproduction including final reports:

*"© Crossrail Limited".*

#### **Further Assurances Z8H**

Z8H.1 The *Contractor* shall (at its own cost) upon the request of the *Employer* promptly execute all documents and do all acts and things which may be necessary to bring into effect or confirm any assignment or the terms of any of the licences contained or referred to in this clause Z8.

Z8H.2 The Parties shall, when appropriate, execute a formal licence or licences for the purpose of registering any licences granted pursuant to this clause Z8 in such form as may be necessary to give effect to this contract and to conform with the laws for the time being existing in respect of Intellectual Property rights. Such licence or licences shall be subject to all the terms and conditions of this contract.

#### **General Z8I**

Z8I.1 The *Contractor* shall not sell, copy or use the Intellectual Property referred to in this clause Z8 if this might compromise the *works* and/or Materials (or any part thereof) or the *Employer's* use of them.

Z8I.2 The *Contractor* shall notify any proposed assignee of this contract of the licences granted to the *Employer* under or in accordance with this contract.

Z8I.3 Not used.

Z8I.4 The *Contractor* agrees to provide all assistance requested by the *Employer* on termination or expiry of this contract to handover the Materials and/or the provision of the *works* to a third party nominated by the *Employer*.

#### **Publicity Z9**

Z9.1 The *Contractor* shall not, except with the consent of the *Employer*, make any press announcements or publicise this contract or the Programme in any way unless the purpose of such disclosure is to allow compliance with a requirement to disclose information concerning this contract as required by law or the requirement of the stock exchange. The provisions of this clause shall not apply to any information relating to this contract, which is or which pursuant to this clause Z9 is public knowledge (otherwise than by breach of this clause) or which is limited to the fact of the *Contractor* being a party to this contract.

## **Data Protection Z10**

- Z10.1 The *Contractor*
- (a) collects the Construction Data as required by the Works Information in accordance with the Crossrail Data Policy
  - (b) ensures that all individuals whose Personal Data are collected by the *Contractor* in accordance with the Crossrail Data Policy are provided with a copy of the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed
  - (c) transfers the Construction Data to the *Employer* or *Project Manager* as required by the Works Information, at which point the *Employer* becomes the Data Controller of such Personal Data and such Personal Data shall become Crossrail Data. For the avoidance of doubt the Crossrail Data shall comprise of Personal Data collected from a number of sources and shall not be limited to the Construction Data.
- Z10.2 The *Contractor* may retain a copy of the Construction Data for its own purposes provided that it remains responsible at all times for all Processing other than that which is undertaken on behalf of the *Employer*.
- Z10.3 Unless the *Employer* takes appropriate steps to widen the Processing which can be undertaken by it, the *Employer* shall only Process the Construction Data for the purposes specified in the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed.
- Z10.4 The Crossrail Data may be processed by the *Contractor* to enable the *Contractor* to undertake the Processing specified in the Crossrail Data Policy. In such circumstances the *Contractor*
- (a) complies with the requirements of the DPA and any equivalent applicable legislation in any other country and in accordance with good industry practice. In particular, the *Contractor* complies with the provisions of the DPA in respect of the Processing of



the Crossrail Data as if it were a Data Controller

- (b) collects, compiles, manipulates and stores or otherwise processes the Crossrail Data only as instructed in writing in advance by the *Employer* or *Project Manager*. The *Contractor* does not carry out any other processing, use or disclosure of the Crossrail Data and
- (c) where and when requested by the *Employer* or *Project Manager*, provides a copy of all or any part of the Crossrail Data which has been collected by the *Contractor* or provided to the *Contractor* by the *Employer* or a third party, to the *Employer*.

Z10.5 The *Employer* or *Project Manager* may request by written notice that any specific item of data contained in the Crossrail Data held by the *Contractor* be amended or deleted by the *Contractor* and the *Contractor* immediately fulfils such a request.

Z10.6 The *Contractor* in particular but without limiting its obligations under Z10.4 above:

- (a) maintains comprehensive registrations or notifications under the DPA or equivalent legislation in any other country in relation to the processing of Personal Data by the *Contractor*
- (b) is aware at all times of the registerable particulars of the *Employer* under the DPA, and ensures that it does not use, disclose or process the Crossrail Data in any way that is outside the scope of those particulars, provided that the *Employer* notifies the *Contractor* of any alterations in its registerable particulars
- (c) keeps the Crossrail Data fully up to date on a timely basis at all times during the continuance of this contract
- (d) assists the *Employer* to respond to any request for information under Section 7 of the DPA made by an individual which complies with the requirements of the DPA
- (e) at all times has in place appropriate technical, procedural and organisational security measures, to protect the Crossrail Data including but not limited to the protection of:
  - (i) database software and equipment;
  - (ii) the Crossrail Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the Crossrail Data

- (f) ensures that any employees, Data Processors or sub-Data Processors involved in the Processing of the Crossrail Data are bound by the security measures specified in Z10.6(e);
  - (g) provides details of the security measures specified in Z10.6(e) to the *Employer* or *Project Manager* in writing within 10 days of a written request from the *Employer* or *Project Manager*; and
  - (h) notifies the *Employer* or *Project Manager* immediately if it receives any notice of non-compliance with, or a request for information under the DPA or any equivalent legislation in any other country.
- Z10.7 The *Employer* may, at its discretion and on reasonable written notice, require access to the *Contractor's* premises and the provision of sufficient relevant information in order to assess the adequacy of the *Contractor's* security measures.
- Z10.8 If any of the Crossrail Data or the Construction Data collected by or in the sole possession of the *Contractor* are either lost or sufficiently degraded to be unusable, the *Contractor* provides replacement and or corrected data within three working days.
- Z10.9 The *Contractor* agrees and undertakes to indemnify the *Employer* and hold the *Employer* harmless against all and any costs, liabilities and losses whatsoever incurred by the *Employer* arising out of any action or inaction of the *Contractor* that results in the *Employer* being in breach of any of its obligations or duties under the DPA or equivalent applicable legislation in any other country.
- Z10.10 The *Contractor* may not, in any circumstances, transfer any of the Crossrail Data to any country or territory outside the European Economic Area without the *Employer's* prior written consent, which may be withheld in its absolute discretion.
- Z10.11 Upon the termination of this contract for whatever reason, the *Contractor*, unless notified otherwise by the *Employer* or *Project Manager* or required by law, immediately ceases all processing of the Crossrail Data and, as requested by the *Employer* or *Project Manager*, destroys, sends, or returns to the *Employer* on suitable media all copies of the Crossrail Data held in whatever form by the *Contractor* or any sub-Data Processor.
- Z10.12 The Crossrail Data and any rights subsisting in them, including without limitation any database rights, are and shall remain at all times the property of the *Employer*, and the *Contractor* assigns to the *Employer* the copyrights, database rights and all other rights of a like nature in the Crossrail Data conferred under the laws of the United Kingdom and all other countries of the world that will be created by the *Contractor* during the term of this contract

for the full term during which those rights and any renewals or extensions subsist.

Z10.13 The *Contractor* warrants that it:

- (a) has maintained and will continue to maintain comprehensive registrations under the DPA or equivalent legislation in any other country in relation to the Processing of Personal Data by the *Contractor*;
- (b) has not received any notice of non-compliance with, or a request for information under the DPA;
- (c) has in place adequate technical and organisational security measures, including database software and equipment, governing the Processing of the Crossrail Data and any employees involved in such Processing; and
- (d) shall carry out the Processing of the Crossrail Data with due skill and care.

#### **Access to Information Z11**

Z11.1 The *Contractor* shall free of charge disclose to the *Employer* and allow the *Employer* and/or those nominated by him to inspect and take away copies of all information relating to the *works* (including without prejudice to the generality of the foregoing accounts and records) as the *Employer* shall require in order to satisfy itself that the provisions of this contract are being observed and performed, and/or in order to facilitate the operation of this contract, and the *Contractor* shall provide all reasonable assistance required by the *Employer* and/or those nominated by him in order to obtain such information and shall ensure that the *Employer* and/or those nominated by him have full and free access (including access to the *Contractor's* premises) and licence to use such information in order to facilitate the operation of this clause but the *Contractor* shall not be obliged to supply any information which would be treated as privileged in any proceedings.

#### **Freedom of Information Z12**

Z12.1 The *Contractor* acknowledges that the *Employer* is subject to the FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under the FOI Legislation. The foregoing shall not preclude the *Contractor* from objecting to a disclosure of Contractor Information.

Z12.2 The *Employer* shall be responsible for determining whether Contractor Information is exempt information under the FOI Legislation and for determining what Contractor Information will be disclosed in that respect to an Information Request in accordance with the FOI Legislation. The *Contractor* shall not itself respond to any person making an Information

Request, save to acknowledge receipt, unless expressly authorised to do so by the *Employer*.

Z12.3 The *Contractor* acknowledges that the *Employer* may be obliged under the FOI Legislation to disclose Contractor Information.

**Confidential Z13  
Information**

Z13.1 Subject to the other provisions of and as expressly permitted by this clause Z13, the *Contractor*:

- (a) may not use any Confidential Information for any purpose other than the performance of its obligations under this contract;
- (b) may not disclose any Confidential Information to any person except with the prior written consent of the *Employer*; and
- (c) shall make every effort to prevent the use or disclosure of the Confidential Information.

Z13.2 Notwithstanding clause Z13.1, the *Contractor* may disclose any Confidential Information to the following parties in the following circumstances:

- (a) to any officer or servant of the *Contractor* or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the *Contractor* to Provide the Works or to enforce its rights under this contract, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;
- (b) to the extent required by any Applicable Law, the rules of any stock exchange or regulatory body or any written request of any taxation authority; and
- (c) pursuant to the order of any court or tribunal of competent jurisdiction.

Z13.3 The provisions of clause Z13.1 above shall not apply to any Confidential Information which:

- (a) is at the date of this contract or any time thereafter becomes publicly known other than by breach of this contract or of an obligation of confidence;
- (b) can be shown by the *Contractor* to the *Employer's* satisfaction to have been known by the *Contractor* before disclosure by the *Employer*.

Z13.4 Before disclosure of any Confidential Information, the *Contractor* shall ensure that the recipient is made aware of and complies with the *Contractor's* obligations of confidentiality under this contract as if the recipient was a

party to this contract.

Z13.5 Without prejudice to any other rights or remedies which the *Employer* may have, the *Contractor* acknowledges and agrees that in the event of breach of this clause Z13 the *Employer* shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.

Z13.6 If this contract is terminated, the *Contractor* shall, return to the *Employer* all of the Confidential Information then within its possession or control or destroy such Confidential Information using a secure and confidential method of destruction and furnish to the *Employer* sufficient evidence of such destruction, save that the *Contractor* may retain one copy of the Confidential Information if required to do so by law.

**Not used Z14**

**Value Engineering Z15**

Z15.1 The *Contractor* may propose to the *Project Manager* that the Works Information provided by the *Employer* should be changed so as to result in a reduction to the forecast Defined Cost and/or result in a saving in the time required to Provide the Works or any part thereof. In such event the *Contractor* submits details of the proposal to the *Project Manager* in accordance with the requirements set out in the Works Information. The *Project Manager* may provide the *Contractor* with details of the *Employer's* estimated additional costs resulting from a *Contractor's* proposal.

Z15.2 If the *Project Manager* accepts the proposal referred to in clause Z15.1 above, he gives an instruction changing the Works Information and:

- the Prices are not reduced save as agreed between the *Project Manager* and the *Contractor* in order to reflect the *Employer's* estimated additional costs; and
- the Completion Date is not changed.

**Omissions Z16**

Z16.1 Without prejudice to any other provision in this contract, the *Project Manager* may remove or withdraw all or part of the *works* from the *Contractor* and arrange for the *works* or that part of the *works* to be undertaken and/or completed by a third party.

Z16.2.1 Where the *Project Manager* has removed or withdrawn all or part of the *works* from the *Contractor* where the *Contractor* failed to comply with the Accepted Programme or was in breach of the contract, the *Employer* may recover from the *Contractor* costs resulting from the same in excess of the

cost of such works provided for in the total of the Prices and the *Contractor* shall not be entitled to make any claim in respect of such omission including for any loss of profit or loss of opportunity.

- Z16.2.2 Where the *Project Manager* has removed or withdrawn all or part of the *works* from the *Contractor* where such removed or withdrawn *works* are identified in the Works Information as part of the *works* capable of being removed or withdrawn without the *Employer* incurring any liability for loss of profit or loss of opportunity, the *Contractor* shall not be entitled to make any claim in respect of such omission including for any loss of profit or loss of opportunity.

**Conflict of Interest Z17**

- Z17.1 The *Contractor* confirms that as at the date of this contract neither it nor any subcontractor or supplier of any tier has any interest in any matter and does not act and has not acted for any party in respect of any matter which would (in either case) create a conflict of interest in Providing the Works. The *Contractor* will undertake ongoing conflict of interest checks and will notify the *Employer* immediately if any conflict or potential conflict of interest arises (including notification of any instructions from a party with whom the *Employer* has or has had any dealings with respect to the Programme).
- Z17.2 To the extent that an actual or potential conflict may arise involving the *Employer*, the *Contractor* shall where required continue to act for and advise the *Employer* and if required will cease to act for any other party where to act so would constitute a conflict of interest.

**Best Value Z18**

- Z18.1 The *Contractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the Project or the Programme requested by the *Employer* or the *Project Manager* from time to time.

**Claims against TfL and DfT Z19**

- Z19.1 The *Employer* is a wholly owned subsidiary of TfL. For the avoidance of doubt the *Contractor* shall not be entitled to bring any claim in tort or in contract under or relating to this contract against TfL or DfT except following any novation of this contract to TfL or DfT respectively.

**Register of undertakings and Z20**

The *Contractor* acknowledges that it has access to the *Employer's* Register of Undertakings and Assurances. The

**assurances**

*Contractor* notifies the *Project Manager* if it has any doubt as to the application of any undertaking or assurance contained in the Register of Undertakings and Assurances to the *works*. The *Project Manager* gives an instruction clarifying the application of the undertaking or assurance to the *works*.

**Not used Z21**

**Ground movement Z22**

Z22.1 Without prejudice to the generality of clause 81, the following is a *Contractor's* risk:

- The *Contractor* is strictly liable for claims, proceedings, compensation and costs (including without limitation any third party claims arising from damage to property) arising from:
  - any ground movement arising out of the *works* which has resulted in volume loss in excess of the limits specified in the Works Information; or
  - any failure to achieve the specified Compensation Grouting Performance Requirements specified in the Works Information; or
  - any failure to control the *works* such that wall deflections exceed the Retaining Wall Maximum Deflection Criteria specified in the Works Information, whether the ground retaining walls were constructed by the *Contractor* or by an Other.

Z22.2 The following is an *Employer's* risk:

- The *Employer* is strictly liable for claims, proceedings, compensation and costs (including without limitation any third party claims arising from damage to property) arising from ground movement where:
  - volume loss is within the limits specified in the Works Information;
  - the Compensation Grouting Performance Requirements specified in the Works Information have been achieved by the *Contractor*; and
  - the *works* have been controlled such that the Retaining Wall Maximum Deflection Criteria specified in the Works Information have not been exceeded,

in each case provided that the same does not arise from any breach by the *Contractor* of any provision

of this contract.

**SCL Temporary Measures Z23**

Z23.1 The following is an additional compensation event under clause 60.1:

The *Contractor*, acting reasonably in response to physical conditions encountered in the execution of the sprayed concrete lining works, employs quantities of the SCL Temporary Measures (as defined in the Works Information) in excess of those specified in the Works Information.

Z23.2 The *Contractor's* sole right in respect of a compensation event under clause Z23.1 is a change to the Prices assessed in accordance with the schedule of rates for the SCL Temporary Measures (as set out in the Works Information).

**Transparency Z24**

Defined terms Z24.1 (1) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the *Employer* is committed to publishing its contracts, tender documents and data from applications for payment and/or invoices received.

(2) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from applications for payment and/or invoices submitted pursuant to this contract 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.

Data transparency Z24.2 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding any other provision of this contract, the *Contractor* hereby gives its consent for the *Employer* to publish the Contract Information to the general public.

Z24.3 The *Employer* may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z24.2. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

**Common Plant and Z25**



## **Materials**

- Z25.1 The Works Information may specify and/or the *Project Manager* may instruct the *Contractor* to enter into a subcontract for any of the design, supply, installation, testing and/or commissioning of Common Plant and Materials as defined in and in accordance with the Works Information. The *Contractor* enters into a subcontract with and may not object to any such Subcontractor.
- Z25.2 The *Contractor* is as responsible for Providing the Works which are the subject of such a subcontract as if he had not subcontracted.
- Z25.3 If any event arises which in the opinion of the *Contractor* entitles him to terminate a subcontract for Common Plant and Materials or to treat such a subcontract as repudiated by the Subcontractor, the *Contractor* at once notifies the *Project Manager* who instructs the *Contractor* how to proceed. The *Contractor* complies with any such instruction.
- Z25.4 The *Contractor* shall not agree to vary or amend the terms of any such subcontract unless such variation or amendment has been accepted by the *Project Manager*. Reasons for not accepting a variation or amendment are the reasons stated in clause 26.3.
- Z25.5 If a Subcontractor for any of the design, supply, installation, testing and/or commissioning of Common Plant commits an Act of Insolvency this is a compensation event under this contract.

## **Legal opinion Z26**

- Z26.1 If the *Contractor* or any company comprising part of the *Contractor* is not a company registered in England and Wales, the *Contractor* provides to the *Employer* on the Contract Date a legal opinion in the form set out in Annexure 8.
- Z26.2 Upon any novation of this contract in accordance with clause Z5 the *Contractor* provides to the *Employer* within 2 weeks of the date of such novation a further legal opinion in identical terms.

## **Delay damages for Key Dates Z27**

- Z27.1 The Contract Data identifies the Key Dates to which this clause Z27 applies. Clause 25.3 of the *conditions of contract* does not apply to such Key Dates.
- Z27.2 If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated, the *Contractor* pays delay damages at the rate stated in the Contract Data from the Key Date for each day until the date on which the work meets the Condition stated.

Z27.3 If the Key Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

**Subcontract conditions of contract Z28**

Z28.1 The *Contractor* uses all reasonable endeavours to ensure that any subcontract of any tier imposes obligations on the subcontractor or supplier of any tier which are identical in effect to the obligations imposed on the *Contractor* under the following clauses of this contract

- Z3 (Equality and diversity) and
- Z18 (Best Value).

Z28.2 The *Contractor* ensures that any subcontract of any tier imposes obligations on the subcontractor or supplier of any tier which are identical in effect to the obligations imposed on the *Contractor* under the following clauses of this contract

- 85.3 (Insurance policies),
- Z8 (The Parties' use of material),
- Z9 (Publicity),
- Z10 (Data Protection),
- Z11 (Access to Information),
- Z12 (Freedom of Information),
- Z13 (Confidentiality),
- Z17 (Conflicts of Interest), and
- Z24 (Transparency).

**Correction of Critical Defects Z29**

Z29.1 For the purpose of this clause Z29 a Critical Defect means any Defect which:

- prevents the work of Others; or
- affects the safety and/or operation, trial operation or trial running of the Project or of any other railway network.

Z29.2 Notwithstanding any other provision of this contract the *Contractor* acknowledges and agrees that the *Project Manager* may arrange for a Critical Defect to be corrected by other people. The *Project Manager* assesses the cost to

the *Employer* of having the Critical Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Critical Defect.

Z29.3 The *Project Manager* may seek to agree with the *Contractor* in respect of any Critical Defect an appropriate *defect correction period* and start date for such *defect correction period*.

**Loss of or damage to  
the works, Plant and  
Materials Z30**

Z30.1 Notwithstanding any other provision of this contract, in the event of any loss of or damage to the *works*, Plant and Materials which is covered by insurances provided by the *Employer*, whether such loss or damage is an *Employer's* risk or a *Contractor's* risk, the following applies:

- (a) The *Contractor* notifies the *Project Manager* as soon as it becomes aware of any such loss or damage;
- (b) The Parties follow the process for quotation and assessment set out in clauses 62, 63 and 64 of this contract as if the loss or damage were a compensation event provided that, if such loss or damage is a *Contractor's* risk:
  - (i) the *Contractor* is not entitled to any delay to the Completion Date and Key Dates;
  - (ii) the assessment of the effect of such loss or damage does not include risk allowances for cost and time pursuant to clause 63.6; and
  - (iii) the changes to the Prices shall not exceed the cost of replacement and/or repair and/or making good which is recovered by the *Employer* under the insurances provided by the *Employer*.
- (c) The assessment made under Z30.1(b) in respect of any delay to the Completion Date and Key Dates is implemented in accordance with the process set out in clause 65 of this contract.
- (d) The assessment made under Z30.1(b) in respect of changes to the Prices is an initial assessment which may be adjusted by the *Project Manager* following receipt of a final report from the appointed loss adjusters to reflect actual Defined Cost of the work done and the resulting Fee.
- (e) Following receipt of such report and any adjustment to the initial assessment, the changes (if any) to the Prices are implemented in accordance with the process set out in clause 65 of this contract.

**Other contracts with Z31  
the *Employer***

An event shall not be a compensation event under this contract if and to the extent that it arises from any matter occurring under another contract between the *Employer* and the *Contractor* which does not constitute a compensation event under that contract.

## **LUL Optional Clause**

### **A1. Definitions used in this Optional Clause**

- A1.1 Available (IW) means in respect of Interface Works:
- (a) the applicable Interface Works comply with the LUL Standards;
  - (b) the applicable Interface Works are safe;
  - (c) the applicable Interface Works are, to the extent that they have been designed by the *Contractor*, fit for purpose;
  - (c) there are no foreseeable hazards to the use of the applicable Interface Works except insofar as a risk assessment has been carried out and any risk is expressly accepted by LUL; and
  - (d) the applicable Interface Works are readily accessible and operable by LUL throughout the periods stipulated and agreed;
- A1.2 Interface Works means those parts of the *works* that are on or impact on or are in the vicinity of LUL Property or systems forming part of or interfacing with the Underground Network including without limitation protective works required as a result of the Crossrail Project;
- A1.3 LUL means London Underground Limited whose registered office is at 55 Broadway, London SW1H 0BD;
- A1.4 LUL's Engineer means the engineer appointed by LUL from time to time whose appointment has been notified to the *Contractor*;
- A1.5 LUL Property means all land, buildings and structures (and contents thereof) owned by or leased or licensed to LUL (including the Underground Network);
- A1.6 LUL Standards means the rules and regulations including codes of practice and standards relating to the operation of LUL's railway and/or the requirements for undertaking works on or in the vicinity of LUL station and railway infrastructure (including any or all of LUL Category 1 and 2 Standards as may be adjusted in accordance with "Standards Change Control Mechanism for Category 1 Standards 1-627" (in the case of Category 1 Standards) and "Standards Change Mechanism for Category 2 Standards 1-626" (in the case of Category 2 Standards)) included in the Works Information or issued to the *Contractor*);
- A1.7 Underground Network means the stations, depots, assets, systems, track and buildings and structures of whatsoever kind which are used in the operation, maintenance and provision of the service known as the "London Underground.

### **A2 Warranties**

- A2.1 The *Contractor* warrants, undertakes and represents that the Interface Works will:
- A2.1.1 comply with the reasonable instructions of LUL's Engineer;
  - A2.1.2 comply with all LUL Standards;
  - A2.1.3 only include substances and materials for incorporation into the Interface Works which are in accordance with relevant codes of practice, general good

building practice and which have not been declared deleterious in any publication of the Building Research Establishment current at the time of such specification or incorporation; and

A2.1.4 be carried out using only materials that are new sound and of good quality.

A2.2 The *Contractor* warrants, undertakes and represents that any plant, equipment or other product of the Interface Works that becomes a fixture on, or part of, LUL Property as a result of the Interface Works will at and following takeover by or on behalf of LUL:

A2.2.1 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 available risk of pollution, nuisance, interference or hazard;

A2.2.2 not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant of a similar nature and manufacture;

A2.2.3 operate safely and efficiently in combination with any plant, equipment and/or system to which it is to be connected (save where LUL agrees otherwise in writing);

A2.2.4 be electromagnetically compatible with existing LUL systems; and

A2.2.5 be Available (IW).

### **A3 Vesting**

Save as specifically provided to the contrary in the Works Information, title in all assets comprising fixtures on, or part of, LUL Property as a result of the Interface Works will vest in LUL on instalment free from any charge, lien or encumbrance of any kind, and the *Contractor* shall obtain such appropriate manufacturer's guarantees in favour of LUL (and its assignees) in respect of those assets as LUL may reasonably require.

## SCHEDULE OF COST COMPONENTS

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* and as shown on the *Contractor's* payroll for people paid according to the time worked while they are within the Working Areas.

12 Payments to people related to work on this contract for

- (a) bonuses and incentives but only those that are pre-agreed between the *Contractor* and the employee and are for performance criteria in relation to this contract only and provided always that they do not exceed 10% of the base salary cost unless otherwise agreed in writing by the *Project Manager* in advance of setting such performance criteria.
- (b) overtime
- (c) working in special circumstances
- (d) special allowances
- (e) absence due to sickness and holidays
- (f) severance payments but only the proportion of such calculated by the time spent working on this contract divided by the total years employed by the *Contractor*.

13 Payments made in relation to people for

- (a) travel
- (b) subsistence and lodging
- (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) Project specific (non-transferable) 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*.

15 Without prejudice to the generality of clause 52.1 (by virtue of which all costs not included in the Defined Cost are treated as included in the Fee) the following items of people cost are deemed to be included in the Fee:

- (a) payroll administration costs,
- (b) sickness payments to people who have worked on the contract for a continuous period of less than three months,
- (c) sickness payments for a cumulative absence of over two weeks within any calendar year,
- (d) bonus and incentive payments not falling within item 12(a),
- (e) pension contributions related to historical shortfalls in a company pension fund, and
- (f) CITB levy.

**Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation).

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.



23A 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 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 has been listed in the Contract Data.

23B Payments for Equipment purchased for work included in this contract but not paid under item 23A at the purchase price of the Equipment.

Cost paid under item 23B is credited with the open market sale price of the Equipment at the end of the period for which the Equipment is required or is available for use within the Working Areas, whichever is the earlier.

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.

<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	Payments for provision and use in the Working Areas of <ul style="list-style-type: none"> <li>• water,</li> <li>• gas and</li> <li>• electricity.</li> </ul>
	42	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	43	Payments for <ul style="list-style-type: none"> <li>(a) cancellation charges arising from a compensation event</li> <li>(b) buying or leasing land</li> <li>(c) compensation for loss of crops or buildings</li> <li>(d) royalties</li> <li>(e) inspection certificates</li> <li>(f) charges for access to the Working Areas</li> <li>(g) facilities for visits to the Working Areas by Others</li> <li>(h) specialist services</li> <li>(i) consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> offices</li> <li>(j) provision of any bonds required by this contract.</li> </ul>
	44	Payments for the provision and use of the following equipment, supplies and services, but excluding accommodation <ul style="list-style-type: none"> <li>(a) catering</li> <li>(b) medical facilities and first aid</li> <li>(c) recreation</li> <li>(d) sanitation</li> <li>(e) security</li> <li>(f) copying</li> <li>(g) telephone, telex, fax, radio and CCTV</li> <li>(h) surveying and setting out</li> <li>(i) computing</li> <li>(j) hand tools not powered by compressed air.</li> </ul>
	45	Cost is credited with payments received by or payable to the <i>Contractor</i> from the sale of materials from excavation

and demolition to which the *Contractor* has title.

**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 do not constitute Defined Cost:

- the cost of events for which this contract requires the *Contractor* to insure, and
- other costs paid to the *Contractor* by insurers.

**Other 8**

The following do not constitute Defined Cost:

- any overdraft charges or any charges associated with the Project Bank Account which do not arise from the ordinary and proper operation of the Project Bank Account in accordance with its terms and conditions, and
- currency exchange hedging costs.

## SHORTER SCHEDULE OF COST COMPONENTS

An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

**People 1** The following components of the cost of

- people who are directly employed by the *Contractor* and whose normal place of working is within the Working Areas,
- people who are directly employed by the *Contractor* and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
- people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.

11 Amounts paid by the *Contractor* including those for meeting the requirements of the law and for pension provision.

**Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).

21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.

22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.

24 Unless the item is in the published list and the rate includes the cost component, payments for

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

25 Unless the item is in the published list and the rate includes the cost component, the purchase price of

Equipment which is consumed.

26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.

27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

28 Payments for Equipment purchased for work included in this contract at the purchase price of the Equipment.

Cost is credited with the open market sale price of Equipment purchased under item 28 at the end of the period for which the Equipment is required or is available for use within the Working Area, whichever is the earlier.

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

31 Payments for

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

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

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

41 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of

- payments for the provision and use in the Working Areas of water, gas and electricity,
- payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
- payments for 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.

**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 do not constitute Defined Cost:

- the cost of events for which this contract requires the *Contractor* to insure, and
- other costs paid to the *Contractor* by insurers.

**Other**

**8** The following do not constitute Defined Cost:

- any overdraft charges or any charges associated with the Project Bank Account which do not arise from the ordinary and proper operation of the Project Bank Account in accordance with its terms and conditions, and
- currency exchange hedging costs.

## **ANNEXURE 2 – CONTRACT DATA**

## CONTRACT DATA

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

- 1 General**
- The *conditions of contract* are the core clauses, dispute resolution clause **W2A**, secondary Options **X1, X2, X4, X5, X7, X8, X13, X18 and Y(UK)3** of the Crossrail Main Civils Contract (Version 6) – Target contract with activity schedule at Annexure 1 to the contract.
  - The *additional conditions of contract* are Z1 to Z20, Z22 and Z24 to Z31 and the LUL Optional Clause of the Crossrail Main Civils Contract (Version 6) – Target contract with activity schedule at Annexure 1 to the contract.
  - The *works* are **Bond Street Station (Main Station Works, Fit-Out and M&E)** as more fully described in the Works Information.
  - The *Employer* is:
    - Name: Crossrail Limited
    - Address: 25 Canada Square, London E14 5LQ
    - Communications to the *Employer* are sent to the Programme Director.
  - The *Project Manager* is:
    - Name: [REDACTED]
    - Address: 25 Canada Square, London E14 5LQ.
  - The *Supervisor* is:
    - Name: [REDACTED]
    - Address: 25 Canada Square, London E14 5LQ
  - The Works Information is in **Volumes 2A, 2B and 2C at Annexure 3 to this contract and includes any information referred to in these Volumes.**
  - The Site Information is in **Volume 3 at Annexure 9 to this contract and includes any information referred to in this Volume.**
  - The *boundaries of the site* are the boundaries of the following worksites:
    - **East Ticket Hall Worksite as indicated on the following Drawings:**
      - C132-WSP-S-DDH-C125-40000;**
      - C132-WSP-S-DDH-C125-40005;**
      - C132-WSP-S-DDH-C125-40010;**



C132-WSP-S-DDH-C125-40015;  
C132-WSP-S-DDH-C125-40020;  
C132-WSP-S-DDH-C125-40021; and  
C132-WSP-S-DDH-C125-40022;

- West Ticket Hall Worksite as indicated on the following Drawings:

C132-WSP-S-DDH-C125-40030;  
C132-WSP-S-DDH-C125-40031;  
C132-WSP-S-DDH-C125-40032;  
C132-WSP-S-DDH-C125-40033;  
C132-WSP-S-DDH-C125-40034; and  
C132-WSP-S-DDH-C125-40035;

together with the boundaries represented by the excavated surfaces of the new tunnels and other subterranean cavities required to be constructed as part of this contract as indicated on the following drawings:

C132-WSP-S-DDH-C125-40040;  
C132-WSP-S-DDH-C125-40041;  
C132-WSP-S-DDH-C125-40045;  
C132-WSP-S-DDH-C125-40046;  
C132-WSP-S-DDH-C125-40047; and  
C132-WSP-S-DDH-C125-40048.

- The *language of this contract* is **English**.
- The *law of the contract* is the law of **England and Wales**.
- The *period for reply* is **14 days**.
- The *period for retention* is **15 years following Completion of the whole of the works**.
- The *panel of adjudicators* comprises the following members:

[REDACTED]



The following matters will be included in the Risk Register:

1. Failure to co-ordinate MEP design with civils;
2. Contractors failure to meet or maintain production rates causing delays;
3. Damage to third party assets / disruption of operations (not ground movement related) due to contractor construction activities;
4. Contractor actions/method of works cause major instability/collapse of Stations excavations or structures resulting in injuries or damage to Crossrail assets or 3rd party property;
5. Lack of clarity in M&E design requirements and change being required due to incorrect assumptions;
6. Structures, including Heritage structures suffer settlement damage and require changes to the project sequence/methodology to mitigate further damage or changes to monitoring;
7. Failure to effectively manage the interface with London Underground, including failure to expedite consent process in accordance with relevant agreements;
8. Delays in the delivery of BOS Stations as a result of works carried out by LU (i.e. systems);
9. Bond Street Station works impact on Tunnels Delivery Contractors. Problems at interfaces between contractors operating within constrained site conditions during Station construction works;
10. Onerous restrictions on permissible noise levels not physically possible to meet at Bond St for multiple contractors;
11. TBM Tunnelling operations affecting C412 construction Station works are delayed by late tunnelling operations or inadequately controlled construction interface;
12. SCL Tunnelling operations affecting C412 construction Station works are delayed by late tunnelling operations or inadequately controlled construction interface;
13. Late delivery of Systemwide equipment for installation by C412;
14. Systemwide do not provide permanent power to enable testing and commissioning activities;

15. Objections by local residents results in temporary stoppage of works
  - High profile & highly influential residents will object to the works being undertaken. (Gilbert St residents have already raised concerns). Assumes project meets all obligations; and
16. Claims arising from damage to surrounding structures, utilities, other 3rd parties and that cannot be attributed to contractors.

- For the purpose of secondary Option Y(UK)3 the terms and persons or organisations are:

term	person or organisation
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<b>All terms of this contract</b>	<b>TfL Group</b>
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<b>All terms of this contract</b>	<b>DfT</b>
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- The *collateral warranty agreements* are to be provided in favour of:

- **London Underground Limited;**
- **over site developer of East Ticket Hall;**
- **over site developer of West Ticket Hall;**
- **tenant of over site developer of East Ticket Hall;**
- **tenant of over site developer of West Ticket Hall;**
- **funder of over site developer of East Ticket Hall; and**
- **funder of over site developer of West Ticket Hall.**

- The other parties requiring Subcontractor collateral warranty agreements pursuant to clause 26.4A of the *conditions of contract* are:

- **over site developer of East Ticket Hall;**
- **over site developer of West Ticket Hall;**
- **tenant of over site developer of East Ticket Hall;**
- **tenant of over site developer of West Ticket Hall;**
- **funder of over site developer of East Ticket Hall; and**
- **funder of over site developer of West Ticket Hall.**

collateral warranties pursuant to clause 26.4A of the *conditions of contract* in favour of the above beneficiaries shall only be required from Subcontractors carrying out the following *works*:

- Concrete substructures and superstructures supporting oversite development works; and
- Ground source heat pump pipework.

**2 The Contractor's Main Responsibilities**

- The *Contractor* prepares forecasts of Defined Cost for the *works* and of the Prices at intervals no longer than 4 weeks.
- The amount of the performance bond is **XX% of the tendered total of the Prices.**
- The *key person compensation amounts* are as follows:
 

Project Director	£XXX
Project Manager	£XXX
Planner	£XXX
Construction Manager	£XXX
Commercial Manager	£XXX
Design Manager	£XXX
Community Relations Manager	£XXX

**3 Time**

- The *starting date* is 25 February 2013

- The *access dates* are:

Part of the Site .....Date

AD1. Access to Eastern Ticket Hall worksite  
(down to Level -2). 01 July 2013

AD2. Access to Eastern Ticket Hall worksite  
(Masterplan shaft). 06 May 2014

AD3. Access to the following areas:

- Eastern Ticket Hall worksite  
(below Level -2).
- Permanent tunnels excluding the western cross passages, western escalator incline and LU link passage as indicated on C132-WSP-S-DDH-C125-40045.
- Temporary tunnels with the Eastern Ticket Hall footprint as indicated on C132-WSP-S-DDH-C125-40022.

06 May 2014

AD4. Access to Eastern Ticket Hall worksite  
(Zone 1). 21 August 2014

AD5. Access to the following areas:

- Western Ticket Hall worksite.
- Western cross passages, western escalator incline and LU link tunnel as indicated on

C132-WSP-S-DDH-C125-40046.

27 November 2014

AD6. Access to final one metre section of platform adjacent to the platform screen doors for platform finishes.

13 October 2017

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

The following comprise *key dates, conditions* to be met and delay damages to which clause Z27 and associated clauses of the *conditions of contract* apply:

<i>condition</i> to be met	<i>key date</i>	amount per day
KD1 – Contractor to provide access to vent shafts at the Western Ticket Hall for the <i>Employer's</i> systemwide ventilation contractor to commence installation of ventilation equipment. All internal civils works to the shaft to be completed, the headhouse structure is to be complete and watertight, and the provision of construction power and access from street level, to enable the safe handling of large Plant and Materials, at the Western Ticket Hall, by Others.	31 July 2015	£XXX
KD2 – Contractor to provide access to vent shafts at the Eastern Ticket Hall for the <i>Employer's</i> systemwide ventilation contractor to commence installation of ventilation equipment. All internal civils works to the shaft to be completed, the headhouse	01 September 2015	£XXX

structure is to be complete and watertight, and the provision of construction power and access from street level, to enable the safe handling of large Plant and Materials, at the Eastern Ticket Hall, by Others.

KD3 – Western Ticket Hall -	01 December 2015	£XXX
<p>Completion of all works to the key rooms as specified in the Works Information, apart from commissioning. The key rooms shall be clean, dry, dust-free and air conditioned as specified and with a power supply sufficient for the key room systemwide installation works to be carried out by Others. Completion of the key rooms power-supply cabling and earthing and bonding works. Completion of the CMS works for cables which run from the key rooms to the tunnels and / or tunnel ventilation plant, in accordance with the Works Information. Provision of access to the <i>Employer's</i> systemwide contractors, to the key rooms to complete their installations and to the CMS to the tunnels and / or tunnel ventilation plant for their cable laying and testing.</p>		
KD4 – Western Ticket Hall -	01 December 2015	£XXX
<p>Completion of the installation of all free issue Plant and Material supplied by the <i>Employer's</i> systemwide</p>		

Communications and Control Systems Contractor, including appropriate installations at platforms, for commissioning by Others.

KD5 – Eastern Ticket Hall - 01 February 2016 £XXX

Completion of all works to the key rooms as specified in the Works Information, apart from commissioning. The key rooms shall be clean, dry, dust-free and air conditioned as specified and with a power supply sufficient for the key room systemwide installation works to be carried out by Others. Completion of the key rooms power-supply cabling and earthing and bonding works. Completion of the CMS works for cables which run from the key rooms to the tunnels and / or tunnel ventilation plant, in accordance with the Works Information. Provision of access to the *Employer's* systemwide contractors, to the key rooms to complete their installations and to the CMS to the tunnels and / or tunnel ventilation plant for their cable laying and testing.

KD6 – Eastern Ticket Hall - 03 February 2016 £XXX

Completion of the installation of all free issue Plant and Material supplied by the *Employer's* systemwide Communications and Control Systems Contractor, including

appropriate installations at platforms, for commissioning by Others.

- The *completion date* for each *section* of the *works* are:

<i>Section</i>	<i>description</i>	<i>completion date</i>
SC1	– East bound platform – Completion of all works in platform tunnel necessary to provide access to the <i>Employer’s</i> systemwide and station tunnels contractors including first stage stage concrete, maintenance walkway concrete, platform structures, over track duct, ventilation duct and supports, steelwork to support CMS and cladding, structure for platform end walls, structure for rooms in platform tunnels beyond end walls and the erection of hoarding 1m from the platform edge.	01 July 2015
SC2	– West bound platform – Completion of all works in platform tunnel necessary to provide access to the <i>Employer’s</i> systemwide and station tunnels contractors including first stage stage concrete, maintenance walkway concrete, platform structures, over track duct, ventilation duct and supports, steelwork to support CMS and cladding, structure for platform end walls, structure for rooms in platform tunnels beyond end walls and the erection of hoarding 1m from the platform edge.	01 July 2015
SC3	– Completion of all fit-out, MEP, lifts & escalators, and testing and commissioning, on temporary power. This excludes the works associated with the final one metre section of platform adjacent to the platform screen doors for platform finishes.	23 February 2017

- The *completion date* for the whole of the *works* is **03 August 2018**.



Delay damages for each *section* of the *works* is:

<i>section</i>	<i>description</i>	amount per day
SC1	– East bound platform – Completion of all works in platform tunnel necessary to provide access to the <i>Employer’s</i> systemwide and station tunnels contractors including first stage concrete, maintenance walkway concrete, platform structures, over track duct, ventilation duct and supports, steelwork to support CMS and cladding, structure for platform end walls, structure for rooms in platform tunnels beyond end walls and the erection of hoarding.	£XXX
SC2	– West bound platform – Completion of all works in platform tunnel necessary to provide access to the <i>Employer’s</i> systemwide and station tunnels contractors including first stage concrete, maintenance walkway concrete, platform structures, over track duct, ventilation duct and supports, steelwork to support CMS and cladding, structure for platform end walls, structure for rooms in platform tunnels beyond end walls and the erection of hoarding.	£XXX
SC3	– Completion of all fit-out, MEP, lifts & escalators, and testing and commissioning, on temporary power. This excludes the works associated with the final one metre section of platform adjacent to the platform screen doors for platform finishes.	£XXX

- Remainder of the *works* £XXX per day
- If no programme is identified in part two of the Contract Data the *Contractor* is to submit a first programme for acceptance within 4 weeks of the Contract Date.

- The *Contractor* submits revised programmes at intervals no longer than **4** weeks.

#### 4 Testing and Defects

- The *defects date* is **52** weeks after Completion of the whole of the *works*.
- The *defect correction period* is **2** weeks.

#### 5 Payment

- The *currency of this contract* is **pounds sterling**.
- The *assessment interval* is **every four week accounting period of the Employer, such periods to be advised to the Contractor annually**.
- The *interest rate* is **2%** per annum above the **base rate in force from time to time of the Bank of England**.
- The *exchange rates* are **those published in the Financial Times on 17 September 2012**.
- The *Contractor's share percentages* and the *share ranges* are

<i>share range</i>	<i>Contractor's share percentage</i>
<b>less than 100 %</b>	<b>XX%.</b>
<b>greater than 100 %</b>	<b>XX%.</b>

- The *project bank* is **HSBC Plc**.
- The proportions used to calculate the Price Adjustment Factor are set out at Attachment 1 to this Contract Data.
- The *base date* for indices is 22 October 2012.

#### 6 Compensation events

- The place where weather is to be recorded is **the Met Office's St. James's recording station in London (with the exception of snow data which shall be recorded at the Met Office's recording station at Heathrow Airport)**.
- 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 09.00 hours GMT**
- The *weather measurements* are supplied by **the Met Office**, FitzRoy Road, Exeter, Devon EX1 3PB.
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **the Met Office's St. James's recording station in London and the Met Office's recording station at Heathrow Airport..**
- The *Geotechnical Baseline Report* is in **Attachment 2 to this Contract Data**

## **7 Risks and insurance**

- The minimum limit of indemnity for insurance in respect of failure of the *Contractor* to use the skill and care normally used by professionals providing services similar to the services provided by the *Contractor* in connection with the *works* is **£XXX in each and every claim.**
- The minimum limit of indemnity for insurance in respect of 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 for any one event is **£XXX.**

The *Employer* provides these insurances from the Insurance Table:

1. Insurance against loss of or damage to the works, Plant and Materials including any Plant and Materials provided by the *Employer*.

Cover/indemnity is: This contract is one of many insured under an Owner Controlled Insurance Programme with a total sum insured of £XXX in the aggregate for all claims. There is no separate sum insured for this contract.

The deductibles are £XXX, increased to £XXX for stations, wet works and defects liability claims, and £XXX for tunnelling works.

2. Insurance against 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.

Cover/indemnity is: The minimum limit of indemnity is £XXX for any one accident.

The deductibles are:

- Third Party Property Damage - £XXX increased to £XXX for claims arising out of vibration, removal and/or weakening of support.
  - Third Party Bodily Injury – Nil.
- The insurance policy giving details of the insurances provided by the *Employer* is included in Attachment 3 to this Contract Data.

**X18 Limitation of Liability**

- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters and including delay damages for *section* SC3, is limited to XX% of the final total of the Prices.
- The *Contractor's* total liability to the *Employer* in respect of delay damages (other than delay damages for *section* SC3) is limited to XX% of the final total of the Prices.

## CONTRACT DATA

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

- The Contractor is:

Name: The Costain Skanska Joint Venture (CSJV) Limited

Address: Costain House  
Vanwall Business Park  
Maidenhead  
Berkshire SL6 4UB

- The direct fee percentage is
- The subcontracted fee percentage is

- The working areas are the Site and the following:

- The Employer's office accommodation – 2<sup>nd</sup> Floor, 75 Davies Street, London, W1K 5JN
- Welfare compound – St George Street, Mayfair, London
- Core Design Team - 2<sup>nd</sup> Floor, 75 Davies Street, London, W1K 5JN
- Further Specialist Support – Arup's Offices, 8 Fitzroy Street, London, W1T 4BQ
- Lorry Holding Area – Park Lane.
- Docklands Transfer Site as defined in Volume 2A, section 26.6.2 of the Works Information.
- Areas required to undertake monitoring as shown on drawings C122-OVE-C2-DDA-CR001\_Z-31582, C122-OVE-C2-DDA-CR001\_Z-31581 and C122-OVE-C2-DDA-CR001\_Z-31502.

- The key people are:

(1) Name: [REDACTED]

Job: Project Director

#### Responsibilities:

- Lead collaboration through the Project Director Forum with CRL and the CSJV
- Responsible for overall delivery of the C412 project in all respects across each of the phases
- Align the CSJV contract strategy and objectives to the Crossrail project objectives
- Retain overall responsibility for engineering assurance, quality, safety and corporate responsibility
- Objectively measure CSJV performance and encourage continuous improvement

#### Qualifications:

[REDACTED]

Experience: [REDACTED]

(2) Name: [REDACTED]

Job: Project Manager

Responsibilities:

- Lead collaboration through Area Management Meetings with CRL
- Integrate all CSJV and subcontractors' personnel into a coherent, effective team for C412
- Drive the engineering, operations, project controls, commercial and financial departments
- Manage the CSJV team members' performance and personal development
- Ensure that C412 is delivered safely, on time, within budget and to the high quality required

Qualifications: [REDACTED]

Experience: [REDACTED]

(3) Name: [REDACTED]

Job: Construction Manager

Responsibilities:

- Leads collaboration through site management meetings
- Forward plan all construction activities in accordance with the accepted programme
- Ensure that all construction is carried out safely, that quality criteria is met, that the project remains on programme and that it is kept within budget
- Manage construction performance of the C412 suppliers and subcontractors
- Ensure completion into testing and commissioning in accordance with the C412 programme for delivery

Qualifications: [REDACTED]

Experience: [REDACTED]

(4) Name: [REDACTED]

Job: Commercial Manager

Responsibilities:

- Lead collaboration through commercial and supply chain meetings
- Lead the commercial team
- Establish all commercial systems and ensure their implementation
- Safeguard the consistency of all processes which serve to manage and administrate the C412 contract

- Provide accurate cost reports and forecast data which will attest to the transparency and availability of cost data for auditing purposes

Qualifications: [REDACTED]

Experience: [REDACTED]

(5) Name: [REDACTED]

Job: Design Manager

Responsibilities:

- Lead the design team and implement robust systems and procedures
- Work collaboratively with CRL designers
- Manage design compliance, assurance and quality control processes
- In accordance with the programme, oversee prescribed CRL and 3rd party design approvals and ensure that procedures put in place to facilitate this are adhered to
- Encourage and cultivate a 'second nature' approach within the design team around all facets of the current and forthcoming CDM regulations

Qualifications [REDACTED]

Experience: [REDACTED].

(6) Name: [REDACTED]

Job: Project Controls Manager

Responsibilities:

- Develop and implement the Project Controls Planning procedures in parallel with site control systems and procedures
- Receive cost, value and progress reports from finance, commercial and planning functions
- Track, monitor and record KPI data which will feed in to management reporting to CRL, the Project Director and the JV board
- Organise the creation of forecasts which demonstrate how costs are accrued and where subsequent value is achieved

Qualifications: [REDACTED]

Experience: [REDACTED].

(7) Name: [REDACTED]

Job: Engineering & Temporary Works Manager

Responsibilities:

- Lead the C412 engineering function in all of its aspects, in particular our designs and their coordination at the interfaces with other designs
- Promote and coordinate engineering safety and assurance best practice; refine testing and commissioning procedures and lead in optimising forecasting of maintenance schedules
- Responsible for independent assurance of all designs
- Assisted by commercial and planning presence

Qualifications: [REDACTED]

Experience: [REDACTED]

(8) Name: [REDACTED]

Job: Systemwide Interface Manager

Responsibilities:

- Act as the primary technical contact with other CRL contractors and LU
- Carry out work in close collaboration with CRL and designers
- Maintain relationships by using channels of two way feedback, continuing the role to testing and commissioning
- Ensure that the CSJV design takes into account the technical requirements of other contractors

Qualifications: [REDACTED]

Experience: [REDACTED].

(9) Name: [REDACTED]

Job: Heritage Manager

Responsibilities:

- Advise and instruct construction teams on how to meet the requirements of heritage commitments that are part of Undertakings and Assurances
- Liaise with stakeholders, including Local Authorities and English Heritage as necessary and in conjunction with the *Project Manager*
- Review settlement impacts for listed structures and buildings, advise construction teams of working methods and mitigation measures which are used to minimise impact. Production of an application under Appendix 2 of the Heritage Deed will be written for approval of 'submitted particulars'
- Work closely with construction teams



Qualifications:

[Redacted]

Experience:

[Redacted]

(10) Name:

[Redacted]

Job: Logistics Manager

Responsibilities:

- Ensure that all vehicles are fully compliant with CRL's specifications
- Establish the logistics arrangements for the site, including any necessary traffic management and local authority approvals and coordinate all vehicle deliveries to the site

Qualifications:

[Redacted]  
Graduateship Award in Leadership & Management

Experience:

[Redacted]

(11) Name:

[Redacted]

Job: Traffic Manager

Responsibilities:

- Develop and implement a Traffic Management Plan
- Develop and provide traffic management training for all personnel to include an induction, tool box talks and specific training for personnel with particular traffic management responsibilities
- Manage all traffic management personnel
- Coordinate traffic management activities with construction teams

Qualifications:

[Redacted]

Experience:

[Redacted]



(12) Name: [Redacted]

Job: MEP Manager

Responsibilities:

- Responsible for works package plans, surveys, isolations, disconnections, systems enabling works, systems temporary works, and permanent electrical, mechanical, communications, and fire detection works and coordinating with the construction department
- Coordination of systems integration, testing and commissioning, and training and bringing into use of station systems
- Planning and preparing for handing over a fully commissioned, operational station in line with project programme and meeting all Network Rail operational and maintenance requirements

Qualifications: [Redacted]

Experience: [Redacted]

(13) Name: [Redacted]

Job: BREEAM Specialist

Responsibilities:

- Impress the principles of the scheme amongst project teams at key stages in the design and procurement process
- Finding ways of improving environmental performance during design
- Mitigate the life cycle impacts of new structures on the environment
- Ensure that designs incorporate adaptation to climate change, the principal areas covered are flood risk and subsurface station platform cooling

Qualifications: [Redacted]

Experience: [Redacted]  
h [Redacted]

[Redacted]

(14) Name: [Redacted]

Job: Consents Coordinator

Responsibilities:

- Prepare, implement, maintain and update the Consents Management Plan
- Be the main point of contact for all consent matters and cooperate with the Project Manager and the Employer in all matters relating to consent applications and compliance
- Ensure that the dates included in the Consents Management Plan and all consents registers are the same as those included in the Contractor's Accepted Programme
- Ensure the Contractor's team is aware of the status of all consent applications such that the works or any part of the works for which consent is required are not commenced until consent is granted

Qualifications: [Redacted]

Experience: [Redacted].

(15) Name: [Redacted]

Job: Utilities Coordinator:

Responsibilities:

- Ensure compliance with all Undertakings and Assurances as defined in Volume 2A of the Works Information
- Be the principal logistics point of contact for utilities related activities
- Produce and implement the Utilities Plan
- Develop and provide utilities training for all personnel to include induction, tool box talks and specific training for personnel with logistics responsibilities

Qualifications: [Redacted]

Experience: [Redacted].

[Redacted]

(16) Name: [Redacted]

Job: Community Relations Manager

Responsibilities:

- Be contactable 24 hours a day, 7 days a week (with a delegate/s nominated during periods of absence)
- Engage with the community to provide appropriate information and be the first line of response to resolve issues of concern
- Cooperate with the *Project Manager* and Employer's Community Relations Team in all matters relating to Community Relations and Publicity policy
- Cooperate with the Employer's Community Relations Team for communicating to the public how training and employment opportunities will be available

Qualifications: [Redacted]

Experience: [Redacted]

(17) Name: [REDACTED]

Job: Risk Manager/Specialist

Responsibilities:

- Prepare and update Risk Management Plan; maintain Project Risk Register; audit risk process
- Allocate risk ownership and lead risk review meetings
- Train team to follow risk management process and systems
- Confirm the specific scope and project objectives addressed by the risk assessment
- Engage with all the relevant parties to identify the risks that could prevent achievement of the project objectives (usually the initial identification is done through a facilitated workshop)

Qualifications: [REDACTED]

Experience: [REDACTED]

(18) Name: [REDACTED]

Job: LU Interface Manager

Responsibilities:

- Interface Works will be carried out in such a manner that:
  - The safe operation of the Underground Network is ensured at all times
  - Any disruption to LU's services is as far as possible planned well in advance and is the minimum reasonably necessary to Provide the Works
  - Satisfies the provisions of the infrastructure protection plan for LU's infrastructure
  - Satisfies the requirements of LU Standard 1-538 Assurance
  - Agreeing of Works Documents in respect of each Works Package
- Cooperate and consult with the Project Manager at all stages during the preparation of the information required to support the Employer's technical submissions and applications for LU closures and possessions

Qualifications: [REDACTED]

Experience: [REDACTED]

(19) Name: [REDACTED]

Job: Responsible Procurement Representative

Responsibilities:

- Be the primary contact for all Responsible Procurement related matters under the contract
- Be responsible for production, implementation, management and updating of the Responsible Procurement Plan and any further deliverables required by the plan
- Cooperate with the Project Manager in providing evidence and records in support of Responsible Procurement including without limitation evidence and records from subcontractors and suppliers of any tier employed on the works

Qualifications:

[REDACTED]

Experience:

[REDACTED]

(20) Name: [REDACTED]

Job: Interface Manager

Responsibilities:

- Manage third party interfaces which make both the engineering solutions and elements of buildability a challenge
- Understand the impacts that the community and a contract can have on each other
- Interface with all stakeholders to ensure delivery of key project milestones
- Ensure communication channels between LU, NR and CSJV remain clear and that issues are raised in a timely manner to ensure project blockers are identified and cleared

Qualifications:

[Redacted]

Experience:

[Redacted]

(21) Name:

[Redacted]

Job:

Security Manager

Responsibilities:

- Maintain daily liaison with the Project Security Manager;
- Attend formal meetings, record discussions and actions and distribute minutes as required with the Project Manager
- Attend quarterly Project-wide security meetings attended by all contractors, the Project Manager and the Employer
- Be available at all times (or nominated deputy) to act as co-ordinator between the Contractor, the principal security contractor, the Project Manager and the emergency services

Qualifications:

[Redacted]

Experience:

[Redacted]

(22) Name: [REDACTED]

Job: Quality Manager

Responsibilities:

- Create C412 Construction Quality Plan, including training, quality audits and compliance
- Review Inspection & Test Plans for compliance with C412 quality requirements
- Manage small team of quality inspectors contributing to quality assurance documentation
- Manage non conformance reporting/analysis/close-out; advise corrective/preventative measures

Qualifications:

[REDACTED]

Experience: [REDACTED].

(23) Name: [REDACTED]

Job: Health & Safety Manager

Responsibilities:

- Ensure CSJV complies with health & safety legislation, including CDM obligations and CRL Golden Rules
- Manage Construction Phase Safety Plan, including inspections, audits and reporting process
- Ensure all C412 team have appropriate H&S and behavioural safety training
- Establish an environment where safety concerns and initiatives are openly discussed

Qualifications:

[REDACTED]

Experience: [REDACTED]



(24) Name: [REDACTED]

Job: Environmental Manager

Responsibilities:

- Manage specific Environmental Management Plan, including training
- Manage Environmental Management System, including monitoring and analysis of incidents
- Liaise with London Boroughs to prepare C412 environmental consent (S61) applications
- Approve environmental element of all construction method statements for C412

Qualifications: [REDACTED]

Experience: [REDACTED]

(25) Name: [REDACTED]

Job: Planning Manager

Responsibilities:

- Planning and programming for all phases of the advanced works
- Sequencing the works to ensure that the best possible solutions are put forward with regard to new works information requirements and PMIs
- Maintaining progress, liaising with project controls to establish and maintain the projects key performance indicators and earned value analysis, production of the period progress reports
- Preparation of reports on programme and progress of the project, attend and contribute to site meetings and other associated meetings, liaison with the Project Manager to ensure the most effective programme strategy is followed at all times

Qualifications: [REDACTED]

Experience: [REDACTED]

Name: [REDACTED]

Job: Temporary Works Coordinator

Responsibilities:

- Be the first point of contact between Temporary Works (TW) designers and the site team and coordinate all TW activities
- Act as the responsible party for ensuring the TW design is implemented in accordance with the drawings and specification
- Responsible for developing the C412 procedure for the control of TW and ensuring that it is implemented on site
- Carry adequate authority to complete his tasks, including authority to stop the work if it is not being carried out satisfactorily

Qualifications:

[REDACTED]

Experience:

[REDACTED]

- The following matters will be included in the Risk Register:
  - 2. Catastrophic failure of the ETH during excavation/construction
  - 6. Construction activities exceed permissible noise levels

.....

.....

.....

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

- The Works Information for the Contractor's design is in  
.....  
.....
- The programme identified in the Contract Data is in **Attachment 4 to this Contract Data**
- The activity schedule is in Attachment 5 to this Contract Data
- The tendered total of the Prices is [REDACTED]

**Data for Schedule  
Of Cost  
Components**

- The rates for special Equipment are:

Equipment	size or capacity	rate
.....	.....	£..... per day
.....	.....	£..... per day

- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are:

category of employee	hourly rate
Tradesman	██████
.....	£

- The percentage for manufacture and fabrication overheads is ██████ .%

**Data for both Schedules of Cost Components**

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

category of employee	hourly rate
Director	██████
Technical Director	██████
Associate Director	██████
Associate	██████
Lead Architect	██████
Project Architect	██████
Principal Engineer	██████
Architect	██████
Senior Engineer	██████
Engineer	██████
Technician	██████
Assistant/Graduate	██████
CAD Draftsman	██████
Acoustics - Director	██████
Acoustics - Associate	██████
Acoustics - Senior	██████
Acoustics – Modeller/Designer	██████
Fire - Engineer	██████

- The percentage for design overheads is ██████
- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside of the Working Areas are

As Listed above.

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

- The percentage for people overheads is [REDACTED] %.
- The published list of Equipment is the last edition of the list as published at the Contract Date by the Civil Engineering Contractors Association.
- The percentage for adjustment for Equipment in the published list is [REDACTED] % (state plus or minus).
- The rates for other Equipment are

Equipment	size or capacity	rate
.....	.....	£..... per day
.....	.....	£..... per day

**Data for Strategic Labour Needs and Training Output Breakdown**

- The Strategic Labour Needs and Training output to be delivered under this contract is at Attachment 6 to the Contract Data.

**C412 Outline Strategic Labour Needs and Training (SLNT) Plan**

SLNT Output Breakdown SLNT Category	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Equivalent value per £3m tendered total	Total
<b>Crossrail Priorities (at least 50%)</b> - an apprentice or a sustainable job start (min 6 months) for; a individual from the Local Community and/or an individual who has been long-term workless/ unemployed/ out of education or training for 6 months plus.							
Apprentice (new)	3	3	3	1	1	1FTE	11
Job Start	1	3	3	1	1	1FTE	9
<b>Other outputs (50% or less)</b>							
Graduate Training Scheme	3	3	4	1	1	1FTE	12
Apprentice (existing)	1	1	2	1	1	0.5FTE	3
Placement (days)	0	0	0	0	0	200 days	0
Workforce Skills (days)	0	100	100	100	0	100 days	3
Work Experience (days)	0	0	0	0	0	100 days	0
							<b>38</b>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ATTACHMENTS TO THE CONTRACT DATA**

**ATTACHMENT 1 – PRICE ADJUSTMENT FACTOR**

## **ATTACHMENT 2 – GEOTECHNICAL BASELINE REPORT**





Crossrail Ltd

# Geotechnical Baseline Report Contract C412 Bond Street Station

**Document Number: CRL1-XRL-C2-RGN-C125-50014**

**Document History:**

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## 1 Introduction

This report is the Geotechnical Baseline Report (GBR) as defined in the *conditions of contract*. It has been prepared by the *Employer* for the sole purpose of determining whether a compensation event has arisen under Clause 60.1(12A) of the *conditions of contract*.

The GBR achieves this purpose by including contractual statements (referred to as “Baseline Statements”) describing the geotechnical conditions expected to be encountered by the *Contractor* during underground construction.

By the operation of Clause 60.1(12A) of the *conditions of contract*, a compensation event will arise if the *Contractor* encounters conditions within the Site which are more adverse than the conditions stated in the Baseline Statements.

The Baseline Statements are aligned with the tender design for Contract C412. This Geotechnical Baseline report focuses on the excavation by C412 of the Eastern Ticket Hall. The construction of the running tunnels, the SCL works, the basement walls, the excavation of the western ticket hall and the access shafts are covered by the GBRs written for Contracts C300, C410 and C411. The Baseline Statements are not geotechnical fact and this report does not constitute a warranty that the conditions described in the Baseline Statements will actually be encountered. The actual conditions encountered could be worse or better than the conditions described in the Baseline Statements.

Nothing contained in this GBR shall change the *Contractor's* responsibility for the safe execution of the Works and for providing the Works in accordance with the contract.

For the avoidance of doubt, this GBR:

- does not constitute Site Information; and
- shall not be considered a document which is part of this contract for the purpose of Clause 17.1 of the *conditions of contract*.

Sources of information used in preparing this GBR are listed in Appendix A.

## 2 Site geological characterisation

### 2.1 Terminology

In this report, the terms “fissure”, “fissures”, “fissured” and “fissuring” have been used to describe all non-bedding related naturally occurring discontinuities (such as joints, shears etc) other than those directly associated with faulting.

In this report, coarse-grained soils are defined as those soils that consist of over about 65% gravel and sand size particles (by weight). Conversely, fine-grained soils are defined as soils that consist of more than about 35% clay and silt size particles by weight.

### 2.2 Geological sequence

Site characterisation is based on information from the ground investigations listed in Appendix A. The geological sequence at the site is listed below; Sections 2.3 to 2.10 give outline descriptions of each stratum:

- Made Ground
- Alluvium
- River Terrace Deposits
- London Clay Formation
- Harwich Formation
- Lambeth Group

### 2.3 Made Ground

The nature and thickness of Made Ground varies across the site area as it depends on the previous development and land use and may include numerous cycles of reconstruction at a particular location. Made Ground may include engineered fill, waste heaps, construction fill, demolition rubble and previous building foundations. Made Ground can also contain contaminants from industrial processes in the vicinity and active service pipes and utilities.

### 2.4 Alluvium

Alluvium is present in areas associated with former courses of major tributaries to the River Thames, including the Westbourne, Tyburn and Fleet Rivers, where River Terrace Deposits are locally absent.

At Bond Street Station it is believed that the historic River Tyburn crossed the west of the site, indicated by the presence of a depression in the top of the London Clay Formation and the localised absence of River Terrace Deposits. However, despite the presence of the River Tyburn, it appears that the alluvium is generally absent in the Bond Street Station area. This may have been due to the removal/reworking and replacement of the alluvial material with Made Ground to potentially improve ground conditions in the past.

Where present, the Alluvium is typically composed of river deposits, primarily silt and clay, with seams of sand and gravel. The deposits are generally soft or loose, often with lenses and beds of peat and organic material, and may include gases from the decomposition of organic matter.

## 2.5 River Terrace Deposits

River Terrace Deposits are variable in presence and thickness at the site. Table 2.1 gives a general description of the River Terrace Deposits. Towards the west of the Station, there is an absence of River Terrace Deposits in some boreholes which is believed to be due to the historic River Tyburn which once ran through the area to the west of Bond Street Station.

**Table 2.1 - General description of River Terrace Deposits**

Formation	Member/ Unit / Bed	General Description
River Terrace Deposits	Lynch Hill Gravel	Typically sand and gravel with clayey and silty sand sediments occurring locally as discontinuous beds, cobbles may also be present.

## 2.6 London Clay Formation

The London Clay Formation is heavily overconsolidated and can be divided into a number of units, with the lower units (A2 and A3) being more sandy than the upper units (B and C).

Claystone layers and bands may be present in the upper units (C, B and A3). Claystones are usually found in near horizontal, semi-continuous layers composed of hard, calcareous concretions. Where claystones are encountered permeability will be higher leading to local seepages.

At Bond Street Station, units B, A3 and A2 are likely to be encountered by the Works. Table 2.2 gives a general description of the London Clay Formation.

**Table 2.2 - General description of London Clay Formation**

Formation	Member/ Unit / Bed	General Description
London Clay Formation (units as King, 1981)	Unit C	Homogeneous, bioturbated, silty clay with dispersed glauconite at its base.
	Unit B	Homogeneous, slightly calcareous silty clay with several thin beds of very silty clay / clayey silt. Basal unit is a sparsely glauconitic sandy clay. Regular succession of semi-continuous claystone bands at 2 to 3m spacing.
	Unit A3	The basal unit is a homogeneous clay containing a number of semi-continuous claystone bands. Above this the remainder of Unit A3 consists of silty clay and very silty clay with thin silt and sand partings. Further thin claystone bands may occur. Pyrite is present throughout.
	Unit A2	Very silty clays and sandy silts on a metric scale, notably pyritic, non-calcareous and containing glauconite. Thin basal unit of glauconitic sandy clay with flint pebbles.

## 2.7 Harwich Formation

The upper unit of the Harwich Formation (Swanscombe Member) has been recorded in the vicinity of Bond Street Station. It is understood that the Harwich Formation probably occupies

localised channels incised into the top of the Lambeth Group, due to its irregular distribution and variable thickness. The Oldhaven and Blackheath Members have not been recorded in the vicinity of Bond Street Station. Table 2.3 gives a general description of the Harwich Formation.

**Table 2.3 - General description of Harwich Formation**

Formation	Member/ Unit / Bed	General Description
Harwich Formation	Swanscombe Member	Glauconitic sandy clay with mollusc shells.
	Oldhaven Member	Fine glauconitic sand with shells and locally with large indurated calcareous concretions. Basal bed of large rounded flint pebbles with shells.
	Blackheath Member	Rounded to subrounded flint pebbles with a limited sand or clay matrix.

## 2.8 Lambeth Group

The Lambeth Group is present at Bond Street Station, and comprises variable ground conditions both laterally and vertically. The Upper Mottled Beds and Lower Mottled Beds are the most clayey units and the basal Upnor Formation is the most coarse-grained. There are hard cemented layers in the Lower Mottled Beds below the Mid-Lambeth Hiatus and bands of flint pebbles and cobbles in the Upnor Formation. The Mid-Lambeth Hiatus at Bond Street Station may be associated with hard concretions e.g. calcrete.

At the site, a Sand Channel of significant thickness and extent around the Western Ticket Hall has been identified. This indicates that it is possible that a laterally extensive zone of several meandering Sand Channels may be present in the Lambeth Group in the western part of the Station. Sand Channels have also been identified in the vicinity of the Eastern Ticket Hall.

Table 2.4 gives a general description of the Lambeth Group.

**Table 2.4 - General description of Lambeth Group**

Group	Member/ Unit / Bed	General Description
Lambeth Group (after CIRIA C583, 2004)	Upper Shelly Beds	Laminated shelly clay, silt and fine sand, sometimes with limestone beds where the shells have become cemented together.
	Sand Channels	Clean to silty fine to medium sand. Found at the top of, or within the Upper Mottled Beds and the Laminated Beds. Can also occur in the Lower Mottled Beds.
	Upper Mottled Beds	Mainly fissured clays, silty clays and clayey sand showing very little sedimentary structure or bedding.
	Laminated Beds	Thinly and thickly laminated clay and silt with partings/lenses/laminae of silt and sand and occasional shell beds.
	Lower Shelly Beds	Laminated clay or silts and sands with shell fragments. Shells can be highly abundant and become cemented to form limestone bands. May contain pyrite.
	Mid Lambeth Hiatus	
	Lower Mottled Beds	Fissured clays, silty sands or pebbles with traces of glauconite. At top is a discontinuous calcrete duricrust.
	Upnor Formation	Primarily composed of fine to medium well graded sand with variable clay/silt content and occasional flint gravel with glauconite and low pyrite content. At the top is a thick bed of well rounded flint gravel in a sandy silt matrix.

## 2.9 Groundwater conditions

The Upper and Lower Aquifers at Bond Street Station are separated by the low permeability strata of the London Clay Formation and Lambeth Group. Dewatering of the Lower Aquifer (comprising the Chalk, Thanet Sand and Upnor Formations) by groundwater extraction during the 19<sup>th</sup> and 20<sup>th</sup> centuries has resulted in under-drained conditions in the low permeability London Clay Formation and Lambeth Group, creating a characteristic under-drained pore water profile. Since the mid-1960's the rate of abstraction has declined with the result that groundwater levels in the confined aquifer began to rise. Beginning in 1999, new public water supply abstractions were implemented in selected locations as a result of the GARDIT initiative to control the rise, and groundwater levels are now broadly stable in the London Basin.

Hydraulically isolated pockets of water charged material (Lambeth Group) may be present within predominantly clay layers, although the lateral extent of these bodies may be considerable and have a large reservoir capacity.

The Made Ground, Alluvium and River Terrace Deposits will be water bearing. In the London Clay Formation, local water seepage will occur from fissures and in the vicinity of claystone layers.

## 2.10 Geological Structures

Within Central London, the following geological structures are present: folds, domes and faults which are generally orientated parallel to the main and synclinal axis of the London Basin. Faulting has been identified to the west of Bond Street Station in the area of the Western Ticket



Hall. Potential faulting has also been identified to the east of Bond Street Station in the area of the Eastern Ticket Hall, which may be associated with the presence of an anticlinal axis/dome structure approximately 1.0km to 1.5km north of the site.



### 3 Baseline Statements for the Excavation Works

Background information is given to set the context where relevant, this does not form part of the Baseline Statements. The Baseline Statements are shown in ***bold italics***.

Levels are given in metres above tunnel datum (mATD). The tunnel datum is 100m below Ordnance Datum.

The following Baseline Statements are for the excavation Works at Bond Street Station for the Eastern Ticket Hall, hereafter referred to as the Works.

#### 3.1 Measurements

The test methods required in order to provide a valid comparison between conditions encountered during construction and those defined by the Baseline Statements are provided in Table 3.1.

**Table 3.1 - Valid testing methods**

Baseline Parameter	Definition	Method of Measurement
Undrained Shear Strength of Fine-Grained Deposits	Undrained shear strength for the intact material not the strength measured on a pre-existing fissure.	Single Stage, Unconsolidated Undrained Triaxial Compression Testing in accordance with BS1377:1990, on a 100mm diameter sample recovered using triple tube rotary coring.
Density of Coarse-Grained Deposits	-	Standard Penetration Testing in accordance with BS EN ISO 22476-3:2005. SPT 'N' values should be reported uncorrected for Energy Ratio.
Unconfined Compressive Strength of Hard Bands and Claystone.	-	Uniaxial Compressive Strength (UCS) testing in accordance with the ISRM Suggested Methods.
Mass Permeability	In-situ permeability of a block of ground, minimum dimensions 10m x10m plan and 0.5m thick	Variable head permeability testing in accordance with BS5930:1999 or Pumping tests in accordance with BS ISO 14686:2003

#### 3.2 Man-Made Features

##### 3.2.1 Existing Foundations

Known and suspected piled structures exist at and within the vicinity of Bond Street Station as shown in the ITT drawing indicated in Table 3.2.

**Table 3.2 - Suspected obstructions within the Works area**

ITT Drawing Ref	Title
C122-OVE-C2-DDA-CR001_Z-41501	Bond Street Station Obstruction Locations Plan C410

The buildings on the site of the Eastern Ticket Hall and their associated foundations will be demolished by others prior to construction of the Works.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to existing foundations are:

- ***Any basements and shallow foundations formerly connected with the buildings on the sites of the Eastern Ticket Hall will be removed by others prior to construction.***
- ***No other foundations will be encountered during construction of the Works other than those identified in the Works Information.***

### 3.2.2 Existing Tunnels

There are no tunnels present in the Eastern Ticket Hall site area.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to existing tunnels is:

***No existing tunnels will be encountered during the construction of the Works at the Eastern Ticket Hall site other than the Crossrail TBM and SCL tunnels identified in the Works Information.***

### 3.2.3 Underground utilities

The streets surrounding the Eastern Ticket Hall contain a large number of utilities. Public utility diversions will be completed by others prior to commencement of the Works.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to underground utilities is:

- ***No utilities will be encountered during the construction of the Works other than those identified in the Works Information..***

### 3.2.4 Excavations/Infilled ground

The existing structures at the Eastern Ticket Hall site will be demolished and the basements backfilled to piling platform level by others prior to commencement of the Works.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to excavations and infilled ground is:

- ***At the Eastern Ticket Hall, infilled ground will be encountered during construction of the Works down to a minimum elevation of 113 mATD.***

### 3.2.5 Boreholes and wells

Existing borehole locations are shown on drawing CRL1-GCG-C2-DDA-CR001-1015.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to boreholes are:

- ***The boreholes and installations listed in Table 3.3 will be encountered during the construction of the Works.***
- ***Boreholes will have a maximum grout diameter of 300mm.***

- **No other boreholes, installations or wells will be encountered during the construction of the Works.**

**Table 3.3 – Boreholes/installations encountered during construction of the Works**

Installation	Location	Base elevation (mATD)	Installation details
WS272	Eastern ticket hall	118	Maximum 200mm diameter grouted borehole with one standpipe piezometer
BST17P	Eastern ticket hall	81.41	Maximum 200mm diameter grouted borehole with two standpipe piezometers

### 3.2.6 Unexploded Ordnance

The potential for unexploded ordnance to be present within the Superficial Deposits is discussed in the Construction Phase Explosive Ordnance Threat Assessment volumes 1 and 2 provided for information in the Site Information section.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to unexploded ordnance is:

- **No unexploded ordnance will be encountered during the construction of the Works.**

## 3.3 Contamination and Waste

Contamination may be encountered in the Made Ground, Alluvium, River Terrace Deposits and upper 2m of London Clay Formation due to the historic anthropogenic activities in the area.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to contamination and waste are:

- **10m<sup>3</sup> of the material excavated during the Works will be classed as Hazardous using the Environment Agency Waste Acceptance Criteria.**
- **100% of the remaining excavated material will be suitable for beneficial re-use.**

## 3.4 Geology

### 3.4.1 Strata Boundaries

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to strata boundaries is:

- **The elevations of the strata boundaries relevant to the Eastern Ticket Hall Works are shown in Table 3.4.**

**Table 3.4 – Baseline Stratigraphy at the Eastern Ticket Hall site**

Stratum	Level of top of stratum (m ATD)	
	Maximum	Minimum
Made Ground	124	120
River Terrace Deposits	123	118
London Clay Formation	118	116

Harwich Formation	90	89
Lambeth Group – Upper Mottled Beds (clay and silt units)	90	88

### 3.4.2 Strata Occurrence

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to strata occurrence is:

- ***The excavation for the Eastern Ticket Hall will encounter Made Ground, River Terrace Deposits, London Clay Formation and the Harwich Formation.***

### 3.4.3 Strata Description

#### Made Ground

Made Ground is variable in terms of its thickness, density, consistency and composition. It encompasses materials of man-made origin and a wide variety of soil types. Made Ground usually reflects the past uses of the site. At the Eastern Ticket Hall, the demolition works will remove the existing structures on site and their foundations and backfill the excavations with recycled construction materials.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to the strata description for Made Ground are:

- ***Made Ground encountered during construction will be heterogeneous.***
- ***The maximum size of individual particles encountered within the Made Ground will be 300mm.***
- ***Made Ground will be water bearing.***

#### River Terrace Deposits

The composition of the River Terrace Deposits is variable at Bond Street Station. The deposits typically comprise sandy gravel with variable clay and silt content. The material varied to include slightly sandy to sandy, silty clay with frequent gravel. The gravel fraction comprised angular to rounded, fine to coarse flint gravel with occasional cobbles. The proportions of clay, silt, sand and gravel vary both vertically and horizontally over relatively short distances.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to the strata description for the River Terrace Deposits are:

- ***The River Terrace Deposits encountered during construction of the Works will exhibit a minimum density corresponding to an SPT N value of 8 and a maximum density corresponding to an SPT N value of 65.***
- ***The maximum particle size encountered within the River Terrace Deposits will be large cobble size (200mm).***
- ***River Terrace Deposits will be water bearing.***

### Thames Group: London Clay Formation

The London Clay Formation is described as a stiff to very stiff, grey brown, fissured, silty to sandy clay with occasional partings of fine sand/silt. The London Clay Formation contains comminuted shell fragments/foraminifera, gypsum flecks/filaments, pyrite, carbonised wood, glauconite and claystones.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to the strata description for the London Clay Formation are:

- ***The London Clay Formation encountered during construction of the Works will have a maximum plasticity index of 60%.***
- ***The minimum undrained shear strength (Su) of the intact London Clay Formation encountered in the Works will be dependent upon depth as indicated by the following equation:***

$$Su = 40 + 3.33z$$

***Where z = depth below existing ground level and Su is in kPa.***

- ***The maximum undrained shear strength (Su) of the intact London Clay Formation encountered during the Works will be 450kPa, with the exception of claystones.***
- ***In the London Clay Formation, local water seepage will occur from fissures and in the vicinity of claystone layers.***

### Harwich Formation

The Harwich Formation lies between the London Clay Formation and the Lambeth Group and incorporates a wide range of lithologies.

Sandy clays, silts, sands, gravels, flint pebbles and weakly cemented layers or concretions of limestone will be present.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to the strata description for the Harwich Formation are:

- ***The fine-grained Harwich Formation encountered by the Works will have a maximum Plasticity Index of 50%.***
- ***The minimum undrained shear strength (Su) of fine-grained Harwich Formation encountered in the Works will be Su = 100kPa***
- ***The maximum undrained shear strength (Su) of fine-grained Harwich Formation encountered in the Works will be 380kPa, with the exception of limestone layers, concretions and flint pebbles.***
- ***The coarse-grained Harwich Formation deposits encountered within the Works will exhibit a minimum relative density corresponding to an SPT N value of 30 and a maximum relative density corresponding to an SPT N value of 100.***
- ***The Harwich Formation will be water bearing.***

### 3.5 Geological Features

#### 3.5.1 Faults

Geological faulting has been identified as present to the west of the eastern ticket hall. A potential fault line strikes north-north west to south-south-east. This fault will not impact the Works.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to faults is:

- ***No faults with a vertical throw greater than 1m will be encountered during construction of the Works for the Eastern Ticket Hall.***

#### 3.5.2 Hard strata

Claystones and claystone layers are known to occur within the London Clay Formation.

For the purpose described in the Introduction to this GBR, for the Bond Street Station Works, the Baseline Statements relating to hard strata within the C412 London Clay Formation are:

- ***Individual claystone beds will have a maximum thickness of 500mm, and a maximum unconfined compressive strength of 100MPa.***
- ***Not more than three (3) claystone beds will be encountered during construction within the London Clay Formation.***
- ***The claystone beds in the London Clay will be water bearing.***

#### 3.5.3 Deep drift infilled hollows and depressions in the London Clay Formation

None of the boreholes have indicated the presence of deep drift infilled hollows or depressions in the immediate site area.

A depression of up to 4m is present in the top of the London Clay Formation around the Western Ticket Hall and southern end of the LU link tunnel possibly associated with the former path of the Tyburn River. No such depressions were identified at the Eastern Ticket Hall.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to deep drift infilled hollows in the London Clay Formation is:

- ***No drift infilled hollows causing the elevation of the surface of the London Clay Formation to reduce below the levels given in Table 3.4 will be encountered during the construction of the Works.***

#### 3.5.4 Ground gas

The presence of gases including methane, carbon dioxide, hydrogen sulphide or carbon monoxide from the decomposition of organic materials is not anticipated. However, there is a limited potential for oxygen depletion through presence of pyrite in the London Clay Formation and appropriate measures should be taken.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to ground gas is:

- **No ground gas will be encountered during the construction of the Works.**

### 3.6 Groundwater

#### 3.6.1 Piezometric level

An upper and a lower aquifer exist at the site, separated by the London Clay Formation and the clay and silt units of the Lambeth Group. Groundwater conditions are discussed in detail in the Report on the Hydrogeological Model and Groundwater Control Programme which is provided for information in the Site Information section.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statements relating to piezometric levels are:

- **The upper aquifer will have a piezometric level of 119mATD ( $\pm 1.5m$ ) during construction.**
- **The lower aquifer will have a piezometric level of 57mATD ( $\pm 5m$ ) during construction.**

#### 3.6.2 Pore Water Pressure

For the purpose described in the Introduction to this GBR, for the Bond Street Station Works, the Baseline Statements relating to pore water pressures are:

- **Within the Made Ground, River Terrace Deposits, London Clay Formation and Lambeth Group there will be a hydrostatic increase in piezometric pressure for an equivalent groundwater level of 119mATD ( $\pm 1.5m$ ).**
- **The maximum piezometric pressure encountered during the construction of the Works will be 150kPa.**

#### 3.6.3 Permeability

A range of permeabilities from in situ permeability tests for each stratum are given in the GSIR.

For the purpose described in the Introduction to this GBR, for the C412 Bond Street Station Works, the Baseline Statement relating to permeability is:

- **The range of permeability for the ground conditions encountered by the Works is provided in Table 3.6.**



**Table 3.6 - Baseline permeability**

<b>Strata</b>	<b>Minimum Permeability (m/s)</b>	<b>Maximum Permeability (m/s)</b>
Made Ground	$1 \times 10^{-8}$ m/s	$1 \times 10^{-5}$ m/s
River Terrace Deposits	$1 \times 10^{-8}$ m/s	$1 \times 10^{-3}$ m/s
London Clay Formation	$1 \times 10^{-11}$ m/s	$1 \times 10^{-7}$ m/s
London Clay Formation – Claystone beds	$1 \times 10^{-11}$ m/s	$1 \times 10^{-5}$ m/s
Harwich Formation	$1 \times 10^{-9}$ m/s	$1 \times 10^{-7}$ m/s
Lambeth Group clay and silt units	$1 \times 10^{-11}$ m/s	$1 \times 10^{-7}$ m/s



## **APPENDIX A:**

### **SOURCES OF INFORMATION**

## A1 Sources of Information

### A1.1 Desk study reports

Three desk studies have been undertaken since 1992 for the area around Bond Street. The reports on these studies are listed in Table A1.1 and are available for information in the Site Information section.

Report Reference	Report Title	Rev	Rev Date
CRL1-GCG-C2-RGN-CR001-50001	Geotechnical Desk Study - Bond Street Station	B	May-07
CRL1-LU-C2-RSI-CRG03-00073	LUL Geotechnical Desk Study Report and SI Proposals Ove Arup July 1992	-	Jul-92
CRL1-LU-C2-RSI-CRG03-00074	LUL Geotechnical Desk Study Report and SI Proposals Appendix Ove Arup July 1992	-	May-92

**Table A1.1 – Desk study reports**

### A1.2 Ground investigation factual information

Ground investigations in the vicinity of Bond Street Station have been undertaken in two phases as part of the Crossrail project in addition to third party ground investigations:

- Crossrail pre-2000 ground investigation packages;
- Crossrail post-2000 ground investigation packages; and
- Third party ground investigations.

#### Crossrail pre-2000 ground investigations

Crossrail ground investigation Package B was undertaken in 1992 and includes investigations at Bond Street Station. Factual reports from this ground investigation are listed in Table A1.2 and are available for information in the Site Information section.

Report Reference	Report Title	Rev	Rev Date
CRL1-LU-C2-RSI-CRG03-00003	Package B, Balderton Street to Charing Cross Road - Vol 1 Part 1	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00017	Package B, Balderton Street to Charing Cross Road - Vol 1 Part 2	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00044	Package B, Balderton Street to Charing Cross Road - Vol 1 Part 3	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00027	Package B, Balderton Street to Charing Cross Road - Vol 2	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00032	Package B, Balderton Street to Charing Cross Road - Vol 3 Part 1	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00037	Package B, Balderton Street to Charing Cross Road - Vol 3 Part 2	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00013	Package B, Balderton Street to Charing Cross Road - Vol 3 Part 3	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00018	Package B, Balderton Street to Charing Cross Road - Vol 4 Part 1	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00040	Package B, Balderton Street to Charing Cross Road - Vol 4 Part 2	-	Sep-92

Report Reference	Report Title	Rev	Rev Date
CRL1-LU-C2-RSI-CRG03-00029	Package B, Balderton Street to Charing Cross Road - Vol 4 Part 3	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00035	Package B, Balderton Street to Charing Cross Road - Vol 4 Part 4	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00042	Package B, Balderton Street to Charing Cross Road - Vol 5 Part 1	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00014	Package B, Balderton Street to Charing Cross Road - Vol 5 Part 2	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00030	Package B, Balderton Street to Charing Cross Road - Vol 5 Part 3	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00026	Package B, Balderton Street to Charing Cross Road - Addendum	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00041	Package B, Balderton Street to Charing Cross Road - Appendix	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00015	Package B, Balderton Street to Charing Cross Road - Addendum - photographic Album	-	Sep-92
CRL1-LU-C2-RSI-CRG03-00012	Package B, Balderton Street to Charing Cross Road V1 S2 and V3 S2 - Addendum - Small Strain stress path testing	-	Jan-93

**Table A1.2 – Crossrail pre-2000 ground investigation factual reports**

Crossrail post-2000 ground investigations

Factual reports from investigations undertaken around Bond Street since 2000 are listed in Table A1.4 and are available for information in the Site Information section.

Report Reference	Report Title	Rev	Rev Date
CRL1-NSE-C2-RGN-CR084-50001	Grand Central Sound Studios 51-53 Great Marlborough Street, W1 NHSEL Factual Report on Foundation Investigations (formerly 1D0101-C1N07-00057)	A	26/07/2007
CRL1-GCG-C2-RGN-CRG03-50023	Royal Oak to Farringdon, Factual Report on Ground Investigation, Package 16 Volume 1	A	Sept 2009
CRL1-GCG-C2-RGN-CRG03-50023	Royal Oak to Farringdon, Factual Report on Ground Investigation, Package 16 Volume 2	A	Sept 2009
C292-FUG-C2-RGN-CR084-50001	Ground Investigation Package 16a Bond Street Final Factual Report and AGS	4.0	Jan 2011
CRL1-XRL-C2-RGN-C125-50001	Bond Street Station Western Ticket Hall, Factual Report on Ground Investigation	2.0	Aug 2011

**Table A1.4 – Crossrail post-2000 ground investigation factual reports**

Third party ground investigations

Ground investigations have been undertaken by third parties in the vicinity of Bond Street station.

Available factual reports are listed in Table A1.3 and are included for information in the Site Information section. Further information about third party ground investigations is given in geotechnical interpretative reports (see Section A1.3).

Report Reference	Report Title	Rev	Rev Date
Incorporated in to the Geotechnical databases	Bond Street Station Upgrade Project - Ground Investigation. Factual Report on Ground Investigation. Soil Mechanics Report No. D8048, January 2009 (2 volumes) + Specialist Laboratory Testing Addendum (March 2009)		

**Table A1.3 – Third party ground investigation factual reports**

### A1.3 Geotechnical interpretative reports

#### Geotechnical sectional interpretative reports

Data from the ground investigations carried out within the vicinity of Bond Street are summarised in the Geotechnical Sectional Interpretive Report 1&2 (GSIR1&2).

Table A1.4 lists the volumes of the GSIR1&2 report. These are available for information in an Appendix to the Tender

Report Reference	Report Title	Rev	Rev Date
CRL1-GCG-C2-RGN-CRG03-50010	Geotechnical Sectional Interpretive Report 1&2 - Royal Oak to Liverpool Street. Volume 1 - Text	A	Jan-09
CRL1-GCG-C2-RGN-CRG03-50010	Geotechnical Sectional Interpretive Report 1&2 - Royal Oak to Liverpool Street. Volume 2 - Figures	A	Jan-09
CRL1-GCG-C2-RGN-CRG03-50010	Geotechnical Sectional Interpretive Report 1&2 - Royal Oak to Liverpool Street. Volume 3 - Drawings	A	Jan-09

**Table A1.4 – Geotechnical sectional interpretative reports**

### A1.4 Geological long sections

The geological long sections for Bond Street Station are shown on drawing numbers C132-WSP-C2-DDA-C125-16000, C132-WSP-C2-DDB-C125-00002 to C132-WSP-C2-DDB-C125-00004 are available in the Site Information section. The subsurface information provided in the geological long section is provided for information only and shall not be construed to constitute a Baseline Statement.

### A1.5 Hydrogeological reports

Hydrogeological conditions are summarised in the reports listed in Table A1.5. These reports are available for information in the Site Information section.

Report Reference	Report Title	Rev	Rev Date
CRL1-GCG-C2-RGN-CRG03-50008	Long Term Design Ground Water Levels in the Lower Aquifer - A Route Wide Assessment for Underground Sections	A	Feb-07
CRL1-GCG-C2-RAN-CRG03-00002	Groundwater Level Monitoring	2	Dec 2011

C122-OVE-C2-RGN-CRG01-00002	Report on the Hydrogeological Model and Groundwater Control Programme	2.0	07/09/09
CRL1-GCG-C2-RAN-CRG03-00003	Monitoring of Groundwater Response to Tidal Variations	B	July 2009
CRL1-GCG-C2-RGN-CRG03-50005	Crossrail Ground Water Monitoring Strategy	B	Sept-09

**Table A1.5 – Hydrogeological reports**

### A1.6 Unexploded ordnance

Explosive ordnance threat assessments have been undertaken along the whole route. The reports that cover the area around Bond Street are listed in Table A1.6 and are available for information in the Site Information section.

Report Reference	Report Title	Rev	Rev Date
CRL1-GCG-C2-RGN-CR001-50002	Explosive Ordinance Threat Assessment of the Crossrail Project Volume 1 - Overview	3	July 2007
CRL1-GCG-C2-RGN-CR001-50002	Explosive Ordinance Threat Assessment of the Crossrail Project Volume 3. Royal Oak Portal to the Pudding Mill Lane and Plumstead Portals	3	12/12/2007
CRL1-GCG-C2-RGN-CR001-50002	Construction phase explosive ordnance threat assessment, volume 2:Paddington to Pudding Mill Lane	3	May-09
CRL1-GCG-C2-RGN-CR001-50002	Abandoned Bomb Register: Maidenhead to Shenfield and Abbey Wood	3	22/10/09
CRL1-GCG-C2-RAN-CR001-00003	Maximum Bomb Penetration Depth Along the Crossrail Tunnelled Alignment	1.1	July 2010
CRL1-GCG-C2-RGN-CRG03-50025	Summary of Second World War Unexploded Bomb Statistics – Discovery and Ground Penetration	1	May 2011

**Table A1.6 - Unexploded ordnance reports**

**ATTACHMENT 3 – SUMMARY OF INSURANCES PROVIDED  
BY THE *EMPLOYER***

# **Crossrail Limited**

## **PROGRAMME POLICY**

**Construction/Erection "All Risks", Existing Structures/Compulsory  
Purchased Property, Tunnel Boring Machines,  
Completed Works and Third Party Liability Insurance**

**27<sup>th</sup> May 2010**

**Unique Market Reference: B0839C09001170**





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## **DEFINITIONS**

**"Bodily Injury"** shall mean bodily injury and includes death, disease illness, arrest, assault, shock, mental anguish or mental injury, invasion of privacy, libel or slander.

**"Branch Extension 1"** shall mean Custom House to Abbey Wood.

**"Branch Extension 2"** shall mean Stepney Green to Pudding Mill Lane.

**"Branch Extension 3"** shall mean Pudding Mill Lane to Shenfield.

**"Branch Extension 4"** shall mean Heathrow to Royal Oak.

**"Branch Extension 5"** shall mean Maidenhead to Heathrow.

**"Civil Engineering Works"** shall mean Tunnelling Works (but not their contents), station boxes (but not their contents), buildings (but not their contents), bridges, embankments, cuttings, earthworks, piling and retaining walls and roads.

**"Completion"** shall mean completion of an Insured Contract in accordance with the terms of that Insured Contract.

**"Compulsory Purchased Property"** shall mean any real or personal property acquired by the Secretary of State for Transport CRL or TfL under a compulsory purchase order.

**"Contractors' Plant and Equipment"** shall mean Plant and Equipment Temporary Buildings and Hired in Plant and Equipment owned leased or hired by the Insured (iii) (iv) (v) and (vi).

**"CRL"** shall mean Crossrail Limited.

**"Crossrail Programme"** means the project for the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich.

**"Deductible"** shall mean the amount stated in the Schedule that the Insured shall bear in respect of each and every Occurrence.

**"Defects Certificate"** shall mean either a list of defects that the supervisor has notified before the defects date which the contractor has not corrected or, if there are no such defects, a statement that there are none.

**"Defects Liability Period"** shall mean a period of 24 months from Completion of each Insured Contract and any extension of period under Section 1a Exclusion 3.

**"Employee"** shall mean any

- (a) person under a contract of service or apprenticeship with the Insured

- (b) person engaged under any training educational or work experience programme
- (c) labour master or labour only subcontractor or any person employed or supplied by them
- (d) self-employed person
- (e) person hired to or borrowed by the Insured
- (f) drivers or operators of Hired-in Plant and Equipment

whilst working for the Insured in the course of the Insured Programme.

**"Existing Structures and Property"** shall mean any real or personal property which exists at the inception of this Policy or is acquired after inception and which is owned by the Insured (i) and/or (ii) or in the Insured (i) and/or (ii)'s care custody or control or for which the Insured (i) and/or (ii) is responsible in connection with the Crossrail Programme.

**"Hired in Plant and Equipment"** shall mean

- (a) constructional plant, machinery, equipment, tools, tackle, apparatus, facilities, stocks, spares and equipment (not on free loan or the subject of a hire purchase lease or similar financing arrangement)
- (b) Temporary Buildings (not on free loan or the subject of a hire purchase lease or similar financing arrangement)

hired by the Insured for use in connection with the Insured Contract.

**"Insured"** shall mean Crossrail Limited and other parties named as the Insured in the Schedule

**"Insured Contract(s)"** shall mean any individual contract and/or works package forming part of the Insured Programme.

**"Insured Programme "** means all works and activities in connection with the development, design, procurement, engineering, preparation, demolition, enabling, fabrication, construction, tunnelling, erection, installation, testing, commissioning, fitting out, integration, systemwide integration, trial running, completion, trial operations, asset management, ownership, occupation and defects correction in connection with the Crossrail Programme including all ancillary and associated works and activities related thereto of whatsoever nature including publicity events.

The Insured Programme shall exclude works and activities in connection with the Isle of Dogs Station (being undertaken by Canary Wharf Group) and Woolwich station box (being undertaken by Berkeley Homes) other than works in respect of integration risks and works undertaken by Insured (vi) but the Insured Programme shall include cover under Section 1b in respect of the Woolwich station. The Insured Programme shall also exclude works and activities in connection with Branch Extension 3, Branch Extension 4 and Branch Extension 5 but includes all interface works as set out in the Insured Contracts.

**"Logistics Centres"** shall mean the two sites used for the Insured Programme to control and manage deliveries, for storage and lorry parking, for casting tunnel segments, for processing of material to recover aggregates and for the transfer of excavated material for onward transportation and any further similar sites as may be declared to the Insurer.

**"Major Works"** shall mean

Paddington Station  
Bond Street Station  
Tottenham Court Road Station  
Farringdon Station  
Liverpool Street Station  
Whitechapel Station  
Old Oak Common Depot  
Tunnel Drives  
Royal Oak Portal  
Pudding Mill Lane Portal  
Victoria Dock Portal  
North Woolwich Portal  
Plumstead Portal.

**"Materials"** shall include all raw and shaped materials as well as free issue materials, goods, samples including bore hole samples, finished parts, units, installations, machinery, constructions and/or other property of every kind and description.

**"Nuisance"** shall mean obstruction, interference, loss of amenities, nuisance, trespass, denial of access, infringement of easement or right of air, light, water or way or any like cause.

**"Occurrence"** is deemed to be an event or series of events attributable to one source or original cause, which causes loss, damage or liability indemnifiable under this Policy.

**"Partner"** Any reference to a partner of the Insured shall not mean the Programme Partner or the Project Delivery Partner.

**"Period of Insurance"** means the period(s) stated in the Schedule.

**"Plant and Equipment"** shall mean constructional plant, machinery, equipment, tools, tackle, apparatus, facilities, stocks, spares, employees' tools and personal effects and equipment whether static or mobile for use in connection with the Insured Programme but excluding the Contractors' Plant and Equipment.

**"Pollution or Contamination"** shall mean

- (a) all pollution or contamination of buildings or other structures or of water or land or the atmosphere
- (b) all Bodily Injury, Nuisance or loss of or damage to material property directly or indirectly caused by such pollution or contamination.

**"Project Delivery Partner"** means

- (a) Bechtel Limited, Halcrow Group Limited and Systra S.A
- (b) any organisations providing secondees or sub consultants to (a) above
- (c) and other companies in the Bechtel, Halcrow or Systra groups of companies

for services required to perform the role and function of the Project Delivery Partner only.

**"Project Development Agreement"** means the Crossrail Project Development Agreement dated 3 December 2008 between The Secretary of State for Transport, Transport for London and Crossrail Limited (previously Cross London Rail Links Limited).

**"Property in Care Custody or Control"** shall mean any real or personal property in the care, custody or control of the Insured (i) and (ii) or for which they are responsible.

**"Site of Work"** shall mean any site including the Logistics Centres of the Insured Programme and the immediate areas adjacent thereto.

**"Station"** shall mean for the purposes of the application of the policy deductible the Stations in the Central Core Area:

- Paddington
- Bond Street
- Tottenham Court Road
- Farringdon
- Liverpool Street
- Whitechapel
- Canary Wharf (Isle Of Dogs)
- Woolwich
- Custom House

but excluding associated and incorporated Tunnelling Works or Tunnels.

**"Subject Matter Insured"** shall have the meaning as defined in each section of this Policy.

**"TBM"** shall mean tunnel boring machine(s) including all associated equipment as specified in the EPB Tunnel Boring Machine Specification Royal Oak Portal to Farringdon (Document Number CR-EG-CT1-CE-SP-00001 Version 2.0 dated June 2009) or the Slurry Tunnel Boring Machine Specification Plumstead Portal to North Woolwich Portal (Document Number CR-EG-THV-CE-SP-00001 Version 1.0 dated July 2009) and any amendments to such specifications as declared to the Insurer.

**"Temporary Buildings"** shall mean temporary buildings, site huts, camps, offices and other temporary accommodation including those on loan and their fixtures, furnishings and contents (excluding Hired in Plant and Equipment or Contractors' Plant and Equipment) for use in connection with the Insured Programme

**"Tunnels"** shall mean Tunnelling Works upon Completion.

**"Tunnelling Works"** shall mean any work involving the excavation of an artificial subterranean passage including shafts or portals, running tunnels, cross passages, cross overs and stations constructed by boring, drilling or any construction techniques. However, this shall be deemed not to apply to any open excavation work (e.g. trenches, foundation work pits, cuttings, openings and the like). For the purpose of clarity all other work (other than tunnelling inside an existing tunnel) or ancillary or associated works in connection with a tunnelling contract shall not be deemed to be "Tunnelling Works".

**"Wet Works"** shall mean ports, harbours, breakwaters, sea walls, quays, jetties, docks, river training or regulating work, channels, dams or foundations and substructures exposed to the action of the sea or river and any other structures and facilities (or parts thereof) which are in or over the sea, rivers or lakes.

**"Works"** shall mean the permanent and/or temporary works and all installations and/or preparatory and/or auxiliary and/or ancillary and/or enabling works executed or in the course of execution in the course of the Insured Programme including Materials, parts, facilities, stocks, spares and all other property and facilities intended for incorporation therein or use therewith.



## THE SCHEDULE

### Insured:

Sections 1a, 3 and 4 only

- (i) **The Client**  
Crossrail Limited (CRL)  
Address:  
25 Canada Square  
London E14 5LQ  
United Kingdom
- (ii) **The Sponsors**  
Department for Transport (DfT)  
Transport for London (TfL)
- (iii) **The Programme Partner**  
Transcend Partners Limited
- (iv) **The Industry Partners**  
Network Rail Infrastructure Limited (NR)  
London Underground Limited (LUL)  
Rail for London (RfL)  
Canary Wharf Properties (Crossrail) Limited  
Canary Wharf Group plc  
Berkeley Homes (East Thames) Limited  
Berkeley Homes plc  
Docklands Light Railway Limited (DLR)
- (v) **The Project Delivery Partner**
- (vi) **Delivery Contractors, Main Contractors, Trade Contractors, Nominated Contractors, Co-Contractors and/or Sub-Contractors** of any tier and any other contractor including advance works and enabling works contractors and maintenance contractors
- (vii) **Architects and/or Engineers and/or Consultants and/or Manufacturers and/or Suppliers** as regards their on-site activities only
- (viii) **Local Authorities and utility providers** including private utility owners as required
- (ix) **Lenders/Financiers** as required
- (x) **Any other party** having an insurable interest to the extent that the Insured is required by contract or agreement to provide insurance to such parties

each for their respective rights and interests.

**Section 1b and 2**

(i) **The Client**  
Crossrail Limited (CRL)  
Address:  
25 Canada Square  
London E14 5LQ  
United Kingdom

(ii) **The Sponsors**  
Department for Transport (DfT)  
Transport for London (TfL)

each for their respective rights and interests.

**Period of Insurance  
for Sections 1, 2 and  
4:**

From 31<sup>st</sup> December 2009 midnight GMT to the planned date of commencement of passenger operations on the final part of the Insured Programme being 31<sup>st</sup> December 2018 midnight GMT 108 months after inception plus the balance of any unexpired Defects Liability Period thereafter.

Extensions to the Period of Insurance automatically covered at nil additional premium for an initial period of three months and pro rata additional premium for a further period of three months and thereafter at terms and conditions to be agreed.

**Period of Insurance  
for Section 3**

CRL to declare dates of the TBMs commencing transit if insurance is to be included for transit under the Policy. If insurance is only to commence from TBMs arrival on site, CRL to declare dates and estimated dates of completion of tunnel drive. Dates to be declared prior to TBMs commencing transit or arriving on site.

**Interest:**

The interest insured by this Policy includes all

- (i) activities associated with the Insured Programme commencing during the Period of Insurance (or prior thereto with approval of the Insurer) including all associated and ancillary works connected therewith and all activities and operations forming part of the Insured Programme.
- (ii) liabilities towards third parties arising from (i) above.

**Estimated Insured  
Programme Value:**

GBP ██████████  
plus

Sum Insured for Section 3

GBP [REDACTED] in respect of TBMs and their ancillary equipment:

2No Slurry TBMs @ GBP [REDACTED] each

6No EPB TBMs @ GBP [REDACTED] each

### **Sections 1a , 1b, 2 and 3**

**GBP [REDACTED] any one Occurrence and in the aggregate during the Period of Insurance in excess of the Deductibles.**

**This aggregate limit does not apply to Section 4 of this Policy.**

**All Inner Limits are subject to an aggregate limit of indemnity of GBP [REDACTED] other than Tunnelling Works claims.**

### **Inner Limits:**

#### **Section 1a:-**

- Damage to Tunnelling Works – GBP [REDACTED] or [REDACTED]% of the original construction cost of the immediate damaged area whichever is the greater any one Occurrence and GBP [REDACTED] in the aggregate
- Suppliers' Sites - GBP [REDACTED] any one Occurrence and in the aggregate per supplier
- Off-Site Storage – GBP [REDACTED] any one Occurrence
- Transit – GBP [REDACTED] any one Occurrence
- Expediting Expenses – [REDACTED]% of the amount of the loss; maximum GBP [REDACTED] any one Occurrence

#### **Sections 1a and 1b:-**

- Loss Minimisation Costs – GBP [REDACTED] any one Occurrence
- Professional Fees – [REDACTED]% of the amount of the loss; maximum GBP [REDACTED] any one Occurrence
- Debris Removal – [REDACTED]% of the amount of the loss; maximum GBP [REDACTED] any one Occurrence
- Operator Rolling Stock GBP [REDACTED]
- Emergency Braking GBP [REDACTED]

#### **Section 2 - GBP [REDACTED] any one Occurrence**

- Tunnel Clause for Connaught Tunnel - GBP [REDACTED] any one Occurrence and GBP [REDACTED] in the aggregate
- Property Due For Demolition – GBP [REDACTED] per Occurrence and GBP [REDACTED] per property in the aggregate

#### **Section 3: –**

- TBM Recovery Costs – GBP [REDACTED] any one Occurrence and GBP [REDACTED] in the aggregate
- Transit – GBP [REDACTED] any one Occurrence

**Sections 1, 2 and 3: –**

- Undamaged Foundations – █% of the amount of the loss; maximum GBP █ any one Occurrence and in the aggregate
- Plans, Models or Other Documents including Computer Records – GBP █ any one Occurrence
- Fire Brigade and/or Metropolitan Police Charges – GBP █ per Occurrence, GBP █ in the aggregate
- EU/Public Authorities/Railway Authorities Clause – █% of the amount of the loss; maximum GBP █ in the aggregate per change in the Stipulations

**Limit of Indemnity  
Section 4:**

**Section 4 – Third Party Liability**

GBP █ any one Occurrence/unlimited in number of Occurrences.

GBP █ in the aggregate for the period of insurance in respect of Pollution or Contamination plus one automatic reinstatement without additional premium.

**Premium:**

**Sections 1, 2 and 4**

GBP █

**Section 3**

Option for TBMs

█% of new replacement value per annum

The premium for TBMs shall be calculated by applying the new replacement value of TBMs at the above rate(s) per annum. CRL will declare estimated new replacement values and premium will be calculated and debited in annual installments pro-rata to/from and on anniversary dates.

TBM Option to be exercised in full by 1<sup>st</sup> June 2012 otherwise offer withdrawn.

**Further premium charges**

Terrorism cover via Pool Re

London Fire Brigade Levy as payable by law

**Territorial Limits**

Sections 1 2 and 3 - Anywhere in Europe arising out of the Insured Programme.

Section 4 – Worldwide, excluding USA and Canada.

**Jurisdiction:** In respect of claims brought against the Insured, the Insured and the Insurer agree to submit to the jurisdiction of any competent court anywhere in the world excluding any court subject to the jurisdiction of the United States of America, its territories or possessions, or Canada.

**Choice of Law and Policy Disputes** This insurance shall be governed by and construed in accordance with the laws of England & Wales in respect of Policy disputes.

**Nominated Loss Adjusters:** Cunningham Lindsey, Crawford and Advanta.

**Deductibles:**

<b>Section 1a, 1b and 2</b>	Tunnelling Works Tunnels and related Section 1a Exclusion 1 claims and Maintenance (Section 1a Exclusion 2 claims)	GBP [REDACTED]
<b>each &amp; every Occurrence</b>	Stations Wet Works and other Section 1a Exclusion 1 claims and Maintenance (Section 1a Exclusion 2) claims	GBP [REDACTED]
<b>Section 3</b>	All other Works	GBP [REDACTED]
<b>each &amp; every Occurrence</b>	TBMs	[REDACTED] % of adjusted claim minimum GBP [REDACTED]
	TBM recovery costs	[REDACTED] % of recovery costs
<b>Section 4</b>	Loss of or damage to property or Nuisance, other than below	GBP [REDACTED]
<b>each &amp; every Occurrence</b>	Vibration, Removal, Weakening of Support	GBP [REDACTED]
	Bodily Injury	[REDACTED]

## **GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS OF THIS POLICY**

This Policy and Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.

### **1. Primary Insurance**

It is expressly agreed that this Policy provides primary cover for the Insured and that in the case of physical loss destruction damage or liability insured under any other policy of insurance taken out by the Insureds, with the exception of insurance policies procured by Industry Partners to cover activities outside the scope of the Insured Programme, the Insurer will indemnify the Insured as if such other policy of insurance did not exist.

### **2. Limit of Indemnity – Sections 1, 2 and 3**

The liability of the Insurer shall not exceed the amount stated in the Schedule as the Limit of Indemnity for Sections 1, 2 and 3.

Any Inner Limits stated within the Policy shall not be in addition to the Limit of Indemnity stated in the Schedule.

The Limit of Indemnity and any Inner Limits stated within the Policy shall apply in excess of the stated Deductible(s).

In the event of physical loss destruction or damage occurring which may be recoverable under one or more of Sections 1a, 1b, 2 or 3 of this Policy and the liability of the Insurer in respect of such physical loss destruction or damage is limited to an Inner Limit under the terms of more than one of those Sections of this Policy, then the highest of such Inner Limits shall apply to the total of the amounts payable under those Sections to which the Inner Limit applies.

An aggregate limit of indemnity of GBP [REDACTED] shall apply to the total of all claims subject to an Inner Limit in Sections 1, 2 and 3 during the Period of Insurance other than claims under the Tunnelling Works Memorandum which shall not be subject to the aggregate limit of indemnity of GBP [REDACTED].

### **3. Mediation/Arbitration**

Where any dispute between the parties arising out of or in connection with this Policy including formation and validity and whether arising during or after the period of this Policy has not been settled through negotiation, then both parties agree to try in good faith to settle such dispute by nonbinding mediation, before resorting to arbitration in the manner set out below.

If the dispute is not settled by mediation within 60 days of the commencement of the mediation, or such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration.

The parties shall seek to agree a single arbitrator to act as the arbitration tribunal (Tribunal) within 30 days of referral of the dispute to arbitration. If the parties are unable to agree a single arbitrator then each party shall appoint their arbitrator and give written notice thereof to the other party within a further 30 days. The two arbitrators shall appoint a third arbitrator (who shall act as chairman) within a further 30 days. Should they fail to do so or either party fails to appoint their arbitrator then either arbitrator or the parties may apply to ARIAS (UK) for appointment of the arbitrator(s).

Unless the parties mutually agree to the contrary, any 1 person or 3 person Tribunal shall consist entirely of an arbitrator or arbitrators each of whom has not less than ten years experience engaged in international insurance or reinsurance business or advising such business in a professional capacity.

If an arbitrator, subsequent to his appointment, is unwilling or unable to act, a new arbitrator shall be appointed to replace him by the procedure set out above.

The seat of the arbitration shall be London, UK.

The Tribunal shall not be bound by the formal rules of evidence. The Tribunal shall have power to fix all procedural rules relating to the conduct of the arbitration. The Tribunal may in its sole discretion make such orders and directions as it considers to be necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions.

The Tribunal shall within sixty days of reaching its decision in the arbitration issue to the parties its written and reasoned award. The award shall be final and binding on the parties who covenant to carry out the same. If either of the parties should fail to carry out the award the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

All costs of the arbitration shall be at the discretion of the Tribunal who may direct to and by whom and in what manner they shall be paid.

This article remains valid, should the Policy be void.

#### **4. Change in Circumstances**

If any change shall occur materially varying any of the circumstances disclosed to the Insurer by the Insured, the Insured shall as soon as reasonably practicable give notice of such change with full particulars thereof and the Insurer shall have the right to vary the terms of this Policy subject to acceptance by CRL. In the event that the Insurer and CRL cannot agree such varied terms within 30 days of them being proposed then such disagreement shall be referred to Arbitration as per General Condition 3.

## **5. Advice of Loss**

### Sections 1, 2 and 3:

In the event of physical loss destruction or damage the Insured shall:-

- a) give advice thereof to the Insurer as soon as reasonably practicable in accordance with the claim procedure agreement;
- b) take all reasonable steps to protect the Subject Matter Insured from further physical loss destruction or damage;
- c) as soon thereafter as is reasonably practicable render a statement to the Insurer signed by the Insured stating to the knowledge and belief of the Insured as to the time and cause of the physical loss destruction or damage and the interest of the Insured and all others in the Subject Matter Insured;
- d) exhibit to any person designated by the Insurer all that remains of any of the Subject Matter Insured herein described;
- e) produce for examination all books of accounts bills invoices and vouchers and any and all documents pertaining to the interest of the Insured hereunder or a certified copy thereof if originals be lost at such reasonable place as may be designated by the Insurer or its representatives and permit extracts and copies thereof to be made.

### Section 4:

- a) In the event of an Occurrence which may give rise to a claim for indemnity under this Policy the Insured shall notify the Insurer as soon as reasonably practicable indicating the nature and extent of the loss or damage and/or liability;
- b) No admission repudiation offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Insurer;
- c) Every letter claim writ summons and process shall be notified or forwarded to the Insurer as soon as reasonably practicable on receipt;
- d) The Insured shall inform the Insurer as soon as reasonably practicable of any impending prosecution inquest or fatal accident inquiry or civil proceedings and send to the Insurer every relevant document.

## **6. Non-Cancellation**

Other than for non-payment of premium by the Insured, it is understood and agreed that this Policy shall not be cancelled except upon notice by CRL in the event of termination of



the Crossrail Programme. Should such an event occur and CRL notifies the Insurer to cancel coverage:

- i) a notice of cancellation shall be issued by the Insurer in accordance with any request provided by or on behalf of CRL so to do;
- ii) coverage will cease in respect of all Insured Contracts hereunder 60 days thereafter and a pro-rata return premium shall be effected for all such Insured Contracts that are claims free at the end of this 60 day period. However, the above shall in no way affect settlement of any claim or claims which occurred before the effective date of any such cancellation.

## **7. Payments on Account**

In the event of any claim under Sections 1a, 1b, 2 and/or 3 which is indemnifiable hereunder the Insurer shall make such payments on account from time to time to CRL as the repair or replacement progresses or interruption continues as are reasonable having regard to normal contracting practice and the likely quantum of the final settlement hereunder.

In the event of physical loss destruction or damage to the Subject Matter Insured for which an indemnity is provided under Sections 1a, 1b, 2 or 3 of this Policy which results in a payment then such payment shall be made directly to the Insured (i) or to the nominee of Insured (i).

## **8. Architects and/or Engineers and/or Consultants and/or Manufacturers and/or Suppliers Subrogation Provision**

Architects and/or Engineers and/or Consultants (hereinafter referred to as Consultants) and/or Manufacturers and/or Suppliers (hereinafter referred to as Suppliers) as defined as Insured Party (vii) in the Schedule (or other parties providing similar services acting on behalf of the other Insured Parties) shall only be insured parties under this Policy to the extent that CRL has by contract or agreement agreed to provide such Consultants and Suppliers with the benefit of this Policy or any part thereof.

Notwithstanding the inclusion of Consultants and Suppliers as insured parties, this Policy does not provide an indemnity to;

- i) any Consultant engaged to provide professional services for the Insured Programme resulting from the neglect, error or omission in the performance of those professional services by such Consultants, or
- ii) any Supplier engaged to supply component products to the Insured Programme resulting from the neglect, error or omission in the design or manufacture of such component products by such Supplier.

However it is noted and agreed that physical loss destruction or damage to Subject Matter Insured or Bodily Injury or Nuisance or loss or damage to third party property arising solely

in consequence of the presence on or movement around the Site of Work of any such Consultants or Suppliers shall not be deemed to have been caused as a consequence of the provision of the professional services or supply of component product and the Insurer shall not be entitled to exercise rights of subrogation in respect of these activities.

Except to the extent that CRL has agreed to provide any such Consultant or Supplier with the benefit of this Policy or any part thereof (by way of agreeing to include such parties as insured parties under this Policy or by waiving or limiting rights of recovery against such parties by contract or agreement), the Insurer reserves the right to subrogate against such party(ies):

- (a) prior to payment of a claim hereunder but only with the agreement of CRL; or
- (b) after payment of a claim hereunder

but only in respect of indemnifiable claims under this Policy which result from the neglect, error or omission in the performance of professional services by such Consultants or from the neglect, error or omission in the design or manufacture of such component products by such Suppliers.

Nothing contained in this condition shall relieve the Insurer of its obligation to settle indemnifiable claims promptly prior to exercising any rights of recourse and/or subrogation that may exist unless with the written approval of CRL.

For the purposes of this General Condition 8 professional services shall mean the provision of design or advisory services but excluding the provision of programme management services or project delivery services provided by Insureds (iii) or (v).

## **9. Premium Adjustment**

### **Insured Contract Value – Insured Contracts for Major Works**

CRL shall within six months of Completion of all Insured Contracts for each item of Major Works advise the Insurer in writing of the final Insured Contract values so that the relevant proportion of the insurance premium can be adjusted. If the final Insured Contract values differ from the value on which the premium was calculated, additional premium shall be paid to the Insurer by the Insured or a refund shall be paid by the Insurer to CRL as the case may be.

If there are outstanding disputes with contractors this adjustment shall be reviewed and revised at six monthly intervals thereafter.

### **Insured Programme Value – other Insured Contracts**

In respect of all other Insured Contracts, CRL shall within six months of Completion of the last Insured Contract advise the Insurer in writing of the final value of all such Insured Contracts so that the remaining proportion of the premium can be adjusted.

If such final value differs from the total estimated value of all such Insured Contracts (as per the Estimated Insured Programme Value) on which the premium was calculated,

additional premium shall be paid to the Insurer by the Insured or a refund shall be paid by the Insurer to CRL as the case may be.

If there are outstanding disputes with contractors this adjustment shall be reviewed and revised at six monthly intervals thereafter.

## **10. Due Observance of Policy Terms**

Subject to General Condition 14 the due observance and fulfilment of the terms of this Policy insofar as:

(i) such terms relate to anything to be done or complied with by the Insured; and

(ii) the non-observance or failure to fulfil such terms by the Insured is causative directly or indirectly of physical loss destruction damage or liability

shall be a condition precedent to any liability of the Insurer in respect of such physical loss destruction damage or liability.

## **11. Reasonable Precautions**

The Insured shall take and cause to be taken at his own expense for the full Period of Insurance all reasonable precautions for the safety of persons and property and the prevention of loss or damage or Bodily Injury, which might give rise to a claim under this Policy. The Insured shall, in particular, take reasonable care in the selection of labour, make reasonable efforts to comply with best practice, statutory requirements and manufacturers' recommendations and take reasonable action to maintain all Plant and Equipment in good working condition.

## **12. Joint Code of Practice**

The Insured shall use all reasonable endeavours to comply with the 'Joint Code for Risk Management of Tunnel Works in the UK' (hereinafter referred to as the Code) or any subsequent amendment thereto or revised edition thereof current at inception or subsequent renewal of the Policy.

Any representative appointed for the purpose by the Insurer shall have the right at all reasonable times and on reasonable notice to enter and inspect any construction site insured under the Policy and/or any relevant documents relating thereto for the purpose of checking whether these in all or any respects comply with the Code.

In the event of the Insurer becoming aware of what it considers to be a breach of the Code, the Insurer may (but shall not be required to) inform the Insured or his representative and the main/management contractor's construction site management of the nature of the breach specifying the remedial measures required by the Insurer ('the Remedial Measures') and the reasonable period within which these shall be completed. The Insured and the main/management contractor will then ensure that all relevant consultants

and trade/subcontractors are made aware promptly of the relevant breach and that the Remedial Measures are carried out within the period being stipulated by the Insurer.

Where the Insurer considers such a breach is of sufficient importance, the Insurer shall confirm the same by notice in writing to the Insured and main/management contractor at their respective addresses nominated by the Insured at the inception of insurance or as subsequently amended.

Under the terms of this or any subsequent notice, the Insurer may suspend insurance under the Policy in respect of the Works which are the subject of the breach from the date stated in the notice (not being a date earlier than the date named for the completion of the Remedial Measures). Such notice shall be given by registered post, recorded delivery, confirmed facsimile transmission or by hand.

Such insurance shall be reinstated when the Insurer is satisfied that the Remedial Measures have been completed.

Insurance under this Policy shall only be suspended in respect of the Works which are the subject of the breach and which are subject to the notice and only to the extent specified in the notice(s) and shall not apply to Works or insurance or insured parties not so specified.

For the avoidance of doubt, the Insurer shall have no liability to indemnify any Insured whose insurance has been suspended under a notice under this General Condition in respect of physical loss destruction or damage, which occurs during the period of suspension.

Nothing in this General Condition shall prejudice, waive or remove the rights of the Insurer under the terms of other Policy conditions and exclusions or otherwise under or in relation to the Policy.

Subject otherwise to the terms, conditions and exclusions of this Policy

### **13. Deductible Inflation Review Clause**

If either on the third or sixth anniversaries of the inception of this Policy inflation exceeds the corresponding percentage stated below (on a cumulative basis from inception of this Policy), this will be considered a change in circumstance and the deductibles will be increased by the cumulative inflation change percentage.

For the purpose of this condition, inflation shall be measured in accordance with the UK Retail Price Index and agreed in writing between the CRL and the Insurer.

Percentage:  
Third Anniversary     █ %  
Sixth Anniversary     █ %

In the event of an Occurrence, the deductible to be considered shall be on the date of the Occurrence.

#### **14. Multiple Insured**

- a) It is hereby noted and agreed that where the Insured described in the Schedule comprises more than one insured party, each operating as a separate and distinct entity, then insurance herein shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurer to all the insured parties collectively shall not exceed the Limits of Indemnity including any Inner Limits set by memorandum or endorsement stated in the Policy.
- b) It is understood and agreed that any payment or payments made by the Insurer to any one or more such insured parties shall reduce to the extent of that payment the Insurer's liability to all such parties arising from any one loss giving rise to a claim under this Policy and (if applicable) in the aggregate.
- c) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of physical loss destruction or damage or liability.
- d) It is further understood and agreed that the Insurer shall be entitled to avoid liability to or (as may be appropriate) claim loss or damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or material breach of any warranty or condition of this Policy (save where such misrepresentation, non-disclosure is unintended or free of fraudulent conduct or intent to deceive) each referred to in this clause as a Vitiating Act.
- e) It is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party and who has not committed a Vitiating Act.
- f) Except as provided for in General Condition 8, the Insurer hereby agrees to waive all rights of subrogation which it may have or acquire against any insured party irrespective of whether such party is an insured party under any section of this policy under which the claim is made except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a Vitiating Act in which circumstances the Insurer may enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured party.

#### **15. Joint Code of Practice on the Protection from Fire of Construction Sites**

The Insured undertakes to comply with The Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation dated May 2009 or any subsequent amendment to or revised edition thereof current at inception (or subsequent renewal if applicable) of the policy, hereinafter referred to as The Joint Code.

This General Condition shall apply to the contract provided that the original contract price is GBP [REDACTED] or more and for the purpose of paragraph 6.3 of The Joint Code if the estimated contract price exceeds GBP [REDACTED] it shall be deemed to be a large project.

The appointed representative of the Insurers shall have the right at all reasonable times to enter and inspect the contract site for the purpose of checking whether the conditions thereon in all respects comply with The Joint Code.

In the event of the Insurers becoming aware of a breach of The Joint Code, the Insurers may inform the main/management contractor's site management of the nature of the breach specifying the remedial measures required by the Insurers (the remedial measures) and the period within which these must be completed.

Where the Insurers consider such a breach is of sufficient importance the Insurers may confirm the same by notice in writing (the notice) to CRL and the main/management contractor at their respective addresses nominated by the Insured at the inception of cover or as subsequently amended. Under the terms of this or any subsequent notice the Insurers may suspend cover under the Policy in respect of the Works which are the subject of the breach from the date named in the notice not being a date earlier than the date named for completion of the remedial measures it being understood that upon suspension such cover shall be reinstated when the Insurers are satisfied that the remedial measures have been completed. Such notice shall be given by registered post, recorded delivery, facsimile transmission or by hand.

Cover under this Policy shall only be suspended in respect of the Works which are the subject of the breach and which are subject to the notice and only to the extent specified in the notice(s) and shall not apply to Works or cover or insured parties not so specified.

This General Condition shall not in itself be considered a condition precedent to liability but its inclusion shall not prejudice, waive or remove the rights of the Insurers under the terms of this Policy.

This General Condition does not apply to any public liability insurance provided by this policy. In the event of cancellation only the Insurers agree to return to CRL a pro-rata proportion of the relevant part of the policy premium.

## **16. Loss Ratio and Review Clause**

On the fifth anniversary of the inception of this Policy:

If the loss ratio exceeds █% an additional premium of █% shall be payable

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The additional premium is to be notified to CRL for payment within 90 days of the fifth anniversary of the inception of this Policy.

The loss ratio shall be calculated at the fifth anniversary of the inception of this Policy as the amount of claims divided by the total premium. The claims will be the amount of paid

claims plus reserves for claims notified but not closed as at the fifth anniversary of the inception of this Policy. The amount of the reserves shall be established by the Insurers and the independent loss adjuster in consultation with CRL in accordance with the agreed claims handling procedures.

The total premium shall include any additional premium paid prior to the fifth anniversary of the inception of this Policy resulting from any alterations to the Estimated Insured Programme Value or alterations to the risk declared by the Insured to the Insurers.

Any revision of the loss ratio generating a return premium due to actual paid claims being subsequently below the outstanding reserves used for the calculation of the loss ratio on the fifth anniversary will be taken into account during the final adjustment of the premium six months after the Completion of the last Insured Contract in accordance with General Condition 9.

Any additional premium paid resulting from any alterations to the Estimated Insured Programme Value or alterations to the risk declared and paid by the Insured to the Insurers before the premium adjustment under General Condition 9 shall be considered as already paid for the purposes of calculating the final adjustment premium due in accordance with General Condition 9.

## **GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THIS POLICY**

The Insurer shall not be liable for the following unless stated to the contrary or qualified to the contrary elsewhere within this Policy for:-

### **1. Nuclear and Associated Risks**

Physical loss destruction or damage or liability occasioned by or through or in consequence, directly or indirectly, of any of the following events, namely:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter, but the exclusion in this sub clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
- (e) any nuclear reaction, nuclear radiation or radioactive contamination regardless of any other cause contributing concurrently or in any other sequence to any physical loss destruction or damage or liability;
- (f) any chemical, biological, bio-chemical or electromagnetic weapon.

### **2. War and Associated Risks**

Physical loss destruction or damage or liability occasioned by or through or in consequence, directly or indirectly, of any of the following events, namely:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not), civil war;
- (b) mutiny, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege, nationalisation, confiscation, requisition, seizure or loss of or damage to property by order of the government or by any public authority.

In any action, suit or other proceedings where the Insurer alleges that, by reasons of the provisions of this Exclusion, any physical loss destruction or damage or liability are not covered by this Policy, the burden of proving that such loss, damage or liability are covered shall be upon the Insured.



It is hereby noted and agreed that this exclusion will not apply to physical loss destruction or damage or liability from or occasioned by the presence of munitions of war in or about the vicinity of the site of the Insured Programme. Provided that the presence of such munitions does not result from a state of war current at the time of such physical loss destruction or damage or liability.

### **3. Fines and Penalties**

- a) penalties for non-completion of or delay in completion of contract
- b) performance guarantees.

### **4. Deductible**

the amount of the Deductible provided that:

Under Section 1a, Section 1b, Section 2 and Section 3:

- (a) except as detailed under (c) below;
  - i) all claims for physical loss destruction or damage under Section 1a and/or 1b and/or 2 arising from one identifiable source or original cause shall be adjusted as one claim and from the amount of such adjusted claim there shall be deducted the highest applicable Deductible as specified in the Schedule
  - ii) all claims for physical loss destruction or damage under Section 3 shall be subject to a separate Deductible as specified in the Schedule in addition to any Deductible that may apply to any other section of the policy
- (b) in the event of any one Occurrence of physical loss destruction or damage affecting the Subject Matter Insured of more than one insured party the Deductible deducted from the claim settlement shall be apportioned between the Insured parties in the same proportion as their individual losses bear to the total amount of the loss
- (c) all physical loss destruction or damage occurring within 72 consecutive hours and caused by storm tempest and flood is deemed to be one event and therefore to constitute one Occurrence for the purpose of determining the number of Deductibles
- (d) for the purpose of the foregoing the commencement of any such 72 hour period shall be decided at the discretion of CRL it being understood and agreed however that there shall be no overlapping in any two or more 72 hour periods in the event of damage occurring over a more extended period of time

Under Section 4:-

- (a) all claims from any claimant or any number of claimants arising from one identifiable source or original cause shall be adjusted as one claim and from the

amount of such adjusted claim there shall be deducted the Deductible specified in the Schedule

- (b) in the event of any one Occurrence causing liability to attach to more than one insured party the Deductible deducted from the claim settlement shall be apportioned between the insured parties in the same proportion that their individual liabilities bear to the total amount of the claim

## **5. Terrorism**

Loss, damage, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Also excluded is loss, damage, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Insurer alleges that by reason of this exclusion, any loss, damage, liability, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this General Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **SECTION 1 – CONSTRUCTION/ERECTION “ALL RISKS” AND COMPLETED WORKS**

### **Termination of Insurer’s Risk under Section 1a**

Cover under Section 1a in respect of an Insured Contract other than cover in respect of Defects Liability Periods shall terminate at Completion.

### **Commencement of Insurer’s Risk under Section 1b**

Cover in respect of Subject Matter Insured under Section 1b shall commence on Completion of the Insured Contract in respect of such Subject Matter Insured (subject to Memorandum 1 to Section 1b).

Cover under Section 1b in respect of Woolwich Station Box shall commence from the date of Practical Completion under and as defined in the Woolwich Station Box Deed between The Secretary of State for Transport, Berkeley Homes (East Thames) Limited, Berkeley Homes plc and CRL.

### **Termination of Insurer’s Risk under Section 1b:**

Cover under Section 1b in respect of any part of the Insured Programme other than cover in respect of Defects Liability Periods shall terminate on the commencement of passenger operations on that part of the Insured Programme.

## **SECTION 1a – CONSTRUCTION/ERECTION “ALL RISKS”**

### **Subject Matter Insured**

Subject Matter Insured comprises the entire Insured Programme, Works, Materials, machinery apparatus and the like incorporated or to be incorporated therein, built, constructed, erected, supplied, installed, repaired, revised or otherwise including all tests and/or trials of whatever nature as often as required.

### **Basis of Indemnity**

This Policy will pay the full cost of replacing and/or repairing and/or making good any of the Subject Matter Insured and/or any part thereof which shall be physically lost destroyed or damaged during the Period of Insurance in any manner and by any cause whatsoever, not hereinafter excluded whilst within the Territorial Limits including whilst in transit (other than by sea or air except sea transit on roll on/roll off ferries) or in storage. The Insurer shall also be liable for the appropriate levels of tax, overhead charges and profit to the extent that they are included in the Estimated Insured Programme Value.

The basis of any loss settlement shall be:

- a. in the case of any physical loss destruction or damage which can be repaired, the costs of repairs necessary to restore the Subject Matter Insured to its condition immediately before the Occurrence , or
- b. where the physical loss destruction or damage cannot be repaired, or the cost of repair is greater than the replacement cost, the cost to replace the Subject Matter Insured which has been physically lost, destroyed or damaged, or
- c. in the case where the damage is not repaired, the actual value of the damaged item of Subject Matter Insured immediately prior to the Damage,

Plus all reasonable or applicable freight, labour, insurance, wages, duties, profit, taxes and overheads, to the extent that they were originally allowed for in the Estimated Insured Programme value and incurred in connection with the Occurrence. The value of any salvage will be deducted.

### **Limit of Indemnity**

The total liability of the Insurer to any one Insured or to all Insured(s) collectively shall not exceed the Limit of Indemnity stated in the Schedule or any other Inner Limit as may be stated in the Schedule or Policy.

Unless otherwise stated all Limits of Indemnity and Inner Limits shall apply in addition to the Deductible(s) stated in the Schedule.

In the event of physical loss destruction or damage occurring to the Subject Matter Insured which is recoverable under this Policy it is necessary to repeat any test or trial and/or repaint and/or

reclean the Subject Matter Insured, the Insurer shall bear the extra costs of such retesting retrieval repainting and/or recleaning.

## **Exclusions applicable to Section 1a**

The Insurer shall not be liable for:-

### **1. Defects**

All costs rendered necessary by defects of material workmanship design plan or specification and should physical loss destruction or damage (which for the purposes of this Exclusion shall include any patent detrimental change in the physical condition of the Subject Matter Insured) occur to any portion of the Works containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material workmanship design plan or specification.

For the purpose of the Policy and not merely this Exclusion it is understood and agreed that any portion of the Works shall not be regarded as physically lost destroyed or damaged solely by virtue of the existence of any defect of material workmanship design plan or specification.

### **2. Defects Liability Period**

Physical loss or destruction of or damage to the permanent works following Completion of an Insured Contract.

Notwithstanding this exclusion the Insurer shall be liable for physical loss or destruction or damage during the Defects Liability Period if such physical loss destruction or damage:

- (a) in respect of Civil Engineering Works results from a cause originating:
  - (i) prior to Completion; or
  - (ii) during any works undertaken during the original Defects Liability Period to repair or replace any part of the permanent works in which event a further Defects Liability Period is to apply to the repaired or replaced works which shall expire after 24 months from completion of such repair or replacement works; or
- (b) in respect of all other works results from a cause originating on the Site of Work:
  - (i) prior to Completion; or
  - (ii) during any works undertaken during the original Defects Liability Period to repair or replace any part of the permanent works in which event a further Defects Liability Period is to apply to such repaired or replaced works which shall expire after 24 months from completion of such repair and replacement works; or
- (c) is caused by the Insured in the course of fulfilling their contractual obligations; or
- (d) arises from any testing, inspection or commissioning operations carried out by or on behalf of the Insured.

### **3. Contractors' Plant and Equipment**

Physical loss destruction of or damage to Contractors' Plant and Equipment (not forming part of or intended to form part of the temporary and/or permanent works).

Notwithstanding this exclusion, unless stated as insured under Section 3, this Section of the Policy shall not exclude physical loss or destruction of or damage to any Temporary Buildings, whether on or off any Site of Work but utilised for the purposes of performing the Insured Programme and including the contents and fixtures and fittings thereof, provided that their estimated value is included in the Estimated Insured Programme Value.

### **4. Tunnelling Works**

Expenses incurred (in relation to Tunnelling Works only):

- (a) (i) for alterations in the construction method or
- (ii) due to unforeseen ground conditions or obstructions

unless necessary to reinstate indemnifiable physical loss destruction or damage,

(b) for measures which become necessary to improve or stabilise ground conditions or to seal against water ingress unless necessary to reinstate indemnifiable physical loss destruction or damage,

(c) for removing material which has been excavated, or due to overbreak in excess of the design profile and/or for refilling cavities resulting therefrom,

(d) for dewatering unless necessary to reinstate indemnifiable physical loss destruction or damage,

(e) for physical loss destruction or damage due to breakdown of the dewatering system if such physical loss destruction or damage could have been avoided by use of standby facilities,

(f) for the loss of bentonite, suspensions, or any media or substance used for excavation support or as a ground-conditioning agent unless caused by otherwise indemnifiable physical loss destruction or damage,

(g) for losses incurred due to abandonment or cessation of works,

(h) damage in advance of the tunnel face (which expression shall mean the limit of that part or parts of the tunnel which at the time of the Damage has been excavated and where the tunnel lining or support has not commenced).

## **5. Foundations, Casings and Sheet Piles**

In respect of the construction of foundations, casings, sheet piles, piling and retaining walls, expenses incurred

- (a) for replacing or rectifying piles or retaining wall elements
  - (i) which have become misplaced or misaligned or jammed during their construction;
  - (ii) which are physically lost destroyed or abandoned or damaged during driving or extraction;
- or
- (iii) which have become obstructed or jammed or damaged piling equipment or casings;
- (b) for rectifying disconnected or declutched sheet piles;
- (c) for rectifying any leakage or infiltration of material of any kind;
- (d) for filling voids or for replacing lost bentonite;
- (e) as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity.
- (f) for reinstating profiles or dimensions

unless caused by otherwise indemnifiable physical loss destruction or damage.

The burden of proving that such physical loss destruction or damage is covered shall be upon the Insured.

## **6. Wet Works**

Physical loss destruction or damage to Wet Works directly or indirectly caused by:

- a) the normal action of the sea or river, which means the state of the sea or river which must be statistically expected to occur once during a 50 year period, or
- b) impact of water borne vessels.

Furthermore the Insurer shall not be liable for

- i) soil erosion, dredging or re-dredging, lost or damaged fill material, or reinstatement of profiles or dimensions



ii) any mobilization/demobilization and/or other costs which arise for stand-by/waiting on weather of offshore construction equipment

iii) any floating and other equipment such as caissons, barges and the like

iv) pulling wires, anchors, chains and buoys

v) physical loss destruction of or damage to more than 50m of uncompleted or unprotected seawall, quay, jetty, pier or other marine structure.

## **7. Watertightness**

Leaks to primary or secondary linings unless caused by otherwise indemnifiable loss destruction or damage.

## **Memoranda applicable to Section 1a**

This Policy is extended to include the following:

### **1. Suppliers' Sites**

The Insurer will indemnify the Insured for physical loss destruction or damage to Materials intended for incorporation in or for use with the Insured Programme whilst such Materials are at the premises of any supplier to the Insured, provided that said Materials are uniquely allocated to the Crossrail Programme and stored in accordance with the suppliers' best practice procedures.

The liability of the Insurer shall not exceed GBP [REDACTED] any one Occurrence and in the aggregate per supplier.

Logistics Centres – if property at the centres is owned by the Insured other than the supplier under Insured (viii) then the limit will not apply. If the property is still owned by a supplier the limit in this Memorandum will apply.

### **2. Off-Site Storage**

The Insurer will indemnify the Insured for physical loss destruction or damage to Materials intended for incorporation in or use with the Insured Programme whilst such Materials are temporarily held in a recognised storage facility within the Territorial Limits away from any Site of Works, provided that the liability of the Insurers shall not exceed GBP [REDACTED] any one Occurrence.

### **3. Transit**

The Insurer will indemnify the Insured for physical loss destruction or damage to Materials intended for incorporation in or use with the Insured Programme whilst such Materials are

- (a) in transit by road rail or inland waterway including all transshipments place of storage and accommodation and all loading and unloading incidental thereto within the Territorial Limits, or
- (b) in transit by sea anywhere within the Territorial Limits on roll on/roll off ferries including all transshipments place of storage and accommodation and all loading and unloading incidental thereto

provided that the liability of the Insurer shall not exceed GBP [REDACTED] any one Occurrence

**4. Rectification of Defects**

It is hereby declared and agreed that the indemnity provided by this Section of the Policy extends to include any Subject Matter Insured which is retained and/or used at the Site of Work during the maintenance period for finishing and/or maintenance works.

**5. Tunnelling Works**

In the event of indemnifiable physical loss destruction or damage to Tunnelling Works, the maximum amount payable shall be limited to the expenses incurred to reinstate the Subject Matter Insured to a standard or condition technically equivalent to that which existed immediately before the occurrence of physical loss destruction or damage but not in excess of the limit as stated below.

Maximum limit payable: GBP [REDACTED] or [REDACTED] % of the original construction cost of the immediate damaged area whichever the greater any one Occurrence and GBP [REDACTED] in the aggregate. This maximum limit payable is inclusive of all other provisions of Section 1 including any other applicable Inner Limits.

**6. Expediting Expenses**

The Insurer will indemnify the Insured for the additional costs of overtime weekend and shift-working plant-hire-charges express-freight air-freight and all other costs necessarily and reasonably incurred in expediting the repair reinstatement or replacement of the Subject Matter Insured consequent upon physical loss destruction or damage to which the indemnity provided by this Section applies, provided that the work is not completed at an earlier date than if no loss destruction or damage had occurred.

Provided that the liability of the Insurer shall not exceed [REDACTED] % of the amount of the total indemnifiable physical loss destruction or damage and a maximum amount of GBP [REDACTED] any one Occurrence.

**7. Series Loss Clause**

If the development or discovery of a defect shall indicate or suggest that a similar defect exists elsewhere in the Subject Matter Insured, then the Insured shall investigate and if necessary rectify the defect(s) in such Subject Matter Insured at its own expense within a reasonable time.

Should the Insured fail to rectify such defects within a reasonable time, then any physical loss destruction or damage due to faulty design defective materials or defective workmanship arising out of the same cause to structures, parts of structures, machines or equipment of the same type shall be indemnified according to the following scale after the application of the deductible:

- [REDACTED] % of the first two Occurrences
- [REDACTED] % of the third Occurrence
- [REDACTED] % of the fourth Occurrence
- [REDACTED] % of the fifth Occurrence

The Insurers will not indemnify the Insured for the amounts of the sixth and following Occurrences resulting from causes of the same nature.

## **SECTION 1b – COMPLETED WORKS (ASSET PROTECTION POST COMPLETION)**

### **Subject Matter Insured**

For the purposes of this Section, the Subject Matter Insured shall comprise property of every kind and description owned by or for which Insured (i) and/or (ii) is responsible and which forms part of or is associated with an Insured Contract on Completion of such Insured Contract (subject to Memorandum 1 to this Section), or is constructed, altered or improved during the Period of Insurance, including whilst in transit or temporary removal within the Territorial Limits as stated in the Schedule.

### **Basis of Indemnity**

This Policy will pay the full cost of replacing and/or repairing and/or making good any of the Subject Matter Insured and/or any part thereof which shall be physically lost destroyed or damaged in any manner and by any cause whatsoever, not hereinafter excluded.

### **Limit of Indemnity**

The total liability of the Insurer to any one Insured or to all Insured(s) collectively shall not exceed the Limit of Indemnity stated in the Schedule or any other Inner Limit as may be stated in the Schedule or Policy.

Unless otherwise stated all Limits of Indemnity and Inner Limits shall apply in addition to the Deductible(s) stated in the Schedule.

In the event of physical loss destruction or damage occurring to the Subject Matter Insured which is recoverable under this Policy it is necessary to repeat any test or trial and/or repaint and/or reclean the Subject Matter Insured the Insurer shall bear the extra costs of such retesting retrieval repainting and/or recleaning.

## **Exclusions applicable to Section 1b**

The Insurer shall not be liable for:-

### **1. Defects, Gradual Operating Causes, Breakdown**

Physical loss destruction or damage caused by or consisting of:

- (a) inherent vice, latent defect, faulty or defective design, workmanship or materials
- (b) change in temperature, colour, flavour, texture or finish
- (c) normal settlement or bedding down of new structures
- (d) mechanical or electrical breakdown

but this exclusion shall only apply to that part(s) of the Subject Matter Insured that is immediately affected by such defect or condition and shall not apply to other parts of the Subject Matter Insured that are free of such defect or condition but physically lost destroyed or damaged as a result thereof.

### **2. Wet Works**

Physical loss destruction of or damage to Wet Works directly or indirectly caused by:

- a) the normal action of the sea or river, which means the state of the sea or river which must be statistically expected to occur once during a 50 year period, or
- b) impact of water borne vessels.

Furthermore the Insurer shall not be liable for

- i) soil erosion, dredging or re-dredging, lost or damaged fill material, or reinstatement of profiles or dimensions
- ii) any mobilization/demobilization and/or other costs which arise for stand-by/waiting on weather of offshore construction equipment
- iii) any floating and other equipment such as caissons, barges and the like
- iv) pulling wires, anchors, chains and buoys.

## **Memoranda applicable to Section 1b**

This Policy is extended to include the following:

### **1. Automatic Additions/Deletions**

This Policy shall automatically allow for additions and deletions to the Subject Matter Insured during the Period of Insurance insofar as such additions and deletions were agreed under Section 1a of this Policy and subject to the provisions of General Condition 4.

### **2. Reinstatement Basis of Settlement**

Subject to the following Special Provisions the basis upon which the amount payable in respect of the Subject Matter Insured is to be calculated will be the Reinstatement of the Subject Matter Insured lost destroyed or damaged.

For this purpose Reinstatement means

- (A) the rebuilding or replacement of Subject Matter Insured lost or destroyed which provided the liability of the Insurer is not increased may be carried out
  - a. in any manner suitable to the requirements of the Insured
  - b. upon another site
- (B) the repair or restoration of Subject Matter Insured damaged

in either case to a condition equivalent to or substantially the same as but not better or more extensive than its condition when new.

#### Special Provisions

- (a) the liability of the Insurer for the repair or restoration of Subject Matter Insured sustaining damage in part only shall not exceed the amount which would have been payable had such Subject Matter Insured been entirely lost or destroyed
- (b) The Insurer will not pay any sum beyond the indemnity value of the Subject Matter Insured
  - (i) unless reinstatement commences and proceeds without unreasonable delay
  - (ii) until the cost of reinstatement has been incurred.

### **3. Woolwich Station Box**

The Subject Matter Insured shall include Woolwich Station Box from the date of Practical Completion under and as defined in the Woolwich Station Box Deed between The Secretary of State for Transport, Berkeley Homes (East Thames) Limited, Berkeley Homes plc and CRL.

## **Memoranda applicable to Sections 1a and 1b**

This Policy is extended to include the following:

### **1. Automatic Increase Clause**

CRL shall provide at the annual anniversary date of inception of this Policy a declaration to the Insurer of any increases in the Estimated Insured Programme Value including any increases in the estimated contract value of Insured Contracts.

In the event that the Estimated Insured Programme Value shall increase during the Period of Insurance the Insurer will continue to provide cover under this Policy at no changes in the terms and conditions of insurance (other than as provided for in General Conditions 4 and 9) provided such increases shall not exceed 15% of the Estimated Insured Programme Value as stated at the inception of this Policy.

In the event that the Estimated Insured Programme Value shall increase during the Period of Insurance by more than 15% of the Estimated Insured Programme Value as stated at the inception of this Policy, the Insurer will continue to provide cover under this Policy at current terms and conditions, with any amendments to such terms and conditions to be agreed between CRL and the Insurer within 90 days of the notification of the increase in the Estimated Insured Programme Value. In the event such terms or conditions cannot be agreed between CRL and the Insurer within 90 days of such notification, such dispute shall be dealt with in accordance with General Condition 3 of this Policy.

Any additional premium due for an increase in the Estimated Insured Programme Value due solely to inflation shall be charged at the rate applicable at inception of the Policy.

### **2. Operator Error (Rolling Stock)**

The Insurer will indemnify the Insured in respect of physical loss destruction or damage to the Subject Matter Insured caused by an error or omission of any operator driver conductor or guard or any other person performing those functions.

### **3. Emergency Braking (Rolling Stock)**

The Insurer will indemnify the Insured in respect of physical loss destruction or damage to the Subject Matter Insured caused by emergency braking.

### **4. Loss Minimisation Costs**

In the event of physical loss destruction or damage indemnifiable under this Policy such indemnity will include all costs and expenses reasonably incurred to protect the Subject Matter Insured or to limit further physical loss destruction or damage to Subject Matter Insured, but not exceeding the amount that would otherwise have been payable under the terms of this Policy had such costs and expenses not been incurred.



The liability of the Insurer shall not exceed GBP [REDACTED] any one Occurrence or such further amounts as agreed by the Insurer.

## **5. Professional Fees**

The Insurer will indemnify the Insured in respect of architects' surveyors' consulting engineers' and other professional fees necessarily and reasonably incurred in the repair reinstatement or replacement of the Subject Matter Insured consequent upon physical loss destruction or damage to which the indemnity provided by this Section applies

provided that

- (a) such fees shall not exceed those that would have been incurred if such work had formed part of the original contract for the Crossrail Programme or had been subject to normal competitive tendering,
- (b) the Insurer will not indemnify the Insured against any fees incurred in preparing any claim but will indemnify the Insured in respect of any financial technical and other such information that may be specifically requested by the Insurer for the purpose of investigating or verifying any claim accepted by the Insurer under this Section. The Insured shall advise the Insurer at the time of its request that costs may be incurred under this heading.
- (c) the liability of the Insurer shall not exceed [REDACTED] % of the amount of the total indemnifiable loss subject to a maximum GBP [REDACTED] any one Occurrence.

## **6. Debris Removal**

The Insurer will indemnify the Insured in respect of costs and expenses necessarily and reasonably incurred by the Insured in

- (a) removal and disposal of debris, detritus and other materials including liquids, gases or vapours following physical loss destruction or damage to the Subject Matter Insured,
- (b) dismantling and/or demolishing of any part of the Subject Matter Insured including temporary storage of dismantled or demolished property,
- (c) shoring up, propping, underpinning, dewatering and/or clearance of drains, sewers and services and/or any other reasonable and necessary action following physical loss destruction or damage to the Subject Matter Insured,
- (d) providing and maintaining lights audible warning barriers hoardings and the like

consequent upon physical loss destruction or damage to which the indemnity provided by this Section applies.

The Insurer shall also be liable for the reasonably and necessarily incurred costs to remove silt debris sludge and the like covering the Subject Matter Insured and/or Site of Work or access thereto or as a result of fly tipping irrespective of whether or not physical loss destruction or damage is caused to the Subject Matter Insured but the removal of which is necessary in order to continue with the performance of the Insured Contract

provided that

(i) the liability of the Insurer shall not exceed 10% of the amount of the total indemnifiable physical loss destruction or damage and a maximum amount of GBP [REDACTED] any one Occurrence,

(ii) the Insurer will not indemnify the Insured against any costs or expenses caused by or arising from Pollution or Contamination of property not insured by this Section.

## **7. Free Issue Materials**

The indemnity provided in respect of physical loss destruction or damage to the Subject Matter Insured is extended to include physical loss destruction or damage to free issue materials supplied by or on behalf of CRL and for which the Delivery Contractors Main Contractors or any Nominated Contractors Trade Contractors or any Co-contractors or Sub-contractors any other Contractors including advance works contractors the enabling works contractors and the maintenance contractors is responsible under the terms of the contract provided that

- a. all such Materials are for incorporation in or use with the Insured Programme,
- b. the total value of all such materials shall be included in the Estimated Insured Programme Value.

**SECTION 2 - EXISTING STRUCTURES/COMPULSORY PURCHASED PROPERTY/PROPERTY IN THE CARE, CUSTODY OR CONTROL OF INSURED (i) and (ii)**

**Subject Matter Insured**

Compulsory Purchased Property and Existing Structures and Property

**Basis of Indemnity**

**a) Increased Demolition Costs (applicable to Subject Matter Insured scheduled for demolition)**

If during the Period of Insurance the Subject Matter Insured shall be physically lost destroyed or damaged by any cause not hereinafter excluded this Policy will pay the costs and expenses necessarily incurred by the Insured in connection with the:

1. removal and disposal of debris, detritus and other materials including liquids, gases or vapours and/or dismantling and/or demolition, including temporary storage and/or protection of dismantled or demolished property following physical loss destruction or damage to the Subject Matter Insured,
2. dismantling and/or demolishing of any part of the Subject Matter Insured including temporary storage of dismantled or demolished property,
3. shoring up, propping, underpinning, dewatering and/or clearance of drains, sewers and services and/or any other reasonable and necessary action following physical loss destruction or damage to the Subject Matter Insured,
4. removal and disposal of debris from the Site of Works or areas adjacent thereto following the action of an event that would have been insured had the Subject Matter Insured been affected,
5. providing and maintaining lights audible warning barriers hoardings and the like.

The Insurer shall also be liable for the reasonably and necessarily incurred costs to remove silt debris sludge and the like covering the Subject Matter Insured and/or Site of Work or access thereto or as a result of fly tipping irrespective of whether or not physical loss destruction or damage is caused to the Subject Matter Insured but the removal of which is necessary in order to continue with the performance of the Insured Programme.

Subject always to Insurer's total limit of liability not exceeding the amount stated in the Schedule in respect of Section 2.

**b) Existing Structures (applicable to Subject Matter Insured not scheduled for demolition)**

If during the Period of Insurance the Subject Matter Insured shall be physically lost destroyed or damaged by any cause not hereinafter excluded this Policy will pay the costs and expenses necessarily incurred by the Insured in connection with the cost of replacing and/or repairing and/or making good any of Existing Structures and/or any part thereof which shall be physically lost destroyed or damaged during the Period of Insurance in any manner and by any cause whatsoever, not hereinafter excluded. The Insurer shall also be liable for the appropriate levels of tax, overhead charges and profit to the extent that they are included in the Sum Insured.

**Reinstatement Basis of Settlement (applicable to Subject Matter Insured not scheduled for demolition)**

Subject to the following Special Provisions the basis upon which the amount payable in respect of the Subject Matter Insured is to be calculated will be the Reinstatement of the Subject Matter Insured lost destroyed or damaged

For this purpose Reinstatement means

(A) the rebuilding or replacement of Subject Matter Insured lost or destroyed which provided the liability of the Insurer is not increased may be carried out

- a. in any manner suitable to the requirements of the Insured
- b. upon another site

(B) the repair or restoration of Subject Matter Insured damaged

in either case to a condition equivalent to or substantially the same as but not better or more extensive than its condition when new.

Special Provisions

1. the liability of the Insurer for the repair or restoration of Subject Matter Insured sustaining damage in part only shall not exceed the amount which would have been payable had such Subject Matter Insured been entirely lost or destroyed
2. the Insurer will not pay any sum beyond the indemnity value of the Subject Matter Insured
  - (i) unless reinstatement commences and proceeds without unreasonable delay
  - (ii) until the cost of reinstatement has been incurred.

**Limit of Indemnity**

The total liability of the Insurer to any one Insured or to all Insured(s) collectively shall not exceed the Limit of Indemnity for Section 2 stated in the Schedule or as may be agreed by the Insurer or any other Inner Limit as may be stated in the Schedule or Policy.

Unless otherwise stated the Limit of Indemnity and all Inner Limits shall apply in addition to the Deductible(s) stated in the Schedule.

In the event of physical loss destruction or damage occurring to the Subject Matter Insured which is recoverable under this Policy it is necessary to repeat any test or trial and/or repaint and/or reclean the Subject Matter Insured the Insurer shall bear the extra costs of such retesting retrial repainting and/or recleaning.

## **Exclusions applicable to Section 2**

The Insurer shall not be liable for:

### **1. Pollution or Contamination**

Any costs or expenses arising from Pollution or Contamination of property not insured hereunder.

### **2. Defects, Gradual Operating Causes, Breakdown**

Physical loss destruction or damage caused by or consisting of:

- (a) inherent vice, latent defect, faulty or defective design, workmanship or materials
- (b) change in temperature, colour, flavour, texture or finish
- (c) normal settlement or bedding down of new structures
- (d) mechanical or electrical breakdown

but this exclusion shall only apply to that part(s) of the Subject Matter Insured that is immediately affected by such defect or condition and shall not apply to other parts of the Subject Matter Insured that are free of such defect or condition but physically lost destroyed or damaged as a result thereof.

### **3. Tunnel Clause**

Expenses incurred (in relation to Connaught Tunnel works only) :

- (a) (i) for alterations in the construction method or  
(ii) due to unforeseen ground conditions or obstructions

unless necessary to reinstate indemnifiable physical loss destruction or damage,

(b) for measures which become necessary to improve or stabilise ground conditions or to seal against water ingress unless necessary to reinstate indemnifiable physical loss destruction or damage,

(c) for removing material which has been excavated, or due to overbreak in excess of the design profile and/or for refilling cavities resulting therefrom,

(d) for dewatering unless necessary to reinstate indemnifiable physical loss destruction or damage,

(e) for physical loss destruction or damage due to breakdown of the dewatering system if such physical loss destruction or damage could have been avoided by use of standby facilities,

(f) for the loss of bentonite, suspensions, or any media or substance used for excavation support or as a ground-conditioning agent unless caused by otherwise indemnifiable physical loss destruction or damage,

(g) for losses incurred due to abandonment or cessation of works,

(h) physical loss destruction or damage in advance of the tunnel face (which expression shall mean the limit of that part or parts of the tunnel which at the time of the Damage has been excavated and where the tunnel lining or support has not commenced).

In the event of indemnifiable physical loss destruction or damage to Tunnelling Works, the maximum amount payable shall be limited to the expenses incurred to reinstate the Subject Matter Insured to a standard or condition technically equivalent to that which existed immediately before the occurrence of physical loss destruction or damage but not in excess of the limit as stated below.

Maximum limit payable: GBP [REDACTED] any one Occurrence and GBP [REDACTED] in the aggregate. This maximum limit payable is inclusive of all other provisions of Sections 1 and 2 including any other applicable Inner Limits.

#### **4. Wharves, Piers and Jetties**

Physical loss destruction or damage to wharves, piers and jetties.

## **Memoranda applicable to Section 2**

### **1. Property Due for Demolition**

It is agreed the Insured may make use of property ultimately scheduled for demolition at or immediately adjacent to any Site of Works provided said use is in connection with the Insured Programme as temporary site accommodation or storage. The Insurer's liability shall be limited following physical loss destruction or damage hereby insured to the lower of the cost of reinstatement or the additional costs of providing adequate alternative accommodation (which is of equivalent suitability for said use) during the Period of Insurance, the costs that the Insured would have incurred absent such physical loss destruction or damage being excluded.

Provided that the liability of the Insurer in respect of any one claim or series of claims arising out of one Occurrence shall not exceed GBP [REDACTED] per occurrence and GBP [REDACTED] per Property in the aggregate.

### **2. Declarations**

CRL shall provide the Insurer within 30 days of each annual anniversary of the inception date of this Policy a declaration of the assets falling within the description of the Subject Matter Insured by this Section.

CRL shall notify the Insurer of any asset not scheduled for demolition with an acquisition value in excess of GBP [REDACTED] within 90 days of the acquisition.

CRL shall notify the Insurer where the total acquisition values of the Subject Matter Insured under this Section not scheduled for demolition exceeds GBP [REDACTED] within 90 days of the acquisition resulting in the total acquisition values exceeding GBP [REDACTED]

Should either of the above limits be exceeded then the provisions of General Condition 4 shall apply.



## **SECTION 3 – TUNNEL BORING MACHINES**

### **Subject Matter Insured**

For the purposes of this Section of the Policy, the Subject Matter Insured shall comprise Tunnel Boring Machines and their ancillary equipment (including compressors, generators, locomotives, conveyors, ventilation and pumping equipment) but only to the extent owned by or the responsibility of CRL or Insured (vi)

### **Basis of Indemnity**

The basis of settlement for claims shall be the cost of replacing and/or repairing and/or making good any of the Subject Matter Insured and/or any part thereof which shall be physically lost destroyed or damaged in any manner and by any cause whatsoever, not hereinafter excluded and as detailed hereunder:

- (i) In the event of physical loss destruction or damage to Tunnel Boring Machines (TBMs) the basis of loss settlement shall be as follows:-  
In cases where damage can be repaired the Insurer shall indemnify the costs necessarily incurred to restore the damaged property to its condition immediately before the occurrence of physical loss destruction or damage, including charges for ordinary freight, customs, duties and dues and the cost of erection provided such expenses have been included in the values declared.  
With the exception of parts which are subject to wear and tear and require routine replacement, no deduction shall be made for depreciation.
- (ii) If the cost of repairs equals or exceeds the actual value of the Tunnel Boring Machine (TBM) immediately before the occurrence of physical loss destruction or damage that property shall be deemed to be a total loss and settlement shall be made on the basis provided for in (iii) below.
- (iii) In the event of a total loss (but not a partial loss) in respect of a TBM the basis of indemnity shall be as follows:

the actual value of the TBM before the completion of tunnelling work will be calculated according to the depreciation formula given below but not less than 40% of the new replacement value. The formula is based on the actual formula given in the BGL (Baugeraeteliste) for construction Plant and Equipment.

After the completion of tunnelling work the actual value shall be deemed to be the salvage or buyback value of (not exceeding 40% with actual figures to be agreed by the Insurer) for the individual parts or elements of the TBM that will be moved to surface.

Actual value =  $\frac{1}{2} A \times (t + e)$

where:

A = new replacement value

t = uncompleted length of tunnel divided by the total length that was to be originally driven by the TBM

e = coefficient of TBM condition whereby:

e = 1.0 if $t \geq 0.8$	for new condition
e = 0.9 if $t < 0.8$ but $\geq 0.6$	for very good condition
e = 0.8 if $t < 0.6$ but $\geq 0.4$	for good condition
e = 0.7 if $t < 0.4$ but $\geq 0.2$	for satisfactory condition
e = 0.6 if $t < 0.2$	for sufficient condition

Subject always to the Insurers total liability not exceeding the amount(s) stated in the schedule in respect of Section 3.

### **Exclusions applicable to Section 3**

The Insurer shall not be liable for:-

#### **1. Mechanical or Electrical Breakdown**

Physical loss destruction or damage to the Subject Matter Insured caused by its own mechanical or electrical failure or overheating but this exclusion shall only apply to that part(s) of the Subject Matter Insured that is immediately affected by such mechanical or electrical breakdown and shall not apply to other parts of the Subject Matter Insured which are physically lost destroyed or damaged as a result of such mechanical or electrical breakdown.

#### **2. Abandonment**

Costs incurred due to abandonment by the Insured but this exclusion shall not apply if and to the extent that the Insurers have given their prior approval to indemnify the Insured for any such costs.

#### **3. Contractors' Plant and Equipment**

Physical Loss destruction or damage to any item of Contractors' Plant and Equipment.

#### **4. Drill Head and Cutting Equipment**

Physical loss destruction or damage to drill head and cutting equipment arising out of its use.

### **Memoranda applicable to Section 3**

The Policy is extended to include the following:

#### **1. Recovery Costs**

Recovery costs following indemnifiable physical loss destruction or damage are covered with a limit of GBP [REDACTED] any one Occurrence and GBP [REDACTED] in the aggregate for this Policy. The Insured shall bear a [REDACTED] % coinsurance to all recovery cost claims.

#### **2. Transit**

The Insurer will indemnify the Insured for physical loss destruction or damage to the Subject Matter Insured intended for incorporation in or use with the Insured Programme whilst such Subject Matter Insured is

- (a) in transit by road rail or inland waterway including all transhipments place of storage and accommodation and all loading and unloading incidental thereto within the Territorial Limits
- (b) in transit by sea anywhere within the Territorial Limits on roll on/roll off ferries including all transhipments place of storage and accommodation and all loading and unloading incidental thereto.

The Insurer will indemnify the Insured against general average contributions salvage sue and labour charges incurred and any customs duty arising out of the transportation of the property insured by sea.

Provided that the liability of the Insurer shall not exceed GBP [REDACTED] any one Occurrence.

## **ADDITIONAL EXCLUSIONS applicable to Sections 1, 2 and 3.**

The Insurer shall not be liable for

### **1. Cash and Banknotes**

Physical loss destruction or damage to cash, banknotes, treasury notes, money orders, cheques or stamps.

### **2. Wear Tear and Corrosion**

(a) normal wear, tear or gradual deterioration but this exclusion shall only apply to that part(s) which has suffered such condition and shall not apply to the remainder of the Subject Matter Insured which is not directly affected by such condition but is damaged as a consequence thereof.

(b) corrosion or erosion but this exclusion shall only apply to that part(s) which has suffered such condition and shall not apply to the remainder of the Subject Matter Insured which is not directly affected by such condition but is damaged as a consequence thereof.

### **3. Inventory Losses**

Unexplained disappearance or shortage if such disappearance or shortage is revealed only during or after the making of an inventory and when the loss can not be traced to a specific occurrence.

### **4. Electronic Data**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to "Trojan Horses", "worms" and "time or logic bombs".

b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to Subject Matter Insured by this Policy directly caused by such listed peril.

Listed Perils fire, lightning, explosion.

## **5. Waterborne Craft or Motor Vehicles**

Physical loss destruction or damage to:

- a) mechanically propelled waterborne craft or vessels (exceeding 8m in length) other than when used on inland waterways
- b) aircraft, helicopters or hovercraft
- c) vehicles primarily designed for the carriage of passengers whilst such vehicles are on public roads
- d) growing crops or trees, shrubs or plants (but this exclusion shall not apply in the event that other Subject Matter Insured is lost destroyed or damaged in the same occurrence)
- e) livestock.

## **6. Consequential Financial Loss**

Consequential financial loss.

## **7. Wilful Acts**

Physical loss destruction or damage which results from a deliberate act or omission committed by or with the full knowledge of the Insured's on-site project manager or those in a more senior position which could, in the view of a knowledgeable and prudent person, in a similar position, have been likely to result in a loss, having regard to the nature and circumstances of such act or omission. This exclusion shall not apply to those costs otherwise recoverable as Loss Minimisation Costs. Loss Minimisation Costs are not covered under Section 4 of this Policy.

This Exclusion shall not apply to any Insured who neither sanctioned, nor had knowledge of, nor was a party to the causing of such physical loss destruction or damage as is provided for in the provisions of General Condition 14.

## **8. Normal Upkeep**

The cost of normal upkeep and normal making good.

## **ADDITIONAL MEMORANDA applicable to Sections 1, 2 and 3.**

The Policy extends to include the following:

### **1. Undamaged Foundations**

In the event of physical loss destruction or damage covered by this Policy and if foundations of buildings, structures and/or plant insured hereby are undamaged or damaged in part then:

- (a) if due to the actions or requirements of municipal or local authorities, statutory, ad hoc or government bodies, replacement cannot be carried out in the same site, or
- (b) if due to damage to other Subject Matter Insured such foundations are rendered unsuitable or unusable or of no further value,

their loss shall be deemed to be total and the Insured will be indemnified accordingly. However, Insurer's liability shall not exceed 10% of the total adjusted loss maximum GBP 20,000,000 any one Occurrence and GBP 20,000,000 in the aggregate.

### **2. Marine Insurance - 50/50 Clause**

Where separate Marine Insurance has been effected by or on behalf of the Insured it is agreed that in the event of physical loss destruction or damage to the Subject Matter Insured due to a peril insured against being discovered after the risk has terminated under the Marine Insurance and, if after proper investigation it is not possible to ascertain whether the cause of such physical loss destruction or damage happened prior to the termination of the Marine Insurance or subsequently, it is understood and agreed that the Insurer hereon shall contribute 50 per cent of the properly adjusted claim and Marine Insurers shall be requested to do likewise.

It is further noted and agreed if the applicable Deductible under this Policy and the Marine Insurance are different, then each insurance shall deduct 50 per cent of its applicable Deductible from its 50 per cent share of the adjusted claim.

In the absence of a separate Marine Insurance (or if such Marine Insurance does not contain a 50/50 clause or complying 50/50 clause) then physical loss destruction or damage to the Subject Matter Insured discovered after unloading at the port of entry (or unloading at the contract site or other termination point of any Marine Insurance in force - whichever is the later) shall be deemed to have been sustained subsequent thereto provided that upon such unloading (as referred to above) an inspection was carried out of the contents of any crates or other packaging showing visible external damage and that any physical loss destruction or damage discovered thereby was reported to any Marine Insurance that may have been in force.

### **3. Plans, Models or Other Documents including Computer Records**

The indemnity will unless otherwise specified include the costs necessarily and reasonably incurred in re-writing or re-creating (from stored back-ups) plans, drawings, models, calculations or any other contract documents or data physically lost destroyed or damaged wherever such physical loss destruction or damage shall occur but not for the value to the Insured of the information contained therein.

The basis of settlement in respect of computer records shall be the value of the materials including the costs incurred to reinstate the information contained therein (from stored back-ups) but excluding the value to the Insured of the information contained therein.

Provided that the liability of Insurer in respect of any one claim or series of claims arising out of one Occurrence shall not exceed GBP [REDACTED] any one Occurrence.

### **4. Fire Brigade and/or Metropolitan Police Charges**

Fire brigade charges, Metropolitan Police costs for which the Insured may be assessed or other extinguishing or security expenses incurred by the Insured consequent upon physical loss destruction or damage to the Subject Matter Insured. Provided that the liability of Insurer in respect of any one claim or series of claims arising out of one Occurrence shall not exceed GBP [REDACTED] per Occurrence, GBP [REDACTED] in the aggregate.

### **5. Terrorism**

In consideration of the payment of the premium in respect of the Period of Insurance, the cover provided under Sections 1a, 1b, 2 and 3 of this Policy is extended to include physical loss destruction or damage to the Subject Matter Insured where covered occasioned by or happening through or in consequence of Terrorism as hereinafter defined for the purposes of this Memorandum.

Terrorism is defined for the purposes of this Memorandum only as:

An act of any person(s) acting on behalf of or in connection with any organisation which carries out activities directed towards the overthrowing or influencing by force or violence of any government de jure or de facto as certified by Her Majesty's Government or H M Treasury or any successor relevant authority

Provided always that the insurance provided by this Memorandum is:

- A. not subject to the Policy Exclusions but is subject to the following War and Allied Risks exclusion :-

physical loss destruction or damage to the Subject Matter Insured occasioned by riot civil commotion war invasion act of foreign enemy hostilities (whether war is declared or not) civil war rebellion revolution insurrection or military or usurped power nationalisation confiscation requisition seizure or destruction by the government or any public authority



B. subject to the following additional exclusions:

(1) Electronic Risks Exclusion

This insurance does not cover any losses whatsoever directly or indirectly caused by or contributed to by or arising from or occasioned by or resulting from:

Physical loss destruction or damage to any computer or other equipment or component or system or item which processes stores transmits or retrieves data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software) and whether the property of the Insured or not, where such physical loss destruction or damage is caused by Virus or Similar Mechanism or Hacking or Denial of Service Attack.

For the purposes of this exclusion the following definitions shall apply:

Virus or Similar Mechanism

Virus or Similar Mechanism means program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self-replication or not. The definition of Virus or Similar Mechanism includes but is not limited to Trojan horses worms and logic bombs.

Hacking

Hacking means unauthorised access to any computer or other equipment or component or system or item which processes stores transmits or retrieves data.

Denial of Service Attack

Denial of Service Attack means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems. Denial of Service Attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

(2) Excluded Property

This insurance does not cover any losses whatsoever directly or indirectly caused by or contributed to by or arising from or occasioned by or resulting from physical loss destruction or damage in respect of:

- i) any property located outside England, Wales and Scotland
- ii) any nuclear installation or nuclear reactor
- iii) any property which is specifically excluded elsewhere in this Policy
- iv) any property which is insured by or would but for the existence of this Policy be insured by any form of transit, aviation or marine Policy

C. subject to the following additional Policy terms and conditions:

- (1) In any action or other proceedings where the Insurer allege that any physical loss destruction or damage is not covered by this Terrorism Memorandum the burden of proving that such any physical loss destruction or damage is covered shall be upon the Insured.
- (2) Except where otherwise indicated in this Memorandum the insurance provided by this Terrorism Memorandum is subject to all the terms definitions exclusions conditions and provisions of this Policy. Subject to any limits stated within this Terrorism Memorandum the Insurer's liability in respect of all losses arising out of any one occurrence and in the aggregate in any one period of insurance shall not exceed the limits as otherwise specified under this Policy.

Notwithstanding anything contained in this Policy to the contrary Terrorism Insurance is only effective for the first twelve calendar months from the original date of inception of the Policy stated in the Policy Schedule. If the Period of Insurance is greater than twelve calendar months Terrorism Insurance shall be effective for each subsequent period not exceeding twelve calendar months.

## **6. EU/Public Authorities/Railway Authorities Clause**

The indemnity provided in respect of physical loss destruction or damage to the Subject Matter Insured shall include any additional cost of reinstatement consequent upon such physical loss destruction or damage which is incurred solely by reason of the necessity to comply with the stipulations of European Union legislation or building or other regulations under or framed in pursuance of any Act of Parliament or with Bye-Laws of any public authority or regulations as advised by railway licensing or regulatory authorities or standards advised by the appropriate standards authorities the Health and Safety Executive or their successor entities (hereinafter referred to as "the stipulations")

Provided that the Insurer will not indemnify the Insured for

- (a) the cost incurred in complying with any of the stipulations
  - (i) in respect of physical loss destruction or damage which is not insured by this Policy
  - (ii) under which notice has been served upon the Insured under the provisions of such stipulations prior to the occurrence of such physical loss destruction or damage
  - (iii) in respect of undamaged property or undamaged portions of property other than foundations of the portion of the property lost destroyed or damaged

- (b) the amount of any charge or assessment, including any rate of tax or duty arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with such stipulations
- (c) the additional cost that would have been required to make good the Subject Matter Insured lost destroyed or damaged to a condition equal to its condition when new had the necessity to comply with such stipulations not arisen

The liability of the Insurer in respect of any one claim or series of claims arising out of one Occurrence shall not exceed [REDACTED] % of the amount of the total indemnifiable physical loss destruction or damage subject to a maximum GBP [REDACTED] in the aggregate per change in the stipulations.

## **SECTION 4 - THIRD PARTY LIABILITY**

### **Basis of Indemnity**

This Policy will indemnify the Insured for any amount the Insured becomes liable to pay as damages or compensation in respect of legal liability arising from:

- a) Bodily Injury to any person
- b) loss of or damage to material property
- c) Nuisance

happening during the Period of Insurance arising out of the Crossrail Programme activities or in connection with the performance of the Insured Programme and all that is connected therewith anywhere within the Territorial Limits.

The Insurer will also indemnify the Insured for all claimants' costs and expenses legally recoverable from the Insured provided such costs are incurred in connection with a claim for which indemnity is provided by this Section.

### **Limit of Indemnity**

The total amount payable for all damages or compensation and claimants' costs and expenses in respect of any one Occurrence shall not exceed the Limit of Indemnity as stated in the Schedule

The Limit of Indemnity will not be reduced by the amount of any Deductible that may be applicable to this Section

Provided the Insurer may at any time pay to the Insured the Limit of Liability (after deduction of any sum or sums paid as damages) or any lesser amount for which any such claim or claims can be settled and upon such payment the Insurer shall relinquish the conduct and control of such claim or claims and be under no further liability under this Section for such claim or claims.

If any claim against the Insured exceeds the Limit of Indemnity shown in the Schedule the liability of the Insurer in respect of Defence Costs shall be limited in the same proportion that the Limit of Indemnity hereunder bears to the liability of the Insured provided always that the Insurer's liability in respect of such Defence Costs shall not exceed the amount specified in Memorandum 5 applicable to this Section.

## **Exclusions applicable to Section 4:**

The Insurer shall not be liable for:-

### **1. Road Traffic Act and Air/Waterborne Craft**

- (a) the use by the Insured of any mechanically propelled vehicle whilst operating in circumstances requiring insurance or security under the applicable road traffic acts except
  - (i) when any such vehicle is being used in connection with the Insured Programme as a tool of trade or
  - (ii) in respect of the excess amount of any liability for damage to property incurred by the Insured beyond that recoverable under a Policy or contract of motor insurance or otherwise provided that the liability of the Insurer hereon shall not exceed the Limit of Liability
- (b) the use by the Insured of any power driven waterborne vessel or craft exceeding 8 metres in length or of any aircraft or hovercraft.

The foregoing exceptions shall not however apply to:

- (a) the use of motor vehicles within the confines of any Site of Work insofar as liability for Bodily Injury or loss of or damage to property is unrecoverable in whole or in part under policies of motor insurance effected in respect of such vehicles
- (b) legal liability for damage caused to roads bridges viaducts adjacent structures or property or to anything beneath caused by the weight or vibration of such vehicles or their loads unless such legal liability is recoverable in whole or in part under policies of motor insurance effected in respect of such vehicles.

### **2. Recoverable under Section(s) 1, 2 or 3 or Contractors' Plant and Equipment policies**

The costs of repairing or replacing loss of or damage to the Subject Matter insured under Sections 1, 2 or 3 (or that would be recoverable thereunder but for the application of one or more Deductible) or loss or damage to Contractors' Plant and Equipment.

Provided that in respect of any legal liability incurred by any one insured party for any consequential loss or financial loss directly or indirectly sustained by any other insured party and arising from such loss or damage this Exclusion shall not apply if the insured party which has sustained the financial or consequential loss is not actively involved in the performance of the Insured Contract at the Site of Work affected by such loss or damage.

For the avoidance of doubt, the Insurer shall in no circumstances be liable for any liability:

1. incurred under the provisions of any agreement between such insured party and any other insured party except to the extent that such liability would have attached in the absence of such agreement

2. in respect of consequential loss or financial loss arising from such loss or damage if such loss or damage does not exceed the amount of any relevant Deductible.

### **3. Employers' Liability**

Death bodily injury illness or disease suffered or contracted by any person under a contract of service or employment or apprenticeship with the Insured when such death bodily injury illness or disease arises out of and in the course of such service or employment or apprenticeship with the Insured, but this Exception shall not apply to the legal liability of an insured party in respect of death bodily injury illness or disease suffered or contracted by any person under a contract of service or employment or apprenticeship with any other insured parties under this Policy.

### **4. Deliberate Acts**

Bodily Injury and/or loss of or damage to property consequent upon any deliberate act error or omission of any board member director partner on-site project manager of the Insured or those in a more senior position the result of which could reasonably have been expected by the Insured having regard to the circumstances. However, this exclusion shall not apply to liability for accidental Bodily Injury or accidental loss of or damage to property resulting therefrom, other than loss of or damage to property forming part of the Insured Contract.

### **5. Asbestos Work**

Any actual or alleged liability whatsoever for any claim in respect of loss directly or indirectly arising out of, resulting from or in consequence of asbestos, in whatever form or quantity.

### **6. Pollution and Contamination**

Bodily Injury loss of or damage to material property which arises directly or indirectly from Pollution or Contamination unless such Pollution or Contamination is directly caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance.

All Pollution or Contamination which arises out of one incident shall be deemed to have occurred at the time such incident takes place.

**7. Punitive and Exemplary Damages**

Any liability for, punitive or exemplary damages.

**8. Professional advice**

any liability arising out of technical or professional advice given by the Insured or by any person acting on behalf of the Insured.

Provided that this Exclusion shall not apply to the Insured's legal liability arising from Bodily Injury to any person loss of or damage to material property or Nuisance.

**9. Contractual Liability**

Any liability including penalties or liquidated damages which has been accepted by agreement, except to the extent that such liability would have attached in the absence of such agreement. For the avoidance of doubt, this exclusion shall not apply to transfers of liabilities between any parties forming the Insured by agreement to the extent that the liability being transferred would have otherwise attached in the absence of such agreement.

**10. Vibration, Removal, Weakening of Support**

(a) liability (other than Bodily Injury) caused by vibration or the weakening or removal of support:

(i) due to or arising from loss of or damage to material property, land or ground if such loss or damage is foreseeable in consideration of the works to be executed and/or the method of construction;

(ii) due to or arising from loss of or damage to property in the proximity of the Site of Works unless a detailed survey report on the structural condition of such property has been set up and made available to the Insurer;

(b) any costs of safety precautions to prevent or minimize any loss or damage to property, land or ground irrespective of whether loss or damage has already occurred or not.

The Deductible applicable for any liability (other than Bodily Injury) due to or arising from loss of or damage to property, land or ground caused by vibration, or the weakening or removal of support is stated in the Schedule.

For the purposes of this exclusion property in the proximity of the Site of Works shall mean:

a) all property identified for Phases 1, 2 and 3 assessment in accordance with Crossrail Information Paper D12 Ground Settlement document;

b) all assets identified for Phases 1, 2 and 3 assessment in the Civil Engineering Design Standard Part 8 Assessment of Existing Structures and Mitigation Design document or any subsequent documents with similar scope.

**11. Revenue Claims Against CRL**

Any amount which CRL becomes liable to pay as damages or compensation in respect of any liability of CRL for loss or revenue by London Underground Limited or Docklands Light Railway Limited.

**12. Care Custody or Control**

Any liability for damage to premises or the contents thereof not belonging to or leased to or rented to the insured or otherwise in the insured's custody or control, but temporarily occupied by the insured for work therein, but this exclusion shall not apply to damage to that part of the property on which the insured is working.



## **Memoranda applicable to Section 4**

Subject to the Policy's terms and conditions, this Section of the Policy is extended to include the following:

### **1. Cross Liability**

Insofar as the "Insured" described in the Schedule comprise more than one party each shall be considered as a separate and distinct entity and the words "Insured" shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each of the said parties and the Insurer hereby agree to waive all rights of subrogation or action which they have or may acquire against any of the aforesaid parties arising out of any occurrence in respect of which any claim is made hereunder, provided nevertheless that, nothing in this memorandum shall be deemed to increase the Limit of Liability in respect of any one Occurrence as stated in the Schedule.

### **2. Additional Indemnities**

The Insurer will indemnify in like manner the following persons:

- (a) any Employee partner or director of the Insured provided that the Insured would have been entitled to indemnity under this Policy had the claim been made against the Insured
- (b) any officer or member of the Insured's canteen social sports or welfare organisation or first aid medical and dental services ambulance fire security services or safety organisation in his/her respective capacity

provided nevertheless that nothing in the memorandum shall be deemed to increase the Limits of Liability in respect of any one Occurrence as stated in the Schedule.

### **3. Health & Safety at Work Act**

The Insurer will indemnify the Insured or at the request of the Insured an Employee or partner or director of the Insured against legal costs and expenses incurred in the defence of any criminal proceedings brought for a breach of the Health and Safety at Work etc Act 1974 or any regulations or other subordinate legislation including any subsequent legislation committed or alleged to have been committed during the Period of Insurance including the costs of the prosecution awarded against the Insured Employee partner or director and legal costs and expenses incurred with the consent of the Insurer in an appeal against conviction arising from such proceedings

Provided that

- (a) the Insurer shall not be liable for the payment of fines or penalties

- (b) the proceedings relate to the safety health and welfare of any person other than an Employee.

#### **4. Consumer Protection Act and Food Safety Act**

The Insurer will indemnify the Insured or at the request of the Insured an Employee or partner or director of the Insured against legal costs and expenses incurred in the defence of any criminal proceedings brought for a breach of –

the Consumer Protection Act 1987

the Food Safety Act 1990

or any regulations or other subordinate legislation including any subsequent legislation committed or alleged to have been committed during the Period of Insurance including the costs of the prosecution awarded against the Insured Employee partner or director and legal costs and expenses incurred with the consent of the Insurer in an appeal against conviction arising from such proceedings

provided that

- (a) the Insurer shall not be liable for the payment of fines or penalties
- (b) no indemnity shall be provided in respect of any deliberate act or omission on the part of any Employee director or partner having responsibility for ensuring compliance with the relevant legislation.

#### **5. Defence Costs**

The Insurer will in addition to the Limit of Indemnity indemnify the Insured in respect of

- (a) legal fees in respect of representation at any Coroners Court Fatal Accident or Government Department Inquiry
- (b) all costs and expenses incurred by the Insured with the written consent of the Insurer

provided always that

- (i) all such legal fees and costs and expenses arise or are incurred in connection with a claim for which indemnity is provided by this Section.
- (ii) the liability of the Insurer under (a) and/or (b) above shall not exceed GBP [REDACTED] any one Occurrence.



## **9. Data Protection Act**

The Insurer will indemnify the Insured and at the request of the Insured any Employee or partner or director of the Insured in respect of their liability to pay compensation for damage or distress under section 13 of the Data Protection Act 1998 or any regulations or other subordinate legislation including any subsequent legislation including reasonable defence costs and expenses incurred with the written consent of the Insurer and in addition the reasonable defence costs incurred with the written consent of the Insurer relating to a prosecution brought under the Data Protection Act 1998 or any regulations or other subordinate legislation including any subsequent legislation in relation to a claim made by any person other than an Employee of the Insured

provided that

- (a) any claim for compensation is first made or prosecution first brought against the Insured during the Period of Insurance
- (b) the Insured is registered in accordance with the terms of the Act or has applied for such registration which has not been refused or withdrawn and has taken all reasonable care to comply with the requirements of the Data Protection Act 1998
- (c) no indemnity is granted in respect of
  - (i) the payment of fines or penalties
  - (ii) the cost of replacing reinstating rectifying erasing blocking or destroying any data
  - (iii) liability caused by or arising from a deliberate or intentional act by or omission of the Insured or any person eligible for indemnity by this extension the effect of which will knowingly result in liability under the Data Protection Act 1998.

## **10. Additional Indemnity**

Notwithstanding the inception date of this Section the indemnity shall extend to include any legal liability incurred by the Insured prior to the inception date subject to such legal liability arising out of or in connection with the Crossrail Programme including the acquisition of land for the purposes of the Crossrail Programme. Any claims filed prior to the inception date however shall not be subject to indemnity under this Policy.

## **11. Site Visitors**

The Insurer will indemnify the Insured against liability to or of visitors to any Insured Programme site or other premises of the Insured in connection with ground breaking topping-out social functions exhibitions and open days or other similar ceremonies or functions and to other invited visitors not directly involved in the Insured Programme or the performance of the Insured Programme.

## **12. Unauthorised Movement of Vehicles**

The Insurer will indemnify the Insured in respect of the movement without the consent of the owner of any vehicle not the property of the Insured by an Employee of the Insured to allow passage to and from the site of the Contract.

## **13. Corporate Manslaughter Defence Costs**

The Insurer will indemnify the Insured:

- (a) in defending a charge of corporate manslaughter (brought under the Corporate Manslaughter and Corporate Homicide Act 2007) where the death in connection with which such charge arises is indemnifiable under this Policy
- (b) in appealing against conviction on such charge and/or the imposition of a remedial or publicity order under the Corporate Manslaughter and Corporate Homicide Act 2007 in connection with such charge provided that in the opinion of a Queen's Counsel or similar legal authority (to be mutually agreed upon by the insured and the Company) such appeal could be contested with the probability of success.

The Insurer's liability under this memorandum shall be subject to a limit of GBP [REDACTED] per occurrence and GBP [REDACTED] in the aggregate which shall be within the existing Limit of Liability under this Policy.

## **14. Damage to London Underground Limited and Docklands Light Railway Limited Assets**

The Insurer will also indemnify the Insured for any amount the Insured becomes liable to pay as damages or compensation in respect of legal liability arising from loss of or damage to property owned by London Underground Limited or Docklands Light Railway Limited or

for which they are responsible caused by or arising out of the performance of Insured Contracts by contractors or subcontractors of London Underground Limited or Docklands Light Railway Limited excluding in-house contractors of London Underground Limited or Docklands Light Railway Limited.

**THE INSURER**

**London Transport Insurance (Guernsey) Limited**

**POLICY NUMBER LTIG/CRL/CAR09-18**

**ATTACHMENT 4 – THE PROGRAMME IDENTIFIED IN THE  
CONTRACT DATA**

None identified.



## **ATTACHMENT 5 – ACTIVITY SCHEDULE**

**ACTIVITY SCHEDULE (10% PERFORMANCE BOND)  
C412 - BOND STREET STATION (MAIN STATION WORKS, FIT-OUT AND M&E)**

<b>PART A - GENERAL ITEMS / PRELIMINARIES</b>			
	<b>Item Reference</b>	<b>Description</b>	<b>Price</b>
1	A.001	Method related charges - Accommodation, welfare, storage etc. & building, time related including maintenance and consumables	
2	A.002	Accommodation and buildings, welfare, storage etc.; fixed charge	
3	A.003	Services; fixed charge	
4	A.004	Services; time related	
5	A.005	Equipment: Temporary Works, Time Related	
6	A.006	Equipment: Temporary Works, Fixed	
7	A.007	Equipment; Plant, Fixed	
8	A.008	Equipment; Plant, Time Related	
9	A.009	Equipment; Transportation	
10	A.010	Labour - Management & Supervision	
11	A.011	Labour - Administration	
12	A.012	Labour and Equipment - Non Productive - Labour and Attendances - Main Contract	
13	A.013	Labour and Equipment - Non Productive - Labour and Attendances - Systemwide	
14	A.014	Bonds and Other General Preliminaries	
15	A.015	Maintain public and private roads	
16	A.016	Additional Items - to be identified	

<b>PART B - ENABLING WORKS/TEMPORARY WORKS</b>			
	<b>Item Reference</b>	<b>Description</b>	<b>Price</b>
1	B.001	Extraordinary site investigation works	
2	B.002	Surveys	
3	B.003	Demolition	
4	B.004	Utility Diversions	
5	B.005	Decommissioning sub-stations and make good	
6	B.006	Temporary Works items as listed	
7	B.007	Instrumentation and Monitoring - Time Related	
8	B.008	Instrumentation and Monitoring - Fixed Costs	
9	B.009	Grout Shaft - Reinstatement Works	

<b>PART C - MAIN WORKS - EASTERN TICKET HALL (ETH) WORKS</b>			
	<b>Item Reference</b>	<b>Description</b>	<b>Price</b>
1	C.001	Excavation and Earthworks	
2	C.002	In Situ Concrete	
3	C.003	Formwork for In situ concrete	
4	C.004	Reinforcement for in situ concrete	
5	C.005	Precast Concrete Components	
6	C.006	Structural Steelwork	
7	C.007	Waterproofing	
8	C.008	Roofing	
9	C.009	Masonry and Blockwork	
10	C.010	Cladding/Covering	
11	C.011	Linings / Sheathing / Dry Partitioning	
12	C.012	Windows / Doors / Stairs	
13	C.013	Surface Finishes	
14	C.014	Furniture / Finishes	
15	C.015	Building Fabric Sundries	

<b>PART C - MAIN WORKS - WESTERN TICKET HALL (WTH) WORKS</b>			
	<b>Item Reference</b>	<b>Description</b>	<b>Price</b>
16	C.016	Excavation and Earthworks	
17	C.017	In Situ Concrete	
18	C.018	Formwork for In situ concrete	
19	C.019	Reinforcement for in situ concrete	
20	C.020	Precast Concrete Components	
21	C.021	Structural Steelwork	
22	C.022	Waterproofing	
23	C.023	Roofing	
24	C.024	Masonry and Blockwork	
25	C.025	Cladding/Covering	
26	C.026	Linings / Sheathing / Dry Partitioning	
27	C.027	Windows / Doors / Stairs	
28	C.028	Surface Finishes	
29	C.029	Furniture / Finishes	
30	C.030	Building Fabric Sundries	

<b>PART C - MAIN WORKS - PLATFORMS</b>			
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**ACTIVITY SCHEDULE (10% PERFORMANCE BOND)**  
**C412 - BOND STREET STATION (MAIN STATION WORKS, FIT-OUT AND M&E)**

	Item Reference	Description	Price
31	C.031	Excavation and Earthworks	
32	C.032	In Situ Concrete	
33	C.033	Formwork for In situ concrete	
34	C.034	Reinforcement for in situ concrete	
35	C.035	Precast Concrete Components	
36	C.036	Structural Steelwork	
37	C.037	Waterproofing	
38	C.038	Masonry and Blockwork	
39	C.039	Cladding/Covering	
40	C.040	Linings / Sheathing / Dry Partitioning	
41	C.041	Windows / Doors / Stairs	
42	C.042	Surface Finishes	
43	C.043	Building Fabric Sundries	

**PART C - MAIN WORKS - TUNNELS AND CROSS PASSAGES**

	Item Reference	Description	Price
44	C.044	Excavation and Earthworks	
45	C.045	In Situ Concrete	
46	C.046	Formwork for In situ concrete	
47	C.047	Reinforcement for in situ concrete	
48	C.048	Precast Concrete Components	
49	C.049	Structural Steelwork	
50	C.050	Waterproofing	
51	C.051	Masonry and Blockwork	
52	C.052	Cladding/Covering	
53	C.053	Linings / Sheathing / Dry Partitioning	
54	C.054	Windows / Doors / Stairs	
55	C.055	Surface Finishes	
56	C.056	Building Fabric Sundries	

**PART D - MEP SERVICES & COMMUNICATION COMPONENTS**

	Item Reference	Description	Price
1	D.001	MEP - Sanitary Appliances	
2	D.002	MEP - Disposal Installations	
3	D.003	MEP - Water Installations	
4	D.004	MEP - Space Heating & Air treatment	
5	D.005	MEP - Ventilation Installation	
6	D.006	MEP - Electrical Installations	
7	D.007	MEP - Electrical Services Cable Management	
8	D.008	MEP - Protective Installations	
9	D.009	MEP - Communications Services Wireways	
10	D.010	MEP - Building Management System	
11	D.011	MEP - Utility Connections	
12	D.012	MEP - Supply Vent & Smoke Extract to Platforms	
13	D.013	MEP - Plant Assessment	
14	D.014	MEP - Communications Installations	
15	D.015	MEP - Plant Assessment to include Systemwide as Part 2A	
16	D.016	MEP - Communications Installations to include Systemwide as Part 2A	
17	D.017	MEP - Testing & Commissioning	
18	D.018	MEP - BWIC/Firestopping	
19	D.019	MEP - Transport systems	
20	D.020	MEP - Reinstatement of Sub-station into permanent structure	
21	D.021	MEP - Reinstatement and relocation of Utilities into permanent structure	

**PART E - EXTERNAL WORKS**

	Item Reference	Description	Price
1	E.001	Roads, paths and pavings	
2	E.002	Planting	
3	E.003	Fencing, railings and walls	
4	E.004	External services	
5	E.005	Facilitating works	

**PART F - CONTRACTOR'S DESIGN COST**

	Item Reference	Description	Price
1	Note	<b>RIBA F</b>	
2	F.001	Mechanical, Electrical and Public Health Services including fire engineering and containment for line wide systems	
3	F.002	Interface works for system wide installation	
4	Note	<b>RIBA F2</b>	
	Item Reference	Description	Price

**ACTIVITY SCHEDULE (10% PERFORMANCE BOND)**  
**C412 - BOND STREET STATION (MAIN STATION WORKS, FIT-OUT AND M&E)**

5	F.003	Architectural common component design (C100)	
6	F.004	Design - Other	

**PART G - RISK**

	Item Reference	Description	Price
1	G.001	Risk Allowance (transferred from risk schedule)	

**PART H - FEE**

	Item Reference	Description	Price
1	H.001	Fee on direct cost	
2	H.002	Fee on sub-contract cost	

<b>Tendered total of the Prices</b>
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**ANNEXURE 3 – WORKS INFORMATION PARTS 2A, 2B AND 2C**

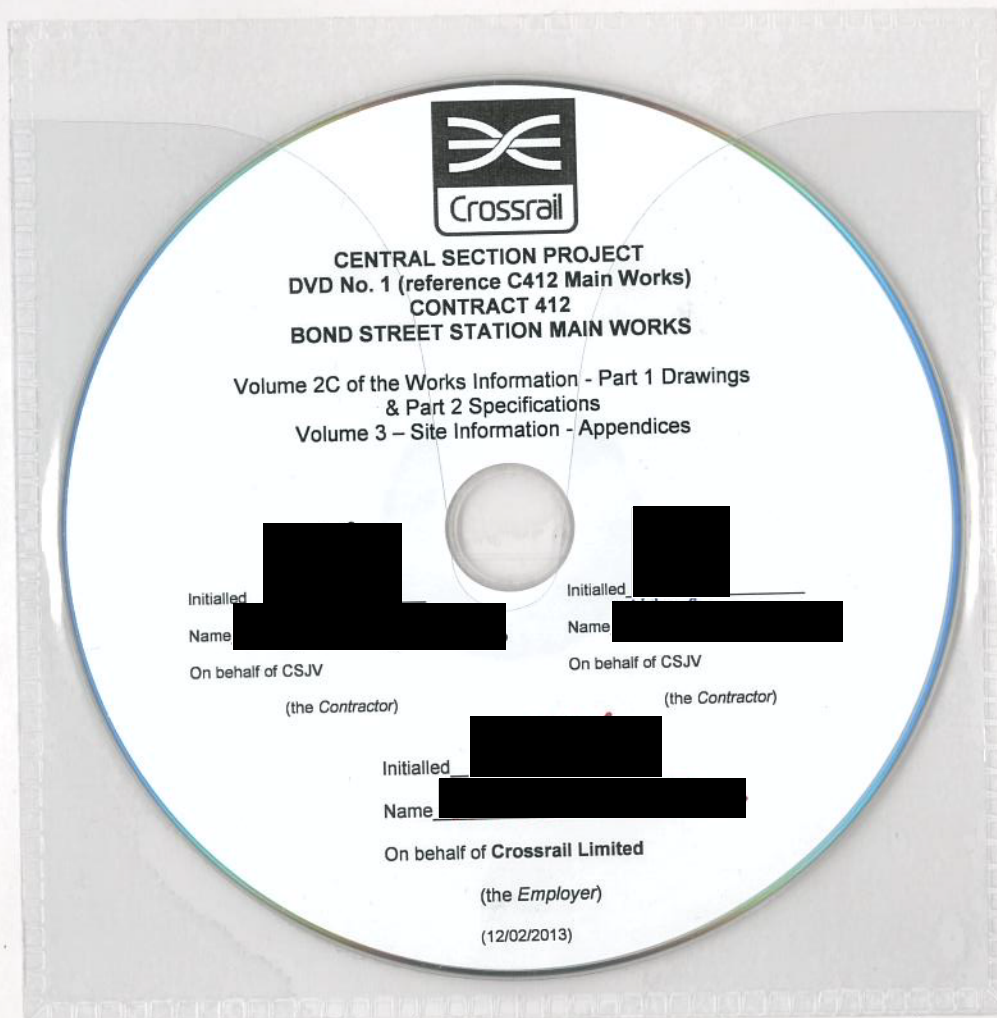
Volume 2A is in Book 2 reference C412-PDP-W-XWI-C125\_Z-50001.

Volume 2B is in Book 3 reference CRL1-XRL-V3-XWI-CR001-50035 Version 1.0.

Volume 2B Appendices is in Book 4 reference CRL1-XRL-V3-XWI-CR001-50035 Version 1.1.

Volume 2C Part 1 is in Book 5 reference C412-PDP-V3-XWI-C125\_WS088\_Z-50001.

Volume 2C Part 2 is in Book 5 reference C412-PDP-V3-XWI-C125\_Z-50001.





1.6 The New Employer undertakes to perform the Contract and to be bound by its terms in every way as if the New Employer were, and had been from the inception, a party to the Contract in lieu of the Employer.

[1.7 The obligations and liabilities hereunder of all parties comprising the Contractor shall be joint and several.]

2. **Proper Law and Jurisdiction**

This Agreement and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

3. **Contracts (Rights of Third Parties) Act 1999**

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

Executed as a Deed by )  
[ ] )  
acting by:- )

Director

Director/Secretary

Executed as a Deed by )  
[ ] )  
acting by:- )

Director

Director/Secretary

Executed as a Deed by )  
[ ] )  
acting by:- )

Director

Director/Secretary

## ANNEXURE 5 - FORMS OF PERFORMANCE BOND

### Part A: Performance Bond

**THIS PERFORMANCE BOND** is made as a deed this                      day of                      20[●]

BETWEEN:-

- (1) [                      ] whose registered office is at [                      ]  
(the "**Surety**"); and
- (2) Crossrail Limited (Company registration No. 04212657) whose registered office is at 25  
Canada Square, London E14 5LQ (the "**Employer**"); and
- (3) [                      ] whose registered office is at [                      ] (the "**Contractor**").

**WHEREAS:-**

- (A) The *Employer* and the *Contractor* have entered into the contract [*insert contract number*]  
(the "**Contract**") for works in connection with [*insert contract description*] (the "**Works**")  
as defined in the Contract.
- (B) The *Surety* has agreed with the *Employer* at the request of the *Contractor* to guarantee  
the performance of the obligations of the *Contractor* under the Contract upon the terms  
and conditions of this Performance Bond subject to the limitation set out in Clause 2.

**NOW THIS DEED WITNESSETH as follows:-**

- 1.1 In consideration of the *Employer* entering into the Contract with the *Contractor*, the  
*Surety* hereby unconditionally and irrevocably guarantees to the *Employer* the due and  
punctual performance by the *Contractor* of each and all of the obligations duties and  
undertakings of the *Contractor* under and pursuant to the Contract when and if such  
obligations, duties and undertakings shall become due and performable according to the  
terms of the Contract. In the event of a breach of the Contract by the *Contractor* (and for  
the purposes of this Performance Bond a termination by the *Employer* of the *Contractor's*  
employment for any of reasons R1 – R10 set out in clause 91 of the Contract shall  
constitute a breach), subject to the provisions of this Performance Bond the *Surety* shall  
promptly on request from time to time so to do by the *Employer* satisfy and discharge the  
damages sustained or incurred by the *Employer* and due from the *Contractor* in respect of  
such breach as established and ascertained in accordance with the provisions of or by  
reference to the Contract and taking into account all sums due to the *Contractor* under  
the Contract.
- 1.2 For the purposes of this Performance Bond:
  - (a) no estimate, forecast or assessment of the *Project Manager* (as defined in the  
Contract) shall be binding and conclusive against the *Surety*; and
  - (b) the damages due and payable under this Performance Bond to the *Employer*  
following a termination of the *Contractor's* employment under condition 91.1 of the  
Contract (Reasons for termination - insolvency events) shall be such amount as  
shall represent the difference between:
    - i) the amounts actually paid by the *Employer* to complete the whole of the  
works together with all direct loss and expense caused to the *Employer* by  
reason of such termination; and



- ii) the amount that would have been payable to the *Contractor* in respect of the completion of the Works in accordance with the Contract but for such determination

but subject to such limitation and to clauses 2 and 7 below, the liability of the *Surety* shall be co-extensive with the liability of the *Contractor* under the Contract.

2. The maximum aggregate liability of the *Surety* under this Performance Bond shall not exceed the "Bond Amount" being [ ] pounds sterling (£ ) which sum shall on the date of Completion (as defined in the Contract) reduce to [ ] pounds sterling (£ ).
3. Subject to clause 4, in any action or proceedings by the *Employer* under this Performance Bond the *Surety* shall be entitled to rely on any limitation in the Contract and to raise the equivalent rights (including the right to adjudication) in defence of its liability hereunder as the *Contractor* would have against the *Employer* under the Contract.
4. The liability of the *Surety* and the rights of the *Employer* in relation to this Performance Bond shall be in addition to, and shall not merge with or otherwise prejudice or affect or be prejudiced or affected by, any other right, remedy, guarantee or security now or at any time hereafter held by the *Employer* in relation to the Contract and shall not be discharged or impaired by reason of:-
  - (a) the winding-up, dissolution, administration or reorganisation of the *Contractor* or any change in its status, function, control or ownership;
  - (b) time, forbearance or other indulgence being granted or agreed to be granted to the *Contractor* or concerning the Contract;
  - (c) any amendment to, or variation, waiver or release of, any of the terms of the Contract;
  - (d) save as provided in clause 5 below, any failure to take or to realise (or fully to take or to realise), or any release, discharge, exchange or substitution of, any security, guarantee or indemnity in respect of the Contract; or
  - (e) any other act, event or omission which, but for this clause 4, might operate to discharge, impair or otherwise affect any of the obligations or liabilities of the *Surety* hereunder or any of the rights, remedies or powers conferred upon the *Employer*.
5. The *Employer* shall be obliged before exercising any of the rights, remedies or powers conferred upon it hereunder:-
  - (a) to make a written demand on the *Contractor* and the *Guarantor* or *Guarantors* (as defined in the Contract) and at the same time provide a copy of the said written demand to the *Surety*; and
  - (b) to certify that there has been a failure to pay under the said written demand within 5 Business Days of service on each of the *Contractor* and the *Guarantor* or *Guarantors*. For the purpose of this Performance Bond, "Business Day" means the day (other than a Saturday or Sunday) on which commercial banks are open for business in London.
6. Notwithstanding any other provisions of this Performance Bond, any termination of the *Contractor's* employment by the *Employer* for any of reasons R1 – R10 set out in clause 91 of the Contract shall be conclusive evidence for the purposes of this Performance Bond of the *Contractor's* failure duly to perform and observe the terms of the Contract and the

*Employer* shall thereafter be entitled to recover pursuant to clause 1 the sum due from the *Contractor* to the *Employer* in respect of such termination.

7. The *Employer* shall pursuant to the provisions of the Contract issue the Defects Certificate (as defined in the Contract) then upon the date named in such certificate (save to the extent of any claims notified by the *Employer* to the *Surety* in writing prior to such date) the obligations of the *Surety* under this Deed shall be null and void but otherwise shall remain in full force and effect.
8. Any notice, request, demand or other communication to be given or made under this Performance Bond shall be made to the address of the addressee within the United Kingdom set out below and marked for the attention of the person set out below:-
  - (a) in the case of the *Employer* by letter to it at 25 Canada Square, London E14 5LQ in each case marked for the attention of the Company Secretary;
  - (b) in the case of the *Surety* by letter to it at [ ] in each case marked for the attention of [ ]; and
  - (c) in the case of the *Contractor* by letter to it at [ ] in each case marked for the attention of [ ]

or at any other address within the United Kingdom or for the attention of such other persons as the parties hereto may from time to time notify to each other and shall be deemed to have been delivered, in the case of any notice, request, demand or other communication given or made by personal delivery, when despatched or delivered unless despatched or delivered outside normal business hours when it shall be deemed to have been delivered on the next normal working day following the date on which it was despatched or, in the case of any notice, request, demand or other communication given or made by letter, upon actual receipt.

9. The construction, validity and performance of this Performance Bond shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.
10. Notwithstanding any other provisions of this Performance Bond nothing in this Performance Bond confers or purports to confer any rights to enforce any of its terms on any person who is not a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Performance Bond.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

## Part B: Goods and Materials Bond

The parties to this Bond are:

- (1) [ ] whose registered office is at [ ] (the "**Surety**"), and
  - (2) Crossrail Limited (Company registration No. 04212657) whose registered office is at 25 Canada Square, London E14 5LQ (the "**Employer**").
  - (A) The *Employer* and [ ] (the "**Contractor**") have entered into a contract (the "Contract") for works in connection with the Project and Programme (the "Works") as defined in the Contract.
1. Subject to the relevant provisions of the Contract as summarised below but with which the Surety shall not at all be concerned:
    - (a) no payment is to be made to the *Contractor* on account of items to be included in the Works ("**Plant and Materials**") which are outside the Working Areas (as defined in the Contract) unless the *Project Manager* has given his permission and the Surety has entered into this Bond in favour of the *Employer*;
    - [(b) the *Contractor* has agreed to insure against loss or damage to the Plant and Materials to their replacement cost, including the amount stated in the Contract Data for any Plant and Materials received and accepted by the *Contractor* which are outside the Working Areas;]
    - (c) immediately on payment and without any further act being necessary title shall pass to the *Employer* and the *Contractor* shall ensure that the Plant and Materials are clearly tagged, identified as the *Employer's* and set aside for the *Employer*. Risk in such Plant and Materials does not pass on payment;
    - (d) this Bond shall exclusively relate to the amount paid to the *Contractor* in respect of the Plant and Materials which are outside the Working Areas.
  2. The *Employer* shall in making any demand provide to the Surety a Notice of Demand in the form of the Schedule attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond.
  3. The Surety shall within 5 Business Days after receiving the demand pay to the *Employer* the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.
  4. Payments due under this Bond shall be made notwithstanding any dispute between the *Employer* and the *Contractor* and whether or not the *Employer* and the *Contractor* are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.
  5. The Surety consents and agrees that the following actions by the *Employer* may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:
    - (a) waiver by the *Employer* of any of the terms, provisions, conditions, obligations and agreements of the *Contractor* or any failure to make demand upon to take action against the *Contractor*;
    - (b) any modification or changes to the Contract; and/or

(c) the granting of an extension of time to the *Contractor* without affecting the terms of clause 7 below.

6. The Surety's maximum aggregate liability under this Bond shall be ●.

**[Note: Value of the relevant Plant and Materials to be inserted]**

7. The obligations of the Surety under this Bond shall cease upon the date on which the Plant and Materials have been delivered to the Working Areas as certified in writing to the Surety by the *Employer* and any claims hereunder must be received by the Surety in writing on or before such date.

8. The Bond is transferable and assignable without the prior written consent of the Surety to any party to whom title is passed in the Plant and Materials subject to written notice to the Surety of any such transfer or assignment being made by the Employer.

9. Notwithstanding any other provisions of this Bond nothing in this Bond confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

10. This Bond shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

**IN WITNESS** whereof this Bond has been executed as a Deed by the Surety and delivered on the date below:

Executed as a deed by [***insert name in*** )  
***bold and upper case***] )  
for and on behalf of the Surety: )

Director

Director/Secretary

Executed as a deed by [***insert name in*** )  
***bold and upper case***] )  
for and on behalf of the *Employer*: )

Director

Director/Secretary

**SCHEDULE TO BOND**

**(clause 2 of the Bond)**

**Notice of Demand**

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

*Employer:* \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £\_\_\_\_\_

being the amount in respect of Plant and Materials included in an interim payment(s) under the Contract which has been duly made to the *Contractor* by the *Employer* but such Plant and Materials have not been delivered to the Working Areas.

Address for payment: \_\_\_\_\_

\_\_\_\_\_

This Notice is signed by the following persons who are authorised by the *Employer* to act for and on his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

## **ANNEXURE 6 FORMS OF WARRANTY**

**CONTRACTOR'S WARRANTY TO OVER SITE DEVELOPMENT DEVELOPER/FUNDER/TENANT  
(FIRST TENANT ONLY)**

**THIS AGREEMENT** is made on

20[●]

**BETWEEN:**

- (1) [ ] (No. ) whose registered office is situated at [ ] (the "**Contractor**"); and
- (2) [ ] (No. ) whose registered office is situated at [ ] (the "**Beneficiary**") which term shall include all permitted assignees under this Agreement.

***[NB1 – Where the Contractor is an unincorporated JV then each party comprising the Contractor to execute.]***

***[NB2 – Where the obligations of the Contractor under the contract are guaranteed, each guarantor is to be a party to this warranty and a guarantee in the form set out in Annexure 7 to this contract (mutatis mutandis) shall be included in this warranty.]***

**RECITALS:**

- (A) The Beneficiary has entered into an agreement with [Crossrail Limited (the "**Employer**")][[●] (the "**Developer**")] relating to [the provision of certain works as referred to therein][the lease of [●]][to provide finance in connection with [●]].
- (B) By a contract (the "**Contract**") which term shall include any enforceable agreements reached between [Crossrail Limited (the "**Employer**")][the Employer] and the Contractor and which arise out of and relate to the same) dated the Employer has appointed the Contractor to [carry out] [construct and complete] certain [works] [and/or services] the "**Works**" (as defined therein).
- (C) The Contractor acknowledges the Beneficiary has an interest in the proper carrying out of the Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

**NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE BENEFICIARY TO THE CONTRACTOR, RECEIPT OF WHICH THE CONTRACTOR ACKNOWLEDGES IT IS HEREBY AGREED** as follows:

1. The Contractor warrants that it has carried out the Works in accordance with the Contract. In the event of any breach of this warranty:
- [(a) subject to paragraph (b) of this clause, the Contractor shall be liable for the reasonable costs of repair renewal and/or reinstatement of any part or parts of the Works to the extent that
- (i) the Beneficiary incurs such costs; and/or
- (ii) the Beneficiary is or becomes liable either directly or by way of contribution for such costs.

The Contractor shall in addition be liable for other losses incurred by the Beneficiary provided the Beneficiary has properly mitigated such losses and that

such additional liability of the Contractor shall not exceed £5 million in respect of each breach of the Contractor's warranty in this clause 1.]<sup>1</sup>

- (b) The Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had if the Beneficiary had been named in its Contract as joint employer and the Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability (save for any right of set-off or counter-claim) as it would have if the Beneficiary had been named as joint Employer under the Contract;
  - (c) the obligations of the Contractor under or pursuant to this clause 1 shall not be increased or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
2. Without prejudice to the generality of Clause 1, the Contractor further warrants that only materials which at the time of use are not deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection of Construction Materials (Ove Arup & Partners) current at the date of use are or have been used in the Works.
  3. The Beneficiary has no authority to issue any direction or instruction to the Contractor in relation to the Contract.
  4. Insofar as the beneficial ownership of copyright is vested in the Contractor it grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and to reproduce all reports, drawings, specifications, plans and other documentation and information prepared or provided by the Contractor for any purpose related to the Contract including, but without limitation, the construction, completion, maintenance, modification, extension, sale, use, letting, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall be capable of sub-licence and transfer by the Beneficiary. The Contractor shall not be liable to the Beneficiary or its appointee for any mis-use of such documentation or information.
  5. The Contractor shall take out and maintain professional indemnity insurance in an amount of [●] pounds [●] for any occurrence or series of occurrences arising out of one event for a period of 12 years from the date of completion of the whole of the Works under the Contract, provided always that at the date of this Agreement and thereafter such insurance is available at commercially reasonable rates. The Contractor shall immediately inform the Beneficiary if such insurance is not or ceases to be available at commercially reasonable rates in order that the Contractor and the Beneficiary can discuss the means of best protecting the Contractor in the absence of such insurance. Any increased or additional premium required by insurers by reason of the Contractor's own claims records or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

As and when it is reasonably requested to do so by the Beneficiary or its appointee, the Contractor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

6. This Agreement may be assigned twice by the Beneficiary by way of absolute legal assignment to another person taking an assignment of the Beneficiary's interest in the Works without the consent of the Contractor being required and such assignment shall be effective upon written notice thereof being given to the Contractor. No further or other assignment of this Agreement shall be permitted.

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<sup>1</sup> Delete if Beneficiary is a funder to developer





## CONTRACTOR'S WARRANTY TO DLR

**THIS DEED** is made on 20[●]

### **BETWEEN:**

- (1) **DOCKLANDS LIGHT RAILWAY LIMITED** company number 02052677 whose registered office is at Operations and Maintenance Centre, PO Box 154, Castor Lane, Poplar, London E14 0DX (the "**Beneficiary**" which expression shall include its successors and assigns); and
- (2) [ ] company number [ ] whose registered office is at [ ] (the "**Contractor**").

***[NB1 – Where the Contractor is an unincorporated JV then each party comprising the Contractor to execute.]***

***[NB2 – Where the obligations of the Contractor under the contract are guaranteed, each guarantor is to be a party to this warranty and a guarantee in the form set out in Annexure 7 to this contract (mutatis mutandis) shall be included in this warranty.]***

### **WHEREAS:**

- (A) By a works agreement dated 8 February 2010 (the "**Works Agreement**"), Crossrail Limited ("**CRL**") agreed with the Beneficiary how certain works and services needed for the Crossrail project will be effected.
- (B) By a building contract dated [ ] (the "**Contract**") CRL appointed the Contractor to carry out certain works and/or services in relation to Replacement Works and/or Interface Works both as defined in the Works Agreement (the "**Works**").
- (C) The Contractor acknowledges that the Beneficiary has an interest in the proper carrying out of the Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

### **NOW IT IS AGREED:**

#### **INTERPRETATION**

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.

#### **SKILL, CARE AND DUTY**

2. The Contractor warrants and undertakes to the Beneficiary that:
  - 2.1 in the carrying out of the Works, it owes a duty of care to the Beneficiary;

- 2.2 it has complied with and will continue to comply with the terms of and fulfil its obligations set out in the Contract; and
- 2.3 it has and will Provide the Works in accordance with the Works Information and Applicable Law.
3. The Contractor recognises that the Beneficiary has relied or will rely exclusively upon the Contractor's skill and care in the full and proper performance of the Contractor's obligations under the Contract.

#### **DELETERIOUS MATERIALS**

4. The Contractor warrants and undertakes to the Beneficiary that it has and will Provide the Works such that only materials which at the time of use are not deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection Of Construction Materials (Ove Arup & Partners) current at the date of use are used in the Works.

#### **ENQUIRIES AND INSPECTION**

5. The liability of the Contractor under this Deed shall not be released diminished or in any way affected by any independent enquiry into any relevant matter which may be made or carried out by the Beneficiary or by any third party on its behalf or by any act or omission of any such third party whether or not such action or omission might give rise to an independent liability of such third party to the Contractor.

#### **INSURANCE**

6. The Contractor warrants and undertakes to the Beneficiary that:
  - 6.1 it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract; and
  - 6.2 that insofar as it is responsible for the design of the Works, it has professional indemnity insurance with a limit of indemnity of not less than £[ ] in any period of insurance in respect of each and every claim which may be made against the Contractor in relation to the Works. The Contractor shall maintain such professional indemnity insurance for a period of twelve (12) years from Completion (as defined in the Contract) of the whole of the Works provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available in which case, the Contractor and the Beneficiary will discuss means of best protecting the respective positions of the Beneficiary and the Contractor in the absence of such insurance. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Contractor's insurance claims record.
7. As and when reasonably requested by the Beneficiary, the Contractor shall produce for inspection documentary evidence that the insurance referred to in Clause 6.2 above is being properly maintained and that payment has been made of the last premium due in

respect of such insurance. The Contractor agrees that in default of such insurances being properly maintained, the Beneficiary shall be entitled to effect such insurance itself and the Contractor shall reimburse the Beneficiary of all of its costs in relation thereto.

## **COPYRIGHT**

8. Insofar as the beneficial ownership of copyright is vested in him the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a royalty free irrevocable, unconditional, unlimited and non exclusive licence to use and to reproduce all details, plans, specifications, schedules and other documentation and information prepared or provided by the Contractor in connection with the Works for any purpose related to the Works including, but without limitation, the construction, completion, use and maintenance, letting, promotion, advertisement, reinstatement and repair of the Works and such licence shall enable the Beneficiary to copy and use such documents for the aforementioned purposes (including an extension to the Works but such use shall not include a license to reproduce the designs contained in them for any such extension) provided that the Contractor shall not be liable for any use of such documents for any purpose other than that for which it was originally prepared and such licence shall include the right to grant sub licences and shall be freely assignable by the Beneficiary.
9. Insofar as the beneficial ownership of copyright in the material referred to in clause 8 above is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 8.

## **ASSIGNMENT**

10. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

## **LIABILITY**

11. The Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had if the Beneficiary had been named in its Contract as its joint employer.
12. The Contractor may use any defence that it would have had under the Contract if the Beneficiary had been named in the Contract as its joint employer in defence of any claim by the Beneficiary under this Deed.
13. The liability of the Contractor under this Deed shall cease twelve (12) years following Completion (as defined in the Contract) of the Works save in respect of claims commenced prior to the expiry of such period.
14. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.

15. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clauses 8 and 9 (Copyright)) prior to the date of issue of the Defects Certificate under the Contract.

#### **RIGHTS AND OBLIGATIONS**

16. Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.

#### **NOTICE**

17. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received forty-eight (48) hours after being posted

#### **VARIATIONS AND AMENDMENTS TO THE CONTRACT**

18. The Contractor acknowledges that no amendment to or variation of any provision of the Contract relating to any limit on the Contractor's liability thereunder shall in any way affect the Contractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment or variation.

#### **LAW AND DISPUTES**

19. Any and all disputes and claims between the Beneficiary and the Contractor as to the construction, interpretation, validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with English Law and the parties hereby submit to the jurisdiction of the Courts of England and Wales.

#### **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

20. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

Executed as a Deed by affixing  
the common seal of  
**DOCKLANDS LIGHT RAILWAY LIMITED**  
in the presence of:

Signature of Director

Signature of Director/Secretary

Signed and delivered as a deed  
for and on behalf of  
**[THE CONTRACTOR]**  
by:

Signature of Director

Signature of Director/Secretary

## CONTRACTOR WARRANTY TO LUL

THIS DEED is made on

20[●]

### BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** company number 01900907 whose registered office is at 55 Broadway, London SW1H 0BD (the "**Beneficiary**" which expression shall include its successors and assigns); and
- (2) [ ] company number [ ] whose registered office is at [ ] (the "**Contractor**").

***[NB1 – Where the Contractor is an unincorporated JV then each party comprising the Contractor to execute.]***

***[NB2 – Where the obligations of the Contractor under the contract are guaranteed, each guarantor is to be a party to this warranty and a guarantee in the form set out in Annexure 7 to this contract (mutatis mutandis) shall be included in this warranty.]***

### WHEREAS:

- (A) By a development agreement dated 3 December 2008 (the "**Development Agreement**"), Crossrail Limited ("CRL") agreed with the Beneficiary how certain works and services needed for the Crossrail project will be effected.
- (B) By a building contract (contract number [ ]) dated [ ] (the "**Contract**") CRL appointed the Contractor to carry out certain works covered by the scope of the Development Agreement (the "**Works**").
- (C) The Contractor acknowledges that the Beneficiary has an interest in the proper carrying out of the Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

### NOW IT IS AGREED:

#### INTERPRETATION

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.

#### SKILL, CARE AND DUTY

2. The Contractor warrants and undertakes to the Beneficiary that:
  - 2.1 in the carrying out of the Works, it owes a duty of care to the Beneficiary;

- 2.2 it has complied with and will continue to comply with the terms of and fulfil its obligations set out in the Contract; and
- 2.3 it has and will Provide the Works in accordance with the Works Information and Applicable Law.
3. The Contractor recognises that the Beneficiary has relied or will rely exclusively upon the Contractor's skill and care in the full and proper performance of the Contractor's obligations under the Contract.

#### **DELETERIOUS MATERIALS**

4. The Contractor warrants and undertakes to the Beneficiary that it has and will Provide the Works such that only materials which at the time of use are not deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection Of Construction Materials (Ove Arup & Partners) current at the date of use are used in the Works.

#### **ENQUIRIES AND INSPECTION**

5. The liability of the Contractor under this Deed shall not be released diminished or in any way affected by any independent enquiry into any relevant matter which may be made or carried out by the Beneficiary or by any third party on its behalf or by any act or omission of any such third party whether or not such action or omission might give rise to an independent liability of such third party to the Contractor.

#### **INSURANCE**

6. The Contractor warrants and undertakes to the Beneficiary that:
  - 6.1 it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract; and
  - 6.2 that insofar as it is responsible for the design of the Works, it has professional indemnity insurance with a limit of indemnity of not less than £[ ] in any period of insurance in respect of each and every claim which may be made against the Contractor in relation to the Works. The Contractor shall maintain such professional indemnity insurance for a period of twelve (12) years from Completion (as defined in the Contract) of the whole of the Works provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available in which case, the Contractor and the Beneficiary will discuss means of best protecting the respective positions of the Beneficiary and the Contractor in the absence of such insurance. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Contractor's insurance claims record.
7. As and when reasonably requested by the Beneficiary, the Contractor shall produce for inspection documentary evidence that the insurance referred to in Clause 6.2 above is being properly maintained and that payment has been made of the last premium due in



respect of such insurance. The Contractor agrees that in default of such insurances being properly maintained, the Beneficiary shall be entitled to effect such insurance itself and the Contractor shall reimburse the Beneficiary of all of its costs in relation thereto.

## **COPYRIGHT**

8. Insofar as the beneficial ownership of copyright is vested in him the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a royalty free irrevocable, unconditional, unlimited and non exclusive licence to use and to reproduce all details, plans, specifications, schedules and other documentation and information prepared or provided by the Contractor in connection with the Works for any purpose related to the Works including, but without limitation, the construction, completion, use and maintenance, letting, promotion, advertisement, reinstatement and repair of the Works and such licence shall enable the Beneficiary to copy and use such documents for the aforementioned purposes (including an extension to the Works but such use shall not include a license to reproduce the designs contained in them for any such extension) provided that the Contractor shall not be liable for any use of such documents for any purpose other than that for which it was originally prepared and such licence shall include the right to grant sub licences and shall be freely assignable by the Beneficiary.
9. Insofar as the beneficial ownership of copyright in the material referred to in clause 8 above is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 8.

## **ASSIGNMENT**

10. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

## **LIABILITY**

11. The Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had if the Beneficiary had been named in its Contract as its joint employer.
12. The Contractor may use any defence that it would have had under the Contract if the Beneficiary had been named in the Contract as its joint employer in defence of any claim by the Beneficiary under this Deed.
13. The liability of the Contractor under this Deed shall cease twelve (12) years following Completion (as defined in the Contract) of the Works save in respect of claims commenced prior to the expiry of such period.
14. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.

15. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clauses 8 and 9 (Copyright)) prior to the date of issue of the Defects Certificate under the Contract.

#### **RIGHTS AND OBLIGATIONS**

16. Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.

#### **NOTICE**

17. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received forty-eight (48) hours after being posted.

#### **VARIATIONS AND AMENDMENTS TO THE CONTRACT**

18. The Contractor acknowledges that no amendment to or variation of any provision of the Contract relating to any limit on the Contractor's liability thereunder shall in any way affect the Contractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment or variation.

#### **LAW AND DISPUTES**

19. Any and all disputes and claims between the Beneficiary and the Contractor as to the construction, interpretation, validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with English Law and the parties hereby submit to the jurisdiction of the Courts of England and Wales.

#### **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

20. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

Executed as a Deed by affixing  
the common seal of  
**LONDON UNDERGROUND LIMITED**  
in the presence of:

Signature of Director

Signature of Director/Secretary

Signed and delivered as a deed  
for and on behalf of  
**[THE CONTRACTOR]** by:

Signature of Director

Signature of Director/Secretary

## CONTRACTOR'S WARRANTY TO NETWORK RAIL

**THIS DEED** is made the                      day of                      20[ ]

### **BETWEEN:**

- (1) [ **CONTRACTOR** ] whose registered office is at [                      ], (the "**Contractor**") and
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED** registered in England and Wales under company number 2904587 and having its registered office at 90, York Way, London, NW1 9AG (the "**Beneficiary**").

***[NB1 – Where the Contractor is an unincorporated JV then each party comprising the Contractor to execute.]***

***[NB2 – Where the obligations of the Contractor under the contract are guaranteed, each guarantor is to be a party to this warranty and a guarantee in the form set out in Annexure 7 to this contract (mutatis mutandis) shall be included in this warranty.]***

### **WHEREAS**

- (A) The Beneficiary has entered into an agreement dated 20 July 2009 with Crossrail Limited (the "**Employer**") in connection with the Works.
- (B) The Contractor has entered into the Contract with the Employer to carry out the Works.
- (C) The Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.

### **NOW IT IS AGREED AS FOLLOWS:**

#### **1. Definitions and interpretation**

- 1.1 In this Deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

"**Contract**" means the agreement dated [ ] between (1) the Employer and (2) the Contractor;

"**Intellectual Property**" means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the Contractor in connection with the Works;

"**Network**" means the railway network of which Network Rail Infrastructure Limited is the facility owner (as defined in section 17(6) of the Railways Act 1993);

"**Network Licence**" means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended); and

"**Works**" means [*insert description of relevant Network Rail Property Works*].

- 1.2 In this Deed unless the context otherwise requires:-

- (a) words importing any gender include every gender;

- (b) words importing the singular number only include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;
- (e) references to paragraphs are references to the relevant paragraph in this Deed;
- (f) the words "include" and "including" are to be construed without limitation;
- (g) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and
- (h) the headings to the paragraphs are for convenience only and shall not affect the interpretation of this Deed.

## 2. **Contractor's obligations**

2.1 The Contractor represents, warrants and undertakes to the Beneficiary:

- (a) that in performing the Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent contractor which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Works;
- (b) that it has complied with and will comply with each and all of the obligations, duties and undertakings of the Contractor under and pursuant to the Contract;
- (c) that on completion the Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and
- (d) that the Beneficiary shall be deemed to have relied upon the Contractor's skill and judgment in respect of those matters relating to the Works as lie within the scope of the Contract and that the Contractor owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the Employer under the Contract).

## 3. **Liability**

3.1 No agreements, comments, instructions, consents, attendance at meetings relating to the Works or advices from the Beneficiary shall in any way relieve the Contractor from its obligations under this Deed.

3.2 Notwithstanding anything that may be contained elsewhere in this Deed, the Contractor shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.

3.3 No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of 12 years from the date of Completion of the Works.

3.4 In any action brought by the Beneficiary for alleged breach of this Deed the Contractor shall have available to it the right to all defences as may have been available to it under the Contract.

3.5 Nothing in this Deed shall render the Contractor liable to the Beneficiary hereunder in respect of any delay howsoever caused to the completion of the Works.

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

4.1 The Contractor as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this Deed (and notwithstanding that the Contract may be completed or terminated) a royalty free, non exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:

- (a) in connection with the maintenance, repair, reinstatement, renewal or extension of the Works; or
- (b) in order for the Beneficiary to comply with the obligations on its part under the Network Licence or to comply with any standard or requirement affecting the Beneficiary.

4.2 Insofar as the beneficial ownership of any Intellectual Property provided by the Contractor in connection with the Works is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in paragraph 4.1.

4.3 The licence referred to in paragraphs 4.1 and 4.2 shall carry the right to grant sub licences in the same terms and shall be transferable to third parties.

4.4 All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the Contractor and the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract or the licence granted in paragraph 4.1 or 4.2.

#### 5. **Insurance**

5.1 The Contractor has effected and will maintain professional indemnity insurance in an amount of £10 million for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of 12 years from the date of the issue of the certificate of Completion of the Works. As and when reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

#### 6. **Notices**

6.1 Any notices to be given under this Deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the Contractor shall be as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such service, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

7. **General**

- 7.1 The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the Contractor thereunder.
- 7.2 The Beneficiary may assign the benefit of this Deed on a maximum of two occasions without the consent of the Contractor. The benefit of this Deed may also be assigned by way of security or charged without the consent of the Contractor to any mortgagee of the Beneficiary or its assignees on any number of occasions.
- 7.3 The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.
- 7.4 If for any reason any paragraph in this Deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this Deed and in such event the remaining provisions of this Deed shall continue to have full force and effect.
- 7.5 This Deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the Courts of England.

**IN WITNESS** whereof the parties have caused this agreement to be executed (as a Deed in the case of the Contractor) on the date first before written.

EXECUTED AS A DEED by  
[**CONTRACTOR**]

Director  
Director/Secretary

The Common Seal of  
**NETWORK RAIL INFRASTRUCTURE LIMITED**

was affixed to this DEED in the presence of

Authorised signatory

## CONTRACTOR'S WARRANTY TO RAIL FOR LONDON LIMITED

**THIS DEED** is made on

20[●]

### **BETWEEN:**

- (1) **RAIL FOR LONDON LIMITED** company number 05965930 whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Beneficiary**" which expression shall include its successors and assigns); and
- (2) [ ] company number [ ] whose registered office is at [ ] (the "**Contractor**").

***[NB1 – Where the Contractor is an unincorporated JV then each party comprising the Contractor to execute.]***

***[NB2 – Where the obligations of the Contractor under the contract re guaranteed, each guarantor is to be a party to this warranty and a guarantee in the form set out in Annexure 7 to this contract (mutatis mutandis) shall be included in this warranty.]***

### **WHEREAS:**

- (A) Crossrail Limited ("**CRL**") has agreed with the Beneficiary how certain works and services needed for the Crossrail project will be effected.
- (B) By a building contract (contract number [ ]) dated [ ] (the "**Contract**") CRL appointed the Contractor to carry out certain works covered by the scope of its agreement with the Beneficiary (the "**Works**").
- (C) The Contractor acknowledges that the Beneficiary has an interest in the proper carrying out of the Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

### **NOW IT IS AGREED:**

#### **INTERPRETATION**

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.

#### **SKILL, CARE AND DUTY**

2. The Contractor warrants and undertakes to the Beneficiary that:
  - 2.1 in the carrying out of the Works, it owes a duty of care to the Beneficiary;
  - 2.2 it has complied with and will continue to comply with the terms of and fulfil its obligations set out in the Contract; and



- 2.3 it has and will Provide the Works in accordance with the Works Information and Applicable Law.
3. The Contractor recognises that the Beneficiary has relied or will rely exclusively upon the Contractor's skill and care in the full and proper performance of the Contractor's obligations under the Contract.

#### **DELETERIOUS MATERIALS**

4. The Contractor warrants and undertakes to the Beneficiary that it has and will Provide the Works such that only materials which at the time of use are not deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection Of Construction Materials (Ove Arup & Partners) current at the date of use are used in the Works.

#### **ENQUIRIES AND INSPECTION**

5. The liability of the Contractor under this Deed shall not be released diminished or in any way affected by any independent enquiry into any relevant matter which may be made or carried out by the Beneficiary or by any third party on its behalf or by any act or omission of any such third party whether or not such action or omission might give rise to an independent liability of such third party to the Contractor.

#### **INSURANCE**

6. The Contractor warrants and undertakes to the Beneficiary that:
- 6.1 it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract; and
- 6.2 that insofar as it is responsible for the design of the Works, it has professional indemnity insurance with a limit of indemnity of not less than £[ ] in any period of insurance in respect of each and every claim which may be made against the Contractor in relation to the Works. The Contractor shall maintain such professional indemnity insurance for a period of twelve (12) years from Completion (as defined in the Contract) of the whole of the Works provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available in which case, the Contractor and the Beneficiary will discuss means of best protecting the respective positions of the Beneficiary and the Contractor in the absence of such insurance. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Contractor's insurance claims record.
7. As and when reasonably requested by the Beneficiary, the Contractor shall produce for inspection documentary evidence that the insurance referred to in Clause 6.2 above is being properly maintained and that payment has been made of the last premium due in respect of such insurance. The Contractor agrees that in default of such insurances being properly maintained, the Beneficiary shall be entitled to effect such insurance itself and the Contractor shall reimburse the Beneficiary of all of its costs in relation thereto.

## **COPYRIGHT**

8. Insofar as the beneficial ownership of copyright is vested in him the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a royalty free irrevocable, unconditional, unlimited and non exclusive licence to use and to reproduce all details, plans, specifications, schedules and other documentation and information prepared or provided by the Contractor in connection with the Works for any purpose related to the Works including, but without limitation, the construction, completion, use and maintenance, letting, promotion, advertisement, reinstatement and repair of the Works and such licence shall enable the Beneficiary to copy and use such documents for the aforementioned purposes (including an extension to the Works but such use shall not include a license to reproduce the designs contained in them for any such extension) provided that the Contractor shall not be liable for any use of such documents for any purpose other than that for which it was originally prepared and such licence shall include the right to grant sub licences and shall be freely assignable by the Beneficiary.
9. Insofar as the beneficial ownership of copyright in the material referred to in clause 8 above is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 8.

## **ASSIGNMENT**

10. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

## **LIABILITY**

11. The Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had if the Beneficiary had been named in its Contract as its joint employer.
12. The Contractor may use any defence that it would have had under the Contract if the Beneficiary had been named in the Contract as its joint employer in defence of any claim by the Beneficiary under this Deed.
13. The liability of the Contractor under this Deed shall cease twelve (12) years following Completion (as defined in the Contract) of the Works save in respect of claims commenced prior to the expiry of such period.
14. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.
15. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clauses 8 and 9 (Copyright)) prior to the date of issue of the Defects Certificate under the Contract.

## **RIGHTS AND OBLIGATIONS**

16. Nothing in this deed shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this deed.

#### **NOTICE**

17. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received forty-eight (48) hours after being posted.

#### **VARIATIONS AND AMENDMENTS TO THE CONTRACT**

18. The Contractor acknowledges that no amendment to or variation of any provision of the Contract relating to any limit on the Contractor's liability thereunder shall in any way affect the Contractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment or variation.

#### **LAW AND DISPUTES**

19. Any and all disputes and claims between the Beneficiary and the Contractor as to the construction, interpretation, validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed by and construed in accordance with English Law and the parties hereby submit to the jurisdiction of the Courts of England and Wales.

#### **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

20. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

Executed as a Deed by affixing  
the common seal of  
**RAIL FOR LONDON LIMITED**  
in the presence of:

Signature of Director

Signature of Director/Secretary

Signed and delivered as a deed  
for and on behalf of  
**[THE CONTRACTOR]** by:

Signature of Director

Signature of Director/Secretary

## **SUBCONTRACTOR'S WARRANTY**

**THIS DEED** is made the [ ] day of [ ] 20[ ]

**BETWEEN:-**

- (1) [ ] whose registered office is at [ ] ("the Sub-Contractor")
- (2) [ ] whose registered office is at [ ] ("the Beneficiary ")
- (3) [ ] whose registered office is at [ ] ("the Contractor")

**WHEREAS:-**

- (A) By a construction contract dated [ ] day of [ ] ("**the Contract**") the Contractor has undertaken with Crossrail Limited to design and construct the Works as defined therein. The Contractor has engaged the Sub-Contractor pursuant to a Sub-Contract dated [ ] day of [ ] ("**the Sub-Contract**") to carry out the design and construction of the Sub-Contract Works as defined in the Sub-Contract.
- (B) The Sub-Contractor acknowledges that the Beneficiary has an interest in the proper design and construction of the Sub-Contract Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

**NOW THIS DEED WITNESSETH** as follows:-

- 1. The Sub-Contractor hereby warrants and undertakes to the Beneficiary that:-
  - 1.1 in respect of any design of the Sub-Contract Works it has exercised and will continue to exercise the standard of skill, care and diligence to carry out and complete such design to be reasonably expected from a properly qualified and competent designer experienced in providing design in respect of works similar in scope, size and complexity to the Sub-Contract Works;
  - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and will continue to fulfil its duties and obligations set out in the Sub-Contract.
- 2. The obligations of the Sub-Contractor under or pursuant to this Deed shall not be released diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress or otherwise report to it in respect of the Sub-Contract Works.
- 3. The Sub-Contractor warrants and undertakes to the Beneficiary that it has not and shall not specify for use or use in the construction of the Sub-Contract Works any prohibited or deleterious material as referred to in the Sub-Contract.
- 4. The Sub-Contractor has effected and will maintain professional indemnity insurance in an amount of £[ ] ([ ] million pounds) for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of twelve years from the date of Completion of the whole of the Works under the Contract provided always that such insurance is available at commercially reasonable rates and upon reasonable commercial terms in the UK market. If such insurance ceases to be available at commercially reasonable rates and upon reasonable commercial terms the Sub-Contractor shall inform the Beneficiary as soon as possible in which case the Sub-Contractor and the Beneficiary will discuss means of best protecting their respective positions in the absence of such insurance. When deciding whether such insurances are available at commercially

reasonable rates and on commercially reasonable terms, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record. As and when it is reasonably requested to do so by the Beneficiary, the Sub-Contractor shall produce for inspection documentary evidence in the form of a broker's letter or certificate (including details of the names of the insurer and the insured, the policy start and end date, limits of indemnity/sums insured and deductibles, territory and key extensions and key exclusions of cover) that its professional indemnity insurance is being maintained and confirm that payment has been made in respect of the last preceding premium due under it.

5. *[Clause 5 included in Employer warranty only]*

5.1 The Sub-Contractor agrees that in the event of the termination of the Contract by the Beneficiary the Sub-Contractor will, if so required by written notice given by the Beneficiary, and subject to clause 5.3, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract, and upon the Beneficiary's request the Sub-Contractor will enter into an agreement for the novation of the Sub-Contract by the Contractor to the Beneficiary or its appointee, such agreement to be in terms reasonably required by the Beneficiary (but subject always to clause 5.3). The Sub-Contractor and Contractor represent and warrant that the form of novation prepared by the City of London Law Society (with the terms "Employer", "Contractor", "Consultant", "Services" and "Appointment" amended to read "Contractor", "Employer", "Sub-Contractor", "Sub-Contract Works" and "Sub-Contract" save in Recital B) is acceptable.

5.2 The Sub-Contractor further agrees that it will not without first giving the Beneficiary not less than 21 days' prior written notice exercise any right it may have to terminate the Sub-Contract (or its employment thereunder) or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties and/or obligations to be performed by the Sub-Contractor pursuant thereto. Such right to terminate the Sub-Contract or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice, and subject to clause 5.3, the Beneficiary shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract, and upon the Beneficiary's request the Sub-Contractor shall enter into an agreement for the novation of the Sub-Contract by the Contractor to the Beneficiary or its appointee, such agreement to be in terms reasonably required by the Beneficiary (but subject always to clause 5.3).

5.3 It shall be a condition of any notice given or any new agreement proposed by the Beneficiary under clauses 5.1 or 5.2 that the Beneficiary or its appointee accepts liability for payment of the sums properly due to the Sub-Contractor under the Sub-Contract (including any sums outstanding at the date of such notice) and for the performance of the Contractor's obligations under the Sub-Contract. Upon the issue of any notice by the Beneficiary under clauses 5.1 and 5.2 the Sub-Contract shall continue in full force and effect as if no right of determination or to treat the same as repudiated or to discontinue performance on the part of the Sub-Contractor had arisen and the Sub-Contractor shall be liable to the Beneficiary or its appointee in lieu of its liability to the Contractor. If any notice given by the Beneficiary under clauses 5.1 or 5.2 requires the Sub-Contractor to accept the instructions of the Beneficiary's appointee and/or to novate the Sub-Contract to such appointee, the Beneficiary shall be liable to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Beneficiary's appointee.

5.4 The Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the Sub-Contractor shall not be in breach of the Sub-Contract by complying with the

obligations imposed on it by clauses 5.1 and 5.2. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 5.1 as conclusive evidence for the purposes of this Deed of the termination of the Contract by the Beneficiary.

6. Notwithstanding anything herein contained, the Sub-Contractor shall not be liable to the Beneficiary for any breach or breaches of this Deed which is or are the subject matter of arbitration or litigation proceedings commenced against the Sub-Contractor unless such proceedings are commenced before the expiry of 12 years from the date of Completion of the whole of the Works.
7. This Deed, the benefit hereof and/or the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary twice without the consent of the Sub-Contractor and the Contractor being required. No further assignment shall be permitted without the consent of the Sub-Contractor and the Contractor, such consent not to be unreasonably withheld or delayed. The Sub-Contractor and the Contractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment.
8. The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 7 hereof is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named beneficiary under this Deed.
9. Notwithstanding any other provision of this Deed, the Sub-Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had to the Beneficiary under the Sub-Contract if the Beneficiary had been named as a joint employer in the Sub-Contract and the Sub-Contractor shall be entitled in any action under this Deed to use any defence that it would have had under the Sub-Contract if the Beneficiary had been named as a joint employer in the Sub-Contract provided that in each such case the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
10. Save where the Beneficiary has exercised its rights under clause 5.1 and/or 5.2 the Sub-Contractor shall not be liable under this Deed for any delay in the completion of the Sub-Contract Works.
11. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the parties to this Deed (which term shall for the purposes of this clause include all permitted assignees or transferees or successors in title) shall have any rights under it nor shall it be enforceable under the Act by any person other than the parties to it.
- 12.
- 12.1 Insofar as the beneficial ownership of copyright is vested in him the Sub-Contractor grants the Beneficiary (and notwithstanding that the Sub-Contractor may complete its duties or terminate its Sub-Contract or have its Sub-Contract terminated) a royalty-free irrevocable, unconditional, unlimited and non-exclusive licence to use and to reproduce all details, plans, specifications, schedules and other documentation and information prepared or provided by the Sub-Contractor in connection with the Works for any purpose related to the Works including, but without limitation, the construction, completion, use and maintenance, letting, promotion, advertisement, reinstatement and repair of the Works and such licence shall enable the Beneficiary to copy and use such documents for the aforementioned purposes (including an extension to the Works but such use shall not include a license to reproduce the designs contained in them for any such extension)

provided that the Sub-Contractor shall not be liable for any use of such documents for any purpose other than that for which it was originally prepared and such licence shall include the right to grant sub-licences and shall be freely assignable by the Beneficiary.

- 12.2 Insofar as the beneficial ownership of copyright in the material referred to in clause 12.1 hereof is vested in a person other than the Sub-Contractor, the Sub-Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 12.1.
13. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received forty-eight (48) hours after being posted.
14. Any and all disputes and claims between the Beneficiary and the Sub-Contractor as to the construction, interpretation, validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

**IN WITNESS WHEREOF** this agreement has been duly executed and delivered as a Deed by the parties hereto on this day and year first before written.

**EXECUTED AS A DEED by [SUBCONTRACTOR]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary

**EXECUTED AS A DEED by [BENEFICIARY]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary

**EXECUTED AS A DEED by [CONTRACTOR]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary





- (b) The *Guarantor's* obligations and liability hereunder shall be no greater than if it had been named in the Contract as a party comprising the *Contractor* with joint and several obligations and liability and the *Guarantor* shall be entitled in any action or proceedings by the *Employer* to rely on any limitation, defences, set-offs and counterclaims under the Contract in relation to any such obligation or liability.
- 1.2 The *Guarantor* confirms that it has full power and capacity to give the guarantee set out herein, and that the guarantee shall not be revocable and shall be a continuing guarantee.
- 1.3 The *Guarantor* agrees that the *Employer* is entitled to assign any of its rights under this guarantee at any time to any person who takes an assignment, novation or other transfer of the Contract or the benefit thereof.
2. As between the *Guarantor* and the *Employer*, the *Guarantor* shall remain liable under clause 1 as if it were the sole principal obligor and not merely a guarantor provided that nothing in this Guarantee set out herein shall render the *Guarantor* liable in respect of any provision of the Contract that is illegal, invalid or unenforceable.
3. The *Guarantor* shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:
- 3.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope or the *works* under the Contract or to the Contract or any related documentation;
- 3.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the *Contractor*;
- 3.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
- 3.4 the dissolution, amalgamation, reconstruction, reorganisation of the *Contractor* or any other person;
- 3.5 the illegality, invalidity or unenforceability of or any defect in any provision of the Contract or any of the *Contractor's* obligations under the Contract or;
- 3.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the *Contractor*;
- 3.7 any compromise of any dispute with the *Contractor*;
- 3.8 any failure of supervision to detect or prevent any fault of the *Contractor*;
- 3.9 any assignment of the benefit of the Contract or any novation of the Contract.
4. The *Guarantor* agrees that any decision of any adjudicator appointed in accordance with the Contract and/or any court and/or any agreement reached between the *Contractor* and the *Employer* in respect of or in connection with the Contract shall be binding on the *Guarantor*, provided always that the *Guarantor* shall have available to it such rights of appeal or challenge as the *Contractor* would have or would have had.
5. If the *Guarantor* is not a company registered in England and Wales, the *Guarantor* provides to the *Employer* a legal opinion in the form appended on the *Guarantor's* execution of this guarantee.
6. No proceedings may be commenced against the *Guarantor* by the *Employer* more than 12 years after Completion under and as defined in the Contract.

7. The construction validity and performance of this guarantee shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

Executed as a deed and delivered on the date above by:

..... (signed)

..... (name of director)

..... (signed)

..... (name of director or company secretary)

On behalf of **CROSSRAIL LIMITED**

..... (signed)

..... (name of director)

..... (signed)

..... (name of director or company secretary)

On behalf of [the *Contractor*][JV member]

..... (signed)

..... (name of director)

..... (signed)

..... (name of director or company secretary)

On behalf of [the *Guarantor*]

**ANNEXURE 8  
LEGAL OPINION LETTER**

[Insert letterhead]

Crossrail Limited

Dear Sirs

**[Contractor] [and Guarantor]  
[●] works for the Crossrail project, London**

We have acted as **[relevant jurisdiction]** legal advisers to *[Contractor]* (the "*Contractor*") *[and Guarantor]* (the "**Guarantor**") in relation to *Contractor*'s obligations under and arising out of its appointment for the Crossrail project and associated collateral warranties *[and novation]* *[and the Guarantor's provision of a guarantee in respect of the same]* (the "**Documents**").

The *Contractor**[Guarantor]* is incorporated in [ ] (the "**Relevant Jurisdiction**") and for the purposes of this legal opinion "**Relevant Laws**" means the laws of the Relevant Jurisdiction and the laws of [ ] as they apply in the Relevant Jurisdiction.

**1. OPINION**

We are of the following opinion insofar as the Documents relate to the *Contractor**[Guarantor]*.

- (a) The *Contractor**[Guarantor]* is registered and validly existing under the **[relevant statute]** and is capable of being sued in its corporate name.
- (b) The execution and performance of each Document as a deed has been authorised by all appropriate action of the *Contractor**[Guarantor]* and will not breach any provisions of any Relevant Law or any regulation binding upon the *Contractor**[Guarantor]* **[or its Memorandum and Articles of Association or Constitution]**.
- (c) Each Document has been validly and properly executed and any power of attorney connected with the execution of any Document constitutes legal, valid and binding obligations of the *Contractor**[Guarantor]* enforceable in accordance with its terms.
- (d) Each person signing a Document as an attorney under a power of attorney is authorised pursuant to the power of attorney by which they were appointed an attorney of the *Contractor**[Guarantor]* to represent the *Contractor**[Guarantor]* and execute the applicable Document on its behalf.
- (e) Any consent from any Government Agency in the Relevant Jurisdiction required for and in connection with the validity and enforceability of each Document, or to enable the *Contractor**[Guarantor]* to perform its obligations under it, have been obtained and any filings and registrations required by any Government Agency have been made.
- (f) Under the Relevant Laws, the choice of the law of England and Wales to govern the validity and enforceability of each Document is a valid choice of law.

- (g) Any judgment in respect of a Document which is enforceable against the [Contractor][Guarantor] in the courts of England and Wales may be enforced in the Relevant Jurisdiction by registration of the judgment under the [relevant statute] and would be recognised and accepted by the courts of that jurisdiction without retrial or examination of the merits of the case.
- (h) All payments to be made by the [Contractor][Guarantor] under a Document may be made free and clear of and without deduction of any tax imposed in [ ].

2. **PURPOSE AND BENEFIT**

This opinion is given for the benefit solely of the parties to which this opinion is addressed.

Yours faithfully

[ ]

**ANNEXURE 9**

**SITE INFORMATION**

Volume 3 is in Book 5 reference C412-XRL-V3-STE-C125\_WS088\_Z-50001.

**ANNEXURE 10**

***EMPLOYER'S FORM OF SUBCONTRACT***

# Subcontract

[ ]

(the *Contractor*)

and

[ ]

(the *Subcontractor*)

***[Drafting Note – repeat as necessary if additional parties comprising the Contractor and/or Subcontractor]***

Subcontract No. [ ]

This amended contract is based on the NEC Engineering and Construction Subcontract, the copyright in which standard form belongs to the Institution of Civil Engineers.



This agreement is made on the ..... day of ..... 20 .....

Between ..... (name)

of .....

[an unincorporated joint venture between [●]]<sup>1</sup>(the *Contractor*)

and ..... (name)

of .....

[an unincorporated joint venture between [●]]<sup>2</sup> (the *Subcontractor*)

1. The *Employer* has entered into the main contract (Contract No. [ ]) with the *Contractor* to procure the carrying out of certain [●] works in relation to the Crossrail project, London (the "**Main Contract**").
2. The *Contractor* wishes to procure the carrying out of certain [●] subcontract works in relation to the Main Contract works.
3. The *Contractor* will pay the *Subcontractor* the amount due and carry out his duties in accordance with this subcontract and the conditions of subcontract at Annexure 1 to this subcontract ("the conditions of subcontract").
4. The *Subcontractor* will Provide the Subcontract Works in accordance with this subcontract and the conditions of subcontract.
5. The subcontract and the conditions of subcontract and the documents referred to in them form this subcontract. References in the conditions of subcontract to "the subcontract" are references to this subcontract. The order of precedence of the contract documents in descending priority is:
  - This form of agreement;
  - The conditions of subcontract;
  - Subcontract Data;
  - Subcontract Works Information and Subcontract Site Information (which shall have joint precedence).
- [6. The obligations and liabilities of each party comprising the *Subcontractor* are joint and several.]<sup>3</sup>

Executed as a deed and delivered on the

date above by:

..... (signed)

..... (name of Director)

..... (signed)

..... (name of Director or Company Secretary)

On behalf of [a party comprising] (the *Contractor*)

<sup>1</sup> Delete if *Contractor* not an unincorporated joint venture

<sup>2</sup> Delete if *Subcontractor* not an unincorporated joint venture

<sup>3</sup> Delete if *Subcontractor* not an unincorporated joint venture

.....

(signed)

.....

(name of Director)

.....

(signed)

.....

(name of Director or Company Secretary)

On behalf of ([a party comprising] the *Subcontractor*).....

***[Drafting Note – repeat sealing blocks as necessary for relevant number of parties comprising the Contractor and Subcontractor]***

## **Index of Annexures to Form of Agreement**

Annexure 1 – Conditions of Subcontract

Annexure 2 – Subcontract Data

Annexure 3 – Subcontract Works Information

Annexure 4 – Forms of Performance Bond

Annexure 5 – Form of Warranty

Annexure 6 – Form of Parent Company Guarantee

Annexure 7 - Legal Opinion

Annexure 8 – Site Information

**ANNEXURE 1**  
**CONDITIONS OF SUBCONTRACT**

**NEC 3**

**Conditions of Subcontract**

**Engineering and Construction Subcontract**

**Terms and Conditions**

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**Schedule of Cost  
Components**

**Shorter Schedule of  
Cost Components**

# CORE CLAUSES

## 1 General

### Actions 10

- 10.1 The *Contractor* and the *Subcontractor* shall act as stated in this subcontract and in a spirit of mutual trust and co-operation.

### Identified and defined terms 11

- 11.1 In these conditions of subcontract, terms identified in the Subcontract Data are in italics and defined terms have capital initials.

- 11.2 (1) The Accepted Programme is the programme identified in the Subcontract Data or is the latest programme accepted by the *Contractor*. The latest programme accepted by the *Contractor* supersedes previous Accepted Programmes. Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Subcontract Works Information.

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

- (3) Applicable Law means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

- (4) Background Rights means in respect of each party the Intellectual Property rights owned by or otherwise in the possession of that party at the date of this subcontract.

- (5) Canary Wharf Works means the permanent and temporary works to be carried out by the CWG SPV (as defined in the PDA) under the CWG Agreement (as defined in the PDA).

- (6) Completion is when the *Subcontractor* has
- done all the work which the Subcontract Works Information states he is to do by the Subcontract Completion Date and
  - corrected notified Defects which would have prevented the *Employer* or the *Contractor* from using the *subcontract works* or Others from doing their work.

If the work which the *Subcontractor* is to do by the Subcontract Completion Date is not stated in the Subcontract Works Information, Completion is when the *Subcontractor* has done all the work necessary for the *Employer* or the *Contractor* to use the *subcontract works* or for Others to do their work.

- (7) Confidential Information means any information of whatever kind (whether commercial, technical, financial, operational or otherwise, in whatever form and whether or not recorded in any way) relating to the *Employer*, the *Contractor* or the Programme.

- (8) Construction Data means Personal Data of employees of the *Subcontractor* and employees of subsubcontractors or suppliers of any tier working at construction sites owned or controlled by the *Employer*.

- (9) Contractor Data means personal data of which the *Contractor* is the Data Controller.
- (10) Crossrail Data Policy means the *Employer's* data protection policy relating to construction sites.
- (11) CWG is Canary Wharf Group plc of One Canada Square, Canary Wharf, London E14 5AB.
- (12) Data Controller shall have the same meaning as in the DPA.
- (13) Data Processor shall have the same meaning as in the DPA.
- (14) Data Subject shall have the same meaning as in the DPA.
- (15) A Defect is
- a part of the *subcontract works* which is not in accordance with the Subcontract Works Information or
  - a part of the *subcontract works* designed by the *Subcontractor* which is not in accordance with this subcontract the Applicable Law or the *Subcontractor's* design which the *Contractor* has accepted.
- (16) The Defects Certificate is either a list of Defects that the *Contractor* has notified before the *defects date* which the *Subcontractor* has not corrected or, if there are no such Defects, a statement that there are none.
- (17) Depot Works means the permanent and temporary works to be carried out by the Depot Contractor (as defined in the PDA) under the Depot Contract (as defined in the PDA).
- (18) DfT is Department for Transport of Great Minster House, 76 Marsham Street, London SW1P 4DR.
- (19) DLR is Docklands Light Railway Limited whose registered office is at Operations and Maintenance Centre, P.O. Box 154, Castor Lane, Poplar, London E14 0DX.
- (20) DPA means the Data Protection Act 1998.
- (21) Equipment is items provided by the *Subcontractor* and used by him to Provide the Subcontract Works and which the Subcontract Works Information does not require him to include in the *subcontract works*.
- (22) The Fee is the sum of the amounts calculated by applying the *subsubcontracted fee percentage* to the Defined Cost of subsubcontracted work and the *direct fee percentage* to the Defined Cost of other work.
- (23) FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such legislation.
- (24) Foreground Rights means all Intellectual Property rights developed by either party (and in the case of the *Subcontractor* any Intellectual Property developed by any subsubcontractor or supplier of any tier) under or in connection with this subcontract and/or the *subcontract works*, including but not limited to all Intellectual Property rights in the Materials.
- (25) GBR means the *Geotechnical Baseline Report*.
- (26) Group Company is any holding company or subsidiary of an entity (within the meaning of section 1159 of the Companies Act 2006) or a company in which an entity or



any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by section 548 of the Companies Act 2006).

- (27) Information Request means a request for information under the FOI Legislation.
- (28) Intellectual Property means any and all patents, trademarks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software (including source codes) and databases, topography rights (in each case whether registered or not and including any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, Know-How, trade secrets and other confidential information, rights in databases and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world.
- (29) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Subcontract Data and the Condition is the *condition* stated in the Subcontract Data unless later changed in accordance with this subcontract.
- (30) Know-How means information and know-how whether patentable or not including but not limited to all patented techniques, operating instructions, machinery designs, raw material or product specifications, drawings, blueprints, and any other technical and commercial information relating to design, development, manufacture, assembly, use or sale.
- (31) LUL is London Underground Limited whose registered office is 55 Broadway, London SW1H 0BD.
- (32) Materials means all documents, items information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by the *Subcontractor* as part of or in connection with the *subcontract works* and/or this subcontract.
- (33) Network Rail is Network Rail Infrastructure Limited whose registered office is at Kings Place, 90 York Way, London N1 9AG.
- (34) New Employer means TfL, DfT or any company which is a holding company or subsidiary (within the meaning of Section 1159 of the Companies Act 2006) of TfL or DfT or is a company in which TfL or DfT or any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by Section 548 of the Companies Act 2006).
- (35) On-Network Works means the Crossrail Project Works (as defined in the PDA) to be undertaken by Network Rail (as defined in the PDA) pursuant to the NR Regulatory Protocol (as defined in the PDA): (i) between Maidenhead in the County of Berkshire and Royal Oak in the City of Westminster; (ii) between Pudding Mill Lane in the London Borough of Newham and Shenfield in the County of Essex; and (iii) between Plumstead and Abbey Wood, both in the London Borough of Greenwich.
- (36) Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, any adjudicator appointed pursuant to clause W2A, the *Contractor*, *Subcontractor* or any employee, subsubcontractor or supplier of any tier.
- (37) The Parties are the *Contractor* and the *Subcontractor*.

- (38) PDA is the Project Development Agreement between the *Employer*, TfL and the Secretary of State for Transport dated 3 December 2008.
- (39) Personal Data shall have the same meaning as in the DPA.
- (40) Plant and Materials are items intended to be included in the *subcontract works*.
- (41) Processing shall have the same meaning as in the DPA and Process and Processed shall be construed accordingly.
- (42) The Programme means the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements.
- (43) A Prohibited Act means:
- (a) offering, giving or agreeing to give to any officer or agent of the *Contractor* and/or the *Employer*, any gift or consideration of any kind:
- (i) as an inducement or reward; or
- (ii) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this subcontract or any other contract with the *Contractor* and/or the *Employer*; or
- (iii) for showing or not showing favour or disfavour for any person in relation to this subcontract or any other contract with the *Contractor* and/or the *Employer*; or
- (iv) for entering into this subcontract in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge unless before this subcontract is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the *Contractor* and the *Employer*; or
- (b) the commission of an offence under the Prevention of Corruption Acts 1889 – 1916;
- (c) entering into any form of collusion with other suppliers of works similar to the *subcontract works* or with other actual or potential bidders for this subcontract; or
- (d) the commission of an offence under the Bribery Act 2010.
- (44) The Project means the project for the development, design, procurement, construction, commissioning, integration and completion of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the London Borough of Hillingdon through central London to Shenfield in the County of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements excluding:
- On-Network Works;
  - Canary Wharf Works;
  - Woolwich Works; and

- Depot Works.
- (45) To Provide the Subcontract Works means to do the work necessary to complete the *subcontract works* in accordance with this subcontract and all incidental work, services and actions which this subcontract requires.
- (46) Register of Undertakings and Assurances means the *Employer's* undertakings and assurances register as referred to in the Subcontract Works Information.
- (47) The Risk Register is a register of the risks which are listed in the Subcontract Data and the risks which the *Contractor* or the *Subcontractor* 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.
- (48) 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 subcontract.
- (49) Site Information is information which
- describes the Site and its surroundings and
  - is in the documents which the Subcontract Data states it is in.
- (50) The Sponsors' Requirements are set out in the PDA and shall apply as amended from time to time.
- (51) The Subcontract Completion Date is the *subcontract completion date* unless later changed in accordance with this subcontract.
- (52) The Subcontract Date is the date of execution by the Parties of this subcontract.
- (53) Subcontract Works Information is information which either
- specifies and describes the *subcontract works* or
  - states any constraints on how the *Subcontractor* Provides the Subcontract Works
- and is either
- in the documents which the Subcontract Data states it is in or
  - in an instruction given in accordance with this subcontract.
- (54) Subcontractor Information means information provided or made available to the *Contractor* by the *Subcontractor* and recorded in any form held by the *Contractor* or held by the *Subcontractor* on behalf of the *Contractor*.
- (55) A Subsubcontractor is a person or organisation who has a contract with the *Subcontractor* to
- construct or install part of the *subcontract works*, or
  - provide a service necessary to Provide the Subcontract Works or
  - supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *subcontract works*, or
  - supply Equipment which has been designed in whole or in part specifically for the *subcontract works*.
- (56) TfL is Transport for London of Windsor House, 42-50 Victoria Street, London SW1H 0TL and "**TfL Group**" is Transport for London and all its subsidiaries (as defined in Section 1159 of the

Companies Act 2006) from time to time.

- (57) Third Party Rights means all Intellectual Property rights which are not owned by the *Contractor* or the *Subcontractor* but required either (a) by the *Subcontractor* to Provide the Subcontract Works or supply the Materials, or (b) by the *Employer* and/or the *Contractor* (or any successors) to use the Materials and/or to implement and/or operate those parts of the Programme which are the subject of this subcontract whether during the term of this subcontract or thereafter.
- (58) Woolwich Works means the permanent and temporary works to be carried out by Berkeley Homes (as defined in the PDA) under the Woolwich Station Box Deed (as defined in the PDA).
- (59) The Working Areas are those parts of the *subcontract working areas* which are
- necessary for Providing the Subcontract Works and
  - used only for work in this subcontract
- unless later changed in accordance with this subcontract.

## **Interpretation and the law 12**

- 12.1 In this subcontract, 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. Words denoting persons include individuals, partnerships, firms and corporations and their successors and permitted assignees or transferees.
- 12.2 This subcontract is governed by the *law of the subcontract*.
- 12.3 No change to this subcontract, unless provided by the *conditions of subcontract*, has effect unless it is has been agreed and confirmed in writing and signed by the Parties.
- 12.4 This subcontract is the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to the subject matter of this subcontract and each Party acknowledges that in entering into this subcontract it has not relied on any representation or undertaking, whether oral or in writing, save such as are expressly incorporated in this subcontract.
- 12.4A If any clause or part of this subcontract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this subcontract and will be ineffective without, as far as is possible, modifying any other clause or part of this subcontract and this will not affect any other provisions of this subcontract which will remain in full force and effect.
- 12.4B In this subcontract any reference to:
- any enactment, order, regulation or other similar instrument references the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
  - a public organisation references any successor (statutory or otherwise) public organisation which has taken over the functions and duties of such public organisation;
  - laws includes any applicable legislation, judgments of a relevant court of law changing a binding precedent and Applicable Law;
  - words preceding "include", "includes", "including", and "included" are construed without limitation to the words which follow those words; and

- this subcontract includes any permitted variation, amendment, or supplement to this subcontract.

12.4C A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

12.4D The terms and conditions of this subcontract and the warranties and undertakings which it contains apply to all works performed and to be performed by the *Subcontractor* in relation to the project to which the *subcontract works* relate both before and after the Subcontract Date.

12.5 Any reference in this subcontract to subsubcontractors or suppliers of any tier means all those subsubcontractors and suppliers that are engaged by the *Subcontractor* or by subsubcontractors within the supply chain of the *Subcontractor*.

### **Communications 13**

13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this subcontract requires is communicated in a form which can be read, copied and recorded or is available for access on the hosted web server referred to in the Subcontract Works Information (save in the case of the notification of a Dispute which shall be notified in hard copy only). Writing is in the *language of this subcontract*. Electronic mail is not a valid means of communication in accordance with this subcontract.

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 Subcontract Data. Alternatively, an electronic communication has effect when it is posted on the hosted web server referred to in the Subcontract Works Information. Communications relating to the notification of a Dispute shall have no effect under this subcontract unless served in hard copy.

13.3 If this subcontract requires the *Contractor* or the *Subcontractor* to reply to a communication, unless otherwise stated in this subcontract, he replies within the *period for reply*.

13.4 The *Contractor* replies to a communication submitted or resubmitted to him by the *Subcontractor* for acceptance. If his reply is not acceptance, the *Contractor* states his reasons and the *Subcontractor* 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 *Subcontractor's* submission fully.

13.5 The *Contractor* may extend the *period for reply* to a communication if the *Contractor* and the *Subcontractor* agree to the extension before the reply is due. The *Contractor* notifies the *Subcontractor* of the extension which has been agreed.

13.6 The *Contractor* issues his certificates to the *Subcontractor*.

13.6A The *Subcontractor* retains copies of drawings, specifications, reports and other documents which record the *subcontract works* for the *period for retention* set out in the Subcontract Data. The copies are retained in the form stated in the Subcontract Works Information.

13.7 A notification which this subcontract requires is communicated separately from other communications.

13.8 The *Contractor* may withhold acceptance of a submission by the *Subcontractor*. Withholding acceptance for a reason stated in this subcontract is not a compensation event.

### **The Contractor 14**

14.1 The *Contractor's* acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction, or any enquiry or inspection which the *Contractor* and/or the *Employer* makes or has carried out for its benefit or on its behalf at any time shall not

operate to reduce, extinguish, exclude, limit or modify the *Subcontractor's* duties and obligations under this subcontract.

- 14.2 The *Contractor*, after notifying the *Subcontractor*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor* in this subcontract includes an action by his delegate.
- 14.3 The *Contractor* may give an instruction to the *Subcontractor* which changes the Subcontract Works Information or a Key Date.

#### **Adding to the Working Areas 15**

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

#### **Early warning 16**

- 16.1 The *Subcontractor* and the *Contractor* 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
  - impair the performance of the *subcontract works* in use,
  - affect the work of the *Contractor*, the *Employer* or an Other, or
  - lead to a breach by the *Contractor* or the *Employer* of any undertaking or assurance contained in the Register of Undertakings and Assurances.

Either the *Contractor* or the *Subcontractor* may give an early warning by notifying the other of any other matter which could increase the total cost. The *Contractor* 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 *Contractor* or the *Subcontractor* 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 subcontract, 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 *Contractor* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Subcontractor*. If a decision needs a change to the Subcontract Works Information, the *Contractor* instructs the change at the same time as he issues the revised Risk Register. For the avoidance of doubt, the *Subcontractor's* only entitlement to a change in the Prices, the Subcontract Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 and 65.

#### **Ambiguities and inconsistencies 17**

- 17.1 The *Contractor* or the *Subcontractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or

between the documents which are part of this subcontract. The *Contractor* gives an instruction resolving the ambiguity or inconsistency.

**Illegal and impossible requirements 18**

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

**Prevention 19** Not used

## 2 The *Subcontractor's* main responsibilities

### Providing the Subcontract Works 20

- 20.1 The *Subcontractor* Provides the Subcontract Works in accordance with the Subcontract Works Information and Applicable Law and such that only materials which at the time of use are not known within the UK civil engineering industry as being deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection of Construction Materials (Ove Arup & Partners) current at the date of use are used in the *subcontract works*.
- 20.2 The *Subcontractor* advises the *Contractor* on the practical implications of the design of the *subcontract works* and on subsubcontracting arrangements.

### The *Subcontractor's* design 21

- 21.1 The *Subcontractor* designs the parts of the *subcontract works* which the Subcontract Works Information states he is to design.
- 21.2 The *Subcontractor* submits the particulars of his design as the Subcontract Works Information requires to the *Contractor* for acceptance. A reason for not accepting the *Subcontractor's* design is that it does not comply with either the Subcontract Works Information or
- Applicable Law or
  - the *Subcontractor's* design which the *Contractor* has accepted or
  - this subcontract.

The *Subcontractor* does not proceed with the relevant work until the *Contractor* has accepted his design.

- 21.3 The *Subcontractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.
- 21.3A The *Subcontractor's* obligation in respect of his design of any part of the *subcontract works* is to use the standard of skill, care and diligence to carry out and complete such design to be reasonably expected from a properly qualified professional consultant experienced in providing design in respect of works similar in size, scope and complexity to the *subcontract works* and for projects similar in size, scope and complexity to the Project. The *Subcontractor* will use the standard of skill and care set out in this clause 21.3A to ensure that any part of the *subcontract works* designed by the *Subcontractor* will interface and integrate fully with any design prepared by, or on behalf of, the *Employer* and/or the *Contractor*.

### Using the *Subcontractor's* design 22

- 22.1 Not used.

### Design of Equipment 23

- 23.1 The *Subcontractor* submits particulars of the design of an item of Equipment to the *Contractor* for acceptance if the *Contractor* instructs him to. A reason for not accepting is that the design of the item will not allow the *Subcontractor* to Provide the Subcontract Works in accordance with
- the Subcontract Works Information,
  - the *Subcontractor's* design which the *Contractor* has accepted or
  - the Applicable Law or



- this subcontract.

## **People 24**

- 24.1 The *Subcontractor* either employs each key person named to do the job stated in the Subcontract Data for so long as they remain under the *Subcontractor's* control (unless the *Subcontractor* is prevented from doing so by circumstances outside the *Subcontractor's* reasonable control) or employs a replacement person who has been accepted by the *Contractor* in accordance with this sub-clause 24.1. If any key person (or his replacement) is proposed to be removed in accordance with this sub-clause 24.1, the *Subcontractor* submits (as soon as reasonably practicable and so as to minimise any adverse effect on the progress of the *subcontract works*) the name, relevant qualifications and experience of a proposed replacement person to the *Contractor* for acceptance. A reason for not accepting the person is the *Employer* or the *Contractor* believes he is a security risk or that his relevant competency, qualifications and experience are not as good as those of the person who is to be replaced.
- 24.1A If a replacement key person is accepted by the *Contractor*, the *Subcontractor* arranges for there to be a minimum handover period of 4 weeks during which both the original key person and his replacement perform the job stated in the Subcontract Data.
- 24.1B Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Contractor* considers are outside the *Subcontractor's* reasonable control, if a key person (or his replacement) ceases to be employed to do the job stated in the Subcontract Data, the *Contractor* may deduct the *key person compensation amount* applicable to such key person (or his replacement) from any sum otherwise due or which at any time may otherwise become due to the *Subcontractor* under this subcontract.
- 24.2 The *Contractor* may instruct the *Subcontractor* to remove a person. The *Subcontractor* then arranges that, after one day, the person has no further connection with the work included in this subcontract.

## **Working with the Contractor and Others 25**

- 25.1 The *Subcontractor* co-operates with Others in obtaining and providing information which they need in connection with the *subcontract works*. The *Subcontractor* co-operates with Others and as required to Provide the Subcontract Works. The *Subcontractor* shares the Working Areas with Others as stated in the Subcontract Works Information.
- 25.1A Where necessary to Provide the Subcontract Works, the *Subcontractor* holds or attends meetings with Others. The *Subcontractor* informs the *Contractor* and the *Employer* of these meetings beforehand and the *Employer*, the *Project Manager* and the *Contractor* may attend them.
- 25.2 The *Contractor* and the *Subcontractor* provide services and other things as stated in the Subcontract Works Information. Any cost incurred by the *Contractor* as a result of the *Subcontractor* not providing the services and other things he is to provide is assessed by the *Contractor* and paid by the *Subcontractor*.
- 25.3 If the *Contractor* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Contractor* incurs any loss expense or additional cost either
- in carrying out work or
  - by paying an additional amount to the *Employer* or Others in carrying out work

the additional cost including that arising in relation to other parts of the Programme or any other project which *Contractor* has paid or

will incur is paid by the *Subcontractor*. The *Contractor* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met.

## **Subsubcontracting 26**

- 26.1 If the *Subcontractor* subsubcontracts work, he is responsible for Providing the Subcontract Works as if he had not subsubcontracted. This subcontract applies as if the employees and equipment of a subsubcontractor or supplier of any tier were the *Subcontractor's*.
- 26.2 The *Subcontractor* submits the name of each proposed Subsubcontractor to the *Contractor* for acceptance. A reason for not accepting the Subsubcontractor is that his appointment will not allow the *Subcontractor* to Provide the Subcontract Works. The *Subcontractor* does not appoint a proposed Subsubcontractor until the *Contractor* has accepted him.
- 26.3 The *Subcontractor* submits the proposed conditions of contract for each subsubcontract to the *Contractor* for acceptance unless
- an NEC contract in the terms of this subcontract is proposed or
  - the *Contractor* has agreed that no submission is required.

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

- they will not allow the *Subcontractor* to Provide the Subcontract Works or
- they do not include a statement that the parties to the subsubcontract shall act in a spirit of mutual trust and co-operation or
- they are not consistent with the terms of this subcontract or
- the subsubcontract has not been procured at open market or competitively tendered prices with provision for deductions for discounts, rebates and taxes which can be recovered.

Once the subsubcontract conditions have been accepted by the *Contractor*, the *Subcontractor* shall not agree to vary or amend the same or terminate the engagement of the Subsubcontractor unless such variation, amendments or termination has been accepted by the *Contractor*.

## **Other responsibilities 27**

- 27.1 The *Subcontractor* obtains approval of his design from Others where necessary.
- 27.2 The *Subcontractor* provides access to work being done and to Plant and Materials being stored for this subcontract for
- the *Contractor*,
  - the *Project Manager*,
  - the *Supervisor* and
  - Others notified to him by the *Contractor* or the *Project Manager*.
- 27.3 The *Subcontractor* obeys an instruction which is in accordance with this subcontract and is given to him by the *Contractor*.
- 27.4 The *Subcontractor* acts in accordance with the health and safety requirements stated in the Subcontract Works Information.
- 27.4A The *Subcontractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site for the effective discharge of those responsibilities.
- 27.4B The *Subcontractor* at all times prevents any public or private

nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant, or occupier or any statutory undertaker arising out of the carrying out of the *subcontract works* or of any obligation under clause 43 and assists the *Employer* and/or the *Contractor* in defending any action or proceedings which may be instituted in relation to the same. Subject to clause 222, the *Subcontractor* is responsible for and indemnifies the *Contractor* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference.

- 27.4C Without prejudice to the *Subcontractor's* obligation under clause 27.4B, the *Subcontractor* ensures that there is no trespass over any adjoining or neighbouring property arising out of the *subcontract works* or of any obligation under clause 43. If the carrying out of the *subcontract works* or of any obligation under clause 43 is likely to necessitate interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Subcontractor*, at no cost to the *Contractor*, obtains the prior written agreement of such owners and/or occupiers to the work, and such agreement will be subject to the approval of the *Contractor* before execution. The *Subcontractor* complies in every respect with any conditions in any such agreement.

## 3 Time

### Starting, Completion 30 and Key Dates

- 30.1 The *Subcontractor* does not start work on the Site until the first *subcontract access date* and proceeds with the work regularly and diligently so that Completion is on or before the Subcontract Completion Date.
- 30.2 The *Contractor* decides the date of Completion. The *Contractor* certifies Completion within two weeks of Completion.
- 30.3 The *Subcontractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

### The programme 31

- 31.1 If a programme is not identified in the Subcontract Data, the *Subcontractor* submits a first programme to the *Contractor* for acceptance within the period stated in the Subcontract Data.
- 31.2 The *Subcontractor* shows on each programme which he submits for acceptance
- the *subcontract starting date, subcontract access dates, Key Dates and Subcontract Completion Date,*
  - planned Completion,
  - the order and timing of the operations which the *Subcontractor* plans to do in order to Provide the Subcontract Works,
  - the order and timing of the work of the *Employer, the Contractor and Others* as last agreed with them by the *Subcontractor* or, if not so agreed, as stated in the Subcontract Works Information,
  - the dates when the *Subcontractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer, the Contractor and Others* to do their work,
  - the dates on which necessary consents and approvals are to be obtained (including those to be obtained by the *Contractor*),
  - provisions for
    - float,
    - time risk allowances,
    - health and safety requirements and
    - the procedures set out in this subcontract,
  - the dates when, in order to Provide the Subcontract Works in accordance with his programme, the *Subcontractor* will need
    - access to a part of the Site if later than its *subcontract access date,*
    - acceptances,
    - Plant and Materials and other things to be provided by the *Employer and the Contractor* and
    - information from Others,
  - for each operation, a statement of how the *Subcontractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and
  - other information which the Subcontract Works Information requires the *Subcontractor* to show on a programme submitted for acceptance.

- 31.3 Within two weeks of the *Subcontractor* submitting a programme to him for acceptance, the *Contractor* either accepts the programme or notifies the *Subcontractor* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Subcontractor's* plans which it shows are not practicable,
  - it does not show the information which this subcontract requires,
  - it does not represent the *Subcontractor's* plans realistically or
  - it does not comply with the Subcontract Works Information.

## **Revising the programme 32**

- 32.1 The *Subcontractor* shows on each revised programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - the effects of implemented compensation events,
  - how the *Subcontractor* plans to deal with any delays and to correct notified Defects and
  - any other changes which the *Subcontractor* proposes to make to the Accepted Programme.
- 32.2 The *Subcontractor* submits a revised programme to the *Contractor* for acceptance
- within the *period for reply* after the *Contractor* has instructed him to,
  - when the *Subcontractor* chooses to and, in any case,
  - at no longer interval than the interval stated in the Subcontract Data from the *subcontract starting date* until Completion of the whole of the *subcontract works*.

## **Access to and use of the Site 33**

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

## **Instructions to stop or not to start work 34**

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

## **Take over 35**

- 35.1 The *Contractor* need not take over the *subcontract works* before the Subcontract Completion Date if it is stated in the Subcontract Data that he is not willing to do so. Otherwise the *Contractor* takes over the *subcontract works* not later than three weeks after Completion.
- 35.2 The *Employer* or the *Contractor* may use any part of the *subcontract works* before Completion has been certified. If he does so, the *Contractor* takes over the part of the *subcontract works* when the *Employer* or the *Contractor* begins to use it except if the use is
- for a reason stated in the Subcontract Works Information or
  - to suit the *Subcontractor's* method of working.
- 35.3 The *Contractor* certifies the date upon which he takes over any part of the *subcontract works* and its extent within two weeks of the date.

**Acceleration 36**

- 36.1 The *Contractor* may instruct the *Subcontractor* to accelerate the *subcontract works* to achieve Completion before the Subcontract Completion Date.

## 4 Testing and Defects

### Tests and inspections 40

- 40.1 The subclauses in this clause only apply to tests and inspections required by the Subcontract Works Information or the Applicable Law.
- 40.2 The *Subcontractor*, the *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Subcontract Works Information.
- 40.3 The *Subcontractor* and the *Contractor* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Subcontractor* notifies the *Contractor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Contractor* and the *Supervisor* may watch any test done by the *Subcontractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Subcontractor* corrects the Defect and the test or inspection is repeated.
- 40.5 The *Contractor* 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 *Contractor's* or *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 *Contractor* or the *Supervisor* has not done the test or inspection and
  - the delay to the test or inspection is not the *Subcontractor's* fault.
- 40.6 The *Contractor* assesses the cost incurred by him in repeating a test or inspection after a Defect is found. The *Subcontractor* pays the amount assessed.

### Testing and inspection before delivery 41

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

### Searching for and notifying Defects 42

- 42.1 Until the *defects date*, the *Contractor* may instruct the *Subcontractor* 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 *Contractor* or the *Supervisor* and
  - doing tests and inspections which the Subcontract Works Information does not require.
- 42.2 Until the *defects date*, the *Contractor* promptly notifies the *Subcontractor* of each Defect as soon as he finds it and the *Subcontractor* promptly notifies the *Contractor* of each Defect as soon as he finds it.

### Correcting Defects 43

- 43.1 The *Subcontractor* corrects a Defect whether or not the *Contractor* notifies him of it.
- 43.2 The *Subcontractor* 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 *Contractor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* or the *Contractor's* rights in respect of a Defect which the *Contractor* has not found or notified are not affected by the issue of the Defects Certificate.
- 43.4 The *Contractor* arranges for the *Employer* and the *Contractor* to allow the *Subcontractor* access to and use of a part of the *subcontract works* which the *Contractor* 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 *Subcontractor* and the *Contractor* may each propose to the other that the Subcontract Works Information should be changed so that a Defect does not have to be corrected.
- 44.2 If the *Subcontractor* and the *Contractor* are prepared to consider the change, the *Subcontractor* submits a quotation for reduced Prices or an earlier Subcontract Completion Date or both to the *Contractor* for acceptance. If the *Contractor* accepts the quotation, he gives an instruction to change the Subcontract Works Information, the Prices and the Subcontract Completion Date accordingly.

#### **Uncorrected Defects 45**

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



## 5 Payment

### Assessing the amount due 50

50.1 The *Contractor* assesses the amount due at each assessment date. The first assessment date is decided by the *Contractor* to suit the procedures of the Parties and is not later than the *assessment interval* after the *subcontract starting date*. Later assessment dates occur

- at the end of each *assessment interval* until [●] weeks after the *Contractor* issues the Defects Certificate and
- at Completion of the whole of the *subcontract works*.

50.2 The amount due is

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Subcontractor*,
- less amounts to be paid by or retained from the *Subcontractor*.

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

50.3 If no programme is identified in the Subcontract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Subcontractor* has submitted a first programme to the *Contractor* for acceptance showing the information which this subcontract requires. If the *Subcontractor* does not submit a revised programme to the *Contractor* within the time required by clause 32.2 five percent of the Price for Work Done to Date is retained in assessments of the amount due until the *Subcontractor* has submitted such revised programme.

50.4 In assessing the amount due, the *Contractor* considers any application for payment the *Subcontractor* has submitted on or before the assessment date. The *Contractor* gives the *Subcontractor* details of how the amount due has been assessed.

50.5 The *Contractor* corrects any wrongly assessed amount due in a later payment certificate.

50.6A If the *Subcontractor* fails to deliver any collateral warranty, parent company guarantee or bond in accordance with this subcontract the *Contractor* may withhold any payment or further payment (as the case may be) which would otherwise be due to the *Subcontractor* under this subcontract until such time as such collateral warranty, guarantee or bond has been so delivered.

### Payment 51

51.1 The *Contractor* certifies a payment within [●] weeks 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 *Subcontractor* to the *Contractor* if the change reduces the amount due. Other payments are made by the *Contractor* to the *Subcontractor*. Payments are in the *currency of this subcontract* unless otherwise stated in this subcontract. The date on which a payment becomes due is the date of the *Contractor's* certificate.

51.2 The final date for payment of each certified payment is [●] days after the date on which payment becomes due. If a certified payment is late, or if a payment is late because the *Contractor* does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the 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.

The *Contractor* issues a notice of payment to the *Subcontractor* not

later than five days after the date on which a payment becomes due specifying the amount due (the notified sum), and the basis on which the amount was calculated. If no such notice is issued the notified sum is the amount referred to as due in the *Contractor's* certificate.

51.2A If either Party intends to pay less than the notified sum, he notifies the other Party not later than [●] days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated.

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

51.2B (1) If:

- any payment has not been paid in full by the final date for payment; and
- notification of intention to pay less has not been given in accordance with clause 51.2A

the *Subcontractor* may suspend his performance under this subcontract.

(2) The *Subcontractor* does not exercise his right to suspend his performance under this subcontract unless he has first given at least seven days' notice in writing to the *Contractor* of:

- his intention to suspend his performance under this subcontract and
- the grounds for suspending his performance under this subcontract.

(3) The right of the *Subcontractor* to suspend his performance ends when the amount that should be paid to the *Subcontractor* is paid to him in full.

51.2C If the *Subcontractor* exercises his right under the Act to suspend his performance, it is a compensation event.

51.3 If an amount due is corrected in a later certificate either

- by the *Contractor* in relation to a mistake or a compensation event or
- following a decision of an adjudicator appointed pursuant to clause W2A or the courts of England and Wales,

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

51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

## **Defined Cost 52**

52.1 All the *Subcontractor'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 Subcontract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

## 6 Compensation events

### Compensation events 60

60.1 The following are compensation events.

- (1) The *Contractor* gives an instruction changing the Subcontract Works Information except
  - a change made in order to accept a Defect or
  - a change to the Subcontract Works Information provided by the *Subcontractor* for his design which is made either at his request or to comply with other Subcontract Works Information provided by the *Contractor* or a change made in order to accept a value engineering proposal under clause Z15.
- (2) The *Contractor* does not allow access to and use of a part of the Site by the later of its *subcontract access date* and the date shown on the Accepted Programme.
- (3) The *Contractor* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.
- (4) The *Contractor* gives an instruction to stop or not to start any work or to accelerate the *subcontract works* to achieve Completion before the Subcontract Completion Date or to change a Key Date.
- (5) The *Employer*, the *Contractor* or Others
  - do not work within the times shown on the Accepted Programme,
  - do not work within the conditions stated in the Subcontract Works Information or
  - carry out work on the Site that is not stated in the Subcontract Works Information.
- (6) The *Contractor* does not reply to a communication from the *Subcontractor* within the period required by this subcontract.
- (7) The *Contractor* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.
- (8) The *Contractor* changes a decision which he has previously communicated to the *Subcontractor*.
- (9) The *Contractor* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect or acceptance of a proposal which does not comply with this subcontract) for a reason not stated in this subcontract.
- (10) The *Contractor* instructs the *Subcontractor* to search for a Defect and no Defect is found unless the search is needed

only because the *Subcontractor* gave insufficient notice of doing work obstructing a required test or inspection.

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

(12) The *Subcontractor* encounters physical conditions which

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

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

(12A) The *Subcontractor* encounters conditions which:

- are within the Site,
- are of a type referred to in the GBR and
- are more adverse than the conditions set out in the GBR

Only the difference between the conditions encountered and those set out in the GBR are taken into account in assessing a compensation event.

(13) A *weather measurement* is recorded

- within a calendar month,
- before the Subcontract Completion Date for the whole of the *subcontract works* and
- at the place stated in the Subcontract 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* or a *Contractor's* risk stated in this subcontract.

(15) The *Contractor* certifies take over of a part of the *subcontract works* before both Completion and the Subcontract Completion Date.

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

(17) The *Contractor* notifies a correction to an assumption

which he has stated about a compensation event.

(18) A breach of subcontract by the *Contractor* which is not one of the other compensation events in this subcontract.

(19) Not used.

60.2 In judging the physical conditions for the purpose of assessing a compensation event under 60.1(12), the *Subcontractor* is assumed to have taken into account

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

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

60.4 The *Subcontractor* takes all reasonable steps to mitigate the effects of any compensation event.

## **Notifying 61 compensation events**

61.1 For compensation events which arise from the *Contractor* giving an instruction or changing an earlier decision, the *Contractor* notifies the *Subcontractor* of the compensation event at the time of giving the instruction or changing the earlier decision. The *Contractor* also instructs the *Subcontractor* to submit quotations, unless the event arises from a fault of the *Subcontractor* or quotations have already been submitted. The *Subcontractor* puts the instruction or changed decision into effect.

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

61.3 Subject to clause 61.7, the *Subcontractor* notifies the *Contractor* of an event which has happened or which he expects to happen as a compensation event if

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

If the *Subcontractor* does not notify a compensation event within seven weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Subcontract Completion Date or a Key Date unless the *Contractor* should have notified the event to the *Subcontractor* but did not.

61.4 If and to the extent the *Contractor* decides that an event notified by the *Subcontractor*

- arises from or is contributed to by a fault of the *Subcontractor* or arises by reason of any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Subcontractor* or any of its employees or agents or of any subsubcontractor or supplier of any tier or any of their employees or agents,

- 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 subcontract

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

If the *Contractor* decides otherwise, he notifies the *Subcontractor* accordingly and instructs him to submit quotations or more information.

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

- two weeks of the *Subcontractor's* notification or
- a longer period to which the *Subcontractor* has agreed,

the *Subcontractor* notifies the *Contractor* to this effect. A failure by the *Contractor* to reply within three weeks of this notification is treated as acceptance by the *Contractor* that the event is a compensation event and an instruction to submit quotations.

- 61.5 If the *Contractor* decides that the *Subcontractor* did not give an early warning of the event which an experienced subcontractor could have given, he notifies this decision to the *Subcontractor* when he instructs him to submit quotations.
- 61.6 If the *Contractor* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the nature of the event in his instruction to the *Subcontractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Contractor* notifies a correction.
- 61.7 A compensation event is not notified after the *defects date*. No change in Prices is made in respect of any matter notified after the *defects date*.

## **Quotations for 62 compensation events**

- 62.1 After discussing with the *Subcontractor* different ways of dealing with the compensation event which are practicable, the *Contractor* may instruct the *Subcontractor* to submit alternative quotations. The *Subcontractor* submits the required quotations to the *Contractor* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Subcontract Completion Date and Key Dates assessed by the *Subcontractor*. The *Subcontractor* submits details of his assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Subcontractor* includes the alterations to the Accepted Programme in his quotation.
- 62.3 The *Subcontractor* submits quotations within one week of being instructed to do so by the *Contractor*. The *Contractor* replies within four 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 *Contractor* instructs the *Subcontractor* to submit a revised quotation only after explaining his reasons for doing so to the *Subcontractor*. The *Subcontractor* submits the revised quotation within one week of being instructed to do so.

62.5 The *Contractor* extends the time allowed for

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

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

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

### **Assessing 63 compensation 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 *Contractor* instructed or should have instructed the *Subcontractor* to submit quotations divides the work already done from the work not yet done.

63.2 If the effect of a compensation event (save for the type referred to in clause 60.1(12A)) is to reduce the total Defined Cost:

- the Prices are proportionately reduced (save in relation to any value engineering proposals accepted under clause Z15) and
- the *Subcontractor* shall not be entitled to any payment in respect of loss of profit or loss of opportunity in respect of the same save in relation to any omission pursuant to clause Z16.1 that does not fall into the categories of the omissions referred to in clause Z16.2.

63.3 A delay to the Subcontract 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.

63.4 The rights of the *Contractor* and the *Subcontractor* to changes to the Prices, the Subcontract Completion Date and the Key Dates are their only rights in respect of a compensation event.

63.5 If the *Contractor* has notified the *Subcontractor* of his decision that the *Subcontractor* did not give an early warning of a compensation event which an experienced subcontractor could have given, the

event is assessed as if the *Subcontractor* had given early warning thereby enabling the *Contractor* to have taken action to minimise or avoid the effects of such compensation event.

- 63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Subcontractor's* risk under this subcontract.
- 63.7 Assessments are based upon the assumptions that the *Subcontractor* 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 Subcontract Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Subcontract Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Subcontract Works Information.
- 63.9 If a change to the Subcontract Works Information makes the description of the Condition for a Key Date incorrect, the *Contractor* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Subcontract Works Information.

#### **The Contractor's 64 assessments**

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



*Contractor.*

**Implementing 65  
compensation events**

65.1 A compensation event is implemented when

- the *Contractor* notifies his acceptance of the *Subcontractor's* quotation,
- the *Contractor* notifies the *Subcontractor* of his own assessment or
- a *Subcontractor's* quotation is treated as having been accepted by the *Contractor*.

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.

## 7 Title

### **The Contractor's title to Plant and Materials and Equipment** 70

- 70.1 Whatever title the *Subcontractor* has to Plant and Materials passes to the *Contractor* if it has been brought within the Working Areas. Notwithstanding the foregoing, title passes to the *Contractor* on payment being made by the *Contractor* to the *Subcontractor* for Plant and Materials outside the Working Areas. Title to Equipment purchased for work included in this contract passes to the *Contractor* on payment being made by the *Contractor* to the *Subcontractor* for such Equipment.
- 70.2 Title to Plant and Materials or Equipment passes back to the *Subcontractor* if it is removed from the Working Areas with the *Contractor's* permission.
- 70.3 No payment is made to the *Subcontractor* on account of Plant and Materials which are outside the Working Areas unless the *Contractor* has given his permission and the *Subcontractor* has provided an on demand form of bond in the full amount of such payment in the form set out in Annexure 4, Part B to this subcontract provided by a bank or insurer which the *Contractor* has accepted. If the rating of the provider of the bond as published by Standard & Poors falls below "A" and if the *Contractor* so requests, the *Subcontractor* provides to the *Contractor* within 7 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Contractor* has accepted provided always that failure by the *Subcontractor* to provide a replacement bond will not of itself constitute default under the subcontract sufficient to enable the *Contractor* to make a demand under the original bond or terminate the subcontract. The cost of the provision of any such replacement bond constitutes Defined Cost.
- A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the *Contractor* agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.
- 70.4 In addition immediately on payment and without any further act being necessary title shall pass to the *Contractor* and the *Subcontractor* shall ensure that the Plant and Materials are clearly tagged, identified as the *Contractor's* and set aside for the *Contractor*. Risk in such Plant and Materials does not pass on payment.

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

- 71.1 The *Contractor* marks Equipment and Plant and Materials which are outside the Working Areas if
- this subcontract identifies them for payment and
  - the *Subcontractor* has prepared them for marking as the Subcontract Works Information requires.

### **Removing Equipment** 72

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

### **Objects and material within the Site** 73

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

## 8 Risks and insurance

### **Employer's and Contractor's risks 80**

80.1 The following are *Employer's* and *Contractor's* risks.

- Claims, proceedings, compensation and costs payable which are, subject to the *Subcontractor's* obligations under clause 27.4B and 27.4C, due to
  - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
  - negligence, breach of statutory duty or interference with any legal right by the *Employer* or the *Contractor* or by any person employed by or contracted to them except the *Subcontractor* or
  - a fault of the *Employer* or the *Contractor* or a fault in their designs.
- Loss of or damage to Plant and Materials supplied to the *Subcontractor* by the *Employer* or *Contractor*, or by Others on the *Employer's* or *Contractor's* behalf, until the *Subcontractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
  - war, civil war, rebellion, revolution, insurrection, terrorism, military or usurped power,
  - strikes, riots and civil commotion not confined to the *Subcontractor's* employees or
  - radioactive contamination.
- Loss of or wear or damage to the parts of the *subcontract works* taken over by the *Contractor*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
  - a Defect,
  - an event occurring before take over which was not itself an *Employer's* or *Contractor's* risk or
  - the activities of the *Subcontractor* on the Site after take over.
- Loss of or wear or damage to the *subcontract works* and any Equipment, Plant and Materials retained on the Site by the *Employer* or *Contractor* after a termination, except loss, wear or damage due to the activities of the *Subcontractor* on the Site after the termination.
- Additional *Employer's* or *Contractor's* risks stated in the Subcontract Data.

80.2 Except as provided above, the *Contractor* carries no risk in relation to Equipment notwithstanding the passing of title to the *Contractor* in accordance with this subcontract.

### **The Subcontractor's risks 81**

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

## Repairs 82

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

## Indemnity 83

- 83.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk. The *Contractor* indemnifies the *Subcontractor* against all claims and liabilities against which the *Employer* indemnifies the *Contractor* under the Main Contract.
- 83.2 The liability of the *Subcontractor* to indemnify the *Contractor* is reduced if events at the *Employer's* or *Contractor's* risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the *Employer's* or *Contractor's* risk contributed, taking into account each Party's responsibilities under this subcontract.
- 83.3 The liability of the *Contractor* to indemnify the *Subcontractor* is reduced if events at the *Subcontractor's* risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the *Subcontractor's* risk contributed, taking into account each Party's responsibilities under this subcontract.

## Insurance cover 84

- 84.1 The *Subcontractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* or the *Contractor* is to provide as stated in the Subcontract Data. The *Subcontractor* provides additional insurances as stated in the Subcontract Data.
- 84.2A The first and third insurances in the Insurance Table are in the joint names of the Parties, the *Employer* and all subsubcontractors and suppliers of any tier. The second insurance in the Insurance Table is in the joint names of the Parties and the *Employer*.
- 84.2B The insurances provided by the *Subcontractor* provide cover for events which are at the *Subcontractor's* risk from the *starting date* until the Defects Certificate or a termination certificate has been issued.
- 84.2C The insurance requirements under this subcontract do not relieve the *Subcontractor* from any of his other obligations and liabilities under this subcontract.
- 84.2D The insurances provided by the *Subcontractor* are placed with a reputable insurer or insurers which the *Contractor* has accepted. A reason for not accepting an insurer is that it does not have a rating of "A" (Standard & Poors) or equivalent or is not authorised to underwrite such risks in the European Union.

### INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>subcontract works</i> , Plant and Materials	The replacement cost subject to the amount stated in the Subcontract Data
Loss of or damage to Equipment	The replacement cost subject to any amount stated in the Subcontract Data

Liability for loss of or damage to property (except the <i>subcontract works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Subcontractor</i> ) caused by activity in connection with this subcontract	The amount stated in the Subcontract Data for any one occurrence with cross liability so that the insurance applies to the Parties separately
Liability for death of or bodily injury to employees of the <i>Subcontractor</i> arising out of and in the course of their employment in connection with this subcontract	The greater of the amount required by the Applicable Law and the amount stated in the Subcontract Data for any one event
Liability for failure of the <i>Subcontractor</i> to use the skill and care normally used by professionals providing services similar to the services provided by the <i>Subcontractor</i> in connection with the <i>subcontract works</i>	The amount stated in the Subcontract Data in respect of each claim without limit to the number of claims

**Insurance policies 85**

- 85.1 Before the *subcontract starting date* and on each renewal of the insurance policy until the *defects date*, the *Subcontractor* submits to the *Contractor* for acceptance certificates and policies which state that the insurance required by this subcontract is in force and the terms on which it is held. The certificates and policies are signed by the *Subcontractor's* insurer or insurance broker. A reason for not accepting the certificates and policies is that they do not comply with this subcontract.
- 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.
- 85.3 The Parties comply and the *Subcontractor* shall procure that all subsubcontractors and suppliers of any tier shall comply with the terms and conditions of the insurance policies.
- 85.4 Any amount not recovered from an insurer (including any deductible under an insurance policy provided by the *Contractor*) and any loss adjuster fees relating to claims within any deductible is borne by the *Employer* or *Contractor* for events which are at their risk and by the *Subcontractor* for events which are at his risk.

**If the *Subcontractor* does not insure 86**

- 86.1 The *Contractor* may insure a risk which this subcontract requires the *Subcontractor* to insure if the *Subcontractor* does not submit a required certificate. The cost of this insurance to the *Contractor* is paid by the *Subcontractor*.

**Insurance by the *Employer* or the *Contractor* 87**

- 87.1 The *Contractor* submits policies for insurances provided by the *Employer* or the *Contractor* to the *Subcontractor* for acceptance before the *subcontract starting date* and afterwards as the *Subcontractor* instructs. The *Subcontractor* accepts the policies if they comply with this subcontract.
- 87.2 The *Subcontractor's* acceptance of an insurance policy provided by the *Employer* or *Contractor* does not change the responsibility of the *Employer* or *Contractor* to provide the insurances stated in the Subcontract Data.
- 87.3 The *Subcontractor* may insure a risk which this subcontract requires the *Employer* or *Contractor* to insure if the *Contractor* does not submit a required policy. The cost of this insurance to the *Subcontractor* is paid by the *Contractor*.

## 9 Termination

### Termination 90

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

**TERMINATION TABLE**

<b>Terminating Party</b>	<b>Reason</b>	<b>Procedure</b>	<b>Amount due</b>
The <i>Contractor</i>	A reason other than R1-R22	P1, P2, P3 and P5	A1, A2 and A4
	R1-R15 or R18 or R22	P1, P2, P3 and P5	A1 and A3
	R17 or R20	P1, P2, P3 and P5	A1 and A2
	R21	P1, P2, P3 and P5	A1 and A2
The <i>Subcontractor</i>	R1-R10	P1, P4 and P5	A1 and A2
	R16 or R19	P1, P4 and P5	A1, A2 and A4
	R17 or R20	P1, P4 and P5	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Contractor* has issued a termination certificate.
- 90.4 Within fourteen weeks of termination, the *Contractor* certifies a final payment to or from the *Subcontractor* which is the *Contractor's* assessment of the amount due on termination less the total of previous payments. Payment is made within four weeks of the *Contractor's* certificate.
- 90.5 After a termination certificate has been issued, the *Subcontractor* does no further work necessary to Provide the Subcontract Works.

### Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- 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, administrator 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).

Any such reason shall be known as an "Act of Insolvency" for the purposes of clause Z25.5.

- 91.2 The *Contractor* notifies and the *Contractor* may terminate (whether or not such notification is provided) if the *Subcontractor* has defaulted in one of the following ways and not put the default right within three weeks of notification of such default by the *Contractor*.
- Failed to comply with his obligations (R11).
  - Not provided a bond or guarantee which this subcontract requires (R12).
  - Appointed a Subsubcontractor for substantial work before the *Contractor* has accepted the Subsubcontractor (R13).
- 91.3 The *Contractor* may terminate immediately if the *Subcontractor* has defaulted in one of the following ways.
- The *Subcontractor* commits a Prohibited Act (R22).
  - Broken a health or safety regulation or a health or safety requirement of this subcontract (R15).
- 91.3A The *Contractor* may terminate immediately if the *Subcontractor* has substantially hindered the *Contractor*, the *Employer* or Others (R14) and not stopped such hindrance within four weeks of a notification by the *Contractor* to the *Subcontractor* of such hindrance.
- 91.4 Save where the *Contractor* has complied with clause 51.2A, the *Subcontractor* may terminate if the *Contractor* has not paid an amount certified by him within thirteen weeks of the date of the certificate (R16) provided always that the *Subcontractor* has given written notification to the *Contractor* of such intention to terminate at least four (4) weeks prior to any such termination and the *Contractor* has not paid the amount due within that period.
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this subcontract (R17).
- 91.6 If the *Contractor* has instructed the *Subcontractor* 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 fourteen weeks,

- the *Contractor* may terminate if the instruction was due to a default by the *Subcontractor* (R18),
- providing the *Subcontractor* has given written notification to the *Contractor* of an intention to terminate at least four (4) weeks prior to expiry of the above 14 weeks and no instruction allowing the work to restart or start has been given within that period, the *Subcontractor* may terminate if the instruction was due to a default by the *Contractor* (R19) and
- providing written notification of an intention to terminate is given to the other Party at least four (4) weeks prior to expiry of the above 14 weeks and no instruction allowing the work to restart or start has been given within that period, either Party may terminate if the instruction was due to any other reason (R20).

91.7 The *Contractor* may terminate if an event occurs which

- stops the *Subcontractor* completing the *subcontract works* or
- stops the *Subcontractor* completing the *subcontract 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 subcontractor would have judged at the Subcontract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

## **Procedures on 92 termination**

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

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Contractor* may instruct the *Subcontractor* to leave the Site and the Working Areas, remove any Equipment, Plant and Materials from the Site and the Working Areas and assign the benefit of any subsubcontract or other contract related to performance of this subcontract to the *Contractor*.

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

P4 The *Subcontractor* leaves the Working Areas and removes the Equipment to which the *Subcontractor* has title.

P5 The *Subcontractor* gives to the *Contractor* or the *Contractor's* nominee all information in its possession relating to the *subcontract works* or this subcontract that the *Contractor* may request.

## **Payment on 93 termination**

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,

- the Defined Cost for Plant and Materials
  - within the Working Areas or
  - to which the *Contractor* has title and of which the *Subcontractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *subcontract works*,
- any amounts retained by the *Contractor* and
- a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table. For the avoidance of doubt the *Subcontractor* is not entitled to claim any loss of profit (save to the extent such loss might be included in any amount recoverable under A4) or other costs or losses arising from any termination.

A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the *Contractor* of completing the whole of the *subcontract works* together with the amount of any loss or expense or additional cost incurred or suffered by the *Contractor* and arising out of the termination in relation to the event entitling the *Contractor* to terminate.

A4 A sum equivalent to 25% of the sum calculated by applying the *direct fee percentage*

- for Options A, B, C and D, to any excess of the total of the Prices at the Subcontract Date over the Price for Work Done to Date or
- for Option E, to any excess of the first forecast of the Defined Cost for the *subcontract works* over the Price for Work Done to Date less the Fee.

## MAIN OPTION CLAUSES

### Option A: Priced subcontract with activity schedule

#### Identified and defined terms 11

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

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

Defined Cost does not include

- the cost of taking out any insurances
- the cost of any bonds unless agreed in advance by the *Contractor* and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

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

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

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

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

#### The programme 31

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

#### Acceleration 36

36.3 Not used.

#### The Activity Schedule 54

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

54.2 If the *Subcontractor* 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 *Contractor* 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.

### **Assessing 63 compensation events**

63.10 Not used.

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

63.14 If the *Contractor* and the *Subcontractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.

### **Implementing 65 compensation events**

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

### **Payment on 93 termination**

93.3 The amount due on termination is assessed without taking grouping of activities into account.

## Option B: Priced subcontract with bill of quantities

### Identified and defined terms 11

11.2 (21) The Bill of Quantities is the *bill of quantities* as changed in accordance with this subcontract to accommodate implemented compensation events and for accepted quotations for acceleration.

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

Defined Cost does not include

- the cost of taking out any insurances
- the cost of any bonds unless agreed in advance by the *Contractor* and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

(28) The Price for Work Done to Date is the total of

- the quantity of the work which the *Subcontractor* has completed for each item in the Bill of Quantities multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the *Subcontractor* has completed.

Completed work is work without Defects which would either delay or be covered by immediately following work.

(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

### Acceleration 36

36.3 Not used.

### The Bill of Quantities 55

55.1 Information in the Bill of Quantities is not Subcontract Works Information or Site Information.

### Compensation events 60

60.4 A difference between the final total quantity of work done and the quantity stated for an item in the Bill of Quantities is a compensation event if

- the difference does not result from a change to the Subcontract Works Information,
- the difference causes the Defined Cost per unit of quantity to change and
- the rate in the Bill of Quantities for the item multiplied by the final total quantity of work done is more than 0.5% of the total of the Prices at the Subcontract Date.

If the Defined Cost per unit of quantity is reduced, the affected rate is reduced.

- 60.5 A difference between the final total quantity of work done and the quantity for an item stated in the Bill of Quantities which delays Completion or the meeting of the Condition stated for a Key Date is a compensation event.
- 60.6 The *Contractor* corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the *method of measurement* or are due to ambiguities or inconsistencies. Each such correction is a compensation event which may lead to reduced Prices.
- 60.7 In assessing a compensation event which results from a correction of an inconsistency between the Bill of Quantities and another document, the *Subcontractor* is assumed to have taken the Bill of Quantities as correct.

### **Assessing 63 compensation events**

63.10 Not used.

63.13 Assessments for changed Prices for compensation events are in the form of changes to the Bill of Quantities.

- For the whole or a part of a compensation event for work not yet done and for which there is an item in the Bill of Quantities, the changes are
  - a changed rate,
  - a changed quantity or
  - a changed lump sum.
- For the whole or a part of a compensation event for work not yet done and for which there is no item in the Bill of Quantities, the change is a new priced item which, unless the *Contractor* and the *Subcontractor* agree otherwise, is compiled in accordance with the *method of measurement*.
- For the whole or a part of a compensation event for work already done, the change is a new lump sum item.

If the *Contractor* and the *Subcontractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.

**Implementing 65  
compensation events**

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



## Option C: Target subcontract with activity schedule

### Identified and defined terms 11

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

(23) Defined Cost is

- the amount of payments due to Subsubcontractors for work which is subsubcontracted without taking account of amounts deducted for
  - retention,
  - payment to the *Contractor* as a result of a Subsubcontractor failing to meet a Key Date,
  - correction of Defects after Completion and
  - payments to Others

and

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

less Disallowed Cost.

Defined Cost does not include

- the cost of taking out any insurances
- the cost of any bonds unless agreed in advance by the *Contractor* and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

(25) Disallowed Cost is cost which the *Contractor* decides

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

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Subcontractor* not complying with a constraint on how he is to Provide the Subcontract Works stated in the Subcontract Works Information,

- correcting Defects before Completion caused by the *Subcontractor* not complying with the accepted quality plan referred to in the Subcontract Works Information or this subcontract,
  - correcting Defects notified to the *Subcontractor* by the *Contractor* which the *Subcontractor* failed previously to notify to the *Contractor* having had the opportunity to notify such Defect,
  - Plant and Materials not used to Provide the Subcontract Works (after allowing for reasonable wastage) unless resulting from a change to the Subcontract Works Information,
  - resources not used to Provide the Subcontract Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Contractor* requested and
  - preparation for and conduct of an adjudication or proceedings in the courts of England and Wales.
- (29) The Price for Work Done to Date is the total Defined Cost which the *Contractor* forecasts will have been paid by the *Subcontractor* before the next assessment date plus the Fee.
- (30) The Prices are the lump sum prices for each of the activities in the Activity Schedule unless later changed in accordance with this subcontract.

## **Providing the Subcontract Works 20**

- 20.3 The *Subcontractor* advises the *Contractor* on the practical implications of the design of the *subcontract works* and on subsubcontracting arrangements.
- 20.4 The *Subcontractor* prepares forecasts of the total Defined Cost for the whole of the *subcontract works* in consultation with the *Contractor* and submits them to the *Contractor*. Forecasts are prepared at the intervals stated in the Subcontract Data from the *subcontract starting date* until Completion of the whole of the *subcontract works*. An explanation of the changes made since the previous forecast is submitted with each forecast.

## **Subsubcontracting 26**

- 26.4 The *Subcontractor* submits the proposed contract data for each subsubcontract for acceptance to the *Contractor* if
- an NEC contract is proposed and
  - the *Contractor* instructs the *Subcontractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Subcontractor* to Provide the Subcontract Works or the subsubcontract has not been procured at open market or competitively tendered process with provision for deductions for discounts, rebates and taxes which can be recovered.

## **The programme 31**

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

**Acceleration 36**

36.3 Not used.

**Tests and inspections 40**

40.7 When the *Contractor* assesses the cost incurred by him in repeating a test or inspection after a Defect is found, he does not include the *Subcontractor's* cost of carrying out the repeat test or inspection.

**Assessing the amount due 50**

50.6 For the purpose of assessing the amount due payments of Defined Cost made by the *Subcontractor* in a currency other than the *currency of this subcontract* are converted to the *currency of this subcontract* using the *exchange rates*.

**Defined Cost 52**

52.2 The *Subcontractor* keeps these records

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

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

**The Subcontractor's share 53**

53.1 The *Contractor* assesses the *Subcontractor'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 *Subcontractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Subcontractor's share percentage*.

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

53.3 The *Contractor* makes a preliminary assessment of the *Subcontractor's* share at Completion of the whole of the *subcontract 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 *subcontract works*.

53.4 The *Contractor* makes a final assessment of the *Subcontractor'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.

53.4A Without limiting clauses 53.3 to 53.4 if the *Contractor* assesses prior to Completion that the Price for Work Done to Date at Completion is likely to exceed the Prices the *Contractor* may deduct from sums otherwise due to the *Subcontractor* a sum equivalent to the *Contractor's* assessment of the likely *Subcontractor's* share of the excess which sum is a proportionate amount having regard to:

- the Price for Work Done to Date at the relevant time,
- the unexpired duration of the subcontract, and
- any proposals submitted by the *Subcontractor* for future cost saving.

Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4.

53.4B No Fee is payable on the amount by which the Defined Cost exceeds the total of the Prices excluding the Fee element of the Prices.

#### **The Activity Schedule 54**

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

54.2 If the *Subcontractor* 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 *Contractor* 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.

#### **Assessing compensation events 63**

63.11 Not used.

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

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

#### **Implementing compensation events 65**

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

#### **Payment on termination 93**

93.4 If there is a termination, the *Contractor* assesses the *Subcontractor's* 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 *Subcontractor* has paid and which he is committed to pay for work done before termination. The assessment uses as the total of the Prices

- the lump sum price for each activity which has been completed and
- 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.

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



## Option D: Target subcontract with bill of quantities

### Identified and defined terms 11

- 11.2 (21) The Bill of Quantities is the *bill of quantities* as changed in accordance with this subcontract to accommodate implemented compensation events and for accepted quotations for acceleration.
- (23) Defined Cost is
- the amount of payments due to Subsubcontractors for work which is subsubcontracted without taking account of amounts deducted for
    - retention,
    - payment to the *Contractor* as a result of a Subsubcontractor 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 subcontract

and

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

less Disallowed Cost.

Defined Cost does not include

- the cost of taking out any insurances
- the cost of any bonds unless agreed in advance by the *Contractor* and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

- (25) Disallowed Cost is cost which the *Contractor* decides

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

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Subcontractor* not complying with a constraint on how he is to Provide the Subcontract Works stated in the Subcontract Works Information,
- Plant and Materials not used to Provide the Subcontract Works (after allowing for reasonable wastage) unless resulting from a change to the

Subcontract Works Information,

- resources not used to Provide the Subcontract Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Contractor* requested and
  - preparation for and conduct of an adjudication or proceedings in the courts of England and Wales.
- (29) The Price for Work Done to Date is the total Defined Cost which the *Contractor* forecasts will have been paid by the *Subcontractor* before the next assessment date plus the Fee.
- (31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.
- (33) The Total of the Prices is the total of
- the quantity of the work which the *Subcontractor* has completed for each item in the Bill of Quantities multiplied by the rate and
  - a proportion of each lump sum which is the proportion of the work covered by the item which the *Subcontractor* has completed.

Completed work is work without Defects which would either delay or be covered by immediately following work.

**Providing the Subcontract Works 20**

20.3 The *Subcontractor* advises the *Contractor* on the practical implications of the design of the *subcontract works* and on subsubcontracting arrangements.

20.4 The *Subcontractor* prepares forecasts of the total Defined Cost for the whole of the *subcontract works* in consultation with the *Contractor* and submits them to the *Contractor*. Forecasts are prepared at the intervals stated in the Subcontract Data from the *subcontract starting date* until Completion of the whole of the *subcontract works*. An explanation of the changes made since the previous forecast is submitted with each forecast.

**Subsubcontracting 26**

26.4 The *Subcontractor* submits the proposed contract data for each subsubcontract for acceptance to the *Contractor* if

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

A reason for not accepting the proposed contract data is that its use will not allow the *Subcontractor* to Provide the Subcontract Works or the subsubcontract has not been procured at open market or competitively tendered process with provision for deductions for discounts, rebates and taxes which can be recovered.

**Acceleration 36**

36.3 When the *Contractor* accepts a quotation for an acceleration, he changes the Prices, the Subcontract Completion Date and the Key Dates accordingly and accepts the revised programme.

**Tests and inspections 40**

40.7 When the *Contractor* assesses the cost incurred by him in repeating a test or inspection after a Defect is found, he does not include the *Subcontractor's* cost of carrying out the repeat test or inspection.

**Assessing the amount due 50**

50.6 Payments of Defined Cost made by the *Subcontractor* in a currency other than the *currency of this subcontract* 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 subcontract* in

order to calculate the Fee and any *Subcontractor's* share using the *exchange rates*.

## **Defined Cost 52**

- 52.2 The *Subcontractor* keeps these records
- accounts of payments of Defined Cost,
  - proof that the payments have been made,
  - communications about and assessments of compensation events for Subsubcontractors and
  - other records as stated in the Subcontract Works Information.
- 52.3 The *Subcontractor* allows the *Contractor* to inspect at any time within working hours the accounts and records which he is required to keep.

## **The Subcontractor's share 53**

- 53.5 The *Contractor* assesses the *Subcontractor'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 *Subcontractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Subcontractor's share percentage*.
- 53.6 If the Price for Work Done to Date is less than the Total of the Prices, the *Subcontractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the Total of the Prices, the *Subcontractor* pays his share of the excess.
- 53.7 The *Contractor* makes a preliminary assessment of the *Subcontractor's* share at Completion of the whole of the *subcontract 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 *subcontract works*.
- 53.8 The *Contractor* makes a final assessment of the *Subcontractor'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.
- 53.9 Without limiting clauses 53.7 to 53.8 if the *Contractor* assesses prior to Completion that the Price for Work Done to Date at Completion is likely to exceed the final Total of the Prices the *Contractor* may deduct from sums otherwise due to the *Subcontractor* a sum equivalent to the *Contractor's* assessment of the likely *Subcontractor's* share of the excess which sum is a proportionate amount having regard to:
- the Price for Work Done to Date at the relevant time,
  - the unexpired duration of the subcontract, and
  - any proposals submitted by the *Subcontractor* for future cost saving.

Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.7 and 53.8.

## **The Bill of Quantities 55**

- 55.1 Information in the Bill of Quantities is not Subcontract Works Information or Site Information.

## **Compensation events 60**

- 60.4 A difference between the final total quantity of work done and the quantity stated for an item in the Bill of Quantities is a compensation event if
- the difference does not result from a change to the Subcontract Works Information,



- the difference causes the Defined Cost per unit of quantity to change and
- the rate in the Bill of Quantities for the item multiplied by the final total quantity of work done is more than 0.5% of the total of the Prices at the Subcontract Date.

If the Defined Cost per unit of quantity is reduced, the affected rate is reduced.

- 60.5 A difference between the final total quantity of work done and the quantity for an item stated in the Bill of Quantities which delays Completion or the meeting of the Condition stated for a Key Date is a compensation event.
- 60.6 The *Contractor* corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the *method of measurement* or are due to ambiguities or inconsistencies. Each such correction is a compensation event which may lead to reduced Prices.
- 60.7 In assessing a compensation event which results from a correction of an inconsistency between the Bill of Quantities and another document, the *Subcontractor* is assumed to have taken the Bill of Quantities as correct.

### **Assessing 63 compensation events**

- 63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Subcontract Works Information, other than a change to the Subcontract Works Information provided by the *Contractor* which the *Subcontractor* proposed and the *Contractor* has accepted or
  - a correction of an assumption stated by the *Contractor* for assessing an earlier compensation event,
- the Prices are reduced.

- 63.13 Assessments for changed Prices for compensation events are in the form of changes to the Bill of Quantities.
- For the whole or a part of a compensation event for work not yet done and for which there is an item in the Bill of Quantities, the changes are
    - a changed rate,
    - a changed quantity or
    - a changed lump sum.
  - For the whole or a part of a compensation event for work not yet done and for which there is no item in the Bill of Quantities, the change is a new priced item which, unless the *Contractor* and the *Subcontractor* agree otherwise, is compiled in accordance with the *method of measurement*.
  - For the whole or a part of a compensation event for work already done, the change is a new lump sum item.

If the *Contractor* and the *Subcontractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.

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

### **Implementing 65 compensation events**

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

**Payment on 93  
termination**

- 93.5 If there is a termination, the *Contractor* assesses the *Subcontractor's* 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 *Subcontractor* has paid and which he is committed to pay for work done before termination.
- 93.6 The *Contractor's* assessment of the *Subcontractor's* share is added to the amount due to the *Subcontractor* on termination if there has been a saving or deducted if there has been an excess.

## Option E: Cost reimbursable subcontract

### Identified and defined terms 11

#### 11.2 (23) Defined Cost is

- the amount of payments due to Subsubcontractors for work which is subsubcontracted without taking account of amounts deducted for
  - retention,
  - payment to the *Contractor* as a result of a Subsubcontractor 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 subcontract

and

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

less Disallowed Cost.

Defined Cost does not include

- the cost of taking out any insurances
- the cost of any bonds unless agreed in advance by the *Contractor* and
- the additional cost of employing both a key person and a replacement pursuant to clause 24.1A for a handover period.

#### (25) Disallowed Cost is cost which the *Contractor* decides

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

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Subcontractor* not complying with a constraint on how he is to Provide the Subcontract Works stated in the Subcontract Works Information,
- Plant and Materials not used to Provide the Subcontract Works (after allowing for reasonable wastage) unless resulting from a change to the Subcontract Works Information,
- resources not used to Provide the Subcontract Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas

when the *Contractor* requested and

- preparation for and conduct of an adjudication or proceedings in the courts of England and Wales.

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

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

## **Providing the Subcontract Works 20**

20.3 The *Subcontractor* advises the *Contractor* on the practical implications of the design of the *subcontract works* and on subsubcontracting arrangements.

20.4 The *Subcontractor* prepares forecasts of the total Defined Cost for the whole of the *subcontract works* in consultation with the *Contractor* and submits them to the *Contractor*. Forecasts are prepared at the intervals stated in the Subcontract Data from the *subcontract starting date* until Completion of the whole of the *subcontract works*. An explanation of the changes made since the previous forecast is submitted with each forecast.

## **Subsubcontracting 26**

26.4 The *Subcontractor* submits the proposed contract data for each subsubcontract for acceptance to the *Contractor* if

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

A reason for not accepting the proposed contract data is that its use will not allow the *Subcontractor* to Provide the Subcontract Works or the subsubcontract has not been procured at open market or competitively tendered process with provision for deductions for discounts, rebates and taxes which can be recovered.

## **Acceleration 36**

36.4 When the *Contractor* accepts a quotation for an acceleration, he changes the Subcontract Completion Date, the Key Dates and the forecast of the total Defined Cost of the whole of the *subcontract works* accordingly and accepts the revised programme.

## **Tests and inspections 40**

40.7 When the *Contractor* assesses the cost incurred by him in repeating a test or inspection after a Defect is found, he does not include the *Subcontractor's* cost of carrying out the repeat test or inspection.

## **Assessing the amount due 50**

50.7 Payments of Defined Cost made by the *Subcontractor* in a currency other than the *currency of this subcontract* 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 subcontract* in order to calculate the Fee using the *exchange rates*.

## **Defined Cost 52**

52.2 The *Subcontractor* keeps these records

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

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

## **Assessing 63**

**compensation events**

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

**Implementing  
compensation events 65**

65.3 The changes to the forecast amount of the Prices, the Subcontract Completion Date and the Key Dates are included in the notification implementing a compensation event.

# DISPUTE RESOLUTION

## Option W2A

- Dispute resolution** W2A.1 Any dispute or difference between the Parties as to the construction of this subcontract or any matter or thing of whatsoever nature arising under this subcontract or in connection therewith (a "Dispute") shall be resolved pursuant to the terms of this clause W2A.
- Managerial Discussions** W2A.2 Without prejudice to the Parties' rights at any time to refer Disputes to adjudication in accordance with this clause W2A the parties shall each use their reasonable endeavours to resolve any Dispute which may arise by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question.
- Adjudication Procedure** W2A.3 Either party may give notice at any time of its intention to refer to adjudication a Dispute arising out of or in connection with this subcontract and such adjudication shall be conducted in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011. The adjudicator shall be agreed between the Parties from the *panel of adjudicators* whose identities are referred to in the Subcontract Data (or such replacements or additional members as are notified to the *Subcontractor*) or failing which the adjudicator shall be nominated by the President or Vice President of the Institution of Civil Engineers from such panel provided that prior to such nomination either Party shall have the right to identify not more than one member of the panel who is not to be nominated to conduct that adjudication. If the Subcontract Data does not specify the identities of the *panel of adjudicators* the adjudicator shall be either agreed by the Parties or nominated by the President or Vice President of the Institution of Civil Engineers.
- Joinder** W2A.4(a) If a Dispute arising under this subcontract raises issues of fact or law which are the same as, or relate to issues raised in an unresolved dispute between the *Contractor* and any Other (a "Related Dispute"):
- (i) the *Contractor* may require a representative of the parties in the Related Dispute to meet with the parties under this subcontract and endeavour to resolve both the Related Dispute and the Dispute; and
  - (ii) the *Contractor* may refer the Related Dispute to an adjudicator or court to which the Dispute has been referred under this subcontract or may refer the Dispute to an adjudicator or court to which the Related Dispute had been referred and the proceedings shall be consolidated, save where the adjudicator or court shall in its absolute discretion determine that it is not possible to consolidate the proceedings; and
  - (iii) any dispute as to whether the Dispute raises issues of fact or law or fact and law which are the same as or related to issues of fact or law in the Related Dispute shall be resolved by the adjudicator or court to which the Dispute and the Related Dispute have been referred, provided that, if the adjudicator or court decides that such issues of fact or law do not arise in the Related Dispute this clause W2A.4 shall cease to apply; and
  - (iv) the adjudicator or court to whom the Dispute and the Related Dispute have been referred shall have power to make such decisions, directions and all

necessary orders and awards in respect of the Dispute and the Related Dispute in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him.

- (b) The *Contractor* may only refer a Related Dispute to the adjudicator appointed in relation to a Dispute if the adjudicator receives particulars of the Related Dispute within seven days of the referral of the Dispute to the adjudicator under this subcontract and may only refer a Dispute to the adjudicator appointed in relation to a Related Dispute if the adjudicator receives particulars of the Dispute within seven days of the referral of the Related Dispute to the adjudicator.

**Final and Binding  
Decision**

W2A.5The Parties may agree that the adjudicator's decision shall be final and binding and shall finally determine any Dispute, or in the absence of such agreement may otherwise refer such Dispute to the courts of England and Wales for further determination

## SECONDARY OPTION CLAUSES

### Option X1: Price adjustment for inflation (used only with Options A, B, C and D)

<b>Defined terms</b>	<b>X1</b>	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> . (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due. (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Subcontract Data multiplied by $(L - B)/B$ for the index linked to it.
<b>Price Adjustment Factor</b>	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.  The Price Adjustment Factor calculated at the Subcontract Completion Date for the whole of the <i>subcontract works</i> is used for calculating price adjustment after this date.
<b>Compensation events</b>	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 Subcontract Data for employees and Equipment.</li></ul>
<b>Price adjustment</b>	X1.4	Each amount due includes an amount for price adjustment which is the sum of
<b>Options A and B</b>		<ul style="list-style-type: none"><li>• the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by the Price Adjustment Factor for the date of the current assessment,</li><li>• the amount for price adjustment included in the previous amount due and</li><li>• correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.</li></ul>
<b>Price adjustment</b>	X1.5	Each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the sum of
<b>Options C and D</b>		<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

### Changes in the law X2

- X2.1 A change in the Applicable Law is a compensation event if it occurs after two years from the Contract Date. The *Contractor* may notify the *Subcontractor* of a compensation event for 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 X3: Multiple currencies (used only with Options A and B)

### Multiple currencies X3

- X3.1 The *Subcontractor* is paid in currencies other than the *currency of this subcontract* for the items or activities listed in the Subcontract Data. The *exchange rates* are used to convert from the *currency of this subcontract* to other currencies.
- X3.2 Payments to the *Subcontractor* in currencies other than the *currency of this subcontract* do not exceed the maximum amounts stated in the Subcontract Data. Any excess is paid in the *currency of this subcontract*.

## Option X4: Parent company guarantee

### Parent company guarantee X4

- X4.1 If a parent company owns the *Subcontractor*, the *Subcontractor* gives to the *Contractor* a guarantee by the ultimate parent company of the *Subcontractor's* performance in the form set out in Annexure 6 to this subcontract. The guarantee is given at the Subcontract Date unless the *Contractor* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.2 If the *Subcontractor* is an incorporated joint venture, the ultimate parent company of each shareholder in the *Subcontractor* gives to the *Contractor* a guarantee of the *Subcontractor's* performance in the form set out in Annexure 6 to this subcontract. The guarantee is given at the Subcontract Date unless the *Contractor* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.3 If the *Subcontractor* comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the *Contractor* a guarantee by its ultimate parent company of such company's performance in the form set out in Annexure 6 to this subcontract. The guarantee is given at the Subcontract Date unless the *Contractor* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor shall provide to the *Contractor* a legal opinion in the form set out in Annexure 7 on the guarantor's execution of any such guarantee.

## Option X5: Sectional Completion

### Sectional Completion X5

- X5.1 In these *conditions of subcontract*, unless stated as the whole of the *subcontract works*, each reference and clause relevant to
- the *subcontract works*,
  - Completion and
  - Subcontract Completion Date
- applies, as the case may be, to either the whole of the *subcontract works* or any section of the *subcontract works*.

## Option X6: Bonus for early Completion

### Bonus for early Completion X6

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

## Option X7: Delay damages

### Delay damages X7

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

## Option X8: Collateral warranty agreements

### Collateral warranty agreements X8

- X8.1 The *Subcontractor* enters into a collateral warranty agreement in the form set out in Annexure 5 to this subcontract in favour of:
- the *Employer* on execution of this subcontract and
  - the other parties specified in the Subcontract Data within

10 days of the *Contractor's* request to do so.

## Option X12: Partnering

<b>Identified and defined terms</b>	<b>X12</b>	
	X12.1	(1) The Partners are those named in the Schedule of Partners. The <i>Client</i> 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 Subcontract Data states it is in or in an instruction given in accordance with this subcontract. (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.
<b>Actions</b>	X12.2	(1) Each Partner works with the other Partners to achieve the <i>Client's objective</i> stated in the Subcontract 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 <i>Client's</i> representative leads the Core Group unless stated otherwise in the Partnering Information. (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised. (6) This Option does not create a legal partnership between Partners who are not one of the Parties in this subcontract.
<b>Working together</b>	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. (3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners. (4) The Partners use common information systems as set out in the Partnering Information. (5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts. (6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices. (7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners

each time it is revised. The *Subcontractor* 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 subsubcontracting any work.
- Incentives** X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.
- (2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

## Option X13: Performance bond

### Performance bond X13

- X13.1 The *Subcontractor* gives the *Contractor* a performance bond, provided by a bank or insurer which the *Contractor* has accepted, for the amount stated in the Subcontract Data and in the form set out in Annexure 4, Part A to this subcontract.
- X13.2 If the bond was not given by the Subcontract Date, it is given to the *Contractor* within four weeks of the Subcontract Date.
- X13.3 After Completion of the whole of the *subcontract works* the *Subcontractor* may give the *Contractor* a replacement performance bond in an amount equivalent to 2.5% of the tendered total of the Prices specified in the Subcontract Data provided always that such replacement bond shall be in the same form and be provided by the same bank or insurer as the original performance bond. On receipt of such replacement bond the *Contractor* shall release the original bond to the *Subcontractor* provided that the *Contractor* may retain the original bond if a Dispute exists on or after Completion of the whole of the *subcontract works*.
- X13.4 If the rating of the provider of a performance bond as published by Standard & Poors falls below "A" and if the *Contractor* so requests, the *Subcontractor* provides to the *Contractor* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Contractor* has accepted provided always that failure by the *Subcontractor* to provide to the *Contractor* a replacement bond will not of itself constitute default under the subcontract sufficient to enable the *Contractor* to make a demand under the original bond or terminate the subcontract. The cost of the provision of any such replacement bond constitutes Defined Cost.
- X13.5 A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the *Contractor* agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.

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

### Advanced payment X14

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

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

- the Subcontract Date and
- the date when the *Contractor* receives the advanced payment bond.

The advanced payment bond is issued by a bank or insurer which the *Contractor* 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 *Subcontractor* has not repaid and is in the form set out in the Subcontract Works Information. Delay in making the advanced payment is a compensation event.

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

## 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 *subcontract works* and
- the date on which the *Contractor* takes over the whole of the *subcontract 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 *subcontract works* or
- in the next assessment after the *Contractor* has taken over the whole of the *subcontract works* if this is before Completion of the whole of the *subcontract 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.

## 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 Subcontract Data, the *Subcontractor* pays the amount of low performance damages stated in the Subcontract Data.

## Option X18: Limitation of liability

- Limitation of liability** X18 The *Subcontractor's* total liability to the *Contractor* for all matters arising under or in connection with this subcontract, other than the excluded matters, is limited to the amount stated in the Subcontract 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 *Subcontractor* as stated in this subcontract for
- delay damages if Option X7 applies
  - Contractor's share if Option C or Option D applies, and
  - repayment of Disallowed Cost.

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

- Incentives** X20.1 A Key Performance Indicator is an aspect of performance by the *Subcontractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with this subcontract.
- X20.2 From the *subcontract starting date* until the Defects Certificate has been issued, the *Subcontractor* reports to the *Contractor* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Subcontract Data and include the forecast final measurement against each indicator.
- X20.3 If the *Subcontractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Contractor* his proposals for improving performance.
- X20.4 The *Subcontractor* 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.
- X20.5 The *Contractor* 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.

## OPTION Y

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

**Third party rights** Y(UK)3

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

## **Option Z: Additional conditions of subcontract**

### **Additional conditions of subcontract Z1**

Z1.1 The *additional conditions of subcontract* stated in the Subcontract Data are part of this subcontract.

### **Training Z2**

Z2.1 Neither the *Employer* nor the *Contractor* is responsible for the adequacy or otherwise of the training of any staff of the *Subcontractor* or a subsubcontractor or supplier of any tier whether or not such staff were trained at any tunnelling academy established by the *Employer* or the *Contractor*. For the avoidance of doubt the *Contractor* is under no obligation to establish any such academy and in the event any such academy is established but is unable to offer adequate training neither the *Employer* nor the *Contractor* shall have any responsibility for the same.

### **Equality and diversity Z3**

Z3.1 Without limiting the generality of any other provision of the contract, the *Subcontractor*:

- complies with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- acknowledges that the *Employer* is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
  - promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - eliminate unlawful discrimination; and
  - promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in Providing the Subcontract Works, the *Subcontractor* assists and co-operates with the *Contractor* and the *Employer* where possible to enable the *Employer* to satisfy its duty; and

- assists and co-operates with the *Contractor* and the *Employer* where possible to enable the *Employer* to comply with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections.

**Crime and disorder Z3.2** The *Subcontractor* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to

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

disorder in its area.

**Assignment Z4** The *Subcontractor* does not assign the subcontract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the *Contractor*. The *Contractor* may assign the contract or any part thereof or any benefit or interest therein or thereunder.

**Not used Z5**

**Project Bank Account Z6**

Z6.1 (1) Project Bank Account is the account in the name of the *Employer* used for the sole purpose of receiving payments from the *Employer* and making payments to the *Contractor*, the *Subcontractor* and subcontractors of the same tier as the *Subcontractor*.

(2) Trust Deed is an agreement between the *Employer* and the *Contractor* relating to the Project Bank Account.

Z6.2 The *Employer* establishes the Project Bank Account with the *project bank* within three weeks of the Contract Date as defined in the Main Contract.

Z6.3 Unless stated otherwise in the Main Contract, the *Employer* pays any charges and the *Employer* is paid any interest made by the *project bank*.

Z6.4 Not used

**Payments Z6.5** On or before the final date for payment under the Main Contract, the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.

Z6.6 The *Contractor* makes payment to the Project Bank Account of any amount not paid by the *Employer* and required to make payment in full of amounts due to the *Subcontractor*.

Z6.7 The *Contractor* makes payment from the Project Bank Account of the amount due to the *Subcontractor* under this subcontract as assessed by the *Contractor*.

Z6.8 The *Contractor* is responsible for the proper operation of all payments from the Project Bank Account.

Z6.9 Not used

**Effect of payment Z6.10** Payments made into the Project Bank Account are treated as payments from the *Employer* to the *Contractor* in accordance with the Main Contract or from the *Contractor* to the *Subcontractor* in accordance with this subcontract as applicable.

**Trust Deed Z6.11** The *Employer* and the *Contractor* sign the Trust Deed before the first assessment date under the Main Contract.

**Termination Z6.12** If the *Project Manager* issues a termination certificate under the Main Contract, no further payments are made into the Project Bank Account.

Z6.13 The *Employer* closes the Project Bank Account following the last payment from the Project Bank Account of an amount due and provides evidence thereof to the *Project Manager*.

**Interface Z7** The *Subcontractor* pays to the *Contractor* amounts paid by the *Contractor* to the *Employer* and to Others who are engaged or required by the *Contractor* to carry out works (other than the *subcontract works*), to provide services or from whom consents, licences, or releases are required by the *Contractor* on or in connection with the Project or the Programme because of any:-

- default;
- negligence; or
- failure to comply with this subcontract,

by the *Subcontractor*.



**The Parties' use of Z8  
material**

**Background Rights Z8A**

- Z8A.1 The Background Rights shall remain the absolute unencumbered property of the owner of such rights at the date of this subcontract. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background Rights of the other party except under the terms of this subcontract, and each party acknowledges that nothing contained in this subcontract shall give it any right, title or interest in or to the Background Rights of the other party save as granted in this subcontract.
- Z8A.2 (a) The *Subcontractor* confirms that it will be able to Provide the Subcontract Works without using or incorporating its Background Rights therein and that the *Contractor* will be able to use the *subcontract works* to develop, implement and operate the Programme both during the term of this subcontract and thereafter without needing a right to use any such Background Rights.
- (b) In the event that the *Contractor* consents to the use or incorporation of the *Subcontractor's* Background Rights to Provide the Subcontract Works, the *Subcontractor* grants the *Contractor* and its appointee a non-exclusive irrevocable and royalty free licence to copy and use the Background Rights of the *Subcontractor* for the purposes of the Programme. The licence shall include the right to grant sub-licences without the consent of the *Subcontractor*. The *Subcontractor* shall not be liable for any use of the Background Rights other than for their originally intended purpose.

**Foreground Rights Z8B  
and Materials**

- Z8B.1 All Foreground Rights and Materials shall vest in and be the property of the *Contractor* on their creation. To the extent that any such Foreground Rights or Materials vest in the *Subcontractor* or any subsubcontractor or supplier of any tier or other third party engaged by the *Subcontractor* in performing this subcontract, the *Subcontractor* hereby:
- (a) assigns to the *Contractor* (or shall procure that the *Contractor* is granted an assignment of) all such present and future Foreground Rights immediately upon creation; and
- (b) transfers to the *Contractor* (or shall procure that the relevant owner transfers) ownership in such present or future Materials immediately upon creation.
- Z8B.2 The *Subcontractor* shall in engaging or employing any Subsubcontractor enter into an enforceable written contract with such party which provides that:
- (a) all Foreground Rights and Materials created by the Subsubcontractor and subsubcontractor or supplier of any tier pursuant to such contract shall vest in and becomes the property of the *Contractor* immediately upon creation;
- (b) upon such vesting, the *Contractor* shall become entitled to exclusive perpetual and unrestricted rights of use and ownership of such Foreground Rights and Materials; and
- (c) the *Contractor* or its nominee shall be able to enforce the rights of the *Subcontractor* against such Subsubcontractor and subsubcontractor or supplier of any tier pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999;

- Z8B.3 The *Subcontractor* shall provide a copy of any contract proposed pursuant to clause Z8B.2 to the *Contractor* for approval and authorisation prior to entry into or execution of the same.
- Z8B.4 The *Subcontractor* agrees to provide to the *Contractor* or any person nominated by the *Contractor* immediate access to all Materials in whatever form requested by the *Contractor* (including without limitation the source code of any software that is not commercially available) at any time but at the latest on termination or expiry of this subcontract. The *Subcontractor* shall upon the written request of the *Contractor* enter into a deposit and/or source code escrow contract with the *Contractor* and a third party nominated by the *Contractor* in respect of such Materials in such form as the *Contractor* may require.

### **Third Party Rights Z8C**

- Z8C.1 The *Subcontractor* shall be responsible for obtaining all necessary consents, authorities or approvals required to use any Third Party Rights necessary for performing its obligations under this subcontract.
- Z8C.2 The *Subcontractor* shall ensure that the *Contractor* has all Third Party Rights necessary to enable the *Contractor* to develop, implement and operate those parts of the Programme which are the subject of this subcontract and/or use Materials during the term of this subcontract and thereafter.
- Z8C.3 The *Subcontractor* shall use its best endeavours to ensure that it is a condition of any licence into which the *Subcontractor* or any subsubcontractor or supplier of any tier enters with a third party that the *Contractor* shall be entitled to a royalty free, irrevocable copyright licence in respect of such Third Party Rights, such licence to be capable of assignment and sub-licence and to allow use of the Third Party Rights for any purpose connected with the development and operation of the Programme.
- Z8C.4 All licences in respect of Third Party Rights used by the *Subcontractor* in connection with the *subcontract works* shall continue for a period of 24 months from expiry or termination of this subcontract. The *Subcontractor* shall use its best endeavours to ensure that all licences for Third Party Rights that are not commercially available may be extended at the request of the *Contractor* thereafter on the same terms. Where the *Contractor* requires an extended right of use of any Third Party Rights used by the *Subcontractor* in connection with the *subcontract works* (or any part thereof) that is not commercially available, the *Contractor* shall pay or procure the payment of, in accordance with terms agreed between the parties, a reasonable licence fee for any such use for the extended period. In determining whether or not any licence fee is reasonable regard shall be had to the nature and use made of the Third Party Rights, licence fees charged to the *Subcontractor* or subsubcontractor or supplier of any tier by their licensors for such Third Party Rights, industry practice and the licence fees for the Third Party Rights normally charged by the *Subcontractor* or subsubcontractor or supplier of any tier in similar circumstances.

### **Licence from the Z8D Contractor**

The *Contractor* hereby grants to the *Subcontractor* for the term of this subcontract and free of charge a non-exclusive, royalty-free licence to use such of the *Contractor's* data, reports, drawings, specifications, plans, software, designs, inventions and/or other material of the *Contractor* as are required by the *Subcontractor* to Provide the Subcontract Works and to fulfil its other obligations pursuant to this subcontract and which relate to the *subcontract works*. This licence is limited to use of such materials for the purpose of, and solely as necessary for, the *subcontract works* during the term of this subcontract. To the extent that any

modifications or enhancements to materials licensed by the *Contractor* to the *Subcontractor* under this clause Z8D are carried out by or on behalf of the *Subcontractor* in Providing the Subcontract Works, the *Subcontractor* hereby assigns (or shall procure that the *Contractor* is granted an assignment of) all present and future Intellectual Property in those modifications and enhancements. By virtue of this clause Z8D all such Intellectual Property rights shall vest in the *Contractor* on their creation.

#### **Warranties and Z8E Indemnity**

- Z8E.1 The *Subcontractor* warrants that:
- (a) it is the beneficial owner of its Background Rights; and
  - (b) the *Contractor's* and the *Employer's* use of the *Subcontractor's* Background Rights or any Foreground Rights developed or supplied by the *Subcontractor* pursuant to this subcontract will not infringe Intellectual Property owned by any third party.
- Z8E.2 The *Subcontractor* will indemnify and hold harmless the *Contractor* against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the *Contractor* (whether direct or consequential) in respect of any claim or action that the *Contractor's* use of:
- (a) Intellectual Property rights licensed by the *Subcontractor* to the *Contractor* under this clause Z8; or
  - (b) the Foreground Rights developed or supplied by the *Subcontractor* under this subcontract;
- infringes the Intellectual Property rights of any third party.

#### **Infringements Z8F**

The *Subcontractor* shall exercise good commercial discretion in watching for Intellectual Property rights and the publication of any applications for the registration of Intellectual Property rights owned or controlled by third parties which may be relevant to the intentions of the *Contractor* and the *Subcontractor* as expressed in this subcontract. Should any such Intellectual Property rights of a third party come to the notice of the *Subcontractor*, then the *Subcontractor* shall inform the *Contractor* promptly and the parties shall decide jointly what action is to be taken. In the event of an agreement not being reached by the *Contractor* and the *Subcontractor*, the *Contractor* shall make the final decision. The *Contractor* and the *Subcontractor* shall at all times have regard when making their decision to the Patents Act 1977 and any subsequent amendment or enactment of such legislation and any other Applicable Law.

#### **Copyright and Z8G publication**

- Z8G.1 The *Contractor* shall be the proprietor of the copyright in this subcontract and any data relating to this subcontract. The *Contractor* reserves the right to determine whether the results of the *subcontract works* shall be published and if so on what conditions. The *Subcontractor* shall provide any reports that the *Contractor* shall request and shall enclose with the report the following disclaimer:

*"The authors of this report are employed by [ ]. The work reported herein was carried out under a deed placed on [date of this contract] by Crossrail Limited and should not be relied upon as authoritative by any third party.*

*This report shall not be copied or reproduced in whole or in part except with the express consent of Crossrail Limited."*

Z8G.2 The following copyright statement shall be included by the *Subcontractor* on all copyright items intended for reproduction including final reports:

"© Crossrail Limited"

#### **Further assurances Z8H**

Z8H.1 The *Subcontractor* shall (at its own cost) upon the request of the *Contractor* promptly execute all documents and do all acts and things which may be necessary to bring into effect or confirm any assignment or the terms of any of the licences contained or referred to in this clause Z8.

Z8H.2 The Parties shall, when appropriate, execute a formal licence or licences for the purpose of registering any licences granted pursuant to this clause Z8 in such form as may be necessary to give effect to this subcontract and to conform with the laws for the time being existing in respect of Intellectual Property rights. Such licence or licences shall be subject to all the terms and conditions of this subcontract.

#### **General Z8I**

Z8I.1 The *Subcontractor* shall not sell, copy or use the Intellectual Property referred to in this clause Z8 if this might compromise the *subcontract works* and/or Materials (or any part thereof) or the *Contractor's* or the *Employer's* use of them.

Z8I.2 The *Subcontractor* shall notify any proposed assignee of this subcontract of the licences granted to the *Contractor* under or in accordance with this subcontract.

Z8I.3 Not used.

Z8I.4 The *Subcontractor* agrees to provide all assistance requested by the *Contractor* on termination or expiry of this subcontract to handover the Materials and/or the provision of the *subcontract works* to a third party nominated by the *Contractor*.

#### **Publicity Z9**

Z9.1 The *Subcontractor* shall not and shall procure that subsubcontractors and suppliers of any tier shall not, except with the consent of the *Contractor*, make any press announcements or publicise this subcontract or the Programme in any way unless the purpose of such disclosure is to allow compliance with a requirement to disclose information concerning this subcontract as required by law or the requirement of the stock exchange. The provisions of this clause shall not apply to any information relating to this subcontract, which is or which pursuant to this clause Z9 is public knowledge (otherwise than by breach of this clause) or which is limited to the fact of the *Subcontractor* being a party to this subcontract.

#### **Data Protection Z10**

Z10.1 The *Subcontractor*

- (a) collects the Construction Data as required by the Subcontract Works Information in accordance with the Crossrail Data Policy
- (b) ensures that all individuals whose Personal Data are collected by the *Subcontractor* in accordance with the Crossrail Data Policy are provided with a copy of the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed
- (c) transfers the Construction Data to the *Contractor* as required by the Subcontract Works Information, at which point the *Contractor* becomes the Data Controller of such Personal Data and such Personal Data shall become Contractor Data. For the avoidance of doubt the Contractor Data shall comprise of Personal Data collected from a

number of sources and shall not be limited to the Construction Data.

- Z10.2 The *Subcontractor* may retain a copy of the Construction Data for its own purposes provided that it remains responsible at all times for all Processing other than that which is undertaken on behalf of the *Contractor*.
- Z10.3 Unless the *Contractor* takes appropriate steps to widen the Processing which can be undertaken by it, the *Contractor* shall only Process the Contractor Data for the purposes specified in the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed.
- Z10.4 The Contractor Data may be processed by the *Subcontractor* to enable the *Subcontractor* to undertake the Processing specified in the Crossrail Data Policy. In such circumstances the *Subcontractor*
- (a) complies with the requirements of the DPA and any equivalent applicable legislation in any other country and in accordance with good industry practice. In particular, the *Subcontractor* complies with the provisions of the DPA in respect of the Processing of the Contractor Data as if it were a Data Controller
  - (b) collects, compiles, manipulates and stores or otherwise processes the Contractor Data only as instructed in writing in advance by the *Contractor*. The *Subcontractor* does not carry out any other processing, use or disclosure of the Contractor Data and
  - (c) where and when requested by the *Contractor*, provides a copy of all or any part of the Contractor Data which has been collected by the *Subcontractor* or provided to the *Subcontractor* by the *Contractor* or a third party, to the *Contractor*.
- Z10.5 The *Contractor* may request by written notice that any specific item of data contained in the Contractor Data held by the *Subcontractor* be amended or deleted by the *Subcontractor* and the *Subcontractor* immediately fulfils such a request.
- Z10.6 The *Subcontractor* in particular but without limiting its obligations under Z10.4 above:
- (a) maintains comprehensive registrations or notifications under the DPA or equivalent legislation in any other country in relation to the processing of Personal Data by the Contractor
  - (b) is aware at all times of the registerable particulars of the *Employer* under the DPA, and ensures that it does not use, disclose or process the Contractor Data in any way that is outside the scope of those particulars, provided that the *Contractor* notifies the *Subcontractor* of any alterations in those registerable particulars
  - (c) keeps the Contractor Data fully up to date on a timely basis at all times during the continuance of this contract
  - (d) assists the *Contractor* or *Employer* to respond to any request for information under Section 7 of the DPA made by an individual which complies with the requirements of the DPA
  - (e) at all times has in place appropriate technical, procedural and organisational security measures, to protect the Contractor Data including but not limited to the protection of:
    - (i) database software and equipment;
    - (ii) the Contractor Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the Contractor Data

- (f) ensures that any employees, Data Processors or sub-Data Processors involved in the Processing of the Contractor Data are bound by the security measures specified in Z10.6(e);
  - (g) provides details of the security measures specified in Z10.6(e) to the *Contractor* in writing within 10 days of a written request from the *Contractor*; and
  - (h) notifies the *Contractor* immediately if it receives any notice of non-compliance with, or a request for information under the DPA or any equivalent legislation in any other country.
- Z10.7 The *Contractor* may, at its discretion and on reasonable written notice, require access to the *Subcontractor's* premises and the provision of sufficient relevant information in order to assess the adequacy of the *Subcontractor's* security measures.
- Z10.8 If any of the Contractor Data or the Construction Data collected by or in the sole possession of the *Subcontractor* are either lost or sufficiently degraded to be unusable, the *Subcontractor* provides replacement and or corrected data within three working days.
- Z10.9 The *Subcontractor* agrees and undertakes to indemnify the *Contractor* and hold the *Contractor* harmless against all and any costs, liabilities and losses whatsoever incurred by the *Contractor* arising out of any action or inaction of the *Subcontractor* that results in the *Contractor* being in breach of any of its obligations or duties under the DPA or equivalent applicable legislation in any other country or of any term of the Main Contract.
- Z10.10 The *Subcontractor* may not, in any circumstances, transfer any of the Contractor Data to any country or territory outside the European Economic Area without the *Contractor's* prior written consent, which may be withheld in its absolute discretion.
- Z10.11 Upon the termination of this subcontract for whatever reason, the *Subcontractor*, unless notified otherwise by the *Contractor* or required by law, immediately ceases all processing of the Contractor Data and, as requested by the *Contractor*, destroys, sends, or returns to the *Contractor* on suitable media all copies of the Contractor Data held in whatever form by the *Subcontractor* or any sub-Data Processor.
- Z10.12 The Contractor Data and any rights subsisting in them, including without limitation any database rights, are and shall remain at all times the property of the *Contractor*, and the *Subcontractor* assigns to the *Contractor* the copyrights, database rights and all other rights of a like nature in the Contractor Data conferred under the laws of the United Kingdom and all other countries of the world that will be created by the *Subcontractor* during the term of this subcontract for the full term during which those rights and any renewals or extensions subsist.
- Z10.13 The *Subcontractor* warrants that it:
- (a) has maintained and will continue to maintain comprehensive registrations under the DPA or equivalent legislation in any other country in relation to the Processing of Personal Data by the *Subcontractor*;
  - (b) has not received any notice of non-compliance with, or a request for information under the DPA;
  - (c) has in place adequate technical and organisational security measures, including database software and equipment, governing the Processing of the Contractor Data and any employees involved in such Processing; and
  - (d) shall carry out the Processing of the Contractor Data with due skill and care.

## **Access to information Z11**

- Z11.1 The *Subcontractor* shall free of charge disclose to the *Contractor*

and allow the *Contractor*, the *Employer* and/or those nominated by the *Contractor* to inspect and take away copies of all information relating to the *subcontract works* (including without prejudice to the generality of the foregoing accounts and records) as the *Contractor* shall require in order to satisfy itself that the provisions of this subcontract are being observed and performed, and/or in order to facilitate the operation of this subcontract, and the *Subcontractor* shall provide all reasonable assistance required by the *Contractor* and/or those nominated by him in order to obtain such information and shall ensure that the *Contractor* and/or those nominated by him have full and free access (including access to the *Subcontractor's* premises) and licence to use such information in order to facilitate the operation of this clause but the *Subcontractor* shall not be obliged to supply any information which would be treated as privileged in any proceedings.

**Freedom of Z12 information**

- Z12.1 The *Subcontractor* acknowledges that the *Employer* is subject to the FOI Legislation and agrees to assist and co-operate with the *Contractor* to discharge his obligation to assist the *Employer* to comply with its obligations under the FOI Legislation. The foregoing shall not preclude the *Subcontractor* from objecting to a disclosure of Subcontractor Information.
- Z12.2 The *Employer* is responsible for determining whether Subcontractor Information is exempt information under the FOI Legislation and for determining what Subcontractor Information will be disclosed in that respect to an Information Request in accordance with the FOI Legislation. The *Subcontractor* shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the *Contractor*.
- Z12.3 The *Subcontractor* acknowledges that the *Contractor* may be obliged due to its obligations under Main Contract to disclose Subcontractor Information to the *Employer* to enable the *Employer* to discharge its obligations under the FOI Legislation.

**Confidential Z13 information**

- Z13.1 Subject to the other provisions of and as expressly permitted by this clause Z13, the *Subcontractor*:
  - (a) may not use any Confidential Information for any purpose other than the performance of its obligations under this subcontract;
  - (b) may not disclose any Confidential Information to any person except with the prior written consent of the *Contractor*; and
  - (c) shall make every effort to prevent the use or disclosure of the Confidential Information.
- Z13.2 Notwithstanding clause Z13.1, the *Subcontractor* may disclose any Confidential Information to the following parties in the following circumstances:
  - (a) to any officer or servant of the *Subcontractor* or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the *Subcontractor* to Provide the Subcontract Works or to enforce its rights under this subcontract, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;
  - (b) to the extent required by any Applicable Law, the rules of any stock exchange or regulatory body or any written request of any taxation authority; and

- (c) pursuant to the order of any court or tribunal of competent jurisdiction.
- Z13.3 The provisions of clause Z13.1 above shall not apply to any Confidential Information which:
- (a) is at the date of this subcontract or any time thereafter becomes publicly known other than by breach of this subcontract or of an obligation of confidence;
- (b) can be shown by the *Subcontractor* to the *Contractor's* satisfaction to have been known by the *Subcontractor* before disclosure by the *Contractor*.
- Z13.4 Before disclosure of any Confidential Information, the *Subcontractor* shall ensure that the recipient is made aware of and complies with the *Subcontractor's* obligations of confidentiality under this subcontract as if the recipient was a party to this subcontract.
- Z13.5 Without prejudice to any other rights or remedies which the *Contractor* may have, the *Subcontractor* acknowledges and agrees that in the event of breach of this clause Z13 the *Contractor* shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.
- Z13.6 If this subcontract is terminated, the *Subcontractor* shall, return to the *Contractor* all of the Confidential Information then within its possession or control or destroy such Confidential Information using a secure and confidential method of destruction and furnish to the *Contractor* sufficient evidence of such destruction, save that the *Subcontractor* may retain one copy of the Confidential Information if required to do so by law.

**Not used Z14**

**Value engineering Z15**

- Z15.1 The *Subcontractor* may propose to the *Contractor* that the Subcontract Works Information provided by the *Contractor* should be changed so as to result in a reduction to the [forecast]<sup>4</sup> Defined Cost and/or result in a saving in the time required to Provide the Subcontract Works or any part thereof. In such event the *Subcontractor* submits details of the proposal to the *Contractor* in accordance with the requirements set out in the Subcontract Works Information. The *Contractor* may provide the *Subcontractor* with details of its and/or the *Employer's* estimated additional costs resulting from a *Subcontractor's* proposal.
- Z15.2 If the *Contractor* accepts the proposal referred to in clause Z15.1 above, he gives an instruction changing the Subcontract Works Information and:
- [the Prices are not reduced save as agreed between the *Contractor* and the *Subcontractor* in order to reflect the *Contractor's* and/or the *Employer's* estimated additional costs]<sup>5</sup> [the Prices are reduced proportionately and further as agreed between the *Contractor* and the *Subcontractor* in order to reflect the *Contractor's* and/or the *Employer's* estimated additional costs, and the *Subcontractor* is paid 50% of the amount of the reduction in the Prices resulting from the change to the Subcontract Works Information]<sup>6</sup>; and
  - the Subcontract Completion Date is not changed.

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<sup>4</sup> Delete if Option C is not used

<sup>5</sup> Delete if Option C is not used

<sup>6</sup> Delete if Option C is used



## **Omissions Z16**

- Z16.1 Without prejudice to any other provision in this subcontract, the *Contractor* may remove or withdraw all or part of the *subcontract works* from the *Subcontractor* and arrange for the *subcontract works* or that part of the *subcontract works* to be undertaken and/or completed by a third party.
- Z16.2.1 Where the *Contractor* has removed or withdrawn all or part of the *subcontract works* from the *Subcontractor* where the *Subcontractor* failed to comply with the Accepted Programme or was in breach of the subcontract, the *Contractor* may recover from the *Subcontractor* costs resulting from the same in excess of the cost of such works provided for in the total of the Prices and the *Subcontractor* shall not be entitled to make any claim in respect of such omission including for any loss of profit or loss of opportunity.
- Z16.2.2 Where the *Contractor* has removed or withdrawn all or part of the *subcontract works* from the *Subcontractor* where such removed or withdrawn *subcontract works* are identified in the Subcontract Works Information as part of the *subcontract works* capable of being removed or withdrawn without the *Contractor* incurring any liability for loss of profit or loss of opportunity, the *Subcontractor* shall not be entitled to make any claim in respect of such omission including for any loss of profit or loss of opportunity.

## **Conflict of interest Z17**

- Z17.1 The *Subcontractor* confirms that as at the date of this subcontract neither it nor any subsubcontractor or supplier of any tier has any interest in any matter and does not act and has not acted for any party in respect of any matter which would (in either case) create a conflict of interest in Providing the Subcontract Works. The *Subcontractor* will undertake ongoing conflict of interest checks and will notify the *Contractor* immediately if any conflict or potential conflict of interest arises (including notification of any instructions from a party with whom the *Contractor* has or has had any dealings with respect to the Programme).
- Z17.2 To the extent that an actual or potential conflict may arise involving the *Contractor*, the *Subcontractor* shall where required continue to act for and advise the *Contractor* and if required will cease to act for any other party where to act so would constitute a conflict of interest.

## **Best value Z18**

- Z18.1 The *Subcontractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions having regard to a combination of economy, efficiency and effectiveness. The *Subcontractor* assists the *Employer* and the *Contractor* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the Project or the Programme requested by the *Contractor* or the *Employer* from time to time.

## **Not used Z19**

## **Register of undertakings and assurances Z20**

The *Subcontractor* acknowledges that it has access to the *Employer's* Register of Undertakings and Assurances. The *Subcontractor* notifies the *Contractor* if it has any doubt as to the application of any undertaking or assurance contained in the Register of Undertakings and Assurances to the *subcontract works*. The *Contractor* gives an instruction clarifying the application of the undertaking or assurance to the *subcontract works*.

## **Not used Z21**

## **Ground movement Z22.1**

Without prejudice to the generality of clause 81, the following is a *Subcontractor's* risk:

- The *Subcontractor* is strictly liable for claims, proceedings,

compensation and costs (including without limitation any third party claims arising from damage to property) arising from:

- any ground movement arising out of the *subcontract works* which has resulted in volume loss in excess of the limits specified in the Subcontract Works Information; or
- any failure to achieve the specified Compensation Grouting Performance Requirements specified in the Subcontract Works Information; or
- any failure to control the *subcontract works* such that wall deflections exceed the Retaining Wall Maximum Deflection Criteria specified in the Subcontract Works Information, whether the ground retaining walls were constructed by the *Subcontractor* or an other.

Z22.2 The following is a *Contractor's* risk:

- The *Contractor* is strictly liable for claims, proceedings, compensation and costs (including without limitation any third party claims arising from damage to property) arising from ground movement where:
  - volume loss is within the limits specified in the Subcontract Works Information;
  - the Compensation Grouting Performance Requirements specified in the Subcontract Works Information have been achieved by the *Subcontractor*; and
  - the *subcontract works* have been controlled such that the Retaining Wall Maximum Deflection Criteria specified in the Subcontract Works Information have not been exceeded,

in each case provided that the same does not arise from any breach by the *Subcontractor* of any provision of this subcontract.

### **SCL Temporary Z23 Measures**

Z23.1 The following is an additional compensation event under clause 60.1:

The *Subcontractor*, acting reasonably in response to physical conditions encountered in the execution of the sprayed concrete lining works, employs quantities of the SCL Temporary Measures (as defined in the Subcontract Works Information) in excess of those specified in the Subcontract Works Information.

Z23.2 The *Subcontractor's* sole right in respect of a compensation event under clause Z23.1 is a change to the Prices assessed in accordance with the schedule of rates for the SCL Temporary Measures (as set out in the Subcontract Works Information).

### **Transparency Z24**

- Defined terms**
- Z24.1 (1) Subcontract Information means (i) this subcontract in its entirety (including from time to time agreed changes to the subcontract) and (ii) data extracted from applications for payment and/or invoices submitted pursuant to this subcontract which shall consist of the *Subcontractor's* name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.
- (2) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the *Employer* is committed to publishing its contracts, tender documents and data from applications for

payment and/or invoices received.

**Data transparency** Z24.2 The *Subcontractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding any other provision of this subcontract, the *Subcontractor* hereby gives its consent for the *Employer* to publish the Subcontract Information to the general public.

Z24.3 The *Employer* may in its absolute discretion redact all or part of the Subcontract Information prior to its publication. In so doing and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in its absolute discretion consult with the *Subcontractor* regarding any redactions to the Subcontract Information to be published pursuant to clause Z24.2. The *Employer* makes the final decision regarding publication and/or redaction of the Subcontract Information.

**Common Plant and Materials** Z25

Z25.1 The Subcontract Works Information may specify and/or the *Contractor* may instruct the *Subcontractor* to enter into a subsubcontract for any of the design, supply, installation, testing and/or commissioning of Common Plant and Materials as defined in and in accordance with the Subcontract Works Information. The *Subcontractor* enters into a subsubcontract with and may not object to any such Subsubcontractor.

Z25.2 The *Subcontractor* is as responsible for Providing the Subcontract Works which are the subject of such a subsubcontract as if he had not subcontracted.

Z25.3 If any event arises which in the opinion of the *Subcontractor* entitles him to terminate a subsubcontract for Common Plant and Materials or to treat such a subsubcontract as repudiated by the Subsubcontractor, the *Subcontractor* at once notifies the *Contractor* who instructs the *Subcontractor* how to proceed. The *Subcontractor* complies with any such instruction.

Z25.4 The *Subcontractor* shall not agree to vary or amend the terms of any such subsubcontract unless such variation or amendment has been accepted by the *Contractor*. Reasons for not accepting a variation or amendment are the reasons stated in clause 26.3.

Z25.5 If a Subsubcontractor for any of the design, supply, installation, testing and/or commissioning of Common Plant commits an Act of Insolvency this is a compensation event under this subcontract.

**Legal opinion** Z26 If the *Subcontractor* or any company comprising part of the *Subcontractor* is not a company registered in England and Wales, the *Subcontractor* provides to the *Contractor* on the Subcontract Date a legal opinion in the form set out in Annexure 7.

**Delay damages for Key Dates** Z27

Z27.1 The Subcontract Data identifies the Key Dates to which this clause Z27 applies. Clause 25.3 of the *conditions of contract* does not apply to such Key Dates.

Z27.1 If the *Contractor* decides that the work does not meet the Condition stated for a Key Date by the date stated, the *Subcontractor* pays delay damages at the rate stated in the Subcontract Data from the Key Date for each day until the date on which the work meets the Condition stated.

Z27.2 If the Key Date is changed to a later date after delay damages have been paid, the *Contractor* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

## **Subsubcontract Z28 conditions of contract**

- Z28.1 The *Subcontractor* uses all reasonable endeavours to ensure that any subsubcontract of any tier imposes obligations on the subsubcontractor or supplier of any tier which are identical in effect to the obligations imposed on the *Subcontractor* under the following clauses of this subcontract
- Z3 (Equality and diversity) and
  - Z18 (Best Value).
- Z28.2 The *Subcontractor* ensures that any subsubcontract of any tier imposes obligations on the subsubcontractor or supplier of any tier which are identical in effect to the obligations imposed on the *Subcontractor* under the following clauses of this subcontract
- 85.3 (Insurance policies),
  - Z8 (The Parties' use of material),
  - Z9 (Publicity),
  - Z10 (Data Protection),
  - Z11 (Access to Information),
  - Z12 (Freedom of Information),
  - Z13 (Confidentiality),
  - Z17 (Conflicts of Interest), and
  - Z24 (Transparency).

## **Correction of Critical Defects Z29**

- Z29.1 For the purpose of this clause Z29 a Critical Defect means any Defect which:
- prevents or substantially impedes the work of the *Employer*, the *Contractor* or Others; or
  - affects the safety and/or operation, trial operation or trial running of the Project or of any other railway network.
- Z29.2 Notwithstanding any other provision of this contract the *Subcontractor* acknowledges and agrees that the *Contractor* may arrange for a Critical Defect to be corrected by other people. The *Contractor* assesses the cost of having the Critical Defect corrected by other people and the *Subcontractor* pays this amount. The Subcontract Works Information is treated as having been changed to accept the Critical Defect.
- Z29.3 The *Contractor* may seek to agree with the *Subcontractor* in respect of any Critical Defect an appropriate *defect correction period* and start date for such *defect correction period*.

## **LUL Optional Clause**

### **A1. Definitions used in this Optional Clause**

- A1.1 Available (IW) means in respect of Interface Works:
- (a) the applicable Interface Works comply with the LUL Standards;
  - (b) the applicable Interface Works are safe;
  - (c) the applicable Interface Works are, to the extent that they have been designed by the *Subcontractor*, fit for purpose;
  - (c) there are no foreseeable hazards to the use of the applicable Interface Works except insofar as a risk assessment has been carried out and any risk is expressly accepted by LUL; and
  - (d) the applicable Interface Works are readily accessible and operable by LUL throughout the periods stipulated and agreed;
- A1.2 Interface Works means those parts of the *subcontract works* that are on or impact on or are in the vicinity of LUL Property or systems forming part of or interfacing with the Underground Network including without limitation protective works required as a result of the Crossrail Project;
- A1.3 LUL means London Underground Limited whose registered office is at 55 Broadway, London SW1H 0BD;
- A1.4 LUL's Engineer means the engineer appointed by LUL from time to time whose appointment has been notified to the *Subcontractor*;
- A1.5 LUL Property means all land, buildings and structures (and contents thereof) owned by or leased or licensed to LUL (including the Underground Network);
- A1.6 LUL Standards means the rules and regulations including codes of practice and standards relating to the operation of LUL's railway and/or the requirements for undertaking works on or in the vicinity of LUL station and railway infrastructure (including any or all of LUL Category 1 and 2 Standards as may be adjusted in accordance with "Standards Change Control Mechanism for Category 1 Standards 1-627" (in the case of Category 1 Standards) and "Standards Change Mechanism for Category 2 Standards 1-626" (in the case of Category 2 Standards)) included in the Subcontract Works Information or issued to the *Subcontractor*);
- A1.7 Underground Network means the stations, depots, assets, systems, track and buildings and structures of whatsoever kind which are used in the operation, maintenance and provision of the service known as the "London Underground".

### **A2 Warranties**

- A2.1 The *Subcontractor* warrants, undertakes and represents that the Interface Works will:
- A2.1.1 comply with the reasonable instructions of LUL's Engineer;
  - A2.1.2 comply with all LUL Standards;
  - A2.1.3 only include substances and materials for incorporation into the Interface Works which are in accordance with relevant codes of practice, general good building practice and which have not been declared deleterious in any publication of the Building Research Establishment current at the time of such specification or incorporation; and
  - A2.1.4 be carried out using only materials that are new sound and of good quality.
- A2.2 The *Subcontractor* warrants, undertakes and represents that any plant, equipment or other product of the Interface Works that becomes a fixture on, or part of, LUL Property as a result of the Interface Works will at and following takeover by or on behalf of LUL:

- A2.2.1 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 available risk of pollution, nuisance, interference or hazard;
- A2.2.2 not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant of a similar nature and manufacture;
- A2.2.3 operate safely and efficiently in combination with any plant, equipment and/or system to which it is to be connected (save where LUL agrees otherwise in writing);
- A2.2.4 be electromagnetically compatible with existing LUL systems; and
- A2.2.5 be Available (IW).

**A3 Vesting**

Save as specifically provided to the contrary in the Subcontract Works Information, title in all assets comprising fixtures on, or part of, LUL Property as a result of the Interface Works will vest in LUL on instalment free from any charge, lien or encumbrance of any kind, and the *Subcontractor* shall obtain such appropriate manufacturer's guarantees in favour of LUL (and its assignees) in respect of those assets as LUL may reasonably require.

## SCHEDULE OF COST COMPONENTS

This schedule is part of the *conditions of subcontract* only when Option C, D or E is used. In this schedule the *Subcontractor* means the *Subcontractor* and not his Subsubcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Subcontract Works.

- People 1** The following components of the cost of
- people who are directly employed by the *Subcontractor* and whose normal place of working is within the Working Areas and
  - people who are directly employed by the *Subcontractor* 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 *Subcontractor* and as shown on the *Subcontractor's* payroll for people paid according to the time worked while they are within the Working Areas.
- 12 Payments to people related to work on this subcontract for
- (a) bonuses and incentives but only those that are pre-agreed between the *Subcontractor* and the employee and are for performance criteria in relation to this subcontract only and provided always that they do not exceed 10% of the base salary cost unless otherwise agreed in writing by the *Contractor* in advance of setting such performance criteria.
  - (b) overtime
  - (c) Working in special circumstances
  - (d) special allowances
  - (e) Absence due to sickness and holidays
  - (f) severance payments but only the proportion of such calculated by the time spent working on this subcontract divided by the total years employed by the *Subcontractor*.
- 13 Payments made in relation to people for
- (a) travel
  - (b) subsistence and lodging
  - (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) Project specific (non-transferable) safety training.
- 14 The following components of the cost of people who are not directly employed by the *Subcontractor* but are paid for by him according to the time worked while they are within the Working Areas.  
Amounts paid by the *Subcontractor*.

- 15 Without prejudice to the generality of clause 52.1 (by virtue of which all costs not included in the Defined Cost are treated as included in the Fee) the following items of people cost are deemed to be included in the Fee:
- (a) payroll administration costs,
  - (b) sickness payments to people who have worked on the subcontract for a continuous period of less than three months,
  - (c) sickness payments for a cumulative absence of over two weeks within any calendar year,
  - (d) bonus and incentive payments not falling within item 12(a),
  - (e) pension contributions related to historical shortfalls in a company pension fund, and
  - (f) CITB levy.

**Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation).

- 21 Payments for the hire or rent of Equipment not owned by
- the *Subcontractor*,
  - 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 Subcontract Data but is
- owned by the Subcontractor,
  - purchased by the Subcontractor under a hire purchase or lease agreement or
  - hired by the Subcontractor from the Subcontractor's parent company or another part of a group with the same parent company
  - at open market rates multiplied by the time for which the Equipment is required.
- 23A Payments for Equipment purchased for work included in this subcontract listed with a time-related on cost charge, in the Subcontract 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 Subcontract Data for the period for which the Equipment is required.
- The change in value is the difference between the purchase price and 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 *Contractor* agrees, an additional item of Equipment may be assessed as if it had been listed in the Subcontract Data.
- 23B Payments for Equipment purchased for work included in this subcontract but not paid under item 23A at the purchase price of the Equipment.
- Cost paid under item 23B is credited with the open market sale price of the Equipment at the end of the period for which the Equipment is required or is available for use within the Working Areas, whichever is the earlier.
- 24 Payments for special Equipment that is listed in the Subcontract Data. These amounts are the rates stated in the Subcontract Data



multiplied by the time for which the Equipment is required.

If the *Contractor* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Subcontract 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 *Subcontractor*.

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 *subcontract works*.

43 Payments for

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land
- (c) compensation for loss of crops or buildings
- (d) royalties
- (e) inspection certificates
- (f) charges for access to the Working Areas
- (g) facilities for visits to the Working Areas by Others
- (h) specialist services
- (i) consumables and equipment provided by the Subcontractor for the Contractor's office
- (j) provision of any bonds required by this subcontract to the extent agreed in advance by the *Contractor*.

44 Payments for the provision and use of the following equipment, supplies and services, but excluding accommodation,

- (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 Cost is credited with payments received by or payable to the *Subcontractor* from the sale of materials from excavation and demolition to which the *Subcontractor* has title.
- 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 *subcontract 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 Subcontract 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 Subcontract Data.
- Design 6** The following components of the cost of design of the subcontract 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 Subcontract 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 Subcontract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Subcontract Data.
- Insurance 7** The following do not constitute Defined Cost
- the cost of events for which this subcontract requires the Subcontractor to insure and
  - other costs paid to the Subcontractor by insurers.
- Other 8** The following do not constitute Defined Cost:
- any overdraft charges or any charges associated with the Project Bank Account which do not arise from the ordinary and proper operation of the Project Bank Account in accordance with its terms and conditions, and
  - currency exchange hedging costs.

## SHORTER SCHEDULE OF COST COMPONENTS

This schedule is part of the *conditions of subcontract* only when Option A, B, C, D or E is used. When Option C, D or E is used, this schedule is used by agreement for assessing compensation events. When Option C, D or E is used, in this schedule the *Subcontractor* means the *Subcontractor* and not his Subsubcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Subcontract Works.

- People 1** The following components of the cost of
- people who are directly employed by the Subcontractor and whose normal place of working is within the Working Areas,
  - people who are directly employed by the Subcontractor and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
  - people who are not directly employed by the Subcontractor but are paid for by him according to the time worked while they are within the Working Areas.

11 Amounts paid by the *Subcontractor* including those for meeting the requirements of the law and for pension provision.

- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).

21 Amounts for Equipment which is in the published list stated in the Subcontract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Subcontract 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 Subcontract Data which is not in the published list stated in the Subcontract Data. These amounts are the rates stated in the Subcontract 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 Subcontract Data or with the published list stated in the Subcontract Data.

24 Unless the item is in the published list and the rate includes the cost component, payments for

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

25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.

26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.

27 Amounts for Equipment which is neither in the published list, stated in the Subcontract Data nor listed in the Subcontract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

28 Payments for Equipment purchased for work included in this subcontract at the purchase price of the Equipment.

Cost is credited with the open market sale price of Equipment purchased under item 28 at the end of the period for which the Equipment is required or is available for use within the Working Area, whichever is the earlier.

- 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**
- 41 The following components of the cost of charges paid by the *Subcontractor*.
- A charge calculated by applying the percentage for people overheads stated in the Subcontract Data to people item 11 to cover the costs of
- payments for the provision and use in the Working Areas of water, gas, and electricity,
  - payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas and 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 subcontract works.
- 44 Consumables and equipment provided by the Subcontractor for the Contractor's office.
- 45 Specialist services.
- 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 subcontract works and
  - manufactured or fabricated outside the Working Areas.
- 51 Amounts paid by the Subcontractor.
- Design 6** The following components of the cost of design of the subcontract 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 Subcontract 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 Subcontract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Subcontract Data.
- Insurance 7** The following do not constitute Defined Cost:
- costs against which this subcontract requires the Subcontractor to insure and
  - other costs paid to the Subcontractor by insurers.

**Other 8** The following do not constitute Defined Cost:

- any overdraft charges or any charges associated with the Project Bank Account which do not arise from the ordinary and proper operation of the Project Bank Account in accordance with its terms and conditions, and
- currency exchange hedging costs.

**ANNEXURE 2  
SUBCONTRACT DATA**

**Part one – Data provided by the Contractor**

**Statements given in  
all  
subcontracts**

- 1 General
- The *conditions of contract* are the Conditions of Subcontract at Annexure 1 to this subcontract utilising main Option ....., dispute resolution Option W2A, secondary Options ..... and *additional conditions of subcontract* .....
  - The *works* in the Main Contract are  
.....
  - The *subcontract works* are  
.....
  - The *Contractor* is  
Name .....  
Address .....  
.....
  - The *Employer* in the Main Contract is  
Name Crossrail Limited  
Address 25 Canada Square, London E14 5LQ
  - The *Project Manager* in the Main Contract is  
Name .....  
Address .....  
.....
  - The *Supervisor* in the Main Contract is  
Name .....  
Address .....  
.....
  - The *panel of adjudicators* is  
[.....]  
[.....]  
[.....]
  - The Subcontract Works Information is in Annexure 3
  - The Site Information is in Annexure 8
  - The *boundaries of the site* are .....
  - The *language of this subcontract* is English.
  - The *law of the subcontract* is the law of England and Wales.
  - The *period for reply* is  
for a reply by the *Contractor* ..... weeks.  
for a reply by the *Subcontractor* ..... weeks.
  - The *period for retention* is .....
  - The following matters will be included in the Risk Register  
.....

.....  
.....

2 The *Subcontractor's* main responsibilities

- The *key person compensation amounts* are as follows:  
.....

3 Time

- The *subcontract starting date* is .....
- The *subcontract access dates* are

Part of the Site	Date
1 .....	.....
2 .....	.....
3 .....	.....

The *Subcontractor* 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 *subcontract 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 subcontract* is pounds sterling (£).
- The *assessment interval* is ..... weeks (not more than five).
- The *interest rate* is ..... % per annum (not less than 2) above the ..... rate of the ..... bank.

6 Compensation events

- The place where weather is to be recorded is  
.....
- 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
- The *Employer* has put in place an Owner Controlled Insurance Programme which provides insurance against the following risks with the levels of indemnity and deductible identified:

Insurance	Limit of Indemnity	of Deductible
-----------	--------------------	---------------

- The minimum limit of indemnity for insurance in respect of failure of the *Subcontractor* to use the skill and care normally used by subcontractors providing works similar to those provided by the *Subcontractor* is £[●]
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Subcontractor* arising out of and in the course of their employment in connection with this subcontract for any one event is £[● ]

**Optional statements**

**If the *Contractor* has decided the *subcontract completion date* for the whole of the *subcontract works***

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

**If the *Contractor* is not willing to take over the *subcontract works* before the **Subcontract Completion Date****

- The *Contractor* is not willing to take over the *subcontract works* before the Subcontract Completion Date.

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

- The *Subcontractor* is to submit a first programme for acceptance within ..... weeks of the Subcontract Date.

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

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

<i>condition</i> to be met	<i>key date</i>
1 .....	.....
2 .....	.....
3 .....	.....

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

- These are additional *Employer's* risks
  - 1 .....
  - 2 .....



3 .....

- These are additional *Contractor's* risks

1 .....

2 .....

3 .....

**If the *Employer* or *Contractor* is to provide Plant and Materials**

- The insurance against loss of or damage to the *subcontract works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* or *Contractor* for an amount of

.....

**If Option B or D is used**

- The *method of measurement* is ..... amended as follows .....

.....

.....

**If Option C or D is used**

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

*share range* ..... *Subcontractor's share percentage*

less than ..... % ..... %

from ..... % to ..... % ..... %

from ..... % to ..... % ..... %

greater than ..... % ..... %.

**If Option C, D or E is used**

- The *Subcontractor* prepares forecasts of Defined Cost for the *subcontract 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. ....

0. ....

0. ....

0. ....

0. ....

0. .... non-adjustable

-----

1.00

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

**If Option X3 is used**

- The Contractor will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total maximum payment in the currency
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

- The exchange rates are those published in ..... on ..... (date).

**If Option X5 is used**

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

section	description	subcontract completion date
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....

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

- The bonus for each section of the subcontract works is

section	description	amount per day
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
Remainder of the subcontract works .....		

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

- Delay damages for each section of the subcontract works are

section	description	amount per day
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
Remainder of the subcontract works .....		

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

- The bonus for the whole of the subcontract 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 subcontract works are ..... per day.

**If Option X8 is used**

- The other parties in favour of whom collateral warranty agreements are to be provided are:
  - Any oversite developer
  - Any funder of any oversite developer
  - Any tenant of any oversite developer

**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 .....
- The amount of the replacement performance bond is .....

**If Option X14 is used**

- The amount of the advanced payment is .....
- The *Subcontractor* repays the instalments in assessments starting not less than ..... weeks after the Subcontract Date.
- The instalments are .....  
.....  
(either an amount or a percentage of the payment otherwise due)
- An advanced 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 .....  
..... for .....  
..... for .....

**If Option X18 is used**

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

- The *Subcontractor's* total liability to the *Contractor* for all matters arising under or in connection with this subcontract, other than the excluded matters, is limited to .....
- The *end of liability date* is ..... years after the Completion of the whole of the *subcontract works*.

**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 Y(UK)3 is used**

- term ..... person or organisation
- .....
- All..... TfL.....
- All..... DfT.....
- .....

**If Option Z is used**

- The *additional conditions of subcontract* are .....
- The *project bank* is .....

**Part two – Data provided by the Subcontractor**

**Statements given in all subcontracts**

- The *Subcontractor* is  
Name .....  
Address .....  
.....
- The *direct fee percentage* is ..... %.
- The *subsubcontracted fee percentage* is ..... %.
- The *subcontract working areas* are the Site and  
.....
- The key people are set out in [●]
- The following matters will be included in the Risk Register  
.....  
.....  
.....  
.....

**Optional statements**

**If the Subcontractor is to provide Subcontract Works Information for his design**

- The Subcontract Works Information for the *Subcontractor's* design is in  
.....  
.....  
.....  
.....  
.....  
.....

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

- The programme identified in the Subcontract Data is .....

**If Option A or C is used**

- The *activity schedule* is .....

**If Option B or D is used**

- The *bill of quantities* is .....

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

- The tendered total of the Prices is .....

**If Option A or B is used**

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

- The percentage for people overheads is .....%.
- The published list of Equipment is the last edition of the list published by  
.....
- The percentage for adjustment for Equipment in the published list is  
..... % (state plus or minus).

- The rates for other Equipment are

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

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

category of employee	hourly rate
.....	.....
.....	.....
.....	.....
.....	.....

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

**If Option C, D or E is used**

**Data for Schedule of Cost Components**

- The listed items of Equipment purchased for work on this subcontract, with an on cost charge, are

Equipment	time-related charge	per time period
.....	..... per	.....
.....	..... per	.....
.....	..... per	.....
.....	..... per	.....

- The rates for special Equipment are

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

- The percentage for Working Areas overheads is ..... %.

- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
.....	.....
.....	.....
.....	.....
.....	.....

- The percentage for manufacture and fabrication overheads is ..... %.

**If Option C, D or E is used**

**Data for both  
schedules of cost  
components**

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

category of employee	hourly rate
.....	.....
.....	.....
.....	.....
.....	.....

- The percentage for design overheads is ..... %.

- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *subcontract works* and Equipment done outside of the Working Areas are

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

**If Option C, D or E is used**

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

- The percentage for people overheads is .....%.
- The published list of Equipment is the last edition of the list published by .....
- The percentage for adjustment for Equipment in the published list is ..... % (state plus or minus).
- The rates for other Equipment are

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

**ANNEXURE 3  
SUBCONTRACT WORKS INFORMATION**



## ANNEXURE 4

### FORMS OF PERFORMANCE BOND

#### Part A: Performance Bond

**THIS PERFORMANCE BOND** is made as a deed this                      day of                      20[●]

#### **BETWEEN:-**

- (1) [                      ] whose registered office is at [                      ] (the "**Surety**"); and
- (2) [                      ] whose registered office is at [                      ] (the "**Contractor**");  
and
- (3) [                      ] whose registered office is at [                      ] (the "**Subcontractor**").

#### **WHEREAS:-**

- A. The *Contractor* and the *Subcontractor* have entered into a subcontract (the "**Subcontract**") for [*insert contract description*] works (the "**Works**") as defined in the Subcontract.
- B. The *Surety* has agreed with the *Contractor* at the request of the *Subcontractor* to guarantee the performance of the obligations of the *Subcontractor* under the Subcontract upon the terms and conditions of this Performance Bond subject to the limitation set out in Clause 2.

#### **NOW THIS DEED WITNESSETH as follows:-**

- 1.1 In consideration of the *Contractor* entering into the Subcontract with the *Subcontractor*, the *Surety* hereby unconditionally and irrevocably guarantees to the *Contractor* the due and punctual performance by the *Subcontractor* of each and all of the obligations duties and undertakings of the *Subcontractor* under and pursuant to the Subcontract when and if such obligations, duties and undertakings shall become due and performable according to the terms of the Subcontract. In the event of a breach of the Subcontract by the *Subcontractor* (and for the purposes of this Performance Bond a termination by the *Contractor* of the *Subcontractor's* employment for any of reasons R1 - R10 set out in clause 91 of the Subcontract shall constitute a breach), subject to the provisions of this Performance Bond the *Surety* shall promptly on request from time to time so to do by the *Contractor* satisfy and discharge the damages sustained or incurred by the *Contractor* and due from the *Subcontractor* in respect of such breach as established and ascertained in accordance with the provisions of or by reference to the Subcontract and taking into account all sums due to the *Subcontractor* under the Subcontract.
- 1.2 For the purposes of this Performance Bond:
  - (a) the damages due and payable under this Performance Bond to the *Contractor* following a termination of the *Subcontractor's* employment under condition 91.1 of the Subcontract (Reasons for termination - insolvency events) shall be such amount as shall represent the difference between:
    - i) the amounts actually paid by the *Contractor* to complete the whole of the works together with all direct loss and expense caused to the *Contractor* by reason of such termination; and

- ii) the amount that would have been payable to the *Subcontractor* in respect of the completion of the Works in accordance with the Subcontract but for such determination

but subject to such limitation and to clauses 2 and 7 below, the liability of the *Surety* shall be co-extensive with the liability of the *Subcontractor* under the Subcontract.

2. The maximum aggregate liability of the *Surety* under this Performance Bond shall not exceed the "Bond Amount" being [ ] pounds sterling (£ ) which sum shall on the date of Completion (as defined in the Subcontract) reduce to [ ] pounds sterling (£ ).
3. Subject to clause 4, in any action or proceedings by the *Contractor* under this Performance Bond the *Surety* shall be entitled to rely on any limitation in the Subcontract and to raise the equivalent rights (including the right to adjudication) in defence of its liability hereunder as the *Subcontractor* would have against the *Contractor* under the Subcontract.
4. The liability of the *Surety* and the rights of the *Contractor* in relation to this Performance Bond shall be in addition to, and shall not merge with or otherwise prejudice or affect or be prejudiced or affected by, any other right, remedy, guarantee or security now or at any time hereafter held by the *Contractor* in relation to the Subcontract and shall not be discharged or impaired by reason of:-
  - (a) the winding-up, dissolution, administration or reorganisation of the *Subcontractor* or any change in its status, function, control or ownership;
  - (b) time, forbearance or other indulgence being granted or agreed to be granted to the *Subcontractor* or concerning the Subcontract;
  - (c) any amendment to, or variation, waiver or release of, any of the terms of the Subcontract;
  - (d) save as provided in clause 5 below, any failure to take or to realise (or fully to take or to realise), or any release, discharge, exchange or substitution of, any security, guarantee or indemnity in respect of the Subcontract; or
  - (e) any other act, event or omission which, but for this clause 4, might operate to discharge, impair or otherwise affect any of the obligations or liabilities of the *Surety* hereunder or any of the rights, remedies or powers conferred upon the *Contractor*.
5. The *Contractor* shall be obliged before exercising any of the rights, remedies or powers conferred upon it hereunder:-
  - (a) to make a written demand on the *Subcontractor* and the *Guarantor* or *Guarantors* (as defined in the Subcontract) and at the same time provide a copy of the said written demand to the *Surety*; and
  - (b) to certify that there has been a failure to pay under the said written demand within 5 Business Days of service on each of the *Subcontractor* and the *Guarantor* or *Guarantors*. For the purpose of this Performance Bond, "Business Day" means the day (other than a Saturday or Sunday) on which commercial banks are open for business in London.
6. Notwithstanding any other provisions of this Performance Bond, any termination of the *Subcontractor's* employment by the *Contractor* for any of reasons R1 – R10 set out in clause

91 of the Subcontract shall be conclusive evidence for the purposes of this Performance Bond of the *Subcontractor's* failure duly to perform and observe the terms of the Subcontract and the *Contractor* shall thereafter be entitled to recover pursuant to clause 1 the sum due from the *Subcontractor* to the *Contractor* in respect of such termination.

7. The *Contractor* shall pursuant to the provisions of the Subcontract issue the Defects Certificate (as defined in the Subcontract) then upon the date named in such certificate (save to the extent of any claims notified by the *Contractor* to the *Surety* in writing prior to such date) the obligations of the *Surety* under this Deed shall be null and void but otherwise shall remain in full force and effect.
8. Any notice, request, demand or other communication to be given or made under this Performance Bond shall be made to the address of the addressee within the United Kingdom set out below and marked for the attention of the person set out below:-
  - (a) in the case of the *Contractor* by letter to it at [ ] in each case marked for the attention of [ ];
  - (b) in the case of the *Surety* by letter to it at [ ] in each case marked for the attention of [ ]; and
  - (c) in the case of the *Subcontractor* by letter to it at [ ] in each case marked for the attention of [ ]

or at any other address within the United Kingdom or for the attention of such other persons as the parties hereto may from time to time notify to each other and shall be deemed to have been delivered, in the case of any notice, request, demand or other communication given or made by personal delivery, when despatched or delivered unless despatched or delivered outside normal business hours when it shall be deemed to have been delivered on the next normal working day following the date on which it was despatched or, in the case of any notice, request, demand or other communication given or made by letter, upon actual receipt.

9. The construction, validity and performance of this Performance Bond shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.
10. Notwithstanding any other provisions of this Performance Bond nothing in this Performance Bond confers or purports to confer any rights to enforce any of its terms on any person who is not a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Performance Bond.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

## Part B: Goods and Materials Bond

### The parties to this Bond are:

- (1) [ ] whose registered office is at [ ] (the "**Surety**"), and
- (2) [ ] whose registered office is at [ ] (the "**Contractor**").
- (A) The *Contractor* and [ ] (the "**Subcontractor**") have entered into a subcontract (the "**Subcontract Works**") as defined in the Subcontract.
  1. Subject to the relevant provisions of the Subcontract as summarised below but with which the Surety shall not at all be concerned:
    - (a) no payment is to be made to the *Subcontractor* on account of items to be included in the Subcontract Works ("**Plant and Materials**") which are outside the Working Areas (as defined in the Subcontract) unless the *Contractor* has given his permission and the Surety has entered into this Bond in favour of the *Contractor*;
    - [(b) the *Subcontractor* has agreed to insure against loss or damage to the Plant and Materials to their replacement cost, including the amount stated in the Subcontract Data for any Plant and Materials received and accepted by the *Subcontractor* which are outside the Working Areas;]
    - (c) immediately on payment and without any further act being necessary title shall pass to the *Contractor* and the *Subcontractor* shall ensure that the Plant and Materials are clearly tagged, identified as the *Contractor's* and set aside for the *Contractor*. Risk in such Plant and Materials does not pass on payment; and
    - (d) this Bond shall exclusively relate to the amount paid to the *Subcontractor* in respect of the Plant and Materials which are outside the Working Areas.
  2. The *Contractor* shall in making any demand provide to the Surety a Notice of Demand in the form of the Schedule attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond.
  3. The Surety shall within 5 Business Days after receiving the demand pay to the *Contractor* the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.
  4. Payments due under this Bond shall be made notwithstanding any dispute between the *Contractor* and the *Subcontractor* and whether or not the *Contractor* and the *Subcontractor* are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.
  5. The Surety consents and agrees that the following actions by the *Contractor* may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:

- (a) waiver by the *Contractor* of any of the terms, provisions, conditions, obligations and agreements of the *Subcontractor* or any failure to make demand upon to take action against the *Subcontractor*;
  - (b) any modification or changes to the Subcontract; and/or
  - (c) the granting of an extension of time to the *Subcontractor* without affecting the terms of clause 7 below.
6. The Surety's maximum aggregate liability under this Bond shall be ●.
- [Note: Value of the relevant Plant and Materials to be inserted]**
7. The obligations of the Surety under this Bond shall cease upon the date on which the Plant and Materials have been delivered to the Working Areas as certified in writing to the Surety by the *Contractor* and any claims hereunder must be received by the Surety in writing on or before such date.
8. The Bond is transferable and assignable without the prior written consent of the Surety to any party to whom title is passed in the Plant and Materials subject to written notice to the Surety of any such transfer or assignment being made by the *Contractor*.
9. Notwithstanding any other provisions of this Bond nothing in this Bond confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
10. This Bond shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

**IN WITNESS** whereof this Bond has been executed as a Deed by the Surety and delivered on the date below:

Executed as a deed by [*insert name in* )  
***bold and upper case*** )  
 for and on behalf of the Surety: )

Director

Director/Secretary

Executed as a deed by [*insert name in* )  
***bold and upper case*** )  
 for and on behalf of the *Contractor*: )

Director

Director/Secretary

**SCHEDULE TO BOND**  
**(clause 2 of the Bond)**

**Notice of Demand**

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

*Contractor:* \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £ \_\_\_\_\_

being the amount in respect of Plant and Materials included in an interim payment(s) under the Subcontract which has been duly made to the *Subcontractor* by the *Contractor* but such Plant and Materials have not been delivered to the Working Areas.

Address for payment: \_\_\_\_\_

\_\_\_\_\_

This Notice is signed by the following persons who are authorised by the *Contractor* to act for and on his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**ANNEXURE 5**  
**FORM OF WARRANTY**

## **SUBCONTRACTOR'S COLLATERAL WARRANTY AGREEMENT**

**THIS DEED** is made the [ ] day of [ ] 20[ ]

### **BETWEEN:-**

- (1) [ ] whose registered office is at [ ] ("the Sub-Contractor")
- (2) [ ] whose registered office is at [ ] ("the Beneficiary ")
- (3) [ ] whose registered office is at [ ] ("the Contractor")

### **WHEREAS:-**

- (A) By a construction contract dated [ ] day of [ ] ("**the Contract**") the Contractor has undertaken with Crossrail Limited to design and construct the Works as defined therein. The Contractor has engaged the Sub-Contractor pursuant to a Sub-Contract dated [ ] day of [ ] ("**the Sub-Contract**") to carry out the design and construction of the Sub-Contract Works as defined in the Sub-Contract.
- (B) The Sub-Contractor acknowledges that the Beneficiary has an interest in the proper design and construction of the Sub-Contract Works and has agreed to enter into a direct contractual relationship with the Beneficiary on the terms contained in this Deed.

### **NOW THIS DEED WITNESSETH** as follows:-

1. The Sub-Contractor hereby warrants and undertakes to the Beneficiary that:-
  - 1.1 in respect of any design of the Sub-Contract Works it has exercised and will continue to exercise the standard of skill, care and diligence to carry out and complete such design to be reasonably expected from a properly qualified and competent designer experienced in providing design in respect of works similar in scope, size and complexity to the Sub-Contract Works;
  - 1.2 it has complied and shall continue to comply promptly and efficiently with the terms of and has fulfilled and will continue to fulfil its duties and obligations set out in the Sub-Contract.
2. The obligations of the Sub-Contractor under or pursuant to this Deed shall not be released diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress or otherwise report to it in respect of the Sub-Contract Works.
3. The Sub-Contractor warrants and undertakes to the Beneficiary that it has not and shall not specify for use or use in the construction of the Sub-Contract Works any prohibited or deleterious material as referred to in the Sub-Contract.
4. The Sub-Contractor has effected and will maintain professional indemnity insurance in an amount of £[ ] ([ ] million pounds) for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of twelve years from the date of Completion of the whole of the Works under the Contract provided always that such insurance is available at commercially reasonable rates and upon reasonable commercial terms in the UK market. If such insurance ceases to be available at commercially reasonable rates and upon reasonable commercial terms the Sub-Contractor shall inform the Beneficiary as soon as possible in



which case the Sub-Contractor and the Beneficiary will discuss means of best protecting their respective positions in the absence of such insurance. When deciding whether such insurances are available at commercially reasonable rates and on commercially reasonable terms, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record. As and when it is reasonably requested to do so by the Beneficiary, the Sub-Contractor shall produce for inspection documentary evidence in the form of a broker's letter or certificate (including details of the names of the insurer and the insured, the policy start and end date, limits of indemnity/sums insured and deductibles, territory and key extensions and key exclusions of cover) that its professional indemnity insurance is being maintained and confirm that payment has been made in respect of the last preceding premium due under it.

5. *[Clause 5 included in Employer warranty only]*
- 5.1 The Sub-Contractor agrees that in the event of the termination of the Contract by the Beneficiary the Sub-Contractor will, if so required by written notice given by the Beneficiary, and subject to clause 5.3, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract, and upon the Beneficiary's request the Sub-Contractor will enter into an agreement for the novation of the Sub-Contract by the Contractor to the Beneficiary or its appointee, such agreement to be in terms reasonably required by the Beneficiary (but subject always to clause 5.3). The Sub-Contractor and Contractor represent and warrant that the form of novation prepared by the City of London Law Society (with the terms "Employer", "Contractor", "Consultant", "Services" and "Appointment" amended to read "Contractor", "Employer", "Sub-Contractor", "Sub-Contract Works" and "Sub-Contract" save in Recital B) is acceptable.
- 5.2 The Sub-Contractor further agrees that it will not without first giving the Beneficiary not less than 21 days' prior written notice exercise any right it may have to terminate the Sub-Contract (or its employment thereunder) or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties and/or obligations to be performed by the Sub-Contractor pursuant thereto. Such right to terminate the Sub-Contract or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice, and subject to clause 5.3, the Beneficiary shall give notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works upon the terms and conditions of the Sub-Contract, and upon the Beneficiary's request the Sub-Contractor shall enter into an agreement for the novation of the Sub-Contract by the Contractor to the Beneficiary or its appointee, such agreement to be in terms reasonably required by the Beneficiary (but subject always to clause 5.3).
- 5.3 It shall be a condition of any notice given or any new agreement proposed by the Beneficiary under clauses 5.1 or 5.2 that the Beneficiary or its appointee accepts liability for payment of the sums properly due to the Sub-Contractor under the Sub-Contract (including any sums outstanding at the date of such notice) and for the performance of the Contractor's obligations under the Sub-Contract. Upon the issue of any notice by the Beneficiary under clauses 5.1 and 5.2 the Sub-Contract shall continue in full force and effect as if no right of determination or to treat the same as repudiated or to discontinue performance on the part of the Sub-Contractor had arisen and the Sub-Contractor shall be liable to the Beneficiary or its appointee in lieu of its liability to the Contractor. If any notice given by the Beneficiary under clauses 5.1 or 5.2 requires the Sub-Contractor to accept the instructions of the Beneficiary's appointee and/or to novate the Sub-Contract to such appointee, the Beneficiary shall be liable

to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Beneficiary's appointee.

- 5.4 The Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it by clauses 5.1 and 5.2. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 5.1 as conclusive evidence for the purposes of this Deed of the termination of the Contract by the Beneficiary.
6. Notwithstanding anything herein contained, the Sub-Contractor shall not be liable to the Beneficiary for any breach or breaches of this Deed which is or are the subject matter of arbitration or litigation proceedings commenced against the Sub-Contractor unless such proceedings are commenced before the expiry of 12 years from the date of Completion of the whole of the Works.
7. This Deed, the benefit hereof and/or the rights arising hereunder (whether or not accrued) may be assigned by the Beneficiary twice without the consent of the Sub-Contractor and the Contractor being required. No further assignment shall be permitted without the consent of the Sub-Contractor and the Contractor, such consent not to be unreasonably withheld or delayed. The Sub-Contractor and the Contractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment.
8. The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 7 hereof is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named beneficiary under this Deed.
9. Notwithstanding any other provision of this Deed, the Sub-Contractor shall have no greater liability to the Beneficiary under this Deed than it would have had to the Beneficiary under the Sub-Contract if the Beneficiary had been named as a joint employer in the Sub-Contract and the Sub-Contractor shall be entitled in any action under this Deed to use any defence that it would have had under the Sub-Contract if the Beneficiary had been named as a joint employer in the Sub-Contract provided that in each such case the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
10. Save where the Beneficiary has exercised its rights under clause 5.1 and/or 5.2 the Sub-Contractor shall not be liable under this Deed for any delay in the completion of the Sub-Contract Works.
11. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the parties to this Deed (which term shall for the purposes of this clause include all permitted assignees or transferees or successors in title) shall have any rights under it nor shall it be enforceable under the Act by any person other than the parties to it.
- 12.
- 12.1 Insofar as the beneficial ownership of copyright is vested in him the Sub-Contractor grants the Beneficiary (and notwithstanding that the Sub-Contractor may complete its duties or terminate its Sub-Contract or have its Sub-Contract terminated) a royalty-free irrevocable, unconditional, unlimited and non-exclusive licence to use and to reproduce all details, plans, specifications, schedules and other documentation and information prepared or provided by the Sub-Contractor in connection with the Works for any purpose related to the Works

including, but without limitation, the construction, completion, use and maintenance, letting, promotion, advertisement, reinstatement and repair of the Works and such licence shall enable the Beneficiary to copy and use such documents for the aforementioned purposes (including an extension to the Works but such use shall not include a license to reproduce the designs contained in them for any such extension) provided that the Sub-Contractor shall not be liable for any use of such documents for any purpose other than that for which it was originally prepared and such licence shall include the right to grant sub-licences and shall be freely assignable by the Beneficiary.

- 12.2 Insofar as the beneficial ownership of copyright in the material referred to in clause 12.1 hereof is vested in a person other than the Sub-Contractor, the Sub-Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in clause 12.1.
13. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received forty-eight (48) hours after being posted.
14. Any and all disputes and claims between the Beneficiary and the Sub-Contractor as to the construction, interpretation, validity and application of this Deed and any and all matters or things of whatsoever nature arising out of or in connection therewith shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

**IN WITNESS WHEREOF** this agreement has been duly executed and delivered as a Deed by the parties hereto on this day and year first before written.

**EXECUTED AS A DEED by [SUBCONTRACTOR]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary

**EXECUTED AS A DEED by [BENEFICIARY]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary

**EXECUTED AS A DEED by [CONTRACTOR]**

acting by two Directors/a Director and  
its Secretary

Director

Director / Secretary

## ANNEXURE 6

### FORM OF PARENT COMPANY GUARANTEE

This agreement is made on the                    day of                    20

Between

- (1)            [name] of [address] (company number [                    ] [(the *Contractor*)] [JV member];
- (2)            [name] of [address] (company number [                    ] (the *Guarantor*); and
- (3)            [name] of [address] (company number [                    ] [(the *Subcontractor*)] [JV member].

#### RECITALS

- (A)            Crossrail Limited has entered into a main contract dated [    ] with the *Contractor*.
- (B)            The *Contractor* has entered into a subcontract (Subcontract No [    ]) dated [            ] with the *Subcontractor* (the "Subcontract").
- (C)            The *Guarantor* has agreed to guarantee the performance of the obligations of [the *Subcontractor*<sup>7</sup>] [[JV member], comprising one part of the *Subcontractor*<sup>8</sup>] under the Subcontract.

In consideration of the *Contractor* appointing the *Subcontractor* in accordance with the terms of the Subcontract, the *Guarantor* covenants with the *Contractor* as follows:

1.

- 1.1            (a)            The *Guarantor* agrees that if the [*Subcontractor*] [JV member] shall in any respect fail to perform any of its obligations arising under or out of the Subcontract (as the same may be amended or varied from time to time) or shall commit any breach or fail to perform any warranty or indemnity set out in the Subcontract (as the same may be amended or varied from time to time), then the *Guarantor* shall upon the *Contractor*'s demand procure the performance of the Works and fulfil in the place of the [*Subcontractor*] [JV member] each and every obligation, warranty or indemnity in respect of which the [*Subcontractor*] [JV member] has defaulted or as may be unfulfilled by the [*Subcontractor*] [JV member] within 10 business days of receipt of written notification from the *Contractor* to the *Guarantor* of such failure or breach by the *Subcontractor* and, if such liability of the *Subcontractor* to the *Contractor* has been contested by the *Subcontractor* under the Subcontract, substantiation of such claim by way of a first adjudication decision either according to the disputes resolution procedure under the Subcontract or, if there is no adjudication decision, of a court judgment for the amount of such claim, or a settlement in respect of such contested liability agreed by the *Contractor* and the *Employer*, and provided the *Guarantor* shall have failed to perform and fulfil in the place of the [*Contractor*] [JV member] within four weeks of such demand, subject always to clause 1.1(b) the *Guarantor* shall

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<sup>7</sup> In the case of an incorporated Joint Venture, the *Guarantor* will guarantee the performance of the *Subcontractor*.

<sup>8</sup> In the case of an unincorporated Joint Venture, the *Guarantor* will guarantee the performance of the relevant Joint Venture member of the *Subcontractor*.

indemnify and save harmless the *Contractor* from any and all losses, damages, expenses, claims, costs or proceedings which the *Contractor* may suffer or incur by reason of the said failure or breach by the *Subcontractor*.

- (b) The *Guarantor's* obligations and liability hereunder shall be no greater than if it had been named in the Subcontract as a party comprising the *Subcontractor* with joint and several obligations and liability and the *Guarantor* shall be entitled in any action or proceedings by the *Contractor* to rely on any limitation, defences, set-offs and counterclaims under the Subcontract in relation to any such obligation or liability.
- 1.2 The *Guarantor* confirms that it has full power and capacity to give the guarantee set out herein, and that the guarantee shall not be revocable and shall be a continuing guarantee.
- 1.3 The *Guarantor* agrees that the *Contractor* is entitled to assign any of its rights under this guarantee at any time to any person who takes an assignment, novation or other transfer of the Subcontract or the benefit thereof.
2. As between the *Guarantor* and the *Contractor*, the *Guarantor* shall remain liable under clause 1 as if it were the sole principal obligor and not merely a guarantor provided that nothing in this Guarantee set out herein shall render the *Guarantor* liable in respect of any provision of the Subcontract that is illegal, invalid or unenforceable.
3. The *Guarantor* shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:
- 3.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope or the *subcontract works* under the Subcontract or to the Subcontract or any related documentation;
- 3.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the [*Subcontractor*][JV member];
- 3.3 the enforcement, absence of enforcement or release of the Subcontract or of any security, right of action or other guarantee or indemnity;
- 3.4 the dissolution, amalgamation, reconstruction, reorganisation of the [*Subcontractor*][JV member] or any other person;
- 3.5 the illegality, invalidity or unenforceability of or any defect in any provision of the Subcontract or any of the [*Subcontractor's* ][JV member's] obligations under the Subcontract or;
- 3.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the [*Subcontractor*][JV member];
- 3.7 any compromise of any dispute with the [*Subcontractor*][JV member];
- 3.8 any failure of supervision to detect or prevent any fault of the [*Subcontractor*][JV member];
- 3.9 any assignment of the benefit of the Subcontract or any novation of the Subcontract.
4. The *Guarantor* agrees that any decision of any adjudicator appointed in accordance with the Subcontract and/or any court and/or any agreement reached between the [*Subcontractor*][JV member] and the *Contractor* in respect of or in connection with the Subcontract shall be binding on the *Guarantor*, provided always that the *Guarantor* shall have available to it such

rights of appeal or challenge as the [*Subcontractor*][JV member] would have or would have had.

6. If the *Guarantor* is not a company registered in England and Wales, the *Guarantor* provides to the *Contractor* a legal opinion in the form appended on the *Guarantor's* execution of this guarantee.
7. No proceedings may be commenced against the *Guarantor* by the *Contractor* more than 12 years after Completion under and as defined in the Subcontract.

Executed as a deed and delivered on the date above by:

..... (signed)  
..... (name of director)  
..... (signed)  
..... (name of director or company secretary)

On behalf of [the *Subcontractor*][JV member]

..... (signed)  
..... (name of director)  
..... (signed)  
..... (name of director or company secretary)

On behalf of [the *Contractor*][JV member]

..... (signed)  
..... (name of director)  
..... (signed)  
..... (name of director or company secretary)

On behalf of [the *Guarantor*]

## ANNEXURE 7

### LEGAL OPINION LETTER

[Insert letterhead]

[Contractor]

Dear Sirs

**[Subcontractor][JV member] and [Guarantor]  
[●] works for the Crossrail project, London**

We have acted as **[relevant jurisdiction]** legal advisers to [[Subcontractor] (the "*Subcontractor*") and **[Guarantor]** (the "*Guarantor*") in relation to [Subcontractor][JV member]'s obligations under and arising out of its appointment for the Crossrail project and associated collateral warranties and the *Guarantor's* provision of a guarantee in respect of the same (the "**Documents**").

The [Subcontractor][Guarantor] is incorporated in [ ] (the "**Relevant Jurisdiction**") and for the purposes of this legal opinion "**Relevant Laws**" means the laws of the Relevant Jurisdiction and the laws of [ ] as they apply in the Relevant Jurisdiction.

#### 1. **OPINION**

We are of the following opinion insofar as the Documents relate to the [Subcontractor][Guarantor] r.

- (a) The [Subcontractor][Guarantor] is registered and validly existing under the **[relevant statute]** and is capable of being sued in its corporate name.
- (b) The execution and performance of each Document as a deed has been authorised by all appropriate action of the [Subcontractor][Guarantor] and will not breach any provisions of any Relevant Law or any regulation binding upon the [Subcontractor][Guarantor] **[or its Memorandum and Articles of Association or Constitution]**.
- (c) Each Document has been validly and properly executed and any power of attorney connected with the execution of any Document constitutes legal, valid and binding obligations of the [Subcontractor][Guarantor] enforceable in accordance with its terms.
- (d) Each person signing a Document as an attorney under a power of attorney is authorised pursuant to the power of attorney by which they were appointed an attorney of the [Subcontractor][Guarantor] to represent the [Subcontractor][Guarantor] and execute the applicable Document on its behalf.
- (e) Any consent from any Government Agency in the Relevant Jurisdiction required for and in connection with the validity and enforceability of each Document, or to enable the [Subcontractor][Guarantor] to perform its obligations under it, have been obtained and any filings and registrations required by any Government Agency have been made.



- (f) Under the Relevant Laws, the choice of the law of England and Wales to govern the validity and enforceability of each Document is a valid choice of law.
- (g) Any judgment in respect of a Document which is enforceable against the [Subcontractor][Guarantor] in the courts of England and Wales may be enforced in the Relevant Jurisdiction by registration of the judgment under the [relevant statute] and would be recognised and accepted by the courts of that jurisdiction without retrial or examination of the merits of the case.
- (h) All payments to be made by the [Subcontractor][Guarantor] under a Document may be made free and clear of and without deduction of any tax imposed in [ ].

2. **PURPOSE AND BENEFIT**

This opinion is given for the benefit solely of the parties to which this opinion is addressed.

Yours faithfully

[ ]

**ANNEXURE 8**  
**SITE INFORMATION**