

Main Systems Contract

Target contract with activity schedule

Crossrail Limited

(the *Employer*)

and

[]

(the *Contractor*)

[Drafting Note – repeat as necessary if additional parties comprising the Contractor]

Contract No. []

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.

Main Systems Version 3.1

This agreement is made on the day of 20

Between **CROSSRAIL LIMITED** of 25 Canada Square, London E14 5LQ (the *Employer*)

and (name)

of

[an unincorporated joint venture between [{ SYMBOL 108\wingdings \s11\h * MERGEFORMAT }]]¹ (the *Contractor*)

1. The *Employer* wishes to procure the carrying out of certain [{ SYMBOL 108\wingdings \s11\h * MERGEFORMAT }] 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.]²

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)

¹ Delete if *Contractor* not an unincorporated joint venture

² Delete if *Contractor* not an unincorporated joint venture

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

On behalf of ([a party comprising] the *Contractor*)

[Drafting Note – repeat sealing blocks as necessary for relevant number of parties comprising the Contractor]

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Index of Annexures to Form of Agreement

- Annexure 1 – Conditions of contract
- Annexure 2 – Contract Data
- Annexure 3 – Works Information Parts 2A, 2B and 2C
- Annexure 4 – Form of Novation
- Annexure 5 – Forms of Performance Bond
- Annexure 6 – Forms of Warranty
- Annexure 7 – Form of Parent Company Guarantee
- Annexure 8 - Legal Opinion
- Annexure 9 – Site Information
- Annexure 10 - Not used
- Annexure 11 – Not used
- Annexure 12 – Maintenance Support Contract

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ANNEXURE 1 - CONDITIONS OF CONTRACT

NEC 3

Conditions of Contract

Engineering and Construction Contract

Terms and Conditions

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CONTENTS

Core clauses	1	General
	2	The <i>Contractor's</i> main responsibilities
	3	Time
	4	Testing and Defects
	5	Payment
	6	Compensation events
	7	Title
	8	Risks and insurance
	9	Termination
Dispute resolution	W	Option W2A
Secondary Option clauses		
	X1	Price adjustment for inflation
	X2	Changes in the law
	X4	Parent company guarantee
	X5	Sectional Completion
	X7	Delay damages
	X8	Collateral warranty agreements
	X13	Performance bond
	X18	Limitation of liability
	Y(UK)3	The Contracts (Rights of Third Parties) Act 1999
Additional conditions of contract	Z1	
	Z2	Training
	Z3	Equality and diversity
	Z4	Assignment
	Z5	Novation
	Z6	Project Bank Account
	Z7	Interface
	Z8	The Parties' use of material
	Z9	Publicity
	Z10	Data protection
	Z11	Access to information
	Z12	Freedom of information
	Z13	Confidential information
	Z14	Not used
	Z15	Value engineering
	Z16	Omissions
	Z17	Conflict of interest
	Z18	Best value
	Z19	Claims against TfL and DfT
	Z20	Register of undertakings and assurances
	Z21	Not used
	Z22	Not used
	Z23	Not used
	Z24	Transparency
	Z25	Common Plant and Materials
	Z26	Legal opinion
	Z27	Delay damages for Key Dates and Milestone Dates
	Z28	Subcontract conditions of contract
	Z29	Correction of Critical Defects

Z30	Loss of or damage to the <i>works</i> , Plant and Materials
Z31	Other contracts with the <i>Employer</i>
Z32	Rejection of Works
Z33	Deferred System Performance
Z34	Milestones
Z35	Not used
Z36A	Maintenance Support Contract
Z36B	Maintenance Support Contract
Z37	Early Access Dates
	LUL Optional Clause

**Schedule of Cost
Components**

**Shorter Schedule of
Cost Components**

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CORE CLAUSES

1 General

Actions 10

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.

Identified and defined terms 11

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) Act of Insolvency has the meaning given to it in clause 91.1.
- (4) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.
- (5) 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.
- (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 or Milestone 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
- is in respect of delayed, disrupted or cancelled access which
 - was not requested in accordance with this contract and the access procedures and requirements contained or referred to in the Works Information,
 - was delayed, disrupted or cancelled to the extent due to the default of the *Contractor* (including where the *Contractor's* default was the cause of an emergency)
 - the *Contractor* did not make a bona fide attempt to use (which includes having the appropriate physical presence on Site required to utilise the access), except where the *Contractor* was instructed by the *Project Manager* not to use the access, or
 - the *Contractor* failed to notify the *Project Manager* within four (4) calendar days of the occurrence

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 or not complying with his obligation to integrate and co-ordinate his design in accordance with clause 21.1 ,
- 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) 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)

(31) Information Request means a request for information under the FOI Legislation.

(32) 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.

(33) LUL is London Underground Limited whose registered office is 55 Broadway, London SW1H

OBD.

- (34) Losses means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments whatsoever or howsoever incurred.
- (35) Milestone is the *milestone* stated in the Contract Data (where clause Z34 applies to this contract) unless later changed in accordance with this contract.
- (36) Milestone Date is the *milestone date* stated in the Contract Data (where clause Z34 applies to this contract) unless later changed in accordance with this contract.
- (37) Network Rail is Network Rail Infrastructure Limited whose registered office is at Kings Place, 90 York Way, London N1 9AG.
- (38) New Employer means TfL, DfT, Network Rail 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 Network Rail or is a company in which TfL or DfT or Network Rail 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).
- (39) 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.
- (40) 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.
- (41) The Parties are the *Employer* and the *Contractor*.
- (42) PDA is the Project Development Agreement between the *Employer*, TfL and the Secretary of State for Transport dated 3 December 2008.
- (43) Personal Data shall have the same meaning as in

the DPA.

- (44) Plant and Materials are items intended to be included in the *works*.
- (45) 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.
- (46) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.
- (47) Processing shall have the same meaning as in the DPA and Process and Processed shall be construed accordingly.
- (48) 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.
- (49) 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.
- (50) 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.
- (51) 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.
- (52) Register of Undertakings and Assurances means the *Employer's* undertakings and assurances register as referred to in the Works Information.
- (53) 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.
- (54) 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.
- (55) Site Information is information which
- describes the Site and its surroundings and

- is in the documents which the Contract Data states it is in.
- (56) The Sponsors' Requirements are set out in the PDA and shall apply as amended from time to time.
- (57) 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*.
- (58) 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.
- (59) 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).
- (60) 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.
- (61) 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.

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.

The Project Manager and the Supervisor 14

- 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, a Key Date or a Milestone Date (where applicable).
- 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 Areas 15

- 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 or a Milestone Date (where applicable)
- 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, a Key Date or Milestone Date (where applicable) as a result of any revision to the Risk Register is in accordance with clauses 60 and 65.

inconsistencies

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.

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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. He integrates and co-ordinates his design with the designs of the *Employer* and Others in accordance with the Works Information and any instructions of the *Project Manager* and where further necessary to Provide the Works.
- 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 or
 - it is not integrated and co-ordinated with the designs of the *Employer* and/or Others where the *Contractor* is required by the Works Information or instructions of the *Project Manager* to integrate and/or co-ordinate his design with the designs of the *Employer* and Others, or such integration is necessary for the *Contractor* to Provide the Works or
 - it is such that if constructed the *works* will not

be capable of Completion.

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* warrants and undertakes to the *Employer* that at Completion the *works*, to the extent they are designed by the *Contractor*, will be fit for the purpose specified in or reasonably to be inferred from this contract.

21.4 The *Contractor* in designing and specifying the parts of the *works* which he is required to design and specify, warrants, undertakes and represents to the *Employer* that the *works* comply with the Works Information and any performance or output specification or requirements contained or referred to in this contract.

21.5 The *Contractor* accepts entire responsibility for his design and specification and for any mistake, inaccuracy, discrepancy or omission contained therein.

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 or that the *Contractor* has not achieved a Milestone (where applicable) 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 or the Milestone is achieved.

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 *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 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. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever to the extent 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 and (where applicable) so that each Milestone is achieved by the Milestone 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, Milestone Dates* (where applicable) 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 Milestones (where applicable) 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,
- it does not allow the *Employer* or Others to start or carry out and complete their works as planned and subsequently to maintain any assets or facilities delivered as a result of such work 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 Subject to the access provisions contained in the Works Information, 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*, and where provided in the Works Information, Others may use any part of the *works* before Completion has been certified. If they do so, the *Employer* takes over the part of the *works* when he or Others begin to use it except if the use is

- for a reason stated in the Works Information or
- for the purposes of testing and commissioning or
- to correct a Defect which the *Contractor* has failed to correct in accordance with this contract or
- to suit the *Contractor's* method of working.

If any of the above exceptions apply, the *Contractor* remains responsible for the care and protection of that part of the *works* whilst being used by the *Employer* and/or Others and the *works* remain at the *Contractor's* risk.

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.

Learning Legacy Document

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 showing the required information 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 or a Milestone Date (where applicable).
- (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 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.

(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, a Key Date or a Milestone Date (where applicable) 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 a Milestone Date (where applicable) 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, the Key Dates and the Milestone Dates (where applicable) 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, Key Dates and Milestone Dates (where applicable) 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*.

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

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

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

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

- the Prices are 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 or Milestone 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 or a Milestone 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, the Key Dates and the Milestone Dates (where applicable) 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, the Key Dates and the Milestone Dates (where applicable) 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 or of a Milestone 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 65
compensation events**

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, the Key Dates and Milestone Dates (where applicable) 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 Not used.

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, 71 Plant and Materials outside the Working 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 or until any other date stated in the Contract Data.

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

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1-R24	P1, P2, P3 and P5	A1, A2 and A4
	R1-R15 or R18 or R22 or R24	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
	R23	P1, P2, P3 and P5	A5
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 in any applicable jurisdiction.

- 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**".

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).

91.7A The *Employer* may terminate at any time if he exercises his right to reject the *works* under clause Z32 (if applicable to this contract) (R23).

91.7B The *Employer* may terminate at any time in the circumstances stated in clause Z35.6 (if applicable to this contract) (R24).

**Procedures on 92
termination**

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 where set out in the Termination Table (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.

A5 The *Contractor* pays to the *Employer* any amounts paid by the *Employer* to the *Contractor* up to the date of termination in respect of the rejected *works* and, where the *Contractor* fails to remove the rejected *works* in accordance with clause Z32, the forecast cost to the *Employer* of removing the

rejected works.

93.4 Except in the case of termination for reason R23, 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 Except in the case of termination for reason R23, 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 and notwithstanding any referral in accordance with clause W2A.3 shall refer any Dispute which may lead to a claim in excess of 7 days or £100,000 (a "Significant Dispute") to the relevant *nominated representative* of each Party for prompt, bona fide discussion of the Significant 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

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

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 <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 X4 guarantee

- 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* for

- delay damages if Option X7 and/or clause Z27 applies
- *Contractor's* share,
- repayment of Disallowed Cost,
- liability of the *Contractor* in the event of abandonment or suspension by the *Contractor*,
- costs of rectifying Defects (whether or not they are listed on the Defects Certificate),
- liability of the *Contractor* under clause Z8F,
- any other liability for Losses against which the *Contractor* is indemnified under any policy of

- insurance, and
- any other items stated in the Contract Data as being excluded matters.

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.

Learning Legacy Document

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 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

Defined Terms Z8A

- (1) 60% Design Gate Review is the design gate review to be undertaken when a design is 60% complete as further detailed in the Works Information Volume 2B Part 29 - Contractor's Design, Assurance, Records and Certification (Systemwide).
- (2) 90% Design Gate Review is the design gate review to be undertaken when a design is 90% complete as further detailed in the Works Information Volume 2B Part 29 - Contractor's Design, Assurance, Records and Certification (Systemwide).
- (3) Background Rights means in respect of each party the Intellectual Property rights owned or licensed by that party at the date of this contract (and including in the case of the *Contractor* any Intellectual Property rights owned or licensed by any subcontractor or supplier of any tier at the date of this contract), except any such Intellectual Property rights licensed to that party from the other party.
- (4) Escrow means the deposit with, and retention by, the Escrow Agent of, the Escrow Information.
- (5) Escrow Agent means NCC Escrow International Limited or any successor or replacement to all or any of its functions.
- (6) Escrow Agreement means an agreement in the form of the NCC Group Single Licensee Software Escrow Agreement between the *Contractor*, the *Employer* and the Escrow Agent, subject to any amendments required to give effect to the requirements of clause Z8K.
- (7) Escrow Information means the Software, the Source Code and the Hardware Information.

- (8) 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*.
- (9) Hardware means all hardware and IT system components comprised in, installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the *works* or any equipment to be used in conjunction with the *works* and supplied by the *Contractor* under this contract.
- (10) Hardware Information means all information necessary to enable a reasonably skilled technician to operate, maintain, support, service, repair, overhaul and enhance the Hardware, including details of its system architecture.
- (11) 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.
- (12) 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.
- (13) Maintenance Release means a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Release.
- (14) 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.
- (15) Modifications means any Maintenance Release or New Release.
- (16) New Release means a new release of all or any part of the Software suitable for use by the *Employer* in which previously identified faults have been remedied

or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

- (17) Software is any computer programme installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the *works* or any equipment to be used in conjunction with the *works* and supplied by the *Contractor* under this contract.
- (18) Source Code means, with respect to any Software, all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to support, maintain, amend and enhance that Software without reference to any other person or document, all in human eye-readable or machine-readable form.
- (19) Third Party Rights means all Background Rights which are not owned by the *Employer* or the *Contractor* but which are used by the *Contractor* in connection with Providing the Works (including in supplying the Materials) and complying with the *Contractor's* obligations under this contract, including any such Background Rights subsisting in the *works* and in any equipment used or to be used in conjunction with development, operation and maintenance of the *works* and supplied by the *Contractor* under this contract.

Background Rights Z8B

Z8B.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.

Z8B.2 Where the Contractor uses its Background Rights (including any Third Party Rights) in connection with Providing the Works (including in supplying the Materials) and complying with the *Contractor's* obligations under this contract, including any Background Rights subsisting in the *works* and in any equipment used or to be used in conjunction with development, operation and maintenance of the *works*, the *Contractor* grants the *Employer* a non-exclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any

Third Party Rights) for the purposes of the Programme. Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the *works*) and the training of personnel in connection with any of the above activities. The licence shall be capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the *Contractor*.

Foreground Rights Z8C

- Z8C.1 All Foreground Rights shall vest in and be the property of the *Employer* on their creation. To the extent that any such Foreground Rights 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 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.
- Z8C.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 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
 - (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;
- Z8C.3 The *Contractor* shall provide a copy of any contract proposed pursuant to clause Z8C.2 to the *Project Manager* for approval and authorisation prior to entry into or execution of the same.
- Z8C.4 Except for items placed in Escrow, to which clause Z8K applies, 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* at any time but at the latest on termination or expiry of this contract.

Third Party Rights Z8D

- Z8D.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.

Z8D.2 The *Contractor* shall 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 licence in respect of such Third Party Rights on the terms set out in clause Z8B.

Licence from the Employer Z8E

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 Z8E 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 Z8E all such Intellectual Property rights shall vest in the *Employer* on their creation.

Warranties and Indemnity Z8F

Z8F.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 (including any Third Party 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.

Z8F.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 Z8G

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 Z8H

Z8H.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 any Materials in which any Foreground Rights are subsisting shall be published and if so on what conditions. The *Contractor* shall provide any reports in connection with such Materials 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."

Z8H.2 The following copyright statement shall be included by the *Contractor* on all copyright items intended for reproduction including final reports:

"© Crossrail Limited".

Z8H.3 The *Contractor* hereby waives irrevocably and shall procure that any Group Company of the *Contractor* and all of the *Contractor's* and any Group Company of the *Contractor's* officers, employees, agents, subcontractors and suppliers of any tier involved in Providing the Works at any time during the term of this contract shall waive irrevocably all moral rights (including without limitation such rights of the *Contractor*, its officers, employees, agents, subcontractors and suppliers of any tier under sections 77 to 85 of the Copyright Designs and Patents Act 1988 or any similar laws

of any jurisdiction to the extent permitted in that jurisdiction) in respect of any Materials.

Further Assurances Z8I

Z8I.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.

Z8I.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 Z8J

Z8J.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 as permitted by this clause Z8.

Z8J.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.

Z8J.3 Not used.

Z8J.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*.

Escrow Z8K

Z8K.1 The *Employer* and the *Contractor* shall enter into the Escrow Agreement no later than the 60% Design Gate Review to which the Escrow Information relates (or first 60% Design Gate Review to which the Escrow Information relates, if more than one).

Z8K.2 The *Contractor* shall place the relevant Escrow Information in Escrow with the Escrow Agent on the terms set out in the Escrow Agreement no later than the 60% Design Gate Review to which the Escrow Information relates and further additional or updated Escrow Information no later than the 90% Design Gate Review to which it relates and shall ensure that all Escrow Information has been placed in Escrow no later than Completion. The *Contractor* acknowledges that it shall be a condition of achieving any Key Date or Milestone which relates to any 60% Design Gate Review and/or 90% Design Gate Review and a condition of achieving Completion that all relevant Escrow

Information have been deposited in Escrow in accordance with this clause.

- Z8K.3 The *Contractor* undertakes to ensure that the Escrow Information deposited in Escrow are up to date at all times (including as a minimum at any relevant 60% Design Gate Review, 90% Design Gate Review and at Completion) up to and including the issue of the Defects Certificate and that the *Employer* has been notified of any updates including, without limitation, to take account of any Modifications.
- Z8K.4 The *Contractor* and the *Employer* mutually undertake to abide by the terms of the Escrow Agreement.
- Z8K.5 The *Employer* shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Escrow Information.
- Z8K.6 The Parties agree that, for the purposes of the Escrow Agreement, the Release Events are:
- (a) a material breach by the *Contractor* in Providing the Works which is not remedied within such reasonable period of time as the *Employer* may specify, having regard to the nature of the breach and its impact on the *works* and the Programme, of a written notice from the *Employer* identifying the breach and requiring it to be remedied;
 - (b) a material failure by the *Contractor* to correct a Defect within the *defect correction period* in accordance with clause 43;
 - (c) the *Contractor* is unwilling or unable to develop, enhance, supplement, modify and/or maintain the Software and/or Hardware in accordance with this contract or the Maintenance Support Contract (as defined in clause Z36A or Z36B, where applicable to this contract) or otherwise on request by the *Employer* on reasonable terms;
 - (d) termination of this contract;
 - (e) termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement;
 - (f) an Act of Insolvency of the *Contractor*; or
 - (g) the *Contractor* assigns its Intellectual Property rights in any Escrow Information to a third party ("Assignee") and the Assignee fails, within 60 days of such assignment, to continue escrow protection for the benefit of the *Employer* by failing to enter into either:
 - (i) a novation agreement with the Escrow Agent for the assumption of the *Contractor's* rights and

obligations under the Escrow Agreement in respect of the relevant Escrow Information by the Assignee; or

- (ii) a new escrow agreement with the *Employer* for the relevant Escrow Information which offers the *Employer* substantially similar protection to that provided by the Escrow Agreement without significantly increasing the overall cost to the *Employer*.

Z8K.7 The *Employer* may use any Escrow Information delivered to it in accordance with the terms of the Escrow Agreement for all purposes connected with the exercise of its rights or the performance of its obligations under this contract as the *Employer* may determine appropriate in its absolute discretion.

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 Information Z13

- 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 <i>Contractor</i> acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the <i>Employer</i> 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 <i>Contractor</i> assists the <i>Employer</i> to discharge the <i>Employer's</i> duty where possible, and in doing so, inter alia carries out any reviews of the Project or the Programme requested by the <i>Employer</i> or the <i>Project Manager</i> from time to time.
Claims against TfL and DfT	Z19	
	Z19.1	The <i>Employer</i> is a wholly owned subsidiary of TfL. For the avoidance of doubt the <i>Contractor</i> 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 assurances	Z20	The <i>Contractor</i> acknowledges that it has access to the <i>Employer's</i> Register of Undertakings and Assurances. The <i>Contractor</i> notifies the <i>Project Manager</i> if it has any doubt as to the application of any undertaking or assurance contained in the Register of Undertakings and Assurances to the <i>works</i> . The <i>Project Manager</i> gives an instruction clarifying the application of the undertaking or assurance to the <i>works</i> .
	Not used	Z21
	Not Used	Z22
	Not Used	Z23
Transparency	Z24	
Defined terms	Z24.1	<p>(1) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the <i>Employer</i> is committed to publishing its contracts, tender documents and data from applications for payment and/or invoices received.</p> <p>(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 <i>Contractor's</i> name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.</p>
Data transparency	Z24.2	The <i>Contractor</i> acknowledges that the <i>Employer</i> 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 Materials Z25

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 and Milestone Dates Z27

- Z27.1 The Contract Data identifies the Key Dates and Milestone Dates to which this clause Z27 applies. Clause 25.3 of the *conditions of contract* does not apply to such Key Dates and Milestone Dates.
- Z27.2 If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date or that the Contractor has not achieved the Milestone by the date stated, the *Contractor* pays delay damages at the rate stated in the Contract Data from the Key Date or Milestone Date for each day until the date on which the work meets the Condition stated.
- Z27.3 If the Key Date or Milestone 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 the Programme 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, Key Dates and Milestone Dates (where applicable); and
 - (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 the Employer Z31

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.

Rejection of Works Z32

Z32.1 In respect of the period up to and including the Completion Date for the whole of the *works*, if for reasons attributable to the *Contractor* the whole of the *works* or any substantial part of the *works* or any system or sub-system forming part of the *works* fails to pass any acceptance or performance test specified or referred to in the Works Information within the period allowed for passing such test, the *Employer* may reject such *works* or such substantial part of the *works* or system or sub-system forming part of the *works*. If the *Employer* has paid the *Contractor* for the rejected *works* the *Employer* may recover the amount paid as a debt due from the *Contractor*. The *Contractor* removes at his own expense such rejected *works* from the Site in accordance with the instructions of the *Project Manager*. In the event that the *Contractor* fails to remove the rejected *works* in accordance with this clause, the *Employer* may arrange for the removal of the rejected *works*. The *Project Manager* assesses the cost to the *Employer* of removing the rejected *works* and the *Contractor* pays this amount.

Deferred System Performance Z33

- Z33.1 After the Price for Work Done to Date exceeds the *deferred system performance free amount* each amount due is reduced by the Deferred System Performance Payment which is an amount equivalent to the *deferred system performance percentage* applied to the Price for Work Done to Date above the *deferred system performance free amount* and the *Contractor* is not entitled to payment in respect of the Deferred System Performance Payment until:
- (a) Completion at which point the *Contractor* is entitled to 25% of the Deferred System Performance Payment; and
 - (b) issue of the Reliability Period Certificate under clause Z33.2 at which point the *Contractor* is entitled to 95% of the Deferred System Performance Payment; and
 - (c) issue of the Defects Certificate at which point the *Contractor* is entitled to 100% of the Deferred System Performance Payment

in each case in accordance with this contract.

Z33.2 The *Project Manager* issues a certificate (the "Reliability Period Certificate") when he is satisfied that the *works* have complied with the Reliability Requirements for a period of 3 consecutive calendar months after commencement of Revenue Service.

Z33.3 In clauses Z33 the following terms have the following meanings:

- (a) Reliability Requirements are the requirements set out in the Works Information Volume 2C – Part 12 (RAM).
- (b) Revenue Service means train services where the paying public is being carried.

Milestones Z34

Z34.1 Any payment due to the *Contractor* under this contract is conditional upon the achievement of those Milestones for which the Milestone Dates fall on or before the relevant assessment date and therefore no payment shall be due unless and until all such Milestones have been achieved. The *Project Manager* decides whether a Milestone has been achieved.

Not used Z35

Maintenance Support Contract Z36A

Z36A.1 The *Contractor* shall, on request by any member of the TfL Group or (if not a member of the TfL Group) such other person who is responsible for the maintenance or operation of any system or systems forming part of the *works* (the "**Maintainer**"), negotiate diligently and in good faith to

agree and enter into with the Maintainer an agreement relating to the provision of maintenance, maintenance support and/or spares for any such system or systems for which the *Contractor* is the direct supplier or manufacturer (the "**Maintenance Support Contract**") on fair and reasonable terms. Such request may be made at any time prior to the *defects date*. Where the *Contractor* is not the direct supplier or manufacturer of such system or systems, the *Contractor* shall ensure that any contract into which the *Contractor* or any Subcontractor enters into with such direct supplier or manufacturer contains a clause on the same terms as this clause Z36A.1 and that the Maintainer shall be able to enforce its rights under such clause pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

Z36A.2 Notwithstanding any other provision of this contract the *Contractor* shall not be relieved from any responsibility or liability under this contract or be able to avoid any obligation under this contract or otherwise obtain any relief from its obligations under this contract or make any claim (whether in contract, tort or otherwise) against or require any payment by the *Employer* (including in respect of a compensation event) in connection with:

- a) a delay in entering into the Maintenance Support Contract;
- b) its or the counterparty's performance or failure to perform in accordance with the Maintenance Support Contract; or
- c) any of its obligations under and in accordance with the Maintenance Support Contract,

and any claim against or liability of the *Contractor* under or in connection with the Maintenance Support Contract shall not count towards any limitation of liability applicable to this contract, and vice versa.

Maintenance Support Contract Z36B

Z36B.1 The *Contractor* shall no later than the date stated in the Contract Data enter into the agreement relating to the provision of maintenance, maintenance support and/or spares for the *works* as set out in Annexure 12 hereto with RfL or (if not RfL) such other person who is responsible for the maintenance or operation of the *works* (the "**Maintenance Support Contract**").

Z36B.2 Notwithstanding any other provision of this contract the *Contractor* shall not be relieved from any responsibility or liability under this contract or be able to avoid any obligation under this contract or otherwise obtain any relief from its obligations under this contract or make any claim (whether in contract, tort or otherwise) against or require any payment by the *Employer* (including in respect of a

compensation event) in connection with:

- a) a delay in entering into the Maintenance Support Contract;
- b) its or the counterparty's performance or failure to perform in accordance with the Maintenance Support Contract; or
- c) any of its obligations under and in accordance with the Maintenance Support Contract,

and any claim against or liability of the *Contractor* under or in connection with the Maintenance Support Contract shall not count towards any limitation of liability applicable to this contract, and vice versa.

Early Access Dates Z37

Z37.1 The *Employer* intends to provide access to the Site or part of the Site on the date falling 45 days before the relevant *access date* stated in the Contract Data ("early access date"), and the *Contractor* shows on each programme the early access dates and the *access dates*.

Z37.2 The *Project Manager* gives an early warning under clause 16.1 if he becomes aware that access could be delayed beyond an early access date. If the *Project Manager* does not give such an early warning by the date falling 3 months before an early access date, that early access date is deemed to be the *access date* in place of the date stated in the Contract Data. If such early warning is given, there is no compensation event if access to the Site or part of the Site is provided on or before the later of the *access date* stated in the Contract Data and the date shown on the Accepted Programme.

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.

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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.

- Plant and Materials 3** The following components of the cost of Plant and Materials.
- 31 Payments for
- purchasing Plant and Materials,
 - delivery to and removal from the Working Areas,
 - providing and removing packaging and
 - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
- Charges 4** The following components of the cost of charges paid by the *Contractor*.
- 41 Payments for provision and use in the Working Areas of
- water,
 - gas and
 - electricity.
- 42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 43 Payments for
- (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 *Contractor* for the *Project Manager's* and *Supervisor's* offices
 - (j) provision of any bonds required by this contract.
- 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 *Contractor* 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 days worked by employees multiplied by the daily 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 days worked by employees multiplied by the daily 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 days worked by employees multiplied by the daily 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

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ANNEXURE 3 – WORKS INFORMATION PARTS 2A, 2B AND 2C

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ANNEXURE 4 - FORM OF NOVATION

THIS AGREEMENT is made the _____ day of _____ 200

BETWEEN:-

- (1) [_____] whose registered office is at [_____] ("the Employer");
- (2) [_____] whose registered office is at [_____] ("the New Employer"); and
- (3) [_____] whose registered office is at [_____] ("the Contractor").

WHEREAS:-

- (A) The Employer has appointed the Contractor to perform [_____] works ("the Works") by a contract dated [_____] ("the Contract") in relation to the Programme and the Project as defined in the Contract.
- (B) The Employer has entered into an agreement with the New Employer in respect of the Programme and the Project.
- (C) The Employer, Contractor and New Employer have agreed that from the date of this Agreement the New Employer shall assume the obligations of the Employer and that the Contractor shall perform its obligations under the Contract in favour of the New Employer and that the Employer on the one part and the Contractor on the other part shall each release the other from any obligations owed by the other to them under the Contract.

NOW IT IS HEREBY AGREED as follows:-

1. Novation

- 1.1 The Employer hereby releases and discharges the Contractor from any and all obligations and liabilities owed to the Employer under the Contract.
- 1.2 The Contractor 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.
- 1.3 The Contractor hereby releases and discharges the Employer from any and all obligations and liabilities owed to the Contractor under the Contract and accepts the obligations and liability of the New Employer under the Contract in lieu of the liability of the Employer.
- 1.4 Without prejudice to Clause 1.2, the Contractor warrants to the New Employer that it shall be liable for any loss or damage suffered or incurred by the New Employer arising out of any negligent act, default or breach by the Contractor in the performance of its obligations under the Contract prior to the date of this Agreement. Subject to any limitation of liability in the Contract, the Contractor shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Employer (or suffered or incurred to the same extent by the Employer).
- 1.5 The Contractor acknowledges that fees and expenses properly due to the Contractor under the Contract in the sum of £[_____] have, as at the date of this Agreement, been paid by the Employer.

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[{ SYMBOL
108\wingdings \s11\h * MERGEFORMAT }]

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
costs and losses 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 { SYMBOL 108\fwingsdings \s11\h * MERGEFORMAT }.

[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 DLR

THIS DEED is made on 20[{\ SYMBOL 108\wingdings \s11\h * MERGEFORMAT }]

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.

INTELLECTUAL PROPERTY RIGHTS

8. Where the Contractor uses its Background Rights (including any Third Party Rights) (each term as defined in the Contract) in connection with Providing the Works (including in supplying the Materials) (as defined in the Contract) and complying with the Contractor's obligations under the Contract, including any Background Rights subsisting in the Works and in any equipment used or to be used in conjunction with development, operation and maintenance of the Works, the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a non-exclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any Third Party Rights) for the purposes of the Programme (as defined in the Contract). Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the Works) and the training of personnel in connection with any of the above activities. The licence shall be capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the Contractor.

ASSIGNMENT

9. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

LIABILITY

10. 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.
11. 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.
12. 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.
13. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.

14. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clause 8 (Intellectual Property Rights)) prior to the date of issue of the Defects Certificate under the Contract.

RIGHTS AND OBLIGATIONS

15. 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

16. 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

17. 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

18. 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

19. 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

Learning Legacy Document

CONTRACTOR WARRANTY TO LUL

THIS DEED is made on
20[{ SYMBOL 108\ f wingdings
\s11\h * MERGEFORMAT }]

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.

INTELLECTUAL PROPERTY RIGHTS

8. Where the Contractor uses its Background Rights (including any Third Party Rights) (each term as defined in the Contract) in connection with Providing the Works (including in supplying the Materials) (as defined in the Contract) and complying with the Contractor's obligations under the Contract, including any Background Rights subsisting in the Works and in any equipment used or to be used in conjunction with development, operation and maintenance of the Works, the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a non-exclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any Third Party Rights) for the purposes of the Programme (as defined in the Contract). Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the Works) and the training of personnel in connection with any of the above activities. The licence shall be capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the Contractor.

ASSIGNMENT

9. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

LIABILITY

10. 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.
11. 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.
12. 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.
13. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.
14. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clause 8 (Intellectual Property Rights)) prior to the date of issue of the Defects Certificate under the Contract.

RIGHTS AND OBLIGATIONS

15. 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

16. 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

17. 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

18. 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

19. 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

Learning Legacy Document

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 inoperative 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
[SYMBOL 108\wingdings
\s11\h * MERGEFORMAT]

20[SYMBOL 108\wingdings

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.

INTELLETUAL PROPERTY RIGHTS

8. Where the Contractor uses its Background Rights (including any Third Party Rights) (each term as defined in the Contract) in connection with Providing the Works (including in supplying the Materials) (as defined in the Contract) and complying with the Contractor's obligations under the Contract, including any Background Rights subsisting in the Works and in any equipment used or to be used in conjunction with development, operation and maintenance of the Works, the Contractor grants the Beneficiary (and notwithstanding that the Contractor may complete its duties or terminate its Contract or have its Contract terminated) a non-exclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any Third Party Rights) for the purposes of the Programme (as defined in the Contract). Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the Works) and the training of personnel in connection with any of the above activities. The licence shall be capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the Contractor.

ASSIGNMENT

9. This Deed may be assigned by the Beneficiary no more than two (2) times without the consent of the Contractor being required.

LIABILITY

10. 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.
11. 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.
12. 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.
13. The Contractor shall have no liability under or in relation to this Deed in relation to any delay to Completion of the Works.
14. The Beneficiary shall not commence any proceedings against the Contractor under this Deed (save in respect of any claims arising under clause 8 (Intellectual Property Rights)) prior to the date of issue of the Defects Certificate under the Contract.

RIGHTS AND OBLIGATIONS

15. 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

16. 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

17. 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

18. 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

19. 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

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SUBCONTRACTOR'S WARRANTY

THIS DEED is made the [] day of [] 20[]

BETWEEN:-

- (1) [] whose registered office is at [] ("the Subcontractor")
- (2) [] whose registered office is at [] ("the Beneficiary ")
- (3) { ADVANCE \I 47 } [] whose registered office is at [] ("the Contractor")

WHEREAS:-

- (A) { ADVANCE \I 47 } 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 Subcontractor pursuant to a Subcontract dated [] day of [] ("**the Subcontract**") to carry out the design and construction of the Subcontract Works as defined in the Subcontract.
- (B) The Subcontractor acknowledges that the Beneficiary has an interest in the proper design and construction of the Subcontract 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 Subcontractor hereby warrants and undertakes to the Beneficiary that:-
 - 1.1 in respect of any design of the Subcontract 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 Subcontract 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 Subcontract.
2. The obligations of the Subcontractor 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 Subcontract Works.
3. The Subcontractor warrants and undertakes to the Beneficiary that it has not and shall not specify for use or use in the construction of the Subcontract Works any prohibited or deleterious material as referred to in the Subcontract.
4. The Subcontractor 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 Subcontractor shall inform the Beneficiary as soon as possible in which case the Subcontractor 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 Subcontractor's insurance claims record. As and when it is reasonably requested to do so by the Beneficiary, the Subcontractor 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 Subcontractor agrees that in the event of the termination of the Contract by the Beneficiary the Subcontractor 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 Subcontract Works upon the terms and conditions of the Subcontract, and upon the Beneficiary's request the Subcontractor will enter into an agreement for the novation of the Subcontract 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 Subcontractor 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", "Subcontractor", "Subcontract Works" and "Subcontract" save in Recital B) is acceptable.
- 5.2 The Subcontractor 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 Subcontract (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 Subcontractor pursuant thereto. Such right to terminate the Subcontract 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 Subcontractor requiring the Subcontractor 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 Subcontract Works upon the terms and conditions of the Subcontract, and upon the Beneficiary's request the Subcontractor shall enter into an agreement for the novation of the Subcontract 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 Subcontractor under the Subcontract (including any sums outstanding at the date of such notice) and for the performance of the Contractor's obligations under the Subcontract. Upon the issue of any notice by the Beneficiary under clauses 5.1 and 5.2 the Subcontract 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 Subcontractor had arisen and the Subcontractor 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 Subcontractor to accept the instructions of the Beneficiary's appointee and/or to novate the Subcontract to such appointee, the Beneficiary shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor 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 Subcontractor shall not be in breach of the Subcontract by complying with the

obligations imposed on it by clauses 5.1 and 5.2. The Contractor acknowledges that the Subcontractor shall be entitled to rely on a notice given to the Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor and the Contractor being required. No further assignment shall be permitted without the consent of the Subcontractor and the Contractor, such consent not to be unreasonably withheld or delayed. The Subcontractor 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 Subcontractor 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 Subcontractor shall have no greater liability to the Beneficiary under this Deed than it would have had to the Beneficiary under the Subcontract if the Beneficiary had been named as a joint employer in the Subcontract and the Subcontractor shall be entitled in any action under this Deed to use any defence that it would have had under the Subcontract if the Beneficiary had been named as a joint employer in the Subcontract provided that in each such case the Subcontractor 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 Subcontractor from the Contractor.
10. Save where the Beneficiary has exercised its rights under clause 5.1 and/or 5.2 the Subcontractor shall not be liable under this Deed for any delay in the completion of the Subcontract 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. Where the Subcontractor uses its Background Rights (including any Third Party Rights) in connection with Providing the Subcontract Works (including in supplying the Materials) and complying with the Subcontractor's obligations under the Contract, including any Background Rights subsisting in the Subcontract Works and in any equipment used or to be used in conjunction with development, operation and maintenance of the Subcontract Works, the Subcontractor grants the Beneficiary (and notwithstanding that the Subcontractor may complete its duties or terminate its Subcontract or have its Subcontract terminated) a non-exclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any Third Party Rights) for the purposes of the Programme. Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the Subcontract Works) and the training of personnel in connection with any of the above activities. The licence shall be

capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the Subcontractor. "Background Rights" as used in this clause means the Intellectual Property rights owned or licensed by the Subcontractor at the date of the Subcontract (including any Intellectual Property rights owned or licensed by any subsubcontractor or supplier of any tier at the date of the Subcontract), except any such Intellectual Property rights licensed to the Subcontractor by the Beneficiary. "Intellectual Property" as used in this clause 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. "Materials" as used in this clause 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 the Subcontract. "Programme" as used in this clause 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 as included in the Project Development Agreement between the Crossrail Limited, Transport for London and the Secretary of State for Transport dated 3 December 2008 and as amended from time to time. "Third Party Rights" as used in this clause means all Background Rights which are not owned by the Subcontractor but which are used by the Subcontractor in connection with Providing the Subcontract Works (including in supplying the Materials) and complying with the Subcontractor's obligations under the Subcontract, including any such Background Rights subsisting in the Subcontract Works and in any equipment used or to be used in conjunction with development, operation and maintenance of the Subcontract Works and supplied by the Subcontractor under the Subcontract.

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 Subcontractor 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

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**ANNEXURE 7
FORM OF PARENT COMPANY GUARANTEE**

This agreement is made on the _____ day of _____ 20_____

Between

- (1) **CROSSRAIL LIMITED** of 25 Canada Square, London E14 5LQ (company number 4212657) (the *Employer*);
- (2) [name] of [address] (company number [_____] (the *Guarantor*); and
- (3) [name] of [address] (company number [_____] [(the *Contractor*)] [JV member].

RECITALS

- (A) The *Employer* has entered into a contract (Contract No [_____]) dated [_____] with [the *Contractor*] [the [_____] Joint Venture comprising [_____] (the "*Contractor*") (the "*Contract*").
- (B) The *Guarantor* has agreed to guarantee the performance of the obligations of [the *Contractor*³] [[JV member], comprising one part of the *Contractor*⁴] under the Contract.

In consideration of the *Employer* appointing the *Contractor* in accordance with the terms of the Contract, the *Guarantor* covenants with the *Employer* as follows:

1.

- 1.1 (a) The *Guarantor* agrees that if [the *Contractor*][JV member] shall in any respect fail to perform any of its obligations arising under or out of the Contract (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 Contract (as the same may be amended or varied from time to time), then the *Guarantor* shall upon the *Employer*'s demand procure the performance of the Works and fulfil in the place of [the *Contractor*][JV member] each and every obligation, warranty or indemnity in respect of which [the *Contractor*][JV member] has defaulted or as may be unfulfilled by [the *Contractor*][JV member], within 10 business days of receipt of written notification from the *Employer* to the *Guarantor* of such failure or breach by [the *Contractor*][JV member] and, if such liability of [the *Contractor*][JV member] to the *Employer* has been contested by [the *Contractor*][JV member] under the Contract, substantiation of such claim by way of a first adjudication decision either according to the disputes resolution procedure under the Contract 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*][JV member] 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 indemnify and save harmless the *Employer* from any and all losses, damages, expenses, claims, costs or proceedings which the *Employer* may suffer or incur by reason of the said failure or breach by [the *Contractor*][JV member].

³ In the case of an incorporated Joint Venture, the *Guarantor* will guarantee the performance of the *Contractor*.

⁴ In the case of an unincorporated Joint Venture, the *Guarantor* will guarantee the performance of the relevant Joint Venture member of the *Contractor*.

- (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]
[{ SYMBOL 108\fwingdings \s11\h * MERGEFORMAT }] 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

[]

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ANNEXURE 9
SITE INFORMATION

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ANNEXURE 10

NOT USED

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ANNEXURE 11

NOT USED

Learning Legacy Document

ANNEXURE 12

MAINTENANCE SUPPORT CONTRACT

[Note: Form of contract provided separately]

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