

SILVERTOWN TUNNEL

Volume 3: Project Agreement – Schedules 2 to 31

Schedule 22 – Change Procedure

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SCHEDULE 22**CHANGE PROCEDURE****Part 1 - TfL Changes****1. TfL CHANGE NOTICE**

1.1 TfL shall be entitled at any time during the Agreement Period to propose a Change (a "**TfL Change**").

1.2 If TfL wishes to propose a TfL Change, it shall serve a notice ("**TfL Change Notice**") on Project Co, which shall set out details of the proposed TfL Change in sufficient detail to enable Project Co to provide the Initial Change Appraisal in accordance with paragraph 3 (*Initial Change Appraisal*).

1.3 TfL shall give an early warning by notifying Project Co as soon as is reasonably practicable after it becomes aware of any matter which would be reasonably likely to require a TfL Change Notice to be served on Project Co.

2. EMERGENCY CHANGES

2.1 If at any time during the Agreement Period:

- (a) following the occurrence of an Emergency; or
- (b) following an event causing, or in the reasonable opinion of TfL, having the potential to cause disruption to the operation or use of the Project,

TfL considers, in its absolute discretion, that a Change needs to be implemented immediately (an "**Emergency Change**"), then TfL shall indicate in the relevant TfL Change Notice or at any time during the process set out in this Part 1 (*TfL Changes*) that the TfL Change is an Emergency Change.

2.2 Where TfL has indicated that a Change is an Emergency Change:

- (a) Project Co shall commence the implementation of such TfL Change immediately notwithstanding that the full process in this Part 1 (*TfL Changes*) has not been followed or completed; and
- (b) the provisions set out in the remainder of this Part 1 (*TfL Changes*) shall apply to such Emergency Change save that, where the context requires, such provisions shall be read having regard to the fact that Project Co has already commenced the implementation of the relevant TfL Change.

2.3 In relation to an Emergency Change, TfL shall:

- (a) not require Project Co to provide or obtain Capital Expenditure in advance (but TfL is entitled to ask Project Co to use reasonable endeavours under paragraph 11 (*Financing of Capital Expenditure*));
- (b) during the implementation of any Emergency Change and prior to the full TfL Change process having been duly completed (in accordance with this Part 1 (*TfL Changes*)), subject to paragraph 2.4, pay to Project Co an amount to cover any reasonable interim incremental costs, fees and expenses reasonably and properly

incurred as a direct result of the implementation of the Emergency Change ("**Emergency Change Interim Payments**"); and

- (c) if (where TfL is not precluded under this Agreement from doing so) TfL withdraws the relevant TfL Change Notice (or if it is otherwise deemed to be withdrawn), pay the reasonable costs properly incurred by Project Co in respect of the Emergency Change prior to such withdrawal (to the extent not already covered by the Emergency Change Interim Payments).

2.4 Any Emergency Change Interim Payments shall be paid by TfL:

- (a) in accordance with clause 27.1 (*Payments due during the Works*) where the Emergency Change occurs prior to the Permit to Use Date; or
- (b) in accordance with clause 27.3(a)(ii) where the Emergency Change occurs on or after the Permit to Use Date,

and any Emergency Change Interim Payments shall be netted off against any payments required in accordance with paragraph 10 (*Payments by TfL*).

3. **INITIAL CHANGE APPRAISAL**

3.1 As soon as practicable and in any event within ten (10) Working Days after receipt of a TfL Change Notice or such longer period as is agreed by TfL (acting reasonably), Project Co shall deliver to TfL a written report (an "**Initial Change Appraisal**") which shall set out:

- (a) whether, in the reasonable opinion of Project Co, including an explanation of Project Co's reasons for such an opinion, the proposed TfL Change would:
 - (i) be technically unfeasible or impossible;
 - (ii) be illegal or put Project Co or TfL in breach of their Safety Obligations where such illegality or breach could not be remedied by Project Co making other changes to the Works or Services in order to accommodate such TfL Change;
 - (iii) contravene any Third Party Agreements unless TfL is able to negotiate a change to such Third Party Agreements to permit the TfL Change;
 - (iv) materially and adversely affect the ability of Project Co to provide the Works and/or Services;
 - (v) if implemented materially and adversely change the nature of the Project (including its risk profile); or
 - (vi) contravene the DCO or any Necessary Consents or require Project Co to obtain a Necessary Consent which is unobtainable,

in each case in a manner that cannot be compensated or relieved by this Schedule 22 (*Change Procedure*);

- (b) Project Co's initial assessment of any impact of the proposed TfL Change on any of the dates or activities referred to in the Project Co Detailed Works Programme, or the Permit to Use Date;

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- (c) Project Co's initial assessment of the scope of any changes to the Works or any additional works required to implement the proposed TfL Change, including:
- (i) any surveys or investigatory work or detailed design work which would have to be carried out in advance of preparing or finalising a Change Appraisal in respect of the proposed TfL Change;
 - (ii) any changes to the Works or additional works which, in order to achieve the proposed TfL Change or to avoid or minimise any abortive works, would have to be commenced in advance of preparing or finalising a Change Appraisal in respect of the proposed TfL Change;
 - (iii) any additional planning consents or approvals that would be required in order to carry out the proposed TfL Change; and
 - (iv) if the proposed TfL Change would require Project Co to access or use land outside of the Project Land.
- (d) Project Co's initial assessment of the impact of the proposed TfL Change on the operation and maintenance regimes adopted or proposed to be adopted for the Project Facilities, including any consequential changes to the Services;
- (e) Project Co's initial assessment of the impact of the proposed TfL Change on any matters which affect Project Co's revenue from the Project including whether such TfL Change will give rise to additional or reduced Deductions;
- (f) Project Co's estimate, acting in good faith, of all Change in Costs, with such estimate identifying separately:
- (i) the aggregate increased or decreased costs discounted back to the date of the Initial Change Appraisal at the Discount Rate and the annual increase or decrease for each Agreement Year; and
 - (ii) the margin to be earned by Project Co (as determined in accordance with paragraph 12 (*Project Co's margin*));
- (g) Project Co's reasonable estimate of the cost and time required to prepare a Change Appraisal in respect of the proposed TfL Change in accordance with paragraph 6 (*Change Appraisal*); and
- (h) Project Co's initial assessment, to the extent reasonably ascertainable by Project Co, of the impact on traffic on the wider road network during the Works and/or the Services likely to be caused by the proposed TfL Change.
- 3.2 If Project Co's estimate referred to in paragraph 3.1(f)(i) is for an amount which is equal to or less than five hundred thousand pounds (£500,000) (Indexed), then the Initial Change Appraisal shall also include:
- (a) in respect of any capital works and any other part of the proposed TfL Change for which:
 - (i) a Fixed Price Quotation can be provided, a Fixed Price Quotation (including supporting information to substantiate the Fixed Price Quotation); and

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- (ii) the cost can be determined by reference to the Schedule of Costs, details of those parts of the proposed TfL Change which are not covered by the Fixed Price Quotation provided under paragraph 3.2(a)(i) and for which the cost can be determined by reference to the Schedule of Costs; and
- (b) Project Co's proposed:
 - (i) Schedule of Payments to cover the Fixed Price Quotation where one can be provided; and
 - (ii) adjustment to the Availability Payment to cover the Fixed Price Quotation, should TfL elect for payment to be made by means of an adjustment to the Availability Payment, such adjustment to be determined pursuant to Schedule 25 (*Base Case*),

calculated in each case in accordance with this Part 1 (*TfL Changes*) and on the assumption that, where Project Co is required under paragraph 4.5(a)(ii) to seek financing for Capital Expenditure in accordance with paragraph 11 (*Financing of Capital Expenditure*), Project Co will be able to obtain such financing.

- 3.3 The reasonable, properly incurred and substantiated costs of Project Co of preparing any Initial Change Appraisal shall be borne by TfL, provided always that Project Co provides TfL at the time of providing the Initial Change Appraisal evidence in support of the cost of preparing the Initial Change Appraisal claimed and any other such evidence as TfL may reasonably require.

4. **PROCEDURE FOLLOWING SUBMISSION OF AN INITIAL CHANGE APPRAISAL**

- 4.1 If the Initial Change Appraisal states that, in Project Co's reasonable opinion, the proposed TfL Change falls within one (1) or more of the restrictions set out in paragraph 3.1(a), then Project Co shall be entitled to object to the implementation of the proposed TfL Change.

- 4.2 Where paragraph 4.1 applies, if TfL disagrees with Project Co's opinion, then TfL shall notify Project Co of such disagreement within ten (10) Working Days of receipt of the Initial Change Appraisal and the Parties shall seek to resolve the matter(s) in dispute and, if agreement has not been reached within ten (10) Working Days of receipt of TfL's notice under this paragraph 4.2, TfL may refer the matter for resolution under the Dispute Resolution Procedure. If TfL has not referred the matter to the Dispute Resolution Procedure within twenty five (25) Working Days of receipt of the Initial Change Appraisal, the TfL Change Notice shall be deemed to be withdrawn.

- 4.3 Provided that the TfL Change Notice has not been withdrawn by TfL or has not been deemed to have been withdrawn in accordance with paragraph 4.2, then within twenty (20) Working Days after receipt of the Initial Change Appraisal (or where a Dispute has been referred pursuant to paragraph 4.2, a determination in favour of TfL under the Dispute Resolution Procedure in relation to such Initial Change Appraisal), TfL may either:

- (a) if Project Co's estimate referred to in paragraph 3.1(f) is:
 - (i) for an amount which is equal to or less than five hundred thousand pounds (£500,000) (Indexed) and TfL would like Project Co to proceed with the proposed TfL Change without Project Co preparing a Change Appraisal; or

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- (ii) for an amount which is more than five hundred thousand pounds (£500,000) (Indexed) and the Parties agree (acting reasonably) that a Change Appraisal is not required in order for Project Co to implement the proposed TfL Change, issue a Change Confirmation Notice instructing Project Co to proceed with the implementation of the relevant TfL Change or a part of the relevant TfL Change in accordance with paragraph 9 (*Implementation of TfL Change*); or
 - (b) issue a Change Appraisal Instruction instructing Project Co to prepare a Change Appraisal in respect of the proposed TfL Change in accordance with paragraph 4.5.
- 4.4 If TfL has not issued a Change Confirmation Notice or a Change Appraisal Instruction pursuant to paragraph 4.3 within such twenty (20) Working Day period, the relevant TfL Change Notice shall be deemed to have been withdrawn.
- 4.5 A Change Appraisal Instruction provided by TfL under paragraph 4.3(b) shall:
 - (a) state:
 - (i) whether TfL requires Project Co to submit to it a Fixed Price Quotation in respect of the proposed TfL Change or any part of the proposed TfL Change and, if so, whether such Fixed Price Quotation should include a Tendered Price for all or any part of the relevant works in accordance with paragraph 5 (*Tendered Prices*);
 - (ii) whether, in respect of any Capital Expenditure, TfL:
 - (A) intends to pay to Project Co the costs involved in implementing the proposed TfL Change; or
 - (B) TfL requires Project Co to use its reasonable efforts to obtain financing in accordance with paragraph 11 (*Financing of Capital Expenditure*);
 - (iii) whether TfL requires a collateral warranty in relation to any contractors to be appointed by Project Co for the purposes of the works required to carry out the relevant TfL Change; and
 - (iv) any other requirement which TfL has with regard to the form of procurement for the works required in relation to the proposed TfL Change;
 - (b) include any additional information in respect of the proposed TfL Change which TfL requires Project Co to consider when preparing the Change Appraisal;
 - (c) specify any reporting format, break down of quotations or any other matters specifically required to be included in the Change Appraisal; and
 - (d) state whether or not TfL accepts:
 - (i) the amount claimed by Project Co of preparing any Initial Change Appraisal provided by Project Co in accordance with paragraph 3.3; and
 - (ii) the estimate of the cost and time required to prepare the Change Appraisal provided by Project Co in accordance with paragraph 3.1(g).
- 4.6 If the Change Appraisal Instruction:

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- (a) states that TfL does not agree with:
- (i) the amount claimed by Project Co of preparing any Initial Change Appraisal; or
 - (ii) the estimate of the cost and/or time required to prepare the Change Appraisal; or
- (b) materially alters the basis on which Project Co made such estimate,

then the Parties shall endeavour to reach agreement on any matter in dispute, failing which either Party may refer such matter for resolution under the Dispute Resolution Procedure, provided that the process set out in this Schedule 22 (*Change Procedure*) shall continue despite the Dispute and such Dispute shall only be in respect of costs.

- 4.7 At the same time as issuing a Change Appraisal Instruction under paragraph 4.3(b), TfL may issue a Change Confirmation Notice instructing Project Co to proceed with any surveys, preliminary works or advance works identified in the Initial Change Appraisal in accordance with paragraph 3.1(c)(i) and/or paragraph 3.1(c)(ii).
- 4.8 Where a Change Confirmation Notice is issued pursuant to paragraph 4.7, the cost of the relevant works shall be included in the quotation included in the Change Appraisal and agreed in accordance with paragraph 9 (*Implementation of TfL Change*), provided that in the event of any Dispute in respect of the extent of such surveys or works, either Party may refer the matter for resolution under the Dispute Resolution Procedure.

5. TENDERED PRICES

- 5.1 Subject to paragraph 5.3 to paragraph 5.5 (inclusive), if Project Co receives a Change Appraisal Instruction which requires Project Co to submit a Tendered Price, Project Co shall, as soon as practicable after receipt of the Change Appraisal Instruction, obtain (or ensure the D&C Contractor obtains on Project Co's behalf) competitive tenders for the implementation of the proposed TfL Change (or the part thereof that Project Co is required to submit a Tendered Price) from not less than three (3) appropriately qualified and experienced contractors acceptable to Project Co and TfL (both acting reasonably).
- 5.2 Where paragraph 5.1 applies, the terms of each such competitive tender shall specify:
- (a) the tender return date;
 - (b) the evaluation criteria (acceptable to Project Co and TfL, each acting reasonably) to be utilised with regard to assessing the most economically advantageous tender;
 - (c) that each tenderer is required to submit a non-collusion certificate to TfL in a form acceptable to TfL (acting reasonably); and
 - (d) that the tenders do not contain confidentiality restrictions which would prevent a copy of the tender from being provided to TfL.
- 5.3 If Project Co demonstrates that it is impractical to complete the tender process within the time period specified in the Change Appraisal Instruction or as agreed or determined in accordance with paragraph 4.6, Project Co shall deliver the Change Appraisal to TfL within five (5) Working Days of the tender return date specified in accordance with paragraph 5.2(a).

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- 5.4 If Project Co receives a Change Appraisal Instruction which requires Project Co to submit a Tendered Price and Project Co, in its reasonable opinion, considers it is impractical given the nature of the proposed TfL Change to obtain a Tendered Price:
- (a) Project Co shall notify TfL of such opinion and provide appropriate supporting information within ten (10) Working Days of receiving the Change Appraisal Instruction; and
 - (b) the Parties shall seek to agree whether it is practical to obtain a Tendered Price,
- and if the Parties fail to reach agreement on such matter within five (5) Working Days of such notification from Project Co, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.
- 5.5 Project Co shall not be required to provide a Tendered Price for any proposed TfL Change (or part thereof) that relates to a change to the Works prior to the Permit to Use Date except in so far as:
- (a) the proposed TfL Change involves a discrete element of specialist work that would normally be carried out by a specialist sub-contractor to Project Co;
 - (b) such a specialist sub-contractor is not already employed on the Project by Project Co or its sub-contractors; and
 - (c) the estimated value of the specialist work exceeds fifty thousand pounds (£50,000) (Indexed).
6. **CHANGE APPRAISAL**
- 6.1 Following the issue of a Change Appraisal Instruction, Project Co shall deliver a written report in relation to the proposed TfL Change (a "**Change Appraisal**") to TfL no later than, as applicable:
- (a) the date accepted in the Change Appraisal Instruction pursuant to paragraph 4.5(d);
 - (b) the date agreed or determined in accordance with paragraph 4.6; or
 - (c) the date determined in accordance with paragraph 5.3.
- 6.2 The Change Appraisal provided by Project Co pursuant to paragraph 6.1 shall set out:
- (a) Project Co's detailed assessment of the matters referred to in paragraph 3.1(b) to 3.1(h) (inclusive) and paragraph 4.5 and any other impact of the proposed TfL Change on the provision of the Works or Services;
 - (b) whether relief from compliance with obligations is required in order to implement the TfL Change, including the obligations of Project Co to use all reasonable endeavours to ensure that the Permit to Use is issued by no later than the Planned Permit to Use Date and to comply with the operation and maintenance regime set out in Schedule 18 (*Operation and Maintenance Requirements*) during the implementation of the proposed TfL Change;
 - (c) any amendments required to this Agreement (including any amendments to the Technical Requirements), any Project Document or any Financing Agreement as a result of the proposed TfL Change;

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- (d) any Necessary Consents which are required to be obtained by Project Co in order to implement the proposed TfL Change and any assistance which Project Co anticipates it will reasonably require from TfL in order for Project Co to obtain such Necessary Consents;
- (e) the proposed method of certification of any design, construction or operational aspects of the Works or Services required by the proposed TfL Change if not covered by the procedures specified in this Agreement;
- (f) where the Change Appraisal Instruction specifies that a Fixed Price Quotation must be provided:
 - (i) the amount of such Fixed Price Quotation and a breakdown of such quotation identifying separately (without double counting):
 - (A) each Change in Costs, such estimates to include the aggregate increased or decreased costs discounted to the date of the Change Appraisal at the Discount Rate and the annual increase or decrease for each Agreement Year;
 - (B) any impact on the Availability Payment, in each case such estimate to include the aggregate increase or decrease discounted back to the date of the Change Appraisal at the Discount Rate and where relevant the annual increase or decrease for each Agreement Year;
 - (C) any additional Deductions arising from the proposed TfL Change which have been taken into account in determining such Fixed Price Quotation;
 - (D) the margin to be earned by Project Co (as determined in accordance with paragraph 12 (*Project Co's Margin*)); and
 - (E) any amount included as a risk allowance; and
 - (ii) where the Change Appraisal Instruction specifies that such Fixed Price Quotation should, subject to paragraph 5 (*Tendered Prices*), include a Tendered Price:
 - (A) a report on the tenders obtained in accordance with paragraph 5.1, together with a recommendation as to the tender which Project Co proposes to accept which, unless TfL directs otherwise, shall be the most economically advantageous tender;
 - (B) sufficient supporting information to demonstrate the basis of such recommendation; and
 - (C) confirmation that the Tendered Price in respect of such recommendation has been included in the Fixed Price Quotation provided under paragraph 6.2(f)(i);
- (g) insofar as not covered by a Fixed Price Quotation provided under paragraph 6.2(f):
 - (i) an estimate of each of the items set out in paragraph 6.2(f)(i)(A) to paragraph 6.2(f)(i)(E); and

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- (ii) details of any of the expenditure referred to in paragraph 6.2(g)(i) which can be determined by reference to the Schedule of Costs; and
- (h) Project Co's proposed:
 - (i) Schedule of Payments; and
 - (ii) any adjustment to the Availability Payment, should TfL elect for payments to be made by means of an adjustment to the Availability Payment, such adjustments to be determined pursuant to Schedule 25 (*Base Case*);

each to individually take account of the relevant Change in Costs for implementing the proposed TfL Change and calculated in each case in accordance with this Part 1 (*TfL Changes*) and on the assumption that, where Project Co is required under paragraph 4.5(a)(ii) to seek financing for Capital Expenditure in accordance with paragraph 11 (*Financing of Capital Expenditure*), Project Co will be able to obtain such financing.

6.3 If while preparing the Change Appraisal, Project Co (acting reasonably) forms the opinion that:

- (a) the proposed TfL Change would fall within one (1) or more of the restrictions set out in paragraph 3.1(a); and
- (b) the grounds for such objection were not identified in the Initial Change Appraisal and have not been the subject of a Dispute under paragraph 4.2,

then Project Co may, at any time prior to the date on which it issues the Change Appraisal, notify TfL of its objection to implementing the proposed TfL Change, provided that any such notification shall be accompanied by an explanation of its reasons supporting its opinion.

6.4 If Project Co issues a notice under paragraph 6.3, the Parties shall endeavour to reach agreement on any matter in dispute regarding the relevant proposed TfL Change, failing which TfL may within ten (10) Working Days of receipt of such notification refer such matter for resolution under the Dispute Resolution Procedure. If TfL has not referred the matter to the Dispute Resolution Procedure within twenty (20) Working Days of receipt of Project Co's notice under paragraph 6.3, the relevant TfL Change Notice shall be deemed to be withdrawn.

6.5 In respect of any Change Appraisal, Project Co shall ensure that the Change in Costs are calculated in accordance with Annex 2 (*Calculation of Change in Costs*) of this Schedule 22 (*Change Procedure*).

6.6 The reasonable, properly incurred and substantiated costs of Project Co of preparing any Change Appraisal shall be borne by TfL, provided always that Project Co provides TfL at the time of providing the Change Appraisal evidence in support of the cost of preparing the Change Appraisal claimed and any other evidence as TfL may reasonably require.

7. **PROCEDURE FOLLOWING SUBMISSION OF A CHANGE APPRAISAL**

7.1 As soon as reasonably practicable after TfL receives a Change Appraisal, the Parties shall discuss and endeavour to agree, acting reasonably, the matters set out in the Change Appraisal.

- 7.2 During the discussions referred to in paragraph 7.1, TfL may:
- (a) request that Project Co:
 - (i) provides any further breakdown or details in respect of any Fixed Price Quotation and/or estimate provided under paragraph 6.2(f) or paragraph 6.2(g) as TfL may reasonably require to ascertain that the Fixed Price Quotation and/or estimate is in accordance with prevailing market rates applicable to the circumstances of the quotation;
 - (ii) provides evidence that Project Co has used reasonable endeavours to oblige its sub-contractors to minimise any increase in costs and maximise any reduction in costs;
 - (iii) demonstrates how any expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken into account by Project Co;
 - (iv) demonstrates that the Fixed Price Quotation and/or estimate provided under paragraph 6.2(f) or paragraph 6.2(g), as applicable, takes account of any reduction in expenditure incurred to replace or maintain assets which was originally anticipated but would be avoided as a result of implementing the TfL Change;
 - (v) provides a copy of each of the tenders obtained in accordance with paragraph 5.1; and
 - (vi) provides any further evidence or information in respect of the matter referred to in paragraph 6.2; and
 - (b) notify Project Co as to whether TfL wishes to amend the proposed TfL Change, providing full details of any proposed amendment.
- 7.3 Where TfL issues a notice pursuant to paragraph 7.2(b), Project Co shall submit an amended Change Appraisal for the relevant TfL Change to reflect the amendments notified by TfL within twenty (20) Working Days of such notification or such longer period as is agreed between the Parties.
- 7.4 All evidence and information provided by Project Co or its Sub-Contractors and their sub-contractors of any tier in response to a request under paragraph 7.2 shall be provided on an open book basis.
- 7.5 If the Parties cannot agree on the contents of a Change Appraisal (other than any element which forms part the Project Co Cost Proposal for which the provisions of paragraph 9 (*Implementation of TfL Change*) shall apply), then either Party may refer the Dispute for resolution under the Dispute Resolution Procedure.
- 7.6 As soon as reasonably practicable, and in any event within forty (40) Working Days, after the contents of a Change Appraisal (other than any outstanding issues in relation to the Project Co Cost Proposal as referred to in paragraph 9 (*Implementation of TfL Change*)) have been agreed in accordance with paragraph 7.1 or otherwise determined in accordance with paragraph 7.5, TfL shall either:

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- (a) issue a Change Confirmation Notice counter-signed by a person authorised by TfL instructing Project Co to proceed with the implementation of the relevant TfL Change or a part of the TfL Change in accordance with paragraph 9 (*Implementation of TfL Change*); or
- (b) withdraw the relevant TfL Change Notice.
- 7.7 If TfL has not issued a Change Confirmation Notice under paragraph 7.6 within forty (40) Working Day, then the TfL Change Notice shall be deemed to have been withdrawn.
- 8. CHANGE APPRAISAL COSTS**
- 8.1 If and to the extent TfL is liable for costs pursuant to paragraph 3.3 or paragraph 6.6, TfL shall pay the costs, fees and expenses reasonably and properly incurred and substantiated by Project Co in preparing and amending the Initial Change Appraisal and/or the Change Appraisal up to a maximum of:
- (a) the amount agreed pursuant to paragraph 4.5(d) or agreed or determined pursuant to paragraph 4.6; and
- (b) where TfL has notified Project Co under paragraph 7.2 that it wishes to amend the relevant TfL Change, any costs, fees and expenses above the amount referred to in paragraph 8.1(a) which have been reasonably and properly incurred by Project Co as a consequence of such amendment.
- 8.2 In determining the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 8.1, the costs of any referral to the Dispute Resolution Procedure shall be disregarded and the apportionment of such costs shall be determined in accordance with Schedule 23 (*Dispute Resolution Procedure*).
- 8.3 Whilst preparing and amending the Change Appraisal, Project Co shall provide a report to TfL on a monthly basis showing:
- (a) the costs, fees and expenses reasonably and properly incurred pursuant to paragraph 8.1 up to the date of the report in relation to the Change Appraisal; and
- (b) Project Co's estimate of the costs, fees and expenses which it anticipates it will incur in total in relation to the Change Appraisal.
- 9. IMPLEMENTATION OF TFL CHANGE**
- 9.1 A Change Confirmation Notice issued by TfL pursuant to paragraph 4.3(a), paragraph 4.7 or paragraph 7.6(a) shall state:
- (a) whether, without prejudice to paragraph 11 (*Financing of Capital Expenditure*), TfL accepts:
- (i) in the case of a Change Confirmation Notice issued under paragraph 4.3(a) or paragraph 4.7 either:
- (A) the Fixed Price Quotation; and Project Co's proposed Schedule of Payments; or
- (B) Project Co's proposed adjustment to the Availability Payment,
- each as included in the relevant Initial Change Appraisal; or

- (ii) in the case of a Change Confirmation Notice issued under paragraph 7.6(a):
 - (A) the Fixed Price Quotation (including any Tendered Price) (if any) and Project Co's proposed Schedule of Payments proposed in accordance with paragraph 6.2(h)(i); or
 - (B) Project Co's proposed adjustments to the Availability Payment proposed in accordance with paragraph 6.2(h)(ii); and
 - (C) any other proposal relating to the costs of or savings arising from the implementation of the TfL Change, including costs that can be calculated using the Schedule of Costs,

each as included in the relevant Change Appraisal (where applicable, as amended in accordance with paragraph 7 (*Procedure following submission of a Change Appraisal*)),

(in each case, the "**Project Co Cost Proposal**"); and

- (b) if TfL states in accordance with paragraph 9.1(a) that it does not accept the Project Co Cost Proposal, whether (without prejudice to paragraph 11 (*Financing of Capital Expenditure*)) TfL requires Project Co to proceed with the TfL Change or any part of the TfL Change either:
 - (i) immediately following issue of the Change Confirmation Notice or such other date specified in the Change Confirmation Notice notwithstanding that the Parties have not reached final agreement in respect of the Project Co Cost Proposal; or
 - (ii) immediately following agreement or determination in respect of the Project Co Cost Proposal in accordance with paragraph 9.5 or paragraph 9.6.

9.2 Any Change Confirmation Notice issued by TfL shall attach a copy of or otherwise reference:

- (a) the Initial Change Appraisal;
- (b) the instructions issued in accordance with paragraph 4.7; or
- (c) the Change Appraisal,

as applicable, which shall be in agreed form other than in respect of any issues relating to the Project Co Cost Proposal or the financing of Capital Expenditure issues which remain to be agreed or determined under this paragraph 9 (*Implementation of TfL Change*).

9.3 Subject to the provisions of this paragraph 9 (*Implementation of TfL Change*) and paragraph 11.3, the Parties acknowledge and agree that a Change Confirmation Notice issued by TfL shall have the effect of varying the relevant Technical Requirements or any other term of this Agreement to the extent provided in the agreed Initial Change Appraisal, the agreed instructions issued in accordance with paragraph 4.7 or the agreed Change Appraisal (as applicable) with effect from the date of receipt by Project Co of the Change Confirmation Notice or such other date specified by TfL in the Change Confirmation Notice.

9.4 As soon as practicable after the date referred to in paragraph 9.3, Project Co shall implement the TfL Change (or part of the TfL Change, where applicable) and shall be

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- bound by this Agreement in so doing as if the TfL Change (or relevant part of the TfL Change, where applicable) formed part of the relevant Technical Requirements or other terms of this Agreement.
- 9.5 If TfL states in a Change Confirmation Notice that it does not agree with the relevant Project Co Cost Proposal, then:
- (a) the Parties shall endeavour to reach agreement in respect of the cost (or saving) of implementing the TfL Change; and
 - (b) TfL may request any additional information of the type referred to in paragraph 7.2 and in providing such information the provisions of paragraph 7.4 shall apply mutatis mutandis.
- 9.6 Where paragraph 9.5 applies, if the Parties fail to reach agreement within twenty (20) Working Days of the issue of the relevant Change Confirmation Notice, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.
- 9.7 Notwithstanding any other provision of this Part 1 (*TfL Changes*), Project Co shall not be entitled to any compensation in connection with a TfL Change save to the extent that such compensation directly arises from such TfL Change and is recoverable pursuant to this Schedule 22 (*Change Procedure*).
- 9.8 The Project Co Cost Proposal accepted in accordance with paragraph 9.1(a) or agreed or determined in accordance with paragraph 9.5 or paragraph 9.6 shall be binding on both Parties in full and final settlement of all costs incurred by Project Co and any impact (whether arising directly or indirectly as a result of the TfL Change) on the Availability Payment, notwithstanding that the actual costs or impact may be greater or less than the Project Co Cost Proposal accepted, agreed or determined, as the case may be.
- 9.9 If Project Co, having used its best endeavours, fails to obtain the Necessary Consents required to be obtained by it in order to implement a TfL Change as set out in the Change Appraisal within one hundred and eighty (180) Working Days of receipt of the Change Confirmation Notice (or such longer period as set out in the agreed Change Appraisal), then Project Co shall notify TfL of such failure.
- 9.10 Following a notification pursuant to paragraph 9.9, TfL shall either:
- (a) withdraw the relevant TfL Change Notice and the reasonable, properly incurred and substantiated costs of Project Co having used its best endeavours to obtain the Necessary Consents pursuant to paragraph 9.9 shall be borne by TfL, provided always that Project Co provides TfL evidence in support of the costs claimed and any other evidence as TfL may reasonably require; or
 - (b) agree an extended period for Project Co to obtain the Necessary Consents or regulatory approvals.
- 9.11 If Project Co, having used its best endeavours, fails to obtain the Necessary Consents required to be obtained by it within the extended period referred to in paragraph 9.10, TfL shall be deemed to have withdrawn the TfL Change Notice and the reasonable, properly incurred and substantiated costs of Project Co having used its best endeavours to obtain the Necessary Consents pursuant to paragraph 9.9 and this paragraph 9.11 shall be borne by TfL, provided always that Project Co provides TfL evidence in support of the costs claimed and any other evidence as TfL may reasonably require.

Schedule 22 – Change Procedure

Part 1 – TfL Changes

- 9.12 In implementing any TfL Change, Project Co shall comply with, as applicable:
- (a) the Review Procedure; or
 - (b) where applicable, the method of certification specified in the agreed Change Appraisal in accordance with paragraph 6.2(e).
- 9.13 Project Co shall maintain and make available any records relating to all TfL Changes in accordance with this Agreement.
- 10. PAYMENTS BY TFL**
- 10.1 Any Schedule of Payments proposed by Project Co in accordance with paragraph 3.2(b) or paragraph 6.2(h) shall:
- (a) set out the timing of the payments to be made by TfL in respect of the net cost (if any) for implementing the proposed TfL Change (as quoted or estimated pursuant to paragraphs 3.1(f) and 3.2(a) or paragraphs 6.2(f) and 6.2(g), as applicable); and
 - (b) in respect of the payments referred to in paragraph 10.1(a), identify those payments which relate to the carrying out of, or specific progress towards, an element within the TfL Change and, in respect of each such payment, specify the evidence which Project Co will provide in order to confirm that the part of the TfL Change corresponding to each occasion when payment is due has been duly carried out.
- 10.2 Where the Project Co Cost Proposal (accepted in accordance with paragraph 9.1(a) or agreed or determined in accordance with paragraph 9.5 or paragraph 9.6):
- (a) requires TfL to make one (1) or more payments to Project Co by reference to a Schedule of Payments, TfL shall make any such payment:
 - (i) in accordance with clause 27.1 (*Payments due prior to the Permit to Use Date*) where the TfL Change occurs prior to the Permit to Use Date; or
 - (ii) in accordance with clause 27.3 (Payment Report) to clause 27.7 (*Payments*) (inclusive) where the TfL Change occurs on or after the Permit to Use Date,and in any event in accordance with the agreed Schedule of Payments (which shall comply with Appendices 1 to 3 where applicable), and where there is no Fixed Price Quotation the actual costs incurred, accompanied and substantiated by invoices and any other evidence as may be reasonably requested by TfL that the relevant part of the TfL Change has been carried out and the costs have been incurred; or
 - (b) requires TfL to pay by way of an adjustment to the Availability Payment, such adjustment will be determined pursuant to Schedule 25 (*Base Case*).
- 10.3 If a payment is not made in accordance with paragraph 10.2, TfL shall pay interest to Project Co on the amount unpaid from the date thirty (30) Working Days after receipt of the relevant invoice until paid at the default rate set out in clause 27.8 (*Late payments*).
- 10.4 Once a Change Confirmation Notice has been issued by TfL, the Parties shall ensure that the Schedule of Payments or adjustment to the Availability Payment (as applicable) provides for a reconciliation of any discrepancy between the Emergency Change Interim

Payments made by TfL and the actual incremental costs, fees and expenses reasonably and properly incurred by Project Co (and accounted for) in relation to the implementation of the Emergency Change during the period from the relevant TfL Change Notice issued pursuant to paragraph 2.1 and prior to the issue of the Change Confirmation Notice.

11. **FINANCING OF CAPITAL EXPENDITURE**

11.1 In the event that the Change Appraisal involves any estimated Capital Expenditure, then (unless TfL has elected to fund such costs in accordance paragraph 4.5(a)(ii)) Project Co shall use its reasonable endeavours to obtain financing for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it and the Senior Funders.

11.2 Where paragraph 11.1 applies, if the actual costs of obtaining such financing are different to Project Co's estimate for such costs as included in the relevant Change Appraisal, then Project Co shall be entitled to amend any element of the Project Co Cost Proposal accordingly and, if TfL does not agree with such amendment, the provisions of paragraph 9.5 shall apply.

11.3 If, pursuant to paragraph 11.1, Project Co has used its reasonable endeavours to obtain financing for the whole of the estimated Capital Expenditure relating to a Change Appraisal, but has been unable to do so within forty five (45) Working Days of the date of the relevant Change Confirmation Notice, then Project Co shall have no obligation to carry out the TfL Change unless TfL agrees within twenty (20) Working Days of the end of such period to pay the costs for which financing is not available on the basis provided in paragraph 11.5.

11.4 Not used.

11.5 Where TfL agrees to pay the costs for which financing is not available pursuant to paragraph 11.3, Project Co shall submit its proposal for any appropriate adjustments to the Schedule of Payments and/or the adjustment to the Availability Payment (determined in accordance with Schedule 25 (*Base Case*)), as applicable, to take account of such costs and, if TfL does not agree with such proposal, the provisions of paragraph 9.5 shall apply.

12. **PROJECT CO'S MARGIN**

12.1 In submitting proposals for or agreeing any adjustments to Project Co's margin as a result of implementing a TfL Change, such margin shall be determined in accordance with Annex 3 (*Project Co's Margin*).

12.2 If either Project Co or TfL considers that the circumstances of either the TfL Change or any quotation or estimate provided pursuant to this Part 1 (*TfL Changes*) are such as to render any part of Annex 3 (*Project Co's Margin*) inapplicable, such Party shall notify the other Party of its objection to the application of Annex 3 (*Project Co's Margin*) and provide full reasons for such objection as soon as reasonably practicable and in any event no later than:

- (a) in the case of Project Co, the date on which it submits its Initial Change Appraisal in accordance with paragraph 3.1 or the date on which it submits its Change Appraisal in accordance with paragraph 6.1; or
- (b) in the case of TfL, twenty (20) Working Days from receipt of the relevant submission referred to in paragraph 12.2(a).

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12.3 If the Parties fail to agree the adjustment to Project Co's margin within ten (10) Working Days of receipt of a notification under paragraph 12.2, then either Party may refer the matter for resolution under the Dispute Resolution Procedure.

13. **COLLATERAL WARRANTIES**

To the extent TfL has stated in a TfL Change Notice or a Change Appraisal Instruction that a collateral warranty is required in relation to any contractors to be appointed by Project Co for the purposes of the works required to carry out the relevant TfL Change, Project Co shall deliver executed collateral warranties in substantially the form of the Collateral Warranty for the Key Tier 2 Sub-Contractors (with any amendments agreed by TfL) from the relevant contractors to TfL prior to commencing the relevant works.

SCHEDULE 22

CHANGE PROCEDURE

Part 2 – Project Co Changes

1. PROJECT CO CHANGE NOTICE

1.1 If Project Co wishes to introduce a change to any of the relevant Technical Requirements (a "**Project Co Change**"), Project Co must serve a notice in writing on TfL (a "**Project Co Change Notice**") which shall:

- (a) set out the proposed Project Co Change in sufficient detail to enable TfL to evaluate it in full, including providing information equivalent to that provided in respect of a TfL Change pursuant to paragraph 3 (*Initial Change Appraisal*) or paragraph 6 (*Change Appraisal*) of Part 1 (*TfL Changes*);
- (b) specify Project Co's reasons for proposing the proposed Project Co Change;
- (c) request TfL to consult with Project Co with a view to deciding whether to agree to Project Co Change and, if so, what consequential changes TfL requires as a result;
- (d) indicate any implications of the proposed Project Co Change;
- (e) indicate, whether an adjustment to the Availability Payment is proposed (and, if so, give a detailed cost estimate of such proposed adjustment in accordance with Schedule 20 (*Payment Mechanism*)); and
- (f) indicate if there are any dates by which a decision by TfL is critical in Project Co's reasonable opinion.

1.2 Project Co shall give an early warning by notifying TfL as soon as is reasonably practicable after it becomes aware of any matter which would be reasonably likely to require a Project Co Change Notice to be served on TfL.

2. EVALUATION OF PROJECT CO CHANGE

2.1 Following the receipt of a Project Co Change, TfL shall evaluate the proposed Project Co Change in good faith, taking into account all relevant issues, including whether:

- (a) TfL will be required to make a change in the Availability Payment or to make any other payment;
- (b) the change affects the quality of the Works or Services or the likelihood of successful delivery of the Works or Services;
- (c) the change will alter the relationship of TfL with third parties;
- (d) the financial strength of Project Co is sufficient to perform the changed Works or Services;
- (e) the change will alter TfL's rights or obligations under this Agreement, including in relation to the Retained DCO Functions or the Retained Third Party Functions;
- (f) the residual value of the Project Facilities is reduced;

Schedule 22 – Change Procedure

Part 2 – Project Co Changes

- (g) whether TfL requires a collateral warranty in relation to any contractors to be appointed by Project Co for the purposes of the works required to carry out the relevant Project Co Change; or
- (h) the change materially affects the risks or costs to which TfL is exposed.

2.2 The Parties acknowledge and agree that:

- (a) TfL cannot reject a Project Co Change which is required in order to conform to a Change in Law; and
- (b) the costs of introducing a Project Co Change and other effects resulting from a Qualifying Change in Law (including any resulting variation in the Availability Payment) shall be dealt with in accordance with clause 25 (*Change in Law*) and, to the extent not so dealt with, shall be borne by Project Co.

2.3 In relation to any Project Co Change which is not required in order to conform to a Change in Law, the reasonable, properly incurred and substantiated costs of TfL of evaluating any Project Co Change Notice shall be borne by Project Co, provided always that TfL provides Project Co at the time of accepting or rejecting the Project Co Change evidence in support of the cost of evaluating the Project Co Change Notice claimed and any other evidence as Project Co may reasonably require.

2.4 In relation to any Project Co Change which is not required in order to conform to a Change in Law, Project Co shall bear its own costs.

3. PROCEDURE FOLLOWING SUBMISSION OF A PROJECT CO CHANGE NOTICE

3.1 Subject to Part 3 (*Changes in O&M Standards*), as soon as reasonably practicable after receiving a Project Co Change Notice and if requested by either Party, the Parties shall meet and discuss the matters referred to in such Project Co Change.

3.2 During the discussions referred to in paragraph 3.1, TfL may propose modifications or (acting in its absolute discretion) accept or reject the relevant Project Co Change Notice.

3.3 If TfL accepts a Project Co Change Notice (with or without modification), the Parties shall, as soon as reasonably practicable after TfL notifies Project Co of its acceptance:

- (a) agree and enter into any documents to amend this Agreement or any relevant Project Document which are necessary to give effect to Project Co Change; and
- (b) implement the Project Co Change.

3.4 In implementing any Project Co Change, Project Co shall comply with the Review Procedure.

3.5 If TfL rejects a Project Co Change:

- (a) the Project Co Change Notice shall be deemed to be withdrawn; and
- (b) TfL shall not be obliged to give its reasons for such a rejection.

3.6 Project Co shall maintain and make available any records relating to all Project Co Changes in accordance with this Agreement.

4. AVAILABILITY PAYMENT ADJUSTMENT

- 4.1 Unless TfL's acceptance of a Project Co Change specifically agrees to an increase in the Availability Payment or other payments under this Agreement, there shall be no increase to such payments as a result of a Project Co Change.
- 4.2 Following agreement to any adjustment to the Availability Payment pursuant to this Part 2 (*Project Co Changes*), the Base Case shall be updated in accordance with Schedule 25 (*Base Case*).

5. COLLATERAL WARRANTIES

To the extent TfL has stated in its response to a Project Co Change Notice that a collateral warranty is required in relation to any contractors to be appointed by Project Co for the purposes of the works required to carry out the relevant Project Co Change, Project Co shall deliver executed collateral warranties in substantially the form of the Collateral Warranty for the Key Tier 2 Sub-Contractors (with any amendments agreed by TfL) from the relevant contractors to TfL prior to commencing the relevant works.

SCHEDULE 22**CHANGE PROCEDURE****Part 3 - Changes in O&M Standards****1. CHANGES IN O&M STANDARDS**

1.1 If Project Co:

- (a) becomes aware of any change (whether by addition, modification, omission or otherwise) in the O&M Standards; or
- (b) is notified by TfL of a change (whether by addition, modification, omission or otherwise) in the O&M Standards that TfL considers relevant to the operation and maintenance of the Project Facilities,

it shall forthwith submit a Project Co Change Notice under paragraph 1.2 or paragraph 2.1.

1.2 Where the change in O&M Standards referred to in paragraph 1.1 does not constitute a Step Change, Project Co shall submit a Project Co Change Notice which shall identify:

- (a) the information required under Part 2 (*Project Co Changes*);
- (b) the standard or specification that Project Co proposes should be included as an O&M Standard or should no longer constitute an O&M Standard;
- (c) any amendments to the terms used in such standard or specification as may be necessary to ensure the proper application of such standard or specification to the operation and maintenance of the Project Facilities;
- (d) any consequential amendments to the O&M Standards;
- (e) any consequential amendments to Part 1 (*O&M Requirements*) of Schedule 18 (*Operation and Maintenance Requirements*) or any other amendments to this Agreement as the case may be; and
- (f) any other consequential amendments to this Agreement.

1.3 Following the submission of any Project Co Change Notice under paragraph 1.2, TfL may accept or reject the proposed Project Co Change in accordance with the procedure set out in Part 2 (*Project Co Changes*).**2. STEP-CHANGE**

2.1 Where the change in O&M Standards referred to in paragraph 1.1 constitutes a Step Change, Project Co shall submit a Project Co Change Notice which shall:

- (a) state that, in Project Co's opinion, the proposed Project Co Change would constitute a Step Change;
- (b) identify the details required by paragraph 1.2(a) to paragraph 1.2(d);
- (c) give details of any variation to the Services which will become necessary as a result of the implementation of the change in O&M Standards; and

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Part 3 – Changes in O&M Standards

- (d) set out the basis of its belief that the implementation of the change in O&M Standards would constitute a Step Change.
- 2.2 Within forty (40) Working Days of receipt of a Project Co Change Notice submitted under paragraph 2.1, TfL shall notify Project Co either:
- (a) that it agrees that a Step Change has occurred and wishes to initiate a TfL Change in respect of such Step Change;
- (b) that it agrees that a Step Change has occurred and does not wish to initiate a TfL Change in respect of such Step Change; or
- (c) that it does not agree that a Step Change has occurred, in which case TfL shall set out in the notice the grounds of objection.
- 2.3 Where TfL fails to respond to Project Co within the forty (40) Working Day period referred to in paragraph 2.2, TfL shall be deemed to have given a notice under paragraph 2.2(b).
- 2.4 Where TfL gives a notice under paragraph 2.2(c), the Parties shall use all reasonable endeavours to reach agreement as to whether or not a Step Change has occurred. If the Parties fail to reach an agreement within forty (40) Working Days of the such notice being given, then either Party may refer the matter to the Dispute Resolution Procedure.
- 2.5 If following a referral to the Dispute Resolution Procedure under paragraph 2.4 it is determined that a Step Change has occurred, TfL shall, within ten (10) Working Days of such determination, give a notice to Project Co specifying that either:
- (a) it wishes to initiate a TfL Change in respect of such Step Change; or
- (b) it does not wish to initiate a TfL Change in respect of such Step Change.
- 2.6 If TfL fails to give a notice within the ten (10) Working Day period referred to in paragraph 2.5, TfL shall be deemed to have given a notice under paragraph 2.5(b).
- 2.7 If following a referral to the Dispute Resolution Procedure under paragraph 2.4 it is determined that a Step Change has not occurred, then TfL may accept or reject the proposed Project Co Change in accordance with the procedure set out in Part 2 (*Project Co Changes*).
- 2.8 Where TfL gives a notice under paragraph 2.2(a) or paragraph 2.5(a):
- (a) the Project Co Change Notice submitted under paragraph 2.1 shall be deemed to have been withdrawn; and
- (b) TfL shall initiate a TfL Change and the provisions of Part 1 (*TfL Changes*) shall apply.
- 2.9 Where TfL gives, or is deemed to have given, a notice under paragraph 2.2(b) or paragraph 2.5(b):
- (a) the Project Co Change Notice submitted under paragraph 2.1 shall be deemed to have been withdrawn; and
- (b) Project Co shall not be obliged to implement the change in O&M Standards.

ANNEX 1 – Schedule of Costs

To the extent that an Initial Change Appraisal or a Change Appraisal agreed in accordance with Part 1 (*TfL Changes*) states that any costs are to be agreed by reference to the Schedule of Costs, then such costs shall be determined in accordance with this Annex 1 (*Schedule of Costs*):

1. **STAFF COSTS**

1.1 **Professional and other monthly paid staff**

The cost of professional and other monthly paid staff of Project Co or its Key Sub-Contractors working directly on the design or construction of any Works or directly providing the Services required by a TfL Change shall be recoverable on a time basis as follows:

(Basic Annual Salary/2088) x Actual Hours Worked x On-Cost Multiplier A

Where:

"Basic Annual Salary" means the annual salary of the relevant staff member excluding overtime and bonuses during the relevant period, which shall be broken down as requested by TfL, provided that where the annual salary is changed during the relevant period, the actual hours worked should be apportioned and applied to the relevant salary level;

"Actual Hours Worked" means the actual hours worked by the relevant staff member in relation to the TfL Change, including overtime hours where the relevant staff member is paid for overtime hours, which shall be provided in timesheet format to TfL, having been verified by Project Co, on a weekly basis while any TfL Change is being carried out; and

"On-Cost Multiplier A" is 1.84 being the factor required to recover the appropriate part of the annual salary and on-costs. The on-costs deemed to be covered by On-Cost Multiplier A include:

- (a) all bonuses, incentives, costs of working in special conditions, special allowances, absence due to sickness and holidays and severance; and
- (b) all contributions and payments made by the employer for staff pension and life assurance schemes and for National Insurance, and any tax, charge, levy, impost or payment of any kind which the employer is obliged by Law to make on behalf of or in respect of the relevant employee.

1.2 **Agency or sub-consultant staff (based in the offices of Project Co or its Key Sub-Contractors)**

The cost of agency or sub-consultant staff working directly on the design or construction of any Works or directly providing the Services required by a TfL Change who are not direct employees of any of Project Co or its Key Sub-Contractors but are based in the offices of Project Co or its Key Sub-Contractors shall be recoverable on a time basis as follows:

Hourly Cost x Actual Hours Worked x On-Cost Multiplier B

Where:

"Hourly Cost" means the hourly cost paid to an agency or sub-consultant in respect of named individual professionals;

"Actual Hours Worked" means the actual hours worked by the named individual professionals in relation to the TfL Change, which shall be provided in timesheet format to TfL, having been verified by Project Co, on a weekly basis while any TfL Change is being carried out; and

"On-Cost Multiplier B" is 1.05 being the factor required to recover the appropriate part of Project Co's and Key Sub-Contractor's on-costs. The on-costs deemed to be covered by On-Cost Multiplier B include costs of working in special conditions.

1.3 Agency or sub-consultant staff (based in their own offices)

The cost of agency or sub-consultant staff working directly on the design or construction of any Works or directly providing the Services required by an TfL Change who are not direct employees of any of Project Co or its Key Sub-Contractors and are based in their own offices shall be recoverable on a time basis as follows:

Hourly Cost x Actual Hours Worked

Where:

"Hourly Cost" means the hourly cost paid to an agency or sub-consultant in respect of named individual professionals;

"Actual Hours Worked" means the actual hours worked by the named individual professionals, in relation to the TfL Change, including overtime hours, which shall be provided in timesheet format to TfL, having been verified by Project Co, on a weekly basis while any TfL Change is being carried out.

1.4 Miscellaneous

(a) In addition to the fee described in paragraph 1.1 to paragraph 1.3 (inclusive), Project Co shall be reimbursed by TfL for all approved costs and expenses properly incurred by it in connection with the TfL Change to be performed under this Schedule of Costs and certified by Project Co in respect of:

- (i) the reasonable costs of time spent in travelling for the purposes of the TfL Change to be performed under this Schedule of Costs, excluding travel between home and normal work place;
- (ii) an appropriate portion of subsistence expenses paid to employees, agency staff or sub-consultant staff as the case may be;
- (iii) the cost of printing and reproduction of all documents, drawings, maps and records and the like authorised by TfL;
- (iv) the cost of providing, where required by TfL, auditors' certificates of costs; and
- (v) the cost of any other expenses authorised by TfL, excluding normal office overheads such as rent, rates, heating, lighting, telephone and postal charges.

- (b) For the purposes of this Schedule of Costs, "approved" means approved in writing by TfL before the cost, remuneration or expenditure in question is incurred or committed.

2. **EQUIPMENT**

2.1 **Calculation of costs for equipment**

- (a) The cost of additional equipment required to carry out a TfL Change shall be recoverable on the basis set out in this paragraph 2 (*Equipment*).
- (b) For the purposes of this paragraph 2 (*Equipment*), "equipment" means any item:
- (i) provided by Project Co;
 - (ii) used by Project Co to complete the works the subject of the TfL Change; and
 - (iii) which does not require incorporation into the Works or the Project Facilities (as applicable).

2.2 **Hire or rental of Equipment**

Payment for the hire or rental of equipment not owned by Project Co or an Affiliate shall be calculated as follows:

Hire or rental rate x Duration utilised in carrying out TfL Change

2.3 **Owned Equipment**

Payment for equipment owned by Project Co or an Affiliate shall be:

The reasonable internal charge of such equipment.

2.4 **Miscellaneous**

- (a) Unless included in the hire or rental rates, actual payments for:
- (i) transporting equipment to and from the Project Land, other than for repair and maintenance; and
 - (ii) constructing, fabricating or modifying equipment as a result of a TfL Change, shall be recoverable.
- (b) The cost of operatives shall be calculated in accordance with paragraph 1.

3. **PLANT AND MATERIALS**

3.1 For the purposes of this paragraph 3 (*Plant and materials*), "plant and materials" means any items

- (a) provided by Project Co; and
- (b) which are intended to be incorporated into the Works or the Project Facilities (as applicable).

3.2 The actual costs of additional plant and materials required to carry out a TfL Change which are to be included in the Works or the Project Facilities shall be recoverable, including:

- (a) purchasing the plant and materials;
- (b) manufacture of the plant and materials;
- (c) delivery to and removal from the Project Land;
- (d) providing and removing packaging; and
- (e) samples and tests.

3.3 The costs listed in paragraph 3.2 shall be reduced to the extent any payments are received for the disposal of any such plant and materials.

4. **CHARGES**

The actual cost of payments for additional water, gas and electricity required by Project Co to carry out the TfL Change shall be recoverable.

5. **MARGIN**

The only margin that may be applied to the amounts set out in paragraph 1 (*Staff Costs*) to paragraph 4 (*Charges*) is set out in Annex 3 (*Margin*).

ANNEX 2 – Calculation of Change in Costs

1. PRINCIPLES

1.1 Project Co shall ensure that any Change in Costs is calculated on the following principles:

- (a) where the activities, items or costs are similar to equivalent activities, items or costs:
 - (i) contained in the Base Case, the costs for such items shall be equivalent to and benchmarked against such costs; or
 - (ii) contained in any of the Sub-Contracts with Key Sub-Contractors, then the costs for such items shall be equivalent to and benchmarked against those in the relevant Sub-Contract;
- (b) where paragraph 1.1(a) does not apply, the costs shall reflect the prevailing market rates applicable to the circumstances of the quotation and on an open book basis;
- (c) Project Co shall oblige (and shall use its best endeavours to enforce such obligation) its Sub-Contractors and their sub-contractors of any tier to use their best endeavours to minimise any increase in costs and maximise any reduction in costs;
- (d) Project Co shall demonstrate how any expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, any foreseeable Changes in Law at that time have been taken into account;
- (e) Project Co shall ensure that the Change in Costs take account of any reduction in expenditure incurred to replace or maintain assets which was originally anticipated but would be avoided as a result of implementing the applicable Change; and
- (f) Project Co shall demonstrate that where Project Co or the Key Sub-Contractors have sourced services, works, parts or materials:
 - (i) from within their respective group undertaking (as such term is defined in section 1161 of the Companies Act 2006); or
 - (ii) using any Shareholder or any entity within the Shareholder's respective group undertaking,

that the margin added in relation to such services, works, parts or material is no more than two thirds of the relevant margin set out in Annex 3 (*Project Co's Margin*) to this Schedule 22 (*Change Procedure*).

2. MARGIN

Subject to paragraph 1.1(f), the only margin which may be added to the costs calculated in accordance with the principles in paragraph 1 (*Principles*) of this Annex 2 (*Calculation of Change in Costs*) is as set out in Annex 3 (*Project Co's Margin*) to this Schedule 22 (*Change Procedure*).

ANNEX 3 – Project Co's Margin

1. An uplift shall be applied to quotations and estimates (or parts of the same) of the direct costs and savings resulting from implementation of proposals for any TfL Change as calculated in accordance with Annex 2 (*Calculation of Change in Costs*).
2. The uplift referred to in paragraph 1 shall be [REDACTED] per cent ([REDACTED]%) where Project Co's estimate referred to in paragraph 3.1(f)(i) of Part 1 (*TfL Changes*) is for an amount which is equal to or less than (£[REDACTED]) (Indexed) and [REDACTED] per cent ([REDACTED]%) where Project Co's estimate referred to in paragraph 3.1(f)(i) of Part 1 (*TfL Changes*) is for an amount which is greater than [REDACTED] pounds (£[REDACTED]) (Indexed).
3. The percentage referred to in paragraph 1 shall be deemed to include all of Project Co's additional or reduced overheads (as applicable), including the costs of corporate management, administration, legal, accountancy, head office overheads and charges, supervision (excluding site supervision to implement the TfL Change), support staff (including training, secretarial and administration staff) insurance, accommodation, provision of small tools including hand tools and protective clothing, and profit resulting from the relevant TfL Change.