UNDERGROUND

1.1 Form of Agreement

THIS AGREEMENT is made the 01 day of ~~April~~ May 2013

BETWEEN:

(1) **LONDON UNDERGROUND LIMITED** whose registered office is at 55 Broadway, London SW1 0BD ("the *Employer*" which expression shall include its successors in title and assigns); and

(2) **BECHTEL LIMITED** whose registered office is at 11 Pigrim Street, London EC4V 6RN ("the *Contractor*").

WHEREAS:

(A) The *Employer* wishes to have provided the design, implementation, testing, commissioning, training, assurance and handover of the congestion relief, station modernisation and refurbishment and the step-free access ("the *works*") at Vauxhall Station as more particularly described in the Works Information.

(B) The *Employer* has accepted a tender by the *Contractor* for the design and construction of the *works* and correction of Defects therein in accordance with the *conditions of contract* (as and amended).

NOW IT IS AGREED THAT:

1. Terms and expressions defined in the *conditions of contract* (as amended) have the same meanings herein.

2. The *Contractor* Provides the Works in accordance with the *conditions of contract* (as amended).

3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract* (as amended).

4. The documents forming the contract are:

   (a) this Form of Agreement duly executed by the Parties as a deed and included in volume 1 section 1 of this contract;

   (b) the NEC Engineering and Construction Contract *conditions of contract* Third Edition June 2005 (with amendments dated June 2006 and September 2011) core clauses and main and secondary option clauses as amended by the *additional conditions of*

contract (Z1 and Z2 clauses) and as shown in the consolidated conditions of contract included in volume 1 section 1 of this contract;

(c) Schedules 1 to 11 inclusive to the *conditions of contract* included in volume 1 section 1 of this contract;

(d) the completed Contract Data Part 1 included in volume 1section 1 of this contract;

(e) the completed Contract Data Part 2 included in volume 1section 1 of this contract;

(f) the Works Information; and

(g) the Site Information.

5. Where there is any discrepancy or conflict within or between the documents forming the contract the order of priority shall be as follows:

First	:	This Form of Agreement;
Second	:	The *additional conditions of contract* designated Z1 or Z2 (including any references to the Contract Data and any necessary parts of the Works Information referred to therein);
Third	:	The other *conditions of contract* (including any references to the Contract Data and any necessary parts of the Works Information referred to therein); and
Fourth	:	The Works Information and any other documents included in this contract.

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.

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[redacted]

Vauxhall Design and Build Works

1.2 Contract Data - Part One

CONTRACT DATA

Part One – Data provided by the *Employer*

Statements given
in all contracts

1. General

- The *conditions of contract* are the core clauses and the clauses for main Option C and secondary Options clauses **X4, X7, X16, X18, X21, X23, X24,** and Y(UK)2 and Z clauses of the NEC3 Engineering and Construction Contract June 2005 (incorporating amendments June 2006 and September 2011) as amended or inserted in each case in accordance with secondary Option Z.

- The *works* are the design, implementation, testing, commissioning, training, assurance and handover of the congestion relief, station modernisation and refurbishment and step-free access at Vauxhall Station as more particularly described in the Works Information.

- The *Employer* is

  Name: London Underground Limited

  Address: 55 Broadway, London SW1H 0BD

- The *Project Manager* is

  Name: [redacted]

  Address: Albany House, Petty France, London, SW1H 9EA

- The *Supervisor* is

  Name: [redacted]

  Address: Albany House, Petty France, London, SW1H 9EA

- The Works Information is included in this contract

- The Site Information is included in this contract

- The *boundaries of the site* are shown on drawings referenced VX-MS-DWG-01 to 08 in Section S100 of the Site Information
- The *language of this contract* is English.
- The *law of the contract* is the law of England and Wales
- The *period for reply* is two (2) weeks with the exception of replies to design submissions when the *period for reply* is four (4) weeks
- The following matters will be included in the Risk Register:

  As identified in Contract Data – Part 2of this contract.

3. Time

- The *starting date* is: 1 May 2013
- The *access date* is the date when the *Contractor* starts the construction work on 9 December 2013 subject to the constraints set out in this contract.
- The *Contractor* submits revised programmes at intervals no longer than four (4) weeks.

4. Testing and Defects

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

5. Payment

- The *currency of this contract* is Pound Sterling
- The *assessment interval* is four (4) weeks
- The *interest rate* is two percent (2%) per annum above the base rate of the Bank of England.

6. Compensation events

- The place where weather is to be recorded is the Site.
- The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than five (5) mm
- the number of days with minimum air temperature less than zero (0) degrees Celsius
- the number of days with snow lying at 09:00 hours GMT.

- The *weather measurements* are supplied by the *Contractor*.
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at Central London and which are available from the Met Office, Fitzroy Road, Exeter, Devon EX1 3PB.

8. Risks and insurance

Insurances taken out by the *Employer*

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

Insurances taken out by the *Contractor*

- ***Employer's* liability insurance -** details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of ten million pounds (£10,000,000) per occurrence..
- ***Contractor's* equipment loss insurance -** details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the

consolidated conditions of contract.

- **Professional indemnity insurance -** details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of five million pounds (£5,000,000) per occurrence and in the aggregate per annum.

Optional statements

If the *Employer* has decided the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is 18th November 2015

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

- The *Employer* is not willing to take over the *works* before the Completion Date.

-

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

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

condition to be met	*key date*
1. Completion and acceptance by the *Project Manager* of the Concept Design Statement for the Congestion Relief element of the *works*.	16 July2013
2. Completion and acceptance by the *Project Manager* of the Concept Design Statement for the Step Free Access element of the *works* (including the lift)	29 July 2013

3. Completion and acceptance by the *Project Manager* of the Detailed Design for the Congestion Relief element of the *works*.	8 November 2013
4. Completion and acceptance by the *Project Manager* of the Detailed Design for the Step Free Access Relief element of the *works* (including the lift).	18 December 2013
5. Commence the construction *works* on site	9 December 2013
6. Completion and acceptance by the *Employer* so to bring into use the Step Free Access elements of the *works* (including the lift)	28 August 2015

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

- The period for payment is twenty-eight (28) days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract.

If there are additional *Employer's* risks

- The *Employer's* risks are as set out in clause 80.1. The additional *Employer's* risks are;

Discovery of asbestos

Cover/deductibles for insurances provided by the *Employer*

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

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

The deductibles are:

- Two hundred and fifty thousand pounds (£250,000) per occurrence for loss or damage to the *works* caused by defects in design plan specification materials or workmanship (DE5 1995). Such deductible shall only apply in respect of reinstatement or making good of that part which is itself defective;
- Twenty five thousand pounds (£25,000) per occurrence in respect of

loss or damage to the works caused by defect in design plan specification materials or workmanship (DE3 1995);

- Twenty five thousand pounds (£25,000) per occurrence in respect of loss or damage caused by storm, tempest, water damage, subsidence or collapse;
- Five thousand pounds (£5,000) every other occurrence.

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

Cover/indemnity is not less than one hundred and fifty five million pounds (£155,000,000) per occurrence

The deductibles are: ten thousand pounds (£10,000) per occurrence

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

Cover/indemnity is not less than twenty five million pounds (£25,000,000) per occurrence

The deductibles are: ten thousand pounds (£10,000) per occurrence

If additional insurances are to be provided

- The *Contractor* provides no additional insurances

If there are *additional termination events*:

- These are the *additional termination events*

1. The *Contractor* does not achieve Concept Design Statement acceptance from the *Project Manager* for either the Congestion Relief, Step Free Access or Lift elements of the *works* by the *key date*.

2. The *Contractor* does not achieve Detailed Design acceptance from the *Project Manager* for either the Congestion Relief, Step Free Access or Lift elements of the *works* by the *key date*.

3. For any reason, the *Employer* does not commence the construction element of the *works*

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

share range	*Contractor's share percentage*
less than 100%	100%
greater than 100%	100%

- The *share termination threshold is* £5,000,000

- The Contractor prepares forecasts of Defined Cost for the *works* at intervals no longer than four (4) weeks.

- The *exchange rates* are those published in The Financial Times on the date of this contract

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

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

Option X7

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

- The maximum aggregate liability of the *Contractor* for liquidated damages payable or allowable under Option X7 is limited to [redacted] -

Option X16

- The *retention free amount* is the amount equal to the lump sum prices in the *activity schedule* for *Contractor's* design.

- The *retention percentage* is 5% of the Price for Work Done to Date for the whole of the works

Option X18

- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters is limited to [redacted]

Option X24

- The *fee cap* is [redacted]

Option Z

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

1.3 Contract Data – Part Two

MAIN OPTION C

CONTRACT DATA

PART 2

CONTRACT DATA

Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is

  Name: Bechtel Limited

  Address: 11 Pilgrim Street, London EC4V 6RN

- The *fee percentage* is [redacted]

- The working areas are the Site; Project Office (at an address to be agreed); offices of Gall Zeidler Consultants at AMP House, Dingwall Road, Croydon, Surrey CR0 2LX; Offices of Jospeh Gallagher Limited at Neagron House, Stanford Road, Orsett, Essex, RM16 3BX.

- The *Contractor's Representative* is

  Name: [redacted]

  Address: 11 Pilgrim Street, London EC4V 6RN

  Telephone Number [redacted]

- The key people are

  1. Name: [redacted]

     Job: Project Manager

     handover period : One calendar month

     Responsibilities: Overall responsibility for the contract

     Qualifications: [redacted]

Experience: [redacted] – see attached CV

2. Name: [redacted]

   Job: Construction Manager

   handover period: One calendar month

   Responsibilities: Control of all construction resources

   Qualifications: [redacted]

   Experience: [redacted] – see attached CV.

3. Name: [redacted]

   Job: Design and Engineering Manager

   handover period: One calendar month

   Responsibilities: Control of design and engineering.

   Qualifications: [redacted]

   Experience [redacted] – see attached CV.

4. Name: [redacted]

Job: Commercial Manager

handover period: One calendar month

Responsibilities: Project Commercial Management

Qualifications: [redacted]

Experience: [redacted] – see attached CV.

5. Name: [redacted]

Job: Planning Manager

handover period: One calendar month

Responsibilities: Project Planning

Qualifications: [redacted]

Experience: [redacted] – see attached CV.

6. Name: [redacted]

Job: HSQE Manager

handover period: One calendar month

Responsibilities: Management of project Health , Safety, Environment and Quality.

Qualifications: [redacted]

Experience: [redacted] see attached CV.

7. Name: [redacted]

Job: Stakeholder Manager

handover period: One calendar month

Responsibilities: Liaising with and management of stakeholders to the project.

Qualifications: [redacted]

Experience: [redacted]

- The following matters will be included in the Risk Register: The risks as identified within Volume 1, Section 1.13 of this contract.

Optional Statements

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

- The Works Information for the *Contractor's* design is the Works Information Scope Narrative 30.4.13 ref: VAUX1

If a programme is to be identified in the Contract Data

The Programme is reference BEC-UIP2154-VXH-PROG-130429 dated 30 April 2013

If the *Contractor* is to decide the *completion date* for the whole of the works

- The *completion date* for the whole of the *works* is: see Contract Data Part 1
- The *activity schedule* is the activity schedule reference BEC-UIP2154-VXH-ACTS-13042 dated 30 April 2013
- The tendered total of the Prices is £18,810,439.79 (Eighteen Million, Eight Hundred and Ten Thousand, Four Hundred and Thirty Nine Pounds and Seventy Nine Pence)

Data for Schedule of Cost Components

- The listed items of Equipment purchased to work on this contract, with an on cost charge, are: **Not applicable**

Equipment	**time-related charge**	**per time period**

- The rates for special Equipment are: **Not applicable**

Equipment	**size or capacity**	**rate**

- The percentage for Working Areas overheads [redacted]%

- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are: **Not applicable.**
- The percentage for manufacture and fabrication overheads is **Not Applicable**

Data for both schedules of cost components

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

category of employee	hourly rate
CAD Operator	[redacted]
. Grade 29	[redacted]
Grade 27	[redacted]
Grade 26	[redacted]
Grade 24	[redacted]

- The percentage for design overheads is [redacted]

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

Data for the Shorter Schedule of Costs Components (Not Applicable)

- The percentage for people overheads is

- The published list of Equipment is the last edition of the list published by

- The percentage for adjustment for Equipment in the published list is (state plus or minus)

- The rates for other Equipment are: **Not Applicable.**

Equipment	**size or capacity**	**rate**

1.4 – LUL / TfL - NEC Consolidated Conditions of Contract for Main Option C

LU-UIP2154-VXH-MNG-CNT-048

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION C

X21	Single Point Design Responsibility
X22	Novation of Associated Contracts
X23	Key Person Succession Plan
X24	Fee Cap
X25	Escrow Agreement

Z1.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

Z1.1.1 • done all the work necessary for the *works* to be Available and

Z1.1.2 ~~when this contract came into existence~~ of this contract.

Z1.1.3 a part of the *works* which is not in accordance with the Works Information or the requirements of this contract, or
a part of the *works* designed by the *Contractor* which is not in accordance with the applicable law or the *Contractor's* design which the *Project Manager* has accepted

Z1.1.4 (6) The Defects Certificate is either a list of Defects that the *Supervisor* or the *Contractor* 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.

(7) Equipment is items provided by the *Contractor* and used by him Works and which the Works Information does not require him to *works*.

Z1.1.5 (8) The Fee is the sum of the amounts calculated by applying the ~~*subcon-tracted percentage*~~ *percentage* to the Defined Cost of both subcontracted work and ~~the *direct fee percentage* to the Defined Cost of o~~ther work.

(9) 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.

Z1.1.5A who are not the *Employer*, the *Project* he Adjudicator, the *Contractor* or any

Z1.1.6 (which expression includes his successors in title and assigns)

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Z1.41.1

~~follow an acceptance or procurement procedure stated in~~ comply with the requirements of

- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,
- is attributable to a compensation event under a subcontract which is not

also a compensation event under this Contract,

- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2).

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with Standards or a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested ~~and~~
-
- preparation for and conduct of an adjudication or proceedings of the ~~*tribunal*~~ c
-
- [and
- profit payable between each party comprising the *Contractor*.][1]

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

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

11.3 Additional defined terms are included in Schedule 1.

Interpretation and the law **12**

Z1.3

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

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.

[1] Delete wording in square brackets if the *Contractor* is a joint venture

12.4 This contract ~~is the entire agreement between the Parties~~

Y2.1(2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act

13.1

Z1.4

Z1.4.1 If and to the extent that clause 12A is not applicable to the contract, e

Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).

Z1.5

Z1.5.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor t review or s

Y2.1/Z1.5.2 14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

The *Contractor's Representative*

Z1.5A.1 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor's Representative*. The *Contractor's Representative* acts on behalf of the *Contractor* under this contract. The *Contractor's Representative* may, after notifying the *Employer* and the *Project* Manager, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor's Representative* in this contract includes an action by

his delegate. The *Contractor's Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor's Representative* in accordance that clause.

Z1.6
Z1.6.1

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

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

Z1.7

The *Contractor* examines the Works Information and all other documents forming this contract and warrants to the *Employer* that he is not aware, as at the Contract Date, of any ambiguity or discrepancy within or between any of the contract

Z1.7.1

documents which might adversely affect the carrying out of the *works* for the tendered Prices in accordance with the *conditions of contract*.

Z1.7.2 17.2

Such instruction is not a compensation event where the *Project*

Manager assesses:

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

Z1.8
Z1.8.1

and which is not

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

prudent and familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor

and

- the *Contractor* can demonstrate that he did not allow for it in his tender;

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

Z1.9
Z1.9.1 a regular and diligent manner and in

20.2 Not used (as not an Option C clause)

Z1.41.1A

(or, if
no interval is stated in the Contract Data, at 4 weekly intervals). Each forecast is in a format prescribed in the Works Information and contains an

20.5 Not used (as not an Option C clause)

Z1.9.2 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.

Z1.10
Z1.10.1 [2]

Z1.10.2 Reasons
this contract or that

- it is such that it will not allow the *works* to be constructed,
- it is such that if constructed the *works* will not be capable of being used for their intended purpose.

Z1.11

Z1.11.1 ~~with construction, use, alteration or demolition of the *works* unless otherwise stated in the Works Information and for other purposes as stated in the Works Information~~ specified in clause Z2.7.

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

Z1.12

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

~~The~~ *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove ~~an employee~~ . The *Contractor* then arranges that, after one day, ~~the employee~~ 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*. He co-operates with Others and shares the Working Areas with them as stated in the Works Information.

25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

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

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

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost ~~within four weeks of~~ the date when the Condition for the Key Date is met. ~~The *Employer's* right to recover the additional cost is his only right in these circumstances.~~

Z1.13.4

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

Z1.14

Z1.14.1

Reasons include:

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

Z1.14.2

~~an NEC contract is proposed or~~

Reasons include:

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

Z1.15

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

Z1.16

Z1.16.1 30.1A The *Contractor* notifies the *Project Manager* when in his opinion the *works* will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* may attend the inspection.

Z1.16.2 *Contractor* provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the *works* have been so completed. If the *Project Manager* is satisfied that the *works* have been so completed, he

If the *Project Manager* is not so satisfied, he notifies the *Contractor* of his reasons for not accepting that the *works* have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.

Z1.17

Z1.17.1

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- environmental and

- for each operation, a cost-loaded programme showing the forecast resources required for that operation,
- its access requirements in accordance with the Works Information, and

Z1.18
Z1.18.1

- the effects of decisions reached and approved by the *Project Manager* at risk reduction meetings.

Z1.19

Z1.19.1

Subject to the provisions of the Works Information regarding access, the ~~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.

Z1.19.2

33.1A The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Z1.20

Z1.20.1

or permit Others to use
does not take and is not treated as having taken over (or Others) and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3.

- ~~for a reason stated in the Works Information or~~

- ~~to suit the *Contractor's* method of working.~~

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

Acceleration 36

36.1

36.2

Z1.41.1B

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

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

Z1.21.1 Subject to sub-clause 46, u

Z1.22

Z1.22.1 Subject to sub-clause 46, the

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

Critical Defects 46

Z1.23

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

Z1.24

at the end of each *assessment interval* until four weeks
Supervisor issues the Defects Certificate and
at Completion of the whole of the *works*.

Z1.24.1 50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.

Z1.24.2

50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.

Z1.24.3

50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A ~~on or before the assessment date~~. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.

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

50.6 Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of this contract* are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate the Fee and any *Contractor*'s share using the *exchange rates*.

Z1.24.6

Z1.24.7

Payment 51

Y1.1.1

51.1 The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor* ~~within one week of each assessment date~~. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.

A The date on which payment becomes due is ~~seven days after the assessment date~~ the later of:

- the assessment date; and
- fourteen days

Contractor's application for payment in accordance with clause 50.1A.

The final date for payment is ~~fourteen days or a different period for payment if state in the Contract Data~~ twenty eight days
due.

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

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

Y1.1.3 ~~Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue,~~ Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment,
final

Y1.1.3A 51.2A If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

Y1.1.4 51.2B
one day

In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

Z1.25.1

by the *Project Manager* in relation to a mistake or a compensation event or following a decision of the *Adjudicator* or the ~~*tribunal*~~courts,

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

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

Z1.41.2

- and
- **information used to compile forecasts of Defined Cost.**

Z1.41.3

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

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

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

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

Z1.26.1

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

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

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

Z1.27.1

57.1 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the

Z1 28
Z1 28 1

but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event [and provided only to the extent that they are not attributable to the Olympic Embargo][3].

or

- an instruction which is stated in this contract not to give rise to a compensation event.

Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor* the *Employer* in accordance with the provisions of this contract

to accelerate or

(not being Statutory Undertakers)

or

~~carry out work on the Site that is not stated in the Works Information.~~

[3] Shaded text to be deleted from contracts awarded after 2012 Olympics.

or act of prevention on the part of (except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible)

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

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

~~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~~

~~is not one of the other compensation events stated in this contract.~~

Z1.28.2

thorough

Z1.28.3 Subject to clause 17,

Z1.28A.1

four weeks of when he becomes aware, or ought reasonably to

have become aware

The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause

Z1 28A 2

61.5

may notify

61.6

Z1 28B 1

in accordance with the requirements of the Works Information

a notification that a proposed instruction will not be given or a proposed changed decision will not be made or

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*.

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

Z1.29

Z1.29.1

provided always that the delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent:

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

The *Project Manager* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.

Z1.29.2

and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

Z1.29.3

~~*Project Manager* has notified the *Contractor* of his decision that the~~

- or
- did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,

the event is ass at the appropriate time.

Z1.29.4

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

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

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

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

Z1.29A

Z1.29A.1

and details of his

in accordance with the Works Information within the time

Z1.29A.2

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

Implementing compensation events **65**

65.1 A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor*'s quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or
- a *Contractor*'s quotation is treated as having been accepted by the *Project Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

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

Z1.30

Z1.30.1 as soon as the *Contractor* or *Supervisor* has marked them as for this contract or the *Employer* makes payment (partial or otherwise) for them, whichever is the earlier ~~if the *Supervisor* has marked it as for~~ . The *Contractor* ensures that such Plant and Materials are clearly identified as belonging to the *Employer* and are set aside for the *Employer*

Z1.30.2 Subject to clause 70.1, t

Z1.30.3 70.3 If requested by the *Project Manager*, the *Contractor* provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.

Z1.31

Z1.31.1 [ ] [other than a fault in his design][4].

Z1.31.2 and/or any Subcontractor's employees

Z1.32

Z1.32.1 The *Contractor* is responsible for and the *Employer*, his employees and agents and members of the TfL Group against all Losses in respect of events or matters ~~the other against claims, proceedings, compensation and costs~~ are including [subject to any applicable limitation of liability under Secondary Option X18][5].

- personal injury to or death of any person;

[4] If Secondary Option X21 is not used delete "other than a fault in his design". If Secondary Option X21 is selected delete "or a fault in his design"

[5] If Secondary Option X18 is not selected, delete ",subject to any applicable limitation of liability under Secondary Option X18"

Z1 32 2 83 2 The liability ~~of each Party~~ to indemnify the ~~other~~ is reduced if events at the ~~other Party's~~ risk contributed to the Losses ~~claims, proceedings, compensation and costs~~. The reduction is in proportion to the extent that events which were at the ~~other Party's~~ risk contributed taking into account each Party's responsibilities under this contract.

Z1 32.3

Z1 33

Insurance cover 84

Z1 34

Z1 34 1 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.

Z1 34 2 84.2 ~~The insurances are in the joint names of the Parties and provide cover for events which are at the *Contractor*'s risk from the *starting date* until the Defects Certificate or a termination certificate has been issued.~~

~~INSURANCE TABLE~~

~~**Insurance against**~~	~~**Minimum amount of cover or minimum limit of indemnity**~~
~~Loss of or damage to the *works*, Plant and Materials~~	~~The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the *Employer*~~
~~Loss of or damage to Equipment~~	~~The replacement cost~~

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

Insurance 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 which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor*'s insurer or insurance broker. A ~~reason~~ for not accepting the certificates ~~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 with the terms and conditions of the insurance policies.

85.4 Any amount not recovered from an insurer 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 and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.

87.2 The *Contractor*'s acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.

87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

Z1.37

If either Party wishes to terminate the *Contractor*'s obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.

Z1.37.1

	the reasons listed in this Termination Table		
	R10A, ~~or~~ R25A		
	or R26		
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	R26A	P1, P2 and P3	A1 and A3
	[R27][6]	[P1 and P4]	[A1 and A2]
	R10A,	P1 and P4	
		P1 and P4	

Z1.37.2

or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.

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

Z1.38
Z1.38.1

in other jurisdictions.

- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

91.2

Z1.38.2

or requirement of this contract

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),

Z1.38.3

- 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).

The *Employer* may terminate the *Contractor's* appointment in the event of:

a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),

a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.12 (R23),

any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),

the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),

A Change of Control (R25A).

Z1.38.5

Z1.38.6 91.10 [The *Employer* may terminate the *Contractor's* appointment if an event occurs which is an *additional termination event* (R27).][7]

Z1.39 **Procedures on termination** **92**

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

Z1.39.1 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the *Project Manager*.

[7] Only used if *additional termination events* are stated in the Contract Data.

and/or

enter into a novation of

Site and removes the Equipment from the

unless otherwise instructed by the *Project Manager*.

i

i

Z1.39.2

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

Z1.41.9

and the resulting Fee

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

Confidentiality

Z2.9

Z2.9.1 The *Contractor* shall, and shall ensure that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.

Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.

Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.

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

(a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions

(b) any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of

Liquidated Damages for Disruption (to the Underground Network)

Z2 12

Z2 12 1 The *Contractor* will pay and/or *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* to Provide the Works or a breach of his obligations under this contract.

TfL GROUP REQUIREMENTS

Z2.14

Z2.15.1

"	means the Greater London Authority Act 1999;
"	means that term as it is used in the GLA Act;

provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* shall be entitled to terminate the contract.

Prohibited Acts

- Not used

– Not used (see Z2.11)

Z1.40.1 (and which is not a change in law which a competent and experienced contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor ought reasonably to have anticipated at the Contract Date)

such

: Parent company guarantee

[parent company of each party

Z1.41.1 comprising the][8]

ttached at Schedule 3

ne

If the Completion Date is changed to a later date after delay damages have been

[8] Only applicable if *Contractor* is a joint venture

Z1.41A.1 X7.4 [For the avoidance of doubt, any liability of the *Contractor* for the payment of delay damages under this clause X7 will not be reduced or otherwise affected in any way as a result of the Olympic Embargo.][9]

Z1.42.1

and has the casting vote

Z1.42.2

subject to any obligations of confidentiality owed by that Partner under his Own Contract.

[9] Delete shaded text for contracts awarded after 2012 Olympics.

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

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

Z1.43.1 [Where a performance bond is required regardless of the *Contractor's* D&B rating, insert:

Schedule 2

1]

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

If the Dun & Bradstreet "Risk Indicator" score for [either]/[the][10] *parent company* falls to 3 (slightly greater than average risk) or 4 (significant level of risk), when instructed to do so by the *Project Manager*, t

Schedule 2.[11]

The bond 1

instruction of the *Project Manager* to do so, and such instruction is a compensation event]

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

[11] Where the *Contractor* is a joint venture, Option X13 may need to be amended to require more than one performance bond to be provided.

Z1.44.1

all the and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the *works* in connection with projects of a similar size, scope and complexity to the project to ensure that his design

Z1.45.1

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

Z1.46.1

Without prejudice to the *Employer's* entitlement to delay damages (Option X7), damages for low performance (Option X17) or liquidated damages pursuant to Z2.12,

Z1.46.2

~~is limited to the amount stated in the Contract~~ is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.

Z1.46.3

X18.4 The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

- liquidated damages for disruption (Z2.12),

, and

- the matters listed in X18.6.

Z1.46.4

~~The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.~~ Not used.

Z1.46.5

X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:

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

the five bullet points in

Group is entitled to an indemnity under clause 83.1.

Option X20: Key Performance Indicators (not used with Option X12)[12]

Incentives

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

X20.2 From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.

Employer may provide copies of such

X20.3 If the *Contractor*'s forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the *Project Manager* his proposals for improving performance.

X20.4 [The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.]

X20.5 The *Employer* may add a Key Performance Indicator and associated payment to the Incentive Schedule [but may not delete or reduce a payment stated in the Incentive Schedule].

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

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

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

Novation of Associated Contracts **X22**

Key Person Succession Plan **X23**

Z1.50

Fee Cap **X24**

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

13

Note: incorporated in Schedule 1 and 12.6.

~~The date on which a payment becomes due is seven days after the assessment~~

~~The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.~~
~~The *Project Manager*'s certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.~~
~~If either Party intends to pay less than the notified sum he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is~~

~~A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this~~

Payment Y1
Z1.51.1 Y1.1 ***NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.***

Z1.52.1 incorporated into these consolidated conditions of contract.

Z1.53.1

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

11

(contract specific)

where such cost arises from a compensation event and has been authorised in writing by the *Project Manager*

dging where such costs are incurred wholly and necessarily in connection with the *works* and are agreed in advance by the *Project Manager*

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.

is not listed in the Contract Data but is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Payments for

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

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

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

41 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

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

43 Payments for

(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)

45 Payments to a surety for the provision of any advance payment bond required under Option X14.

61

i

SHORTER SCHEDULE OF COST COMPONENTS

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

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.

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

46 Payments to a surety for the provision of any advance payment bond required under Option X14.

- and
- the cost of excess payments or deductibles.

1.5 – Schedules

Schedule 1 – Additional Definitions

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

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

Adjudicator means any adjudicator appointed from time to time in accordance with the Dispute Resolution Procedure.
Available means:

the *works* are safe and fit for their intended purpose,
there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and
the *works* are readily accessible and operable by the *Employer*.

Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause Z2.7.1;

BCV Contract means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms;

Change of Control means a change of ownership of the *Contractor* (or *parent company* if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or *parent company* as the case may be).

Connected Persons means all and any of the *Contractor's* employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005;

Corporate IPRs are those trade marks, trade names and other IPRs listed in Schedule 7 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards;

Critical Defect means a Defect which appears on or before the *defects date* and which is:
critical to the operation and/or safety of the Underground Network; within a category of Defects identified in the Works Information as Critical Defects; or
deemed by the *Project Manager* to be critical to the carrying out and completion of the *works* and/or the work of Others;

Customer means a customer on the Underground Network;

Dispute means any dispute, controversy or claim arising out of or in connection with this contract;

Dispute Resolution Procedure means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 8;

Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract;

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, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

Form of Agreement means the form of agreement to which these *conditions of contract* are attached;

Information means information recorded in any form held by or on behalf of the *Employer*;

Information Request means a request for any Information under the FOI Legislation;

Infraco means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns;

IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names and other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;

JNP Contract means the contract between Tube Lines Limited and the *Employer* for the provision of infrastructure maintenance services dated 31 December 2002 as amended from time to time in accordance with its terms;

Losses means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising;

LUL means London Underground Limited (No. 1900907) or its successor in title or assignee;

LUL Nominee BCV means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee;

LUL Nominee SSL means LUL Nominee SSL Limited (No. 06242508) or its successor in title or assignee;

Management Plans mean any management plans (including any plans relating to key person succession (if Option X23 applies), the Subcontractor Procurement Plan, the Risk Management Plan and the Quality Plan) identified as such in the Works Information;

Pay Less Notice means the notice referred to in clause 51.2B;

PFI Contract means, in each case, the main project contract entered into or to be entered into by the *Employer* and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);

PFI Contractors means those contractors who have entered into or will enter into PFI Contracts and as further referred to in the Works Information;

PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract and **PPP Contract** means any one of them or, as the context requires, a particular one of them;

Prevention Event has the meaning ascribed to that term in clause 19.1;

Prohibited Act means:
(a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:

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
for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;

(b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer;*

(c) committing any offence:
under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
under any law or legislation creating offences in respect of fraudulent acts, or
at common law in respect of fraudulent acts
in relation to this contract or any other contract with the *Employer*; or

(d) defrauding or attempting to defraud the *Employer*.

Responsible Procurement Principles mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network and/or the safety of the *Employer's* Customers, staff or any other person.

SSL Contract means the contract between Metronet Rail SSL Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee SSL on 27 May 2008 and as amended from time to time in accordance with its terms;

Standards means the various standards documents and associated codes of practice identified in the Works Information as applicable to the project;

Station means a building, equipment or facilities designed to be used by Customers to access or leave a train;

Statutory Requirement means any act of parliament, any instrument, rule or order made under any act of parliament and any regulation or by-law of any local authority or of any Statutory Undertaker which has jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the site in connection with which the *works* are to be provided;

Statutory Undertaker means any governmental or local authority or statutory undertaker:
which has any jurisdiction with regard to the *works* and/or the project including any jurisdiction to control development of the Site or any part of it;
with whose requirements the *Employer* is accustomed to comply; or
with whose systems and/or utilities the project and/or the *works* will be connected.

Subcontractor Procurement Plan means a plan for the procurement and appointment of Subcontractors by the *Contractor* containing the information stated in the Works Information and which is submitted and accepted in accordance with the provisions of the Works Information;

Supplementary Notes means the notes entitled "Schedule of Cost Components/Shorter Schedule of Cost Components Supplementary Notes" included in this contract;

TfL Group means Transport for London ("**TfL**"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group;

TLL means Tube Lines Limited (No. 03923425) (or its successor in title or assignee);

Underground Network means the Stations and depots (wherever situate), assets, systems, track, and other buildings, which are used in the maintenance and provision of the underground service known as “the "London Underground".