



Crossrail

**Project Delivery Partner
OJEU Notice 2008/S 65-088136 Lot 2
Invitation to Tender
Part 2 - Contract**



Project Delivery Partner Appointment

Cross London Rail Links Limited

(the Employer)

and

[]

(the Project Delivery Partner)

and

[]

(the Guarantor)

Project Delivery Partner Services

Contract No. []

[TO BE AMENDED TO REFLECT REQUIREMENTS OF THIRD PARTY AGREEMENTS AS AND WHEN SAME FINALISED – DEFINED TERMS TO BE HARMONISED BETWEEN ALL DOCUMENTS]

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

This agreement is made on the day of 20

Between **CROSS LONDON RAIL LINKS LIMITED** of Portland House, Bressenden Place,
London SW1E 5BH

(company/organisation) (the *Employer*)

and ●
(name)

of
.....

(company/organisation) (the *Project Delivery Partner*)

and ●
(name)

of
.....

(company/organisation) (the *Guarantor*)

1. The *Employer* wishes to appoint the *Project Delivery Partner* to carry out certain delivery partner services in relation to the Crossrail project, London.
2. The *Employer* will pay the *Project Delivery Partner* the amount due and carry out his duties in accordance with this agreement (including the conditions of contract).
3. The *Project Delivery Partner* will Provide the Services in accordance with this agreement (including the conditions of contract).
4. This agreement (including the conditions of contract) and the documents referred to in it form this contract. References in the conditions of contract to "the contract" are references to this contract. This agreement (including the conditions of contract) shall take precedence over any other document forming part of this contract.
5. In consideration of the *Employer* appointing the *Project Delivery Partner* to Provide the Services, the *Guarantor* has agreed to guarantee the obligations of the *Project Delivery Partner* hereunder.

Executed as a deed and delivered on the date above by:

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

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

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

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**CROSSRAIL
Project Delivery Partner Conditions of Contract**

**Professional Services Contract
Terms and Conditions**

An NEC document

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CORE CLAUSES

1 General

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- 10.1 The *Employer* and the *Project Delivery Partner* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

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

- 11.2
- (1) The Accepted Programme is the programme set out in the Service Delivery Plan or is the latest programme accepted by the *Employer*. The latest programme accepted by the *Employer* supersedes previous Accepted Programmes.
 - (2) The Act is the Housing Grants, Construction and Regeneration Act 1996.
 - (3) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
 - (4) The Adjudicator Panel is the panel of adjudicators referred to in Appendix 7.
 - (5) Auditor means any person (including the District Auditor, National Audit Office or any internal auditor) with the responsibility for auditing the accounts of the *Employer* and any person conducting an audit in accordance with the *Employer's* quality management system;
 - (6) Background Rights means in respect of each party the Intellectual Property rights owned by or otherwise in the possession of that party at the date of this contract;
 - (7) Completion is when the *Project Delivery Partner* has
 - done all the work which the Scope states he is to do by the Completion Date and
 - corrected all notified or patent Defects.

If the work which the *Project Delivery Partner* is to do by the Completion Date is not stated in the Scope, Completion is when the *Project Delivery Partner* has done all the work necessary for the rail transport system that is the subject of the Programme to commence full operations and so there are no notified or patent Defects.

- (8) The Completion Date is the *completion date* unless later changed in accordance with this contract.

- (9) Confidential Information means any information of whatever kind (whether commercial, technical, financial, operational or otherwise, in whatever form and whether or not recorded in any way) relating to the *Employer* or the Programme;
- (10) *Project Delivery Partner* Information means information provided or made available to the *Employer* by the *Project Delivery Partner* and recorded in any form held by the *Employer* or held by the *Project Delivery Partner* on behalf of the *Employer*;
- (11) The Contract Date is the date of execution by the Parties of this contract.
- (12) A Defect is a part of the *services* which is not in accordance with the Scope, Standards, Legislation or any term of this contract.
- (13) The Dispute Board is the board of experts referred to in the Dispute Board Procedure.
- (14) The Dispute Board Procedure is the procedure annexed.
- (15) FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such legislation;
- (16) Foreground Rights means all Intellectual Property rights developed by either party (and in the case of the *Project Delivery Partner* any Intellectual Property developed by any Subconsultant to the *Project Delivery Partner*) under or in connection with this contract and/or the *services*, including but not limited to all Intellectual Property rights in the Materials;
- (17) Information Request means a request for information under the FOI Legislation;
- (18) Intellectual Property means any and all patents, trade marks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software (including source codes) and databases, topography rights (in each case whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, Know-How, trade secrets and other confidential information, rights in databases and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world;
- (19) 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.

- (20) Know-How means information and know-how whether patentable or not including but not limited to all patented techniques, operating instructions, machinery designs, raw material or products specifications, drawings, blueprints, and any other technical and commercial information relating to design, development, manufacture, assembly, use or sale;
- (21) Legislation means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.
- (22) Materials means all documents, items, information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by the *Project Delivery Partner* as part of or in connection with the *services* and/or this contract;
- (23) New Employer means *TfL*, the Department for Transport or any company which is a holding company or subsidiary (within the meaning of Section 739 of the Companies Act 1985 as amended by Section 144 of the Companies Act 1989) of *TfL* or the Department for Transport or is a company in which *TfL* or the Department for Transport or any such holding company or subsidiary holds more than 25% of the issued equity share capital (as defined by Section 744 of the Companies Act 1985);
- (24) Others are people or organisations who are not the *Employer*, the *Project Delivery Partner*, the *Guarantor*, the *Adjudicator* or any employee, Subconsultant or supplier of the *Project Delivery Partner*.
- (25) The Parties are the *Employer* and the *Project Delivery Partner*.
- (26) The Policies are the *Employer's Policies and Procedures* and any other such policies of which the *Employer* notifies the *Project Delivery Partner*.
- (27) Premises are the property approved or made available by the *Employer* which is used by the *Project Delivery Partner* in Providing the *Services* and which, as at the Contract Date are identified in the Contract Data.
- (28) The Programme means the development, procurement and commissioning of a railway transport system that is capable of operating services from Maidenhead in the County of Berkshire and from Heathrow Airport in the

London Borough of Hillingdon through central London to Shenfield in the county of Essex and Abbey Wood in the London Borough of Greenwich in accordance with the Sponsors' Requirements;

- (29) A Prohibited Act means;
- (a) offering, giving or agreeing to give to any officer or agent of the *Employer*, any gift or consideration of any kind:
 - (i) as an inducement or reward; or
 - (ii) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
 - (iii) for showing or not showing favour or disfavour for any person in relation to this contract or any other contract with the *Employer*; or
 - (iv) entering into this contract in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge unless before this contract is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the *Employer*; or
 - (b) the commission of an offence under the Prevention of Corruption Acts 1889 - 1916; or
 - (c) entering into any form of collusion with other suppliers of services similar to the services or with other actual or potential bidders for this contract.
- (30) The Project means the central section of the Programme between, in the west, Royal Oak in the City of Westminster and, in the east, Pudding Mill Lane and Custom House (both in London Borough of Newham) and Abbeywood in the London Borough of Greenwich but excluding Isle of Dogs Station and the Woolwich Station Box;
- (31) To Provide the Services means to do the work necessary to complete the *services* in accordance with this contract and all incidental work, services and actions which this contract requires.
- (32) The Resource Schedule is the schedule of staff resources within the Service Delivery Plan or any further resource schedule agreed by the *Employer*.

- (33) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Employer* or the *Project Delivery Partner* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.
- (34) The Scope is information which either
- specifies and describes the *services* or
 - states any constraints on how the *Project Delivery Partner* Provides the Services
- and is either
- in the documents which the Contract Data states it is in or
 - in an instruction given in accordance with this contract.
- (35) The Service Delivery Plan is the further definition of the *services* and deliverables annexed (and includes the Resource Schedule) together with all future Service Delivery Plans that the *Employer* and the *Project Delivery Partner* may agree.
- (36) The Sponsor's Requirements are set out in the Scope.
- (37) Standards are UK railway standards and standards and codes of practice published from time to time by the International Organization for Standardization or other international standards and codes of practice, including those published by the British Standards Institution.
- (38) A Subconsultant is a person or organisation who has a contract with the *Project Delivery Partner* to provide part of the *services*.
- (39) Third Party Agreements are such agreements notified to the *Project Delivery Partner* by or on behalf of the *Employer* from time to time as constituting Third Party Agreements for the purposes of this contract including those agreements referred to as such in the Contract Data.
- (40) Third Party Rights means all Intellectual Property rights which are not owned by the *Employer* or the *Project Delivery Partner* but required either (a) by the *Project Delivery Partner* to Provide the Services, or (b) by the *Employer* (or any successors) to use the Materials and/or to implement and/or operate the Programme whether during the term of this contract or thereafter;
- (41) The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this

contract provided always that all staff time spent in excess of the maximum time commitment for each staff member set out in the Resources Schedule , or staff time incurred by staff not included in such Resource Schedule, shall not be included in the Time Charge and the *Project Delivery Partner* shall not be reimbursed in respect of such staff time incurred.

- (42) The Price for Services Provided to Date is the Time Charge for the work which has been completed. Completed Work is work that has been completed without Defects.
- (43) The Prices are the Time Charge.
- (44) The TUPE Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006

Interpretation, the law and best value 12

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter. Words denoting persons include individuals, partnerships, firms and corporations and their successors and permitted assignees or transferees.
- 12.2 This contract is governed by the *law of the contract*.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract is the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to the subject matter of this contract and each Party acknowledges that in entering into this contract it has not relied on any representation or undertaking, whether oral or in writing, save such as are expressly incorporated in this contract.
- 12.5 If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect.
- 12.6.1 The *Employer* is currently owned by *TfL* and the Department for Transport in equal shares. It is expected that in due course the *Employer* will become a wholly owned subsidiary of *TfL*. For the avoidance of doubt the *Consultant* shall not be entitled to bring any claim in tort or in contract under or relating to this

contract against *TfL* or the Department for Transport.

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

12.7 In this contract any reference to:

- any enactment, order, regulation or other similar instrument references the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- a public organisation references any successor (statutory or otherwise) public organisation which has taken over the functions and duties of such public organisation;
- laws includes any applicable legislation, judgments of a relevant court of law changing a binding precedent, standards and codes of practice published from time to time by the International Organisation for Standardisation or other international standards and codes of practice;
- words preceding "include", "includes", "including", and "included" are construed without limitation to the words which follow those words; and
- this contract includes any permitted variation, amendment, or supplement to this contract.

Communications 13

13.1 Each instruction, certificate, submission, proposal, record acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded or is available for access on a nominated hosted web server (save in the case of the notification of a Dispute which shall be notified in hard copy only). Writing is in the *language of this contract*.

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

- 13.3 If this contract requires the *Employer* or the *Project Delivery Partner* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Employer* replies to a communication submitted or resubmitted to him by the *Project Delivery Partner* for acceptance. If his reply is not acceptance, the *Employer* states his reasons and the *Project Delivery Partner* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Project Delivery Partner's* submission fully.
- 13.5 The *Employer* may extend the *period for reply* to a communication if the *Employer* and the *Project Delivery Partner* (acting reasonably) agree to the extension before the reply is due. The *Employer* notifies the *Project Delivery Partner* of the extension which has been agreed.
- 13.6 The *Project Delivery Partner* retains copies of drawings, specifications, reports and other documents which record the *services* for the *period for retention*. The copies are retained in the form stated in the Scope.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Employer* may withhold acceptance of a submission by the *Project Delivery Partner*. Withholding acceptance for a reason stated in this contract or for any other reasonable grounds is not a compensation event.

Acceptance 14

- 14.1 No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer*, nor any enquiry or inspection which the *Employer* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Project Delivery Partner's* liabilities, duties and obligations under this contract unless it is in writing from the *Employer*, refers to this contract and clearly identifies the liability, duty or obligation and the extent to which such liability, duty or obligation is to be reduced, extinguished, excluded, limited or modified.

Early warning 15

- 15.1 The *Employer* and the *Project Delivery Partner* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - change the Accepted Programme,

- delay meeting a Key Date,
- impair the usefulness of the *services* to the *Employer* or
- affect the work of the *Employer*, an *Employer's* contractor or another consultant.

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

15.2 Either the *Employer* or the *Project Delivery Partner* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other Party agrees.

15.3 At a risk reduction meeting, those who attend will, having regard to and subject to any provisions in this contract relating to which Party (if any) is to be responsible for each registered risk, co-operate in

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

15.4 The *Project Delivery Partner* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Employer*. If a decision needs a change to the *Scope*, the *Employer* instructs the change following issue of the revised Risk Register. For the avoidance of doubt the *Project Delivery Partner's* only entitlement to a change in the *Prices*, the *Completion Date* or a *Key Date* as a result of any revision to the Risk Register is in accordance with clauses 60 and 65.

Ambiguities and inconsistencies 16

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

Illegal and impossible 17

requirements

- 17.1 The *Project Delivery Partner* notifies the *Employer* as soon as he considers that the Scope requires him to do anything which is illegal or impossible. If the *Employer* agrees, he gives an instruction to change the Scope appropriately.

2 The Parties' main responsibilities

The *Employer's* obligations 20

- 20.1 The *Employer* provides information and things which this contract requires him to provide in accordance with the Accepted Programme.
- 20.2 The *Employer* may give an instruction to the *Project Delivery Partner* which changes the Scope, a Key Date or the Service Delivery Plan. After Completion, an instruction is given only if it is necessary to Provide the Services.
- 20.3 The *Employer* does not give an instruction to the *Project Delivery Partner* which would require him to act in a way that was outside his professional code of conduct.
- 20.4 The *Employer* may give an instruction to the *Project Delivery Partner* omitting *services* from the Scope or obligations from the contract and may procure that such omitted *services* or obligations be provided by Others or a Subconsultant.

The *Project Delivery Partner's* obligations 21

- 21.1 The *Project Delivery Partner* Provides the Services:
- in accordance with the Scope and the Service Delivery Plan;
 - in compliance with all Legislation;
 - so as not to cause or contribute to any breach by the *Employer* of any of its duties and obligations under any Third Party Agreements; and
 - in accordance with Standards;
- and, using the standard of skill, care and diligence referred to in Clause 21.2:
- in accordance with the Policies; and
 - such that there is only specified or approved for use materials which at the time of specification, approval or use are not deleterious to health and safety or to durability and which accord with the guidelines contained in the publication Good Practice in Selection of Construction Materials (Ove Arup & Partners) current at the date and specification, approval or use.
- 21.2 The *Project Delivery Partner's* obligation in respect of the performance of the *services* is to use the standard of skill, care and diligence to carry out and complete the *services* to be reasonably expected from a properly qualified professional consultant experienced in providing services similar in size, scope and complexity to the *services* and for projects similar

in size, scope and complexity to the Programme.

21.3 The *Project Delivery Partner* shall cooperate with and coordinate his Provision of the Services with the services to be provided by the designers, the principal contractor and the CDM Co-ordinator under the Construction (Design and Management) Regulations 2007.

21.4 The *Project Delivery Partner* shall prepare and agree with the *Employer* revisions of Service Delivery Plans in a format and covering the periods of time to be agreed with the *Employer*. Each Service Delivery Plan shall identify the *services* to be provided during the agreed period, a programme for the same, and a Resource Schedule identifying the staff resources to be used in relation to the provision of such *services*.

Equality and diversity

21.5 Without limiting the generality of any other provision of the contract, the *Project Delivery Partner*:

- does not unlawfully discriminate;
- procures that its personnel do not unlawfully discriminate; and
- uses reasonable endeavours to procure that its Subconsultants do not unlawfully discriminate in relation to the *services*

within the meaning and scope of:

- the Sex Discrimination Act 1975;
- the Race Relations Act 1976 (including the Race Relations (Amendment) Act 2000);
- the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005);
- the Employment Equality (Sexual Orientation) Regulations 2003;
- the Employment Equality (Religion or Belief) Regulations 2003;
- the Equality Act 2006;
- and any other relevant enactments in force from time to time relation to discrimination in employment.

21.6 The *Project Delivery Partner* acknowledges that the *Employer* is under a duty under Section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In the performance of the contract, the *Project Delivery Partner* assists and co-operates and uses reasonable endeavours to procure that its Subconsultants and co-operate

with the *Employer* where possible in satisfying this duty.

21.7 The *Project Delivery Partner* acknowledges that *TfL* is under a duty by virtue of a Mayor of London's direction under Section 155 of the Greater London Authority Act 1999 (in respect of the Greater London Authority's duty under section 404(2) of the Greater London Authority Act 1999) to have due regard to the need to:

- promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;
- eliminate unlawful discrimination; and
- promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in the performance of the contract, the *Project Delivery Partner* assists and co-operates and uses reasonable endeavours to procure that its Subconsultants assist and co-operate with the *Employer* where possible to enable *TfL* to satisfy its duty.

21.8 The *Employer's* Harassment, Bullying and Discrimination Policy ("Harassment Policy") requires the *Employer's* own staff and those of its consultants to comply fully with the Harassment Policy to eradicate harassment in the workplace. The *Project Delivery Partner*:

- ensures that its staff, and those of its Subconsultants who are engaged in the performance of the contract are fully conversant with the requirements of the Harassment Policy;
- fully investigate allegations of workplace harassment in accordance with the Harassment Policy; and
- ensures that appropriate effective action is taken where harassment is found to have occurred.

21.9 The *Project Delivery Partner* acknowledges that the *Employer* is under a duty under Section 49A of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) to have due regard to the need to

- eliminate discrimination that is unlawful under the Disability Discrimination Acts;
- eliminate harassment of disabled persons related to their disabilities and promote equality of opportunity between disabled persons and other persons;
- take steps to take account of disabled persons' disabilities (even when that involves treating disabled persons more favourably than other persons); and
- promote positive attitudes towards disabled persons

and encourage participation by disabled persons in public life

and in the performance of the contract, the *Project Delivery Partner*, assists and co-operates, and uses reasonable endeavours to procure that its Subconsultants assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty.

People 22

- 22.1 The *Project Delivery Partner* either employs each *key person* named to do the job for him stated in the Contract Data or Service Delivery Plan or employs a replacement person who has been accepted by the *Employer*. The *Project Delivery Partner* submits the name, relevant qualifications and experience of a proposed replacement person to the *Employer* for acceptance. A reason for not accepting the person is the *Employer* believes (in his absolute discretion) he is a security risk or that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- 22.2 The *Employer* may instruct the *Project Delivery Partner* to remove a person employed by the *Project Delivery Partner* or a Subconsultant of the *Project Delivery Partner*. The *Project Delivery Partner* then arranges that, after one day, the person has no further connection with the work included in this contract.
- 22.3 The *Project Delivery Partner* ensures that *key persons* carry out the responsibilities required of them and listed in the Contract Data or Service Delivery Plan in respect of the *services*. The *Project Delivery Partner* does not reallocate the duties of any *key person* (or their accepted replacement) nor assign any *key person* (or their accepted replacement) to any other project or contract without the prior written consent of the *Employer*.
- 22.4 If any *key person* (or their accepted replacement) dies, resigns, retires, is dismissed, or is otherwise prevented from carrying out its responsibilities as listed in the Contract Data or Service Delivery Plan during the term of this contract then if the *Employer* so requires, the *Project Delivery Partner* procures the replacement of such *key person* (or their accepted replacement) with a suitably qualified and competent replacement, such replacement to be accepted by the *Employer*.
- 22.5 The *Project Delivery Partner* employs only the *key persons* and other persons referred to in the Contract Data or Service Delivery Plan to Provide the Services. Other persons may only be employed to Provide the Services with the written consent (in his absolute discretion) of the *Employer*.

London Living Wage 22A

22A.1 In this clause 22A, the following expressions shall have the following meanings:

"London Living Wage" the basic hourly wage of £7.45 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the *Project Delivery Partner*;

22A.2 Without prejudice to any other provision of this contract, the *Project Delivery Partner* shall:

22A.2.1 ensure that none of its employees engaged in connection with the Programme under this contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

22A.2.2 ensure that none of its employees engaged in connection with the Programme under this contract is paid less than the amount to which they are entitled in their respective contracts of employment;

22A.2.3 provide to the *Employer* such information concerning the London Living Wage and as the *Employer* or its nominees may reasonably require from time to time;

22A.2.4 disseminate on behalf of the *Employer* to its employees engaged in connection with the Programme under this contract such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collate and return to the *Employer* responses to such questionnaires; and

22A.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

Working with the Employer and Others 23

23.1 The *Project Delivery Partner* co-operates with Others in obtaining and providing information which they need in connection with the *services*.

23.2 Where necessary to Provide the *Services*, the *Project Delivery Partner* holds or attends meetings with Others. The *Project Delivery Partner* informs the *Employer* of these meetings beforehand and the *Employer* may attend them.

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

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

the additional cost the *Employer* has paid or will incur is paid by the *Project Delivery Partner*. The *Employer* assesses the additional cost within four weeks of the date when the Condition stated for that Key Date is met.

Employer provides Premises 23.4

- (1) The *Employer* provides the right of access for the *Project Delivery Partner* to any Premises provided by the *Employer* as necessary for the *services* subject to any constraints stated in the Scope or Service Delivery Plan.
- (2) The *Employer* provides things which it is to provide for any Premises provided by the *Employer* as stated in the Scope or the Service Delivery Plan.
- (3) The *Project Delivery Partner* acknowledges that the *Employer* may engage or need to work with Others who will require use of or access to any Premises provided by the *Employer* in which event the *Project Delivery Partner* shares any Premises provided by the *Employer* with Others as instructed by the *Employer*.

Subconsulting 24

24.1 If the *Project Delivery Partner* subcontracts work, he is responsible for Providing the Services as if he had not subcontracted. This contract applies as if a Subconsultant's employees were the *Project Delivery Partner's*.

24.2 The *Project Delivery Partner* submits the name of each proposed Subconsultant to the *Employer* for acceptance. A reason for not accepting the Subconsultant is that the *Employer* believes, in his absolute discretion, that his appointment will not allow the *Project Delivery Partner* to Provide the Services. The *Project Delivery Partner* does not appoint a proposed Subconsultant until the *Employer* has accepted him.

24.3 The *Project Delivery Partner* submits the proposed conditions of contract and the Contract Data for each subcontract to the *Employer* for acceptance unless the *Employer* has agreed that no submission is required.

The *Project Delivery Partner* does not appoint a Subconsultant on the proposed subcontract conditions and the Contract Data submitted until the *Employer* has accepted them. A reason for not accepting them is that

- they will not allow the *Project Delivery Partner* to Provide the Services; or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-

operation; or

- they are not consistent with the terms of this contract.

Once the sub-contract conditions have been accepted by the *Employer* the *Project Delivery Partner* shall not agree to vary or amend the same or terminate the engagement of the Subconsultant unless such variation, amendments or termination has been accepted by the *Employer* (at his absolute discretion).

- 24.4 The *Project Delivery Partner* shall procure that it (where appropriate) and each Subconsultant shall enter into collateral warranties in the forms set out in Appendix 9 in favour of each of the *Employer*, [LUL/Tubelines/Network Rail/DLR] within 14 days of the *Employer's* request to do so¹.

Other responsibilities 25

- 25.1 The *Project Delivery Partner* obtains approval from Others where necessary or desirable to Provide the Services.
- 25.2 The *Employer* provides access to a person, place or thing to the *Project Delivery Partner* as stated in the Contract Data or Service Delivery Plan on or before the later of its *access date* and the access date for it shown on the Accepted Programme.
- 25.3 The *Project Delivery Partner* obeys an instruction which is in accordance with this contract and is given to him by the *Employer*.
- 25.4 The *Project Delivery Partner* acts in accordance with the health and safety requirements stated in the Scope.
- 25.5 The *Project Delivery Partner* co-operates with Others To Provide the Services and in complying with its other obligations under this contract so as not to cause the *Employer* or Others delay, loss, expense or additional cost.

Assignment and Novation 26

- 26.1 The *Project Delivery Partner* does not assign the contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the *Employer*. The *Employer* may assign the contract or any part thereof or any benefit or interest therein or thereunder.
- 26.2 The *Project Delivery Partner* and *Guarantor* execute and deliver to the *Employer* a deed of novation in the form annexed with the *Employer* and any New *Employer* within fourteen days of the *Employer's* request.

¹ Beneficiaries of warranties are to be confirmed.

- 26.3 If the *Project Delivery Partner* and the *Guarantor* do not execute and deliver such deed of novation to the *Employer* within such time period then no further payment is due to the *Project Delivery Partner* until the *Project Delivery Partner* and *Guarantor* have executed and delivered such deed of novation to the *Employer*.

Transfer of 27 Undertakings

- 27.1 The parties acknowledge that there may be a "relevant transfer" of an undertaking or part of one as defined in the TUPE Regulations ("**Relevant Transfer**") on the *starting date* or on any omission or termination of the *services* or any or all of the *Deliver Partner's* obligations under this contract and agree to deal with the risks and/or consequences thereof as follows.
- 27.2 If there is a Relevant Transfer on the *starting date*, the parties agree, as between themselves, that the *Project Delivery Partner* shall be wholly responsible for and liable accordingly for continuing any contracts of employment, collective agreements and/or trade union recognition agreements which transfer under the TUPE Regulations and discharging all the obligations of a transferee under the TUPE Regulations.
- 27.3 If there is or may (in the reasonable opinion of the *Employer*) be a Relevant Transfer as a result of any omission or termination of the *services* or any or all of the *Project Delivery Partner's* obligations under this contract, the parties agree as between themselves that the *Project Delivery Partner* will be wholly responsible for and liable accordingly for discharging all the obligations of a transferor under the TUPE Regulations.
- 27.4 The *Project Delivery Partner* agrees that within 14 days of a written request from the *Employer* (such request not to be made earlier than 6 months before the termination of this contract whether by effluxion of time or otherwise) it shall provide to the *Employer* in writing the following information:
- (1) the number and description of the employees engaged in Providing the Services;
 - (2) for each employee (or where they are employed on common terms and conditions of employment each such group of employees) the particulars, as at a specified date not more than 7 days before the information is given, of the matters specified in Section 1(4) of the Employment Rights Act 1996.

The *Employer* shall be entitled to use and/or disclose the said information in confidence in connection with engaging a replacement delivery partner to Provide the Services or to provide any *services* or perform any obligations of the *Project Delivery Partner* omitted pursuant to clause 20.4.

- 27.5 The *Project Delivery Partner* shall not agree with or otherwise promise any employees or trade union any terms or conditions of employment which are outside the ordinary and normal custom and practice for the industry or relevant trade or which are conditional upon or triggered by a Relevant Transfer or are intended to frustrate a re-tendering exercise or deter potential tenderers from tendering.

Conflict of Interest 28

- 28.1 The *Project Delivery Partner* confirms that as at the date of this contract it does not have any interest in any matter and does not act and has not acted for any party in respect of any matter which would (in either case) create a conflict of interest in Providing the Services. The *Project Delivery Partner* will undertake ongoing conflict of interest checks and will notify the *Employer* immediately if any conflict or potential conflict of interest arises (including notification of any instructions from a party with whom the *Employer* has or has had any dealings with respect to the Programme).
- 28.2 To the extent that an actual or potential conflict may arise involving the *Employer*, the *Project Delivery Partner* shall continue to act for and advise the *Employer* and if reasonably required will cease to act for any other party where to act so would constitute a conflict of interest.

Performance reviews 29

At 6 monthly intervals, or at such other intervals as the Parties may agree to from time to time, the *Employer* and the *Project Delivery Partner* shall undertake a formal review of the performance of the *Project Delivery Partner*, including its performance against the Interim KPIs and Programme KPIs pursuant to (and as defined under) clause X20. The *Project Delivery Partner* and the *Employer* shall discuss any ways in which the performance of the *Project Delivery Partner* may be improved.

3 Time

Starting, Completion and Key Dates 30

- 30.1 The *Project Delivery Partner* starts work on the *starting date* (not before) and proceeds with the work diligently so that Completion is on or before the Completion Date.
- 30.2 The *Employer* decides the date of Completion and certifies it within 30 days of the date.
- 30.3 The *Project Delivery Partner* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

- 31.1 If a programme is not identified in the Contract Data, the *Project Delivery Partner* submits a first programme to the *Employer* for acceptance within the period stated in the Contract Data.
- 31.2 The *Project Delivery Partner* shows on each programme which he submits for acceptance
- the *starting date*, *access dates*, Key Dates and Completion Date,
 - planned Completion,
 - the order and timing of the operations which the *Project Delivery Partner* plans to do in order to Provide the Services,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Project Delivery Partner* or, if not so agreed, as stated in the Scope,
 - the dates when the *Project Delivery Partner* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
 - provisions for
 - float,
 - time risk allowances,
 - health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Services in accordance with his programme, the *Project Delivery Partner* will need

- access to a person, place or thing if later than its *access date*,
 - information and things to be provided by the *Employer* and
 - information and approval from Others,
 - for each operation, a statement of how the *Project Delivery Partner* plans to do the work identifying the resources which he plans to use and
 - other information which the Scope requires the *Project Delivery Partner* to show on a programme submitted for acceptance.
- 31.3 Within two weeks of the *Project Delivery Partner* submitting a programme to him for acceptance, the *Employer* either accepts the programme or notifies the *Project Delivery Partner* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Project Delivery Partner's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Project Delivery Partner's* plans realistically or
 - it does not comply with the Scope.

Revising the programme 32

- 32.1 The *Project Delivery Partner* shows on each revised programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
 - the effects of implemented compensation events and of notified early warning matters,
 - how the *Project Delivery Partner* plans to deal with any delays and to correct notified Defects and
 - any other changes which the *Project Delivery Partner* proposes to make to the Accepted Programme.
- 32.2 The *Project Delivery Partner* submits a revised programme to the *Employer* for acceptance
- within the *period for reply* after the *Employer* has instructed him to,
 - when the *Project Delivery Partner* chooses to and, in

any case,

- at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *services*.

Instructions to stop or not to start work 33

- 33.1 The *Employer* may instruct the *Project Delivery Partner* to stop or not to start any work and may later instruct him that he may re-start or start it.

Acceleration 34

- 34.1 The *Employer* may instruct the *Project Delivery Partner* to submit a quotation for acceleration to achieve Completion before the Completion Date. The *Employer* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Project Delivery Partner* submits details of his assessment with each quotation.
- 34.2 The *Project Delivery Partner* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- 34.3 When the *Employer* accepts a quotation for acceleration, the *Project Delivery Partner* submits changes to the Completion Date, the Key Dates and the forecast of the total Time Charge for the whole of the *services* to the *Employer* for acceptance.

4 Quality

Quality management system 40

- 40.1 The *Project Delivery Partner* operates a quality management system for Providing the Services as stated in the Scope. The quality management system complies with the requirements stated in the Scope.
- 40.2 The *Project Delivery Partner* provides the *Employer*, within the period stated in the Contract Data, with a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope.
- 40.3 The *Project Delivery Partner* complies with an instruction from the *Employer* to the *Project Delivery Partner* to correct a failure to comply with the quality plan.

Correcting Defects 41

- 41.1 Until the *defects date*, the *Employer* notifies the *Project Delivery Partner* of each Defect as soon as he finds it and the *Project Delivery Partner* notifies the *Employer* of each Defect as soon as he finds it. After Completion and until the *defects date*, the *Project Delivery Partner* notifies the *Employer* of each Defect as soon as he finds it. The *Employer's* rights in respect of a Defect which the *Employer* has not found or notified by the *defects date* are not affected.
- 41.2 The *Project Delivery Partner* corrects a Defect whether or not the *Employer* notifies him of it. The *Project Delivery Partner* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. If the *Project Delivery Partner* does not correct a Defect within a reasonable time having regard to the nature of the Defect, the *Employer* assesses the cost to him of having the Defect corrected by other people and the *Project Delivery Partner* pays this amount.
- 41.3 For the avoidance of doubt, the *Project Delivery Partner* continues to be liable for Defects after:
- the *defects date*;
 - the operation of this clause 41;
 - the termination of this contract for any reason (including breach by the *Employer*);

in accordance with the *law of the contract*.

5 Payment

Assessing the amount due 50

50.1 The *Project Delivery Partner* assesses the amount due and submits an invoice at each assessment date. The first assessment date is decided by the *Project Delivery Partner* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur

- at the end of each *assessment interval* until eight weeks after the *defects date* and
- at Completion of the whole of the *services*.

50.2 Invoices submitted by the *Project Delivery Partner* include the details stated in the Scope to show how the amount due has been assessed. The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.

50.3 The amount due is

- the Price for Services Provided to Date,
- the amount of the *expenses* properly spent by the *Project Delivery Partner* in Providing the Services and
- other amounts to be paid to the *Project Delivery Partner*,

less amounts to be paid by or retained from the *Project Delivery Partner*.

Any tax which the law requires the *Employer* to pay to the *Project Delivery Partner* is included in the amount due.

Payment 51

51.1 The date on which a payment becomes due is seven days after the date of the *Project Delivery Partner's* invoice.

The final date for payment is twenty three days after the date on which payment becomes due.

Not later than five days after the date on which a payment becomes due, the *Employer* issues a notice to the *Project Delivery Partner* stating the amount of payment made or proposed to be made, and the basis on which the amount was calculated.

51.2 If either Party intends to withhold payment of an amount due under this contract, he notifies the other Party not later than five days (the prescribed period) before the final date for payment by stating the amount proposed to be withheld and the reason for withholding payment. If there is more than one

reason, the amount for each reason is stated.

A Party does not withhold payment of an amount due under this contract unless he has notified his intention to withhold payment as required by this contract.

51.3 (1) If:

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

the *Project Delivery Partner* may suspend his performance under this contract.

(2) The *Project Delivery Partner* does not exercise his right to suspend his performance under this contract unless he has notified the Employer of:

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

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

51.4 If the *Project Delivery Partner* exercises his right under the Act to suspend his performance, it is a compensation event.

51.5 Payments are in the *currency of this contract* unless otherwise stated in this contract.

51.6 If the *Employer* does not accept the *Project Delivery Partner's* assessment of the amount due, he notifies the *Project Delivery Partner* of his reasons and the amount which he assesses is due before the payment becomes due. He pays the amount of his assessment. The agreed part of the invoice is paid. The *Project Delivery Partner* either

- corrects the invoice to a sum agreed by the *Employer* or
- provides further information to justify the invoice.

51.7 If a payment is late or has been delayed because of a disagreement, interest is paid. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

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

**Accounts and 52
records**

- 52.2 Without prejudice to clause 73, the *Project Delivery Partner* keeps accounts and records of his Time Charge and *expenses* and allows the *Employer* to inspect them at any time within working hours.

6 Compensation events

Compensation events 60

- 60.1 The following are compensation events.
- (1) The *Employer* gives an instruction changing the Scope or a Service Delivery Plan.
 - (2) The *Employer* does not provide access to any Premises provided by the *Employer* for the *Project Delivery Partner* as stated in this contract.
 - (3) The *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.
 - (4) The *Employer* gives an instruction to stop or not to start any work or to change a Key Date.
 - (5) The *Employer* or Others do not work within the times shown on the Accepted Programme or within the conditions stated in the Scope.
 - (6) The *Employer* does not reply to a communication from the *Project Delivery Partner* within the period required by this contract.
 - (7) The *Employer* changes a decision which he has previously communicated to the *Project Delivery Partner*.
 - (8) The *Employer* withholds an acceptance (other than acceptance of a quotation for acceleration) for a reason not stated in this contract.
 - (9) The *Employer* notifies a correction to an assumption which he has stated about a compensation event.
 - (10) A breach of contract or act of prevention by the *Employer* which is not one of the other compensation events in this contract.
 - (11) The *Employer* notifies the *Project Delivery Partner* of a Policy with which he is to comply that is not listed in the Contract Data or a Service Delivery Plan.

Notifying compensation events 61

- 61.1 For compensation events which arise from the *Employer* giving an instruction or changing an earlier decision, the *Project Delivery Partner* notifies the *Employer* of the compensation event at the time of receiving the instruction or the change to the earlier decision. The *Employer* then instructs the *Project*

Delivery Partner to submit quotations, unless the event arises from a fault of the *Project Delivery Partner* or quotations have already been submitted. The *Project Delivery Partner* puts the instruction or changed decision into effect.

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

61.3 Subject to clause 61.8, the *Project Delivery Partner* notifies the *Employer* of an event which has happened or which he expects to happen as a compensation event if the *Project Delivery Partner* believes that the event is a compensation event.

If the *Project Delivery Partner* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in Prices, the Completion Date or a Key Date.

61.4 If and to the extent the *Employer* decides that an event notified by the *Project Delivery Partner*

- arises from or is contributed to by a fault of the *Project Delivery Partner*,
- has not happened and is not expected to happen,
- has no effect upon the *Project Delivery Partner's* costs, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

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

If the *Employer* decides otherwise, he notifies the *Project Delivery Partner* accordingly and instructs him to submit quotations.

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

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

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

No change in Prices is made in respect of any matter notified after the *defects date*.

61.8 The *Project Delivery Partner* and the *Employer* agree to implement a procedure for bundling together and submitting every 4 weeks notifications of and for assessing and implementing compensation events. Such procedure will not apply in respect of any compensation events of such value or nature which require that they should be brought to the attention of the other Party before the next notification date.

Quotations for compensation events 62

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

62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Project Delivery Partner*. The *Project Delivery Partner* submits details of his assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Project Delivery Partner* includes the alterations to the Accepted Programme in his quotation.

62.3 The *Project Delivery Partner* submits quotations within two weeks of being instructed to do so by the *Employer*. The *Employer* replies within two weeks of the submission. His reply is

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

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

62.5 The *Employer* extends the time allowed for

- the *Project Delivery Partner* to submit quotations for a compensation event and
- the *Employer* to reply to a quotation

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

Assessing 63 compensation events

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

- the actual Time Charge for the work already done and
- the forecast Time Charge for the work not yet done.

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

63.2 If the effect of a compensation event is to reduce the total Time Charge, the Prices are proportionately reduced and the *Project Delivery Partner* shall not be entitled to any payment in respect of loss of profit or loss of opportunity in respect of the same.

63.3.1 Subject to clause 63.3.2 a delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is later than the Completion Date and a delay to a Key Date is assessed as the length of time that, due to the compensation event, the date when the Condition stated for a Key Date is met is later than the relevant Key Date.

63.3.2 Any delay is only treated as being due to a compensation event if the compensation event is the sole or principal cause of the delay.

63.4 The rights of the *Employer* and the *Project Delivery Partner* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.

63.5 If the *Employer* has notified the *Project Delivery Partner* of his decision that the *Project Delivery Partner* did not give an early warning of a compensation event which an experienced consultant could have given, the event is assessed as if the *Project Delivery Partner* had given early warning, thereby enabling the *Employer* to have taken action to minimise or avoid the effects of such compensation event.

63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Project Delivery*

Partner's risk under this contract.

- 63.7 Assessments for work not yet done are based upon the assumptions that the *Project Delivery Partner* will react competently and promptly to the compensation event and that the Accepted Programme can be changed. Assessments for work already done include only cost and time which were reasonably incurred.
- 63.8 A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.
- 63.9 If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Employer* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.10 If the work included in a quotation for a compensation event includes work by staff for which there is no *staff rate*, a proposed rate is included in the quotation.
- 63.11 The following are deducted from the assessment of compensation events
- the cost of events for which this contract requires the *Project Delivery Partner* to insure and
 - other costs paid to the *Project Delivery Partner* by insurers.

**The Employer's 64
assessments**

- 64.1 The *Employer* assesses a compensation event
- if the *Project Delivery Partner* has not submitted a required quotation and details of his assessment within the time allowed,
 - if the *Employer* decides that the *Project Delivery Partner* has not assessed the compensation event correctly in a quotation and he does not instruct the *Project Delivery Partner* to submit a revised quotation,
 - if, when the *Project Delivery Partner* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
 - if, when the *Project Delivery Partner* submits quotations for a compensation event, the *Employer* has not accepted the *Project Delivery Partner's* latest programme for one of the reasons stated in this contract.

- 64.2 The *Employer* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme or
 - the *Project Delivery Partner* has not submitted a programme or alterations to a programme for acceptance as required by this contract.
- 64.3 The *Employer* notifies the *Project Delivery Partner* of his assessment of a compensation event and gives him details of it within the period allowed for the *Project Delivery Partner's* submission of his quotation for the same event. This period starts when the need for the *Employer's* assessment becomes apparent.
- Implementing compensation events** 65
- 65.1 A compensation event is implemented when
- the *Employer* notifies his acceptance of the *Project Delivery Partner's* quotation,
 - the *Employer* notifies the *Project Delivery Partner* of his own assessment or
 - a *Project Delivery Partner's* quotation is treated as having been accepted by the *Employer*.
- 65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
- 65.3 The changes to the forecast amount of the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event and the Service Delivery Plan is modified accordingly.
- Reviewing staff resourcing levels included in Service Delivery Plans** 66
- Where the *Project Delivery Partner* considers that staff resource levels set out in the Service Delivery Plan are not sufficient to Provide the Services and such lack of sufficiency is not due to a compensation event, the *Employer* and the *Project Delivery Partner* shall discuss whether or not to agree a change to the Service Delivery Plan. If no agreement can be reached the *Employer* will, in its absolute discretion, decide whether the Service Delivery Plan should be changed and if so in what regard.

7 Rights to material**The Parties' use of material 70****Background Rights 70A**

- 70A.1 The Background Rights shall remain the absolute unencumbered property of the owner of such rights at the date of this contract. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background Rights of the other party except under the terms of this contract, and each party acknowledges that nothing contained in this contract shall give it any right, title or interest in or to the Background Rights of the other party save as granted in this contract.
- 70A.2 (a) The *Project Delivery Partner* confirms that it will be able to Provide the Services without using or incorporating its Background Rights therein and that the *Employer* will be able to use the *services* to develop, implement and operate the Programme both during the term of this contract and thereafter without needing a right to use any such Background Rights.
- (b) The *Project Delivery Partner* may request the *Employer's* consent to use or to incorporate the *Project Delivery Partner's* Background Rights to Provide the Services and may do so subject to receipt of the *Employer's* prior written consent. Such consent shall be given at the *Employer's* absolute discretion and will be subject to prior contract between the *Employer* and the *Project Delivery Partner* with respect to licensing and commercial arrangements required with respect to use of such Background Rights.

Foreground Rights and Materials 70B

- 70B.1 All Foreground Rights and Materials shall vest in and be the property of the *Employer* on their creation. To the extent that any such Foreground Rights or Materials vest in the *Project Delivery Partner* or any Subconsultant or other third party engaged by the *Project Delivery Partner* in performing this contract, the *Project Delivery Partner* hereby:
- (a) assigns to the *Employer* (or shall procure that the *Employer* is granted an assignment of) all such present and future Foreground Rights immediately upon creation; and
- (b) transfers to the *Employer* (or shall procure that the relevant owner transfers) ownership in such present or future Materials immediately upon creation.

- 70B.2 The *Project Delivery Partner* shall in engaging or employing any Subconsultant enter into an enforceable written contract with such party which provides that:
- (a) all Foreground Rights and Materials created by the Sub-contractor pursuant to such contract shall vest in and becomes the property of the *Employer* immediately upon creation;
 - (b) upon such vesting, the *Employer* shall become entitled to exclusive perpetual and unrestricted rights of use and ownership of such Foreground Rights and Materials; and
 - (c) the *Employer* or its nominee shall be able to enforce the rights of the *Project Delivery Partner* against such Subconsultant pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999;
- 70B.3 The *Project Delivery Partner* shall provide a copy of any contract proposed pursuant to clause 70B.2 to the *Employer* for approval and authorisation prior to entry into or execution of the same.
- 70B.4 The *Project Delivery Partner* agrees to provide to the *Employer* or any person nominated by the *Employer* immediate access to all Materials in whatever form reasonably requested by the *Employer* (including without limitation the source code of any software that is not commercially available) at any time but at the latest on termination or expiry of this contract. The *Project Delivery Partner* shall upon the written request of the *Employer* enter into a deposit and/or source code escrow contract with the *Employer* and a third party nominated by the *Employer* in respect of such Materials in such form as the *Employer* may require.

Third Party Rights 70C

- 70C.1 The *Project Delivery Partner* shall be responsible for obtaining all necessary consents, authorities or approvals required to use any Third Party Rights necessary for performing its obligations under this contract.
- 70C.2 The *Project Delivery Partner* shall ensure that the *Employer* has all Third Party Rights necessary to enable the *Employer* to develop, implement and operate the Programme and/or use Materials during the term of this contract and thereafter.
- 70C.3 The *Project Delivery Partner* shall use its best endeavours to ensure that it is a condition of any licence into which the *Project Delivery Partner* or any Subconsultant enters with a third party that the *Employer* shall be entitled to a royalty free, irrevocable copyright licence in respect of such Third Party Rights, such licence to be capable of assignment and sub-licence and to allow use of the Third Party Rights for any purpose connected with the Programme.

70C.4 All licenses in respect of Third Party Rights used by the *Project Delivery Partner* in connection with the *services* shall continue for a period of 24 months from expiry or termination of this contract. The *Project Delivery Partner* shall use its best endeavours to ensure that all licences for Third Party Rights that are not commercially available may be extended at the request of the *Employer* thereafter on the same terms. Where the *Employer* requires an extended right of use of any Third Party Rights used by the *Project Delivery Partner* in connection with the *services* (or any part thereof) that is not commercially available, the *Employer* shall pay or procure the payment of, in accordance with terms agreed between the parties, a reasonable licence fee for any such use for the extended period. In determining whether or not any licence fee is reasonable regard shall be had to the nature and use made of the Third Party Rights, licence fees charged to the *Project Delivery Partner* or Subconsultant by their licensors for such Third Party Rights, industry practice and the licence fees for the Third Party Rights normally charged by the *Project Delivery Partner* or Subconsultant in similar circumstances.

Licence from the Employer 70D

The *Employer* hereby grants to the *Project Delivery Partner* for the term of this contract and free of charge a non-exclusive, royalty-free licence to use such of the *Employer's* data, reports, drawings, specifications, plans, software, designs, inventions and/or other material of the *Employer* as are required by the *Project Delivery Partner* to Provide the *Services* and to fulfil its other obligations pursuant to this contract and which relate to the *services*. This licence is limited to use of such materials for the purpose of, and solely as necessary for, the *services* during the term of this contract. To the extent that any modifications or enhancements to materials licensed by the *Employer* to the *Project Delivery Partner* under this clause 70D are carried out by or on behalf of the *Project Delivery Partner* in Providing the *Services*, the *Project Delivery Partner* hereby assigns (or shall procure that the *Employer* is granted an assignment of) all present and future Intellectual Property in those modifications and enhancements. By virtue of this clause 70D all such Intellectual Property rights shall vest in the *Employer* on their creation.

Warranties and Indemnity 70E

70E.1 The *Project Delivery Partner* warrants that:

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

70E.2 The *Project Delivery Partner* will indemnify and hold harmless the *Employer* against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the *Employer* (whether direct or consequential) in respect of any claim or action that the *Employer's* use of:

- (a) Intellectual Property rights licensed by the *Project Delivery Partner* to the *Employer* under this clause 70; or
- (b) the Foreground Rights developed or supplied by the *Project Delivery Partner* under this contract;

infringes the Intellectual Property rights of any third party.

Infringements 70F

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

Copyright and Publication 70G

70G.1 The *Employer* shall be the proprietor of the copyright in this contract and any data relating to this contract. The *Employer* reserves the right to determine whether the results of the services shall be published and if so on what conditions. The *Project Delivery Partner* shall provide any reports that the *Employer* shall request and shall enclose with the report the following disclaimer:

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

This report shall not be copied or reproduced in whole or in part except with the express consent of Cross London Rail Links Limited."

70G.2 7.2 The following copyright statement shall be included by the *Project Delivery Partner* on all copyright items intended for reproduction including final reports:

"© Copyright Controller HMSO year. This material is published for Cross London Rail Links Limited with the permission of the Controller of Her Majesty's Stationery Office".

Further Assurances 70H

70H.1 The *Project Delivery Partner* shall (at its own cost) upon the request of the *Employer* promptly execute all documents and do all acts and things which may be necessary to bring into effect or confirm any assignment or the terms of any of the licences contained or referred to in this clause 70.

70H.2 The parties shall, when appropriate, execute a formal licence or licences for the purpose of registering any licences granted pursuant to this clause 70 in such form as may be necessary to give effect to this contract and to conform with the laws for the time being existing in respect of Intellectual Property rights. Such licence or licences shall be subject to all the terms and conditions of this contract.

General 70I

70I.1 The *Project Delivery Partner* shall not sell, copy or use the Intellectual Property referred to in this clause 70 if this might compromise the services and/or Materials (or any part thereof) or the *Employer's* use of them.

70I.2 The *Project Delivery Partner* shall notify any proposed assignee of this contract of the licences granted to the *Employer* under or in accordance with this contract.

70I.3 The *Project Delivery Partner* shall ensure that any contracts between the *Project Delivery Partner* and any Subconsultant imposes obligations on the Sub-consultant which are identical in effect to the obligations imposed on the *Project Delivery Partner* under this clause 70.

70I.4 The *Project Delivery Partner* agrees to provide all assistance reasonably requested by the *Employer* on termination or expiry of this contract to handover the Materials and/or the provision of the services to a third party nominated by the *Employer*.

Publicity 71

The *Project Delivery Partner* shall not, except with the consent of the *Employer*, make any press announcements or publicise this contract or the Programme in any way unless the purpose of such disclosure is to allow compliance with a requirement to disclose information concerning this contract as required by law or the requirement of the stock exchange. The provisions of this clause shall not apply to any information relating to this contract, which is or which pursuant to this clause 71 is public knowledge (otherwise than by breach of this clause) or which is limited to the fact of the *Project Delivery Partner* being a

party to this contract.

Data Protection 72

- 72.1 (a) The *Project Delivery Partner* shall comply with all of its obligations under the Data Protection Act 1998 (the "DPA") and, where it is processing personal data (as defined in the DPA) on behalf of the *Employer* ("Employer Personal Data"), the *Project Delivery Partner* shall only act in accordance with instructions from the *Employer* in relation to the Employer Personal Data.
- (b) The *Project Delivery Partner* shall take appropriate technical and organisational measures to the satisfaction of the *Employer* to prevent unauthorised or unlawful processing of, accidental loss or destruction of, and damage to, Employer Personal Data.
- 72.2 The *Project Delivery Partner* shall fully indemnify and hold the *Employer* harmless in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with: (i) any breach by the *Project Delivery Partner*, its employees, agents, Subconsultants, or any other third party to whom it has disclosed Employer Personal Data; and (ii) any third party claims made in respect of information subject to the DPA, which claims would not have arisen but for some act, omission or negligence on the part of the *Project Delivery Partner*, its employees, agents, Subconsultants, or any other third party to whom it has disclosed Employer Personal Data.

Access to Information 73

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

Freedom of Information 74

- 74.1 The *Project Delivery Partner* acknowledges that the *Employer* is subject to the FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under the FOI Legislation. The foregoing

shall not preclude the *Project Delivery Partner* from objecting to a disclosure of *Project Delivery Partner* Information.

- 74.2 The *Employer* shall be responsible for determining whether *Project Delivery Partner* Information is exempt information under the FOI Legislation and for determining what *Project Delivery Partner* Information will be disclosed in that respect to an Information Request in accordance with the FOI Legislation. The *Project Delivery Partner* shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the *Employer*.
- 74.3 The *Project Delivery Partner* acknowledges that the *Employer* may be obliged under the FOI Legislation to disclose *Project Delivery Partner* Information.

**Confidential 75
Information**

- 75.1 Subject to the other provisions of and as expressly permitted by this clause 75, the *Project Delivery Partner*:
- (a) may not use any Confidential Information for any purpose other than the performance of its obligations under this contract;
 - (b) may not disclose any Confidential Information to any person except with the prior written consent of the *Employer*; and
 - (c) shall make every effort to prevent the use or disclosure of the Confidential Information.
- 75.2 Notwithstanding clause 75.1, the *Project Delivery Partner* may disclose any Confidential Information to the following parties in the following circumstances:
- (a) to any officer or servant of the *Project Delivery Partner* or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the *Project Delivery Partner* to Provide the Services or to enforce its rights under this contract, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;
 - (b) to the extent required by any applicable law, the rules of any stock exchange or regulatory body or any written request of any taxation authority; and
 - (c) pursuant to the order of any court or tribunal of competent jurisdiction.
- 75.3 The provisions of clause 75.1 above shall not apply to any Confidential Information which:
- (a) is at the date of this contract or any time thereafter becomes publicly known other than by breach of this

contract or of an obligation of confidence;

- (b) can be shown by the *Project Delivery Partner* to the *Employer's* reasonable satisfaction to have been known by the *Project Delivery Partner* before disclosure by the *Employer*.

75.4 Before disclosure of any Confidential Information, the *Project Delivery Partner* shall ensure that the recipient is made aware of and complies with the *Project Delivery Partner's* obligations of confidentiality under this contract as if the recipient was a party to this contract.

75.5 Without prejudice to any other rights or remedies which the *Employer* may have, the *Project Delivery Partner* acknowledges and agrees that in the event of breach of this clause 75 the *Employer* shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.

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

8 Indemnity, insurance and liability

Indemnity 80

80.1 The *Project Delivery Partner* indemnifies the *Employer* against all losses, claims, proceedings, compensation and costs payable arising from:

- death and/or personal injury;
- property damage or loss;
- breach of statutory duty;
- third party claims (including an infringement of the rights of Others but except for an infringement which arose out of the use by the *Project Delivery Partner* of things provided by the *Employer*);

arising from the *Project Delivery Partner* Providing the Services.

Insurance cover 81

81.1 The *Project Delivery Partner* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The insurances provide cover from the Contract Date until the end of the periods stated in the Contract Data.

INSURANCE TABLE

Insurance against	Minimum amount of cover
Liability of the <i>Project Delivery Partner</i> for claims made against him arising out of his failure to use the skill care and diligence required by the contract	The amount stated in the Contract Data
Liability for death of or bodily injury to a person (not an employee of the <i>Project Delivery Partner</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Project Delivery Partner</i>	The amount stated in the Contract Data for any one event
Liability for death of or bodily injury to employees of the <i>Project Delivery Partner</i> arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event

81.2 When requested by a Party the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

9 Termination

Termination 90

- 90.1 Either Party may terminate the *Project Delivery Partner's* employment by notifying the other Party if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented his petition for bankruptcy,
 - had a bankruptcy order made against him,
 - had a receiver appointed over his assets or
 - made an arrangement with his creditors.
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it,
 - had a provisional liquidator appointed to it,
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct),
 - had an administration order made against it,
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets or
 - made an arrangement with its creditors.
- 90.2 The *Project Delivery Partner* may terminate his employment by notifying the *Employer* if the *Employer* has not paid an amount due to the *Project Delivery Partner* within eight weeks of the issue of a notice by the *Project Delivery Partner* to the *Employer* confirming that the final date for payment of such amount has passed.
- 90.3 The *Employer* may terminate the *Project Delivery Partner's* employment by notifying the *Project Delivery Partner* if
- the *Employer* no longer requires the *Project Delivery Partner* to Provide the Services or
 - the *Project Delivery Partner* has failed to comply with his obligations.
 - the *Project Delivery Partner* commits a Prohibited Act
- 90.4 The *Employer* may terminate the *Project Delivery Partner's* employment by notifying the *Project Delivery Partner* if an event occurs which

- stops the *Project Delivery Partner* completing the *services* or
- stops the *Project Delivery Partner* completing the *services* 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 consultant 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.

Procedures on 91 termination

91.1 On termination

- the *Project Delivery Partner* does no further work necessary to Provide the Services,
- the *Employer* may complete the *services* and may use any material to which he has title,
- the *Employer* may require the *Project Delivery Partner* to assign the benefit of any subconsultancy or other contract related to performance of this contract to the *Employer* and
- the *Project Delivery Partner* gives to the *Employer* or the *Employer's* nominee information resulting from work carried out to date and information the *Project Delivery Partner* has obtained which he has a responsibility to provide under this contract.
- the Parties continue to comply with the constraints and obligations in this contract on
 - the use of material prepared or obtained by the *Project Delivery Partner* and
 - publicising the services, confidentiality and the FOI Legislation

Termination shall be without prejudice to any accrued rights and obligations under this contract as at the date of such termination.

91.2 Following any termination of the *Project Delivery Partner's* employment or the omission of any of the *services* under this contract and upon the expiry of this contract, the *Project Delivery Partner* shall co-operate with the *Employer* and shall provide to him all reasonable assistance to facilitate the handover or transfer of any of the *Project Delivery Partner's*

obligations or *services* to the *Employer* or the *Employer's* nominee including briefing and providing information to the *Employer* or the *Employer's* nominee.

**Payment on 92
termination**

92.1 A final payment is made as soon as possible after termination. The amount due on termination is

- an amount due assessed as for normal payments and
- a fair and reasonable proportion of the Prices commensurate with any partially complete activities as at the date of termination.

92.2 If the *Employer* terminates because of the

- insolvency of the *Project Delivery Partner* or
- failure of the *Project Delivery Partner* to comply with his obligations,

the amount due on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* together with the amount of any loss or expense or additional cost incurred or suffered by the *Employer* and arising out of the termination or the event entitling the *Employer* to terminate. If such deduction exceeds the amount due on termination such excess shall be recoverable by the *Employer* from the *Project Delivery Partner* as a debt.

100 Guarantee

- 100.1 The *Guarantor* is a party to this contract for the sole purpose of guaranteeing the performance of the obligations of the *Project Delivery Partner* hereunder.
- 100.2 In consideration of the *Employer* appointing the *Project Delivery Partner* in accordance with the terms of this contract, the *Guarantor*:
- (a) agrees that if the *Project Delivery Partner* shall in any respect fail to perform any of its obligations arising under this contract (as the same may be amended or varied from time to time) or shall commit any breach or fail to perform any warranty or indemnity set out in this contract (as the same may be amended or varied from time to time), then the *Guarantor* shall forthwith upon the *Employer's* demand perform and fulfil in the place of the *Project Delivery Partner* each and every obligation, warranty or indemnity in respect of which the *Project Delivery Partner* has defaulted or as may be unfulfilled by the *Project Delivery Partner*, and the *Guarantor* shall indemnify and save harmless the *Employer* from any and all losses, damages, expenses, claims, costs or proceedings which the *Employer* may suffer or incur by reason of the said failure or breach;
 - (b) confirms that it has full power and capacity to enter into this contract and to give the guarantee set out herein, and that the guarantee shall not be revocable and shall be a continuing guarantee; and
 - (c) agrees that the *Employer* is entitled to assign any of its rights under this guarantee at any time to any person who takes an assignment, novation or other transfer of this contract or the benefit thereof.
- 100.3 As between the *Guarantor* and the *Employer*, the *Guarantor* shall remain liable under clause 100.2 as if it were the sole principal obligor and not merely a guarantor
- 100.4 The *Guarantor* shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:
- (a) any amendment, modification, waiver, consent or variation, express or implied, to the Scope, the *services* or to this contract or any related documentation;
 - (b) the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the *Project Delivery Partner*;
 - (c) the enforcement, absence of enforcement or release of the contract or of any security, right of action or other

guarantee or indemnity;

- (d) the dissolution, amalgamation, reconstruction, reorganisation of the *Project Delivery Partner* or any other person;
- (e) the illegality, invalidity or unenforceability of or any defect in any provision of the contract or any of the *Project Delivery Partner's* obligations under the contract;
- (f) any indulgence or additional or advanced payment, forbearance, payment or concession to the *Project Delivery Partner*;
- (g) any compromise of any dispute with the *Project Delivery Partner*;
- (h) any failure of supervision to detect or prevent any fault of the *Project Delivery Partner*;
- (i) any assignment of the benefit of the contract.

100.5 Without prejudice to the generality of clause 100.2, the *Employer* shall have the right, as its sole option, in the event of any default by the *Project Delivery Partner* to engage another consultant, other than the *Guarantor* or any nominee of the *Guarantor* to Provide the Services and the *Guarantor* undertakes to pay any additional costs (whether direct or indirect) thereby incurred by the *Employer*.

MAIN OPTION CLAUSES

W2

- Dispute Resolution** W.2.1 Any dispute or difference between the Parties as to the construction of this contract or any matter or thing of whatsoever nature arising under this contract or in connection therewith (a "Dispute") shall be resolved pursuant to the terms of this clause W.2.
- Managerial Discussions** W.2.2 Without prejudice to the Parties' rights at any time to refer Disputes to adjudication in accordance with this clause W.2 the Parties shall each use their reasonable endeavours to resolve any Dispute which may arise by means of prompt, bona fide discussion at a managerial level appropriate to the Dispute in question. If such discussions do not resolve the Dispute, subject to the Parties' rights to refer the Dispute to adjudication, the Parties shall refer the Dispute to the Dispute Board in accordance with the Dispute Board Procedure.
- Adjudication Procedure** W.2.3 Either party may give notice at any time of its intention to refer to adjudication a Dispute arising out of or in connection with this contract and such adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998. The adjudicator shall be agreed between the Parties or shall be nominated by the referring party from the Adjudicator Panel.
- Joinder** W.2.4 (a) If a Dispute arising under this contract raises issues of fact or law which are the same as, or relate to issues raised in an unresolved dispute between the *Employer* and any Other (a "Related Dispute"):
- (i) the *Employer* may require a representative of the parties in the Related Dispute to meet with the parties under this contract and endeavour to resolve both the Related Dispute and the Dispute; and
 - (ii) the *Employer* may refer the Related Dispute to an adjudicator or court to which the Dispute has been referred under this contract or may refer the Dispute to an adjudicator or court to which the Related Dispute had been referred and the proceedings shall be consolidated, save where the adjudicator or court shall in its absolute discretion determine that it is not possible to consolidate the proceedings; and
 - (iii) any dispute as to whether the Dispute raises issues of fact or law which are the same as or related to issues of fact or law in the Related Dispute shall be resolved by the adjudicator or court to which the Dispute and the Related Dispute have been referred, provided that, if the adjudicator or court decides that such issues of fact or law do not arise in the Related Dispute this

clause W.2.4 shall cease to apply; and

- (iv) the adjudicator to whom the Dispute and the Related Dispute have been referred shall have power to make such decisions, directions and all necessary orders and awards in respect of the Dispute and the Related Dispute in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him.
- (b) The *Employer* may only refer a Related Dispute to the adjudicator appointed in relation to a Dispute if the adjudicator receives particulars of the Related Dispute within seven days of the referral of the Dispute to the adjudicator under this contract and may only refer a Dispute to the adjudicator appointed in relation to a Related Dispute if the adjudicator receives particulars of the Dispute within seven days of the referral of the Related Dispute to the adjudicator.

**Final and Binding
Decision** W.2.5

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

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

If *staff rates* are fixed at the Contract Date and are not variable with changes in salary paid to individuals.

Price adjustment factor X1

X1.1 On 1 April 2010 and on each anniversary of 1 April thereafter, the *Project Delivery Partner* calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before 1 April 2010.

If the value of an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The price adjustment factor calculated at the Completion Date for the whole of the *services* is used for calculating price adjustment after this date.

Price adjustment X1.2

Each amount due after 1 April 2010 includes an amount for price adjustment which is the sum of

- the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and
- the amount for price adjustment included in the previous amount due.

Price adjustment Option C X1.3

Each time the amount due is assessed after 1 April 2010, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.

Expenses adjustment X1.6

If payment rates for any of the *expenses* are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the 1 April 2010 includes an amount for *expenses* adjustment which is the sum of

- the change in fixed *expenses* since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and
- the amount for *expenses* adjustment included in the previous amount due.

If *staff rates* are variable with changes in salary paid to individuals.

Price adjustment factor	X1	
	X1.1	<p>On 1 April 2010 and on each anniversary of 1 April thereafter, the <i>Project Delivery Partner</i> calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the <i>index</i> and B is the last value of the <i>index</i> published before the 1 April 2010.</p> <p>If an <i>index</i> is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.</p> <p>The price adjustment factor calculated at the Completion Date for the whole of the <i>services</i> is used for calculating price adjustment after this date.</p>
Price adjustment Option A	X1.2	<p>Each amount due after 1 April 2010 includes an amount for price adjustment which is the sum of</p> <ul style="list-style-type: none"> • the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and • the amount for price adjustment included in the previous amount due.
Price adjustment Option C	X1.3	<p>Each time the amount due is assessed after 1 April 2010, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.</p>
Price adjustment Option G	X1.4	<p>Not Used.</p>
Compensation events Options A, C and G (lump sum items on the Task Schedule) only	X1.5	<p>The Time Charge for compensation events is assessed using the <i>staff rates</i> current at the time of assessing the compensation event adjusted to the Contract Date by dividing by $(1+PAF)$, where PAF is the price adjustment factor calculated at the last anniversary.</p>
Expenses adjustment	X1.6	<p>If payment rates for any of the <i>expenses</i> are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the 1 April 2010 includes an amount for <i>expenses</i> adjustment which is the sum of</p> <ul style="list-style-type: none"> • the change in fixed <i>expenses</i> since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and • the amount for <i>expenses</i> adjustment included in the

previous amount due.

Option X8: *Collateral warranty agreements*²

Collateral warranty agreements X8

X8.1 [Assume warranties or third party rights in favour of:

- *LUL – identified packages*
- *NR – identified packages*
- *Tubelines – identified packages*
- *DLR – identified packages]*
- *Rail for London – identified packages*
- *Any operator of any depot]*

Option X20: Incentives

Incentives X20

- X20.1 Interim KPIs and Programme KPIs are aspects of performance by the *Project Delivery Partner* for which targets are 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 date*, the *Project Delivery Partner* reports to the *Employer* his performance against each of the Interim KPIs and Programme KPIs. Reports are provided at the intervals stated in the Contract Data or Service Delivery Plan and include the forecast final measurement against each indicator.
- X20.3 If the *Project Delivery Partner's* forecast final measurement against an Interim KPI or Programme KPI will not achieve an "Excellent" rating in the relevant Performance Band, he submits his proposals for improving performance.
- X20.4 The *Project Delivery Partner* or the *Employer* (as the case may be) is paid the relevant percentage of the Interim Earned Amount and is paid the Final Earned Amount in accordance with the Incentive Schedule.
- X20.5 Capitalised terms used in this clause X20 and not otherwise defined have the meaning ascribed to them in the Incentive

² Beneficiaries of warranties are to be confirmed.

Schedule.

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

Third party rights Y(UK)3

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

CONTRACT DATA

Part one – Data provided by the *Employer*

Statements given in all contracts

1 General • The *conditions of contract* are the amended NEC Professional Services Contract Conditions to which this Contract Data is attached.

• The *Employer* is

Name Cross London Rail Links Limited

Address Portland House, Bressenden Place, London SW1E 5BH

• The *services* are set out in the Scope as the same may be modified or augmented by the Service Delivery Plan.

• The Scope is at Appendix 1.

• The *language of this contract* is English

• The *law of the contract* is the law of England and Wales

• The *period* for reply is 14 days except in relation to the following: [●]

• The *period for retention* is 15 years following Completion or earlier termination.

• The following matters will be included in the Risk Register:

.....

• The *Employer's Policies and Procedures* are set out in Appendix 1

• The Third Party Agreements are set out in Appendix 6.

• *TfL* is Transport for London of Windsor House, 42-50 Victoria Street, London SW1H 0TL.

2 The Parties' main responsibilities • The *Employer* provides access to the persons, places and things as set out in Appendix 2 and the Service Delivery Plan

3 Time • The *starting date* is [●]

• The programme identified in the Contract Data is in the Service Delivery Plan.

• The *Project Delivery Partner* submits revised programmes at each assessment interval.

- 4 Quality
- The quality policy statement and quality plan are provided within 1 month of the *starting date*.
 - ³The *defects date* is the later of twelve months after the date that the railway transport system that is the subject of the Programme commences full operations and twelve months from final completion under the Project Development Agreement
- 5 Payment
- The *assessment interval* is every four week accounting period of the *Employer*, such periods to be advised to the *Project Delivery Partner* annually.
 - The *currency of this contract* is pounds sterling (£).
 - The *interest rate* is 2% per annum (not less than 2) above the base rate of the Bank of England.
- 8 Indemnity, insurance and liability
- The amounts of insurance and the periods for which the *Project Delivery Partner* maintains insurance are

event	cover	period following Completion of the whole of the services or earlier termination
failure of the <i>Project Delivery Partner</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£25 million in respect of each claim, without limit to the number of claims	Twelve years
death of or bodily injury to a person (not an employee of the <i>Project Delivery Partner</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Project Delivery Partner</i> .	£25 million in respect of each claim, without limit to the number of claims	Twelve years
death of or bodily injury to employees of the <i>Project Delivery Partner</i> arising out of and in the course of their employment in	£10 million in respect of each claim, without limit to the number of claims.	Twelve years

³ Definition to be aligned with final position under the Project Development Agreement

connection with this contract

Optional statements **If the *Employer* has decided the *completion date* for the whole of the *services***

- The *completion date* for the whole of the *services* is [●]

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 set out in the Service Delivery Plan.

If the *Employer* states any *expenses*

- The *expenses* stated by the Employer are in Appendix 2

If Option C, E or G is used

The *Project Delivery Partner* prepares forecasts of the total Time Charge and *expenses* at each assessment interval

If Option X1 is used

The *index* is the Average Earnings Index Whole Economy excluding bonuses series jqdw.

If Option X8 is used

The *collateral warranty agreements* are as set out in Appendix 9

agreement reference	third party
Appendix 9	[LUL]
	[Tubelines]
	[NR]
	[DLR]
	[Rail for London]
	[Any operator of any depot]

If Option X20 is used

- The *incentive schedule* is in Appendix 4 and/or the Service Delivery Plan
- A report of performance against each Interim KPI and the Programme KPIs is provided by the *Project Delivery Partner* at each assessment interval for review by the *Employer*.

Y(UK)3

Term	Person or organisation
All	<i>TfL</i>
All	Department for Transport

Part two – Data provided by the *Project Delivery Partner*

Statements given in all contracts

- The *Project Delivery Partner* is

Name []

Address []

- The *key persons* are

.....

and any further *key persons* identified in the Service Delivery Plan.

- The *staff rates* are as set out in Appendix 3 and/or the Service Delivery Plan and are further explained in Appendix 2

- The following matters will be included in the Risk Register

.....

.....

.....

- The *Guarantor* is

Name []

Address []

Appendix 1

Scope

Appendix 2

Commercial information

Staff rates

The *staff rates* applicable to all grades and types of staff are shown in appendix 3.

The *staff rates* shall be deemed to include all costs required or incurred by the *Project Delivery Partner* to Provide the Services in accordance with the contract but excluding *expenses*.

The *staff rates* are daily rates for a minimum eight working hour day. No further payment shall be made for hours worked in excess of any eight hour working day within any 24 hour period. Where staff work less than an eight working hour day then the *staff rates* shall be proportionally reduced.

Indexation: Option X1 applies.

Expenses

The *expenses* are:

- Reasonable transport costs required and approved in advance by the *Employer* but excluding any transport costs to any office of the *Project Delivery Partner* or any office or construction site of the *Employer* or any contractor of the *Employer*.

Persons, places and things provided by the Employer

The *Employer* shall provide the following things for use by the *Project Delivery Partner's* staff:

- Central office and construction site office accommodation including all normal office furniture and stationery.
- Computer workstations and use of information technology appropriate for the tasks being undertaken (typical software listed below), telephone (but excluding mobile telephone), printing and fax facilities.
 - Microsoft Excel, Word, Powerpoint, Visio
 - Primavera P6
 - Lotus Notes
 - Documentum
- Crossrail specific safety training (the *Employer* shall not however provide any industry standard safety training required for the role being undertaken by the *Project Delivery Partner's* staff nor Network Rail, London Underground or Docklands Light Railway safety training or infrastructure access qualifications or the like).
- Crossrail unique software systems training (the *Employer* shall not however provide any industry standard software training required for the role being undertaken by the *Project Delivery Partner's* staff).

Service Delivery Plan: Resource Schedule

The initial Resource Schedule is contained within the Service Delivery Plan.

The Time Charge for staff used by the *Project Delivery Partner* in any *assessment interval* shall not exceed the maximum Time Charge for the corresponding *assessment interval* shown within the Resource Schedule.

Before the *Project Delivery Partner* allows any *key persons* or any other persons to commence Providing the Services it shall propose to the *Employer* an appropriate *staff rate* that is consistent with the *staff rates* in Appendix 3 and shall obtain the *Employer's* acceptance of that person and the proposed *staff rate*. The *Employer's* acceptance of any person and their applicable *staff rate* is required irrespective of the *staff rates* set out in Appendix 3.

Requests for the acceptance of *staff rates* shall include detailed curriculum vitae of each person together with details of the proposed role and responsibilities, position within the *Project Delivery Partner's* team and reporting lines, anticipated duration and any other information requested by the *Employer*.

The Resource Schedule shall only be applicable for the period of time covered by the Resource Schedule.

At least three *assessment interval* periods prior to the end of the time period covered by any Resource Schedule, the *Project Delivery Partner* shall propose a new resource schedule for Providing the Services for the next period of time which shall normally be a year commencing 1 April but may be any other period of time notified by the *Employer*.

At least one *assessment interval* period before the end of the time covered by any Resource Schedule, the *Project Delivery Partner* and the *Employer* shall agree the new resource schedule for Providing the Services for the next period of time. Following notification by the *Employer* that the new resource schedule has been agreed, this shall become the Resource Schedule for the period of time covered.

Where the *Employer* notifies the *Project Delivery Partner* under clause 65.1 of the contract then the *Employer* shall also provide the *Project Delivery Partner* with a revised Resource Schedule indicating the changes from the previous Resource Schedule.

Invoicing

Prior to the submission of each invoice the *Project Delivery Partner* and the *Employer* should, as far as possible, discuss and agree the amount due and to be invoiced by the *Project Delivery Partner*.

Details to be included within invoices:

The *Project Delivery Partner* shall include information within each invoice to demonstrate to the *Employer* how the amount has been assessed including details of:

- The name of each person being invoiced for.
- The grade, position and/or role being undertaken by each person.
- In the case of Subconsultants' staff, the name of the Subconsultant company.
- The days, or part days, properly worked for each individual member of staff.
- The staff rate applicable to each person.
- The Time Charge for each person and the total Time Charge.

For the purposes of the above the *Project Delivery Partner* must use a template spreadsheet issued by the *Employer*. This must be submitted hard copy with the invoice and also electronically to the *Employer*.

For expenses:

- Evidence and details of the prior approval of the *Employer*.
- Copies of invoices and Subconsultant accounts to demonstrate that the amounts have been properly incurred.
- Calculations showing the amount due including

Appendix 3

Staff rates

Appendix 4

Incentive Schedule

1. Definitions

In this schedule, the following defined terms have the following meanings:

Contract Year	A twelve month period, commencing 1 April, save that the first Contract Year shall be the period from the Contract Date to and including 31 March 2010.
Final Earned Amount	Has the meaning set out in section 3.2 below.
Final Incentive Schedule	The final incentive schedule attached.
Final Maximum Amount	The sum of the Reserved Amounts.
Interim Actual Amount	Such amount of the Interim Maximum Amount as is allocated within the Interim Incentive Schedule to the achievement of a particular Performance Band for an Interim KPI.
Interim Earned Amount	Has the meaning set out in section 2.2 below.
Interim Incentive Schedule	The interim incentive schedule attached and subsequent interim incentive schedules agreed in accordance with this annexure.
Interim KPI	A key performance indicator set out in the Interim Incentive Schedule.
Interim Maximum Amount	An amount expressed in pounds sterling being the product of the anticipated Price for Services Provided to Date for the next Contract Year multiplied by the Interim Performance Incentive Percentage.
Interim Performance Incentive Percentage	15%
Omission Value	An amount equal to the Interim Performance Incentive Percentage applied to the anticipated Price for Services Provided to Date for omitted <i>services</i> as at the date of such omission.
Performance Band	A performance band set out in the Interim or Final Incentive Schedule.
Programme Completion	The <i>defects date</i> .
Programme KPI	A key performance indicator set out in the Final Incentive Schedule.
Reserved Amount	75% of the Interim Earned Amount in any Contract Year.

2. Interim Incentive Scheme

2.1 Fixing Interim KPIs

The Interim KPIs and associated Performance Bands and Interim Actual Amounts are to be aligned with the short-term aims for this contract and the Project.

The Interim KPIs for the first Contract Year are attached.

No later than 3 assessment intervals prior to the commencement of each subsequent Contract Year, the *Project Delivery Partner* submits a draft Interim Incentive Schedule to the *Employer* for review as part of its proposed Service Delivery Plan. The *Employer* reviews this and the Parties use all reasonable endeavours to agree the same before the final assessment date prior to commencement of such Contract Year. In the event of any failure to agree the Interim Incentive Schedule by such date, the *Employer* shall be entitled at its absolute discretion to determine the Interim Incentive Schedule for the Contract Year in question.

Subject to the remainder of this paragraph, once the Interim Incentive Schedule for a Contract Year (including without limitation the Interim Maximum Amount) has been agreed by the Parties or determined by the *Employer* as relevant, it may not be changed whether in consequence of a compensation event or otherwise. If the *Employer* omits *services* whose Omission Value exceeds 15% of the Interim Maximum Amount and such omission arises out of any failure by the *Project Delivery Partner*, the *Employer* may in its absolute discretion deduct such Omission Value from the current Interim Maximum Amount.

2.2 Ascertaining the applicable Interim Actual Amount

At the end of a Contract Year, the *Project Delivery Partner* reports his performance against the Interim KPIs to the *Employer*, stating which Performance Band he believes he has achieved in respect of each Interim KPI. The *Employer* reviews the *Project Delivery Partner's* report and either accepts or rejects the *Project Delivery Partner's* statements in respect of each Interim KPI. If the *Employer* rejects the *Project Delivery Partner's* statements in whole or in part then the *Employer* shall make his own assessment of the *Project Delivery Partner's* performance against those Interim KPI's where the *Employer* has rejected the *Project Delivery Partner's* statement and such assessment shall, subject to the *Project Delivery Partner's* rights under clause W.2, be used in the assessment of the Interim Earned Amount.

The "Interim Earned Amount" is the sum of the Interim Actual Amounts associated with the Performance Band achieved against each Interim KPI and:

If the Interim Earned Amount is a positive number:

- 25% of the Interim Earned Amount is an amount due to the *Project Delivery Partner* pursuant to clause 50.3. Invoices submitted by the *Project Delivery Partner* shall clearly identify the Interim Earned Amount and the calculation thereof; and
- The Reserved Amount is not an amount due but is included within the Final Maximum Amount.

Or, if the Interim Earned Amount is a negative number:

- the Interim Earned Amount is an amount due to the *Employer* as a debt and may be deducted from sums otherwise payable to the *Project Delivery Partner*; provided that the aggregate of such deductions in any Contract Year shall not exceed 10% of the anticipated Price for services Provided to Date for that Contract Year; and
- no amount is added to or deducted from the Final Maximum Amount.

3. Final Incentive Scheme

3.1 Fixed Programme KPIs

The Final Incentive Schedule is included within this Appendix. The *Employer* will only consider making changes to the Final Incentive Schedule where there is a major change to the Sponsor's Requirements that can be shown to materially affect the Programme KPIs and/or Performance Bands. In such circumstances the *Employer* shall propose changes to the Final Incentive Schedule in writing for agreement by the *Project Delivery Partner*. The *Project Delivery Partner* shall respond to any such proposal within a reasonable period and if the proposal is agreed such agreement shall be recorded in writing and the Final Incentive Schedule shall be amended accordingly.

3.2 Ascertaining the applicable Final Earned Amount

Upon Programme Completion the *Project Delivery Partner* reports his performance against the Programme KPIs to the *Employer*, stating which Performance Band he believes he has achieved in respect of each Programme KPI. The *Employer* reviews the *Project Delivery Partner's* report and either accepts or rejects the *Project Delivery Partner's* statements in respect of each Programme KPI. If the *Employer* rejects the *Project Delivery Partner's* statements in whole or in part then he shall make his own assessment of the *Project Delivery Partner's* performance against those Programme KPI's where the *Employer* has rejected the *Project Delivery Partner's* statement and such assessment shall, subject to the *Project Delivery Partner's* rights under clause W.2, be used in the assessment of the Final Earned Amount.

The "Final Earned Amount" is the sum of the percentages achieved in respect of each Programme KPI applied to the Final Maximum Amount.

The Final Earned Amount is an amount due to the *Project Delivery Partner* pursuant to clause 50.3. Invoices submitted by the *Project Delivery Partner* shall clearly identify the Final Earned Amount and the calculation thereof. If the Final Earned Amount is a negative amount, such amount is payable by the *Project Delivery Partner* to the *Employer* as a debt due and the *Employer* may deduct such amount from sums otherwise due to the *Project Delivery Partner*.

If the *Project Delivery Partner's* performance against a Programme KPI is capable of being determined prior to Programme Completion, the *Project Delivery Partner* may report his performance against such Programme KPI to the *Employer*, stating which Performance Band he believes he has achieved and requesting that the *Employer* makes a provisional determination of the Final Earned Amount in respect of that KPI. If the *Employer* in its absolute discretion agrees to make such a provisional determination and accepts the *Project Delivery Partner's* statements in respect of such KPI, the amount of such provisional determination is an amount due and payable to the *Project Delivery Partner* in accordance with the preceding paragraph. The *Project Delivery Partner* acknowledges that any payment of such provisional determination is without prejudice to the *Employer's* right to open up and re-determine such provisional determination following Programme Completion. In the event any such re-determination reduces the Final Earned Amount for such KPI, the amount of such reduction is payable to the *Employer* as a debt due and may be deducted from sums otherwise payable to the *Project Delivery Partner*.

The *Project Delivery Partner* is only entitled to be paid any Reserved Amount or part thereof in accordance with this section 3 and without limiting the foregoing is not entitled to any such payment following termination of its employment or this contract prior to Programme Completion. In the event the *Project Delivery Partner* has been paid a provisional sum in respect of the Final Incentive Schedule and its employment or this contract is terminated, such amount is payable to

the *Employer* as a debt due and may be deducted from sums otherwise payable to the *Project Delivery Partner*.

Interim Incentive Schedule

Interim Maximum Amount (aggregate of sums available for "Excellent" rating for all Interim KPIs) is: [£]

[Table to be inserted]

Final Incentive Schedule

[Table to be inserted]

Appendix 5

First Service Delivery Plan

[Each Service Delivery Plan will contain a "quality plan".]

Appendix 6

Third Party Agreements

Core Agreements

Project Development Agreement
Sponsors Agreement
TfL Shareholders Agreement

**Stakeholder and industry
partner agreements**

All agreements between CLRL and Programme stakeholders and industry partners, including Network Rail, London Underground, DLR, BAA, Berkeley Homes, Canary Wharf Group, Wood Wharf, City of London Corporation, utility companies and the ODA.

Appendix 7

Dispute Resolution

Part 1: Dispute Board Procedure

[TO BE ADVISED AND AGREED WITH PROJECT DELIVERY PARTNER. IN THE EVENT A PROCEDURE IS NOT AGREED PRIOR TO AWARD THE PROJECT DELIVERY PARTNER WILL INSTEAD HAVE AN OBLIGATION TO USE ALL REASONABLE ENDEAVOURS TO AGREE A DISPUTE BOARD PROCEDURE WITH THE EMPLOYER FOLLOWING AWARD.]

Part 2: Adjudication Panel

[TO BE ADVISED AND AGREED WITH PROJECT DELIVERY PARTNER]

1.5 The Project Delivery Partner acknowledges that all fees and expenses properly due to the Project Delivery Partner under the Appointment up to the date of this Agreement have been paid by the Employer.

1.6 The New Employer undertakes to perform the Appointment and to be bound by its terms in every way as if the New Employer were, and had been from the inception, a party to the Appointment in lieu of the Employer.

2. Proper Law and Jurisdiction

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

3. Contracts (Rights of Third Parties) Act 1999

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

Executed as a Deed by)
[])
acting by: -)

Director

Director/Secretary

Executed as a Deed by)
[])
acting by: -)

Director

Director/Secretary

Executed as a Deed by)
[])
acting by: -)

Director

Director/Secretary

Appendix 9
Forms of collateral warranty⁴

⁴ Forms of warranty to be included once collateral warranty requirements finalised.



Crossrail

