



Execution Version

Project Agreement

Transport for London

and

RiverLinx Limited

relating to the design, construction,
finance, maintenance and operation of
the Silvertown Tunnel

2019

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BETWEEN:

- (1) **TRANSPORT FOR LONDON** of 5 Endeavour Square, Stratford, London E20 1JN ("**TfL**"); and
 - (2) **RIVERLINX LIMITED** (company number 12164246) whose registered office is at 16 Hockley Court, 2401 Stratford Road, Hockley Heath, Solihull, B94 6NW ("**Project Co**"),
- each a "**Party**" and together the "**Parties**".

RECITALS

- (A) TfL wishes to engage a contractor to design, construct, finance, operate and maintain a road tunnel and associated connecting roads and facilities alongside the Blackwall Tunnel in London, connecting the Greenwich Peninsula and the Royal Docks in London.
- (B) TfL carried out a tender competition for the Project which commenced with the publication of a contract notice on 8 October 2016.
- (C) As a result of the competition referred to in recital (B), TfL has awarded the contract to Project Co and this Agreement sets out the terms and conditions upon which Project Co is appointed to deliver the Project.

THE PARTIES AGREE AS FOLLOWS:

PART I – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context or express provisions of this Agreement otherwise require, capitalised words and expressions used in this Agreement shall have the meanings given to them in Schedule 1 (*Definitions and Interpretation*).

1.2 Interpretation

In this Agreement, except where the context or the express provisions of this Agreement otherwise require:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) a reference in this Agreement to any clause, sub-clause, paragraph, Part, Schedule or Annex is, except where it is expressly stated to the contrary in this Agreement, a reference to such clause, sub-clause, paragraph, Part, Schedule or Annex of this Agreement;
- (d) a reference in this Agreement to any:
 - (i) paragraph is, except where it is expressly stated to the contrary in this Agreement, a reference to such paragraph of the Part, Annex or Schedule of this Agreement in which it is contained; and

- (ii) Part or Annex is, except where it is expressly stated to the contrary in this Agreement, a reference to such Part or Annex of the Schedule of this Agreement in which it is contained;
- (e) save where expressly stated to the contrary in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- (f) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- (g) references to any documents or DVDs being "in the agreed form" means such documents or DVDs have been initialled by or on behalf of each of the Parties for the purpose of identification;
- (h) a reference to a person includes firms, partnerships and corporations;
- (i) any reference to a public organisation or representative shall be deemed to include reference to any successor to such public organisation or representative or any organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative in whole or in part. References to other persons shall include their successors and permitted assignees or transferees;
- (j) headings and sub-headings are for convenience of reference only;
- (k) any obligation on Project Co to do or not to do anything shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by any Project Co Related Party and acts or omissions of any Project Co Related Party shall be deemed to be acts or omissions of Project Co for the purposes of this Agreement;
- (l) the words "include" and "including" are to be construed as meaning "including, without limitation";
- (m) references to "writing" shall include any mode of reproducing words in any legible form;
- (n) not used;
- (o) unless expressly stated otherwise, all drawings referred to in the Schedules shall be references to the drawing of the same name on the DVD entitled "Drawings" in the agreed form and signed by the Parties on the Effective Date; and
- (p) where either Party is:
 - (i) required to issue a notice or response to the other Party pursuant to this Agreement; and
 - (ii) no express time limit for issuing such notice or response is specified,
 then the relevant Party shall issue such notice or response to the other Party as soon as reasonably practicable.

1.3 Precedence

- (a) In the case of any inconsistency or discrepancy between the provisions of the body of this Agreement and the provisions of the body of the Schedules, the body of this Agreement shall take precedence.
- (b) In the case of any inconsistency or discrepancy between the Schedules, the conflict should be resolved according to the following descending order of priority:
 - (i) Schedule 1 (*Definitions and Interpretation*);
 - (ii) Schedule 20 (*Payment Mechanism*);
 - (iii) the Schedules other than Schedule 1 (*Definitions and Interpretation*), Schedule 20 (*Payment Mechanism*), Part 3 (*Project Co Works Proposals*) of Schedule 10 (*Design and Construction Requirements*) and Part 5 (*Project Co O&M Proposals*) of Schedule 18 (*Operation and Maintenance Requirements*); and
 - (iv) Part 3 (*Project Co Works Proposals*) of Schedule 10 (*Design and Construction Requirements*) and Part 5 (*Project Co O&M Proposals*) of Schedule 18 (*Operation and Maintenance Requirements*).
- (c) To the extent that the inconsistency or discrepancy has not been resolved pursuant to clause 1.3(a) and clause 1.3(b), Project Co may notify TfL who shall promptly issue an instruction to Project Co detailing which one (1) or more of the provisions the subject of the inconsistency or discrepancy Project Co should comply with to resolve such inconsistency or discrepancy.
- (d) Project Co shall comply, at its own cost, with any instructions issued by TfL pursuant to clause 1.3(c).

1.4 **Approval**

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of TfL, nor the failure of any of the same, shall unless otherwise expressly stated in this Agreement, relieve Project Co of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.5 **Indexation**

Except as otherwise specified in Schedule 20 (*Payment Mechanism*) or elsewhere in this Agreement, amounts stated or expressed in this Agreement to be "Indexed" shall be references to such amounts at the Indexation Base Month prices multiplied by:

$$\frac{RPI_y}{RPI_x}$$

where:

RPI_y means the published RPI figure for the month of July published in the calendar year preceding the calendar year in which the payment is required or calculation is made; and

RPI_x means [REDACTED]

1.6 **Housing Grants, Construction and Regeneration Act**

- (a) This Agreement is entered into under a project applying similar principles to PFI and is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of article 4 of the Construction Contracts (England and Wales) Exclusion Order 1998.
- (b) Project Co acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights or obligations under any Project Document.

PART II – GENERAL

2. DURATION OF AGREEMENT

This Agreement shall take effect on the Effective Date and (subject to the provisions for early termination set out in this Agreement) shall continue until the Expiry Date.

3. DOCUMENTATION

3.1 Ancillary Documents

(a) Project Co shall perform its obligations under and observe all of the provisions of the Ancillary Documents and shall:

- (i) not terminate or agree to the termination of all or part of any Ancillary Document;
- (ii) not make or agree to any material variation of any Ancillary Document;
- (iii) not in any material respect depart from its obligations under any Ancillary Document (or waive or allow to lapse any rights it may have under any Ancillary Document in a material respect to the extent such waiver or lapsing could have an adverse effect on the ability of Project Co to perform its obligations, the Project or the rights of TfL);
- (iv) ensure that no counterparty to an Ancillary Document in any material respect departs from its obligations under any Ancillary Document (or waives or allows to lapse any rights they may have under any Ancillary Document in a material respect to the extent such waiver or lapsing could have an adverse effect on the ability of Project Co to perform its obligations, the Project or the rights of TfL);
- (v) not enter into (or permit the entry into by any other person of) any new Ancillary Document or any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document;
- (vi) not permit the assignment or transfer of any Ancillary Document other than in accordance with the Funders' Direct Agreement; and
- (vii) ensure that the Ancillary Documents allow Project Co and TfL to disclose such documents as required by the Transferred Third Party Functions, Retained Third Party Functions (as applicable) or otherwise by the Third Party Agreements,

unless and to the extent that the proposed course of action (and any relevant documentation) has been submitted to TfL for review and there has been no objection made by TfL within thirty (30) Working Days of receipt by TfL of such submission, or such shorter period as may be agreed by the Parties.

(b) Project Co acknowledges and agrees that TfL is entitled to refuse to give its approval under clause 3.1(a) in circumstances where the proposed course of action would:

- (i) be inconsistent with:
 - (A) TfL's statutory duties; or
 - (B) any provision of this Agreement;

- (ii) be in breach of, not be in accordance with or otherwise not comply with, any Applicable Requirements;
- (iii) on the balance of probabilities, adversely affect Project Co's ability to perform its obligations under this Agreement;
- (iv) on the balance of probabilities, adversely affect TfL's ability to perform its obligations under this Agreement;
- (v) be likely to adversely impact on TfL's public image;
- (vi) be likely to adversely impact on the Project;
- (vii) on the balance of probabilities, adversely affect any right of TfL under this Agreement or its ability to enforce any such right; or
- (viii) not be in accordance with Good Industry Practice.

3.2 **Financing Agreements**

Without prejudice to the provisions of clause 3.3 (*TfL liabilities*), clause 3.4 (*Provision of copies*) and clause 28 (*Refinancing*), Project Co shall not, without the prior written consent of TfL, enter into new Financing Agreements or terminate, amend, waive its rights under or otherwise deal with the Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of Project Co to perform its obligations under this Agreement or the Project Documents.

3.3 **TfL liabilities**

- (a) No amendment, waiver or exercise of a right under any Financing Agreement shall have the effect of increasing TfL's liabilities on early termination of this Agreement unless:
 - (i) Project Co has obtained the prior written consent of TfL specifically to such increased liability for the purposes of this clause 3.3 (*TfL liabilities*); or
 - (ii) it is a Permitted Borrowing.
- (b) In the event of any conflict between the provisions of this clause 3.3 (*TfL liabilities*) and any other provision of this Agreement, the provisions of this clause 3.3 (*TfL liabilities*) shall prevail.

3.4 **Provision of copies**

Without prejudice to the other provisions of this clause 3 (*Documentation*), if at any time:

- (a) a material amendment is made to any Ancillary Document or Financing Agreement;
- (b) Project Co or any Sub-Contractor enters into a new Ancillary Document or Financing Agreement (or any agreement which affects the interpretation or application of any Ancillary Document or Financing Agreement); or
- (c) Project Co or any Sub-Contractor is granted a waiver or release of any material obligations under any Ancillary Document or Financing Agreement,

then Project Co shall deliver to TfL a conformed copy of each such amendment, waiver or agreement or (so far as such amendment or agreement is not in writing) a true and complete record thereof in writing within ten (10) Working Days of the date of its

execution or creation (as the case may be), certified as a true copy by an officer of Project Co who is authorised to sign documents on behalf of Project Co.

3.5 **Collateral Warranties**

Without prejudice to clause 17.1(m) or the Transferred Third Party Functions, Project Co shall:

- (a) deliver an executed Collateral Warranty from the D&C Contractor to TfL on the Effective Date;
- (b) deliver an executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL by the date which is thirteen (13) months from the Effective Date; and
- (c) without prejudice to clause 3.5(b), not engage:
 - (i) any O&M Contractor;
 - (ii) any new D&C Contractor; or
 - (iii) any replacement or supplemental Key Tier 2 Sub-Contractor unless and until such person has delivered to TfL an executed Collateral Warranty.

3.6 **Surveys**

Prior to or on the Effective Date, TfL shall:

- (a) provide a copy of the Relevant Surveys to Project Co; and
- (b) ensure that:
 - (i) collateral warranties in relation to the Relevant Surveys conducted by 40Seven Limited and WSP; and
 - (ii) a deed of assignment in relation to the Relevant Survey conducted by Soil Engineering Geoservices Limited,are provided to Project Co.

3.7 **Management Systems**

Project Co shall comply with Schedule 8 (*Management Systems*).

3.8 **Key Tier 2 Sub-Contractor**

- (a) In the event that Project Co fails to deliver an executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL by the date which is thirteen (13) months following the Effective Date pursuant to clause 3.5(b), Project Co shall pay to TfL by way of liquidated and ascertained damages [REDACTED] (Indexed) for each complete week or part of a week that Project Co continues to fail to deliver such executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL.
- (b) In the event that Project Co fails to deliver an executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL by the date which is sixty (60) weeks following the Effective Date, TfL may write to notify the Security Agent:
 - (i) that Project Co has breached clause 3.5(b); and

- (ii) that a Project Co Default will arise pursuant to clause 34.1(v) (*Project Co Default*) if Project Co fails to deliver an executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL by the date which is sixty one (61) weeks following the Effective Date.

4. **THE PROJECT**

4.1 **Design, construction, financing, operation and maintenance**

Subject to and in accordance with the provisions of this Agreement, Project Co shall:

- (a) carry out and complete the Works;
- (b) perform the Services;
- (c) finance the activities referred to in clause 4.1(a) and clause 4.1(b); and
- (d) perform all of its obligations under this Agreement,

at its own cost and risk without recourse to TfL (other than as expressly provided in this Agreement).

4.2 **General obligations**

Project Co shall perform its obligations pursuant to this Agreement at all times:

- (a) in an efficient, effective and safe manner;
- (b) in accordance with:
 - (i) Good Industry Practice; and
 - (ii) the Project Documents;
- (c) in a manner that is not likely to be injurious to health or to cause damage to property;
- (d) in such manner as to enable TfL to discharge its statutory duties and functions, the Retained DCO Functions and the Retained Third Party Functions in each case in relation to the Project;
- (e) having regard to the image and reputation of TfL, including in relation to its duties as a Highway Authority, Street Authority or Traffic Authority; and
- (f) in compliance with:
 - (i) the DCO and any Further Planning Permissions;
 - (ii) the Third Party Agreements; and
 - (iii) all Applicable Requirements.

4.3 **Project Co due diligence**

On the Effective Date, Project Co hereby confirms that it has:

- (a) carefully studied the requirements of this Agreement, the Project Documents, the Third Party Agreements, the Disclosed Data and the DCO and is entirely familiar with the contents thereof;

- (b) satisfied itself as to the nature and extent of the obligations and risks assumed by it under this Agreement and the Project Documents;
- (c) inspected and examined to its satisfaction the Project Land and the surroundings and where applicable any existing structures or works on, over or under the Project Land;
- (d) gathered all information necessary to perform its obligations under this Agreement (including the Transferred DCO Functions and the Transferred Third Party Functions) and the Project Documents, including having satisfied itself as to:
 - (i) the nature of the climatic, hydrological, ecological, environmental, geotechnical, geological conditions (including in relation to riverbeds) and general conditions of the Project Land;
 - (ii) the nature of the ground sub-surface conditions and subsoil within the Project Land;
 - (iii) the form and nature of the Project Land;
 - (iv) the risk of injury or damage to property adjacent to or affecting the Project Land or to occupiers of such property;
 - (v) the nature of the materials (whether natural or otherwise) to be excavated from the Project Land;
 - (vi) the nature of the design, work, plant and materials necessary for the Project;
 - (vii) the location and physical condition of all Project Land and all information relating to Contamination, Historical Remains, Unexploded Ordnance and Utilities;
 - (viii) the means of communication to, and access to and through the Project Land, the accommodation it may require and the adequacy of the rights of access;
 - (ix) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any Interested Parties; and
 - (x) the risks of interference by Protestors or Trespassers.

4.4 **No warranty by TfL**

TfL makes no representation or warranty as to the accuracy or otherwise of the Disclosed Data, any information regarding the land referred to in Part 1 (*Land available for the Project*) of Schedule 4 (*Land Requirements*), any other information provided to Project Co by or on behalf of TfL, the TfL Representative or its contractors or advisers or any other information contained or referred to in this Agreement and, subject to Schedule 30 (Ground Conditions), TfL shall have no liability to Project Co in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in any such information.

4.5 **Environmental Requirements**

Without prejudice to the other obligations in this Agreement, Project Co shall comply with Schedule 12 (*Environmental Requirements*).

4.6 **No liability to Project Co**

Except in respect of any liability which cannot be excluded as a matter of law and except as expressly stated in this Agreement, Project Co shall not be entitled to make any claim against TfL (nor any TfL Related Party) in contract, tort (including negligence or breach of statutory duty), statute or otherwise or to seek any relief or remedy of any nature nor shall Project Co be relieved from any risks or obligations imposed on or undertaken by it under the Project Documents on the grounds:

- (a) of any misunderstanding or misapprehension in respect of the matters referred to in clause 13.10 (*Ground conditions*), clause 13.12 (*Contamination*), clause 13.15 (*Historical Remains*) or clause 13.16 (*Unexploded Ordnance*);
- (b) that incorrect or insufficient information was given to Project Co by any person whether or not in the employment of TfL, whether prior to or following the Effective Date;
- (c) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in any Disclosed Data or any information contained in or referred to in this Agreement;
- (d) that any information contained in the Relevant Surveys is incorrect or insufficient or that the creditworthiness or identity of the provider of any Relevant Survey is in any way inadequate; or
- (e) that, at the Effective Date, Project Co did not or could not foresee any matter which may affect or has affected the ability of Project Co to comply with its obligations under the Project Documents.

4.7 **Public use**

Save where expressly permitted or required under this Agreement:

- (a) Project Co shall keep the Project Roads open for public use from the Permit to Use Date until the End Date; and
- (b) Project Co shall carry out the Project so as not to interfere unnecessarily with:
 - (i) the convenience of Users;
 - (ii) the convenience of other members of the public; or
 - (iii) the access to, use and occupation of public or private roads or footpaths, footways, waterways, cycle ways or bridleways, whether under the control or in the possession of TfL or any other person.

4.8 **TfL Representative**

- (a) The TfL Representative shall be [REDACTED] or such other person appointed by TfL pursuant to this Agreement.
- (b) The Parties acknowledge and agree that:
 - (i) subject to clause 4.8(b)(ii), the TfL Representative has authority to exercise the functions of TfL in relation to the administration of this Agreement and to exercise any right of TfL under this Agreement on behalf of TfL; and
 - (ii) the TfL Representative shall not have authority to:

- (A) replace the TfL Representative in accordance with clause 4.8(c);
 - (B) issue notices on behalf of TfL under clause 46.1 (*TfL step-in*) or take any Required Action in accordance with clause 46.1 (*TfL step-in*);
 - (C) exercise any of TfL's statutory powers;
 - (D) give consent to the settlement of any action in accordance with clause 30.2(c)(iv) or clause 30.2(d);
 - (E) terminate this Agreement;
 - (F) refer any Dispute to the Dispute Resolution Procedure;
 - (G) waive a term or provision of or vary this Agreement in accordance with clause 51.4 (*Waiver and variation*);
 - (H) make any drawdown from the TfL Insurance Account;
 - (I) vary the TfL UC Installation Period under clause 14.2(k);
 - (J) determine the O&M Area pursuant to clause 7.15 (*O&M Area*); and
 - (K) give consent to any refinancing pursuant to Schedule 26 (*Refinancing*).
- (c) TfL may at any time and from time to time by notice to Project Co terminate the appointment of any TfL Representative or appoint a substitute TfL Representative. TfL shall (as far as practicable) consult with Project Co prior to the appointment of any substitute TfL Representative taking account of the need for liaison and continuity in respect of the Project. Any such notice shall specify the date on which such termination or substitution shall have effect, which date shall (other than in the case of an Emergency) be such as will not cause significant inconvenience to Project Co in the execution of its obligations under this Agreement.
- (d) The TfL Representative may appoint a deputy to carry out any of the functions which it is authorised to perform in accordance with clause 4.8(b)(i) and the TfL Representative shall notify Project Co of the identity of any such deputy from time to time.
- (e) During any period (if any) when there is no TfL Representative (or when TfL's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement), TfL shall carry out the functions which would otherwise be performed by the TfL Representative.
- (f) Except as expressly stated in this Agreement, the TfL Representative shall have no authority to relieve Project Co of any of its obligations under this Agreement.
- (g) Except as notified by TfL to Project Co, Project Co shall be entitled to treat any act of the TfL Representative which is authorised by this Agreement as being expressly authorised by TfL, and Project Co shall not be required to determine whether an express authority has in fact been given.
- (h) Any decision by the TfL Representative is specific to the circumstances to which it relates and shall not be construed as binding on, or limiting any other decision to be made by, TfL or the TfL Representative whether in the same or similar circumstances or otherwise.

- (i) TfL may at any time appoint more than one (1) TfL Representative, provided TfL provides written confirmation to Project Co of the extent of each representative's authority.
- (j) TfL may at any time by notice to Project Co modify the authority and functions of the TfL Representative as set out in this clause 4.8 (*TfL Representative*).

4.9 **Project Co Representative**

- (a) The Project Co Representative shall be [REDACTED] or such other person appointed pursuant to this Agreement.
- (b) Project Co shall ensure that the Project Co Representative is competent and qualified to act in such role in connection with this Agreement.
- (c) The Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Agreement and TfL shall be entitled to treat any act of the Project Co Representative in connection with this Agreement as being expressly authorised by Project Co, and TfL shall not be required to determine whether any express authority has in fact been given.
- (d) Promptly upon the Project Co Representative ceasing to act in the case of resignation, death or serious illness and prior to termination of the appointment in all other cases, Project Co shall by notice to TfL appoint a substitute Project Co Representative.
- (e) Any appointment of a replacement Project Co Representative shall be subject to the approval of TfL (such approval not to be unreasonably withheld or delayed).
- (f) The Project Co Representative may appoint a deputy to carry out any of the functions which it is authorised to perform in accordance with clause 4.9(c) and Project Co shall notify TfL of the identity of any such deputy.

PART III – LAND, PLANNING AND DUTIES

5. PLANNING

5.1 Development consent order

- (a) Project Co:
 - (i) hereby confirms that it has examined the DCO; and
 - (ii) acknowledges and accepts the adequacy of the DCO for the purposes of performing its obligations pursuant to this Agreement and the Project Documents.
- (b) Project Co shall not, and shall ensure that each Project Co Related Party shall not, make any application to vary or modify the DCO without the prior written consent of TfL (which may be given or withheld in TfL's absolute discretion).

5.2 Transferred DCO Functions

- (a) TfL hereby:
 - (i) grants to Project Co the right to exercise; and
 - (ii) transfers to Project Co the obligation to discharge (and Project Co shall discharge),

(as applicable) the Transferred DCO Functions.
- (b) The Parties acknowledge and agree that, as between TfL and Project Co, all Transferred DCO Functions shall be exclusively exercised by and transferred to Project Co (which for the avoidance of doubt shall not restrict Project Co's ability to sub-contract the exercise of Transferred DCO Functions) unless and until a notice is given by TfL under clause 5.2(c) in relation to a Transferred DCO Function, after which date the relevant Transferred DCO Function may be exercised concurrently by TfL and Project Co.
- (c) TfL may, but is not obliged to, exercise or discharge any of the Transferred DCO Functions concurrently with Project Co provided it gives prior written notice to Project Co of its intention to do so (such notice only being required once in relation to each Transferred DCO Function). To the extent that any such concurrent exercise or discharge of any Transferred DCO Function adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
 - (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or
 - (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*),

unless and to the extent that the concurrent exercise or discharge of any Transferred DCO Function is as a result of a breach by Project Co of its obligations under this Agreement.
- (d) Project Co acknowledges and agrees that in exercising and discharging the Transferred DCO Functions, Project Co is subject to the same restrictions,

conditions, procedures, rules of interpretation, liabilities and obligations as would apply to TfL under and in relation to the DCO if TfL were to exercise or discharge those functions.

- (e) If a Review Submission relates to a Transferred DCO Function or is otherwise required by this Agreement to comply with a Transferred DCO Function, Project Co shall submit to TfL a DCO Statement of Conformity as part of such Review Submission in relation to the relevant Transferred DCO Functions.
- (f) In addition to the DCO Statements of Conformity required pursuant to clause 5.2(e), Project Co shall:
 - (i) at its own cost and expense, keep TfL fully informed of the progress and status of exercising and discharging the Transferred DCO Functions and any potential issues regarding exercising and discharging any Transferred DCO Function; and
 - (ii) submit to TfL a Monthly DCO Statement of Conformity within five (5) Working Days of the end of each TfL Reporting Period during the period from the Effective Date until the Permit to Use Date (unless agreed otherwise by TfL).
- (g) If a Review Submission relates to the design and construction of any aspect of the Works or is otherwise relevant to the Design Principles, Project Co shall submit to TfL a Design Statement of Conformity with each such Review Submission.
- (h) Project Co acknowledges and agrees that, for the duration of the Agreement Period:
 - (i) Project Co shall be an "authorised person" (as that term is defined in the DCO) and shall perform the obligations of an "authorised person" for the purposes of the following provisions of the DCO in relation to the Project Roads:
 - (A) Article 44(1), Article 44(2), Article 44(3) and Article 44(4) (*Removal of motor vehicles*);
 - (B) Article 45(1), Article 45(2) and Article 45(8) (*Removal of other obstructions*);
 - (C) Article 48(5) (*Byelaws relating to the Silvertown Tunnel area and the Blackwall Tunnel Area*);
 - (D) Article 49(1), Article 49(2), Article 49(6) and Article 49(7) (*Fixed penalty notices*); and
 - (E) paragraph (6)(2), paragraph 7(1), paragraph 7(2), paragraph 7(6), paragraph 7(11), paragraph 7(12), paragraph 7(13), paragraph 7(16), paragraph 7(17), paragraph 8(2)(a), paragraph 8(3), paragraph 8(6), paragraph 9(1), paragraph 9(2), paragraph 10(1), paragraph 10(2), paragraph 10(3), paragraph 11(1), paragraph 11(2) and paragraph 12 of Schedule 9 (*Blackwall and Silvertown Tunnels Byelaws*);
 - (ii) Project Co shall be a "custodian" (as that term is defined in the DCO) and shall perform the obligations of a "custodian" for the purposes of the following provisions of the DCO in relation to the Project Roads:

- (A) Article 44(4), Article 44(5), Article 44(6), Article 44(7), Article 44(8), Article 44(9), Article 44(10), Article 44(11), Article 44(12), Article 44(14), Article 44(15), Article 44(16), Article 44(19), Article 44(20), and Article 44(21) (*Removal of motor vehicles*); and
- (B) Article 45(2), Article 45(3), Article 45(4), Article 45(5), Article 45(6), Article 45(7), and Article 45(8) (*Removal of other obstructions*); and
- (iii) Project Co shall not be entitled to treat TfL as a "custodian" (as that term is defined in the DCO) for the purposes of the articles of the DCO listed in clause 5.2(h)(ii) and shall not deliver any vehicles or loads to TfL pursuant to Article 44(4) or Article 45(2) of the DCO.
- (i) Where Project Co is designated as the "authorised person" and/or "custodian" (as the case may be) under clause 5.2(h), Project Co shall be subject to and shall comply with any ancillary or associated conditions, procedures, restrictions, rules of interpretation or limitations in the DCO as they apply to the exercise or discharge of the functions of the "authorised person" or "custodian" (as the case may be).
- (j) Project Co shall, within thirty (30) days of receipt, pay to TfL all amounts received by Project Co as a result of Project Co issuing fixed penalty notices in its capacity as an "authorised person" pursuant to Article 49(1), Article 49(2), Article 49(6) and Article 49(7) (*Fixed penalty notices*) of the DCO.
- (k) The Parties acknowledge and agree that TfL will retain the right, pursuant to Article 52(1) and Article 52(4) of the DCO (*Restrictions on other works in the river Thames*), to consent to the PLA carrying out certain activities within part of the river Thames or granting of river works licences and dredging licences to third parties.
- (l) In relation to any application for consent under Article 52(1) or Article 52(4) (*Restrictions on other works in the river Thames*) of the DCO, TfL shall not provide consent to the PLA without the prior written consent of Project Co (which consent must not be unreasonably withheld or delayed).
- (m) TfL acknowledges and agrees that Project Co's consent pursuant to clause 5.2(l) may be withheld until the PLA or the relevant licence applicant (as applicable) has entered into an asset protection agreement with Project Co which is reasonably acceptable to Project Co in relation to the protection of the Project and/or Project Co's ability to perform its obligations under this Agreement, which may include (amongst other things):
 - (i) requirements relating to insurance;
 - (ii) indemnities from the PLA or the licence applicant (as applicable) in relation to the impact of the activities to be carried out or otherwise contemplated by the relevant licence;
 - (iii) provisions allowing for the unconditional transfer of the asset protection agreement to TfL;
 - (iv) obligations for safeguarding the Works and/or Project Facilities;
 - (v) key points of contact;
 - (vi) provisions relating to the review and ability for Project Co and TfL to comment in relation to the design and construction documents (if any) (including, but not limited to, risk assessments, method statements, design

5.4 Further Planning Permissions

- (a) Subject to clause 5.4(b) and without prejudice to clause 6 (*Consents*), Project Co shall obtain at its own cost and risk any further planning permissions which may be required for the performance of its obligations pursuant to this Agreement, including pursuant to the Transferred Third Party Functions or the Transferred DCO Functions (a "**Further Planning Permission**").
- (b) Project Co:
 - (i) shall not, and shall ensure that each Project Co Related Party shall not, make any application to obtain any Further Planning Permissions without the prior written consent of TfL (such consent not to be unreasonably withheld or delayed); and
 - (ii) shall not apply for any Further Planning Permission that may prejudice TfL's rights and obligations under this Agreement.
- (c) If Project Co seeks to obtain any Further Planning Permissions pursuant to clause 5.4(a), Project Co shall:
 - (i) prepare and deliver to TfL for approval all draft applications not less than sixty (60) Working Days prior to submission of such original (or any amended) application to the relevant planning authority, and TfL shall be entitled but not obliged to comment on each such application (without any responsibility on the part of TfL); and
 - (ii) to the extent that TfL has commented on an application pursuant to clause 5.4(c)(i), take account of any such comments in preparing and finalising the relevant application.
- (d) If, on the date that the application for any Further Planning Permission is due to be submitted, Project Co has either not received comments from TfL pursuant to clause 5.4(c)(i), Project Co has received confirmation from TfL that it has no comments on the application for such Further Planning Permission or Project Co has complied with clause 5.4(c)(ii), Project Co shall:
 - (i) submit such application to the relevant planning authority and shall ensure that all:
 - (A) statutory requirements concerning such application are complied with;
 - (B) notices required to be given by Project Co are duly given; and
 - (C) fees (whether statutory or otherwise) payable in connection with such application are duly paid;
 - (ii) take all steps necessary to secure the approval of the relevant planning authority in relation to any application as expeditiously as reasonably possible and in any event so as not to delay the issue of the Permit to Use;
 - (iii) keep TfL fully informed of the progress of each application or any appeal made pursuant to clause 5.4(d)(v), including details of costs and potential delays;
 - (iv) notify TfL of any grant or refusal of an application by the relevant planning authority within five (5) Working Days of Project Co having received

written notification thereof and provide Tfl with a copy of each such grant or refusal;

- (v) in the event of a refusal of an application or the non-determination thereof, take such steps as a reasonable and prudent contractor would take in order to secure such approval as will enable Project Co to comply with its obligations under this Agreement; and
 - (vi) not be entitled to any relief or compensation pursuant to this Agreement as a result of the grant, refusal or delay of any such application or as a result of any failure to obtain any Further Planning Permission for whatever reason.
- (e) Subject to Tfl's responsibility to act in accordance with its statutory duties, Tfl shall provide such reasonable assistance as may be reasonably requested by Project Co in relation to any applications for Further Planning Permissions under clause 5.4(a) and consented to pursuant to clause 5.4(b) (provided that Tfl shall not be required to incur or expend any material costs or expenses in providing such assistance).
- (f) To the extent any Further Planning Permission is granted and imposes any conditions or limitations on Tfl, Project Co shall be liable to reimburse Tfl for any cost incurred by Tfl in complying with such conditions or limitations.

5.5 **Indemnity**

Project Co shall be responsible for, and shall release and indemnify Tfl and any Tfl Related Party from and against, all Losses suffered or incurred which arise from:

- (a) any breach by Project Co or any Project Co Related Party of any Transferred DCO Function, Transferred Third Party Function or Further Planning Permission; or
- (b) any breach by Tfl or any Tfl Related Party of the DCO, any Third Party Agreement or any Further Planning Permission caused by Project Co or any Project Co Related Party.

5.6 **Not used**

5.7 **Third Party Developments**

- (a) Without prejudice to the provisions of any asset protection agreement entered into pursuant to clause 5.8(d), Project Co shall assume at its own cost and expense all the risks and any adverse impact on the Project arising from Third Party Developments.
- (b) Not used.
- (c) Without prejudice to the generality of clause 5.7(a), Project Co acknowledges that it has satisfied itself as to, and made full provision for, any Third Party Developments known as at the Bid Date and will comply with all relevant Third Party Agreements in relation to the interface with such Third Party Developments.
- (d) Subject to the restriction in clause 5.8(g), Project Co shall, for the Agreement Period, monitor and take all such actions as a prudent contractor would take in order to physically safeguard the Project against the impact or likely impact of any Third Party Development, including taking any action required by any Applicable Requirements or the DCO.

- (e) Where Project Co becomes aware of any Third Party Development or proposed Third Party Development, Project Co shall notify Tfl of the relevant Third Party Development as soon as reasonably possible.
- (f) In the event that Project Co considers that a Third Party Development will or may adversely affect the Project and/or Project Co's ability to perform its obligations under this Agreement, Project Co shall:
 - (i) promptly notify Tfl, including providing written details of those adverse effects; and
 - (ii) take into account any requests of Tfl regarding the nature of any actions taken pursuant to clause 5.7(d).
- (g) Subject to clause 5.8 (*Responses to Third Party Developments*), Project Co shall, upon request by Tfl, consider and provide advice and recommendations to Tfl in respect of any Third Party Development proposals or planning applications.
- (h) In respect of any Third Party Development proposals or planning applications and without prejudice to the generality of clause 5.7(f), Project Co shall (within such reasonable period specified by Tfl):
 - (i) review the development proposals (including any of the documents referred to in clause 5.8(j) and related papers);
 - (ii) submit to Tfl preliminary, reasoned advice describing in detail the safety and traffic implications (if any) and recommended actions and conditions that such proposals might have in relation to the Project;
 - (iii) advise Tfl whether Project Co intends to undertake any further action (including the commissioning of any further investigations or studies);
 - (iv) provide to Tfl any draft submissions which Project Co proposes Tfl submits as part of any response to any relevant planning application and any other application referred to in clause 5.8(j); and
 - (v) where the proposed development is within the Restricted Zone, provide to Tfl any proposed requirements for an asset protection agreement.

5.8 Responses to Third Party Developments

- (a) Project Co and Tfl acknowledge and agree that, subject to clause 5.8(h), Tfl shall have the sole conduct of any and all representations of any kind in respect of any Third Party Development (including any of the actions listed in clause 5.8(b)), and will have the benefit of restrictive covenants in relation to the Restricted Zone.
- (b) In relation to any Third Party Development in the Restricted Zone, where Tfl provides consent under the restrictive covenant to any development or otherwise provides the relevant third party developer with a release or waiver from the restrictions of the restrictive covenants without the prior written consent of Project Co (subject to clause 5.8(l), such consent not to be unreasonably withheld or delayed), then to the extent that any such consent, release or waiver adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
 - (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or

- (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*).
- (c) In relation to any Third Party Development on land owned by TfL which may adversely affect the Project and/or Project Co's ability to perform its obligations under this Agreement, where TfL provides consent to any development without the prior written consent of Project Co (subject to clause 5.8(l), such consent not to be unreasonably withheld or delayed), then to the extent that any such consent adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
 - (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or
 - (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*).
- (d) Subject to clause 5.8(m), TfL acknowledges and agrees that Project Co's consent pursuant to clause 5.8(b) and clause 5.8(c) may be withheld until the relevant third party developer has entered into an asset protection agreement with Project Co on terms which:
 - (i) are reasonably acceptable to Project Co in relation to the protection of the Project and/or Project Co's ability to perform its obligations under this Agreement; and
 - (ii) have been approved by TfL (acting reasonably).
- (e) TfL and Project Co acknowledge and agree that any asset protection agreement referred to in clause 5.8(d) may include, amongst other things:
 - (i) requirements relating to insurance;
 - (ii) indemnities from the third party in relation to the impact of the development;
 - (iii) obligations for safeguarding the Works and/or Project Facilities;
 - (iv) key points of contact;
 - (v) provisions relating to the review and ability for TfL and Project Co to comment in relation to the design and construction documents (including, but not limited to, risk assessments, method statements, design risk assessments, conceptual design statements and detailed design submissions);
 - (vi) details of the rates and estimated costs to the third party;
 - (vii) provisions allowing for the unconditional transfer of the asset protection agreement to TfL; and
 - (viii) details of technical standards to apply to the Third Party Development works.

- (f) Project Co shall use reasonable endeavours to reach agreement on the terms of any asset protection agreement with any proposed developer and such reasonable endeavours shall include (amongst other actions):
 - (i) providing a draft asset protection agreement to the proposed developer within twenty (20) Working Days of a request;
 - (ii) acting reasonably when considering any comments made by the proposed developer;
 - (iii) meeting with the proposed developer promptly and for a reasonable period to discuss any comments; and
 - (iv) when considering the reasonableness of the proposed developer's comments on the draft asset protection agreement, taking into account the provisions of similar asset protection agreements entered into by other transport companies or authorities who are seeking to ensure the protection of key transport infrastructure.
- (g) Project Co (which for the purposes of clause 1.2(k) and this clause 5.8(g) shall exclude any Affiliate of Project Co not acting in relation to the Project) shall not make or publish any objection, representation or comment to any person (other than TfL) in respect of any Third Party Development and shall not support, procure or suffer any such objection, representation or comment to be made on its behalf.
- (h) The Parties acknowledge and agree that TfL's rights under clause 5.8(a) and the restriction under clause 5.8(g) shall not prevent or restrict in any way the negotiation by Project Co of an asset protection agreement between Project Co and any proposed developer in relation to any Third Party Development.
- (i) TfL shall not be obliged to make any objection, representation or comment in respect of any Third Party Development and, in particular, TfL, subject to clause 5.8(b) and clause 5.8(c), may exercise its statutory functions in its absolute discretion without fetter or restriction arising from clause 5.7 (*Third Party Developments*) or this clause 5.8 (*Responses to Third Party Developments*).
- (j) The Third Party Developments to which clause 5.7 (*Third Party Developments*) and this clause 5.8 (*Responses to Third Party Developments*) apply include without limitation:
 - (i) any application for planning permission;
 - (ii) any application for development consent;
 - (iii) the making, confirmation or implementation of any compulsory purchase order;
 - (iv) any works to, or improvement, closure, stopping up, or alteration of any highway, including orders, directions or authorisations given under the Highways Act 1980, Road Traffic Regulation Act 1984, New Roads and Street Works Act 1991 or any similar provision;
 - (v) any applications for an order under Part 1 of the Transport and Works Act 1992;
 - (vi) the planning, authorisation and carrying out of any project authorised or proposed to be authorised by any Act of Parliament or Statutory Instrument; and

- (vii) the preparation and adoption of any statutory plans by any local planning authority, the Greater London Authority or otherwise,
- and any consultation, proposal, application, agreement or submission associated with any such matter.
- (k) Objections, representations and comments to which this clause 5.8 (*Responses to Third Party Developments*) applies include without limitation:
 - (i) the submission by any means of any response to any consultation;
 - (ii) correspondence with any public or private party person or body;
 - (iii) any media statement or announcement;
 - (iv) the erection, publication or display of any notice, sign or advertisement; and
 - (v) legal action including any correspondence as to future legal action.
 - (l) Project Co acknowledges and agrees that in respect of land within the Restricted Zone which is subject to the Permanent Land Deed or land which is owned by TfL which is the subject of the Surplus Land Lease, Project Co:
 - (i) shall not withhold its consent under clause 5.8(b) or clause 5.8(c) (as applicable) unless the proposed Third Party Development would:
 - (A) damage or endanger the Silvertown Tunnel (as defined in the Permanent Land Deed or Surplus Land Lease (as applicable)); or
 - (B) otherwise adversely affect the use, structural integrity, safety, security, maintenance or repair of the Silvertown Tunnel (as defined in the Permanent Land Deed or Surplus Land Lease (as applicable)), including the associated costs of the same; and

and there are no reasonable conditions which could be imposed to protect against the impacts described in clause 5.8(l)(i)(A) and clause 5.8(l)(i)(B); and
 - (ii) acknowledges and agrees that the right of Project Co to give consent under clause 5.8(b) and clause 5.8(c) does not apply in relation to any Third Party Development where TfL's consent is not required pursuant to:
 - (A) paragraph 1.2, paragraph 2.2 and paragraph 3.2 of Schedule 1 of the Permanent Land Deed; and
 - (B) paragraph 9 of Schedule 4 of the Surplus Land Lease.
 - (m) Project Co acknowledges and agrees that in respect of any Third Party Development on land which is subject to the Permanent Land Deed or the Surplus Land Lease, where Project Co requires the relevant third party developer to enter into an asset protection agreement with Project Co, the covenants to be imposed in the asset protection agreement:
 - (i) shall be the minimum properly required to ensure that the Third Party Development does not:
 - (A) damage or endanger the Silvertown Tunnel (as defined in the Permanent Land Deed or Surplus Land Lease (as applicable)); or

- (B) otherwise adversely affect the use, structural integrity, safety, security, maintenance or repair of the Silvertown Tunnel (as defined in the Permanent Land Deed or Surplus Land Lease (as applicable)), including the associated costs of the same; and
- (ii) shall otherwise reflect the principles set out or referred to in Schedule 1 of the Permanent Land Deed (including without limitation the general principles referred to in paragraph 5.2 of Schedule 1 of the Permanent Land Deed) and Schedule 5 of the Surplus Land Lease (including without limitation the general principles referred to in paragraph 1.2 of Schedule 5 of the Surplus Land Lease).

5.9 **Impact of other developments**

In relation to any Third Party Development for which Project Co enters into an asset protection agreement, the following provisions shall apply:

- (a) in relation to the design and construction documents for the relevant Third Party Development:
 - (i) following the completion of each material design or construction document for the relevant development, Project Co shall provide copies of such designs to TfL; and
 - (ii) within twenty (20) Working Days of receipt of a design or construction document provided pursuant to clause 5.9(a)(i), TfL may provide Project Co with comments on such documents and Project Co shall (acting reasonably) consider any comments received from TfL pursuant to this clause 5.9(a)(ii); and
- (b) where:
 - (i) Project Co provides a document, notice or information to a counterparty to an asset protection agreement, Project Co shall provide a copy to TfL at the same time; and
 - (ii) Project Co receives any document, warranty, notice or information from a counterparty to an asset protection agreement, Project Co shall, as soon as is reasonably practicable, provide a copy of that document, warranty, notice or information to TfL.

5.10 **Code of Construction Practice**

- (a) Each reference to the term "Contractor" in this clause 5.10 (*Code of Construction Practice*) shall be a reference to the term "Contractor" as defined in the Code of Construction Practice.
- (b) Project Co shall perform the obligations of the Contractor under the Code of Construction Practice.
- (c) The Parties acknowledge and agree that the requirement for Project Co to perform the obligations of the Contractor under the Code of Construction Practice pursuant to clause 5.10(b) shall be deemed to be a Transferred DCO Function for the purposes of this Agreement.
- (d) For the avoidance of doubt, and without prejudice to any other obligations of the Contractor under the Code of Construction Practice, the Parties acknowledge and agree that the following paragraphs of the Code of Construction Practice shall be treated as being expressed as clear obligations of the Contractor under the Code

of Construction Practice which Project Co is required to perform pursuant to clause 5.10(b):

- (i) the first sentence of paragraph 1.4.4, paragraph 1.4.10, paragraph 2.3.1 (excluding the third sentence), the first and third sentences of paragraph 2.3.2, the second sentence of paragraph 2.3.3, paragraph 2.3.4, paragraph 2.4.4, paragraph 2.4.6, the first sentence of paragraph 2.4.7, paragraph 2.4.8, paragraph 2.7.3, the final two sentences of paragraph 3.1.5, the first sentence of paragraph 4.1.1 (to the extent required to enable Project Co to perform its obligations under this Agreement), the first sentence of paragraph 5.4.2, paragraph 6.1.7, paragraph 6.1.8, paragraph 8.1.2, paragraph 8.1.3, paragraph 9.2.2, the final sentence of paragraph 9.2.3, the second sentence of paragraph 9.3.2, paragraph 9.3.3, paragraph 10.1.4, paragraph 10.2.1 to paragraph 10.2.3 (inclusive), paragraph 10.4.1, paragraph 11.2.1, paragraph 11.2.5, the final sentence of paragraph 11.2.7, paragraph 11.2.8, paragraph 12.1.2, the second sentence of paragraph 13.1.1, the final sentence of paragraph 13.3.1, paragraph 13.3.3, paragraph 13.3.4, paragraph 13.4.3, the last sentence of paragraph 15.2.1, paragraph 15.2.2 to paragraph 15.2.6 (inclusive), the final sentence of paragraph 15.3.3, the first sentence of paragraph 15.3.4 up to the word "and", paragraph 15.3.5, paragraph 15.4.2, paragraph 15.4.3, paragraph 15.5.2 and paragraph 15.6.3;
- (ii) the following provisions of appendix A (*Settlement Assessment and Mitigation Process*): paragraph A.1.2, paragraph A.1.3, paragraph A.1.5, paragraph A.1.6, paragraph A.1.8 to paragraph A.1.11 (inclusive), paragraph A.1.14 to paragraph A.1.17 (inclusive) and paragraph A.1.27 to paragraph A.1.31 (inclusive);
- (iii) the following provisions of appendix C (*CD&E Materials Commitments*): the second sentence of paragraph 4.2.5, paragraph 4.2.9, paragraph 4.2.11, paragraph 4.2.12, paragraph 4.2.13 to paragraph 4.2.16 (inclusive), paragraph 4.3.1, paragraph 4.3.2, paragraph 4.4.3, paragraph 4.4.4 and paragraph 4.4.6.
- (iv) the following provisions of appendix E (*Site Waste Management Plan*): paragraph 1.1.6, paragraph 1.1.8, paragraph 1.2.1, the second and third sentences of paragraph 1.2.4, paragraph 1.3.6, paragraph 1.3.12, paragraph 2.2.4, paragraph 2.3.3 to paragraph 2.3.5 (inclusive), paragraph 2.4.5, paragraph 2.6.2, paragraph 2.6.3, the final sentence of paragraph 2.6.7, paragraph 2.7.2, paragraph 2.8, the second sentence of paragraph 4.1.1, the second sentence of paragraph 4.1.3, paragraph 4.2.4 to paragraph 4.2.6 (inclusive), paragraph 4.2.8, paragraph 4.2.10, paragraph 4.2.13, paragraph 4.3.2, the second and third sentences of paragraph 4.3.3, paragraph 4.3.4 to paragraph 4.3.6 (inclusive), the first sentence of paragraph 4.4.1, paragraph 4.4.4, paragraph 4.5.1, paragraph 4.5.2, the final sentence of paragraph 4.5.3, the first sentence of paragraph 4.5.5, paragraph 4.5.6 to paragraph 4.5.10 (inclusive), the second sentence of paragraph 4.6.1, paragraph 4.6.8, paragraph 5 (excluding paragraph 5.1.1), paragraph 6 (excluding paragraph 6.1.1 and paragraph 6.1.8), paragraph 7 (excluding paragraph 7.1.3 and paragraph 7.1.4), paragraph 8 and paragraph 9.1.2;
- (v) the following provisions of appendix G (*Construction Noise and Vibration Mitigation Scheme*): the third sentence of paragraph 3.1.6, the second sentence of paragraph 3.1.7, the final sentence of paragraph 3.1.8, paragraph 3.1.10, the second sentence of paragraph 4.1.6 and the final sentence of paragraph 4.1.7; and

- (vi) the following provisions of appendix H (*Outline Ecology Management Plan*): paragraph 3.2.2, the second sentence of paragraph 3.3.1, paragraph 3.4.2, paragraph 3.5.1 to paragraph 3.5.6 (inclusive), paragraph 4.1.1, paragraph 4.1.3 to 4.2.2 (inclusive), paragraph 5.1.1, paragraph 5.1.2, paragraph 5.3.1 to paragraph 5.3.4 (inclusive), appendix A (*Pre Construction & Construction, Survey Methodology and Timings*), paragraph B.1.1 and paragraph B.2.1 of appendix B (*Preliminary Method Statement - Trees*), the final sentence of paragraph B.3.2 of appendix B (*Preliminary Method Statement - Trees*), paragraph B.3.2 of appendix B (*Preliminary Method Statement - Trees*) and paragraph B.4.1 to paragraph B.5.2 (inclusive) of appendix b (*Preliminary Method Statement - Trees*).
- (e) Project Co acknowledges and agrees that any references in the Code of Construction Practice to:
- (i) "the Contractor will";
 - (ii) "the Contractor must";
 - (iii) "the Contractor would";
 - (iv) "the Contractor is required";
 - (v) "the Contractor is expected";
 - (vi) "the Contractor are responsible";
 - (vii) "the Contractor has a number of responsibilities which it shall execute as follows";
 - (viii) "will be prepared by the Contractor";
 - (ix) "will be produced by the Contractor";
 - (x) "will be updated by the Contractor";
 - (xi) "will be developed by the Contractor";
 - (xii) "will be determined by the Contractor";
 - (xiii) "to be prepared by the Contractor";
 - (xiv) "contractual requirements will require the Contractor to";
 - (xv) "it will be the Contractor's responsibility to";
 - (xvi) "TfL will require the Contractor";
 - (xvii) "TfL through the Contractor will"; and
 - (xviii) "TfL would require",
- and any similarly expressed requirements or similar terminology shall be deemed to be read as "the Contractor shall" (including any further amendments required to express such paragraphs as clear obligations of the Contractor) and Project Co shall perform such obligations of the Contractor pursuant to clause 5.10(b).

- (f) Where the Code of Construction Practice requires the Contractor to produce plans or strategies, the Parties acknowledge and agree that:

- (i) Project Co shall be required to develop such plans or strategies and to ensure that such plans or strategies include any content required by the provisions of the Code of Construction Practice; and
 - (ii) subject to clause 5.10(g), clause 5.10(h) and clause 5.10(i)(i), following the approval of such plans or strategies by all parties whose approval is required pursuant to the Code of Construction Practice, Project Co shall be required to comply with such plans and strategies and implement any measures contained therein.
- (g) Where the Code of Construction Practice requires the Contractor to review and update plans or strategies, Project Co shall be required to review and update such plans or strategies in accordance with the provisions of the Code of Construction Practice and Project Co shall comply with such reviewed and updated plans and strategies and implement any measures contained therein.
- (h) Project Co acknowledges and agrees that any requirement for the Contractor to obtain the "approval of TfL" under the Code of Construction Practice shall be deemed to be a requirement for Project Co to obtain the endorsement of TfL as "received" or "received with comments" in accordance with the Review Procedure.
- (i) Project Co shall comply with the requirements of:
- (i) paragraph 2.1.3 of Part 2 (*Review Procedure*) of Schedule 9 (*Certification and Review Procedure*) in relation to any submissions made pursuant to clause 5.10(h) which TfL has endorsed as "comments" in accordance with the Review Procedure; and
 - (ii) paragraph 2.1.1 and paragraph 2.1.2 of Part 2 (*Review Procedure*) of Schedule 9 (*Certification and Review Procedure*) in relation to any submissions made pursuant to clause 5.10(h) which TfL has endorsed as "received" or "received with comments" in accordance with the Review Procedure.
- (j) Project Co acknowledges and agrees that any requirement of the Contractor pursuant to the Code of Construction Practice to:
- (i) obtain the approval of any third party (other than TfL) in relation to any plans or strategies, shall be deemed to be a requirement for Project Co to submit, amend and re-submit such plans or strategies (as required) to such third party until such approval has been received;
 - (ii) "consult" with any third party (other than TfL) shall be deemed to be a requirement for Project Co to actively seek, and take into account, the third party's views in relation to the relevant subject matter; and
 - (iii) "liaise" with any third party (other than TfL) shall be deemed to be a requirement for Project Co to communicate and work with such third party in relation to the relevant subject matter.
- (k) Project Co shall comply with the requirements of section 23 (*Applications made under requirements*) of Schedule 2 (*Requirements*) of the DCO in relation to any applications to a discharging authority for any consent, agreement or approval required to be made by the Contractor pursuant to the Code of Construction Practice.
- (l) The Parties acknowledge and agree that the Contractor is obligated to comply with the provisions of the following appendices of the Code of Construction Practice in accordance with the requirements of the Code of Construction Practice:

- (i) appendix A (*Settlement Assessment and Mitigation Process*);
- (ii) appendix B (*Settlement Deed*), including any settlement deed entered into pursuant to the provisions of the Code of Construction Practice;
- (iii) appendix C (*CD&E Materials Commitments*), including the construction, demolition and excavated materials commitments as set out in paragraph 4 (*Construction, Demolition and Excavated Materials Commitment*) of appendix C (*CD&E Materials Commitments*);
- (iv) appendix D (*Receptor Site Assessment*);
- (v) appendix E (*Site Waste Management Plan*), including the requirement to update the site waste management plan during the construction phase;
- (vi) appendix F (*Groundwater Monitoring Strategy*);
- (vii) appendix G (*Construction Noise and Vibration Mitigation Scheme*); and
- (viii) appendix H (*Outline Ecology Management Plan*),

and Project Co shall be required to perform such obligations pursuant to clause 5.10(b).

- (m) The Parties acknowledge and agree that any discrepancy with regards to the names or locations of appendices to the Code of Construction Practice shall be resolved based on the contents page of the Code of Construction Practice.

6. **CONSENTS**

6.1 **Necessary Consents**

- (a) Project Co shall at its own cost and expense:
 - (i) obtain and maintain in effect all Necessary Consents as and when required:
 - (A) for the performance of its obligations under this Agreement; and
 - (B) by any Applicable Requirements;
 - (ii) keep TfL fully informed of the progress and status of any application for a Necessary Consent, and any potential issues regarding the adequacy of any current or prospective Necessary Consent;
 - (iii) implement each Necessary Consent within the period of its validity and in accordance with its terms;
 - (iv) perform its obligations pursuant to this Agreement in accordance with all Necessary Consents;
 - (v) ensure that the Works and the Project Facilities shall at all times meet the terms of any Necessary Consents and all Applicable Requirements;
 - (vi) ensure that the Services shall at all times be carried out in accordance with the terms of any Necessary Consents and all Applicable Requirements;
 - (vii) ensure that the benefit of all Necessary Consents obtained by Project Co in relation to the Project can to the extent legally possible be enjoyed by TfL

concurrently with Project Co, both prior to and following the End Date, provided that where the extension of the benefit of a Necessary Consent beyond the End Date cannot be obtained by Project Co, Project Co shall provide such reasonable assistance as requested by TfL in relation to so extending the benefit of such Necessary Consent (provided that Project Co shall not be required to expend time and resources on such extension which are in excess of the equivalent time and resources that would reasonably be incurred on obtaining the relevant Necessary Consent);

- (viii) provide to TfL whenever reasonably requested evidence that all Necessary Consents have been obtained and maintained in effect; and
 - (ix) maintain a full register of all Necessary Consents in relation to the Project and provide a copy to TfL whenever reasonably requested.
- (b) Project Co acknowledges and agrees that to the extent any Transferred DCO Function requires Project Co to obtain a Necessary Consent, this clause 6 (*Consents*) shall apply to such Necessary Consent.
- (c) To the extent that any concurrent enjoyment by TfL of any Necessary Consents obtained by Project Co pursuant to this clause 6.1 (*Necessary Consents*) adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
- (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or
 - (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*),

unless and to the extent that the concurrent enjoyment of any Necessary Consent is as a result of a breach by Project Co of its obligations under this Agreement.

6.2 **Copies**

Project Co shall at its own cost, as soon as reasonably practicable after obtaining them, provide copies of each Necessary Consent to TfL, together with any supporting or supplementary documents or other relevant information as may be requested by TfL.

6.3 **No amendments**

Project Co shall not, without the prior written consent of TfL, apply for or agree to any change, relaxation or waiver of:

- (a) the DCO or any part thereof (such consent to be provided or withheld in TfL's absolute discretion); or
- (b) any Necessary Consent or any part thereof (such consent not to be unreasonably withheld or delayed).

6.4 **TfL as Relevant Authority**

Notwithstanding any other provision of this Agreement, where Project Co applies to TfL in its capacity as a Relevant Authority (and not in its capacity as counterparty to the Project Documents) to obtain a Necessary Consent, Project Co acknowledges and agrees that:

- (a) the provisions of the Project Documents shall not apply to regulate the manner in which TfL responds to such application;
- (b) nothing in the Project Documents shall in any way fetter TfL's discretion in the exercise of its statutory duties, functions and powers; and
- (c) the granting, withholding or delay of such Necessary Consent shall not in any way relieve Project Co from complying with the Project Documents, nor shall it entitle Project Co to make any claim whatsoever against TfL pursuant to the Project Documents.

6.5 **Collaboration**

Without prejudice to clause 6.4 (*TfL as Relevant Authority*), TfL shall provide such reasonable assistance as may be reasonably requested by Project Co in relation to obtaining any Necessary Consent (provided that TfL shall not be required to incur or expend any material costs or expenses in providing such assistance).

7. **SITE ACCESS**

7.1 **Access rights**

- (a) Subject to clause 7.1(b), clause 7.2 (*River Access*) and clause 7.5 (*Limitations on the use of the Site*), TfL shall provide access to each Section of the Site to Project Co for the duration of the relevant Access Period for the sole purpose of Project Co carrying out its obligations under this Agreement.
- (b) The right of access granted pursuant to clause 7.1(a):
 - (i) is a contractual right only and shall not operate or be deemed to operate as a demise of the Site or any part thereof and Project Co shall not have or be entitled to exclusive possession or any estate right, title or interest in the Site or any part thereof;
 - (ii) is personal to Project Co and any Project Co Related Party and may not be granted by Project Co to any other third party;
 - (iii) only relates to the Site and does not include any Highway Areas or Protective Works Areas;
 - (iv) in relation to any Section of the Site or part thereof the subject of a Third Party Agreement, shall not commence until all of the Transferred Third Party Functions relating to conditions to access or sequencing requirements applicable to the relevant land pursuant to the relevant Third Party Agreement have been satisfied by Project Co, notwithstanding that the Site Access Date for the Section of the Site may have already occurred;
 - (v) does not include access to the private roads within the Sections of the Site numbered 23 and 25(a) in the Construction Land Drawings, which Project Co may only access pursuant to an exercise of the Transferred DCO Function in relation to Article 13 (*Use of private roads for construction*) of the DCO by Project Co;
 - (vi) shall only be granted by TfL to Project Co and any Project Co Related Party, unless otherwise agreed between the Parties;
 - (vii) shall allow Project Co and any Project Co Related Party to occupy the relevant Section of the Site exclusively, save where a Third Party Agreement provides otherwise, and subject always to clause 7.1(b)(i),

clause 7.8 (*Responsibility for Protestors and Trespassers*) and paragraph 3 (*Access Requirements*) of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*);

- (viii) shall require TfL to provide any Section of the Site free from any Protestors or Trespassers on the date that the right of access commences for such Section of the Site pursuant to clause 7.4(a); and
- (ix) shall require TfL to provide each Section of the Site on the relevant Site Access Date in the same or substantially the same physical condition as the physical condition for the relevant Section of the Site set out in the Schedule of Condition.

7.2 River access

- (a) In relation to the Section of the Site numbered 20 in the Construction Land Drawings, Project Co acknowledges and agrees that:
 - (i) the access provided pursuant to clause 7.1 (*Access rights*) and to which the relevant Site Access Date applies, relates to the subsurface below the riverbed of that Section of the Site only; and
 - (ii) if Project Co requires any access to the surface of such Section of the Site (including access above the riverbed), Project Co shall secure such access pursuant to the Transferred DCO Functions and such access shall be subject to the provisions of Article 17 (*Work in the river Thames: conditions*) of the DCO.
- (b) For the purposes of the Sections of the Site numbered 15 and 21 in the Construction Land Drawings, Project Co acknowledges and agrees that:
 - (i) TfL is not providing access to such Sections of the Site under clause 7.1 (*Access rights*); and
 - (ii) Project Co must secure any access required in order to carry out the Works pursuant to the Transferred DCO Functions and such access shall be subject to the provisions of Article 17 (*Work in the river Thames: conditions*) of the DCO.
- (c) Project Co acknowledges and agrees that when accessing:
 - (i) the Sections of the Site numbered 15 and 21 in the Construction Land Drawings; and
 - (ii) the surface (including areas above the riverbed) of the Section of the Site numbered 20 in the Construction Land Drawings,

such access shall be limited to the extent permitted by Article 29(2) (*Temporary use of land for carrying out the authorised development*) of the DCO.

7.3 Compensation principles

- (a) The Parties shall comply with their obligations in Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*).
- (b) Notwithstanding Project Co's right to access granted under clause 7.1(a), Project Co shall take reasonable measures to mitigate any sums payable by TfL pursuant to Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*).

7.4 Duration of rights of access

(a) Subject to the rest of this clause 7.4 (*Duration of rights of access*) and clause 7.5 (*Limitations on the use of the Site*), the right of access granted pursuant to clause 7.1(a) in relation to:

(i) each Section of the Site (including any part of an Additional Asset Area located within that Section of the Site), commences on the earlier of:

(A) the Site Access Date for that Section of the Site; and

(B) such date as may be agreed by TfL (in its absolute discretion) for that Section of the Site pursuant to clause 7.4(g),

provided that in relation to any Section of the Site or part thereof the subject of a Third Party Agreement, all Transferred Third Party Functions relating to conditions to pre-occupation access and sequencing requirements applicable to the relevant land pursuant to the relevant Third Party Agreement have been satisfied by Project Co prior to access commencing; and

(ii) each Section of the Site and each Additional Asset Area, subject to clause 7.4(c) and paragraph 2.12.4 of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*), terminates on:

(A) the date of the relevant Handover Certificate for such Section of the Site and Additional Asset Area the subject of a Handover Certificate;

(B) the Permit to Use Date for each Section of the Site not the subject of a Handover Certificate and not part of the Construction Compound; and

(C) the date by which Project Co is required to vacate the relevant Section of the Site in accordance with clause 18.4 (*Construction Compound*) for each Section of the Site which is part of the Construction Compound,

or, in each case, on the Termination Date if earlier,

(the "**Access Period**").

(b) Project Co acknowledges and agrees that:

(i) where Project Co enters any land within the Site to exercise:

(A) the Transferred DCO Function in relation to Article 16(1) (*Authority to survey and investigate land*) of the DCO; or

(B) a Transferred Third Party Function in relation to carrying out surveys or monitoring activities only,

the Access Period in relation to the relevant Sections of the Site shall not commence with such entry and clause 7.4(a) shall continue to apply to determine the Access Period for that Section of the Site; and

(ii) notwithstanding clause 7.4(a) and the Site Access Expiry Date for the Section of the Site numbered 47 in the Construction Land Drawings, Project Co shall use all reasonable endeavours to vacate that Section of the Site as soon as is reasonably practicable.

- (c) Notwithstanding clause 7.4(a) but subject to clause 7.4(m) if, at any time prior to the Site Access Expiry Date for a Section of the Site or the Additional Asset Access Expiry Date for an Additional Asset Area, Project Co determines that it does not require access to the relevant Section of the Site or Additional Asset Area up to the relevant Site Access Expiry Date or Additional Asset Access Expiry Date (as applicable):
 - (i) Project Co shall, not less than forty (40) Working Days before the relevant Site Access Expiry Date or Additional Asset Access Expiry Date, provide written notice to TfL identifying the relevant Section of the Site or Additional Asset Area and requesting an earlier Site Access Expiry Date or Additional Asset Access Expiry Date for the relevant Section of the Site or the Additional Asset Area (as applicable); and
 - (ii) TfL shall within twenty (20) Working Days notify Project Co whether TfL (in its absolute discretion) agrees to Project Co's request made pursuant to clause 7.4(c)(i) and, where TfL agrees, the date upon which Project Co must vacate the Section of the Site or Additional Asset Area (as applicable), which shall be no earlier than the date notified by Project Co pursuant to clause 7.4(c)(i) and no later than the current Site Access Expiry Date or Additional Asset Access Expiry Date.
- (d) Where TfL agrees to a change pursuant to clause 7.4(c), the Site Access Expiry Date or Additional Asset Access Expiry Date for the relevant Section of the Site or Additional Asset Area (as applicable) will be amended to be the date notified by TfL pursuant to clause 7.4(c)(ii).
- (e) To the extent a Section of the Site includes an Additional Asset Area or part thereof, the Parties acknowledge and agree that:
 - (i) the Site Access Expiry Date for a Section of the Site will not apply to any Additional Asset Areas the subject of a Handover Certificate on the relevant Site Access Expiry Date; and
 - (ii) where an Additional Asset Area is the subject of a Handover Certificate, such Additional Asset Area shall be deemed to be excluded from the relevant Section of the Site from the date of the relevant Handover Certificate.
- (f) Project Co acknowledges and agrees that TfL has no obligation to provide access to a Section of the Site prior to the relevant Site Access Date.
- (g) Notwithstanding clause 7.4(f):
 - (i) at any time prior to the Site Access Date for a Section of the Site, Project Co may by written notice to TfL request access to that Section of the Site prior to the relevant Site Access Date; and
 - (ii) TfL may (in its absolute discretion) provide access in relation to the relevant Section of the Site on a date prior to the Site Access Date (provided that such date is no earlier than the date requested by Project Co).
- (h) If, prior to the Site Access Date for a Section of the Site, Project Co determines that it does not require access to that Section of the Site for the purposes of carrying out its obligations under this Agreement:
 - (i) Project Co shall, not less than eighty (80) Working Days before the Site Access Date for that Section of the Site, provide written notice to TfL

requesting that the relevant Section of the Site be removed from the Site and confirming that Project Co no longer requires access to that Section of the Site; and

- (ii) TfL shall notify Project Co within twenty (20) Working Days of Project Co's request under clause 7.4(h)(i) whether TfL (in its absolute discretion) agrees to Project Co's request prior to the Site Access Date for the relevant Section of the Site.
- (i) Project Co acknowledges and agrees that TfL has no obligation to agree to a request under clause 7.4(h).
- (j) If TfL:
 - (i) approves a request under clause 7.4(h):
 - (A) TfL and Project Co shall be released from their obligations under this Agreement in relation to the relevant Section of the Site; and
 - (B) the relevant Section of the Site shall be removed from the Site for the purposes of this Agreement; or
 - (ii) does not approve a request under clause 7.4(h), Project Co shall not be relieved from any of its obligations with respect to the relevant Section of the Site.
- (k) Subject to clause 7.4(l), if, prior to the Site Access Expiry Date for a Section of the Site or the Additional Asset Access Expiry Date for an Additional Asset Area, Project Co requires access to that Section of the Site or Additional Asset Area to continue after the Site Access Expiry Date or the Additional Asset Access Expiry Date in order to carry out the Works, Project Co shall:
 - (i) notify TfL as soon as practicable, and in any event no less than twenty (20) Working Days (or such other time as may be stated in an applicable Third Party Agreement), prior to the relevant Site Access Expiry Date or the Additional Asset Access Expiry Date (as applicable):
 - (A) that Project Co requires access to the relevant Section of the Site or Additional Asset Area after the relevant Site Access Expiry Date or Additional Asset Access Expiry Date; and
 - (B) of the date on which Project Co expects to vacate that Section of the Site or Additional Asset Area;
 - (ii) from the date of such notice until Project Co vacates the relevant Section of the Site or Additional Asset Area, notify TfL every five (5) Working Days of the date on which Project Co expects to vacate the Section of the Site or Additional Asset Area;
 - (iii) continue to comply with its payment obligations under Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*) until Project Co vacates the Section of the Site or Additional Asset Area; and
 - (iv) vacate the relevant Section of the Site or Additional Asset Area as soon as practicable after the relevant Site Access Expiry Date or the Additional Asset Access Expiry Date (as applicable) and in any event but subject to clause 18.4 (*Construction Compound*), vacate the Section of the Site or Additional Asset Area in accordance with clause 7.4(n),

provided that nothing in this clause 7.4(k) permits TfL or Project Co to breach the terms of the DCO or any Third Party Agreement or to continue accessing an Additional Asset Area beyond the Access Period for the Sections of the Site in which the Additional Asset is located.

- (l) Project Co acknowledges and agrees that:
 - (i) clause 7.4(k) does not apply to Sections of the Site forming part of the Construction Compound; and
 - (ii) to the extent a notice is given under clause 7.4(k)(i) in relation to an Additional Asset Area, Project Co shall also issue a notice under clause 7.4(k)(i) in respect of any Sections of the Site in which the Additional Asset Area is located so that the Access Period for the Additional Asset Area expires no later than the Access Period for the Sections of the Site in which the Additional Asset Area is located.
- (m) Project Co shall not be entitled to vacate any Section of the Site or any Additional Asset Area until the earliest of:
 - (i) the issue of a Handover Certificate with respect to the relevant Section of the Site or Additional Asset Area; and
 - (ii) the Permit to Use;except in relation to the Sections of the Site forming part of the Construction Compound, to which clause 18.4 (*Construction Compound*) will apply.
- (n) No later than twenty four (24) hours after the expiry of the Access Period for a Section of the Site or Additional Asset Area, Project Co shall vacate such Section of the Site or Additional Asset Area, except in relation to any Section of the Site or part thereof comprising the O&M Area for which clause 7.14 (*Operation and Maintenance Access*) shall apply.
- (o) At any time prior to the date which is ten (10) Working Days prior to the Site Access Date for a Section of the Site, TfL may by written notice to Project Co require that the Access Period for that Section of the Site commences up to five (5) Working Days earlier than the relevant Site Access Date, provided that Project Co shall not be liable for any Daily Land Occupation Fees pursuant to Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*) in relation to such extra days.
- (p) Where clause 7.4(o) applies, the Access Period for the relevant Section of the Site will commence on the date notified by TfL pursuant to clause 7.4(o).
- (q) Notwithstanding any other provision of this Agreement, Project Co shall enter and take possession of all parts of the Site no later than the date which is five (5) years after the date on which the DCO was made.

7.5 **Limitations on the use of the Site**

- (a) In carrying out the Project, Project Co shall not, and shall ensure that each Project Co Related Party shall not, act or fail to act in a manner which could give rise to a right for any person (other than TfL) to obtain title to or any right or interest over the Site or any part of it.
- (b) Project Co must:

- (i) only use the Active Site, or permit the Active Site to be used, for the purposes of the Works or the performance of Project Co's obligations under this Agreement, and for no other purposes; and
 - (ii) not use any part of the Site for the purposes of the Project other than within the Active Site.
- (c) Project Co's rights in relation to the Project Land in this clause 7 (*Site Access*) shall:
- (i) subsist for the purposes of carrying out the Project and for no other purposes;
 - (ii) not be capable of assignment; and
 - (iii) be subject to:
 - (A) any requirement for planning consent under the Town and Country Planning Act 1990 or any other Applicable Requirement;
 - (B) any restrictions or requirements under the DCO;
 - (C) the Third Party Agreements and any specific restrictions or limitations on access contained therein, including any rights of suspension;
 - (D) not used;
 - (E) the right of any Relevant Authority to have access to the Project Land;
 - (F) the right of the public to access and use the Highways Areas;
 - (G) the right of any relevant Highway Authority, Street Authority, Traffic Authority and/or Statutory Undertaker to have access for the execution on or near the Project Land of any work in fulfilling any function of such entity under any Applicable Requirement;
 - (H) the right of any person to have access to the Project Land pursuant to any Applicable Requirement;
 - (I) the right of access of any contractor or consultant (employed by or on behalf of TfL or by any Relevant Authority) carrying out works on the Project Land pursuant to the terms of this Agreement; and
 - (J) the terms of this Agreement.
- (d) Project Co acknowledges and agrees that it:
- (i) bears the risk of the means of access to the Project Land and coordinating its use of such means of access to the Project Land with any other person that uses the routes of access to the Project Land; and
 - (ii) must comply with any applicable rights of access and egress in accordance with its obligations regarding the Code of Construction Practice, the requirements of the DCO and any applicable Transferred Third Party Functions.

- (e) In accessing Sections of the Site, Project Co shall ensure that it does not close off or prevent access to any parcels of land occupied by third parties.

7.6 **Investigations and surveys**

- (a) Project Co shall, within twenty (20) Working Days of completion of any investigation or survey, provide TfL with copies of all information, records and test results (including any interpretation of such test results) resulting from such investigation or survey, including any:
 - (i) investigation or survey of the conditions of the Project Land, including the surface and subsoil, including those investigations or surveys carried out pursuant to and under the conditions set out in the DCO or Third Party Agreements;
 - (ii) archaeological or ecological survey of the Project Land; or
 - (iii) traffic survey in relation to the Works.

7.7 **Active Site**

- (a) On and from the date of commencement of the Access Period for a Section of the Site, such Section of the Site shall be deemed to be part of the Active Site for the duration of such Access Period.
- (b) Subject to any express term of this Agreement to the contrary, Project Co shall take responsibility for all risks associated with the Active Site.
- (c) Without prejudice to Project Co's responsibility to pay the Daily Land Occupation Fees pursuant to Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*) Project Co shall not be responsible for the payment of any taxes, assessments, outgoing and impositions whatsoever payable in respect of the relevant part of the Project Land or assessed upon the owner or occupier in respect thereof which relate to the period of time during which Project Co has access to the relevant part of the Project Land.

7.8 **Responsibility for Protestors and Trespassers**

- (a) Subject to clause 7.1(b)(viii), TfL shall not be responsible for:
 - (i) the presence on or around, or entry onto or around, the Active Site and the O&M Area (as applicable) of any Protester or Trespasser;
 - (ii) any other interference with or affecting the Active Site or the O&M Area or the vicinity of such areas by or caused by any Protester or Trespasser;
 - (iii) any other interference with the Project by or caused by any Protestor or Trespasser; or
 - (iv) any act, omission or default of any Protestor or Trespasser in connection with the Project or on or around the Active Site or the O&M Area,during the Agreement Period.
- (b) Subject to clause 7.1(b)(viii) and without prejudice to clause 7.1 (*Access rights*) the presence on or around the Project Land, or any other interference with or affecting the Project Land or the Project by, or caused by, any Protestor or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of the obligations of TfL under this clause 7 to provide access to Project Co

of any part of the Site nor a breach of any other obligation, representation or warranty of TfL under this Agreement.

- (c) Subject to clause 7.1(b)(viii), as between TfL and Project Co, Project Co shall bear, without recourse to TfL, any Loss suffered by any person which is caused by any Protestor or Trespasser, including any damage to property, any personal injury or death, and any loss of income (including any reduction in the Availability Payment) in relation to the Project Land for the Agreement Period.
- (d) For the avoidance of doubt, nothing in this clause 7.8 (*Responsibility for Protestors and Trespassers*) shall affect:
 - (i) any right of TfL to make or recover any Claim against any Protestor or Trespasser for damage suffered by TfL or any TfL Related Party; or
 - (ii) any right of Project Co to make or recover any Claim against any Protestor or Trespasser for damage suffered by Project Co or any Project Co Related Party.
- (e) Project Co shall not give directly or indirectly, nor permit or suffer to be given, to any Protestor or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protestor or Trespasser or by other Protestors or Trespassers.

7.9 **Reinstatement**

Subject to complying with any Applicable Requirements, before the expiry of the Access Period in relation to any Section of the Site or any Additional Asset Area, Project Co shall:

- (a) ensure that all temporary works and temporary structures erected thereon by Project Co shall be removed and all equipment, plant, materials, waste, debris and other possessions that are not necessary for the proper performance of the Services have been dismantled and removed;
- (b) ensure that the relevant Section of the Site or Additional Asset Area is restored to the condition required by Article 29(7) (*Temporary use of land for carrying out the authorised development*) of the DCO as if the obligations of such article were a Transferred DCO Function, including circumstances where such article does not apply on its terms to the relevant land, and the Third Party Agreements (where applicable); and
- (c) use all reasonable endeavours to provide TfL with a written statement from each landowner of land within the relevant Section of the Site or Additional Asset Area (other than where the landowner is TfL) stating that the land which they own within the relevant Section of the Site or Additional Asset Area, as applicable, has been restored to the landowner's satisfaction,

provided that this clause 7.9 (*Reinstatement*) does not apply to any Section of the Site forming part of the Construction Compound, to which clause 18.4 (*Construction Compound*) applies.

7.10 **Handover of Additional Assets**

Project Co shall handover:

- (a) each Additional Asset Area; and
- (b) to the extent the expiry of the relevant Access Period is prior to the Permit to Use Date, each Section of the Site,

in accordance with clause 17.1 (*Handover Certificate*).

7.11 Access to the Highway Areas

- (a) When, in performing the Works, Project Co reasonably requires access to Highway Areas, Project Co shall procure such access subject to the following conditions:
 - (i) Project Co must obtain all Necessary Consents and statutory approvals required pursuant to all Applicable Requirements in order to undertake the relevant Works prior to such access;
 - (ii) Project Co must comply with the DCO, all Necessary Consents and statutory approvals; and
 - (iii) Project Co must comply with the applicable requirements of Schedule 13 (*Network Occupancy*).
- (b) In accessing the Highway Areas, Project Co shall comply with:
 - (i) the DCO and Third Party Agreements (to the extent relevant);
 - (ii) the applicable requirements of Schedule 13 (*Network Occupancy*); and
 - (iii) the conditions of access listed in clause 7.5(c)(iii) (*Limitations on the use of the Site*).
- (c) The Parties acknowledge and agree that the categorisation of an area of land as a Highway Area may change depending on whether that area falls within the definition of "Highway Area" set out in Schedule 1 (*Definitions and Interpretation*), and on any occasion that an area of land does not fall within the definition of "Highway Area" set out in Schedule 1 (*Definitions and Interpretation*), such area will constitute part of the Section of the Site in which it is located.

7.12 Access to the Protective Works Areas and access to survey and investigate land

- (a) Project Co acknowledges and agrees that the Transferred DCO Functions provide Project Co with sufficient rights to access:
 - (i) the Protective Works Areas and other areas within the Site required from time to time by Project Co for the purpose of discharging or exercising the Transferred DCO Function in relation to Article 15 (*Protective works to buildings*) of the DCO; and
 - (ii) the areas within the Order Limits or adjacent to but outside the Order Limits for the purpose of discharging or exercising the Transferred DCO Function in relation to Article 16 (*Authority to survey and investigate land*) of the DCO.
- (b) Notwithstanding the provisions of clause 7.12(a), in the event that Project Co provides notice to TfL no later than three (3) months prior to the date upon which Project Co requires access to land for the purpose of carrying out any activities referred to in the Transferred DCO Functions relating to Article 15 (*Protective works to buildings*) and/or Article 16 (*Authority to survey and investigate land*) of the DCO (as applicable), TfL shall (whether by itself exercising the rights under Article 15 (*Protective works to buildings*) and/or Article 16 (*Authority to survey and investigate land*) or otherwise) ensure that Project Co is provided with access to the relevant land by the date that such land is required by Project Co as set out in its notice, provided that Project Co shall continue to discharge any Transferred DCO Functions relating to Article 15 (*Protective works to buildings*) and/or Article

16 (*Authority to survey and investigate land*) of the DCO notwithstanding any exercise by TfL of the rights under Article 15 and/or Article 16 pursuant to this clause 7.12(b).

- (c) In accessing the Protective Works Areas, Project Co shall comply with:
 - (i) the DCO and Third Party Agreements; and
 - (ii) the conditions of access listed in clause 7.5(c)(iii) (*Limitations on the use of the Site*).
- (d) In relation to discharging the Transferred DCO Function in relation to Article 15 (*Protective works to buildings*) of the DCO, Project Co shall report quarterly to TfL regarding the progress of dealing with the relevant landowners and the completion of the relevant protective works.

7.13 **Works outside the Project Land**

- (a) Subject to clause 7.13(b) and clause 7.13(i), Project Co shall not construct, or permit the construction of, any buildings, structures or other works forming part of or related to the Project (including any operations and maintenance facilities in connection with the Project and whether or not constructed or occupied by Project Co or some other person) outside the Project Land (as applicable in accordance with this Agreement) without TfL's prior written consent (such consent to be given or withheld in TfL's absolute discretion).
- (b) Subject to clause 7.13(c), Project Co may:
 - (i) construct temporary works in relation to the Project that:
 - (A) will not form part of the Project Facilities; and
 - (B) will not be required for Project Co to perform its obligations during the Availability Period; and
 - (ii) assemble elements of the Works prior to the Permit to Use Date, outside the Project Land.
- (c) Where Project Co requires access rights to any land for the purposes of clause 7.13(b) which does not, at the relevant time, form part of the Project Land (the "**Additional Access Rights**"), the responsibility and cost of securing or acquiring such Additional Access Rights and any Necessary Consents shall be entirely the responsibility of Project Co.
- (d) Prior to taking steps to procure any Additional Access Rights, Project Co shall notify TfL of the details of the required rights and obtain TfL's written consent to procuring such Additional Access Rights, such consent not to be unreasonably withheld or delayed, provided that any consent given by TfL pursuant to this clause 7.13(d) shall not relieve Project Co of its obligations under clause 7.13(e).
- (e) When accessing any areas outside of the Project Land for the purposes of clause 7.13(b), Project Co shall comply with:
 - (i) the provisions of this Agreement as if the additional areas were part of the Active Site;
 - (ii) the requirements in Schedule 13 (*Network Occupancy*);

- (iii) the DCO and any applicable Third Party Agreements; and
 - (iv) to the extent that Further Planning Permissions are required, the provisions of clause 5.4 (*Further Planning Permissions*) shall apply.
- (f) Notwithstanding the provisions of Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*), Project Co shall bear all costs, expenses, fees, liabilities and charges or other sums in respect of any Loss or Claims arising from the procurement and/or exercise of any Additional Access Rights by Project Co.
- (g) The freehold and/or leasehold interest in any land, any licence granted, and/or rights in land acquired by Project Co in accordance with clause 7.13(c) shall, upon request by TfL, be conveyed to TfL or to a person nominated by TfL at the End Date free of charge and without any Encumbrances.
- (h) Without prejudice to clause 7.13(f), Project Co shall ensure that all and any freehold or leasehold interests and/or licence in any lands acquired by Project Co in accordance with clause 7.13(c):
- (i) upon which buildings, structures or other works forming part of, or related to the Project (including for the avoidance of doubt, any operations and maintenance facility in connection with the Project and whether or not constructed or occupied by Project Co or some other person) are constructed; and
 - (ii) which are not part of the Project Land,
- shall, on the End Date and upon request by TfL, be conveyed to TfL or to a person nominated by it free of charge and without any Encumbrances.
- (i) The Parties acknowledge and agree that clause 7.13(a) does not prevent Project Co from accessing:
- (i) the Protective Works Areas to the extent they are located outside the Order Limits; and
 - (ii) any other area outside the Order Limits to which Project Co is entitled to access pursuant to the Transferred DCO Functions or the Transferred Third Party Functions,
- for the purposes of complying with the Transferred DCO Functions and the Transferred Third Party Functions.

7.14 **Operation and Maintenance access**

- (a) Immediately following the issue of the Permit to Use, TfL grants to Project Co:
- (i) a licence to access the O&M Area; and
 - (ii) the right to exercise or enforce the Permanent Rights to the extent necessary for the purposes of Project Co performing its obligations and exercising its rights under this Agreement during the Availability Period.
- (b) Project Co shall, and shall ensure that its Sub-Contractors shall, use the O&M Area only for the purposes of carrying out the Services.
- (c) The licence granted pursuant to clause 7.14(a)(i):
- (i) terminates on the End Date;

- (ii) is on the basis of a contractual licence only and shall not operate or be deemed to operate as a demise of the O&M Area or any part thereof and Project Co shall not have or be entitled to exclusive possession or any estate right, title or interest in the O&M Area or any part thereof;
 - (iii) is personal to Project Co and any Project Co Related Party; and
 - (iv) is subject to the DCO or any rights required to be granted by TfL pursuant to the DCO.
- (d) Project Co shall ensure that there shall be no action or omissions to act by Project Co or any Project Co Related Party which shall give rise to a right for any person (other than TfL) to obtain any estate, right, title or interest in the O&M Area or any part thereof.
- (e) Without prejudice to clause 7.13 (*Works outside the Project Land*), Project Co acknowledges and agrees that any access required by Project Co during the Availability Period not referred to in clause 7.14(a) shall be acquired by Project Co at its own cost and risk.

7.15 **O&M Area**

- (a) No later than thirty (30) Working Days after the date which is three (3) years and six (6) months from the date the DCO is made, Project Co shall provide TfL with:
- (i) plans updating the Operational Land Drawings identifying any areas of land:
 - (A) falling within the Provisional O&M Area which, in Project Co's reasonable opinion, are required to perform the Services; and
 - (B) outside of the Provisional O&M Area containing assets or Structures that were located within the Provisional O&M Area based on the reference design submitted by TfL as part of the DCO Application; and
 - (ii) full details and plans of Project Co's proposal for the Permanent Rights (the "**Draft Permanent Rights**").
- (b) In preparing the Draft Permanent Rights submitted to TfL pursuant to clause 7.15(a)(ii), Project Co shall:
- (i) use reasonable endeavours to formulate the Draft Permanent Rights so as to minimise the likely compensation payable by TfL pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO or the Third Party Agreements in relation to such rights; and
 - (ii) ensure that the Draft Permanent Rights:
 - (A) are limited to the Affected Project Land;
 - (B) capture both the rights to be acquired and the restrictive covenants to be imposed;
 - (C) capture any permanent rights or restrictive covenants which TfL is entitled to acquire or impose pursuant to the provisions of a Third Party Agreement;
 - (D) subject to clause 7.15(b)(ii)(C), are limited to the extent of the rights reasonably required for Project Co to perform its obligations

and exercise its rights under this Agreement during the Availability Period; and

- (E) are capable of being acquired or imposed by TfL pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO and/or the terms of the Third Party Agreements.
- (c) No later than thirty (30) Working Days after receipt of the plans under clause 7.15(a)(i), TfL shall produce drawing(s) identifying an area for the purposes of the Availability Period (the "**O&M Area**"), which:
- (i) shall not identify any areas outside of the boundaries of the Provisional O&M Area other than any areas containing assets or Structures that were located within the Provisional O&M Area based on the reference design submitted by TfL as part of the DCO Application;
 - (ii) shall identify all areas within the boundaries of the Provisional O&M Area which Project Co has identified pursuant to clause 7.15(a)(i)(A) are required to perform the Services; and
 - (iii) may, subject to clause 7.15(c)(i) and clause 7.15(c)(ii), exclude or include any areas of land identified by Project Co pursuant to clause 7.15(a) in TfL's absolute discretion.
- (d) No later than thirty (30) Working Days after receipt of the Draft Permanent Rights under clause 7.15(a)(ii), TfL shall either:
- (i) notify Project Co that it agrees with the Draft Permanent Rights; or
 - (ii) provide comments and any proposed amendments to the Draft Permanent Rights to Project Co.
- (e) Within ten (10) Working Days of receipt by Project Co of any TfL comments on or amendments to the Draft Permanent Rights pursuant to clause 7.15(d)(ii), the Parties shall meet to discuss and attempt to agree the Permanent Rights.
- (f) If the Parties cannot agree the Permanent Rights within twenty (20) Working Days of the date of the first meeting pursuant to clause 7.15(e), the Parties shall refer the matter to the Dispute Resolution Procedure to determine whether the Draft Permanent Rights (as modified by any amendments agreed between the Parties) comply with the requirements in clause 7.15(b).
- (g) Within twenty (20) Working Days of the Permanent Rights being agreed or determined, TfL shall provide to Project Co drawings showing the location of the O&M Area and the Permanent Rights.
- (h) If, at any time following the date that the Permanent Rights are agreed or determined but prior to the expiry of TfL's rights to acquire rights pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO, Project Co considers that rights in addition to the Permanent Rights are required for Project Co to perform its obligations and exercise its rights under this Agreement during the Availability Period, Project Co may notify TfL of the details of such rights in accordance with the provisions of clause 7.15(b)(ii)(A) to clause 7.15(b)(ii)(E) (inclusive).
- (i) Following receipt of a notice pursuant to clause 7.15(h), TfL:
- (i) may (acting reasonably) elect to exercise its rights pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO to acquire the relevant rights notified by Project Co; and

- (ii) shall notify Project Co if the relevant rights are acquired.
- (j) Project Co acknowledges and agrees that it shall not be entitled to compensation and shall not be relieved from the performance of its obligations under this Agreement if:
 - (i) TfL elects not to exercise its rights pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO to acquire the relevant rights notified by Project Co pursuant to clause 7.15(h); or
 - (ii) TfL is unable to acquire the relevant rights.
- (k) Project Co shall reimburse TfL for all such costs reasonably and properly incurred by TfL in exercising its rights pursuant to Article 22 (*Compulsory acquisition of rights*) of the DCO to acquire the relevant rights notified by Project Co pursuant to clause 7.15(h).

8. EXERCISE OF TFL'S STATUTORY POWERS

8.1 Application

- (a) Whenever the exercise by TfL of any statutory power is essential to enable Project Co to perform any obligation under this Agreement, the provisions of this clause 8 (*Exercise of TfL's statutory powers*) shall apply, save where the relevant statutory power is an Authorised Function or Project Co has the right to make a request under clause 10.1(e).
- (b) Project Co confirms that as of the Effective Date, it is not aware of any statutory powers exercisable by TfL (including any statutory powers referred to in the 2009 Order) that are essential to enable Project Co to perform any obligation under this Agreement, other than:
 - (i) the powers under Article 19 (*Compulsory acquisition of land*), Article 22 (*Compulsory acquisition of rights*), Article 27 (*Acquisition of subsoil, etc., only*), Article 29 (*Temporary use of land for carrying out the authorised development*), Article 30 (*Temporary use of land for maintaining the authorised development*) and Article 34 (*Special category land*) of the DCO for the purposes of obtaining the rights required for TfL to comply with clause 7 (*Site Access*); and
 - (ii) the powers of TfL as Traffic Authority and Highway Authority in relation to the Network Occupancy Approval Process contemplated in Schedule 13 (*Network Occupancy*) for the purposes of Project Co performing its obligations under this Agreement.

8.2 Procedure

- (a) If Project Co believes that the exercise by TfL of any statutory power is essential to enable Project Co to perform any obligation under this Agreement, Project Co shall promptly give notice to that effect to TfL.
- (b) Any notice given by Project Co in accordance with clause 8.2(a) shall:
 - (i) clearly specify the action requested of TfL, the obligation of Project Co under this Agreement in respect of which such action is requested and the reasons why such action by TfL is required;
 - (ii) indicate a reasonable time by which the requested action is required; and

- (iii) set out any recommendation by Project Co in respect of the requested action.
- (c) Within fifteen (15) Working Days after receipt of a notice pursuant to clause 8.2(a), TfL shall acknowledge receipt of such notice and shall give its good faith estimate of the date on which TfL will respond on the merits of the request, provided that no such estimate shall be binding on TfL.
- (d) TfL shall respond on the merits of the request contained in the notice given pursuant to clause 8.2(a) as soon as reasonably practicable in the circumstances, taking into consideration, inter alia, any requirement for consultation with the public or other Interested Parties in connection with such request.

8.3 **No fetter on discretion**

- (a) TfL shall consider any request for action contained in a notice given in accordance with clause 8.2(a) on its merits in accordance with its statutory duties.
- (b) Without in any way limiting the discretion of TfL in responding to a request under clause 8.2(a), TfL shall, in reaching any such decision, give consideration, inter alia, to the matters set out in clause 8.4 (*Relevant considerations*).
- (c) Project Co acknowledges and agrees that the decision of TfL on the merits of a request under clause 8.2(a) shall not be subject to review under the Dispute Resolution Procedure.

8.4 **Relevant considerations**

The considerations referred to in clause 8.3 (*No fetter on discretion*) are the following:

- (a) the requirements of the relevant Law and the DCO;
- (b) whether TfL has the statutory power to take the action requested;
- (c) whether there is any alternative course available to Project Co (and the cost of such alternative course) which would not require action by TfL;
- (d) the effect the requested action would have on the interests of any third parties;
- (e) whether the timing and substance of the request is such as to enable TfL to consider the merits of the request in accordance with the principles of procedural fairness (taking into account, where appropriate, the necessity or desirability of consultation with other interested parties); and
- (f) whether the action requested would have any implications for the safety of Users or of any other third parties.

8.5 **Indemnity for Losses**

If, in the exercise of its discretion, TfL agrees to take the action requested in a notice given pursuant to clause 8.2(a), then (unless TfL in its absolute discretion otherwise agrees) Project Co shall be responsible for, and shall release and indemnify TfL and any TfL Related Party, for all Losses suffered or incurred as a consequence of or in connection with taking such action and the exercise of such statutory power.

9. **TFL'S STATUTORY DUTIES**

9.1 **NRSWA and Traffic Management Act**

- (a) Project Co acknowledges that:
 - (i) TfL has a duty to coordinate the execution of works on the TLRN and SRN (including the Project Roads) pursuant to the Traffic Management Act, the TMA Regulations, the TMA Codes of Practice, the NRSWA, the NRSWA Regulations and the NRSWA Codes of Practice; and
 - (ii) all works on the TLRN and SRN (including the Project Roads) whether promoted by Project Co, Statutory Undertakers, TfL or other parties are subject to compliance with the Traffic Manager's network management procedures established in accordance with the Traffic Management Act.
- (b) Without prejudice to clause 23.2 (*Network Management Duty*) or Schedule 13 (*Network Occupancy*), Project Co shall co-ordinate the execution of works of all kinds (including Major Highway Works, Works for Road Purposes and Diversionary Works) or other activities affecting the Works and/or the Project Facilities and the surrounding highway network:
 - (i) in the interests of safety;
 - (ii) so as to minimise the inconvenience to Users and other road users;
 - (iii) so as to protect the structure of the Project Facilities and the integrity of Apparatus;
 - (iv) so as to enable TfL to discharge its statutory duties, including those duties referred to in clause 9.1(a); and
 - (v) in accordance with:
 - (A) the Traffic Management Act, the TMA Regulations, the TMA Codes of Practice, the NRSWA, the NRSWA Regulations and the NRSWA Codes of Practice;
 - (B) the Traffic Manager's network management procedures established in accordance with the Traffic Management Act; and
 - (C) the DCO.
- (c) Project Co shall notify TfL of any offence committed on or within the Active Site or the O&M Area (as applicable) by a Statutory Undertaker under the Traffic Management Act or NRSWA of which Project Co is or should reasonably be aware and shall provide such information relating to such offence as may be specified by TfL.
- (d) For the purposes of:
 - (i) this clause 9.1 (*NRSWA and Traffic Management Act*); and
 - (ii) clause 10.2 (*Expiry, revocation, Other Functions and other services*) (but only to the extent relevant to the SU Authorised Functions),

"**affected**" or "**affecting**" shall be regarded as including the meaning given to "affected" in Section 105(4) of the NRSWA.

9.2 **Statutory functions of TfL**

- (a) Project Co shall, in addition to any other obligations of Project Co pursuant to Schedule 5 (*Allocation of DCO and Other Requirements*) and Schedule 6

(Interested Parties, Third Parties and Liaison Procedures), at all times, assist and facilitate TfL in carrying out and complying with its duties as the Street Authority, Highway Authority and Traffic Authority for the Works and/or the Project Facilities.

- (b) Project Co shall take such actions as are appropriate to inform all interested parties of its role on behalf of TfL pursuant to clause 10 (*Contracting out of functions*).

9.3 **Diversionsary Works**

- (a) Without prejudice to Project Co's obligation to comply with the Transferred DCO Functions, where any Diversionsary Works are necessary in connection with the Works or Services, Project Co shall notify TfL of the relevant Diversionsary Works, including details of the relevant Apparatus, the required works and the relevant Statutory Undertaker for such Apparatus.
- (b) Project Co shall be responsible for all costs, planning, coordination, programming, design, implementation, commissioning and all other incidental activities in connection with Diversionsary Works, and shall make all payments due to and as may be agreed with Statutory Undertakers in accordance with the NRSWA, the NRSWA Regulations and the procedure referred to in Article 32 (*Apparatus and rights of statutory undertakers in stopped up streets*), Article 33 (*Recovery of costs of new connection*) and Schedule 13 (*Protective Provisions*) of the DCO.

10. **CONTRACTING OUT OF FUNCTIONS**

10.1 **Authorised Functions**

- (a) Subject to the provisions of this clause 10 (*Contracting out of functions*) and pursuant to the 2009 Order, TfL as Street Authority, Highway Authority and Traffic Authority (as the case may be) hereby authorises Project Co for the Authorisation Period to exercise in respect of the Works and the Services each of the functions of TfL listed in Part 3 (*Authorised Functions*) of Schedule 5 (*Allocation of DCO and Other Requirements*).
- (b) Project Co shall take such actions as are necessary for the efficient transfer of any Authorised Function to Project Co.
- (c) From the Effective Date and for as long as any authorisation made under this clause 10 (*Contracting out of functions*) is effective, Project Co shall exercise properly and fully each of the Authorised Functions in respect of the Works and the Services.
- (d) The authorisation made under this clause 10 (*Contracting out of functions*) in respect of an Authorised Function is made on the following terms:
 - (i) it shall be non-assignable; and
 - (ii) Project Co shall not delegate any such Authorised Function, provided that this shall not prohibit Project Co from sub-contracting the performance of any works or services arising as a result of Project Co's exercise of any such Authorised Function.
- (e) On or before the expiry of the Authorisation Period (or any Renewed Authorisation Period) in respect of an Authorised Function, Project Co may request TfL to renew the authorisation for any period not exceeding ten (10) years from the date of renewal, provided that the decision whether or not to renew the authorisation in whole or in part shall be in the absolute discretion of TfL and the decision of TfL shall not be subject to review under Schedule 23 (*Dispute Resolution Procedure*).

- (f) If:
- (i) following a request under clause 10.1(e), TfL decides to renew the authorisation for any of the Authorised Functions; or
 - (ii) TfL otherwise determines that an authorisation for an Authorised Function should be renewed,
- TfL shall confirm the same by notice to Project Co, which notice shall specify:
- (iii) the function of TfL which Project Co is authorised to exercise in respect of the Works and the Services; and
 - (iv) the authorisation period, which shall not exceed the shorter of the remainder of the Agreement Period and ten (10) years from the date of the renewal (the "**Renewed Authorisation Period**").
- (g) Without prejudice to Project Co's obligations under clause 10.2 (*Expiry, revocation, Other Functions and other services*), if the 2009 Order or any replacement order made under Section 69 and Section 77 of the Deregulation and Contracting Out Act 1994 shall cease for whatever reason to be in effect:
- (i) TfL may elect to take such action as is necessary to bring into effect a further order in respect of part or all of the functions the subject of the original order; or
 - (ii) where TfL has not taken the action referred to in clause 10.1(g)(i), Project Co may request TfL to take such action and the provisions of clause 8.2 (*Procedure*), clause 8.3 (*No fetter on discretion*) and clause 8.4 (*Relevant considerations*) shall apply *mutatis mutandis* to any such request.
- (h) In exercising the Authorised Functions, Project Co shall act in accordance with the principles of administrative law which govern the conduct of TfL and, without prejudice to the generality of the foregoing, shall:
- (i) obey all relevant Applicable Requirements and administrative and procedural requirements;
 - (ii) not take any decisions or actions which may be considered perverse and liable to be quashed in a court of law;
 - (iii) obey the rules of natural justice; and
 - (iv) take such reasonable actions as are necessary to minimise the risk of Judicial Review.
- (i) For so long as any authorisation under this clause 10 (*Contracting out of functions*) is effective, Project Co shall include in the Design and Construction Report and the Operation and Maintenance Report details of all actions taken by Project Co or of which Project Co is aware relating to the Authorised Functions, including details of:
- (i) all notices given and received;
 - (ii) all directions, permissions and consents given to Statutory Undertakers or third parties;
 - (iii) all agreements, commitments or compromises reached with Statutory Undertakers with regard to Diversionary Works or third parties in the exercise of the Authorised Functions; and

- (iv) any legal or arbitration proceedings (including appeals) commenced, proposed or threatened in relation to any Statutory Provision or the exercise of any Authorised Function.
- (j) Without prejudice to the generality of clause 10.1(i), Project Co shall provide TfL with copies of all permissions, consents, directions and proceedings issued or given by Project Co and all notices given and received by Project Co and all proceedings (including any appeals) commenced against Project Co in respect of any Statutory Provisions or the exercise of any Authorised Function.
- (k) If Project Co fails to exercise any Authorised Function in the manner referred to in clause 10.1(h), TfL may withdraw or suspend the authorisation in respect of such Authorised Function and such suspension or withdrawal by TfL shall not be treated by Project Co as a repudiation of this Agreement or this clause 10 (*Contracting out of functions*) by TfL and shall not entitle Project Co to any relief or compensation under this Agreement.
- (l) If an authorisation under this clause 10.1 (*Authorised Functions*) is revoked by TfL other than in accordance with clause 10.1(k), then for the purposes of Section 73 of the Deregulation and Contracting Out Act 1994 "relevant contract" means this clause 10 (*Contracting out of functions*) and no other provision of this Agreement.
- (m) On the expiry or revocation of an authorisation under this clause 10 (*Contracting out of functions*), Project Co shall take such actions as are necessary for the efficient transfer of any such function to TfL or such person as TfL may designate.
- (n) Without prejudice to Project Co's obligations pursuant to clause 9.2(b), TfL shall:
 - (i) from time to time, at the request of Project Co, notify the relevant Statutory Undertakers and other third parties that in respect of which, subject to the terms and conditions set out in this Agreement, Project Co will be exercising the Authorised Functions or will be performing the services referred to in clause 10.2 (*Expiry, revocation, Other Functions and other services*) as the case may be; and
 - (ii) notify Project Co promptly of any third party's requirements, notices or details of legal proceedings which it receives relating to the Statutory Provisions.

10.2 **Expiry, revocation, Other Functions and other services**

- (a) If, at any time and from time to time:
 - (i) an authorisation under clause 10 (*Contracting out of functions*) expires or is revoked, withdrawn or suspended (and is not renewed); or
 - (ii) an Interested Party or third party requests Project Co or TfL (and TfL notifies Project Co of such request) to exercise in relation to the Works or the Services any function of TfL as Street Authority, Highway Authority and Traffic Authority (as the case may be) or TfL otherwise notifies Project Co that it requires Project Co to exercise any such function in respect of an Interested Party or third party, in either case under any statute or regulation (other than an Authorised Function) (an "**Other Function**"),

then, unless otherwise directed by TfL and subject to clause 10.2(f), Project Co shall:

 - (iii) be released from exercising and shall not exercise the relevant Authorised Function referred to in clause 10.2(a)(i);

- (iv) in relation to the SU Authorised Functions referred to in clause 10.2(a)(i), perform those services set out in Part 4 (*Services in Relation to TfL Functions*) of Schedule 5 (*Allocation of DCO and Other Requirements*) (if any);
- (v) in relation to the General Authorised Functions referred to in clause 10.2(a)(i), perform those services set out in clause 10.2(b); and
- (vi) in relation to the Other Functions, perform those services set out in clause 10.2(b),

in each case insofar as they relate to the Other Function or the same function of TfL as the Authorised Function which has expired or has been revoked, withdrawn or suspended (as applicable).

- (b) In the circumstances referred to in clause 10.2(a)(v) and clause 10.2(a)(vi), in relation to:
 - (i) any application for a permission, consent, authorisation, licence or other form of approval relating to the Project Facilities or the Project or the execution of the Works or Services the grant of which is required by an Applicable Requirement to be made by or on behalf of TfL (an "**Application**"), Project Co shall assemble all requisite documentation to support and explain the relevant Application and shall prepare a recommendation in respect of:
 - (A) any terms and conditions to be attached to any consent to the Application (if relevant); and
 - (B) the merits of the relevant Application, and submit the same to TfL,
 and upon TfL granting or refusing any Application, Project Co shall upon notice from TfL take all necessary steps to give effect to any such grant or refusal and comply with the terms thereof;
 - (ii) any proceedings commenced by a third party relating to any decision made or condition imposed on an Application (an "**Appeal**"), Project Co shall assemble all requisite documentation and evidence to defend the Appeal and shall prepare a recommendation in respect of the merits of the relevant Appeal and submit the same to TfL;
 - (iii) any power or obligation to carry out the Works or any works on the Project Roads by or on behalf of TfL and to recover the expenses from any Interested Party or third party, Project Co shall assemble all relevant documentation and evidence necessary to explain why the said works should be carried out and prepare a recommendation as to how the said expenses should be recovered;
 - (iv) any requirement for a notice or a direction to an Interested Party or third party which is required by Law to be made by or on behalf of TfL (a "**Direction**"), Project Co shall assemble all requisite documentation to support and explain the Direction and prepare a recommendation as to whether the Direction should be made and the terms thereof and upon TfL making a Direction Project Co shall serve the Direction on the relevant Interested Party or third party on behalf of TfL;
 - (v) any power to manage, maintain or provide facilities on any part of the Project Facilities by or on behalf of TfL, Project Co shall prepare recommendations to TfL as and when required by TfL in respect of the

exercise of the aforementioned powers in relation to the Project Facilities;
and

- (vi) any right of TfL as Highway Authority in relation to the Project Facilities, to object to a proposed course of action by a third party (an "**Objection**"), Project Co shall assemble all requisite documentation and evidence in relation to the Objection and prepare a recommendation in relation to the Objection and submit the same to TfL.
- (c) As part of the Liaison Procedures, Project Co shall establish with TfL a procedure for the communication of the matters referred to in clause 10.2(b) to TfL.
- (d) Project Co shall deal with all matters relating to its obligations pursuant to clause 10.2(b) in a timely and expeditious manner so as to ensure that TfL is able to discharge or exercise any relevant duty, power or discretion within the time required by the Applicable Requirement.
- (e) In addition to its obligations under clause 10.1 (*Authorised Functions*) and clause 10.2(a) (as the case may be), but subject to clause 10.2(f), Project Co shall perform the services set out in Part 5 (*Other Services*) of Schedule 5 (*Allocation of DCO and Other Requirements*) throughout the Agreement Period.
- (f) In carrying out its services pursuant to this clause 10.2 (*Expiry, revocation, Other Functions and Other Services*), Project Co shall not contract with, enter into binding commitments with, compromise with, give a notice of intention to proceed to, impose obligations upon, issue Street Works Licences, respond to any Application from or Appeal by, issue any Direction to or seek to recover costs from Statutory Undertakers or other third parties or carry out works affecting Statutory Undertakers or other third parties without the prior written approval of TfL.
- (g) For the purposes of clause 10.2(f), the approval of TfL may be given from time to time either in terms relating to a particular contract, commitment, compromise, works or matter relating to the relevant Statutory Provision (where applicable) or upon terms relating generally to such matters.
- (h) Actions taken by Project Co pursuant to this clause 10.2 (*Expiry, revocation, Other Functions and Related Services*) shall not in any way limit or fetter the discretion of TfL in the discharge or exercise of its duties or powers.
- (i) The decision of TfL regarding any recommendation made by Project Co pursuant to clause 10.2(b) shall not be subject to review under the Dispute Resolution Procedure.

10.3 **Additional functions**

- (a) Project Co may at any time and from time to time request TfL to authorise Project Co to exercise any one (1) or more of the functions conferred on TfL by the provisions of any of the statutes or regulations set out in any of the schedules to the 2009 Order, as amended, replaced, consolidated or re-enacted as referred to in clause 10.3(c) (other than the Authorised Functions at of the date of the relevant request).
- (b) The provisions of clause 8.2 (*Procedure*), clause 8.3 (*No fetter on discretion*) and clause 8.4 (*Relevant considerations*) shall apply *mutatis mutandis* in relation to any request pursuant to clause 10.3(a) and, if TfL decides to make any such authorisation, TfL shall confirm the same by a notice to Project Co in accordance with the provisions of clause 10.3(d) and the decision of TfL whether or not to

accede to any request of Project Co pursuant to this clause 10.3(b) in whole or in part shall not be subject to review under the Disputes Resolution Procedure.

- (c) Without prejudice to clause 10.1(a), clause 10.1(b) and clause 10.3(a) and subject to clause 10.3(d), where:
- (i) pursuant to any amendment, replacement, consolidation or re-enactment to the 2009 Order, further statutes or regulations (including any replacement or additional Legislation (as relevant)) are brought within the ambit of the 2009 Order; or
 - (ii) pursuant to the 2009 Order, TfL decides in its absolute discretion that an authorisation should be made in relation to an existing function (or functions) under the 2009 Order as of the Effective Date that is not an Authorised Function at the time of TfL's decision under this clause 10.3(c)(ii),

TfL may from time to time during the Agreement Period by notice to Project Co authorise Project Co to exercise such additional functions.

- (d) Any notice by TfL pursuant to clause 10.3(b) or clause 10.3(c) shall specify:
- (i) the function(s) of TfL which Project Co is authorised to exercise in respect of the Works and the Services;
 - (ii) whether the additional functions are General Authorised Functions or SU Authorised Functions; and
 - (iii) the authorisation period, which shall not exceed the shorter of the remaining Agreement Period and ten (10) years from the date of the grant of the authorisation,

and each of the statutes or regulations setting out one of the functions so authorised shall be deemed to be a Statutory Provision from the date of the authorisation and the provisions of clause 10 (*Contracting out of functions*) applicable to Authorised Functions (other than this clause 10.3(d)) shall apply *mutatis mutandis* in respect of such function from such date.

10.4 **Project Co responsibility**

- (a) Project Co shall be responsible for, and shall release and indemnify TfL and any TfL Related Party from and against, any Losses incurred in connection with:
- (i) Project Co's performance or exercise of the rights and powers granted under; or
 - (ii) any failure to comply with or fully observe, perform or satisfy (including in accordance with this clause 10 (*Contracting out of functions*)),

any or all of the Authorised Functions or Project Co's obligations in relation to any Other Functions.

- (b) For the purposes of clause 10.4(a), TfL shall be permitted to have regard to its statutory duties and functions when mitigating such Losses.

11. **STATUTORY UNDERTAKERS**

11.1 **Works promoted by Statutory Undertakers**

- (a) Notwithstanding any authorisation granted to Project Co by TfL from time to time under clause 10 (*Contracting Out of Functions*), Project Co shall be responsible for day to day co-ordination of the activities of Statutory Undertakers and others authorised to carry out works on the Project Land by the Traffic Manager, including:
- (i) receiving notices of street works;
 - (ii) co-ordinating the activities of Statutory Undertakers with Project Co's operations;
 - (iii) ensuring that contractors and others seeking to carry out works or carrying out works on the Project Land are properly authorised and that works are approved by the Traffic Manager;
 - (iv) promptly notifying the Traffic Manager of any contractor or other person which fails to provide evidence of proper authorisation or approval pursuant to clause 11.1(a)(iii);
 - (v) notifying the Traffic Manager of any works and the circumstances of such works carried out by Statutory Undertakers as emergency works for which street works notices may not have been issued;
 - (vi) notifying the Traffic Manager of any offence committed within the Project Land by a Statutory Undertaker under the Traffic Management Act or the NRSWA which Project Co is aware of and providing such information relating to such offence as may be required by the Statutory Authority; and
 - (vii) inspecting reinstatements carried out by Statutory Undertakers and notifying the Traffic Manager of any inadequate or unsatisfactory reinstatement.
- (b) Notwithstanding the duty of the Traffic Manager in respect of inspections of reinstatements for works promoted by Statutory Undertakers pursuant to the NRSWA, Project Co may carry out its own inspections of such reinstatements carried out by Statutory Undertakers on Project Facilities or in connection with the Works.
- (c) In the event that Project Co considers a reinstatement by a Statutory Undertaker to be unsatisfactory and detrimental to the ability of Project Co to comply with its obligations under this Agreement, then Project Co shall notify TfL and the Traffic Manager of the same within ten (10) Working Days of the relevant inspection being completed, provided that where no inspection is conducted within ten (10) Working Days of the relevant works being completed, Project Co shall be deemed to have accepted the reinstatement.
- (d) Upon receipt of the notice in clause 11.1(c), TfL shall request the Traffic Manager to apply the enforcement measures pursuant to the NRSWA, the NRSWA Regulations or the NRSWA Codes of Practice (as applicable) and require the relevant Statutory Undertaker to make good the reinstatement work to enable Project Co to comply with its obligations under this Agreement.
- (e) If, pursuant to works promoted by Statutory Undertakers, a contribution is made pursuant to Section 78 of the NRSWA to:
- (i) TfL, then TfL shall only pay such contributions to Project Co to the extent the contribution relates to costs actually incurred or likely to be incurred by Project Co during the Agreement Period; or

- (ii) Project Co, then Project Co shall pay such contribution to TfL to the extent the contribution relates to costs incurred or likely to be incurred by TfL at any time, including outside the Agreement Period.

11.2 **TfL responsibility**

- (a) Subject to clause 11.1(e), clause 11.2(b) and clause 11.2(c), TfL will pay to Project Co within thirty (30) days of receipt any monies actually received by it from any Statutory Undertaker in respect of the Project or the Project Facilities pursuant to any provision of the NRSWA, the NRSWA Regulations or the NRSWA Codes of Practice, other than fees relating to Sample Inspection.
- (b) If works are necessary as a consequence of an event described in Section 82(2) of the NRSWA, then those works shall be considered as a TfL Change and any sums received by TfL from any Statutory Undertaker shall not be subject to clause 11.2(a).
- (c) Subject to clause 11.2(d), at the request of Project Co, TfL shall use its reasonable endeavours to recover all Losses due to TfL as Street Authority in respect of the Project pursuant to the NRSWA, the NRSWA Regulations or the NRSWA Codes of Practice.
- (d) Project Co shall be responsible for, and shall release and indemnify TfL for, all costs incurred by TfL in connection with clause 11.2(c), including administrative costs, general staff costs and overheads.

12. **THIRD PARTY AGREEMENTS**

12.1 **Transferred Third Party Functions**

- (a) Project Co hereby confirms it is fully aware of the obligations, time constraints, risks and liabilities set out in the Third Party Agreements.
- (b) The Parties acknowledge that Project Co has, on or prior to the Effective Date, entered into deeds of covenant in favour of the counterparties to the following Third Party Agreements in relation to the Transferred Third Party Functions:
 - (i) the agreement between TfL and ASD Limited dated 13 April 2017;
 - (ii) the agreement between TfL and Southern Gas Networks plc dated 31 March 2017;
 - (iii) the agreement between TfL and Southern Gas Networks (as utility provider) dated 31 March 2017;
 - (iv) the agreement between TfL and Thames Water Utilities Limited dated 14 July 2017;
 - (v) the agreement between TfL, Knight Dragon Developments Limited, Knight Dragon Investments Limited, Knight Dragon Infrastructure Limited, Ansco Arena Limited, Waterfront Partner 1 Limited, Waterfront GP Limited, GLA Land and Property Limited and Trinity (D) Limited dated 17 March 2017;
 - (vi) the agreement between TfL and Docklands Light Railway Limited dated 19 December 2018;
 - (vii) the agreement between TfL and Docklands Light Railway Limited dated 25 January 2019;

- (viii) the agreement between TfL and Royal Borough of Greenwich dated 26 April 2019;
 - (ix) the agreement between TfL and London Borough of Tower Hamlets dated 3 May 2018;
 - (x) the agreement between TfL, Brenntag Inorganic Chemicals Limited and Brenntag UK Limited dated 10 April 2017;
 - (xi) the agreement between TfL and Birch Sites Limited dated 30 March 2017;
 - (xii) the agreement between TfL and London Underground Limited dated 2 April 2019; and
 - (xiii) the agreement between TfL, Silvertown Homes Limited, GLA Land and Property Limited and Silvertown Homes Limited and GLA Land and Property Limited dated 22 August 2017.
- (c) Except as provided in this Agreement, the Transferred Third Party Functions are hereby transferred to Project Co.
- (d) Project Co shall at its own risk and cost observe, comply with, perform, exercise and discharge all the Transferred Third Party Functions on behalf of TfL.
- (e) In exercising, discharging or taking the benefit of the Transferred Third Party Functions, Project Co is subject to the same restrictions, conditions, rules of interpretation, procedures, liabilities and obligations as would apply to TfL under and in relation to the Third Party Agreements if TfL were to exercise those functions.
- (f) Without prejudice to clause 12.1(g), Project Co acknowledges that TfL may, but is not obliged to, exercise or discharge any of the Transferred Third Party Functions concurrently with Project Co provided it gives prior notice to Project Co of its intention to do so (such notice only being required once in relation to each Transferred Third Party Function). To the extent that any such concurrent exercise or discharge of any Transferred Third Party Function adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
- (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or
 - (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*),
- unless and to the extent that the concurrent exercise or discharge of any Transferred Third Party Function is as a result of a breach by Project Co of its obligations under this Agreement.
- (g) The Parties acknowledge and agree that:
- (i) some of the Transferred Third Party Functions relate to provisions of the Third Party Agreements pursuant to which the relevant counterparty to those Third Party Agreements is obliged to take certain actions, or refrain from certain actions, the performance of which would benefit TfL as the contractual counterparty to the Third Party Agreements; and

- (ii) in identifying those provisions as Transferred Third Party Functions:
 - (A) TfL shall continue to enjoy such benefit; and
 - (B) Project Co shall be entitled to enjoy the benefit of the performance of any such obligations, to the extent relevant to the performance of Project Co's obligations under this Agreement.
- (h) TfL may exercise and discharge (as applicable) the Retained Third Party Functions.
- (i) Project Co shall provide reasonable administrative assistance to TfL in exercising and discharging (as applicable) the Retained Third Party Functions whenever requested by TfL (provided that Project Co shall not be required to incur or expend any material costs or expenses in providing such assistance).
- (j) Project Co shall not do anything or omit to do anything that might cause or contribute to a breach of the Third Party Agreements, including a breach of the Retained Third Party Functions.
- (k) If a Review Submission relates to a Transferred Third Party Function or is otherwise required in order to comply with a Transferred Third Party Function, Project Co shall submit to TfL a Third Party Agreement Statement of Conformity as part of each such Review Submission in relation to the relevant Transferred Third Party Functions.
- (l) In addition to the Third Party Agreement Statements of Conformity required pursuant to clause 12.1(k), Project Co shall submit to TfL a Monthly Third Party Agreement Statement of Conformity within five (5) Working Days of the end of each TfL Reporting Period during the period from the Effective Date until the Permit to Use Date (unless agreed otherwise by TfL).
- (m) Without prejudice to any notice required pursuant to clause 17.1 (*Handover Certificate*), wherever the provisions of a Third Party Agreement require an inspection to be carried out and the carrying out of such inspection is identified as a Retained Third Party Function, Project Co shall, as soon as reasonably practicable, notify TfL of the completion of the works to be the subject of such inspection.
- (n) To the extent that TfL performs any inspection, test or certification of any works performed by Project Co pursuant to a Transferred Third Party Function, TfL shall:
 - (i) invite Project Co to attend the relevant inspection, test or certification by providing no less notice to Project Co than that which is required to be provided to the counterparty to the relevant Third Party Agreement under the terms of that Third Party Agreement; and
 - (ii) provide Project Co with copies of any certification or other document produced as a result of the inspection, test or certification at the same time as such document is provided to the counterparty to the relevant Third Party Agreement.
- (o) Project Co shall procure that the D&C Contract contains terms which require the D&C Contractor to perform the obligations required by the Transferred Third Party Functions.
- (p) Project Co shall ensure that the Project Co Detailed Works Programme is consistent with the programming requirements in the Third Party Agreements.

- (q) Except as otherwise specified in this Agreement, Project Co shall be fully responsible for any costs arising pursuant to the Transferred Third Party Functions, including arising as a result of any delay in securing the issue of the Permit to Use or any Handover Certificate.
- (r) To the extent that the exercise or discharge of the Retained Third Party Functions by TfL directly and adversely affects Project Co's performance of its obligations under this Agreement, such adverse effects shall:
 - (i) prior to the Permit to Use Date, constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*); or
 - (ii) following the Permit to Use Date, to the extent that Project Co incurs additional costs or is required to undertake additional works or services, be deemed to be a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*).

12.2 TPA Survey Contracts

- (a) Project Co acknowledges that, prior to the Effective Date, TfL has entered into the TPA Survey Contracts.
- (b) Project Co acknowledges that prior to the Effective Date, TfL provided copies of the TPA Survey Contracts and all associated completed condition surveys to Project Co.
- (c) Project Co shall, on or before the Effective Date, procure that the D&C Contractor shall accept a novation of the TPA Survey Contracts and procure that the D&C Contractor shall comply with all of the obligations contained in the TPA Survey Contracts.
- (d) Project Co shall not be entitled to make any claim against TfL or to seek any relief or remedy of any nature from TfL, nor shall Project Co be relieved from any risks or obligations imposed on or undertaken by it under this Agreement, for any reason in connection with the TPA Survey Contracts.
- (e) If, in compliance with any Transferred Third Party Function, Project Co is required to perform or obtain any surveys or condition reports in addition to the TPA Survey Contracts, Project Co shall ensure that the benefit of all such surveys or condition reports obtained by Project Co can, to the extent legally possible, be enjoyed by TfL concurrently with Project Co and any third party as provided for by the terms of the relevant Third Party Agreement.

12.3 Specific requirements

Project Co shall comply with the specific requirements in relation to the Third Party Agreements listed in paragraph 4 (*Specific conditions*) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*).

PART IV - WORKS

13. DESIGN AND CONSTRUCTION

13.1 Carrying out the Works

Project Co shall carry out and complete the Works in accordance with:

- (a) the D&C Requirements and Project Co's Works Proposals;
- (b) the DCO and all Further Planning Permissions;
- (c) the Third Party Agreements;
- (d) all Applicable Requirements;
- (e) Good Industry Practice; and
- (f) all other requirements contained in this Agreement.

13.2 General obligations relating to the Works

Without prejudice to the generality of clause 13.1 (*Carrying out the Works*), Project Co shall carry out and complete the Works so that:

- (a) not used;
- (b) adequate time and resources are allocated to carry out and complete the Works in a safe manner;
- (c) the Works will comprise only materials and goods which will be of sound and merchantable quality and have been manufactured or prepared in accordance with Good Industry Practice;
- (d) all persons employed in connection with the Works are skilled, trained competent and experienced in their professions and trades or adequately supervised;
- (e) subject to the terms of the Certification Procedure, the design of the Works will be carried out by or under the supervision of the Designer and the persons carrying out any design and/or supervision are suitably qualified and experienced to do so and in particular have adequate previous experience of the part of the design they are carrying out or supervising;
- (f) all aspects of the Works are supervised by sufficient numbers of competent persons having adequate skills, training and knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement;
- (g) Project Co has full regard for the health, safety and security of all persons;
- (h) not used;
- (i) the Works are maintained in good order, kept in a safe condition and protected from damage; and
- (j) the Active Site is kept and maintained in a good, clean, tidy and safe condition so far as practicable having regard to the nature of the Works.

13.3 **Certification Procedure and Review Procedure**

- (a) Project Co shall ensure that the procedures referred to in the Certification Procedure are complied with by the appropriate persons referred to therein (other than TfL), and that such persons are at all relevant times duly authorised to carry out such procedures and to sign the relevant certificates. TfL shall comply with any obligations of TfL under the Certification Procedure.
- (b) Any failure by any person (other than TfL) referred to in the Certification Procedure to fulfil the obligations required of them under the Certification Procedure shall be a breach of Project Co's obligations under this Agreement.
- (c) Where Project Co has submitted any Design Data accompanied by a certificate to TfL in accordance with the Certification Procedure, Project Co shall not, and shall ensure that its Sub-Contractors shall not, depart from such Design Data other than:
 - (i) where such departure is of a minor nature which is consistent with the D&C Requirements and Project Co's Works Proposals and will not adversely affect:
 - (A) the Users;
 - (B) the appearance or functionality of the Project Facilities;
 - (C) health and safety; or
 - (D) the environment;
 - (ii) pursuant to a Project Co Change or a TfL Change; or
 - (iii) pursuant to a subsequent superseding submission of such Design Data which expressly states that it is superseding a previous submission of such Design Data, accompanied by a certificate in accordance with the Certification Procedure.
- (d) Project Co shall design and construct the Works in accordance with any Design Data which TfL has endorsed as "received" or "received with comments" in accordance with the Review Procedure.
- (e) Project Co shall not commence or permit the commencement of construction of any part of the Works until all the Design Data relating to that part of the Works and all relevant certificates (as required in accordance with Schedule 9 (*Certification and Review Procedure*)) have been submitted to TfL under the Review Procedure and TfL has endorsed all such Design Data as "received" or "received with comments" in accordance with the Review Procedure.
- (f) Project Co acknowledges and agrees that:
 - (i) all documents, plans, proposals, permissions and other items required to be prepared, submitted, approved, consented to and/or obtained pursuant to the Transferred DCO Functions or the Transferred Third Party Functions must be submitted to TfL under the Review Procedure and endorsed as "received" or "received with comments" in accordance with the Review Procedure prior to finalisation and, where applicable, submission to the relevant consent authority, body or, relevant counterparty to the Third Party Agreement; and

- (ii) all proposed variations to any of the items finalised or submitted in accordance with clause 13.3(f)(i) must be submitted to TfL under the Review Procedure and endorsed as "received" or "received with comments" in accordance with the Review Procedure prior to variation of such document.
- (g) Project Co shall ensure that the D&C Contractor appoints an independent UKAS accredited testing organisation to carry out or verify all testing required under Schedule 9 (*Certification and Review Procedure*) and the other provisions of this Agreement.

13.4 **Project Co's Works Proposals**

- (a) Project Co acknowledges and agrees that:
 - (i) the obligations in clause 13.1(a) are independent obligations; and
 - (ii) the fact that Project Co has complied with Project Co's Works Proposals but not the D&C Requirements shall not be a defence to an allegation that Project Co has not satisfied the D&C Requirements.
- (b) If Project Co or TfL becomes aware that any element of Project Co's Works Proposals does not comply with and satisfy the D&C Requirements:
 - (i) Project Co or TfL (as applicable) shall notify the other Party as soon as reasonably practicable and nonetheless within twenty (20) Working Days of becoming aware of such matter; and
 - (ii) Project Co shall propose (in accordance with Part 2 (*Project Co Changes*) of Schedule 22 (*Change Procedure*)) a Project Co Change to amend Project Co's Works Proposals so that they comply with and satisfy the D&C Requirements.

13.5 **Project Co Mobilisation Plan**

- (a) Project Co shall comply with the Project Co Mobilisation Plan from the Effective Date until all activities contemplated by the Project Co Mobilisation Plan have been completed.
- (b) No later than fifteen (15) Working Days prior to the date upon which Project Co anticipates that the construction of the Works will commence, Project Co shall issue to TfL a notice to that effect indicating the relevant anticipated date of construction commencement.
- (c) Project Co shall not commence any Major Works until it has complied with the following aspects of the Project Co Mobilisation Plan:
 - (i) the appointment of all "key people" in accordance with paragraph 4.3 (Organisation chart), figure 3 (Organisation chart), paragraph 4.4 (Key people) and table 1 (Key people and credentials) in the Project Co Mobilisation Plan;
 - (ii) the development and submission to TfL of the Management Systems documentation set out in paragraphs 5.1 (Development and review procedures for documents) to 5.8 (Model Production and Delivery Table (MPDT)) of the Project Co Mobilisation Plan, including without limitation, the documentation listed in figure 5 (Mobilisation plan phase key document map) and table 3 (Documents requiring approval by third parties and TfL

as part of the review process), and the endorsement by TfL as "received" or "received with comments" in accordance with the Review Procedure of:

- (A) the Community Engagement Plan;
 - (B) the Project Co Management System;
 - (C) the Environmental Management System;
 - (D) the Health and Safety Management System; and
 - (E) the Performance Management Plan;
- (iii) the engagement and communication activities with local residents and key stakeholders contemplated by paragraphs 5.9, 5.10 and 5.11 of the Project Co Mobilisation Plan have occurred, including, without limitation:
- (A) the implementation, operation and publication of a 24-hour helpline for Interested Parties or other members of the public in accordance with paragraph 5.11.2 (24-hour helpline) of the Project Co Mobilisation Plan;
 - (B) the establishment of a stakeholder database in accordance with paragraph 5.11.3 (Project helpline provider and stakeholder database) of the Project Co Mobilisation Plan;
 - (C) the hosting of at least one (1) public exhibition in accordance with paragraph 5.11.4 (Public exhibitions) of the Project Co Mobilisation Plan and the Community Engagement Plan (as defined in the Project Co Mobilisation Plan), including event follow-up;
 - (D) the establishment, maintenance and meeting of at least three (3) Community Liaison Groups (as defined in the Project Co Mobilisation Plan) in accordance with paragraph 5.11.5 (Promoting Community Liaison Groups) of the Project Co Mobilisation Plan; and
 - (E) the establishment of monthly meetings with local authorities and engagement with schools to implement programmes such as work experience placements, careers days, careers talks and site visits, as set out in paragraph 5.11.6 (Voluntary and educational activity) of the Project Co Mobilisation Plan;
- (iv) the development of the Logistics Management Plan (as defined in the Project Co Mobilisation Plan) and its subsidiary plans, in accordance with paragraph 5.12 (Logistics Management Plan (LPM) including Traffic Management Plan and River Transport Management Plan) and paragraph 20 (Logistics Management) of the Project Co Mobilisation Plan, including the appointment of the Logistics Manager (as defined in the Project Co Mobilisation Plan) and staffing team in accordance with paragraph 20.2 (Logistics team) and as set out in figure 26 (Proposed staffing structure for marine and road logistics) in the Project Co Mobilisation Plan;
- (v) the Health and Safety Management Plan for any specific early works in accordance with paragraph 6 (Initial HS&W arrangements 50.39(b)(ii)(C)) of the Project Co Mobilisation Plan (if applicable);
- (vi) performance of competence checks and the creation and maintenance of a Register of Site Staff (as defined in the Project Co Mobilisation Plan), in

accordance with paragraph 6.3 (Competence Checks, Appointed Persons and Training) of the Project Co Mobilisation Plan;

- (vii) the establishment of Site facilities, accommodation, boundaries, user route diversions and security arrangements in accordance with paragraph 7 (Site Facilities and Accommodation 50.39(b)(ii)(E)(H)) of the Project Co Mobilisation Plan;
- (viii) the completion of all activities set out in paragraph 8 (Liaison Procedures);
- (ix) the establishment of the Consents Register (as defined in the Project Co Mobilisation Plan) encompassing the consents set out in table 5 (Summary of consents required for the Silvertown Works) and table 6 (Summary of consents required for the Greenwich Works), the related dashboard reports and the Third Party Commitments Register (as defined in the Project Co Mobilisation Plan) in accordance with paragraph 11.2 (Comprehensive forecast of required approvals) of the Project Co Mobilisation Plan;
- (x) the establishment of monthly meetings between consents, programme and constructions teams regarding the alignment of the consents process and the Project Co Tender Programme in accordance with paragraph 11.3 (Programme risk management via the consents process) of the Project Co Mobilisation Plan;
- (xi) the development of monitoring plans and software tools in accordance with paragraph 14 (Monitoring, data collection and recording 50.39(b)(ii)(L)) of the Project Co Mobilisation Plan;
- (xii) the completion of design workshops and reviews in accordance with paragraph 16 (Design 50.39(b)(iii)(B)) of the Project Co Mobilisation Plan including:
 - (A) periodic design and innovation workshops in accordance with paragraph 16.2.2 (Design and innovation workshops) of the Project Co Mobilisation Plan;
 - (B) Tender Design Stakeholder Consultation Group and Tunnel Design Review Panel (each as defined in the Project Co Mobilisation Plan) workshops during the review period in accordance with paragraph 16.2.6 (Design programme activities) of the Project Co Mobilisation Plan; and
 - (C) an interim review with TfL at the end of the developed design phase in accordance with paragraph 16.2.6 (Design programme activities) of the Project Co Mobilisation Plan;
- (xiii) the completion of all activities set out in paragraph 18 (Activities within the mobilisation period 50.39(b)(viii)) of the Project Co Mobilisation Plan); and
- (xiv) the development, implementation and operation of a risk management system as set out in paragraph 19 (Risk Management) of the Project Co Mobilisation Plan,

and, in each case, such compliance with the Project Co Mobilisation Plan to be evidenced by Project Co to TfL's satisfaction (acting reasonably).

13.6 **Not Used**

13.7 **Traffic Signalling Works**

- (a) Project Co shall:
 - (i) design, construct and install the Traffic Signalling in accordance with the D&C Requirements and the terms of this Agreement as part of the Works; and
 - (ii) without prejudice to clause 6 (*Consents*), obtain any Necessary Consents that may be required in connection with the Traffic Signalling.
- (b) Project Co shall design the Traffic Signalling in such a manner so as to allow for all traffic configurations within the Project Land that are reasonably likely to be required throughout the period of construction (including based on the access contemplated by the Site Access Programme).
- (c) The Parties acknowledge and agree that:
 - (i) Project Co shall not be responsible for commissioning, testing, operating or maintaining the Traffic Signalling (other than the commissioning and testing required to ensure the Traffic Signalling is operational prior to integration with the wider TfL Signalling System by TfL);
 - (ii) the Traffic Signalling does not form part of the Project Facilities; and
 - (iii) any traffic signals installed solely as part of the Tunnel Closure System do not constitute Traffic Signalling.
- (d) Not used.
- (e) Project Co shall fully co-operate with TfL and any relevant TfL Related Party in relation to commissioning and testing the Traffic Signalling.¹

13.8 Signalling Commissioning Period

- (a) No later than forty (40) Working Days prior to the date upon which Project Co anticipates that the design, construction and installation of a Traffic Signalling System will be completed in accordance with the D&C Requirements and the requirements of this Agreement, Project Co shall issue to TfL a notice to that effect indicating the date that the relevant Traffic Signalling System will be completed.
- (b) Project Co shall:
 - (i) submit the Signalling Documentation for a Traffic Signalling System to the Review Procedure on or prior to the date upon which Project Co anticipates that the design, construction and installation of such Traffic Signalling System will be completed in accordance with the D&C Requirements and the requirements of this Agreement; and
 - (ii) ensure that:
 - (A) the signalling configuration software included in the Signalling Documentation is compatible with TfL systems in accordance with Annex 6 (*Traffic Safety and Control Requirements (Outside Tunnel)*) of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*); and

¹ Subject to discussions with UKPN/SGN.

- (B) the licence granted pursuant to clause 41.3 (*Project Co IPR licence*) is granted in relation to the Project Co IPR in such software.
- (c) Project Co shall provide TfL and any TfL Related Party with all access requested by TfL to any Traffic Signalling System and surrounding areas and any other access to the Active Site reasonably required by TfL for the duration of the Signalling Commissioning Period for the purposes of commissioning and testing such Traffic Signalling System.
- (d) During the Signalling Commissioning Period, TfL shall commission and test the relevant Traffic Signalling System to:
- (i) ascertain whether the Traffic Signalling System has been designed, constructed and installed by Project Co in accordance with the D&C Requirements and the terms of this Agreement; and
 - (ii) test compatibility and operation of the Traffic Signalling System with the wider TfL Signalling System.
- (e) No later than five (5) Working Days after the expiry of the Signalling Commissioning Period, TfL shall either:
- (i) issue the Signalling Commissioning Certificate in relation to the relevant Traffic Signalling System; or
 - (ii) notify Project Co of its decision not to issue the Signalling Commissioning Certificate on the grounds that the Traffic Signalling System has not been designed, constructed and/or installed by Project Co in accordance with the D&C Requirements or the terms of this Agreement and state the reasons for such decision.
- (f) Where clause 13.8(e)(ii) applies, Project Co shall reimburse TfL for all such costs reasonably and properly incurred by TfL in carrying out any further commissioning and testing activities under clause 13.8(j).
- (g) TfL may only refuse to issue a Signalling Commissioning Certificate under clause 13.8(e)(ii) on the grounds that the Traffic Signalling System has not been designed, constructed and/or installed by Project Co in accordance with the D&C Requirements or the terms of this Agreement.
- (h) If TfL issues a notice pursuant to clause 13.8(e)(ii) that the Signalling Commissioning Certificate will not be issued, Project Co shall complete such further works or other measures necessary or appropriate to remedy or remove all grounds for refusal to issue the Signalling Commissioning Certificate.
- (i) No later than five (5) Working Days prior to the date upon which Project Co anticipates it will have completed the works or measures referred to in clause 13.8(h), Project Co shall give notice to TfL that such further works have been completed or measures taken and setting out the date that the relevant works or other measures will be completed.
- (j) Following receipt by TfL of the notice under clause 13.8(i), the provisions of clause 13.8(c), clause 13.8(d), clause 13.8(e), clause 13.8(f), clause 13.8(g), clause 13.8(h), clause 13.8(i) and this clause 13.8(j) shall thereafter apply to such notice *mutatis mutandis*.
- (k) If Project Co fails to provide TfL and any relevant TfL Related Party with the access requested pursuant to clause 13.8(c), the Signalling Commissioning Period shall be extended by a period equivalent to the duration of such failure and

Project Co shall not be entitled to any compensation or relief from its obligations pursuant to this Agreement in relation to such extension.

- (l) If TfL fails to complete the commissioning and testing of a Traffic Signalling System prior to the expiry of the relevant Signalling Commissioning Period, the Signalling Commissioning Period shall be automatically extended until the date that TfL issues a Signalling Commissioning Certificate for the relevant Traffic Signalling System and, subject to clause 13.8(m), such extension shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).
- (m) Project Co acknowledges and agrees that a Compensation Event shall not arise pursuant to clause 13.8(l) where an extension to the Signalling Commissioning Period is required as a result of any breach of this Agreement by Project Co, including:
 - (i) a failure by Project Co to provide access to TfL and any TfL Related Party as requested pursuant to clause 13.8(c); and/or
 - (ii) a failure by Project Co to design, construct and install the Traffic Signalling in accordance with the D&C Requirements or the requirements of this Agreement.
- (n) Project Co acknowledges and agrees that any Traffic Signalling which is the subject of a Signalling Commissioning Certificate but not located within an Additional Asset Area or Section of the Site which is the subject of a Handover Certificate will be re-assessed by the Independent Certifier as part of the assessment of the satisfaction of the Permit to Use Requirements.

13.9 **Damage to the Traffic Signalling**

- (a) Following the date on which TfL issues a Signalling Commissioning Certificate, Project Co shall be responsible for ensuring that the relevant Traffic Signalling System is not damaged prior to the relevant Handover Date or the Permit to Use Date (as applicable).
- (b) In the event of any damage referred to in clause 13.9(a) occurring:
 - (i) Project Co shall:
 - (A) notify TfL of such damage promptly upon becoming aware;
 - (B) promptly rectify any damage to the Traffic Signalling notified to TfL pursuant to clause 13.9(b)(i)(A) or otherwise notified by TfL to Project Co and notify TfL when such damage has been rectified;
 - (C) provide TfL and any TfL Related Party with all access required for TfL to inspect and assess the functionality of signalling for a period of five (5) Working Days following the notice under clause 13.9(b)(i)(B); and
 - (D) rectify any issues in Traffic Signalling identified by TfL following the inspection referred to in clause 13.9(b)(i)(C);
 - (ii) the relevant Handover Certificate or the Permit to Use (as applicable) shall not be issued until such damage (and the issues identified by TfL) has been rectified by Project Co; and

- (iii) subject to clause 13.9(c), Project Co shall release and indemnify TfL and any TfL Related Party for the cost of any inspection or assessment undertaken in accordance with clause 13.9(b)(i)(C).
- (c) Project Co shall be responsible for rectifying any damage to the Traffic Signalling or the Works caused by TfL or any relevant TfL Related Party whilst commissioning and testing the Traffic Signalling and such damage shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).

13.10 **Ground conditions**

- (a) No warranty is given nor representation made by TfL that any Project Land or any existing structures, foundations and services on such Project Land are or will be fit or adequate for any particular purpose, including without limitation for the purpose of enabling Project Co to comply with its obligations pursuant to this Agreement.
- (b) Subject to Schedule 30 (*Ground Conditions*), Project Co accepts full responsibility for and has made full provision for all costs and risks which may arise from:
 - (i) the physical condition of all Project Land required by Project Co for the Project, including climatic, hydrological, ecological, environmental, geotechnical, geological conditions (including in relation to riverbeds), ground, subsoil, sub-strata and general conditions at whatever time those conditions may arise; and
 - (ii) the nature of the design, works and materials necessary for the execution of the Works.
- (c) The provisions of Schedule 30 (*Ground Conditions*) shall apply to any Qualifying Events.

13.11 **Site materials**

Project Co may only excavate, extract, dispose of, exploit or otherwise deal with any materials, including any soil, aggregates, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Works (together "**Site Materials**"):

- (a) in accordance with the DCO;
- (b) if and to the extent that Project Co has the right to do so pursuant to and in accordance with any Applicable Requirement or the terms of any agreement or compulsory purchase order;
- (c) if and to the extent that, in the case of excavation or extraction of Site Materials, such excavation or extraction is necessary for the purpose of carrying out the Works in accordance with the D&C Requirements;
- (d) in accordance with the Transferred Third Party Functions; and
- (e) subject to any limitation, restriction or condition, whether pursuant to any Applicable Requirement or otherwise, applying to or affecting the right of Project Co to undertake any such excavation, extraction, disposal, exploitation or other dealing.

13.12 **Contamination**

- (a) Nothing in this Agreement or otherwise shall constitute or imply a representation or warranty by or on the part of TfL as to the extent of any Contamination existing or being discovered on or in any land required by Project Co for the Project.
- (b) Subject to Schedule 30 (*Ground Conditions*), Project Co accepts full responsibility for and has made full provision for all acts and risks which may arise from Contamination existing or being discovered on or in any land required by Project Co for the Project.
- (c) Subject to Schedule 30 (*Ground Conditions*), Project Co shall be responsible at its own cost for cleaning up, preventing or otherwise dealing with any Contamination to the extent:
 - (i) required to undertake the Works in accordance with this Agreement;
 - (ii) Project Co or its Sub-Contractors have disturbed or dislodged such Contamination whilst undertaking the Works;
 - (iii) cleaning up or otherwise dealing with such Contamination is required to comply with the Applicable Requirements;
 - (iv) a Transferred Third Party Function requires that such Contamination is cleaned up or otherwise dealt with; and
 - (v) required by the Transferred DCO Functions.
- (d) In complying with clause 13.12(c), Project Co shall at all times comply with Good Industry Practice, all Applicable Requirements, Schedule 12 (*Environmental Requirements*), any Necessary Consents, orders, notices or directions of any regulatory body (whether made against TfL or Project Co or any landowner or occupier), the Transferred Third Party Functions, and all other provisions of this Agreement.

13.13 Hazardous Substances

When performing the Works, Project Co shall:

- (a) not use, transport, store or dispose of Hazardous Substances nor emit, discharge or release Hazardous Substances or permit any other person to do so other than as may be essential in the interests of safety or in order to perform its obligations under this Agreement;
- (b) comply with Good Industry Practice, all Applicable Requirements, Schedule 12 (*Environmental Requirements*), any Necessary Consents, orders, notices or directions of any regulatory body (whether made against TfL or Project Co or any landowner or occupier) and all other provisions of this Agreement in relation to the activities described in 13.13(a); and
- (c) not commit any act or omission on the Active Site whereby any property (including the air above, water running on or through or the soil, sub-soil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the Environment or on human health.

13.14 Monitoring

- (a) Except as otherwise required by the Retained DCO Functions or Retained Third Party Functions, Project Co shall be responsible at its own cost for undertaking all ground and other monitoring required to comply with, or demonstrate compliance

with, its obligations pursuant to this Agreement, all Applicable Requirements, the Third Party Agreements and Good Industry Practice.

- (b) Project Co shall, on or before the Effective Date, procure that the D&C Contractor shall accept a novation of the Monitoring Agreement and procure that the D&C Contractor shall comply with all of the obligations contained in the Monitoring Agreement.
- (c) Project Co shall not be entitled to make any claim against TfL or to seek any relief or remedy of any nature from TfL, nor shall Project Co be relieved from any risks or obligations imposed on or undertaken by it under this Agreement, for any reason in connection with any ground or other monitoring or otherwise in connection with the Monitoring Agreement.

13.15 **Historical Remains**

- (a) Nothing in this Agreement or otherwise shall constitute or imply a representation or warranty by or on the part of TfL as to the extent of any Historical Remains existing or being discovered on or in any land required by Project Co for the Project.
- (b) Subject to Schedule 30 (*Ground Conditions*), Project Co accepts full responsibility for and has made full provision for all costs and risks which may arise from Historical Remains existing or being discovered on or in any land required by Project Co for the Project.
- (c) Upon the discovery of any Historical Remains on or at the Project Land by Project Co or any Project Co Related Party, Project Co shall:
 - (i) promptly inform the TfL Representative of such discovery; and
 - (ii) at all times comply with Good Industry Practice, all Applicable Requirements, Schedule 12 (*Environmental Requirements*), any Necessary Consents, orders, notices or directions of any regulatory body (whether made against TfL or Project Co or any landowner or occupier) and all other provisions of this Agreement.
- (d) Without prejudice to Project Co's obligation to comply with the Transferred DCO Functions, Project Co:
 - (i) shall use all reasonable endeavours to act in such manner in respect of Historical Remains so as to ensure that any such discovery does not prevent the performance of its obligations in this Agreement; and
 - (ii) acknowledges and agrees that, as between TfL and Project Co, all Historical Remains which may be found on or at the Project Land are or shall become, upon discovery, the absolute property of TfL.

13.16 **Unexploded Ordnance**

- (a) Nothing in this Agreement or otherwise shall constitute or imply a representation or warranty by or on the part of TfL as to the extent of any Unexploded Ordnance existing or being discovered on or in any land required by Project Co for the Project.
- (b) Subject to Schedule 30 (*Ground Conditions*), Project Co accepts full responsibility for and has made full provision for all costs and risks which may arise from any Unexploded Ordnance existing or being discovered on or in any land required by Project Co for the Project.

- (c) If Project Co discovers any Unexploded Ordnance in carrying out its obligations under this Agreement, Project Co shall:
 - (i) promptly inform the TfL Representative of such discovery; and
 - (ii) dispose of, or otherwise deal with, the Unexploded Ordnance at all times in accordance with Good Industry Practice, all Applicable Requirements, Schedule 12 (*Environmental Requirements*), any Necessary Consents, orders, notices or directions of any regulatory body (whether made against TfL or Project Co or any landowner or occupier) and all other provisions of this Agreement.
- (d) Without prejudice to Schedule 30 (*Ground Conditions*), the discovery of any Unexploded Ordnance on or in any land required by Project Co for the Project shall constitute a Relief Event subject to and in accordance with clause 26.2 (*Relief Events*).

13.17 Utilities

- (a) Nothing in this Agreement or otherwise shall constitute or imply a representation or warranty by or on the part of TfL as to the extent, location or quantity of any Utilities on or in any land required by Project Co for the Project.
- (b) Subject to Schedule 30 (*Ground Conditions*), Project Co accepts full responsibility for and has made full provision for all costs and risks which may arise from the need to relocate, divert, disconnect or install any Utilities in order to perform the Works in accordance with this Agreement, including:
 - (i) procuring any necessary relocation, diversion, disconnection or installation to be undertaken by or required by any utility providers;
 - (ii) co-ordinating, liaising with and managing relevant utility providers; and
 - (iii) complying with all Applicable Requirements and the Third Party Agreements, including the undertaking of any relevant protective works.
- (c) TfL shall provide such reasonable assistance as may be reasonably requested by Project Co in relation to engaging with utility providers (provided that TfL shall not be required to incur or expend any material costs or expenses in providing such assistance).
- (d) Project Co shall be responsible for the provision and full cost of all power, gas, water, telecommunications and other utilities required to undertake the Works.
- (e) Project Co shall, on or before the Effective Date, procure that:
 - (i) the D&C Contractor shall accept a novation of the contract between TfL and UK Power Networks for power capacity provision and shall comply with all of the obligations contained in such contract; and
 - (ii) the D&C Contractor shall:
 - (A) accept an appointment as agent of TfL in relation to the contract between TfL and Southern Gas Networks in relation to the relocation of the SGN Pressure Reduction Station; and
 - (B) comply with all of the obligations contained in such contract as are applicable to its role as agent of TfL under that contract.

- (f) Project Co shall not be entitled to make any claim against TfL or seek any relief or remedy of any nature from TfL, nor shall Project Co be relieved from any risks or obligations contained in the contracts listed in clause 13.17(e).

13.18 Relevant Authorities

- (a) Subject to the requirements of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*), Project Co shall be responsible for liaising with all Relevant Authorities in relation to the Works and Transferred DCO Functions and, in carrying out the Works and Transferred DCO Functions, shall comply with the requirements of all Relevant Authorities.
- (b) Project Co shall supply TfL with copies of all notices received by Project Co from Relevant Authorities in relation to the Project within five (5) Working Days of receipt by Project Co.

13.19 CDM Regulations

- (a) For the purpose of this clause, the terms "**Client**", and "**Health and Safety File**" shall have the same meanings as the equivalent uncapitalised terms in the Construction (Design and Management) Regulations 2015 (the "**CDM Regulations**") and the term "**Executive**" as used in this clause shall mean the Health and Safety Executive (or other regulatory body where "**Executive**" in the CDM Regulations is to be read as a reference to a separate regulatory body).
- (b) As between Project Co and TfL, Project Co shall be entirely responsible for the safety of any design which forms part of the Works and/or Services and for the adequacy, stability and safety of all site operations and methods of construction.
- (c) Project Co hereby agrees to be treated as the only Client in respect of the Project for the purpose of the CDM Regulations and Project Co shall not, at any time, seek to withdraw, terminate or in any manner derogate from such agreement.
- (d) TfL hereby consents to Project Co being treated as the only Client in respect of the Project for the purpose of the CDM Regulations, as set out in clause 13.19(c) and shall confer on Project Co such authority as Project Co may reasonably require in order to discharge its duties as Client under the CDM Regulations.
- (e) Project Co shall give notice to the Executive in accordance with CDM Regulation 6 as soon as is practicable after the Effective Date (and in any event before the construction of the Works begins) and shall simultaneously provide a copy of such notice to TfL.
- (f) Project Co shall observe, perform and discharge and/or shall ensure the observance, performance and discharge of all of the Client's obligations, requirements and duties arising under the CDM Regulations in connection with the Project and shall do so in accordance with any code of practice or guidance for the time being approved by the Executive, or any successor organisation, pursuant to the Health & Safety at Work etc. Act 1974.
- (g) On or prior to the earlier of the Permit to Use Date and the termination of this Agreement in accordance with its terms, Project Co shall provide a certified copy of the full and complete Health and Safety File for the Project to TfL and Project Co hereby grants to TfL an irrevocable, royalty free and non-exclusive licence to use and reproduce any information or documents contained at any time within such Health and Safety File for any purpose connected with the Project, which licence shall carry the right to grant sub-licences and shall be transferable to third parties.

- (h) Insofar as the beneficial ownership of copyright and all other intellectual property and design rights in any information or documents to be contained at any time in the Health and Safety File for the Project will be vested in any person other than Project Co, Project Co shall ensure, as a condition precedent to the appointment of such beneficial owner, that they grant to TfL an irrevocable, perpetual, royalty free and non-exclusive licence to use and reproduce the Health and Safety File for any and all purposes connected with the Project, which licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- (i) Project Co shall:
 - (i) for the duration of the Availability Period, compile, maintain and update the Health and Safety File for the Project and ensure its availability for use in connection with such future works and services as may be carried out to the completed Works; and
 - (ii) grant a licence in relation to such updates on the same terms as the licences contemplated by clause 13.19(g) and clause 13.19(h) (as applicable).
- (j) During the Availability Period, Project Co shall supply copies of the current Health and Safety File to TfL upon written request and upon any material changes being made to the Health and Safety File.
- (k) Upon Project Co's request, TfL shall provide to Project Co such information and assistance as TfL is obliged to provide to Project Co under CDM Regulations 4(4) and 8(6).
- (l) Project Co shall be responsible for, and shall release and indemnify TfL and any TfL Related Party from and against Losses for breach of its obligations under this clause 13.19 (*CDM Regulations*).
- (m) In addition to the provision of the Health and Safety File for the Project pursuant to clause 13.19(g), Project Co shall prepare separate Health and Safety Files in accordance with the CDM Regulations for each of the following:
 - (i) the Project Facilities;
 - (ii) each of the Additional Asset Areas; and
 - (iii) each Section of the Site (excluding the Additional Assets Areas within that Section of the Site),

and provide such separate Health and Safety Files to TfL on or prior to the earlier of the Permit to Use Date or the date of the relevant Handover Certificate (as applicable) and the termination of this Agreement.
- (n) Project Co shall provide the Health and Safety Files prepared in relation to each Additional Asset Area to the respective owner or maintaining authority promptly following the date of the Handover Certificate for the relevant Additional Asset Areas.
- (o) In the event of any conflict regarding the type and detail of records required for compliance with the CDM Regulations and Schedule 16 (*Records and Reporting*) regarding the Health and Safety File, Project Co shall comply with the requirements of the CDM Regulations but shall include any additional information or detail required by this Agreement.

- (p) Project shall agree the arrangements of the Health and Safety File with TfL, including the layout of documentation, format of data provided, storage of information and update requirements throughout the Project.

13.20 **Performance monitoring and Key Performance Indicators**

Project Co shall comply with its obligations pursuant to Schedule 15 (*Design & Construction Performance Monitoring*).

14. **TFL USER CHARGING SYSTEM**

14.1 **Passive User Charging Infrastructure**

- (a) Project Co shall:
 - (i) design, construct and install the Passive User Charging Infrastructure in accordance with the D&C Requirements and the terms of this Agreement as part of the Works; and
 - (ii) without prejudice to clause 6 (*Consents*), obtain and maintain for the Agreement Period any Necessary Consents that may be required in connection with the Passive User Charging Infrastructure.
- (b) Project Co shall not be responsible for designing, constructing, installing, commissioning or testing the Active User Charging Infrastructure.
- (c) Project Co shall not be liable for any Losses caused by any incompatibility between the Active User Charging Infrastructure and the Passive User Charging Infrastructure, provided that Project Co has designed, constructed and completed the Passive User Charging Infrastructure in accordance with clause 14.1(a).

14.2 **TfL UC Installation Period**

- (a) Project Co shall provide TfL and any TfL Related Party with all access requested by TfL to the Passive User Charging Infrastructure and surrounding areas and any other access to the Active Site reasonably required by TfL for the duration of the TfL UC Installation Period for the purposes of constructing, installing, commissioning and testing the Active User Charging Infrastructure.
- (b) The Parties shall both comply with the terms of the UC Interface Protocol in relation to access by TfL and any TfL Related Party to the Active Site pursuant to clause 14.2(a) and Project Co shall fully co-operate with TfL and any relevant TfL Related Party in relation to constructing, installing, commissioning and testing the Active User Charging Infrastructure in the Active Site.
- (c) No later than eighteen (18) months prior to the expected Permit to Use Date based on the current Project Co Detailed Works Programme, Project Co shall notify TfL of its proposed TfL UC Installation Period Commencement Date, which date shall be:
 - (i) no earlier than twelve (12) months; and
 - (ii) no later than six (6) months,prior to the expected Permit to Use Date based on the current Project Co Detailed Works Programme.
- (d) No later than forty (40) Working Days prior to the date upon which Project Co anticipates that the design, construct and install of all the Passive User Charging

Infrastructure will be completed in accordance with the D&C Requirements, Project Co shall issue to TfL and the Independent Certifier a notice to that effect indicating:

- (i) the date that the Passive User Charging Infrastructure will be completed; and
 - (ii) the Passive User Charging Infrastructure Inspection Date, which shall be no later than the date thirteen (13) months prior to the expected Permit to Use Date based on the current Project Co Detailed Works Programme.
- (e) Project Co shall enforce its contractual rights to procure that the Independent Certifier carries out an inspection of the Passive User Charging Infrastructure on or following the Passive User Charging Infrastructure Inspection Date (but no later than ten (10) Working Days following such date) and takes such measures as are required to ascertain whether the Passive User Charging Infrastructure has been designed, constructed and installed by Project Co in accordance with the D&C Requirements and the terms of this Agreement.
- (f) Project Co shall enforce its contractual rights to procure that, within twenty (20) Working Days of the Passive User Charging Infrastructure Inspection Date, the Independent Certifier either:
- (i) issues the Passive UC Infrastructure Completion Certificate; or
 - (ii) notifies Project Co of its decision not to issue the Passive UC Infrastructure Completion Certificate on the grounds that the Passive User Charging Infrastructure has not been designed, constructed and installed by Project Co in accordance with the D&C Requirements or the terms of this Agreement, and state the reasons for such decision.
- (g) If the Independent Certifier issues a notice pursuant to clause 14.2(f)(ii) that the Passive UC Infrastructure Completion Certificate will not be issued, Project Co shall complete such further works or other measures necessary or appropriate to remedy or remove all grounds for refusal to issue the Passive UC Infrastructure Completion Certificate.
- (h) No later than five (5) Working Days prior to the date upon which Project Co anticipates it will have completed the works or measures referred to in clause 14.2(g), Project Co shall give notice to TfL and the Independent Certifier that such further works have been completed or measures taken and setting out:
- (i) the date that the relevant works or other measures will be completed; and
 - (ii) the Passive User Charging Infrastructure Inspection Date.
- (i) Following receipt by TfL of the notice under clause 14.2(h), the provisions of clause 14.2(e), clause 14.2(f), clause 14.2(g), clause 14.2(h) and this clause 14.2(h)(i) shall thereafter apply to such notice *mutatis mutandis*, except that the twenty (20) Working Day period referred to in clause 14.2(f) shall be reduced to ten (10) Working Days and the ten (10) Working Day period referred to in clause 14.2(e) shall be reduced to five (5) Working Days.
- (j) If Project Co fails to provide TfL and any relevant TfL Related Party with the access requested pursuant to clause 14.2(a), the TfL UC Installation Period shall be extended by a period equivalent to the duration of such failure and Project Co shall not be entitled to any compensation or relief from its obligations pursuant to this Agreement in relation to such extension.

- (k) TfL may at any time vary the TfL UC Installation Period at its absolute discretion by notice to Project Co, provided that TfL notifies:
- (i) Project Co of the new expiry date of the TfL UC Installation Period; and
 - (ii) Project Co of the reasons for the variation,
- and, subject to clause 14.2(m), any extension of the TfL UC Installation Period notified by TfL pursuant to this clause 14.2(k) shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).
- (l) If TfL fails to complete the construction, installation and commissioning of the Active User Charging Infrastructure prior to the expiry of the TfL UC Installation Period, the TfL UC Installation Period shall be automatically extended until the date that TfL issues a notice pursuant to clause 14.2(o) and, subject to clause 14.2(m), such extension shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).
- (m) Project Co acknowledges and agrees that a Compensation Event shall not arise pursuant to clause 14.2(k) or clause 14.2(l) where an extension to the TfL UC Installation Period is required as a result of any breach of this Agreement by Project Co, including:
- (i) a failure by Project Co to provide access to TfL and any TfL Related Party as requested pursuant to clause 14.2(a); and/or
 - (ii) a failure by Project Co to design, construct and install the Passive User Charging Infrastructure in accordance with the D&C Requirements and the terms of this Agreement.
- (n) If, during the TfL UC Installation Period, any failure of Project Co to comply with clause 14.1(a) or any defect in the Passive User Charging Infrastructure is identified or occurs:
- (i) the Permit to Use shall not be issued until such failure or defect has been rectified by Project Co; and
 - (ii) the TfL UC Installation Period shall be extended by a period of time equivalent to any delay caused to TfL or any TfL Related Party in installing, commissioning and testing the Active User Charging Infrastructure by any such failures or defects.
- (o) TfL shall promptly notify Project Co when the construction, installation, commissioning and testing of the Active User Charging Infrastructure is complete (including reasonable supporting evidence) and the TfL UC Installation Period shall expire on the receipt of such notice.
- (p) For the purposes of clause 14.2(a), clause 14.2(e) and clause 14.2(f), the references to the Passive User Charging Infrastructure shall exclude any Passive User Charging Infrastructure located in Sections of the Site or Additional Asset Areas which are the subject of a Handover Certificate as of Passive User Charging Infrastructure Inspection Date.
- (q) Project Co shall be responsible for rectifying any damage to the Works (including the Passive User Charging Infrastructure) caused by TfL or any relevant TfL Related Party whilst constructing, installing, commissioning and testing the Active User Charging Infrastructure and such damage shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).

14.3 Damage to the Active User Charging Infrastructure prior to the Permit to Use Date

- (a) Without limiting clause 14.3(e), following the date which TfL confirms to Project Co that the Active User Charging Infrastructure has been installed and is operational and provides reasonable supporting evidence of the same pursuant to clause 14.2(o), Project Co shall be responsible for ensuring that the Active User Charging Infrastructure is not damaged at any time prior to:
 - (i) where the Active User Charging Infrastructure is located in a Section of the Site or an Additional Asset Area the subject of a Handover Certificate, the date of the Handover Certificate for the relevant Section of the Site or Additional Asset Area containing the Active User Charging Infrastructure (if any); and
 - (ii) where clause 14.3(a)(i) does not apply, the Permit to Use Date.
- (b) In the event of any damage referred to in clause 14.3(a) occurring:
 - (i) Project Co shall:
 - (A) notify TfL of such damage promptly upon becoming aware, including a statement as to whether the associated Passive User Charging Infrastructure has also been damaged;
 - (B) promptly rectify any damage to the associated Passive User Charging Infrastructure notified under clause 14.3(b)(i)(A) (if any) and notify TfL when such damage is rectified; and
 - (C) provide TfL and any TfL Related Party with all access required for TfL to rectify such damage pursuant to clause 14.3(c);
 - (ii) the Permit to Use (or in relation to any Passive User Charging Infrastructure located in a Section of the Site or Additional Asset Area for which Project Co issues a notice pursuant to clause 17.1(a), the Handover Certificate) shall not be issued until any damage referred to in clause 14.3(a) has been rectified by TfL and any damage notified under clause 14.3(b)(i)(A) (if any) has been rectified by Project Co; and
 - (iii) Project Co shall release and indemnify TfL and any TfL Related Party for the cost of rectifying any such damage, except to the extent that such damage is caused by TfL or any TfL Related Party.
- (c) TfL shall rectify damage to the Active User Charging Infrastructure notified pursuant to clause 14.3(b)(i)(A) within twenty (20) Working Days (or such other period as the Parties (acting reasonably) may agree given the nature of the rectification required) of receipt by TfL of:
 - (i) where the notice under clause 14.3(b)(i)(A) refers to damage to the associated Passive User Charging Infrastructure, the notice issued pursuant to clause 14.3(b)(i)(B); or
 - (ii) where the notice under clause 14.3(b)(i)(A) does not refer to damage to the associated Passive User Charging Infrastructure, the notice issued pursuant to clause 14.3(b)(i)(A).
- (d) Project Co shall rectify any damage to the Works (including the Passive User Charging Infrastructure) caused by TfL or any relevant TfL Related Party whilst rectifying damage to the Active User Charging Infrastructure pursuant to clause

14.3(c), and such damage to the Works (including the Passive User Charging Infrastructure) shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*).

- (e) Project Co shall release and indemnify TfL and any TfL Related Party for the costs associated with rectifying any damage to the Active User Charging Infrastructure caused by Project Co or any Project Co Related Party prior to the notification issued by TfL under clause 14.2(o).

15. **PROGRAMME**

15.1 **Project Co Tender Programme**

Project Co acknowledges and agrees that, as of the Effective Date, the Project Co Tender Programme sets out the timetable in which Project Co intends to carry out the Works, including all investigations, design, construction, commissioning, testing and related works appearing in the D&C Requirements.

15.2 **Project Co Detailed Works Programme**

Project Co shall prepare the initial Project Co Detailed Works Programme in accordance with the requirements set out in Part 2 (*Project Co Detailed Works Programme*) of Schedule 2 (*Programme*) and shall submit a copy of the same to TfL under the Review Procedure within twenty (20) Working Days of the Effective Date.

15.3 **Notification of delays in progress of the Works**

If either:

- (a) Project Co becomes aware at any time that the actual progress of the Works may become or has been delayed by at least four (4) weeks or has fallen behind the then current Project Co Detailed Works Programme by at least four (4) weeks; or
- (b) it appears to the TfL Representative at any time that the actual progress of the Works has been delayed by at least four (4) weeks or has fallen behind the then current Project Co Detailed Works Programme by at least four (4) weeks (and the TfL Representative requests Project Co to do so),

Project Co shall within ten (10) Working Days:

- (i) submit to TfL a report identifying the reasons for the relevant delay and showing the steps to be taken by Project Co to eliminate or reduce the delay; and
- (ii) produce and submit to TfL a revised Project Co Detailed Works Programme showing the revised manner and the periods in which the Works will be carried out which shall be aimed at eliminating or reducing the delay.

15.4 **Progressing the Works**

- (a) Notwithstanding clause 15.3 (*Notification of delays in progress of the Works*), Project Co shall ensure that the D&C Contractor is, at all times prior to the Permit to Use Date, either:
 - (i) progressing the Works in accordance with or in advance of the Project Co Tender Programme; or
 - (ii) within six (6) months of the date of any notice pursuant to clause 15.3 (*Notification of delays in progress of the Works*) taking all such steps as

are reasonably necessary to ensure that the Works are being progressed with due expedition such that the Permit to Use Date will be achieved by the Longstop Permit to Use Date, including but not limited to:

- (A) taking reasonable steps to reduce and/or mitigate any delay in the progress of the Works;
 - (B) making substantial progress on critical path activities; and
 - (C) continuing to expend funds in progressing the Works at a level commensurate with what might reasonably be expected for works of a comparable scope, size and programme.
- (b) Project Co shall provide TfL with all information reasonably requested by TfL in relation to the steps being taken, and the expenditure being incurred, by the D&C Contractor as required by clause 15.4(a).

16. **INDEPENDENT CERTIFIER**

16.1 Project Co shall at its own cost enforce its contractual rights to procure that the Independent Certifier fulfils its duties under the Independent Certifier's Deed of Appointment.

16.2 TfL and Project Co shall each comply with the obligations placed upon them under the Independent Certifier's Deed of Appointment.

16.3 Neither TfL nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):

- (a) agree to terminate, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of the Independent Certifier's Deed of Appointment, or treat the same as having been terminated, repudiated or otherwise discharged;
- (b) release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which the other may from time to time have against the Independent Certifier; or
- (c) vary or agree or purport to vary the terms of the Independent Certifier's Deed of Appointment or the service performed or to be performed by the Independent Certifier.

16.4 Project Co shall ensure that the Independent Certifier is kept informed of any variations to this Agreement, any Project Co Changes and any TfL Changes.

17. **HANDOVER OF ADDITIONAL ASSETS AND SUPPLEMENTARY WORKS**

17.1 **Handover Certificate**

- (a) Subject to clause 17.1(b), no later than twenty (20) Working Days prior to the date upon which Project Co expects that the Handover Requirements in respect of:
 - (i) all of the Additional Assets in an Additional Asset Area; or
 - (ii) all of the Supplementary Works in a Section of the Site (excluding any Additional Asset Areas within the relevant Section of the Site which are the subject of a Handover Certificate),

will be achieved, Project Co shall issue a notice to that effect to TfL.

- (b) Project Co shall not be entitled to issue a notice pursuant to clause 17.1(a) in relation to any Sections of the Site which form part of the Provisional O&M Area.
- (c) Within twenty (20) Working Days following the receipt by TfL of a notice under clause 17.1(a), TfL shall carry out an inspection of the relevant Additional Asset Area or Section of the Site (as applicable) and take such other measures as are required to ascertain whether the Handover Requirements have been achieved in relation to that Additional Asset Area or Section of the Site and Project Co shall not object to the participation in any such inspection of the relevant Highway Authority or any other nominee of TfL.
- (d) Project Co shall ensure that TfL is provided with all documents and other evidence that TfL requires in order to assess whether the Handover Requirements have been achieved in relation to the relevant Additional Asset Area or the relevant Section of the Site.
- (e) Subject to clause 17.1(g), TfL shall, within ten (10) Working Days of the completion of the inspection referred to under clause 17.1(c), either:
 - (i) issue a Handover Certificate in respect of the relevant Additional Asset Area or the relevant Section of the Site; or
 - (ii) subject to clause 17.1(h), notify Project Co of its decision not to issue a Handover Certificate in respect of the relevant Additional Asset Area or the relevant Section of the Site, stating the reasons for such decision.
- (f) Where clause 17.1(e)(ii) applies, Project Co shall reimburse TfL for all costs reasonably and properly incurred by TfL in carrying out any further inspections under clause 17.1(k).
- (g) Except for those Sections of the Site listed in Paragraph 2.12 of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*), notwithstanding the provisions of clause 17.1(e), TfL shall not be entitled to issue a Handover Certificate in respect of an Additional Asset Area or a Section of the Site pursuant to clause 17.1(e)(i) until the Additional Asset Access Expiry Date for such Additional Asset Area or the Site Access Expiry Date for such Section of the Site has occurred.
- (h) Subject to clause 17.1(g), TfL may only refuse to issue a Handover Certificate under clause 17.1(e)(ii) on the grounds that Project Co has failed to achieve the relevant Handover Requirements.
- (i) If TfL serves a notice under clause 17.1(e)(ii), Project Co shall promptly complete such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue a Handover Certificate.
- (j) No later than five (5) Working Days prior to the date upon which Project Co expects such further works to be complete or measures to be taken in respect of the relevant Additional Asset Area or the relevant Section of the Site, Project Co shall issue a notice to that effect to TfL.
- (k) Following receipt by TfL of a notice under clause 17.1(j):
 - (i) TfL shall inspect such further works or measures within ten (10) Working Days of such notice;
 - (ii) Project Co shall not object to the participation in such inspection of the relevant Highway Authority or any other nominee of TfL; and

- (iii) the provisions of clause 17.1(d) to this clause 17.1(k) (inclusive) shall apply to such notice *mutatis mutandis*.
- (l) Upon the issue of the Handover Certificate in respect of an Additional Asset Area or a Section of the Site:
 - (i) TfL shall assume, or shall ensure that the relevant Highway Authority or another party assumes (subject to clause 17.1(l)(iii)) responsibility for the assets within the relevant Additional Asset Area or the relevant Section of the Site, including the operation and maintenance of such assets;
 - (ii) without prejudice to the remainder of this clause 17 (*Handover of Additional Assets and Supplementary Works*), Project Co shall not be responsible for maintaining or operating any assets within the relevant Additional Asset Area or the relevant Section of the Site; and
 - (iii) Project Co shall be liable for the rectification of any Defects in relation to any Additional Assets or Supplementary Works (as applicable) within the relevant Additional Asset Area or the relevant Section of the Site in accordance with clause 17.2 (*Defects*).
- (m) Where a relevant Highway Authority or another party (other than GLA Land and Property Limited or Silvertown Homes Limited) assumes the responsibility for the assets within an Additional Asset Area or a Section of the Site in accordance with clause 17.1(l)(i) or otherwise, Project Co shall:
 - (i) execute a Collateral Warranty (or procure that the D&C Contractor executes a Collateral Warranty) with the relevant Highways Authorities and/or other party nominated by TfL in the form set out in Part 5 (*Collateral Warranty from Project Co*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*); and
 - (ii) provide (or if the D&C Contractor has executed a Collateral Warranty pursuant to clause 17.1(m)(i), procure that the D&C Contractor provides) a copy of such executed Collateral Warranty to TfL and do all such other things as may be reasonably requested by TfL for the purpose of confirming or giving effect to the provisions of this clause 17.1(m).
- (n) For the purposes of Schedule 17 and this clause 17 (*Handover of Additional Assets and Supplementary Works*) only, references to the Site or any Section of the Site shall include any Highway Areas included within the Site or such Section of the Site (other than any Highway Areas within any Additional Asset Areas).

17.2 Defects

- (a) Project Co shall promptly notify TfL of any Defects (and any damage caused by such Defects) in the Additional Assets or the Supplementary Works (as applicable) which are not the subject of a Collateral Warranty executed pursuant to clause 17.1(m)(i) of which Project Co becomes aware during the relevant Defects Rectification Period (or any Further Defects Rectification Period) and such notice shall:
 - (i) identify the relevant Defect and any damage caused by the relevant Defect;
 - (ii) contain a summary of the work required to rectify the Defect and any damage caused by the Defect; and

- (iii) include a proposed rectification programme for the rectification of the Defect and any damage caused by the Defect, for approval by TfL (such approval not to be unreasonably withheld or delayed).
- (b) TfL may notify Project Co of any Defects (and any damage caused by such Defects) in the Additional Assets or the Supplementary Works (as applicable) which are not the subject of a Collateral Warranty executed pursuant to clause 17.1(m)(i) of which TfL becomes aware during the relevant Defects Rectification Period (or any Further Defects Rectification Period) and following receipt of such notice Project Co shall promptly provide TfL with:
 - (i) a summary of the work required to rectify the relevant Defect and any damage caused by the relevant Defect; and
 - (ii) a proposed rectification programme for the rectification of the Defect and any damage caused by the relevant Defect, for approval by TfL (such approval not to be unreasonably withheld or delayed).
- (c) Where TfL does not approve the proposed rectification programme referred to in clause 17.2(a) or clause 17.2(b) (or any updated proposed rectification programme provided pursuant to this clause 17.2(c)), TfL shall provide comments to Project Co in relation to the programme and Project Co shall provide TfL with an updated rectification programme for approval, taking into account any comments raised by TfL (acting reasonably).
- (d) Subject to clause 17.2(e), Project Co shall rectify all Defects (and any damage caused by such Defects) in the Additional Assets or any Supplementary Works (as applicable) which are not the subject of a Collateral Warranty executed pursuant to clause 17.1(m)(i) and which arise during the relevant Defects Rectification Period as soon as reasonably practicable, and in any event within any time period specified in a rectification programme approved by TfL pursuant to this clause 17.2 (*Defects*).
- (e) The Parties acknowledge and agree that in respect of any Defects in the Additional Assets or Supplementary Works arising in relation to land being maintained by TfL during the Defects Rectification Period pursuant to the Retained DCO Functions relating to Article 8(1) and Article 8(2) (*Construction and maintenance of new, altered or diverted streets*) of the DCO:
 - (i) TfL shall carry out any necessary rectification work in relation to such Defect; and
 - (ii) Project Co shall reimburse TfL the costs reasonably and properly incurred in rectifying such Defects.
- (f) Subject to clause 17.2(g), in carrying out any rectification work in relation to a Defect, Project Co shall:
 - (i) be responsible for obtaining any required access to the relevant area for the purpose of complying with its Defect rectification obligations pursuant to this clause, including complying with the requirements of Schedule 13 (*Network Occupancy*); and
 - (ii) have regard to the usage of the relevant Additional Assets or Supplementary Works (as applicable) and shall carry out all rectification work at times and in a manner which causes as little inconvenience to TfL, the road network and any other affected third parties as is reasonably possible.

- (g) If, after using all reasonable endeavours, Project Co is unable to obtain the access required for the purpose of complying with its Defect rectification obligations pursuant to this clause 17.2 (*Defects*) or its obligations in respect of making good Snagging Items pursuant to clause 18.3 (*Snagging Items*):
 - (i) Project Co shall notify TfL as soon as reasonably practicable, including details of the specific area for which access is required; and
 - (ii) TfL shall, within twenty (20) Working Days, notify Project Co whether:
 - (A) Project Co is relieved of its Defect rectification or snagging make good obligations (as applicable) in relation to the area identified in Project Co's notice under clause 17.2(g)(i); or
 - (B) TfL shall exercise its powers under Article 30(1) (*Temporary use of land for maintaining the authorised development*) of the DCO and provide access to Project Co to the relevant area for the rectification of the specified Defect or the making good of Snagging Items.
- (h) Project Co acknowledges and agrees that where TfL provides access to Project Co in accordance with clause 17.2(g)(ii)(B):
 - (i) any such rights granted shall be limited:
 - (A) to the access rights TfL is able to obtain pursuant to the powers contained in Article 30 (*Temporary use of land for maintaining the authorised development*) of the DCO;
 - (B) by the other conditions and limitations in the DCO on the exercise of powers contained in Article 30 (*Temporary use of land for maintaining the authorised development*);
 - (C) to the purpose of rectification of the specified Defect or making good of the specified Snagging Items (as applicable); and
 - (D) to the duration required to rectify the Defects or make good the Snagging Items in accordance with the proposed rectification programme approved by TfL pursuant to clause 17.2(a)(iii) or clause 17.2(b)(ii) or the Snagging Programme, as applicable; and
 - (ii) Project Co shall be liable to reimburse TfL for the payment of all compensation paid by TfL pursuant to Article 30(9) of the DCO in respect of the exercise of such power.
- (i) Not used.
- (j) Nothing in this clause 17.2 (*Defects*) shall have the effect of limiting Project Co's obligations or relieving Project Co of its obligations under paragraph 15.1 of Schedule 1 of the Third Party Agreement between TfL, Knight Dragon Developments Limited and others.

17.3 Tfl rectification

- (a) If Project Co does not complete any rectification work by the date required by clause 17.2 (*Defects*), TfL may carry out or have the rectification works carried out at Project Co's expense (but without prejudice to any other rights that TfL may have against Project Co with respect to the relevant Defect) and the costs of the rectification works (including any irrecoverable VAT payable thereon) incurred

by TfL will be a debt due from Project Co to TfL which is payable thirty (30) days from TfL's written demand.

- (b) Without prejudice to clause 17.3(a), if in the opinion of TfL it is necessary to urgently rectify any Defect (or any damage caused by such Defects) in relation to any Additional Assets or Supplementary Works (as applicable) during the Defects Rectification Period by reason of the occurrence of any Emergency, TfL may at any time carry out or procure the carrying out of such measures as TfL may consider necessary to rectify such Defect (or any damage caused by such Defect), and the reasonable costs of the rectification works (including any irrecoverable VAT payable thereon) incurred by TfL will be a debt due from Project Co to TfL which is payable thirty (30) days from TfL's written demand.

17.4 **Further Defects Rectification Period**

- (a) A Further Defects Rectification Period will apply to all Defects (and any damage caused by such Defects) in the Additional Assets or Supplementary Works (as applicable) which Project Co is required to rectify pursuant to clause 17.2 (*Defects*).
- (b) Clause 17.2 (*Defects*) to this clause 17.4 (*Further Defects Rectification Period*) (inclusive) will apply to any Defects (and any damage caused by such Defects) which arise during the Further Defects Rectification Period *mutatis mutandis* as though references in those clauses to the Defects Rectification Period were references to the Further Defects Rectification Period.

18. **PERMIT TO USE AND COMMENCEMENT OF SERVICES**

18.1 **Planned Permit to Use Date**

Project Co shall use all reasonable endeavours to ensure that the Permit to Use is issued by no later than the Planned Permit to Use Date.

18.2 **Permit to Use**

- (a) No later than forty (40) Working Days prior to the date upon which Project Co anticipates that the Permit to Use Requirements will be achieved, Project Co shall issue to TfL and the Independent Certifier a notice to that effect indicating:
 - (i) the date that the Permit to Use Requirements will be achieved; and
 - (ii) the PTU Inspection Date.
- (b) On or following the PTU Inspection Date (but no later than twenty (20) Working Days following such date), Project Co shall enforce its contractual rights to procure that the Independent Certifier carries out an inspection of the Works (excluding any Additional Asset Areas and any Sections of the Site that are the subject of a Handover Certificate) and take such other measures as are required to ascertain whether the Permit to Use Requirements have been achieved.
- (c) Project Co shall ensure that the Independent Certifier is provided with all documents and other evidence the Independent Certifier requires in order to assess whether the Permit to Use Requirements have been achieved.
- (d) Subject to clause 18.2(f), within forty (40) Working Days of the PTU Inspection Date, Project Co shall enforce its contractual rights to procure that the Independent Certifier either:

- (i) issues the Permit to Use, whereupon (unless instructed otherwise by TfL) Project Co shall promptly make the Project Roads available for public use without traffic management restrictions; or
 - (ii) subject to clause 18.2(e), notifies Project Co of its decision not to issue the Permit to Use on the grounds that Project Co has failed to achieve the Permit to Use Requirements, and state the reasons for such decision.
- (e) Subject to clause 14.3 (*Damage to the Active User Charging Infrastructure prior to the Permit to Use Date*) and clause 18.2(f), the Independent Certifier may not refuse to issue the Permit to Use under clause 18.2(d)(ii) on the grounds that the TfL User Charging System is not operational.
- (f) The Independent Certifier must not issue the Permit to Use under clause 18.2(d)(i) before the expiry of the TfL UC Installation Period unless the Independent Certifier has obtained TfL's written consent.
- (g) If the Independent Certifier issues a notice pursuant to clause 18.2(d)(ii), Project Co shall complete such further works or other measures necessary or appropriate to remedy or remove all grounds for refusal to issue the Permit to Use.
- (h) No later than five (5) Working Days prior to the date upon which Project Co anticipates it will have completed the works or measures referred to in clause 18.2(g), Project Co shall give notice to TfL and the Independent Certifier that such further works have been completed or measures taken and setting out:
- (i) the date that the Permit to Use Requirements will be achieved; and
 - (ii) the PTU Inspection Date.
- (i) On receipt by TfL and the Independent Certifier of a notice under clause 18.2(h), the provisions of clause 18.2(b) to clause 18.2(h) (inclusive) and this clause 18.2(h)(i) shall thereafter apply to such notice *mutatis mutandis*, except that the forty (40) Working Day period referred to in clause 18.2(d) shall be reduced to twenty (20) Working Days.
- (j) The Permit to Use Date:
- (i) may, subject to the provisions of clause 18.2(k):
 - (A) occur up to ninety (90) days prior to the Planned Permit to Use Date; or
 - (B) subject to TfL's prior written consent (which may be provided or withheld in TfL's absolute discretion), occur more than ninety (90) days prior to the Planned Permit to Use Date; and
 - (ii) shall, prior to the Planned Permit to Use Date, not occur prior to a Proposed Early Opening Permit to Use Date.
- (k) Project Co shall at least 12 months prior to any proposed Permit to Use Date that complies with clause 18.2(j), provide TfL with written notice of such proposed date (the "**Proposed Early Opening Permit to Use Date**") together with a revised Project Co Detailed Works Programme which takes account of the Proposed Early Opening Permit to Use Date.
- (l) Where Project Co has provided a notice pursuant to clause 18.2(k), if the Permit to Use has not been issued by the Proposed Early Opening Permit to Use Date, then from the Proposed Early Opening Permit to Use Date until the earlier of (i)

the Permit to Use Date; (ii) the Planned Permit to Use Date; or (iii) the Termination Date, Project Co shall pay to TfL by way of liquidated and ascertained damages the following amount for each complete day or part of a day:

- (i) [REDACTED] prior to the Proposed Early Opening Permit to Use Date:
 - (A) that the Permit to Use will not be issued by the Proposed Early Opening Permit to Use Date; and
 - (B) of any new proposed Permit to Use Date that complies with clause 18.2(j) (the "**Amended Proposed Early Opening Permit to Use Date**") together with a revised Project Co Detailed Works Programme which takes account of the Amended Proposed Early Opening Permit to Use Date; or
 - (ii) in all other cases, [REDACTED] (Indexed).
- (m) Where Project Co has provided a written notice pursuant to clause 18.2(l)(i):
- (i) the Permit to Use Date shall in no circumstances occur prior to the Amended Proposed Early Opening Permit to Use Date; and
 - (ii) if the Permit to Use has not been issued by the Amended Proposed Early Opening Permit to Use Date then clause 18.2(l) and this clause 18.2(m) shall apply *mutatis mutandis* as though references in clause 18.2(l) to the Proposed Early Opening Permit to Use Date are references to the Amended Proposed Early Opening Permit to Use Date.
- (n) The Parties acknowledge and agree that the rates for liquidated damages set out in clause 18.2(l) represent a commercially justifiable position which reflects the effect of any delay in the issuance of the Permit to Use by the Early Opening Permit to Use Date and are not a penalty. Project Co waives any defence as to the validity of any liquidated damages in this Agreement on the grounds that such liquidated damages are void as penalties.
- (o) The Parties acknowledge and agree that:
- (i) the issue of the Permit to Use by the Independent Certifier shall, in the absence of manifest error, bad faith or fraud, indicate for the purposes of ascertaining the Permit to Use Date that Project Co has achieved the Permit to Use Requirements and, without prejudice to the right of either Party to make a claim under the Independent Certifier's Deed of Appointment, shall in no way lessen or affect the other obligations of Project Co under this Agreement or the Project Documents; and
 - (ii) the decision by the Independent Certifier not to issue the Permit to Use shall, in the absence of manifest error, bad faith or fraud, indicate for the purposes of ascertaining the Permit to Use Date that Project Co has not achieved the Permit to Use Requirements and, without prejudice to the right of either Party to make a claim under the Independent Certifier's Deed of Appointment, shall in no way lessen or affect the other obligations of Project Co under this Agreement or the Project Documents.

18.3 Snagging Items

- (a) On the date of issuing the Permit to Use, Project Co shall enforce its contractual rights to procure that the Independent Certifier will issue a complete list of all Snagging Items (the "**Snagging List**") to TfL and Project Co.
- (b) Within ten (10) Working Days of receipt by Project Co of the Snagging List, Project Co shall provide to TfL and the Independent Certifier for their agreement a reasonable programme for making good each Snagging Item, which programme shall require that each Snagging Item shall be made good as soon as reasonably practicable, and in any event within three (3) months after the Permit to Use Date other than:
 - (i) any landscaping Snagging Items that cannot be completed within such three (3) month period for seasonal reasons, in which case completion shall be as soon as reasonably practicable; or
 - (ii) any other Snagging Items which Project Co can demonstrate to TfL's reasonable satisfaction cannot be completed within such three (3) month period, in which case completion shall be by a date to be agreed with TfL (acting reasonably).
- (c) Within ten (10) Working Days of receipt of the programme under clause 18.3(b) or clause 18.3(d) (as applicable), Project Co shall enforce its contractual rights to procure that the Independent Certifier (acting reasonably) either:
 - (i) notifies Project Co that the proposed programme is accepted; or
 - (ii) provides comments on the proposed programme.
- (d) Project Co shall take into account any reasonable comments raised by the Independent Certifier pursuant to clause 18.3(c)(ii) in relation to the proposed programme and provide the revised programme to TfL and the Independent Certifier for review and the provisions of clause 18.3(c) and this clause 18.3(d) shall thereafter apply to such programme *mutatis mutandis*.
- (e) The programme accepted by the Independent Certifier under clause 18.3(c)(i) (or otherwise determined in accordance with the Dispute Resolution Procedure) shall be known as the "**Snagging Programme**".
- (f) Project Co shall ensure that making good of the Snagging Items shall not interfere with:
 - (i) the use of the Project Roads by Users and the use of the TLRN, the SRN and other roads by the public; or
 - (ii) the carrying out of the Services.
- (g) Project Co:
 - (i) shall ensure that each Snagging Item is made good in accordance with the Snagging Programme;
 - (ii) acknowledges and agrees that Project Co shall be responsible for obtaining any required access to the relevant area for the purpose of making good any Snagging Items pursuant to this clause 18.3 (*Snagging Items*); and
 - (iii) acknowledges clause 17.2(g) in relation to any access required outside the O&M Area for making good any Snagging Items.

- (h) If Project Co does not make good any Snagging Items by the date set out in the Snagging Programme, then TfL may carry out or have carried out (in each case at Project Co's expense) such works as may be necessary to make good the Snagging Items and the cost of such works (including any irrecoverable VAT payable thereon) incurred by TfL will be a debt due from Project Co to TfL which is payable thirty (30) days from TfL's written demand.
- (i) No later than twenty (20) Working Days prior to the date upon which Project Co anticipates that all the works detailed in the Snagging Programme will be completed, Project Co shall issue to TfL and the Independent Certifier a notice to that effect, and shall enforce its contractual rights to procure that the Independent Certifier carries out an inspection of the Snagging Items.
- (j) Within twenty (20) Working Days of receipt of the notice under clause 18.3(i), Project Co shall enforce its contractual rights to procure that the Independent Certifier either:
 - (i) issues the Snagging Completion Certificate to confirm the Snagging Programme has been completed; or
 - (ii) subject to clause 18.3(k), notifies Project Co of its decision not to issue the Snagging Completion Certificate on the grounds specified in clause 18.3(k) and state the reasons for such decision.
- (k) The Independent Certifier may only refuse to issue the Snagging Completion Certificate pursuant to clause 18.3(j)(ii) if the Snagging Items have not been completed in accordance with the D&C Requirements and the terms of this Agreement.
- (l) If the Independent Certifier issues a notice under clause 18.3(j)(ii) that the Snagging Completion Certificate will not be issued, Project Co shall complete such further works or other measures necessary or appropriate to remedy or remove the cause of the initial refusal to issue a Snagging Completion Certificate.
- (m) No later than five (5) Working Days prior to the date upon which Project Co anticipates it will complete the works or measures referred to in clause 18.3(l), Project Co shall give notice to TfL and the Independent Certifier that such further works have been completed or measures taken.
- (n) On receipt by TfL and the Independent Certifier of the notice under clause 18.3(m), the provisions of clause 18.3(i) to clause 18.3(m) (inclusive) and this clause 18.3(n) shall thereafter apply to such notice *mutatis mutandis* except that the twenty (20) Working Day period referred to in clause 18.3(i) shall be reduced to ten (10) Working Days.
- (o) The issue of a Snagging Completion Certificate shall be without prejudice to and shall not in any way relieve Project Co from its obligation to carry out the Services in accordance with this Agreement.

18.4 **Construction Compound**

- (a) Subject to clause 18.4(b) and unless otherwise agreed by TfL, no later than sixty (60) Working Days after the Permit to Use Date, Project Co shall:
 - (i) dismantle and remove all temporary works, equipment, plant, materials, waste, debris and other possessions, including temporary site buildings and structures, from the Construction Compound, other than those things that are necessary for the proper performance of the Services;

- (ii) ensure that the Construction Compound is restored to the condition required by Article 29(7) (*Temporary use of land for carrying out the authorised development*) of the DCO as if the obligations of such article were a Transferred DCO Function, including circumstances where such article does not apply on its terms to the relevant land, and the Third Party Agreements (where applicable); and
 - (iii) leave the Construction Compound in an orderly and safe condition.
- (b) Notwithstanding clause 18.4(a), Project Co shall dismantle and remove as a condition to obtaining the Permit to Use any temporary works, equipment, plant, materials, waste, debris and other possessions that would prevent the Project Facilities from being operated and maintained:
- (i) in an efficient, effective and safe manner;
 - (ii) in accordance with:
 - (A) Good Industry Practice;
 - (B) the Project Documents;
 - (C) the DCO and any Further Planning Permissions;
 - (D) the Third Party Agreements;
 - (E) the O&M Requirements; and
 - (F) all Applicable Requirements;
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property; or
 - (iv) in such manner so as:
 - (A) to enable TfL to discharge its statutory duties and functions and the Retained DCO Functions; and
 - (B) not to detract from the image and reputation of TfL, including in relation to its duties as a Highway Authority; and
 - (C) not to interfere unnecessarily with:
 - (aa) the convenience of Users;
 - (bb) the convenience of other members of the public; or
 - (cc) the access to, use and occupation of public or private roads or footpaths, footways, waterways, cycle ways or bridleways, whether under the control or in the possession of TfL or any other person.

PART V – SERVICES

19. OPERATION AND MAINTENANCE

19.1 Performing the Services

Project Co shall perform the Services:

- (a) at its own cost and risk for the duration of the Availability Period; and
- (b) in accordance with:
 - (i) the O&M Requirements and Project Co's O&M Proposals;
 - (ii) the O&M Standards;
 - (iii) the Transferred Third Party Functions;
 - (iv) the DCO and all Further Planning Permissions;
 - (v) all Applicable Requirements;
 - (vi) Good Industry Practice; and
 - (vii) all other requirements contained in this Agreement.

19.2 General obligations relating to the Services

Without prejudice to the generality of clause 19.1 (*Performing the Services*), Project Co shall carry out and complete the Services so that:

- (a) not used;
- (b) Project Co only uses materials, goods and consumables of sound and merchantable quality that have been manufactured or prepared in accordance with Good Industry Practice and recognised UK and EU accepted standards;
- (c) adequate time and resources are allocated to carry out and complete the Services in a safe manner;
- (d) all persons employed in connection with the Services are skilled, trained and experienced in their professions and trades or adequately supervised;
- (e) all aspects of the Services are supervised by sufficient numbers of persons having adequate skills, training and knowledge of such matters for the satisfactory and safe performance of the Services in accordance with this Agreement;
- (f) Project Co has full regard for the health, safety and security of all persons at all times;
- (g) the Project Facilities are at all times clean and tidy, in good order, kept in a safe condition and protected from damage so far as practicable having regard to the nature of the Services;
- (h) upon expiry or termination of this Agreement, each element of the Project Facilities meets the condition requirements set out in Schedule 19 (*Handback Requirements*); and

- (i) Project Co shall perform the Services in accordance with any Review Submission which TfL has endorsed as "received" or "received with comments" in accordance with the Review Procedure.

19.3 **Hazardous Substances**

When performing the Services, Project Co shall:

- (a) not use, transport, store or dispose of any Hazardous Substances nor emit, discharge or release Hazardous Substances or permit any Project Co Related Party to do so other than as may be essential in the interests of safety or in order to perform its obligations under this Agreement;
- (b) comply with Good Industry Practice, all Applicable Requirements, Schedule 12 (*Environmental Requirements*), any Necessary Consents, orders, notices or directions of any regulatory body (whether made against TfL or Project Co), and all other provisions of this Agreement in relation to the activities described in clause 19.3(a); and
- (c) not commit any act or omission whereby any property (including the air above, water running on or through or the soil, sub-soil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the Environment or on human health.

19.4 **Relevant Authorities**

- (a) Project Co shall be responsible for liaising with all Relevant Authorities in relation to the Services and the Transferred DCO Functions and, in carrying out the Services and the Transferred DCO Functions, shall comply with the requirements of all Relevant Authorities.
- (b) Project Co shall supply TfL with copies of all notices received by Project Co from Relevant Authorities in relation to the Project within five (5) Working Days of receipt by Project Co.

19.5 **Maintenance of TfL User Charging System**

- (a) Project Co shall maintain the Passive User Charging Infrastructure located within the O&M Area in accordance with the O&M Requirements and the terms of this Agreement.
- (b) Project Co shall not be responsible for:
 - (i) operating or maintaining the Passive User Charging Infrastructure located outside the O&M Area;
 - (ii) operating or maintaining the Active User Charging Infrastructure;
 - (iii) setting user charging rates; or
 - (iv) collecting user charges or enforcing non-payment of user charges.
- (c) Project Co shall provide TfL and any relevant TfL Related Party with all access reasonably required by TfL or such TfL Related Party to the O&M Area and the Project Facilities during the Availability Period for the purposes of operating and maintaining the Active User Charging Infrastructure, as notified by TfL to Project Co.

- (d) The Parties shall comply with the terms of the UC Interface Protocol in relation to access by TfL and any relevant TfL Related Party pursuant to clause 19.5(c).
- (e) Project Co shall fully co-operate with TfL and any relevant TfL Related Party in relation to the operation and the maintenance of the Active User Charging Infrastructure.
- (f) Project Co shall rectify any damage to the Project Facilities caused by TfL or any TfL Related Party whilst operating and maintaining the Active User Charging Infrastructure, and TfL shall reimburse Project Co for the reasonably and properly incurred costs of such rectification.

19.6 Damage to the TfL User Charging System during the Availability Period

- (a) Project Co shall at its own cost rectify all damage to the Passive User Charging Infrastructure located within the O&M Area during the Availability Period.
- (b) In the event of any damage to the Active User Charging Infrastructure occurring during the Availability Period:
 - (i) Project Co shall promptly provide TfL and any TfL Related Party with all access reasonably requested by TfL to rectify such damage; and
 - (ii) subject to clause 19.6(c), Project Co shall release and indemnify TfL and any TfL Related Party for the cost of rectifying any damage to the Active User Charging Infrastructure caused by Project Co or any Project Co Related Party.
- (c) Project Co shall not be obliged to indemnify TfL or any TfL Related Party pursuant to clause 19.6(b)(ii) for any loss of user charging revenue.
- (d) Project Co shall rectify any damage to the Project Facilities (including the Passive User Charging Infrastructure located within the O&M Area) caused by TfL or any TfL Related Party whilst rectifying any damage in the Active User Charging Infrastructure pursuant to clause 19.6(b), and TfL shall reimburse Project Co for the reasonably and properly incurred costs of such rectification.

19.7 Upgrades and changes to the TfL User Charging System

- (a) Project Co shall provide TfL and any relevant TfL Related Party with all access reasonably required to the Project Facilities during the Availability Period for the purposes of upgrading or replacing any element of the TfL User Charging System.
- (b) Any works or changes to the Services which TfL requires Project Co to undertake regarding the Passive User Charging Infrastructure in relation to such upgrading or replacing of the TfL User Charging System shall be instructed as a TfL Change pursuant to Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*).
- (c) Project Co shall rectify any damage to the Project Facilities caused by TfL or any TfL Related Party whilst upgrading or replacing any element of the TfL User Charging System, and TfL shall reimburse Project Co for the reasonably and properly incurred costs of such rectification.

19.8 Maintenance

Without prejudice to clause 19.1 (*Performing the Services*), Project Co shall ensure on a continuing basis that it performs the Services at all times to ensure that:

- (a) the Project Facilities are kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Agreement;
- (b) it maintains the design intention of the Project Facilities set out in the D&C Requirements;
- (c) the Project Facilities are safe and functional for the duration of the Availability Period, in accordance with Project Co's obligations under this Agreement; and
- (d) it minimises the unavailability of the Project Facilities and all risks to the health, safety and security of Users.

19.9 Incidents and emergencies

Project Co shall comply with its obligations in respect of responding to any incidents and Emergencies in accordance with paragraph 6 (*Incident Response*) of Part 2 (*Operation Requirements*) of Schedule 18 (*Operation and Maintenance Requirements*) of this Agreement.

19.10 Changes in O&M Standards

Project Co shall comply with Part 3 (*Changes in O&M Standards*) of Schedule 22 (*Change Procedure*) in relation to any change to the O&M Standards.

19.11 Fire safety

Project Co acknowledges and agrees that it:

- (a) will be the "responsible person" for the Project Facilities once constructed for the purposes of the Regulatory Reform (Fire Safety) Order 2005; and
- (b) shall carry out the duties and responsibilities of the "responsible person" in respect of the Project Facilities under the Regulatory Reform (Fire Safety) Order 2005,

until the End Date.

20. COMMERCIAL OPPORTUNITIES

20.1 Revenue

- (a) As between the Parties, TfL shall be solely entitled to:
 - (i) let any advertising contracts to any entities it deems appropriate; and
 - (ii) retain all revenue arising from any advertising, promotional activity and other commercial opportunities,
 in relation to the Project and the Project Facilities.
- (b) TfL or any TfL Related Party shall be entitled to install, maintain or update any advertising or other commercial media in the O&M Area and Project Co shall provide TfL and any TfL Related Party with all access reasonably required to the O&M Area, the Project Facilities and the Project Roads for these purposes.
- (c) Project Co shall not undertake or permit any advertising or promotional activity in or on the Project Facilities or the O&M Area or in relation to the Project without the prior written consent of TfL.

- (d) Project Co shall rectify any damage to the Project Facilities caused by TfL or any TfL Related Party whilst installing, maintaining or updating any advertising or other commercial media, and TfL shall reimburse Project Co for the reasonably and properly incurred costs of such rectification.

20.2 Tfl Cables

- (a) Project Co shall install the Tfl Cable Ducting and cabling as part of the Works in accordance with the requirements of paragraph 4 (*Tfl Cables*) of Part 1 (*Tfl Technology D&C Requirements*) of Schedule 11 (*Tfl Technology Requirements*).
- (b) Without prejudice to Schedule 11 (*Tfl Technology Requirements*), TfL and any TfL Related Party shall be entitled to the sole use of the Tfl Cable Ducting and any cables installed in the Tfl Cable Ducting.
- (c) Subject to clause 20.2(g), TfL and any relevant TfL Related Party shall be entitled to lay further cables in the Tfl Cable Ducting or remove cables from the Tfl Cable Ducting at any time during the Availability Period.
- (d) Project Co shall, during the Availability Period, provide TfL and any relevant TfL Related Party with all access reasonably required to the Tfl Cable Ducting within the O&M Area in accordance with paragraph 1.1.3 of Part 2 (*Tfl Technology O&M Requirements*) of Schedule 11 (*Tfl Technology Requirements*).
- (e) Subject to clause 20.2(i), Project Co shall at its own cost rectify all damage to:
 - (i) the Tfl Cable Ducting within the O&M Area; or
 - (ii) any cables within the O&M Area laid by Project Co pursuant to clause 20.2(a),as soon as reasonably practicable during the Availability Period.
- (f) If Project Co does not complete any rectification work pursuant to clause 20.2(e) as soon as reasonably practicable, then TfL may carry out or have the rectification works carried out at Project Co's expense and the costs of the rectification works (including any irrecoverable VAT payable thereon) incurred by TfL will be a debt due from Project Co to TfL which is payable thirty (30) days from TfL's written demand.
- (g) Project Co shall provide TfL with such assistance as TfL may require in connection with laying any cables pursuant to clause 20.2(c).
- (h) Any assistance which TfL requires from Project Co in connection with laying any cables pursuant to clause 20.2(c) which cannot be provided by Project Co through the use of its site-based resources during their normal working hours without incurring additional costs or adversely affecting Project Co's ability to perform the Services shall be instructed as a TfL Change pursuant to Part 1 (*Tfl Changes*) of Schedule 22 (*Change Procedure*).
- (i) Project Co shall rectify any damage to the Project Facilities caused by TfL or any TfL Related Party whilst laying or removing cables in the Tfl Cable Ducting or accessing the Tfl Cable Ducting in accordance with paragraph 1.1.3 of Part 2 (*Tfl Technology O&M Requirements*) of Schedule 11 (*Tfl Technology Requirements*) and TfL shall reimburse Project Co for the reasonably and properly incurred costs of such rectification.

20.3 **Signage**

Except placards, signs or hoardings required by the Transferred DCO Functions, Project Co shall not affix or display any placards, signs or hoardings on the Project Facilities except signage which size, colour and purpose is approved by TfL.

21. **POWER AND OTHER SUPPLIES**

21.1 **Power supply and cost**

- (a) Subject to clause 21.1A (*Electricity Suppliers*) and clause 21.2 (*Exclusions*) and paragraph 8 (*Calculation of Electricity Adjustment*) of Schedule 20 (*Payment Mechanism*), Project Co shall for the duration of the Availability Period be responsible for:
- (i) supplying and maintaining power, gas, water, telecommunications and other utilities and the full cost of all such utilities required to maintain and operate the Project Facilities and to perform the Services in accordance with this Agreement; and
 - (ii) the ongoing supply of power required to operate any advertising or other commercial media installed by TfL within the O&M Area.
- (b) Project Co shall as soon as reasonably practicable and in any event within twelve (12) months of the Effective Date submit the proposed capacity of the electricity supply for the Project Facilities during the Availability Period to TfL under the Review Procedure.
- (c) Project Co shall retain detailed records of all electricity consumption in relation to the Project Facilities. On request by TfL, Project Co shall provide TfL with all details and readings of, and access to, all electricity meters used by Project Co in connection with the Project Facilities.

21.1A **Electricity Suppliers**

TfL shall contract with and pay electricity suppliers directly in relation to power consumed by the Project Facilities during the Availability Period.

21.2 **Exclusions**

Project Co shall not be responsible for:

- (a) the ongoing supply of power or the cost of power required to operate or maintain the Active User Charging Infrastructure;
- (b) the cost of power consumption required to operate any advertising or other commercial media on the Project Roads or within the O&M Area; or
- (c) any loss of user charging revenue, advertising revenue, promotional activity and other commercial opportunities arising from a breach of Project Co's obligations under clause 21.1 (*Power supply and cost*).

21.3 **Tunnel boring machine**

If at any time between (i) the connection of the 13MVA power supply to the Site by UK Power Networks; and (ii) the Permit to Use Date, any continuous failure or shortage of power from the grid distribution network:

- (a) persists for a period of at least twenty four (24) hours; and

- (b) directly results in Project Co being unable to utilise the tunnel boring machine in relation to the Project,

then the delay in Project Co's ability to utilise the tunnel boring machine shall constitute a Compensation Event subject to and in accordance with clause 26.1 (*Compensation Events*), save to the extent that any such continuous failure or shortage of power arises as a result of any act or omission of Project Co or any Project Co Related Party (other than UK Power Networks).

PART VI – NETWORK REQUIREMENTS

22. TEMPORARY TRAFFIC MANAGEMENT

22.1 Traffic management and operations

- (a) Project Co acknowledges and agrees that general management and safety of traffic using the Project Roads shall be the responsibility of Project Co.
- (b) Project Co shall comply with the requirements of Schedule 13 (*Network Occupancy*) when performing the Works and carrying out the Services.
- (c) Without prejudice to any authorisations required under any Applicable Requirements and to any other requirement of this Agreement, Project Co shall only implement any Temporary Traffic Management Measures in accordance with Schedule 13 (*Network Occupancy*).
- (d) Without prejudice to any other provision in this Agreement, Project Co shall promptly provide such information as TfL may require in respect of each Temporary Traffic Management Measure implemented in relation to the Project (whether planned, current or completed and whether proposed by Project Co, TfL or by any Relevant Authority) in such electronic or other format as TfL may require from time to time.

22.2 Construction Traffic Management Plan

Project Co shall comply with the requirements of Schedule 8 (*Management Systems*) in relation to the Construction Traffic Management Plan.

22.3 Construction worker's travel plans

Project Co shall ensure that persons employed in carrying out the Works comply with the requirements of Part 4 (*Environmental Management Requirements*) of Schedule 8 (*Management Systems*) in relation to the constructions worker's travel plans.

23. NETWORK MANAGEMENT

23.1 Traffic management

- (a) Subject to clause 23.2 (*Network Management Duty*), the DCO and Schedule 13 (*Network Occupancy*) but without prejudice to Schedule 18 (*Operation and Maintenance Requirements*), Project Co shall be responsible for ensuring compliance with the reasonable requirements of the police with regard to the management of traffic on or in the vicinity of the Project Land or the Project Roads.
- (b) The Parties acknowledge that:
 - (i) Users shall be subject to the same Legislation as those using the remainder of the public highway network; and
 - (ii) the enforcement of that Legislation shall be the responsibility of the police.
- (c) In this clause 23 (*Network management*), any reference to "traffic" is to be interpreted in accordance with section 31 of the Traffic Management Act.

23.2 **Network Management Duty**

Without prejudice to clause 9.1 (*NRSWA and Traffic Management Act*), Project Co acknowledges that:

- (a) TfL is subject to a duty to manage the TLRN pursuant to the Traffic Management Act (the "**Network Management Duty**");
- (b) within TfL, the Network Management Duty is performed by the Traffic Manager;
- (c) in carrying out the Network Management Duty, the Traffic Manager acts independently from TfL (in its capacity as a Party to this Agreement);
- (d) no action of the Traffic Manager in carrying out the Network Management Duty or any other function in its capacity as Traffic Manager (including the various actions contemplated in Schedule 13 (*Network Occupancy*)) shall constitute an action of or breach by TfL under this Agreement; and
- (e) the Traffic Manager has implemented the procedures described in Schedule 13 (*Network Occupancy*) for carrying out of the Network Management Duty.

23.3 **Co-ordination and liaison**

- (a) Without prejudice to clause 9 (*TfL's statutory duties*), clause 10 (*Contracting out of functions*), clause 11 (*Statutory Undertakers*) or the DCO, Project Co shall plan and co-ordinate the Works and Services in accordance with the requirements of Schedule 13 (*Network Occupancy*) and such other procedures as TfL or the Traffic Manager puts in place from time to time for carrying out the Network Management Duty.
- (b) Project Co shall in performing the Works and Services comply with:
 - (i) the requirements of the Traffic Manager pursuant to the Traffic Management Act;
 - (ii) the requirements of any relevant Highway Authority, Street Authority or Traffic Authority in respect of the impact of any adjoining highway network; and
 - (iii) the requirements of the police and the other Emergency Services.

23.4 **Traffic Director**

In the event of a Traffic Director being appointed by order pursuant to section 21 of the Traffic Management Act to carry out all or some of the Traffic Manager's functions in respect of network management, Project Co shall comply with the requirements of the Traffic Director and the provisions of clause 23.2 (*Network Management Duty*), clause 23.3 (*Co-ordination and liaison*) and Schedule 13 (*Network Occupancy*) shall be construed accordingly.

23.5 **Road tunnel safety requirements**

Project Co shall comply with the requirements set out in Part 2 (*Road Tunnel Safety Regulations*) of Schedule 5 (*Allocation of DCO and other Requirements*).

23.6 **Provision of information**

Throughout the Availability Period, Project Co shall promptly provide to TfL the details of:

- (a) any request received by Project Co in relation to escorting a motor vehicle carrying dangerous goods or abnormal loads on the Project Roads; and
- (b) without prejudice to clause 5.2(h) and where requested by TfL, any potential offence under the byelaws made pursuant to Article 48 (*Byelaws relating to the Silvertown Tunnel area and the Blackwall Tunnel area*) of the DCO of which Project Co becomes aware, including any details known to Project Co in relation to any potential offence notified to Project Co by TfL.

PART VII – CHANGE AND RELIEF

24. CHANGE PROCEDURE

24.1 Tfl Changes

The Parties shall comply with the procedure set out in Part 1 (*Tfl Changes*) of Schedule 22 (*Change Procedure*) in respect of any Tfl Change.

24.2 Project Co Changes

- (a) The Parties shall comply with the procedure set out in Part 2 (*Project Co Changes*) of Schedule 22 (*Change Procedure*) in respect of any Project Co Change.
- (b) Project Co acknowledges and agrees that if Project Co proposes to vary or amend the D&C Requirements, such proposal together with an explanation of the reason for the proposed change shall be proposed as a Project Co Change in accordance with Schedule 22 (*Change Procedure*).

24.3 Project Facilities

Any works which are carried out in order to implement a Tfl Change or a Project Co Change shall upon completion:

- (a) form part of the Project Facilities if designated as such pursuant to a Tfl Change or a Project Co Change and the definition of "Project Facilities" in Schedule 1 (*Definitions and Interpretation*) shall be deemed to be amended as is appropriate to include such works; or
- (b) form part of the Additional Assets or Supplementary Works (as applicable) if designated as such pursuant to a Tfl Change or a Project Co Change and the definition of "Additional Assets" or "Supplementary Works" (as applicable) in Schedule 1 (*Definitions and Interpretation*) shall be deemed to be amended as is appropriate to include such works.

25. CHANGE IN LAW

25.1 Occurrence

Project Co shall take all steps necessary to ensure that its obligations under this Agreement, including the performance of the Works and Services, are performed in accordance with the terms of this Agreement following any Change in Law.

25.2 Notice of a Qualifying Change in Law

- (a) If a Qualifying Change in Law occurs or is expected to occur shortly, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:
 - (i) any necessary change in the Technical Requirements to deal with the Qualifying Change in Law;
 - (ii) whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
 - (iii) whether relief from compliance with obligations under this Agreement is required, including the obligation of Project Co to use reasonable endeavours to ensure the issue of the Permit to Use on or before the Planned Permit to Use Date and/or meet the requirements of Schedule 20

(Payment Mechanism) during the implementation of any relevant Qualifying Change in Law;

- (iv) any loss of revenue that will result from the relevant Qualifying Change in Law;
- (v) any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- (vi) any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Availability Period,

in each case giving in full detail the procedure for implementing the change in the Works or the Services.

- (b) Responsibility for the costs of implementation of any Qualifying Change in Law (and any resulting variation to the Availability Payment) shall be dealt with in accordance with clause 25.3 (*Responsibility for cost and mitigation*) to clause 25.5 (*Compensation*) (inclusive).

25.3 **Responsibility for cost and mitigation**

- (a) As soon as practicable after receipt of any notice from either Party under clause 25.2(a) (*Notice of Qualifying Change in Law*), the Parties shall discuss and agree the issues referred to in clause 25.2(a) (*Notice of Qualifying Change in Law*) and any ways in which Project Co can mitigate the effect of the Qualifying Change of Law, including Project Co:
 - (i) providing evidence that Project Co has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
 - (ii) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when any relevant expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by Project Co;
 - (iii) giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
 - (iv) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clause 25.2(a)(v) and/or clause 25.2(a)(vi).
- (b) Project Co shall only be entitled to compensation for a Change in Law to the extent it is a Qualifying Change in Law and to the extent agreed in accordance with this clause 25.3 (*Responsibility for cost and mitigation*) or otherwise determined under clause 48 (*Dispute Resolution Procedure*).

25.4 **Capital Expenditure**

- (a) If the Parties agree or it is determined under clause 48 (*Dispute Resolution Procedure*) that Project Co is required to incur additional Capital Expenditure due

to a Qualifying Change in Law, then (unless otherwise requested by TfL) Project Co shall:

- (i) use its reasonable endeavours to obtain finance for such Capital Expenditure on terms reasonably satisfactory to Project Co, the Senior Funders and TfL; and
 - (ii) provide evidence to TfL's satisfaction of the steps it has taken pursuant to clause 25.4(a)(i).
- (b) If Project Co has used reasonable endeavours to obtain finance for the Capital Expenditure referred to in clause 25.4(a), but has been unable to do so within forty (40) Working Days of the date that the agreement or determination in clause 25.4(a) occurred, then TfL shall pay to Project Co the cost of such Capital Expenditure either (at Project Co's election):
- (i) as a lump sum on or before the date falling forty (40) Working Days after the total Capital Expenditure has been incurred; or
 - (ii) on a monthly basis on receipt of valid invoices in accordance with clause 27 (*Invoicing and Payment*).

25.5 **Compensation**

Any compensation payable under this clause (other than pursuant to clause 25.4(b)) by means of an adjustment to the Availability Payment shall be modelled in accordance with Schedule 25 (*Base Case*).

25.6 **Brexit**

- (a) The Parties agree that:
- (i) subject to the remainder of this clause 25.6 (*Brexit*), TfL shall not be entitled to claim that a Change in Law or a Brexit Tariff Change in Law was foreseeable at the Effective Date by virtue of the fact that the United Kingdom's decision to leave the European Union was foreseeable at such date either as a result of the Referendum and/or as a result of any statements, documents, policies or proposals made or issued as part of, or connected with, the Referendum;
 - (ii) neither:
 - (A) the taking by the United Kingdom of any step under Article 50 of the Treaty on European Union, whether on the behalf of the entirety of the United Kingdom or any part thereof; nor
 - (B) subject to clause 25.6(a)(iv), the repeal or amendment of the European Communities Act 1972 (or any part thereof) to the extent it is done in purported implementation of the outcome of the Referendum or any further referendum held under Legislation putting in question the United Kingdom's membership of the European Union,shall constitute a Qualifying Change in Law;
 - (iii) subject to clause 25.6(a)(iv), any Change in Law which provides for the replication of any Enforceable EU Right and/or the terms of any other European Union directive or treaty (or part thereof), which has legal effect

in the United Kingdom on the Effective Date, into the domestic laws of the United Kingdom shall not constitute a Qualifying Change in Law; and

- (iv) to the extent that any regulations made pursuant to:
 - (A) section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising from withdrawal from the European Union; and/or
 - (B) section 9 of the European Union (Withdrawal) Act 2018 for the purposes of implementing the withdrawal agreement,

materially alter the substance and effect of any Enforceable EU Right and/or other European Union directive or treaty (or part thereof):

- (aa) the provisions of clause 25.6(a)(ii)(B) and clause 25.6(a)(iii) shall not apply; and
- (bb) the other provisions of this clause 25 (*Change in Law*) shall continue to apply.

25.7 **Payment of Irrecoverable VAT**

- (a) TfL shall pay to Project Co from time to time as the same is incurred by Project Co sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law.
- (b) Any such payment shall be made within twenty (20) Working Days of the delivery by Project Co to TfL of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed.
- (c) For the purposes of clause 25.7(a) and clause 25.7(b), "**Irrecoverable VAT**" means input VAT incurred by Project Co on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that Project Co is not entitled to repayment or credit from HMRC in respect of such input VAT.

26. **COMPENSATION EVENTS AND RELIEF EVENTS**

26.1 **Compensation Events**

- (a) If, on or before the Permit to Use Date, as a direct result of the occurrence of a Compensation Event:
 - (i) Project Co is unable to secure the issue of the Permit to Use:
 - (A) where:
 - (aa) TfL has provided any required prior written consent pursuant to clause 18.2(j)(i)(B); and
 - (bb) Project Co has provided written notice pursuant to clause 18.2(k) or 18.2(l)(i),

on or before the Proposed Early Opening Permit to Use Date or the Amended Proposed Early Opening Permit to Use Date (as applicable);

- (B) on or before the Planned Permit to Use Date; or
- (C) following the Planned Permit to Use Date, before the Longstop Permit to Use Date; and/or

(ii) Project Co is unable to comply with its obligations under this Agreement; and/or

(iii) Project Co incurs costs or loses revenue,

then Project Co is entitled to apply for relief from its obligations and/or claim compensation under this Agreement.

(b) Subject to clause 26.1(f), to obtain relief and/or claim compensation in relation to the impact of a Compensation Event Project Co must:

(i) as soon as practicable, and in any event within fifteen (15) Working Days, after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or Project Co to incur costs or lose revenue, give to TfL a notice of its claim for an extension of time, payment of compensation and/or relief from its obligations under this Agreement;

(ii) within fifteen (15) Working Days of receipt by TfL of the notice referred to in clause 26.1(b)(i), give full details to TfL of the Compensation Event and the extension of time and/or relief from its obligations under this Agreement and/or any Estimated Change in Project Costs claimed; and

(iii) demonstrate to the reasonable satisfaction of TfL that:

(A) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of the Permit to Use Date on or before the Proposed Early Opening Permit to Use Date, the Amended Proposed Early Opening Permit to Use Date or the Planned Permit to Use Date (as relevant) or, following the Planned Permit to Use Date, delay in securing the issue of the Permit to Use before the Longstop Permit to Use Date; and

(B) the Estimated Change in Project Costs and/or loss of revenue, time lost and/or relief from obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by Project Co acting in accordance with Good Industry Practice.

(c) Following service of a notice by Project Co pursuant to clause 26.1(b), Project Co shall promptly supply to TfL any further information relating to the relevant Compensation Event which:

(i) is received by Project Co; or

(ii) is reasonably requested by TfL.

(d) Within fifteen (15) Working Days of providing full details of the Compensation Event to TfL pursuant to clause 26.1(b)(ii), the Parties shall meet to discuss such Compensation Event, including:

(A) such full details of the Compensation Event provided to TfL pursuant to clause 26.1(b)(ii);

- (B) the extent to which Project Co has demonstrated to the reasonable satisfaction of TfL the items specified in clause 26.1(b)(iii); and
- (C) the ways in which Project Co can mitigate the effects of such Compensation Event,

and, in the event that the discussions between the Parties pursuant to this paragraph 26.1(d) does not result in agreement, then TfL may request any further relevant information relating to the Compensation Event that is required to be provided by Project Co and the Parties shall meet within fifteen (15) Working Days of receipt of such further information by TfL to discuss the Compensation Event further.

- (e) Where Project Co has complied with its obligations under clause 26.1(b) in relation to the Compensation Event, then:
 - (i) in the case of a delay:
 - (A) the Proposed Early Opening Permit to Use Date or the Amended Proposed Early Opening Permit to Use Date (as relevant);
 - (B) the Planned Permit to Use Date; or
 - (C) following the Planned Permit to Use Date, the Longstop Permit to Use Date,

shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
 - (ii) in the case of additional cost being incurred or revenue being lost by Project Co on or before the Permit to Use Date, TfL shall compensate Project Co for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) within twenty (20) Working Days of receipt of a written demand by Project Co supported by all relevant information;
 - (iii) in the case of a payment of compensation for the Estimated Change in Project Costs and/or, without double counting, loss of revenue that does not result in Capital Expenditure being incurred by Project Co referred to in clause 26.1(e)(ii) but which reflects a change in the costs to be incurred by Project Co after the Permit to Use Date, TfL shall compensate Project Co in accordance with clause 26.1(h) by an adjustment to the Availability Payment; and
 - (iv) TfL shall give Project Co such relief from its obligations under this Agreement as is reasonable for such a Compensation Event.
- (f) In the event that information is provided by Project Co after the dates referred to in clause 26.1(b), then Project Co shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- (g) If the Parties cannot agree the extent of any compensation, delay incurred or relief from Project Co's obligations under this Agreement, or TfL disagrees that a Compensation Event has occurred (or as to its consequences), or that Project Co is entitled to any relief under this clause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

- (h) Any payment of compensation referred to in clause 26.1(e)(iii) shall be modelled in accordance with Schedule 25 (*Base Case*).

26.2 **Relief Events**

- (a) If and to the extent that a Relief Event:
 - (i) is the direct cause of a failure to secure the issue of the Permit to Use:
 - (A) where:
 - (aa) Tfl has provided any required prior written consent pursuant to clause 18.2(j)(i)(B); and
 - (bb) Project Co has provided written notice pursuant to clause 18.2(k) or 18.2(l)(i),

on or before the Proposed Early Opening Permit to Use Date or the Amended Proposed Early Opening Permit to Use Date (as applicable);
 - (B) on or before the Planned Permit to Use Date; or
 - (C) following the Planned Permit to Use Date, before the Longstop Permit to Use Date; and/or
 - (ii) adversely affects the ability of Project Co to perform any of its obligations under this Agreement,

then Project Co is entitled to apply for relief from any rights of Tfl arising under clause 34.1 (*Project Co Default*).
- (b) Subject to clause 26.2(f), to obtain relief in relation to a Relief Event, Project Co shall:
 - (i) as soon as practicable, and in any event within ten (10) Working Days, after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of Project Co to perform its other obligations give to Tfl a notice of its claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
 - (ii) within five (5) Working Days of receipt by Tfl of the notice referred to in clause 26.2(b)(i), give full details of the relief claimed in relation to the relevant Relief Event; and
 - (iii) demonstrate to the reasonable satisfaction of Tfl that:
 - (A) Project Co and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken acting in accordance with Good Industry Practice without incurring material expenditure;
 - (B) the Relief Event directly caused the delay in securing the issue of the Permit to Use on or before the Proposed Early Opening Permit to Use Date, the Amended Proposed Early Opening Permit to Use Date or the Planned Permit to Use Date (as relevant) or, following the Planned Permit to Use Date, delay in securing the issue of the Permit to Use before the Longstop Permit to Use Date;

- (C) the time lost could not reasonably be expected to be mitigated or recovered by Project Co acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (D) Project Co is using reasonable endeavours to perform its obligations under this Agreement.
- (c) Following service of a notice by Project Co pursuant to clause 26.2(b)(i), Project Co shall promptly supply to TfL any further information relating to the Relief Event which:
- (i) is received by Project Co; or
 - (ii) is reasonably requested by TfL.
- (d) In the event that Project Co has complied with its obligations under clause 26.2(b) in relation to a Relief Event, then:
- (i) the Proposed Early Opening Permit to Use Date or the Amended Proposed Early Opening Permit to Use Date (as relevant), the Planned Permit to Use Date or, following the Planned Permit to Use Date, the Longstop Permit to Use Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
 - (ii) TfL shall not be entitled to exercise its rights to terminate this Agreement under clause 34.3 (*Termination on Project Co Default*) to the extent the Project Co Default arises as a consequence of such Relief Event.
- (e) Nothing in clause 26.2(d) shall affect any entitlement to make deductions or any deductions made pursuant to Schedule 20 (*Payment Mechanism*) during the period in which the Relief Event is subsisting provided that any such deductions shall be disregarded for the purpose of TfL's right to terminate this Agreement for Project Co Default.
- (f) In the event that information required by clause 26.2(b) is provided by Project Co after the dates referred to in that clause, then Project Co shall not be entitled to any relief for the period during which the information is delayed.
- (g) Project Co shall notify TfL if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- (h) If the Parties cannot agree the extent of the relief required in relation to a Relief Event, or TfL disagrees that a Relief Event has occurred, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

PART VIII – FINANCIAL PROVISIONS

27. INVOICING AND PAYMENT

27.1 Payments due prior to the Permit to Use Date

- (a) In any calendar month from the Effective Date to the Permit to Use Date (or part thereof in the case of the first and last calendar month in the Agreement Period) where any amount is owed by one (1) Party to the other pursuant to this Agreement, the Party owed the amount shall issue an invoice to the other Party within five (5) Working Days of the last day of the relevant calendar month.
- (b) If the Party owing an amount under an invoice issued pursuant to clause 27.1(a) disputes the amount contained in the invoice pursuant to clause 27.4(b), the Parties shall use all reasonable endeavours to discuss and resolve any Dispute in relation to the invoiced amount within ten (10) Working Days of the Dispute arising, failing which either Party may refer the matter to the Dispute Resolution Procedure.
- (c) A dispute as to any amount payable under this clause 27.1 (*Payments due prior to the Permit to Use Date*) shall not relieve the Party owing an amount of its obligations to pay any undisputed amount required by this Agreement by the date required in clause 27.1(e).
- (d) Following resolution of any Dispute in relation to the invoiced amount, the Party owed the amount shall issue a revised invoice to the other Party for any amount which is agreed or determined to be payable within five (5) Working Days of the relevant Dispute being resolved.
- (e) The Party owing an amount under an invoice shall pay to the other Party the amount of the invoice not later than thirty (30) days after the owing Party has received the relevant invoice issued pursuant to clause 27.1(a) or, where the owing Party has disputed the amount pursuant to clause 27.1(b), the invoice issued pursuant to clause 27.1(d).

27.2 Availability Payment

With effect from the Permit to Use Date, TfL shall pay the Availability Payment to Project Co in accordance with the remainder of this clause 27 (*Invoicing and payment*).

27.3 Payment Report

- (a) Within five (5) Working Days of the last day of each Payment Period, Project Co shall deliver to TfL a report setting out:
 - (i) the Availability Payment due in respect of the relevant Payment Period, separately identifying each of the elements of the Availability Payment specified in Schedule 20 (*Payment Mechanism*);
 - (ii) where such Payment Period is the first occurring Payment Period in an Agreement Year (save for the First Agreement Year), the initial Electricity Adjustment based on the estimated price per kWh provided by TfL to Project Co pursuant to paragraph 8.3(a) of Schedule 20 (*Payment Mechanism*) due in respect of the previous Agreement Year;
 - (iii) where TfL has provided Project Co with actual prices per kWh in accordance with paragraph 8.3(b) of Schedule 20 (*Payment Mechanism*) in such Payment Period, the actual Electricity Adjustment based on the actual prices per kWh provided by TfL to Project Co pursuant to paragraph 8.3(b)

of Schedule 20 (*Payment Mechanism*) due in respect of the previous Agreement Year and any resulting reconciliation amount due and payable by one (1) Party to the other;

- (iv) any other amounts due and payable by one (1) Party to the other pursuant to this Agreement;
- (v) any VAT payable in respect of the above amounts; and
- (vi) the total amount owing by TfL to Project Co, or by Project Co to TfL, (the "**Payment Report**").

(b) Each Payment Report delivered by Project Co shall be accompanied by evidence substantiating each of the elements specified in clause 27.3(a).

(c) If Project Co fails to submit a Payment Report in accordance with clause 27.3(a), then TfL may submit to Project Co a report setting out the matters referred to in clause 27.3(a) (a "**TfL Payment Report**").

27.4 **Response to Payment Report**

(a) Within five (5) Working Days of receipt of the Payment Report or the TfL Payment Report (as applicable), the recipient shall give notice to the other Party indicating whether it agrees with the amounts set out in the Payment Report or TfL Payment Report (as applicable) (the "**Payment Report Response**").

(b) The Payment Report Response shall indicate whether any amount set out in the Payment Report or TfL Payment Report (as applicable) is disputed (the "**Disputed Amount**"), together with an explanation of why any such amount is disputed.

27.5 **Invoice**

(a) If the Undisputed Amount is an amount owing by TfL to Project Co, Project Co shall issue a valid invoice from Project Co to TfL in respect of such Undisputed Amount within five (5) Working Days of receipt of the Payment Report Response.

(b) If the Undisputed Amount is an amount owing by Project Co to TfL, TfL shall issue an invoice to Project Co in respect of such Undisputed Amount within twenty (20) Working Days of sending the Payment Report Response.

(c) Any Disputed Amount shall not relieve the Party owing an amount of its obligations to pay any Undisputed Amount required by this Agreement by the date required in clause 27.7 (*Payments*).

27.6 **Disputed Amounts**

(a) The Parties shall use all reasonable endeavours to discuss and resolve any Dispute in relation to a Disputed Amount within ten (10) Working Days of the Dispute arising, failing which either Party may refer the matter to the Dispute Resolution Procedure.

(b) Following resolution of any Dispute in relation to a Disputed Amount, either TfL or Project Co (as applicable) shall issue an invoice to the other Party for any amount which is agreed or determined to be payable, together with interest thereon at a rate per annum equal to the Interest Rate from the day after the date on which payment was due to (and including) the date of payment.

27.7 **Payments**

- (a) Without prejudice to clause 27.6 (*Disputed Amounts*), Tfl shall pay to Project Co the amount of an invoice issued by Project Co pursuant to clause 27.5(a) or clause 27.6(b) not later than thirty (30) days after Tfl has received the invoice in respect of such Payment Period.
- (b) Without prejudice to clause 27.6 (*Disputed Amounts*), Project Co shall pay to Tfl the amount of an invoice issued by Tfl pursuant to clause 27.5(b) or clause 27.6(b) not later than thirty (30) days after Project Co has received the invoice in respect of such Payment Period.
- (c) The obligation of Tfl to pay invoices is subject to Tfl's right to make retentions and withhold payments in accordance with this Agreement, and Tfl's right of set-off in clause 27.9 (*Set-off*).
- (d) Should the original due date of any payment pursuant to this Agreement not be a Working Day, then the due date shall be the Working Day next following the original due date.
- (e) All payments under this Agreement shall be made in pounds sterling for value on the due date to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

27.8 Late payments

- (a) If any Undisputed Amount due under this Agreement or any amount to be paid pursuant to clause 27.1(e) remains unpaid after its due date, such payment shall bear interest at a rate per annum equal to the Interest Rate from the day after the date on which the payment was due to (and including) the date of payment.
- (b) The right of either Party to receive interest in respect of the late payment of any sum due shall be without prejudice to such other rights as that Party may have under this Agreement.

27.9 Set-off

Project Co shall not be entitled to retain or set-off any amount due to Tfl by Project Co, but, subject to paragraph 2 (*Set-off on termination*) of Part 7 (*Calculation and Payment of Early Termination Payments*) of Schedule 27 (*Compensation on Termination*), Tfl may retain or set-off any amount owed to it by Project Co under this Agreement which has fallen due and payable against any amount due to Project Co under this Agreement.

27.10 Project Development Costs

- (a) Project Co shall pay to Tfl [REDACTED] (plus any payable VAT) within thirty (30) days of the issue of an invoice by Tfl.
- (b) Tfl may issue an invoice for the amount referred to in clause 27.10(a) at any time following the Effective Date.

28. REFINANCING

The Parties shall comply with the requirements set out in Schedule 26 (*Refinancing*) in respect of any Refinancing undertaken by Project Co.

29. CHANGE OF OWNERSHIP

29.1 Project Co warranty

Project Co represents and warrants to TfL that at the Effective Date the legal and beneficial ownership of Project Co, Hold Co and each Consortium Hold Co is as set out in Schedule 29 (*Project Co and Hold Co Information*) and that no arrangements are in place that have resulted or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in Project Co or Hold Co.

29.2 **Change of Ownership**

- (a) Project Co shall inform TfL as soon as reasonably practicable if it becomes aware of any proposed Change of Ownership prior to its occurrence or, subject to clause 29.2(e), if it does not have prior information, as soon as reasonably practicable and in any event within ten (10) Working Days of any Change of Ownership occurring and shall provide, with this information, details of the new ownership structure (legal and beneficial) and details of the purchase price paid.
- (b) Project Co shall provide details to TfL as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of TfL's request for details of any Change of Ownership.
- (c) Project Co's obligations under clause 29.2(a) and clause 29.2(b) shall, except where a legal transfer of shares has occurred, be limited to the extent of Project Co's awareness having made all reasonable enquiry.
- (d) Project Co shall obtain TfL's prior written consent (which may be given in TfL's absolute discretion and subject to conditions) to, and provide TfL with all information reasonably requested by TfL in relation to, any transfer of any share in Project Co or Hold Co to an Unsuitable Third Party.
- (e) Project Co acknowledges and agrees that no Change of Ownership may occur during the Lock-In Period, provided that any Change of Ownership arising as a consequence of:
 - (i) the grant or enforcement of security in favour of the Senior Funders over or in relation to any of the shares of Project Co or Hold Co, provided that any document conferring security over any shares has been approved by TfL (such approval not to be unreasonably withheld or delayed);
 - (ii) any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or
 - (iii) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in:
 - (A) Project Co, Hold Co, Aberdeen European Infrastructure III B Limited or Aberdeen European Infrastructure III A Limited by Aberdeen European Infrastructure Partners III LP and/or an Affiliate of Aberdeen European Infrastructure Partners III LP to Aberdeen European Infrastructure Partners III LP and/or an Affiliate of Aberdeen European Infrastructure Partners III LP;
 - (B) Project Co, Hold Co, or BAM Silvertown Tunnel Holdings Limited by BAM PPP PGGM Infrastructure Cooperatie U.A. (NL) and/or an Affiliate of BAM PPP PGGM Infrastructure Cooperatie U.A. (NL) to BAM PPP PGGM Infrastructure Cooperatie U.A. (NL) and/or an Affiliate of BAM PPP PGGM Infrastructure Cooperatie U.A. (NL);
 - (C) Project Co, Hold Co or BAM Silvertown Tunnel Holdings Limited by BAM PPP PGGM Infrastructure Cooperatie U.A. (NL) and/or an

Affiliate of BAM PPP PGGM Infrastructure Cooperatie U.A. (NL) to the Koninklijke BAM Groep N.V. and/or an Affiliate of Koninklijke BAM Groep N.V.;

- (D) Project Co, Hold Co or Cintra Silvertown Limited by Cintra Infrastructures UK Ltd and/or an Affiliate of Cintra Infrastructures UK Ltd to Cintra Infrastructures UK Ltd and/or an Affiliate of Cintra Infrastructures UK Ltd;
- (E) Project Co, Hold Co, Brunel UK Investments Limited or Brunel UK Holdings Limited by Macquarie Corporate Holdings Pty Ltd and/or an Affiliate of Macquarie Corporate Holdings Pty Ltd to Macquarie Corporate Holdings Pty Ltd and/or an Affiliate of Macquarie Corporate Holdings Pty Ltd;
- (F) Project Co, Hold Co, or Silvertown Investco Ltd by SK Engineering & Construction (Korea) and/or an Affiliate of SK Engineering & Construction (Korea) to SK Engineering & Construction (Korea) and/or an Affiliate of SK Engineering & Construction (Korea),

shall be disregarded for the purposes of this clause 29.2(e).

- (f) Where clause 29.2(e)(iii) applies and, subsequent to any such transfer but prior to the end of the Lock-In Period, the transferee ceases to be an Affiliate of the original transferor, Project Co shall be in breach of clause 29.2(e) if the shares or interests which were the subject of the original transfer are not within fifteen (15) Working Days of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.

30. INDEMNITIES

30.1 Project Co indemnities

- (a) Project Co shall, subject to clause 30.1(c), be responsible for, and shall release and indemnify TfL and each TfL Related Party from and against, all Losses arising from or in connection with:
 - (i) death or personal injury;
 - (ii) loss of or damage to property (including property which is in the ownership or control of TfL and on or adjacent to the Project Land ("**TfL Property**") but excluding the Project Facilities); and
 - (iii) third party actions, claims, demands, costs, charges and expenses brought against TfL or any TfL Related Party (including legal expenses on an indemnity basis),

which may arise out of or in consequence of any construction, design, operation or maintenance required by this Agreement or the performance or non-performance by Project Co of its obligations under this Agreement or the presence on the TfL Property or the Project Land of Project Co, a Sub-Contractor or any Project Co Related Party.

- (b) Project Co shall, subject to clause 30.1(c) and clause 30.1(d), be responsible for, and shall release and indemnify TfL and each TfL Related Party, from and against all Losses arising from third party actions, claims, demands, costs, charges and expenses (as described in clause 30.1(a)(iii)) brought against TfL or any TfL Related Party for breach of statutory duty which may arise out of or as consequence of a breach by Project Co of its obligations under this Agreement.

- (c) Project Co shall not be responsible or be obliged to indemnify TfL or any TfL Related Party under any indemnity in this Agreement for:
 - (i) any of the matters referred to in clause 30.1(a) or clause 30.1(b) which arises as a direct result of Project Co acting on the express instruction of TfL;
 - (ii) any Losses caused by the negligence or wilful misconduct of TfL or any TfL Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by Project Co of its obligations under this Agreement) or by the breach by TfL of its obligations under this Agreement;
 - (iii) any claim made pursuant to clause 30.1(b) to the extent that, when taken together with any other claims made under clause 30.1(b), the amount of Project Co's Uninsured Losses arising under this clause 30.1 exceeds ten million pounds (£10,000,000) (Indexed);
 - (iv) any loss of user charging revenue;
 - (v) Land Compensation or Operational Compensation; or
 - (vi) any claim made pursuant to 30.1(a)(iii) arising from any agreement that TfL or any TfL Related Party has with any third party (other than any Third Party Agreement in the form provided to Project Co prior to the Effective Date).
- (d) The Parties acknowledge and agree that any Losses arising from or in connection with:
 - (i) death or personal injury; and/or
 - (ii) loss of or damage to property,

arising in relation to a breach of statutory duty by TfL or any TfL Related Party which arises out or as a consequence of a breach by Project Co of its obligations under this Agreement shall be covered by the indemnity in clause 30.1(a) and shall not be subject to the cap set out in clause 30.1(c)(iii).
- (e) An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.

30.2 **Conduct of Claims subject to Project Co's indemnities**

- (a) If TfL receives any notice, demand, letter or other document concerning any Claim from a third party from which it appears that TfL is or may become entitled to indemnification from Project Co under this Agreement, TfL shall give notice to Project Co as soon as reasonably practicable following such receipt.
- (b) Subject to clause 30.2(c), clause 30.2(d) and clause 30.2(e), following receipt of a notice pursuant to clause 30.2(a) and Project Co giving notice to TfL, Project Co shall be entitled to and shall resist the Claim in the name of TfL at its own expense and shall have the conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations, and TfL will give Project Co all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim.
- (c) With respect to any Claim subject to clause 30.2(b):

- (i) Project Co shall keep TfL fully informed and consult with TfL about the conduct and progress of the Claim;
 - (ii) Project Co shall at all times comply with the terms of any relevant policies of insurance referred to in clause 32.1 (*Insurance requirements*);
 - (iii) to the extent that TfL is not entitled to be indemnified by Project Co for all of the liability arising out of the act or omission which is the subject of the Claim, no action shall be taken by Project Co pursuant to clause 30.2(b) which shall or is likely to increase the amount of any payment to be made by TfL in respect of that part of the Claim which is not covered by the indemnity from Project Co; and
 - (iv) Project Co shall not pay or settle such Claim without the prior written consent of TfL, such consent not to be unreasonably withheld or delayed.
- (d) TfL shall be free to pay or settle any Claim on such terms as it may, in its absolute discretion, think fit and without prejudice to its rights and remedies under this Agreement if:
- (i) within twenty (20) Working Days of the notice from TfL under clause 30.2(a), Project Co fails to notify TfL of its intention to dispute the Claim; or
 - (ii) Project Co fails to comply in any material respect with the provisions of clause 30.2(b) and clause 30.2(c).
- (e) TfL shall be free at any time to give notice to Project Co that it is taking over the conduct of any defence, dispute, compromise or appeal of any Claim referred to in clause 30.2(b) or of any incidental negotiations.
- (f) Upon receipt of a notice under clause 30.2(e), Project Co shall:
- (i) promptly take all steps necessary to transfer the conduct of the relevant Claim to TfL and shall provide to TfL all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim; and
 - (ii) be released from its indemnity in respect of such Claim save where such notice was given as a consequence of a failure of Project Co to deal properly with any such Claim in accordance with the terms of this Agreement.

31. TAXES

31.1 VAT

- (a) All amounts due under this Agreement are exclusive of VAT.
- (b) If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition to the amount due pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- (c) Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.

- (d) Project Co shall provide TfL with any information reasonably requested by TfL in relation to the amount of VAT chargeable in accordance with this Agreement and payable by TfL to Project Co.

31.2 Deductions from payments

Save as otherwise provided in this Agreement and save only as may be required by Law, all sums payable by either Party to the other under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation.

31.3 Construction Industry Scheme

- (a) For the purposes of this clause 31.3 (*Construction Industry Scheme*) only, the "**Regulations**" mean the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) and the "**Act**" means the Finance Act 2004 and references to provisions of the Act and the Regulations in this clause include references to those provisions as amended or re-enacted in each case from time to time.
- (b) The Parties acknowledge that this Agreement falls within the scope of the Construction Industry Scheme. TfL (for the purposes of this clause 31.3 (*Construction Industry Scheme*) only, the "**Contractor**") is a "contractor" for the purposes of Chapter 3, Part 3 of the Act and Project Co (for the purposes of this clause 31.3 (*Construction Industry Scheme*) only, the "**Sub-Contractor**") is a "sub-contractor" for such purposes.
- (c) The Sub-Contractor undertakes that it shall as soon as reasonably practicable after entering into this Agreement register for gross payment under section 63(2) of the Act, and in any event, it undertakes to ensure that it is so registered on and immediately before each date on which TfL shall make any payment to it under this Agreement to which section 60 of the Act relates.
- (d) The Contractor shall not be obliged to make any payment to the Sub-Contractor unless and until the Sub-Contractor provides the Contractor with its unique taxpayer's reference and company registration number to enable the Contractor to verify with HM Revenue & Customs whether the Sub-Contractor is registered for gross payment or payment under deduction for the purposes of section 69 of the Act and Regulation 6 of the Regulations.
- (e) Notwithstanding any other provisions of this Agreement, the Sub-Contractor acknowledges that, in the case of a payment under this Agreement to which section 60 of the Act relates, the Contractor shall make payment gross, or under deduction of basic rate or higher rate tax as notified for the time being by HM Revenue & Customs in compliance with Regulation 6 of the Regulations.
- (f) If the Sub-Contractor is registered for payment under deduction, the Sub-Contractor shall provide the Contractor with details of the total amount included in contract payments under this Agreement to which section 61 of the Act relates that represents the direct cost of materials used or to be used in carrying out the construction operations under this Agreement to enable the Contractor to discharge its obligations to provide a monthly return under section 70 of the Act and Regulation 4 of the Regulations.
- (g) The Sub-Contractor shall promptly inform the Contractor in writing if its status under Chapter 3, Part 3 of the Act or the Regulations changes or is cancelled or expires without being renewed and give the date of such change, cancellation or expiry.

- (h) The Sub-Contractor shall comply with any and all of its obligations under the Act and the Regulations in the event that it sub-contracts any of Project Co's obligations to be provided under this Agreement.
- (i) The Sub-Contractor shall indemnify the Contractor and keep it indemnified (in each case on an after-tax basis) against any loss, damage, cost or expense incurred by the Contractor arising out of any breach by the Sub-Contractor of its obligations under this clause 31.3 (*Construction Industry Scheme*) and/or under the Act and the Regulations including the inaccuracy or inadequacy of any evidence or other information furnished to the Contractor under this clause 31.3 (*Construction Industry Scheme*).
- (j) If compliance with this clause involves TfL or Project Co not complying with any other term of this Agreement (save for the Parties' obligations to comply with all laws), then the provisions of this clause shall prevail.

32. **INSURANCE**

32.1 **Insurance requirements**

- (a) Project Co shall, prior to the carrying out of any building work or demolition work in relation to the Project, take out and maintain (or procure the maintenance of) the insurances described in Part 1 (*Policies to be taken out during the Works*) of Schedule 21 (*Insurance*) and any other insurances as may be required by Law and these insurances must be effective in each case not later than the date on which the relevant risk commences.
- (b) Project Co shall, during the Availability Period, take out and maintain (or procure the maintenance of) the insurances described in Part 2 (*Policies to be taken out during the Availability Period*) of Schedule 21 (*Insurance*) and any other insurances as may be required by Law.
- (c) Neither Party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person in relation to the Project.
- (d) With the exception of any insurances required by Law, the Required Insurances shall:
 - (i) subject to clause 32.1(e), name TfL as co-insured with any other party maintaining the insurance;
 - (ii) provide for non-vitiating protection in respect of any claim made by TfL as co-insured in accordance with Endorsement 2 (*Multiple Insured/Subrogation/Non-Vitiating Clause*) in Part 3 (*Endorsements*) of Schedule 21 (*Insurance*);
 - (iii) contain a clause waiving the insurers' subrogation rights against TfL, its employees and agents in accordance with Endorsement 2 (*Multiple Insured/Subrogation/Non-Vitiating Clause*) in Part 3 (*Endorsements*) of Schedule 21 (*Insurance*);
 - (iv) provide for twenty (20) Working Days' prior written notice of their cancellation, non-renewal or amendment to be given to TfL in accordance with Endorsement 1 (*Cancellation*) in Part 3 (*Endorsements*) of Schedule 21 (*Insurance*);

- (v) subject to clause 32.6(c), contain a loss payee clause within the Physical Damage Policies in accordance with Endorsement 4 (*Loss Payee*) of Part 3 (*Endorsements*) of Schedule 21 (*Insurance*);
 - (vi) contain provisions dealing with the requirements of Endorsement 3 (*Communications*), Endorsement 5 (*Primary Insurance*), Endorsement 6 (*Claims Negotiation Rights*) and Endorsement 7 (*Ringfencing*) in Part 3 (*Endorsements*) of Schedule 21 (*Insurance*); and
 - (vii) in respect of the Physical Damage Policies, provide for payment of any proceeds received by Project Co to be applied in accordance with clause 32.7 (*Reinstatement*).
- (e) Project Co shall ensure that the Required Insurances name TfL as a co-insured for its separate interest.
- (f) Project Co shall provide to TfL:
- (i) copies on request of all the Required Insurance policies (together with any other information reasonably requested by TfL relating to such Required Insurance policies) and TfL shall be entitled to inspect them during ordinary business hours;
 - (ii) evidence that the premiums payable under all insurance policies in relation to the Project have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 32.1 (*Insurance requirements*) and Schedule 21 (*Insurance*); and
 - (iii) on or before the date of expiry of any of the Required Insurances, satisfactory evidence that the relevant insurance has been or is being renewed.
- (g) Renewal certificates in relation to any of the Required Insurances shall be obtained as and when necessary and Project Co shall provide copies (certified in a manner acceptable to TfL) to TfL as soon as possible but in any event on or before the relevant renewal date.
- (h) If Project Co is in breach of clause 32.1(a) or clause 32.1(b), TfL may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from Project Co on written demand, which amount will be a debt due from Project Co to TfL which is payable thirty (30) days from TfL's written demand.
- (i) Project Co shall give TfL written notification within twenty (20) Working Days after any claim in excess of [REDACTED] on any of the Required Insurance policies or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances policies referred to in this clause 32.1 (*Insurance requirements*), accompanied by full details of the incident giving rise to the claim.
- (j) Neither a failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve Project Co of its other liabilities and obligations under this Agreement.
- (k) The insurance premiums in respect of the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of Project Co.

32.2 Identity of insurer

The Required Insurances shall be effected with insurers approved by TfL, such approval not to be unreasonably withheld or delayed.

32.3 Professional indemnity insurance

- (a) In addition to the Required Insurances, Project Co undertakes to ensure that the D&C Contractor takes out and maintains in force professional indemnity insurance ("**PI Insurance**") from the Effective Date until the date twelve (12) years from and including the completion of all the Works, provided that such insurance is generally available in the market to members of the relevant party's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the relevant party's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.
- (b) Where the PI Insurance is effected in accordance with clause 32.3(a), Project Co shall either (at the sole discretion of Project Co):
- (i) provide evidence satisfactory to TfL (as and when reasonably required by TfL) of the PI Insurance being in full force and effect from the Effective Date until the date twelve (12) years from and including the completion of all the Works (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of [REDACTED] [REDACTED] either for each and every loss or in the aggregate (if in the aggregate, then in any one (1) year of insurance a minimum of two (2) automatic reinstatements of the aggregate indemnity limit is required)); or
 - (ii) provide evidence satisfactory to TfL (as and when reasonably required by TfL) of the PI Insurance being in full force and effect from the Effective Date until the date twelve (12) years from and including the completion of the Works (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of [REDACTED] [REDACTED] either for each and every loss or in aggregate if it is to be specific for the Project).
- (c) Project Co shall
- (i) provide TfL with notice of:
 - (A) any cancellation of the PI Insurance not less than twenty five (25) Working Days prior to the relevant cancellation date; and
 - (B) any adverse material changes to or suspension of cover relevant to the Project not less than twenty five (25) Working Days prior to the relevant change or suspension; and
 - (ii) inform TfL as soon as reasonably practicable of any claim under the PI Insurance in respect of the Project in excess of [REDACTED] [REDACTED] (such sum to be gross of any deductible) and provide such information to TfL as TfL may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit.

32.4 Claims

Project Co shall, where it is obliged to effect insurance under this clause 32 (*Insurance*), not bring any claim or action against TfL (or any TfL Related Party) in respect of any loss or damage in circumstances where Project Co is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement), provided that this clause 32.4 (*Claims*) shall not by itself prevent Project Co from claiming against TfL (or any TfL Related Party) for any loss or damage not covered by such insurance because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement.

32.5 Broker's letter of undertaking

- (a) On the Effective Date and within twenty (20) Working Days following each renewal of the Required Insurances, Project Co shall deliver to TfL a broker's letter of undertaking signed by the insurance broker to Project Co in the agreed form as set out in Part 4 (*Broker's Letter of Undertaking*) of Schedule 21 (*Insurance*).
- (b) Project Co shall ensure that any broker(s) appointed during the Agreement Period in relation to the Required Insurances shall:
 - (i) owe TfL such obligations and give to TfL such warranties as are substantially the same as those set out in Part 4 (*Broker's Letter of Undertaking*) of Schedule 21 (*Insurance*) and in this clause 32 (*Insurance*); and
 - (ii) enter into an agreement in substantially the same form as that set out in Part 4 (*Broker's Letter of Undertaking*) of Schedule 21 (*Insurance*).

32.6 Joint Insurance Account

- (a) Project Co shall set up and at all times maintain the Joint Insurance Account in the joint names of TfL and Project Co and requiring joint signatures.
- (b) Project Co shall ensure that the Joint Insurance Account is set up and maintained with a bank:
 - (i) with a long term credit rating equal to or better than:
 - (A) BBB- from Standard & Poor's Rating Services; or
 - (B) Baa3 from Moody's Investors Services Inc.;
 - (ii) based in the United Kingdom; and
 - (iii) governed by the Financial Services Authority.
- (c) All insurance proceeds paid under any Physical Damage Policy in relation to the Works or Project Facilities in respect of a single event (or a series of related events) in an amount in excess of [REDACTED] shall be paid into the Joint Insurance Account.

32.7 Reinstatement

- (a) All insurance proceeds received under any Physical Damage Policies shall be applied to repair, reinstate and replace each part or parts of the Works or Project Facilities in respect of which the proceeds were received.

(b) Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of [REDACTED] (Indexed), the following shall apply in respect of the Relevant Incident:

(i) Project Co shall deliver to TfL as soon as practicable, and in any event within twenty (20) Working Days after the making of the claim, a plan (the "**Reinstatement Outline**") prepared by Project Co for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace the Works or Project Facilities which are the subject of the relevant claim or claims in accordance with this clause 32.7 (*Reinstatement*), which Reinstatement Outline shall set out:

(A) if not the D&C Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of TfL; and

(B) the proposed terms and reasonable timetable on which the Reinstatement Works are to be effected (including the date that the Project Facilities will become fully operational, where applicable), the final terms of which shall be subject to the prior written approval of TfL, which approval shall not be unreasonably delayed;

(ii) TfL shall, within ten (10) Working Days of receipt of the Reinstatement Outline, notify Project Co in writing whether:

(A) TfL is satisfied that the Reinstatement Outline will enable Project Co to comply with its obligations to carry out the Reinstatement Works within a reasonable timetable, and that the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is approved; or

(B) TfL does not approve:

(aa) the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works; and/or

(bb) the Reinstatement Outline,

together with its reasons for such non-approval in sufficient detail so as to enable Project Co to understand the nature and extent of such non-approval and to assess whether TfL's approval under clause 32.7(b)(ii)(A) has been unreasonably withheld,

provided that if TfL does not make one (1) of the responses referred to in clause 32.7(b)(ii) within the period specified in clause 32.7(b)(ii), TfL shall be deemed to have approved the Reinstatement Outline, save where TfL has reasonably requested any further information from Project Co, in which case the time limit outlined in clause 32.7(b)(ii) will be deemed to commence upon receipt of such further information by TfL;

(iii) if TfL gives notice of non-approval in accordance with clause 32.7(b)(ii)(B), Project Co shall amend and re-submit the Reinstatement Outline (the "**Amended Reinstatement Outline**") to TfL taking into account TfL's comments for TfL's reconsideration and TfL shall give its approval or non-approval within five (5) Working Days of the submission of the Amended Reinstatement Outline to TfL, provided that if TfL does not approve the

Amended Reinstatement Outline, Tfl shall provide reasons for such non-approval in sufficient detail so as to enable Project Co to understand the nature and extent of such non-approval and to assess whether Tfl's approval has been unreasonably withheld;

- (iv) in the event that the Amended Reinstatement Outline is not approved by Tfl in accordance with clause 32.7(b)(iii), Project Co may submit the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether Tfl's approval under clause 32.7(b)(iii) was unreasonably withheld;
- (v) the Reinstatement Outline or the Amended Reinstatement Outline (as the case may be) as approved by Tfl pursuant to this clause 32.7 (*Reinstatement*) (or as determined pursuant to the Dispute Resolution Procedure) shall be adopted as the reinstatement plan (the "**Reinstatement Plan**") in relation to the Relevant Incident;
- (vi) following the adoption of the Reinstatement Plan:
 - (A) Project Co shall effect the Reinstatement Works in accordance with the Reinstatement Plan;
 - (B) Project Co shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan and approved by Tfl;
 - (C) prior to the End Date, any amounts standing to the credit of the Joint Insurance Account in respect of the Relevant Incident (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by Project Co from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 32.7(b)(vi)(B) and to meet any other reasonable costs and expenses of Project Co for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments;
 - (D) Tfl acknowledges and agrees that, subject to compliance by Project Co with its obligations under this clause 32.7 (*Reinstatement*) and provided that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 32.7(b)(vi)(B), Tfl shall not be entitled to exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds where clause 26.2 (*Relief Events*) applies;
 - (E) Tfl undertakes to use reasonable endeavours to provide reasonable assistance to Project Co in the carrying out of the Reinstatement Plan (provided that Tfl shall not be required to incur or expend any material costs or expenses in providing such assistance);
 - (F) after the Reinstatement Plan has been implemented to the reasonable satisfaction of Tfl and in accordance with this clause 32.7 (*Reinstatement*), Tfl shall permit withdrawal by Project Co of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under this clause 32.7 (*Reinstatement*), in

respect of the Relevant Incident, together with any interest accrued;
and

- (G) subject to the provisions of clause 30 (*Indemnities*), Project Co shall be solely responsible for the payment of any deficiency between the cost of the Reinstatement Works and the Relevant Proceeds.
- (c) Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace the Works or Project Facilities, Project Co shall carry out the work in accordance with the D&C Requirements and the terms of this Agreement so that on completion of the work, the provisions of this Agreement are complied with.
- (d) Following the End Date, TfL may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works.

32.8 **Risks that become Uninsurable**

- (a) If a risk usually covered by contractors' "all risks" insurance, property damage insurance, third party liability insurance, delay in start-up insurance (but excluding loss of profits), business interruption insurance (but excluding loss of profits) or statutory insurances, in each case required under this Agreement, becomes Uninsurable then:
 - (i) Project Co shall notify TfL within five (5) Working Days of Project Co becoming aware of the risk becoming Uninsurable and in any event at least five (5) Working Days before expiry or cancellation of the existing insurance in respect of that risk; and
 - (ii) if both Parties agree, or it is determined in accordance with clause 48 (*Dispute Resolution Procedure*), that the relevant risk is Uninsurable and that:
 - (A) the risk being Uninsurable is not caused by the breaches, defaults, actions or omissions of Project Co or any Project Co Related Party; and
 - (B) Project Co has demonstrated to TfL that Project Co and a prudent board of directors of a company operating the same or substantially similar PFI and/or PF2 businesses in the United Kingdom to that operated by Project Co would in similar circumstances (in the absence of the type of relief envisaged by this clause 32.8 (*Risks that become Uninsurable*)) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

- (b) If the requirements of clause 32.8(a) are satisfied, but the Parties cannot agree as to how to manage or share the relevant Uninsurable risk, then:
 - (i) in respect of third party liability insurance only, TfL shall (at TfL's option) either:

- (A) pay to Project Co an amount equal to the amount calculated in accordance with clause 35.2 (*Compensation on termination for force majeure*) and this Agreement will terminate; or
 - (B) elect to allow this Agreement to continue and clause 32.8(b)(ii) shall thereafter apply in respect of such risk;
- (ii) in respect of contractor's "all risks" insurance, property damage insurance, third party liability insurance (if TfL elects to allow this Agreement to continue in accordance with clause 32.8(b)(i)), delay in start-up insurance (but excluding loss of profits), business interruption insurance (but excluding loss of profits) or statutory insurances, this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) TfL shall (at TfL's option) either pay to Project Co:
- (A) an amount equal to insurance proceeds that would have been payable had the relevant risk continued to be insurable and this Agreement will continue; or
 - (B) an amount equal to the amount calculated in accordance with clause 35.2 (*Compensation on termination for force majeure*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable had the relevant risk continued to be insurable, whereupon this Agreement will terminate; and
- (iii) where pursuant to clause 32.8(b)(i) and/or clause 32.8(b)(ii) this Agreement continues, then the Availability Payment shall be reduced in each Agreement Year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by Project Co in respect of the relevant risk in the Agreement Year prior to the relevant risk becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable), provided that where the risk is Uninsurable for part of an Agreement Year only, the reduction in the Availability Payment shall be pro-rated to the number of months for which the risk was Uninsurable;
- (iv) where pursuant to clause 32.8(b)(i) and/or clause 32.8(b)(ii) this Agreement continues, Project Co shall approach the insurance market at least every four (4) months to establish whether the risk remains Uninsurable, and as soon as Project Co is aware that the relevant risk is no longer Uninsurable, Project Co shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement and provide TfL with reasonable evidence of the existence of such insurance;
- (v) in respect of any period between TfL receiving notification in accordance with clause 32.8(a)(i) that a TPL Risk has become Uninsurable and TfL's notification to Project Co in accordance with clause 32.8(b)(i) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of clause 32.8(a)(ii) are satisfied in respect of the Uninsurable TPL Risk and subject to clause 32.8(b)(vi), clause 32.8(b)(ii) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and
- (vi) clause 32.8(b)(v) shall only apply if Project Co does not unreasonably materially delay:

- (A) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of clause 32.8(a)(ii) are satisfied in respect of the relevant Uninsurable TPL Risk; and/or
 - (B) meeting with TfL to discuss the means by which the risk should be managed.
- (c) If, pursuant to clause 32.8(b)(ii), TfL elects to make payment to Project Co (such that this Agreement will terminate) (the "**Relevant Payment**"), Project Co shall have the option (exercisable in writing within twenty (20) Working Days of the date of such election by TfL (the "**Option Period**")) to pay to TfL on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case this Agreement will continue (and the Relevant Payment will not be made by TfL), and Project Co's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.
- (d) Nothing in this clause 32.8 (*Risks that become Uninsurable*) shall oblige Project Co to take out insurance in respect of a risk which is Uninsurable, save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of Project Co or a Project Co Related Party.

32.9 **Increase in insured amounts**

The limit of indemnity and the maximum deductibles for each of the Required Insurances required during the Availability Period shall be Indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that is Indexed becomes equal to or exceeds the next whole insurable amount or deductible (as the case may be) available in the insurance market.

32.10 **Insurance Terms that become unavailable**

- (a) If, upon the renewal of any insurance which Project Co is required to maintain or to procure the maintenance of pursuant to this Agreement:
- (i) any Insurance Term is not available to Project Co in the worldwide insurance market with reputable insurers of good standing; and/or
 - (ii) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,
- (other than, in each case, by reason of one (1) or more actions or omissions of Project Co and/or any Project Co Related Party) then clause 32.10(b) shall apply.
- (b) If it is agreed or determined that clause 32.10(a) applies, then TfL shall waive Project Co's obligations in this clause 32 (*Insurance*) and/or Schedule 21 (*Insurance*) in respect of that particular Insurance Term and Project Co shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 32.10(a) continue to apply to such Insurance Term.
- (c) To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to Project Co in the worldwide

insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address Project Co's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the United Kingdom are (at such time) generally prepared to pay, Project Co shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition and, notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 5 (*Insurance Premium Risk Sharing*) of Schedule 21 (*Insurance*).

- (d) Where Tfl has exercised the waiver pursuant to clause 32.10(b), it shall be entitled to deduct from the annual Availability Payment the "**Adjusted Amount**", such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding Agreement Year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by Project Co to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to clause 32.10(c).
- (e) While clause 32.10(a) applies, the annual Availability Payment shall be reduced each Agreement Year by the Adjusted Amount, Indexed from the date that the particular Insurance Term is no longer available provided that where the Insurance Terms is unavailable for part of an Agreement Year only, the reduction in the Availability Payment shall be pro-rated to the number of months for which the Insurance Term was unavailable.
- (f) Project Co shall notify Tfl as soon as reasonably practicable and in any event within five (5) Working Days of becoming aware that clause 32.10(a)(i) and/or clause 32.10(a)(ii) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same).
- (g) Project Co shall provide Tfl with such information as Tfl reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- (h) In the event that clause 32.10(a)(i) and/or clause 32.10(a)(ii) apply in respect of an Insurance Term, (irrespective of the reasons for the same), Project Co shall approach the insurance market at least every four (4) months to establish whether clause 32.10(a)(i) and/or clause 32.10(a)(ii) remain applicable to the relevant Insurance Term.
- (i) As soon as Project Co is aware that clause 32.10(a)(i) and/or clause 32.10(a)(ii) have ceased to apply to an Insurance Term, Project Co shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

32.11 **Not used**

32.12 **Insurance exclusions**

The Parties acknowledge and agree that Project Co is not, pursuant to this Agreement, required to insure:

- (a) the Active User Charging Infrastructure; or

- (b) following the Permit to Use Date, any Passive User Charging Infrastructure, Traffic Signalling or TfL cabling which Project Co is not obliged to maintain pursuant to this Agreement.

PART IX – DEFAULT AND TERMINATION

33. TFL DEFAULT

33.1 Tfl Default

Each of the following shall be a "**Tfl Default**":

- (a) an expropriation, sequestration or requisition of a material part of the Works or Project Facilities and/or shares of Project Co or Hold Co by Tfl or other Relevant Authority;
- (b) a failure by Tfl to make payment of any amount of money exceeding the Tfl Non-Payment Threshold that is due and payable by Tfl under this Agreement within thirty (30) days of service of a formal written demand by Project Co, where that amount fell due and payable two (2) (or more) months prior to the date of service of the written demand;
- (c) a breach by Tfl of its obligations under this Agreement which substantially frustrates or renders it impossible for Project Co to perform its obligations under this Agreement for a continuous period of two (2) months;
- (d) a breach by Tfl of clause 42.5 (*Assignment by Tfl*); and
- (e) a breach by Tfl of clause 42.6(g) (*Tfl Change of Status and Assignment Guarantee Transfer*).

33.2 Termination on Tfl Default

- (a) If a Tfl Default has occurred and Project Co wishes to terminate this Agreement, it must serve a Termination Notice on Tfl within thirty (30) Working Days of becoming aware of the Tfl Default.
- (b) A Termination Notice issued by Project Co under clause 33.2(a) must specify the type of Tfl Default which has occurred entitling Project Co to terminate this Agreement.
- (c) Where Project Co validly issues a Termination Notice, this Agreement will terminate on the day falling thirty (30) Working Days after the date Tfl receives the Termination Notice, unless Tfl rectifies the relevant Tfl Default within twenty (20) Working Days of receipt of the Termination Notice.

33.3 Compensation on termination for Tfl Default

Upon a termination of this Agreement pursuant to clause 33.2 (*Termination on Tfl Default*), Project Co shall be entitled to compensation in accordance with Part 1 (*Compensation on Termination for Tfl Default*) of Schedule 27 (*Compensation on Termination*).

34. PROJECT CO DEFAULT

34.1 Project Co Default

Each of the following shall be a "**Project Co Default**":

- (a) a breach by Project Co of any of its obligations or warranties under this Agreement which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that Project Co or Hold Co be wound up or a resolution for a voluntary winding-up of Project Co or Hold Co is passed;
- (d) any receiver or manager in respect of Project Co or Hold Co is appointed or possession is taken by or on behalf of any creditor of any property of Project Co or Hold Co that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of Project Co or Hold Co;
- (f) an administration order is made, or an administrator is appointed in respect of Project Co or Hold Co;
- (g) a breach by Project Co of clause 3.1(a) (*Ancillary Documents*) (other than clause 3.1(a)(iv));
- (h) a breach by Project Co of clause 42.1 (*Project Co sub-contracting and assignment*);
- (i) a breach by Project Co of clause 29.2(d), clause 29.2(e) or clause 29.2(f) (*Change of Ownership*);
- (j) Project Co Abandons the Works at any time;
- (k) a failure to achieve the Permit to Use Date by the Longstop Permit to Use Date;
- (l) in any period comprising six (6) or less consecutive Payment Periods, the aggregate amount of Total Unavailability Deductions is equal to or greater than the Termination Unavailability Threshold;
- (m) in any period comprising six (6) or less consecutive Payment Periods, the aggregate amount of Total Service Shortfall Deductions is equal to or greater than the Termination Service Shortfall Threshold;
- (n) subject to clause 32.8 (*Risks that Become Uninsurable*) and 32.10 (*Insurance Terms that become unavailable*), a breach by Project Co of its obligation to take out and maintain Required Insurances;
- (o) a failure by Project Co to make payment of any amount of money exceeding [REDACTED] (Indexed) that is due and payable by Project Co under this Agreement within twenty (20) Working Days of service of a formal written demand by TfL, where that amount fell due and payable two (2) (or more) months prior to the date of service of the written demand;
- (p) a failure to materially commence physical works on the Site by the date which is six (6) months after the date that material physical works are envisaged to commence in the Project Co Tender Programme;
- (q) Project Co committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by TfL of its obligations under this

Agreement) which results in the criminal investigation, prosecution and conviction of Project Co or any Project Co Related Party or TfL under the Health and Safety Regime (an "**H&S Conviction**"), provided that an H&S Conviction of a Project Co Related Party shall not constitute a Project Co Default if, within ninety (90) Working Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Project Co Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by Project Co in accordance with this Agreement provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Project Co Related Party under this clause 34.1(q), TfL shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (r) not used;
- (s) a breach by Project Co of:
- (i) clause 5.2(a) (*Transferred DCO Functions*) which results in a material breach of the DCO; or
 - (ii) clause 5.3(c) (*Retained DCO Functions*) which results in a material breach of the DCO;
- (t) a material breach by Project Co of clause 12.1(d) (*Third Party Agreements*);
- (u) failure of Project Co to comply with clause 3.5(a) or 3.5(c) (*Collateral Warranties*); and
- (v) Project Co fails to deliver an executed Collateral Warranty from the Key Tier 2 Sub-Contractor to TfL by the date which is sixty one (61) weeks following the Effective Date.

34.2 **Notification of Project Co Default**

Project Co shall notify TfL of:

- (a) the occurrence and details of any Project Co Default; and
- (b) any event or circumstance which would, with the passage of time or otherwise, constitute or give rise to a Project Co Default,

in either case promptly upon Project Co becoming aware of the occurrence thereof.

34.3 **Termination on Project Co Default**

Subject to clause 34.4 (*Rectification*), TfL shall be entitled to terminate this Agreement in accordance with this clause 34 (*Project Co Default*).

34.4 **Rectification**

- (a) If a Project Co Default has occurred and TfL wishes to terminate this Agreement, TfL shall serve a Termination Notice on Project Co.
- (b) The Termination Notice served by TfL pursuant to clause 34.4(a) must specify:
 - (i) the type and nature of Project Co Default that has occurred, giving reasonable details; and
 - (ii) that, in the case of any Project Co Default under clause 34.1(a), clause 34.1(g), clause 34.1(h), clause 34.1(i), clause 34.1(n), clause 34.1(o), clause 34.1(s), clause 34.1(t), clause 34.1(u) and clause 34.1(v), this Agreement may be terminated by TfL pursuant to clause 34.4(d), unless:
 - (A) in the case of a Project Co Default under clause 34.1(a), Project Co puts forward a rectification programme acceptable to TfL within twenty (20) Working Days after the date on which Project Co receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the relevant Project Co Default in accordance with the programme); or
 - (B) in the case of a Project Co Default under clause 34.1(g), clause 34.1(h), clause 34.1(i), clause 34.1(n), clause 34.1(o), clause 34.1(s), clause 34.1(t), clause 34.1(u) and clause 34.1(v), Project Co rectifies the relevant Project Co Default within forty (40) Working Days after the date Project Co receives the Termination Notice; or
 - (iii) that, in the case of any other Project Co Default (not being under clause 34.1(a), clause 34.1(g), clause 34.1(h), clause 34.1(i), clause 34.1(n), clause 34.1(o), clause 34.1(s), clause 34.1(t), clause 34.1(u) or clause 34.1(v)), this Agreement may be, subject to the terms of the Funders' Direct Agreement, terminated by TfL pursuant to clause 34.4(d).
- (c) Where TfL issues a Termination Notice, if Project Co either:
 - (i) rectifies the relevant Project Co Default within the time period specified in the Termination Notice to TfL's reasonable satisfaction; or
 - (ii) implements the accepted rectification programme, if applicable, in accordance with its terms,

the Termination Notice will be deemed to be revoked and this Agreement will continue.
- (d) If:
 - (i) in the case of a Project Co Default under clause 34.1(a), no acceptable rectification programme has been put forward pursuant to clause 34.4(b)(ii)(A);
 - (ii) in the case of a Project Co Default under clause 34.1(g), clause 34.1(h), clause 34.1(i), clause 34.1(n), clause 34.1(o), clause 34.1(s) or clause 34.1(t), clause 34.1(u) or clause 34.1(v), Project Co fails to rectify the Project Co Default within forty (40) Working Days after the date on which Project Co receives the Termination Notice; or
 - (iii) in the case of a Project Co Default not under clause 34.1(a), clause 34.1(g), clause 34.1(h), clause 34.1(i), clause 34.1(n), clause 34.1(o), clause 34.1(s), clause 34.1(t), clause 34.1(u) and clause 34.1(v).

TfL may give notice to Project Co stating that this Agreement will, subject to the terms of the Funders' Direct Agreement, terminate on the date falling five (5) Working Days after the date of receipt of such notice.

- (e) If, in the case of a Project Co Default under clause 34.1(a), Project Co has put forward an acceptable rectification programme but fails to implement such rectification programme in accordance with its terms, this Agreement will, subject to the terms of the Funders' Direct Agreement, terminate on the date falling five (5) Working Days after the date of notification by TfL to Project Co of such failure to implement the rectification programme in accordance with its terms.

34.5 **Persistent Breach**

- (a) If an Information Breach, or any other breach of this Agreement by Project Co other than any breach for which Deductions could have been made, has continued for more than thirty (30) Working Days or occurred more than three (3) times in any rolling six (6) month period, then TfL may serve a notice on Project Co:
 - (i) specifying that it is a formal warning notice for a persistent breach (a **"Persistent Breach Warning Notice"**);
 - (ii) giving reasonable details of the relevant breaches; and
 - (iii) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.
- (b) If, following service of a Persistent Breach Warning Notice, the breach specified in the notice has continued beyond a further thirty (30) Working Days or recurred in two (2) or more months within the six (6) month period after the date of service, then TfL may serve another notice on Project Co:
 - (i) specifying that it is a final warning notice for the persistent breach (a **"Final Persistent Breach Warning Notice"**);
 - (ii) stating that the breach specified has been the subject of a Persistent Breach Warning Notice served within the six (6) month period prior to the date of service of the Final Persistent Breach Warning Notice; and
 - (iii) stating that if such breach continues for more than thirty (30) Working Days or recurs in two (2) or more months within the six (6) month period after the date of service of the Final Persistent Breach Warning Notice, this Agreement may be terminated for Persistent Breach.
- (c) A Persistent Breach Warning Notice may not be served in respect of any breach which has previously been counted in the making of a separate Persistent Breach Warning Notice or Final Persistent Breach Warning Notice.

34.6 **Compensation on termination for Project Co Default**

On termination of this Agreement in accordance with clause 34.4 (*Rectification*), Project Co shall be entitled to compensation in accordance with Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*).

34.7 **Termination for corrupt gifts and fraud**

- (a) Project Co warrants that in entering this Agreement it has not committed any Prohibited Act.

- (b) Project Co undertakes to TfL that it will throughout the Agreement Period use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with Project Co from bribing any person with the intention of obtaining or retaining business for Project Co or with the intention of obtaining or retaining an advantage in the conduct of the business of Project Co.
- (c) If Project Co or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of Project Co's or their agents or shareholders commits any Prohibited Act, then TfL shall be entitled to act in accordance with this clause 34.7 (*Termination for corrupt gifts and fraud*).
- (d) Notwithstanding clause 34.7(e) to clause 34.7(h) (inclusive), if a Prohibited Act is committed by:
 - (i) Project Co; or
 - (ii) an employee not acting independently of Project Co,

then TfL may terminate this Agreement by giving notice to Project Co provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, TfL may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.

- (e) If the Prohibited Act is committed by an employee of Project Co acting independently of Project Co, then TfL may give notice to Project Co of termination and this Agreement will terminate twenty (20) Working Days after receipt of such notice, unless within such period Project Co terminates the relevant employee's employment and (if necessary) procures the performance of such part of the Project by another person.
- (f) If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then TfL may give notice to Project Co of termination and this Agreement will terminate twenty (20) Working Days after receipt of such notice, unless during such period Project Co:
 - (i) where the relevant Sub-Contractor is a counter-party to an Ancillary Document, terminates the relevant Ancillary Document; or
 - (ii) where the relevant Sub-Contractor is a sub-contractor (of any tier) to a counter-party to an Ancillary Document, procures that the relevant sub-contract is terminated,

and procures the performance of such part of the Project by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, TfL may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.

- (g) If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then TfL may give notice to Project Co of termination and this Agreement will terminate twenty (20) Working Days after receipt of such notice, unless during such period the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Project by another person.
- (h) If the Prohibited Act is committed by any other person not specified in clause 34.7(d) to clause 34.7(g) (inclusive), then TfL may give notice to Project Co of termination and this Agreement will terminate twenty (20) Working Days after

receipt of such notice, unless during such period Project Co procures the termination of such person's employment and of the appointment of their employer (where not employed by Project Co or the Sub-Contractors) and (if necessary) procures the performance of such part of the Project by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, TfL may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.

- (i) Any notice of termination under this clause 34.7 (*Termination for corrupt gifts and fraud*) shall specify:
 - (i) the nature of the Prohibited Act and under which sub-clause of this clause 34.7 (*Termination for corrupt gifts and fraud*) TfL is exercising its right to terminate this Agreement;
 - (ii) the identity of the party whom TfL believes has committed the Prohibited Act; and
 - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause 34.7 (*Termination for corrupt gifts and fraud*).
- (j) Project Co undertakes to TfL that it will throughout the Agreement Period use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with Project Co from bribing any person with the intention of obtaining or retaining business for Project Co or with the intention of obtaining or retaining an advantage in the conduct of business for Project Co.

34.8 Compensation on termination for corrupt gifts and fraud

On termination of this Agreement in accordance with clause 34.7 (*Termination for corrupt gifts and fraud*), Project Co shall be entitled to compensation in accordance with Part 3 (*Compensation on Termination for Corrupt Gifts and Fraud*) of Schedule 27 (*Compensation on Termination*).

34.9 Termination by TfL for breach of the Refinancing provisions

- (a) If Project Co wilfully breaches Schedule 26 (*Refinancing*), then TfL may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under clause 34.9(b) to clause 34.9(c) (inclusive).
- (b) If TfL wishes to terminate this Agreement under this clause 34.9 (*Termination by TfL for breach of the Refinancing provisions*), it must give notice to Project Co stating:
 - (i) that TfL is terminating this Agreement under this clause 34.9 (*Termination by TfL for breach of the Refinancing provisions*); and
 - (ii) that this Agreement will terminate on the date falling twenty (20) Working Days after the date of service of the notice.
- (c) This Agreement will terminate on the date falling twenty (20) Working Days after the date of service of the notice referred to in clause 34.9(b).

34.10 Compensation on termination for breach of the Refinancing provisions

On termination of this Agreement in accordance with clause 34.9 (*Termination by TfL for Breach of the Refinancing Provisions*), Project Co shall be entitled to compensation in accordance with Part 4 (*Compensation on Termination for Breach of the Refinancing Provisions*) of Schedule 27 (*Compensation on Termination*).

35. NON-DEFAULT TERMINATION

35.1 Termination on force majeure

- (a) No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and that other Party is prevented from carrying out such obligations by that Force Majeure Event.
- (b) For the avoidance of doubt (but without prejudice to clause 35.1(f) or clause 35.1(h)), TfL shall not be entitled to terminate this Agreement for a Project Co Default if such Project Co Default arises from a Force Majeure Event.
- (c) Nothing in clause 35.1(a) shall affect any entitlement to make deductions or any deductions made as a result of Schedule 20 (*Payment Mechanism*) in the period during which the Force Majeure Event is subsisting.
- (d) On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable, which notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- (e) As soon as practicable following a notification under clause 35.1(d) , the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- (f) If:
 - (i) no terms are agreed under clause 35.1(e) on or before the date falling one hundred and twenty (120) Working Days after the date of the commencement of the relevant Force Majeure Event; and
 - (ii) such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and eighty (180) Working Days,then, subject to clause 35.1(h), either Party may terminate this Agreement by giving thirty (30) Working Days' written notice to the other Party.
- (g) If this Agreement is terminated under clause 35.1(f) or clause 35.1(h) compensation shall be payable by TfL in accordance with clause 35.2 (*Compensation on termination for force majeure*).
- (h) If Project Co gives notice to TfL under clause 35.1(f) that it wishes to terminate this Agreement, then TfL has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Working Days after the date of its receipt stating that it requires this Agreement to continue.
- (i) If TfL gives Project Co a notice under clause 35.1(h):

- (i) at any time during the period from the Effective Date until the day before the Permit to Use Date, then the relevant Force Majeure Event shall be treated as a Compensation Event from the date of such notice; or
- (ii) at any time after the Permit to Use Date, then TfL shall pay to Project Co the Availability Payment from the day after the date on which this Agreement would have terminated under clause 35.1(f) as if the Services were being fully provided,

in each case until the relevant Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and this Agreement will not terminate until expiry of written notice (of at least thirty (30) Working Days) from TfL to Project Co that it wishes this Agreement to terminate.

- (j) The Parties shall, at all times following the occurrence of a Force Majeure Event, use all reasonable endeavours to prevent and mitigate the effects of any delay and Project Co shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- (k) The Affected Party in relation to a Force Majeure Event shall notify the other Party as soon as practicable after the relevant Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

35.2 **Compensation on termination for force majeure**

Upon a termination of this Agreement pursuant to clause 35.1 (*Termination on force majeure*), Project Co shall be entitled to compensation in accordance with Part 5 (*Compensation on Termination for Force Majeure*) of Schedule 27 (*Compensation on Termination*).

35.3 **Voluntary termination by TfL**

- (a) TfL may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under clause 35.3(b) to clause 35.3(c) (inclusive).
- (b) If TfL wishes to terminate this Agreement under this clause 35.3 (*Voluntary termination by TfL*), TfL must give notice to Project Co stating:
 - (i) that TfL is terminating this Agreement under this clause 35.3 (*Voluntary termination by TfL*); and
 - (ii) that this Agreement will terminate on the date specified in the notice, which must be a minimum of twenty (20) Working Days after the date of the notice;
- (c) This Agreement will terminate on the date specified in the notice referred to in clause 35.3(b).

35.4 **Compensation on voluntary termination**

Upon a termination of this Agreement pursuant to clause 35.3 (*Voluntary termination by TfL*), Project Co shall be entitled to compensation in accordance with Part 6 (*Compensation on Voluntary Termination by TfL*) of Schedule 27 (*Compensation on Termination*).

36. **DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT**

36.1 **Declaration of Ineffectiveness**

- (a) In the event that a court makes a Declaration of Ineffectiveness, TfL shall promptly notify Project Co and the Parties agree that:
 - (i) the provisions of clause 37 (*Consequences of termination*) and this clause 36.1 (*Declaration of Ineffectiveness*) shall apply as from the date of receipt by Project Co of the notification of the Declaration of Ineffectiveness; and
 - (ii) where there is any conflict or discrepancy between the provisions of clause 37 (*Consequences of termination*) and this clause 36.1 (*Declaration of Ineffectiveness*) or the Cessation Plan, the provisions of this clause 36.1 (*Declaration of Ineffectiveness*) and the Cessation Plan shall prevail.
- (b) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- (c) As from the date of receipt by Project Co of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, TfL shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the Works and Services or (at TfL's request) a transition of the Works and Services to TfL or such other entity as TfL specify; and
 - (ii) minimal disruption or inconvenience to TfL or to public passenger transport services or facilities,

in accordance with the provisions of this clause 36.1 (*Declaration of Ineffectiveness*) and to give effect to the terms of the Declaration of Ineffectiveness.
- (d) Upon agreement, or determination by TfL, of the Cessation Plan under clause 36.1(c), the Parties will comply with their respective obligations under the Cessation Plan.
- (e) TfL shall pay Project Co's reasonable costs in assisting TfL in preparing, agreeing and complying with the Cessation Plan and such costs shall be based on any comparable costs agreed as part of this Agreement or as otherwise reasonably determined by TfL.

36.2 **Public Procurement Termination Event**

- (a) Without prejudice to TfL's rights of termination implied into this Agreement by regulation 73(3) of the Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, TfL shall promptly notify Project Co and the Parties agree that:
 - (i) the provisions of clause 37 (*Consequences of termination*) and this clause 36.2 (*Public Procurement Termination Event*) shall apply as from the date of receipt by Project Co of the notification of the Public Procurement Termination Event; and

- (ii) if there is any conflict or discrepancy between the provisions of clause 37 (*Consequences of termination*) and this clause 36.2 (*Public Procurement Termination Event*) or the Cessation Plan, the provisions of this clause 36.2 (*Public Procurement Termination Event*) and the Cessation Plan shall prevail.
- (b) The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.
- (c) As from the date of receipt by Project Co of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, TfL shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation or (at TfL's election) a transition to TfL or such other entity as TfL may specify of:
 - (A) the Works and Services; or
 - (B) at TfL's election, the part of the Works and Services which are affected by the Public Procurement Termination Event; and
 - (ii) minimal disruption or inconvenience to TfL or to public passenger transport services or facilities,

in accordance with the provisions of this clause 36.2 (*Public Procurement Termination Event*) and to give effect to the terms of the Public Procurement Termination Event.
- (d) Upon agreement, or determination by TfL, of the Cessation Plan under clause 36.2(c), the Parties will comply with their respective obligations under the Cessation Plan.
- (e) TfL shall pay Project Co's reasonable costs in assisting TfL in preparing, agreeing and complying with the Cessation Plan and such costs shall be based on any comparable costs agreed as part of this Agreement or as otherwise reasonably determined by TfL.

36.3 Compensation on termination for Declaration of Ineffectiveness and Public Procurement Termination Event

Upon a termination of this Agreement pursuant to clause 36.1 (*Declaration of Ineffectiveness*) or clause 36.2 (*Public Procurement Termination Event*), Project Co shall be entitled to compensation on the same basis as following a termination for a Force Majeure Event in accordance with Part 5 (*Compensation on Termination for Force Majeure*) of Schedule 27 (*Compensation on Termination*).

37. CONSEQUENCES OF TERMINATION

37.1 Service continuity

- (a) Without prejudice to clause 46 (*TfL step-in and inspections*), in the event that:
 - (i) TfL or Project Co has given a Termination Notice under clause 34 (*Project Co Default*) or clause 35 (*Non-default termination*);
 - (ii) where TfL has given a Termination Notice under clause 34.4(a), the Project Agreement is scheduled to terminate pursuant to clause 34.4(b)(ii)(B) or

TfL is entitled to issue a notice to terminate pursuant to clause 34.4(d) or clause 34.4(e); and

- (iii) members of the public are unable to use the Project Facilities either safely, without undue delay or at all,

then for a maximum period of three (3) months:

- (A) TfL may on five (5) Working Days' notice to Project Co expel Project Co from the Project Land without thereby avoiding this Agreement; and
 - (B) whether or not it exercises the right under clause 37.1(a)(iii)(A), TfL may take, or employ others to take, such steps in relation to the operation and maintenance of the Project Facilities or the provision of such other works or services as it may think fit to protect the position of such members of the public, and TfL may recover all costs of so doing (including the relevant administrative expenses of TfL, including an appropriate sum in respect of general staff costs and overheads) from Project Co.
- (b) If TfL exercises its rights pursuant to clause 37.1(a), any time periods specified in any Termination Notice pursuant to clause 34.4(b)(ii)(A) and clause 34.4(b)(ii)(B) shall be deemed to commence on the date that TfL ceases to exercise its rights pursuant to clause 37.1(a).
 - (c) Subject to the exercise by TfL of any right under clause 37.1(a), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of default or Termination Notice until this Agreement terminates in accordance with the provisions of this Agreement.
 - (d) If TfL exercises its rights pursuant to clause 37.1(a)(iii)(B) following a Termination Notice given under clause 35 (*Non-default termination*), clause 46.8 (*Damage*) shall apply *mutatis mutandis*.

37.2 Savings

- (a) Save as otherwise expressly provided in this Agreement, and without prejudice to clause 45 (*Remedies*), termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Termination Date.
- (b) Save as provided in clause 37.2(a) and clause 51.10 (*Survival*), all rights and obligations of TfL and Project Co under this Agreement shall cease and be of no further force and effect upon termination of this Agreement.
- (c) Notwithstanding any breach of this Agreement by either Party and without prejudice to any other rights which the other Party may have in relation thereto, the other Party may elect to continue to treat this Agreement as in full force and effect and to enforce its rights hereunder, and failure of either Party to exercise any right hereunder including any right to terminate this Agreement and any right to claim damages shall not be deemed a waiver of such right for any continuing or subsequent breach.
- (d) Project Co shall have no claim for compensation or otherwise as a result of termination of this Agreement except in accordance with the express provisions of this Agreement.

- (e) Neither Party shall be entitled to terminate this Agreement for any reason whatsoever except as expressly set out in this Agreement.

PART X - RETURN

38. HANDBACK

38.1 Handback requirements

Project Co shall comply with Schedule 19 (*Handback Requirements*).

38.2 Transfer, Co-operation and transition

On the expiry or termination of this Agreement for any reason:

- (a) Project Co shall transfer to TfL (or its nominee) all of its right, title and interest in and to the Assets and in the event of a termination of this Agreement occurring prior to the issue of the Permit to Use, Project Co shall transfer to and there shall vest in TfL (or its nominee) such part of the Works as shall have been carried out;
- (b) Project Co shall transfer to TfL (without prejudice to any accrued rights) any asset protection agreement entered into pursuant to clause 5.2(m) or clause 5.8(c);
- (c) Project Co shall (acting reasonably) cooperate with TfL and any successor design and construction contractor in relation to the Works or any successor operator and/or maintainer of the Project Facilities (as applicable) in order to achieve a smooth transfer of the carrying out of the Works or the Services (as applicable), so as to protect the safety of and avoid undue delay or inconvenience to Users;
- (d) Project Co shall, as soon as practicable, remove from the Project Land (and any other areas occupied by Project Co for the purposes of performing its obligations under this Agreement in relation to Defects and Snagging Items) any materials, construction plant, temporary buildings, road vehicles, spare parts and other property not required by TfL and, if Project Co has not done so within twenty (20) Working Days after any notice from TfL requiring it to do so, TfL may (without being responsible for any Loss) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of Project Co;
- (e) Project Co shall, on or before the Termination Date deliver to TfL all keys, alarm numbers or other means of access to any part of the Project Facilities;
- (f) Project Co shall, as soon as practicable vacate and shall leave the Project Land, (and any other areas occupied by Project Co for the purposes of performing its obligations under this Agreement in relation to Defects and Snagging Items), in a good, clean, tidy, orderly, secure and safe condition and in compliance with all Applicable Requirements; and
- (g) the rights of access under clause 7 (*Site access*) and Schedule 4 (*Land Requirements*) shall automatically terminate.

38.3 DCO and Third Party Agreements

- (a) Following the termination or expiry of this Agreement, Project Co shall be deemed to transfer back to TfL the:
 - (i) Transferred DCO Functions; and
 - (ii) Transferred Third Party Functions.
- (b) The transfer contemplated by clause 38.3(a) shall occur automatically on the End Date.

39. **RETENDER OF SERVICES**

- (a) On or before a date falling no later than six (6) months prior to the Expiry Date, TfL shall notify Project Co in writing whether it wishes to retender the provision of the Services.
- (b) If TfL notifies Project Co pursuant to clause 39(a) that it wishes to retender the provision of the Services then:
 - (i) unless instructed otherwise by TfL, Project Co shall do all necessary acts (including entering into any contracts) to ensure that the successor contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date; and
 - (ii) TfL will bear all costs of any retendering of this Agreement on expiry.

PART XI – MISCELLANEOUS

40. EMPLOYMENT

40.1 Staff

- (a) Project Co shall, and shall ensure that its Sub-Contractors shall, only employ persons that are properly qualified, experienced, trained and competent to perform the Works or Services assigned to them.
- (b) Project Co shall ensure that all employees referred to in clause 40.1(a) comply with all Applicable Requirements and carry out all relevant work in a diligent and safe manner.
- (c) Project Co shall provide evidence that persons have been properly assessed as competent to perform any safety critical duties to TfL whenever reasonably requested.

40.2 Compliance with the TfL Policies

Project Co shall, and shall ensure that its Sub-Contractors shall, take all necessary steps to ensure that all persons engaged in the provision of any part of the Works or Services shall comply with the TfL Policies.

40.3 Conduct of staff

Where TfL has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Works or Services is undesirable or would present a risk to themselves or any other person or to any property, TfL may require the exclusion of the relevant employee from the relevant location and that relevant person shall not be employed again in connection with the Works or the Services without the written consent of TfL.

40.4 Resources and training

Project Co shall, and shall ensure that its Sub-Contractors shall, ensure that:

- (a) there will at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Works and the Services with the requisite level of skill and experience and this obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Works and the Services; and
- (b) all staff receive such training and supervision as is necessary to ensure the proper performance of the Works and the Services under this Agreement.

40.5 Personnel policies and procedures

- (a) Project Co shall ensure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Works and/or Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety).
- (b) Project Co shall ensure that the terms and implementation of policies and procedures referred to in clause 40.5(a) comply with all Applicable Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to TfL whenever reasonably requested.

40.6 Employee Transfer

- (a) Project Co shall, and shall ensure that any Sub-Contractor shall, within the period of twenty four (24) months immediately preceding the Expiry Date or immediately following the service of a Termination Notice or as a consequence of TfL notifying Project Co of its intention to retender any of the obligations in this Agreement:
- (i) on receiving a written request from TfL, promptly provide to TfL at its own cost in respect of any person engaged or employed by Project Co or any Sub-Contractor in the provision of the Services (the "**Assigned Employees**") full and accurate details regarding the number, age, length of service, job title, grade, employee benefits (including pensions) and terms and conditions of employment of and any other matters specified by TfL affecting each of those Assigned Employees who it is expected, if they remain in the employment of Project Co or of any Sub-Contractor as the case may be until immediately before the End Date, would be Transferring Employees (the "**Employee Transfer Information**");
 - (ii) notify TfL forthwith in writing of any material changes to the Employee Transfer Information promptly as and when such changes arise;
 - (iii) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with TfL's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (iv) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with TfL's prior written consent (such consent not to be unreasonably withheld or delayed); and
 - (v) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services in order to provide the Services, save with TfL's prior written consent (such consent not be unreasonably withheld or delayed).
- (b) At least twenty eight (28) days prior to the End Date, Project Co shall provide to TfL and/or any Future Service Provider:
- (i) updated Employee Transfer Information which shall identify the Transferring Employees; and
 - (ii) the Employee Liability Information.
- (c) Project Co shall be responsible for, and shall release and indemnify and shall keep indemnified in full TfL and at TfL's request any Future Service Provider against all Losses arising from any claim by any party as a result of Project Co or a Sub-Contractor failing to provide or promptly to provide TfL and/or any Future Service Provider where requested by TfL with any Employee Transfer Information and/or Employee Liability Information or to provide full Employee Transfer Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Employee Transfer Information and/or Employee Liability Information.
- (d) Project Co agrees that TfL shall be entitled to disclose any Employee Transfer Information or Employee Liability Information as part of any procurement process referred to in clause 50.4(a)(vii).

40.7 **Communications and consultation**

- (a) As required by TfL prior to the Expiry Date, or following the service of a Termination Notice or as a consequence of TfL notifying Project Co of its intention to retender any of the obligations in this Agreement, Project Co and TfL shall discuss the:
- (i) respective communications programmes that will be delivered to the employees of Project Co and any Sub-Contractor; and
 - (ii) process by which the transfer will take place (including the consultation process),
- and Project Co shall also discuss its employee communications programme with any Future Service Provider.
- (b) Project Co shall, and shall ensure that any Sub-Contractor shall, comply with its or their obligations to elect appropriate representatives and inform and consult with the appropriate employees and any recognised trade unions or other employee representatives in accordance with Regulation 13 of TUPE as if such legislation applied, even if it does not in fact apply.
- (c) TfL shall comply, and shall use reasonable endeavours to ensure that any Future Service Provider shall comply, with its or their obligations to inform and consult, and to provide Project Co (or any Sub-Contractor) with such information as is required to enable it to consult, in accordance with Regulation 13 of TUPE as if such legislation applied, even if it does not in fact apply.

40.8 **Expiry or termination**

- (a) On the expiry or early termination of this Agreement, TfL and Project Co agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Services but the position shall be determined in accordance with Law at the End Date and this clause 40.8 (*Expiry or termination*) is without prejudice to such determination.
- (b) Upon the End Date, the following shall apply:
- (i) Project Co shall ensure or shall procure that all wages, salaries and other benefits of the Transferring Employees, all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees up to the End Date are satisfied;
 - (ii) TfL shall ensure or shall procure that all wages, salaries and other benefits of the Transferring Employees and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees on and after the End Date are satisfied;
 - (iii) without prejudice to clause 40.8(b)(i), Project Co shall:
 - (A) remain (and ensure that Sub-Contractors shall remain) (as relevant) responsible for all Project Co's or Sub-Contractor's employees (other than the Transferring Employees) on or after the End Date and shall be responsible for, and shall release and indemnify TfL and any Future Service Provider against all Losses incurred by TfL or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the End Date by or on behalf of any of Project Co's or Sub-Contractor's employees who do not constitute the Transferring Employees; and

- (B) in respect of those employees who constitute Transferring Employees Project Co shall be responsible for, and shall release and indemnify TfL and any Future Service Provider against all Losses incurred by TfL or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period on or before the End Date (whether any such claim, attributable to the period up to and on the End Date, arises before, on or after the End Date), including but not limited to any failure by Project Co or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of TfL or any Future Service Provider.
- (c) Following the End Date, TfL shall:
- (i) indemnify Project Co (for itself and for the benefit of each relevant Sub-Contractor) in respect of those employees who constitute Transferring Employees against all Losses incurred by Project Co or any relevant Sub-Contractor in connection with or as a result of any failure by TfL to comply with its obligations under Regulation 13(4) of TUPE as if such legislation applied, even if it does not in fact so apply; and
 - (ii) use reasonable endeavours to ensure that any Future Service Provider directly indemnifies Project Co (for itself and for the benefit of each relevant Sub-Contractor) in respect of those employees who constitute Transferring Employees against all Losses incurred by Project Co or any relevant Sub-Contractor in connection with or as a result of any failure by any Future Service Provider to comply with its obligations under Regulation 13(4) of TUPE as if such legislation applied, even if it does not in fact so apply,

save to the extent that any such failure arises as a result of any act or omission of Project Co or any relevant Sub-Contractor.

40.9 **Corrective measures**

- (a) If the contract of employment of any of the Transferring Employees is found or alleged not to have effect after the End Date as if originally made with TfL or any Future Service Provider (save in circumstances where that Transferring Employee has objected under Regulation 4(7) of TUPE), TfL or the Future Service Provider, in consultation with Project Co, may within five (5) Working Days of being informed of such finding or allegation make to such Transferring Employees an offer in writing to employ him/her under a new contract of employment to take effect on the termination referred to in clause 40.9(b).
- (b) Upon the offer referred to in clause 40.9(a) being accepted by the employee, Project Co will (or will ensure that the relevant Sub-Contractor will) allow the employee to terminate his or her contract of employment with Project Co or the relevant Sub-Contractor with immediate effect, and will waive any right it may otherwise have against the employee to enforce his or her contractual notice period. Project Co shall indemnify TfL and any Future Service Provider against all Losses arising out of or as a result of any act or omission by Project Co or any Sub-Contractor in relation to such employee occurring prior to the termination of their employment.
- (c) If the contract of employment of any person(s) who is not a Transferring Employee (an "**Unexpected Employee**") is found or alleged to have effect after

the End Date as if originally made with TfL or a Future Service Provider, then TfL or such Future Service Provider may terminate the employment of the Unexpected Employee and Project Co shall indemnify TfL and any Future Service Provider against all Losses of TfL and any Future Service Provider arising directly or indirectly in relation to the Unexpected Employee.

40.10 **Future Service Provider**

- (a) TfL shall be entitled to assign the benefit of the indemnities set out in this clause 40 (*Employment*) to any Future Service Provider.
- (b) Notwithstanding any other provisions of this Agreement, where in this Agreement TfL has an obligation to use reasonable endeavours to ensure that a Future Service Provider does or does not do something, Project Co acknowledges and agrees (for itself and on behalf of each Sub-Contractor) that such obligation shall be discharged by TfL taking reasonable steps to ensure that a contractual obligation to that effect is included in the contract between TfL and such Future Service Provider.

40.11 **No Effective Date transfer**

- (a) The Parties acknowledge and agree that there are no individuals employed prior to the Effective Date by TfL or any TfL Related Party whose contracts of employment will, by virtue of the transfer to Project Co of responsibility for provision of any services in accordance with this Agreement, have effect after the Effective Date (or at any other time) as if originally made between those persons and Project Co and/or relevant Sub-Contractor in accordance with TUPE.
- (b) If it is subsequently agreed or determined that there are individuals employed prior to the Effective Date by TfL or any TfL Related Party whose contracts of employment do have effect after the Effective Date as if originally made between those persons and Project Co and/or any relevant Sub-Contractor in accordance with TUPE (the "**Transferring Staff**") then TfL shall reimburse Project Co in respect of any redundancy costs reasonably incurred within six (6) months of the Effective Date by Project Co or any relevant Sub-Contractor in relation to such Transferring Staff.

41. **INTELLECTUAL PROPERTY**

41.1 **General**

- (a) Except as expressly provided otherwise, nothing in this clause 41 (*Intellectual property*) has the effect of assigning to a Party any Intellectual Property Rights owned by the other Party as at the Effective Date or any Intellectual Property Rights created or developed by or on behalf of either Party during the term of this Agreement or otherwise.
- (b) Neither Party shall do anything or cause anything to be done at any time which would prejudice the other Party's right, title and interest in any of the Intellectual Property Rights vested in that Party pursuant to this Agreement or as otherwise owned by that Party.

41.2 **Project Data**

- (a) Project Co shall promptly provide to TfL without charge, in the form as required by TfL, all Project Data which might reasonably be required by TfL whether before, during or after the Availability Period for the purposes of exercising its rights under this Agreement or carrying out any other functions or duties in respect of the Works and the Project Facilities, including in relation to completing the Works,

operating and maintaining the Project Facilities following the expiry or termination of this Agreement and exercising its rights pursuant to clause 46 (*TfL step-in and inspections*).

- (b) Project Co hereby grants, or shall procure the grant of, to TfL free of charge a perpetual, irrevocable, transferable, non-exclusive, worldwide, royalty-free licence (or sub-licence, as applicable), with the right to grant sub-licences to any number of tiers, to use all Project Data created prior to or after the Effective Date and provided pursuant to clause 41.2(a):
 - (i) for any purpose relating to or in connection with the Project;
 - (ii) for purposes of ensuring the safe and efficient operation of the Silvertown Tunnel; and/or
 - (iii) in relation to the proper exercise of TfL's statutory functions.
- (c) Project Co shall ensure that it obtains at its own cost all necessary licences, permissions and consents to ensure that it is able and is permitted to make the Project Data available to TfL and grant the licences referred to in clause 41.2(b) on the terms required by this Agreement.
- (d) In this clause 41 (*Intellectual property*), "use" shall include the acts of copying, modifying, maintaining, adapting and translating the material in question and/or incorporating them with other materials or creating derivatives of the material in question.

41.3 **Project Co IPR licence**

Project Co hereby grants, or shall procure the grant of, to TfL free of charge a perpetual, irrevocable, transferable, non-exclusive, worldwide, royalty-free licence (or sub-licence, as applicable), with the right to grant sub-licences to any number of tiers, to use the Project Co IPR and the Third Party IPR, in each case for any purpose relating to or in connection with the Project.

41.4 **Project Co representations and warranties**

- (a) Project Co represents and warrants to TfL that in using any Project Data, Project Co IPR or Third Party IPR for the purposes specified in this Agreement, neither TfL nor any of its sub-licensees of whatever tier will infringe or make unauthorised use of any Intellectual Property Rights of any person.
- (b) Project Co represents and warrants to TfL that in performing its obligations under this Agreement, neither Project Co nor any Sub-Contractors will infringe or make unauthorised use of any Intellectual Property Rights of any person.

41.5 **Project Co IPR indemnity**

Without prejudice to:

- (a) clause 41.4 (*Project Co representations and warranties*); or
- (b) the ability of TfL to claim damages, on any basis available to it, in the event that any of the representations or warranties in clause 41.4 (*Project Co representations and warranties*) prove to be untrue or misleading or are breached (as the case may be),

Project Co shall be responsible for, and shall release and indemnify TfL and any TfL Related Party from and against, all Losses incurred by TfL and/or any TfL Related Party

as a result of or in connection with any breach of this clause 41 (*Intellectual property*) by Project Co and/or any act or omission of any Sub-Contractor in relation to this clause 41 (*Intellectual Property*) or the Intellectual Property Rights in relation to the Project.

41.6 **TfL branding**

For the purposes of using any TfL branding or devices in relation to the Project, Project Co shall comply with all standards listed under "TfL corporate design standards" on the TfL website and made available at <https://tfl.gov.uk/info-for/suppliers-and-contractors/design-standards> (or such replacement standards from time to time).

41.7 **Access to Project Data**

(a) To the extent that any of the Project Data is generated by or maintained on a computer or other equipment or otherwise in any machine readable format, or Project Co otherwise creates or utilises any software or database to perform its obligations pursuant to this Agreement, Project Co shall ensure, at no charge to TfL, that:

- (i) a perpetual, irrevocable, transferable, non-exclusive, worldwide, royalty-free licence (or sub-licence, as applicable), with the right to grant sub-licences to any number of tiers, is granted to TfL to enable TfL or any person authorised by TfL to use any relevant software or database or access and otherwise use such Project Data (including online access and use, as applicable) for any purpose whether relating to the Project or otherwise;
- (ii) the software or database referred to in clause 41.7(a) is supplied to TfL; and
- (iii) the software or database referred to in clause 41.7(a), including all software systems for the Project Facilities shall comply with the requirements set out in Part 5 (*Information Management*) of Schedule 8 (*Management Systems*).

(b) Within twenty (20) Working Days after the Effective Date Project Co shall submit to TfL under the Review Procedure its proposals for backing-up and storage in safe custody of the Project Data.

(c) Project Co shall comply, and shall ensure that its Sub-Contractors comply, with the procedures for backing-up and storage in safe custody of the Project Data endorsed by TfL as "received" or "received with comments" under the Review Procedure and Project Co may not vary its procedures for such backup and storage without the prior written consent of TfL.

41.8 **Support following expiry or termination**

On the date of expiry or early termination of this Agreement for any reason, Project Co shall, at TfL's election either:

- (a) assign, novate or otherwise transfer to TfL or its nominee all agreements (including support agreements) between Project Co or its Sub-Contractors and third parties relating to the software or database referred to in clause 41.7(a) (other than in relation to any commercial off the shelf products); or
- (b) continue to provide, at its own cost, all support required by TfL or its nominee in relation to the software or database referred to in clause 41.7(a) for a period of six (6) months following the date of expiry or termination of this Agreement.

41.9 **Further assurances**

Upon request from TfL, Project Co shall execute such further documents, and do such other things, as TfL may reasonably request in order to obtain for TfL the full benefit of this clause 41 (*Intellectual property*), at no cost to TfL.

42. **ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF STATUS**

42.1 **Project Co sub-contracting and assignment**

Subject to clause 42.2 (*Exceptions*), Project Co shall not sub-contract, transfer, assign, underlet, charge, sell, bargain or otherwise deal in any way with any of the rights or obligations under this Agreement in whole or in part, except with the prior written consent of TfL.

42.2 **Exceptions**

- (a) The provisions of clause 42.1 (*Project Co sub-contracting and assignment*) do not apply to the grant of any security for any advance made to Project Co under the Financing Agreements or to the enforcement of the same.
- (b) By entering into this Agreement, TfL approves the Key Sub-Contractors appointed by Project Co as at the Effective Date.

42.3 **Project Co's obligations**

Notwithstanding any prior written consent that may be provided by TfL pursuant to clause 42.1 (*Project Co sub-contracting and assignment*):

- (a) Project Co shall perform, or procure the performance of, all obligations pursuant to the terms of all Sub-Contracts;
- (b) Project Co shall ensure that all Sub-Contractors have the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract;
- (c) Project Co shall ensure that all Sub-Contractors have the resources available to them which are sufficient to enable them to perform the obligations of the relevant Sub-Contract under the relevant Sub-Contract and that all persons employed or engaged by all Sub-Contractors have the appropriate qualifications, experience, training and technical competence;
- (d) Project Co shall remain primarily and directly liable for Project Co's obligations under this Agreement notwithstanding the entering into of any Sub-Contract; and
- (e) Project Co shall ensure that:
 - (i) the Designer shall not be permitted to assign the Design Contract or any part thereof or any benefit or interest therein or thereunder;
 - (ii) the D&C Contractor shall not be permitted to assign the D&C Contract or any part thereof or any benefit or interest therein or thereunder; and
 - (iii) an O&M Contractor shall not be permitted to assign the O&M Contract or any part thereof or any benefit or interest therein or thereunder,

without Project Co having obtained the prior written consent of TfL.

42.4 **Replacement of Sub-Contractors**

- (a) The rights set out in:
 - (i) clause 42.4(b) may be exercised on no more than two (2) occasions; and
 - (ii) clause 42.4(d) may be exercised on no more than one (1) occasion,
 during the Agreement Period.
- (b) Prior to the appointment, substitution or replacement of an O&M Contractor (or a sub-contractor to such O&M Contractor), in each case provided that Project Co:
 - (i) is acting in compliance (where relevant) with clause 3.1 (*Ancillary Documents*); and
 - (ii) has acted in compliance with Clause 3.5(b) (*Collateral Warranties*),

Project Co may notify TfL that, for the purposes of clause 34.1 (*Project Co Default*) only:

- (iii) any accrued Unavailability Deductions for the purposes of clause 34.1(l);
- (iv) any accrued Service Shortfall Deductions for the purposes of clause 34.1(m); and/or
- (v) any Persistent Breach Warning Notices or Final Persistent Breach Warning Notices for the purposes of clause 34.1(b),

in each case relating to the relevant Services in respect of which the O&M Contractor (or relevant sub-contractor to such O&M Contractor) is being appointed, substituted or replaced, shall be cancelled.

- (c) Where Project Co serves a notice on TfL pursuant to clause 42.4(b) then, on the appointment, substitution or replacement of an O&M Contractor (or relevant sub-contractor to such O&M Contractor), for the purposes of clause 34.1 (*Project Co Default*) only:
 - (i) no Unavailability Deductions shall accrue for the purposes of clause 34.1(l);
 - (ii) no Service Shortfall Deductions shall accrue for the purposes of clause 34.1(m); and
 - (iii) no Persistent Breach Warning Notices or Final Persistent Breach Warning Notices shall accrue for the purposes of clause 34.1(b),

in respect of the relevant Services during a period of two (2) months from the date on which such Services are first provided by the appointed O&M contractor or replacement O&M Contractor (or relevant sub-contractor to such O&M Contractor) as appropriate, provided that Deductions shall still be made from the Availability Payment during that period but, where at the date of appointment, substitution or replacement of the O&M Contractor (or a sub-contractor to such O&M Contractor), the Ramping Factor is being applied pursuant to paragraph 4.2 of Schedule 20 (*Payment Mechanism*) the Ramping Factor shall be reset with effect from the date of such replacement.

- (d) Prior to the substitution or replacement of the D&C Contractor (or a sub-contractor to the D&C Contractor), in both cases provided that Project Co is acting in compliance with clause 3.1 (*Ancillary Documents*), Project Co may notify TfL that, for the purposes of clause 34.3 (*Termination on Project Co Default*) only Persistent Breach Warning Notices or Final Persistent Breach Warning Notices in

each case relating to the relevant Works in respect of which the D&C Contractor (or a sub-contractor to the D&C Contractor) is being replaced, shall be cancelled.

- (e) Where Project Co serves a notice on TfL pursuant to clause 42.4(d) then, on the substitution or replacement of the D&C Contractor (or a sub-contractor to the D&C Contractor), for the purposes of clause 34.3 (*Termination on Project Co Default*) only, no Persistent Breach Warning Notices or Final Persistent Breach Warning Notices shall accrue for the purposes of clause 34.1(b) in respect of the Works during a period of two (2) months from the date on which such Works are first provided by the replacement or substitute D&C Contractor (or a sub-contractor to the D&C Contractor).

42.5 **Assignment by TfL**

- (a) Subject to clause 42.5(b), TfL shall not assign, novate or otherwise transfer (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) any of its rights or obligations under this Agreement without the prior written consent of Project Co (such consent not to be unreasonably withheld or delayed).
- (b) TfL shall be entitled to assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Project Co to a public body (being a single entity) acquiring the whole of this Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of TfL under this Agreement being:
 - (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
 - (ii) any "local authority" within the meaning of Local Authorities Finance Legislation which has sufficient financial standing or financial resources to perform the obligations of TfL under this Agreement; or
 - (iii) any other public body whose financial obligations in relation to this Agreement are unconditionally and irrevocably guaranteed (the "**Assignment Guarantee**") by TfL or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of TfL under this Agreement,

in each case a "**Transferee**".

42.6 **TfL Change of Status and Assignment Guarantee Transfer**

- (a) For the purposes of this clause 42.6 (*TfL Change of Status and Assignment Guarantee Transfer*):
 - (i) "**TfL Change of Status**" means, in respect of TfL, any amendment to the Greater London Authority Act 1999 (the "**GLAA**") (or any re-enactment or amendment thereof) (the "**GLAA Legislation**") which results in:
 - (A) TfL ceasing to be a body responsible for facilitating the discharge of the transport strategy and provision of transport facilities to, from and within Greater London or a subsidiary of such a body; or
 - (B) TfL ceasing to be treated as a "local authority", within the meaning of Local Authorities Finance Legislation or a subsidiary of such a body,

unless (i) TfL remains a Public Sector Body; and (ii) the credit rating of TfL continues to be BBB- or better from Standard and Poor's Corporation or Baa3 or better from Moody's Investors Services Inc.;

- (ii) **"Assignment Guarantee Transfer"** means an event whereby the obligations pursuant to any Assignment Guarantee put in place pursuant to clause 42.5(b)(iii) cease to be legal, valid and enforceable obligations of:
 - (A) a Minister of the Crown; or
 - (B) TfL;
 - (iii) **"Qualifying Financial Institution"** means an OECD Zone A bank or other financial institution which has a long-term credit rating of no less than "A+" (or equivalent) from at least two (2) of Standard and Poor's Ratings Services, Moody's Investors Services Inc. and Fitch;
 - (iv) **"Relevant Date"** means the date on which a TfL Change of Status or an Assignment Guarantee Transfer takes place;
 - (v) **"Security Event"** means a TfL Change of Status or an Assignment Guarantee Transfer (as applicable); and
 - (vi) **"TfL"** (except in relation to the use of that term in the definition of Assignment Guarantee Transfer) includes reference to any other person in whom all or any of the rights and obligations in the Project Documents expressed to be rights and obligations of TfL are vested for time to time.
- (b) If notification is given by TfL under clause 42.6(c)(i), at least thirty (30) Working Days prior to the relevant Security Event or, if notification is given by TfL under clause 42.6(c)(ii), as soon as reasonably practicable after becoming aware of the relevant Security Event, TfL shall ensure that TfL's payment obligations under Schedule 27 (*Compensation on Termination*) are supported by either:
- (i) a letter or letters of credit from a Qualifying Financial Institution or Institutions on terms (including terms as to amount and drawings on such letter of credit) no less favourable to Project Co than the Assignment Guarantee, provided that:
 - (A) the aggregate of the face amounts of such letter or letters of credit is at least equal to the Potential Exposure applicable to the relevant Agreement Year; and
 - (B) demand may be made under any such letter of credit for the full face value if it is not replaced at least twenty (20) Working Days before its expiry date or at least ten (10) Working Days before the effective date of any Change in Law which would render the obligations of any such Qualifying Financial Institution under such letter of credit illegal, invalid or unenforceable; or
 - (ii) a letter of support from a Minister of the Crown on terms acceptable to Project Co and the Senior Funders; or
 - (iii) cash collateral is deposited with such security agent as Project Co and the Senior Funders may reasonably require in an amount in sterling which is equal to the Potential Exposure applicable to the relevant Agreement Year; or

- (iv) such other credit support arrangements as may be acceptable to Project Co and the Senior Funders.
- (c) TfL shall give to Project Co:
 - (i) at least sixty (60) Working Days' notice prior to the date on which TfL reasonably believes a Security Event is likely to occur; or
 - (ii) in the event that TfL does not become aware that a Security Event is likely to occur until after the date falling sixty (60) Working Days prior to the date on which TfL reasonably believes that such Security Event is likely to occur, notice as soon as reasonably practicable after becoming aware of the same,

and shall specify in reasonable detail the steps intended to be taken to ensure compliance with clause 42.6(b).

- (d) If TfL gives notice to Project Co under clause 42.6(c):
 - (i) Project Co shall use all reasonable endeavours (with the reasonable co-operation of TfL) to make alternative financing arrangements such that, on or before the Relevant Date, either the concerns of the Senior Funders and Project Co in relation to the Security Event are satisfied or the facilities of the Senior Funders are fully repaid and, in either case, with this Agreement continuing on its then existing terms without Project Co seeking to exercise its right to terminate this Agreement in accordance with clause 33 (*TfL Default*); and
 - (ii) TfL shall reimburse Project Co for all legal and administrative costs reasonably and properly incurred by Project Co in relation to clause 42.6(d)(i).
- (e) The obligation of Project Co to use all reasonable endeavours to make alternative financing arrangements under clause 42.6(d)(i) will be satisfied if Project Co has, as a minimum:
 - (i) used reasonable endeavours to seek finance from:
 - (A) a representative range of lending and investing institutions including those which at the time provide finance to Project Co; and
 - (B) the Shareholders (provided that this shall not impose any obligation on those Shareholders to subscribe equity or otherwise provide finance to Project Co);
 - (ii) given TfL all information reasonably requested by it in relation to the reasonable endeavours taken by Project Co under clause 42.6(e)(i) and the reasons for the failure to make alternative financing arrangements including, if agreed to by them, letters from lenders and financiers that Project Co has approached for finance, as well as the Shareholders, stating the reasons for their refusal to provide such finance; and
 - (iii) if requested by TfL and agreed to by such lenders, financiers and/or Shareholders, arranged for TfL to attend meetings with the lenders, financiers and/or Shareholders to discuss those reasons referred to in clause 42.6(e)(ii),

provided always (and for the avoidance of doubt) that TfL shall in no circumstances be entitled to terminate this Agreement pursuant to clause 34

(*Project Co Default*) by reason of any breach (or alleged breach) by Project Co of its obligations under this clause 42.6(e) and provided further that, in the event such alternative financing is obtained, this Agreement shall continue on its then existing terms save as may then otherwise be agreed between TfL and Project Co and Project Co shall have no further rights under clause 33 (*TfL Default*) in respect of the Security Event.

- (f) If Project Co is successful in arranging alternative financing arrangements in accordance with clause 42.6(d) it shall promptly inform TfL and following receipt of such notice (but not otherwise), TfL shall be relieved from its obligations under clause 42.6(b) in relation to the relevant Security Event and if TfL has, prior to receipt of the notice, supported its payment obligations in relation to the relevant Security Event in accordance with clause 42.6(b)(i) to clause 42.6(b)(iv) then TfL shall be entitled to cancel or release itself from such arrangements.
- (g) Subject as provided elsewhere in this clause 42.6 (*TfL Change of Status and Assignment Guarantee Transfer*) and without prejudice to Project Co's rights under clause 33 (*TfL Default*), if at any time following TfL having supported its payment obligations in relation to a Security Event pursuant to clause 42.6(b), TfL's payment obligations under Schedule 27 (*Compensation on Termination*) are no longer supported in relation to such Security Event in accordance with clause 42.6(b), then TfL shall ensure that, within ten (10) Working Days of such event, TfL's payment obligations under Schedule 27 (*Compensation on Termination*) are so supported in accordance with clause 42.6(b).
- (h) Project Co and TfL acknowledge that the provisions of this clause 42.6 (*TfL Change of Status and Assignment Guarantee Transfer*) are intended to ensure that Project Co is placed in a no less favourable and a no more favourable position as a result of a Security Event than if the Security Event had not occurred and TfL and Project Co undertake to exercise their respective rights under this clause 42.6 (*TfL Change of Status and Assignment Guarantee Transfer*) in a reasonable manner so as to give effect to the intention of the Parties as set out in this clause 42.6(h).
- (i) If:
 - (i) TfL provides a notice pursuant to clause 42.6(c);
 - (ii) the Security Event referred to in such notice does not subsequently occur; and
 - (iii) TfL has supported its payment obligations by making arrangements in relation to the relevant Security Event in accordance with clause 42.6(b)(i) to clause 42.6(b)(iv),

then TfL shall be entitled to cancel or release itself from such arrangements.

43. **WARRANTIES AND REPRESENTATIONS**

43.1 **Project Co's representations and warranties**

Project Co warrants and represents to TfL that on the Effective Date:

- (a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) it has complied with all its obligations regarding declaration and payment of Tax;

- (c) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- (d) all action necessary on the part of Project Co to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project Document executed after the Effective Date, will be taken before such execution;
- (e) the obligations expressed to be assumed by Project Co under the Project Documents are, or in the case of any Project Document executed after the Effective Date will be, legal, valid, binding and enforceable to the extent permitted by Law and each Project Document is or will be in the proper form for enforcement in England;
- (f) the execution, delivery and performance by it of the Project Documents does not contravene any provision of:
 - (i) any existing Applicable Requirements binding on Project Co;
 - (ii) the constitutional documents of Project Co;
 - (iii) any order or decree of any court or arbitrator which is binding on Project Co; or
 - (iv) any obligation which is binding upon Project Co or upon any of its assets or revenues;
- (g) Project Co's Warranted Data is true and accurate in all respects;
- (h) Project Co has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- (i) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of Project Co, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of Project Co to perform its obligations under any Project Document;
- (j) it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of Project Co to perform its obligations under any Project Document;
- (k) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of Project Co, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (l) each of the Ancillary Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by Law constitute the valid, binding and enforceable obligations of the parties thereto; and
- (m) the copies of the Ancillary Documents which Project Co has delivered or, when executed, will deliver to TFL are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Ancillary Documents which would materially affect the interpretation or application of any of the Ancillary Documents,

and TfL relies upon such warranties and representations.

44. **RECORDS AND INFORMATION**

44.1 **Maintenance of records**

- (a) Project Co shall:
 - (i) at all times maintain records in full relating to the Project as required by Part 1 (*Records*) of Schedule 16 (*Records and Reporting*) and Schedule 8 (*Management Systems*) and records of all other costs of performing the Project, including those relating to the design, construction, maintenance, operation and finance of the Project;
 - (ii) when requested by TfL, provide a summary of any of the costs referred to in clause 44.1(a)(i), including details of any funds held by Project Co specifically to cover such costs, in such form and detail as TfL may reasonably require to enable TfL to monitor the performance by Project Co of its obligations under this Agreement;
 - (iii) provide such facilities as TfL may reasonably require for its nominees to visit any place where the records are held and examine and copy the records maintained under this clause 44.1(a); and
 - (iv) without prejudice to the above, comply with its obligations in Part 1 (*Records*) of Schedule 16 (*Records and Reporting*).
- (b) Project Co shall keep (and where appropriate ensure that each Sub-Contractor shall keep) books of account with respect to this Agreement in accordance with best accountancy practice showing in detail:
 - (i) administrative overheads;
 - (ii) payments made to Sub-Contractors;
 - (iii) capital and revenue expenditure; and
 - (iv) such other items as TfL may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure for the purpose of clause 25 (*Change in Law*), clause 26.1 (*Compensation Events*) and Schedule 22 (*Change Procedure*),

and Project Co shall have (and ensure that the Sub-Contractors shall have) the books of account evidencing the items listed in clause 44.1(b) available for inspection by TfL and its nominees upon reasonable notice, and shall present a report of these to TfL as and when requested.

44.2 **Retention of records**

- (a) The records referred to in this clause 44 (*Records and Information*) shall be retained for no less than the period specified in respect of such records in Schedule 16 (*Records and Reporting*) (or, if no such period is specified, a period of at least thirteen (13) years after Project Co's obligations under this Agreement have come to an end).
- (b) Where the period for the retention of any records pursuant to clause 44.2(a) has expired, Project Co shall notify TfL and if TfL elects:

- (i) to receive the relevant records, Project Co shall at its own cost deliver up such records to TfL in the manner and at such location as TfL shall reasonably specify; or
- (ii) not to receive the relevant records, dispose of such records.

44.3 **Transfer of records**

Subject to TfL's obligations pursuant to clause 50.3 (*TfL's obligations as to confidentiality*), upon expiry or termination of this Agreement, and in the event that TfL wishes to enter into another contract in connection with the completion of the Works or the operation and maintenance of the Project Facilities, Project Co shall (and shall ensure that the Sub-Contractors shall) comply with all reasonable requests of TfL to provide information relating to Project Co's costs of completing the Works or operating and maintaining the Project Facilities (as applicable) to TfL or its nominee.

44.4 **Required reports**

- (a) Project Co shall:
 - (i) provide to TfL on 31 March, 30 June, 30 September and 31 December in each Agreement Year a document listing all information provided by it to the Senior Funders during the preceding three (3) month period and, at the request of TfL, provide to TfL any information provided by it to the Senior Funders during the Agreement Period and any other information relating to the Project that TfL may require including, if requested, any Technical Adviser's report;
 - (ii) provide to TfL copies of its annual report and annual accounts which are required to be produced in accordance with any Applicable Requirements within twenty (20) Working Days of publication;
 - (iii) provide to TfL on each 31 March and 30 September throughout the Agreement Period (or such other six (6) month reporting cycle as the Parties may agree) a calculation of the Equity IRR (for both an actual cumulative return to the date of preparation and for the expected forecast return up to the Expiry Date) for the Project and for each of the Shareholders to be prepared using the Base Case and calculated on a cash basis to include all Distributions and any other payments made to Shareholders in respect of fees;
 - (iv) promptly upon the occurrence of a default under the Senior Financing Agreements, notify TfL of such default;
 - (v) use all reasonable endeavours to assist TfL in its preparation of any report required by any government department or governmental body, from time to time;
 - (vi) provide all information required by TfL in connection with Changes; and
 - (vii) provide the reports listed in, and otherwise comply with, Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*).
- (b) TfL may, in the circumstances referred to in clause 44.4(a)(iv) (regardless of whether the Senior Funders have exercised any enforcement or similar rights under the Senior Financing Agreements) require Project Co to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Funders attend, such meetings as TfL may convene to discuss such Interim Project Report and the circumstances giving rise to it.

44.5 **Personal Data**

- (a) For the purpose of this clause 44.5 (*Personal Data*), the terms "**Data Controller**", "**Data Subject**" and "**Process/Processing**" shall have the meaning given to them in the Data Protection Laws.
- (b) Project Co undertakes to TfL that it shall comply with the obligations of a "Data Controller" under the provisions of the Data Protection Laws.
- (c) Project Co:
 - (i) warrants that it has, or will have at all material times (and it shall procure that all Sub-Contractors have or will have at all material times), Protective Measures in place to protect against unauthorised or unlawful Processing or any Data Loss Event and that it has taken, or will take at all material times, all reasonable steps to ensure the reliability of any of its staff which will have access to Personal Data Processed as part of the Project;
 - (ii) undertakes that it will only obtain, hold, Process, use, store and disclose Personal Data as is necessary to perform its obligations or exercise its rights under this Agreement and (without prejudice to clause 4.2 (*General obligations*)) that such data will be held, Processed, used, stored and disclosed only in accordance with the Data Protection Laws and any other Applicable Requirements;
 - (iii) undertakes that it will:
 - (A) notify TfL without undue delay following any Personal Data Breach in respect of any Personal Data; and
 - (B) keep TfL properly and regularly informed in relation to any Personal Data Breach until such Personal Data Breach has been resolved;
 - (iv) undertakes that it will co-operate with TfL and provide any assistance as TfL may reasonably require in relation to any notifications to the Information Commissioner or to Data Subjects which either Party is required to make following a Personal Data Breach;
 - (v) undertakes that it will co-operate with TfL, to the extent reasonably requested in relation to:
 - (A) a request to TfL from a Data Subject to exercise any right under the Data Protection Laws;
 - (B) any other communication from a Data Subject to TfL concerning the Processing of their Personal Data;
 - (C) any communication from the Information Commissioner concerning the Processing of Personal Data, or compliance with the Data Protection Laws; and
 - (vi) undertakes to allow TfL any access reasonably required to any relevant premises to inspect the Protective Measures described in clause 44.5(c)(i).
- (d) Project Co shall be responsible for, and shall release and indemnify TfL and any TfL Related Party from and against, all Losses in connection with any breach of this clause 44.5 (*Personal Data*) by Project Co and/or any act or omission of the D&C Contractor and/or an O&M Contractor.

44.6 Freedom of Information

- (a) Project Co acknowledges that Tfl is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate Tfl's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clause 44.6(b) to clause 44.6(i) (inclusive).
- (b) Where Tfl receives a Request for Information in relation to Information that Project Co is holding on its behalf and which Tfl does not hold itself, Tfl shall refer to Project Co such Request for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information and Project Co shall and shall ensure that its Sub-Contractors shall:
 - (i) provide Tfl with a copy of all such Information in the form that Tfl requires as soon as practicable and in any event within ten (10) Working Days (or such other period as Tfl acting reasonably may specify) of Tfl's request; and
 - (ii) provide all necessary assistance as reasonably requested by Tfl in connection with any such Information to enable Tfl to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- (c) Following notification under clause 44.6(b) and up until such time as Project Co has provided Tfl with all the Information specified in clause 44.6(b)(i), Project Co may make representations to Tfl as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that Tfl shall be responsible for determining at its absolute discretion:
 - (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (ii) whether Information is to be disclosed in response to a Request for Information, and in no event shall Project Co respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by Tfl.
- (d) Project Co shall, and shall ensure that its Sub-Contractors shall, transfer to Tfl each Request for Information relevant to this Agreement, the Project or any member of the Tfl Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Request for Information.
- (e) Project Co acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that Tfl may nevertheless be obliged to disclose Confidential Information (or information that Project Co considers to be Confidential Information) in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- (f) In the event of a request from Tfl pursuant to clause 44.6(b), Project Co shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform Tfl of Project Co's estimated costs of complying with the request to the extent these would be recoverable if incurred by Tfl under Section 12(1) of the FOIA and the Fees Regulations.

- (g) Where the costs referred to in clause 44.6(f) (either on their own or in conjunction with TfL's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**"), TfL shall inform Project Co in writing whether or not it still requires Project Co to comply with the request and, where it does require Project Co to comply with the request, the ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as TfL is entitled to under Section 10 of the FOIA.
- (h) Where clause 44.6(g) applies, TfL shall notify Project Co of such additional days as soon as practicable after becoming aware of them and shall reimburse Project Co for such costs as Project Co incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- (i) Project Co acknowledges that (notwithstanding the provisions of clause 50 (*Confidentiality*)) TfL may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000 (the "**FOI Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning Project Co or the Project:
- (i) in certain circumstances without consulting with Project Co; or
 - (ii) following consultation with Project Co and having taken their views into account,
- provided always that where clause 44.6(i)(i) applies TfL shall, in accordance with the recommendations of the FOI Code, draw this to the attention of Project Co prior to any disclosure.
- (j) Project Co acknowledges that TfL is subject to a commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments.
- (k) Notwithstanding this rest of this clause 44.6 and clause 50.3 but subject to clause 44.6(l), Project Co hereby gives its consent for TfL to publish the following information to the general public:
- (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement); and
 - (ii) data extracted from the invoices submitted pursuant to this Agreement which shall consist of Project Co's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount,
- (together the "**Agreement Information**").
- (l) TfL (in its absolute discretion) may:
- (i) redact all or any part of the Agreement Information prior to its publication and in so doing may take account (in its absolute discretion) of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation; and
 - (ii) consult with Project Co regarding any redactions to the Agreement Information to be published pursuant to clause 44.6(k),

provided that Tfl shall make the final decision regarding both publication and redaction of the Agreement Information.

45. **REMEDIES**

45.1 **Common law rights for Tfl**

(a) Subject to:

- (i) clause 45.1(b);
- (ii) any other express right or remedy of Tfl pursuant to this Agreement; and
- (iii) Tfl's right to claim, on or after termination of this Agreement, the amount of its reasonable Losses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by Project Co, save to the extent that the same has already been recovered by Tfl pursuant to this Agreement or has been taken into account to calculate any compensation payable by Tfl pursuant to Schedule 27 (*Compensation on Termination*),

following the Permit to Use Date, the sole remedy of Tfl in respect of any Unavailability Event or Service Shortfall Event shall be the operation of Schedule 20 (*Payment Mechanism*).

(b) Nothing in this clause 45 (*Remedies*) shall prevent or restrict the rights of Tfl:

- (i) to terminate this Agreement in accordance with its terms;
- (ii) to take action in accordance with clause 46 (*Tfl step-in and inspections*);
- (iii) to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court;
- (iv) to undertake works to complete Snagging Items and recover the costs of doing so from Project Co pursuant to clause 18.3 (*Snagging Items*);
- (v) to carry out or have carried out rectification works in relation to Defects and recover the costs of doing so from Project Co pursuant to clause 17.3 (*Tfl rectification*);
- (vi) to claim for any breach by Project Co of this Agreement in relation to the Additional Assets or the Supplementary Works;
- (vii) to claim pursuant to any indemnity under this Agreement;
- (viii) to carry out or have carried out rectification works and recover the costs of doing so from Project Co pursuant to clause 20.2(f);
- (ix) to pay any premiums, fees, broker's costs or other expenses under clause 32.1(h);
- (x) to take action in accordance with clause 34 (*Project Co Default*);
- (xi) to retain the Retained Amounts or require the procurement of a Handback Bond pursuant to Schedule 19 (*Handback Requirements*);
- (xii) to carry out, or procure the carrying out of, any inspections, plans, reports and Rectification Works and recover the costs of doing so in accordance

with paragraph 12 (*TfL Action*) of Schedule 19 (*Handback Requirements*);
or

- (xiii) to claim for any breach by Project Co of this Agreement in relation to the Transferred Third Party Functions.

45.2 **Common law rights for Project Co**

Without prejudice to any entitlement of Project Co:

- (a) to seek specific performance of any obligation under this Agreement;
- (b) to seek injunctive relief; or
- (c) to any other express right or remedy of Project Co pursuant to this Agreement,

Project Co's sole remedy in relation to any Compensation Event prior to the Permit to Use Date shall be the operation of clause 26.1 (*Compensation Events*).

46. **TFL STEP-IN AND INSPECTIONS**

46.1 **TfL step-in**

- (a) If:
 - (i) TfL reasonably believes that it needs to take action in connection with the Services:
 - (A) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - (B) to discharge a statutory duty; and/ or
 - (C) because an Emergency has arisen; or
 - (ii) prior to the Permit to Use Date (or, in relation to the rectification of any Defects pursuant to clause 17 (*Handover of Additional Assets and Supplementary Works*), prior to the expiry of the Defects Rectification Period), Project Co is in breach of this Agreement and any activities required to rectify such breach would not require physical presence on the Active Site,

then TfL shall be entitled to take action in accordance with clause 46.1(b) to clause 46.1(d) (inclusive).

- (b) If clause 46.1(a) applies and TfL wishes to take action, TfL shall notify Project Co in writing of the following:
 - (i) the action TfL wishes to take;
 - (ii) the reason for such action;
 - (iii) the date TfL wishes to commence such action;
 - (iv) the time period which TfL believes will be necessary for such action; and
 - (v) to the extent practicable, the effect on Project Co and its obligation to carry out the Project during the period such action is being taken.
- (c) Following service of a notice under clause 46.1(b):

- (i) TfL shall take such action as notified under clause 46.1(b) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**");
 - (ii) Project Co shall give all reasonable assistance to TfL while it is taking such Required Action; and
 - (iii) TfL shall provide Project Co with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice, as is reasonably practicable, of its anticipated completion.
- (d) Where the Required Action has been taken otherwise than as a result of a breach by Project Co, TfL shall undertake the Required Action in accordance with Good Industry Practice and shall be responsible for, and shall release and indemnify Project Co from and against all Losses where it fails to do so.
- (e) In relation to any Required Action, Project Co shall use reasonable endeavours to permit TfL to hire from Project Co or any Project Co Related Party at a fair market value and on standard market terms (as between willing counterparties), any requested tools, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Related Party and reasonably required in connection with undertaking the Required Action.
- (f) TfL shall use any tools, road vehicles, spare parts and other moveable property hired from Project Co pursuant to clause 46.1(e) solely in relation to undertaking the Required Action.

46.2 **Project Co not in breach**

Where TfL takes any Required Action pursuant to clause 46.1 (*TfL step-in*) and Project Co is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken and this prevents Project Co from carrying out any parts of the Project:

- (a) Project Co shall be relieved from its obligations to carry out such part of the Project; and
- (b) in respect of the period in which TfL is taking the Required Action and provided that Project Co provides TfL with reasonable assistance (such assistance to be at the expense of TfL to the extent incremental costs are incurred), the Availability Payment (if any) due from TfL to Project Co shall equal the amount Project Co would receive if it were satisfying all its obligations and carrying out such parts of the Project affected by the Required Action in full over that period.

46.3 **Project Co in breach**

Where TfL takes any Required Action pursuant to clause 46.1 (*TfL step-in*) and the Required Action is taken as a result of a breach of the obligations of Project Co under this Agreement, then for so long as and to the extent that the Required Action is taken (and provided that Project Co provides TfL with reasonable assistance, at its own cost) and the Required Action prevents Project Co from carrying out any part of the Project:

- (a) Project Co shall be relieved of its obligations to carry out such part of the Project;
- (b) in respect of the period in which TfL is taking the Required Action during the Availability Period and provided that Project Co provides TfL with reasonable assistance at its own cost, the Availability Payment (if any) due from TfL to Project Co shall:

- (i) if TfL undertakes the Required Action in accordance with Good Industry Practice, be subject to Deductions to reflect the extent that the Services are not being provided over such period; or
- (ii) if TfL does not undertake the Required Action in accordance with Good Industry Practice, equal the amount Project Co would receive if it were satisfying all its obligations and carrying out such parts of the Project affected by the Required Action in full over that period,

in each case, less an amount equal to all TfL's costs in taking the Required Action (provided that if such overall amount is less than zero (0), Project Co shall be liable to pay TfL the absolute value of that overall amount); and

- (c) Project Co shall not be relieved of any award of performance points pursuant to Schedule 15 (*Design & Construction Performance Monitoring*).

46.4 **Right of inspection and access**

Without prejudice to any rights and remedies of TfL under this Agreement, Project Co shall ensure that TfL, any representative or adviser of TfL, any TfL Related Party and the Independent Certifier shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works or the carrying out of the Services) to enter onto the Project Land in order to:

- (a) inspect the state and progress of the Works (and to ascertain whether they are being properly executed in accordance with the terms of this Agreement);
- (b) inspect the operation and maintenance of the Project and the performance of the Services;
- (c) monitor compliance by Project Co with its obligations under this Agreement;
- (d) perform TfL's obligations or exercise TfL's rights under this Agreement, including the rectification of any Defects pursuant to clause 17.2 (*Defects*);
- (e) carry out TfL's functions as Highway Authority or any other statutory functions;
- (f) attend any inspection, test or survey which is carried out in respect of the Works or the Project Facilities;
- (g) maintain, repair or upgrade any Traffic Signalling and traffic signage located in the O&M Area; or
- (h) maintain or repair the Active User Charging Infrastructure located in the O&M Area or upgrade the TfL User Charging System in accordance with clause 19 (*Operation and Maintenance*).

46.5 **Inspection of other property**

TfL, any representative or adviser of TfL and the Independent Certifier may, at all reasonable times and on reasonable notice and subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co shall use all reasonable endeavours to obtain), enter upon any property used by Project Co as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works.

46.6 **Project Co's reasonable assistance**

- (a) Project Co shall ensure that satisfactory facilities are made available to TfL, any representative or adviser of TfL and the Independent Certifier and that reasonable assistance is given for the purposes of clause 46.4(a), clause 46.4(b) and clause 46.5 (*Inspection of Facilities*), subject to:
 - (i) Project Co's and the Sub-Contractors' construction obligations not being adversely affected; and
 - (ii) TfL reimbursing Project Co for any reasonable costs or expenses incurred as a result of the action taken by TfL and its representatives and advisers under clause 46.4(a), clause 46.4(b) and clause 46.5 (*Inspection of Facilities*).
- (b) Project Co shall provide TfL and the Independent Certifier with reasonable notice of any inspection, test or survey which is carried out by Project Co or any Project Co Related Party in respect of the Works or the Project Facilities to permit TfL and the Independent Certifier the opportunity to exercise their rights in accordance with clause 46.4 (*Right of inspection and access*).

46.7 **Health and safety requirements**

TfL and its representative shall at all times (including where TfL accesses the Active Site or the O&M Area pursuant to the provisions of this Agreement) comply with all relevant health and safety procedures which shall include any relevant health and safety plans for the construction, operation and maintenance of the Project Facilities and any reasonable directions with regard to safety that may be issued by or on behalf of Project Co.

46.8 **Damage**

If TfL or any TfL Related Party causes material damage to any Project Facilities in exercising any right under this clause 46 (*TfL step-in and inspections*), then:

- (a) TfL shall be liable to Project Co for the reasonable costs directly caused by such damage; and
- (b) without double counting, such damage shall be deemed to be:
 - (i) a Compensation Event where such damage occurred prior to the Permit to Use Date; or
 - (ii) an Excusing Cause where such damage occurred during the Availability Period.

47. **NOTICES**

47.1 **Requirement for notice in writing**

Any notice, consent, approval, certificate or determination to be given or issued by any person under this Agreement shall be deemed a "notice" and shall be in writing unless otherwise specified and the words "notify", "consent", "approve", "certify" and "determined" shall be construed accordingly.

47.2 **Service of notices**

- (a) Any notice made under or in connection with the matters contemplated by this Agreement shall be deemed duly given if delivered personally or sent by prepaid first-class post or by airmail if posted to or from a place outside the United Kingdom in accordance with the requirements of this clause 47 (*Notices*).

(b) Notices under this Agreement shall be served:

In the case of TfL, to²:

Address: 5 Endeavour Square, Stratford, London, E20
1JN

Attention: Howard Carter

In the case of Project Co, to:

Address: 16 Hockley Court, 2401 Stratford Road, Hockley
Heath, Solihull, B94 6NW

Attention: 
The Company Secretary

47.3 Time of service

(a) A notice shall be deemed to have been received:

- (i) if delivered by hand, at the time when the notice is left at the address of the Party to be served;
- (ii) if sent by first-class post, on the next Working Day following the day of posting or, if the day of posting was not a Working Day, the next Working Day following the first Working Day after the day of posting; and
- (iii) if sent by airmail, five (5) Working Days after the day of posting,

provided that if, in accordance with the above provision, any such notice would otherwise be deemed to be given or made after 5.00 p.m. such notice shall be deemed to be given or made at 9.00 a.m. on the next Working Day.

(b) For the purposes of this clause 47.3 (*Time of service*), all times are to be read as local time in the place of deemed receipt.

47.4 Change of details

A Party shall notify the other Party of a change to its name, relevant addressee or postal address to update the information in clause 47.2(b) provided that such notification shall only be effective:

- (a) on the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Working Days after the date on which notice is given, the date falling five (5) Working Days after notice of any such change has been given.

² Note to Tenderers: Project Co's notice details (and any amendments to TfL's notice details) will be populated by TfL following appointment of the Preferred Bidder and before Project Agreement Award.

48. **DISPUTE RESOLUTION PROCEDURE**

- (a) Except where expressly provided to the contrary, any Dispute (including in relation to the Schedules) shall be resolved in accordance with the procedures set out in Schedule 23 (*Dispute Resolution Procedure*).
- (b) Nothing in this Agreement shall prevent either Party from seeking injunctive relief, specific performance or other equitable relief.
- (c) The parties acknowledge and agree that any Dispute that:
 - (i) directly relates to a Transferred Third Party Function; and
 - (ii) involves the counterparty of the relevant Third Party Agreement,shall be determined in accordance with the dispute resolution procedure under the applicable Third Party Agreement to which the Dispute relates.

49. **RESPONSIBLE PROCUREMENT AND ANTI-CORRUPTION**

49.1 **Responsible procurement**

Project Co shall comply with Schedule 7 (*Responsible Procurement*).

49.2 **Anti-corruption and money laundering**

- (a) Project Co shall if required, at no additional cost to TfL, provide in a timely manner all such assistance to TfL as TfL may reasonably require in connection with TfL's anti-corruption and anti-bribery procedures in compliance with the Bribery Act 2010.
- (b) Project Co shall:
 - (i) promptly inform TfL where formal proceedings have been issued or commenced against it in relation to a genuine allegation, complaint or information with regard to a Prohibited Act or offence under the Money Laundering Regulations 2007 related to the Project;
 - (ii) following any notification pursuant to clause 49.2(b)(i), provide such updates and/or copies of Project Co's records as TfL may request in relation to such alleged Prohibited Act or offence under the Money Laundering Regulations 2007;
 - (iii) without prejudice to any similar obligation contained within this Agreement, keep books and records of all financial transactions and expenditures in connection with the Project and permit TfL to review and take copies of the same; and
 - (iv) ensure that all Sub-Contracts which are entered into in connection with the Project impose obligations on the relevant Sub-Contractor which are identical in effect to the obligations set out in clause 49.2(b)(i) to clause 49.2(b)(iii) (inclusive).
- (c) Notwithstanding any confidentiality obligation contained within this Agreement, Project Co acknowledges, and shall ensure that all Sub-Contractors acknowledge, that all information acquired by TfL pursuant to clause 49.2(b) may be provided to any bank or other institution which may be providing finance to TfL in connection with the Project.

50. **CONFIDENTIALITY**

50.1 **Restrictions on publicity and public relations**

- (a) Project Co shall not by itself, its employees or agents, and shall ensure that its Sub-Contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the Project without the prior written approval of TfL.
- (b) Unless necessary for the Works or Services, Project Co shall not (or provide facilities for others to) photograph or film in or upon any property used in relation to the Project without TfL's prior written consent.
- (c) Notwithstanding any other provision of this Agreement, including, without limitation, clause 30 (*Indemnities*), Project Co agrees that TfL shall have the right to control and supervise all dealings with the media in respect of any incident, event, claim or action in relation to the Project.
- (d) Project Co shall co-operate with TfL in relation to TfL's publicity of any part of the Project.

50.2 **Project Co's obligations as to confidentiality**

Subject to clause 50.4 (*Permitted Disclosures*) and except as otherwise provided in the Project Documents, Project Co shall keep confidential all matters relating to this Agreement, the Project Documents and the Project and shall use all reasonable endeavours to prevent its employees, agents and Sub-Contractors from making any disclosure to any person of any matter relating to this Agreement.

50.3 **TfL's obligations as to confidentiality**

- (a) Subject to clause 50.4 (*Permitted Disclosures*) and clause 50.3(b), TfL shall have the same obligations as those imposed on Project Co under clause 50.2 (*Project Co's obligations as to confidentiality*) in respect of the Commercially Sensitive Information, until such time as indicated in Schedule 24 (*Commercially Sensitive Information*).
- (b) Without prejudice to the foregoing and clause 50.4 (*Permitted Disclosures*), TfL shall be entitled to:
 - (i) disclose Confidential Information where TfL considers that it is obliged to do so under any Applicable Requirements;
 - (ii) use Confidential Information to the extent necessary to obtain the benefit of Project Co's performance under this Agreement;
 - (iii) disclose Confidential Information as may be required to be published in the Official Journal of the European Union;
 - (iv) disclose Confidential Information as may be required pursuant to a valid FOIA request;
 - (v) disclose the terms of the Project Agreement as may be required to comply with the Retained Third Party Functions; and
 - (vi) publish any information which is not Commercially Sensitive Information to the general public, including on any website.

50.4 **Permitted disclosures**

- (a) Clause 50.2 (*Project Co's obligations as to confidentiality*) and clause 50.3 (*TfL's obligations as to confidentiality*) shall not apply to:
- (i) any disclosure of information that is reasonably required by persons engaged in the performance of obligations set out in this Agreement;
 - (ii) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 50 (*Confidentiality*);
 - (iii) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
 - (iv) any disclosure which is required by any Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law;
 - (v) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (vi) any provision of information to:
 - (A) the Parties' own professional advisers or insurance advisers;
 - (B) the Senior Funders or the Senior Funders' professional advisers or insurance advisers;
 - (C) any prospective funders who may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to Project Co and/or Hold Co or TfL in connection with carrying out its obligations under this Agreement or such prospective funders' professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; or
 - (D) any person who may wish to acquire shares in Project Co and/or Hold Co in accordance with the provisions of this Agreement, or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (vii) any disclosure by TfL of information relating to the design, construction, operation and maintenance of the Project and such other information (except pricing information) as may be reasonably required for the purpose of conducting a procurement process or a due diligence exercise in relation to any proposed new contractors and their advisers;
 - (viii) any registration or recording of any consents and property registration required;
 - (ix) any disclosure of information by TfL in accordance with clause 50.4(e);
 - (x) any disclosure by TfL of any document related to this Agreement to which it is a party and which Project Co (acting reasonably) has agreed with TfL contains no commercially sensitive information;
 - (xi) any disclosure for the purpose of:

- (A) the examination and certification of TfL's or Project Co's accounts;
or
 - (B) any examination pursuant to section 6(1) of the National Audit Act 1983; and
- (xii) any disclosure to the insurers of the Project.
- (b) Where disclosure is permitted under clause 50.4(a), other than clause 50.4(a)(iv), clause 50.4(a)(vi), clause 50.4(a)(vii), clause 50.4(a)(ix) and clause 50.4(a)(x), the discloser of such information shall ensure that the recipient of the information shall be subject to the same obligations of confidentiality as those contained in this Agreement.
 - (c) For the purposes of the National Audit Act 1983, the C&AG may examine such documents as he may reasonably require which are owned, held or otherwise within the control of Project Co and any Sub-Contractor and may require Project Co and any Sub-Contractor to produce such oral or written explanations as he considers necessary.
 - (d) For the avoidance of doubt it is hereby declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to Project Co is not a function exercisable under this Agreement.
 - (e) Nothing in this Agreement shall prevent the disclosure by TfL of any Confidential Information to other subsidiaries of TfL, the Mayor, all respective advisers or any other person or body that TfL from time to time is required to consult with or provide information to or any other Public Sector Body. The Parties acknowledge that the National Audit Office has the right to publish details of this Agreement (including commercially sensitive information) in its relevant report to Parliament.
 - (f) Project Co shall not make use of this Agreement or any information issued or provided by or on behalf of TfL in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of TfL.
 - (g) Where Project Co, in carrying out its obligations under this Agreement, is provided with information relating to users of the Project Facilities, Project Co shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless Project Co has sought the prior written consent of the user and has obtained the prior written consent of TfL.

50.5 **Return of Confidential Information**

Save to the extent that the same may reasonably be required in respect of any current or anticipated litigation or to the extent Project Co is required to provide the same to TfL pursuant to this Agreement, on expiry or termination of this Agreement howsoever occurring, Project Co shall return to TfL or permanently delete and destroy any Confidential Information (including all copies thereof) supplied to it at any time (including at a time before the Effective Date) by TfL or any other person with the knowledge and consent of TfL, except where retention of any such Confidential Information is required by Law or pursuant to any applicable stock exchange listing requirements (in which case the provisions of clause 50.2 (*Project Co's obligations as to confidentiality*) shall continue to apply to such information).

51. **MISCELLANEOUS**

51.1 **Statutory notices**

- (a) If any statutory notice relating to the subject matter of this Agreement or naming TfL or a member of the TfL Group as a party, is served on Project Co or any of its Sub-Contractors or suppliers, Project Co shall promptly (or in the case of a statutory notice served on a Sub-Contractor or supplier, promptly following such statutory notice coming into Project Co's possession, provided that Project Co shall impose a requirement in its Sub-Contracts and supply agreements that the Sub-Contractors or suppliers promptly forward any such statutory notices to Project Co) inform TfL and provide TfL with a copy of such statutory notice.
- (b) Where Project Co receives any "letters of claim", writs and/or summons naming TfL or a member of the TfL Group as a party or which may affect Project Co's ability to perform this Agreement, it shall provide the same or a copy promptly to TfL.
- (c) Where Project Co receives any letters, faxes, emails or other communication from any person holding TfL, any member of the TfL Group and/or any of their respective employees, agents or contractors responsible for any incident, Project Co shall consult promptly with TfL and obtain TfL's approval prior to giving any response to such letters, faxes, emails or other communication.

51.2 **Mitigation**

Any indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the indemnified Party is entitled to bring a claim against the indemnifying Party pursuant to this Agreement.

51.3 **Illegality and severability**

If at any time any provision of this Agreement (or part thereof) is or becomes illegal or invalid or unenforceable in any respect under the law of any relevant jurisdiction, such illegality, invalidity or unenforceability shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other part of that provision or any other provision of this Agreement or, in any other jurisdiction, of that provision or part thereof or any other provision of this Agreement.

51.4 **Waiver and variation**

- (a) No term or provision of this Agreement shall be considered as waived by either Party to this Agreement unless a waiver is given in writing by such Party.
- (b) No waiver under clause 51.4(a) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.
- (c) No variation to this Agreement shall be effective unless recorded in writing by the Parties.

51.5 **No partnership or agency**

- (a) Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute, or be deemed to constitute, a partnership, unincorporated association or other co-operative entity.
- (b) Project Co shall not be or be deemed to be the agent of TfL and Project Co shall not hold itself out as having authority or power to bind TfL in any way.

51.6 **Entire agreement**

- (a) This Agreement and the Project Documents constitute the whole agreement and understanding of the Parties in connection with their subject matter and supersede all prior representations, communications, negotiations and understandings concerning the subject matter of such agreements.
- (b) Each of the Parties acknowledges and agrees that:
 - (i) it does not enter into this Agreement on the bases of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
 - (ii) this clause 51.6 (*Entire Agreement*) shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

51.7 **Further assurance**

Each Party agrees that it shall, now and at any time during the Agreement Term, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other Party, as the other Party may reasonably require for giving full effect to and obtaining the full benefit of the rights powers and remedies conferred upon such other Party by this Agreement.

51.8 **Third party rights**

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce a right expressly or impliedly conferred by this Agreement. This does not affect any right or remedy of a third party which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999.

51.9 **Language**

- (a) The language of this Agreement is English and all correspondence, drawings, Design Data, test reports, certificates, specifications and information shall be entirely in English.
- (b) All operating and maintenance instructions, identification labels and other written and printed matter relating to the Project shall be in English, as shall instructions and notices to the public and staff and all other signing and information notices.

51.10 **Survival**

- (a) The following provisions of this Agreement shall remain in full force and effect notwithstanding the expiry or termination of this Agreement: clause 1 (*Definitions and Interpretation*), clause 3.7 (*Management Systems*), clause 5.5 (*Indemnity*), clause 6.1(a)(vii), clause 8.5 (*Indemnity for losses*), clause 10.4(a), clause 11.2(d), clause 13.9(b)(iii), clause 13.19(l), clause 14.3(b)(iii), clause 14.3(e), clause 17 (*Handover of Additional Assets and Supplementary Works*), clause 19.6(b)(ii), clause 19.6(c), clause 25 (*Change in Law*), clause 27.7 (*Payments*), clause 30 (*Indemnities*), clause 31.3(i), clause 32 (*Insurance*), Part IX (*Default and Termination*), clause 36 (*Declaration of Ineffectiveness and Public Procurement Termination Event*), clause 38 (*Handback*), clause 40.6(c), clauses 40.8 (*Expiry or termination*) to 40.10 (*Future Service Provider*) (inclusive), clause

41 (*Intellectual Property*), clause 42.5 (*Assignment by TfL*), clause 43 (*Warranties and Representations*), clause 44.3 (*Transfer of Records*), clause 44.5 (*Personal Data*), clause 44.6 (*Freedom of Information*), clause 45 (*Remedies*), clause 47 (*Notices*), clause 48 (*Dispute Resolution Procedure*), clause 50 (*Confidentiality*), clause 51 (*Miscellaneous*), Schedule 1 (*Definitions and Interpretation*), Schedule 19 (*Handback Requirements*), Schedule 21 (*Insurance*), Schedule 23 (*Dispute Resolution Procedure*), Schedule 24 (*Commercially Sensitive Information*), Schedule 27 (*Compensation on Termination*) and any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination.

- (b) In the event that a court makes a Declaration of Ineffectiveness, each of the provisions in clause 51.10(a) above are intended to survive.

51.11 **Counterparts**

This Agreement may be executed in any number of counterparts and by the several Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one (1) and the same instrument.

51.12 **Governing law and jurisdiction**

- (a) This Agreement and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation (including any non-contractual disputes or claims), shall be governed by and construed in all respects in accordance with the laws of England.
- (b) Subject to clause 48 (*Dispute Resolution Procedure*), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

Executed as a deed by the Parties and delivered on the Effective Date.

The common seal of **TRANSPORT FOR**)
LONDON)
was affixed to this deed in the presence of:)
)

.....
Authorised signatory

Executed as a deed, but not delivered until the)
first date specified on page 1, by **RIVERLINX**)
LIMITED by two directors:)
)

Signature

Name (block capitals)

Director

Signature

Name (block capitals)

Director

SCHEDULE 1

Definitions and Interpretation

For the purposes of this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"2009 Order" means the Contracting Out (Highway Functions) Order 2009 (SI 2009/721);

"Abandon" means not to carry out any Works on the Active Site for:

- (a) twenty (20) consecutive Working Days; or
- (b) during sixty (60) Working Days (whether consecutive or not) in any twelve (12) month period;

"Access Period" has the meaning given to it in clause 7.4 (*Duration of rights of access*);

"Accident and Incident Report" has the meaning given to it in paragraph 17 (*Accident and Incident Reports*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Account Bank Agreement" means the agreement entitled the Account Bank Agreement made between, amongst others, the Borrower, the Account Bank, the Security Trustee and the Intercreditor Agent (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Active Site" means:

- (a) those Sections of the Site that have been deemed to be part of the "Active Site" pursuant to clause 7.7 (*Active Site*) or paragraph 2.11.4 of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*); and
- (b) any Protective Works Areas or part thereof for which Project Co has access from time to time;

"Active User Charging Infrastructure" means the components of the TfL User Charging System which are active in collecting the user charges, including the vehicle identity capture equipment, power cabling and communications cabling;

"Actual Reduction" has the meaning given to it in the definition of Base Relevant Insurance Reduction;

"Actual Relevant Insurance Cost" means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain the Relevant Insurances during an Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

"Additional Access Rights" has the meaning given to it in clause 7.13(c);

"Additional Assets" means those assets and facilities:

- (a) to be constructed and/or adapted within the Site by Project Co as part of the Works that are not and will not be Project Facilities, as more particularly described in paragraph 5 (*Additional Assets*) of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*); or

(b) designated as an Additional Asset pursuant to a Project Co Change or Tfl Change;

"Additional Asset Access Expiry Date" means, in respect of an Additional Asset Area, the date specified as a "Additional Asset Access Expiry Date" for that Additional Asset Area in the Site Access Programme;

"Additional Asset Areas" means the land identified as such on the Construction Land Drawings;

"Additional Costs of Installation" means the cost to design, procure and install GFRP Ground Anchors under paragraph 2.7 of Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*) and including any programme or time delay costs due to any negligence or breach of the terms of this Agreement by Tfl or any acts or omissions of any Third Party (as defined in paragraph 1.2, Part 2 (*Third Parties*) of Schedule 6) in relation to such design, procurement or installation, minus the costs that would otherwise be incurred by Project Co in designing, procuring and installing non-GFRP Ground Anchors where non-GFRP Ground Anchors were to be installed within the same area according to Part 3 (*Project Co's Works Proposals*) of Schedule 10 (*Design and Construction Requirements*);

"Additional Costs of Removal" means the costs of removing, or of applying reasonable endeavours in attempting to remove, Ground Anchors required to be removed under paragraph 2.8 of Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*) including the costs related to programme or time delay;

"Additional Permitted Borrowing" means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of Tfl) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing, the Security Trustee is not in material breach of its obligations under clause 11.5(c) of the Funders' Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is:

- (i) invested as part of any Qualifying Variation;
- (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the Effective Date, disregarding any subsequent amendment; or
- (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which Tfl has agreed that its liabilities on a termination may be increased pursuant to clause 3.3(a)(i),

shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit" means an amount equal to:

- (a) [REDACTED] of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced [REDACTED] or less of the Original Senior Commitment; and

- (b) after the expiry of the period referred to in paragraph (a) above, the higher of:
 - (i) [REDACTED] of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a) above;

"Adjudicator" has the meaning given to it in paragraph 4.3 of Schedule 23 (*Dispute Resolution Procedure*);

"Adjusted Amount" has the meaning given to it in clause 32.10(d);

"Adjusted Estimated Fair Value of the Agreement" means the Estimated Fair Value of the Agreement, less an amount equal to the aggregate of:

- (a) where relevant, any Post Termination Service Amounts paid to Project Co (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that TfL is entitled to set-off or deduct under clause 27.9 (*Set-off*),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value of the Agreement is calculated;
- (ii) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in paragraph (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) paragraph (i), paragraph (ii) and paragraph (iii) above have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and
- (B) TfL has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account;

"Adjusted Highest Compliant Tender Price" means the Highest Compliant Tender Price less the aggregate of:

- (a) where relevant, any Post Termination Service Amounts paid to Project Co to date (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that TfL is entitled to set-off or deduct under clause 27.9 (*Set-off*),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Compliant Tender is received;

(ii) any insurance proceeds and other amounts owing to Project Co, to the extent not included in paragraph (i) above; and

(iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

(A) paragraph (i), paragraph (ii) and paragraph (iii) above have not been directly taken into account in that Compliant Tender; and

(B) TfL has received such amounts in accordance with this Agreement;

"Affected Party" has the meaning given to it in the definition of "Force Majeure Event";

"Affected Project Land" means the land:

(a) identified as the "pink" and "blue" areas on the DCO Land Plans; and

(b) identified in the Third Party Agreements;

in relation to which TfL has the right to acquire Permanent Rights;

"Affiliate" means, in relation to any person:

(a) any holding company or subsidiary of that person or any subsidiary of such holding company; or

(b) any unit trust, limited partnership or fund in which that person or any holding company or subsidiary of that person or any subsidiary of such holding company of that person is a trustee, general partner, principal, manager, co-manager or adviser,

save that for the purposes of determining whether one (1) entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded. "Holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006;

"Agent" means Crédit Agricole Corporate and Investment Bank in its capacity as agent for the Senior Funders under the Senior Financing Agreements;

"Agreement" means this project agreement between TfL and Project Co, including all Schedules;

"Agreement Information" has the meaning given to it in clause 44.6(k);

"Agreement Period" means the period from and including the Effective Date to the End Date;

"Agreement Year" means a period of twelve (12) months starting on 1 April, other than the first Agreement Year, which shall commence on the Effective Date and end on the 31 March first occurring thereafter (the **"First Agreement Year"**), and the last Agreement Year, which shall commence on 1 April and end on the End Date (the **"Last Agreement Year"**);

"Air Quality Management Plan" has the meaning given to it in paragraph 13.1 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"ALARP" means the 'as low as reasonably practicable' approach to risk assessment;

"Amended Proposed Early Opening Permit to Use Date" has the meaning given to it in clause 18.2(l)(i)(B);

"Amended Reinstatement Outline" has the meaning given to it in clause 32.7(b)(iii);

"Ancillary Documents" means the D&C Contract, any O&M Contract and the guarantees under which the obligations of the D&C Contractor under the D&C Contract and any O&M Contractor under any O&M Contract are respectively guaranteed (in each case to Project Co), copies of which have been initialled by the Parties for the purposes of identification, as they may be amended or replaced from time to time;

"Annual Design and Construction Review" has the meaning given to it in paragraph 10 (*Annual Design and Construction Review*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Annual Management Report" has the meaning given to it in paragraph 13 (*Annual Management Report*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Annual Operation and Maintenance Review" has the meaning given to it in paragraph 11 (*Annual Operation and Maintenance Review*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Annual Payment Report" means the report set out in paragraph 14 (*Annual Payment Report*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Annual Programme" means the programme of maintenance activities that has been endorsed as "received" or "received with comments" by TfL pursuant to the Review Procedure, as set out in paragraph 1.6 (*Annual Programme*) of Part 3 (*Asset Management*) of Schedule 18 (*Operation and Maintenance Requirements*);

"APB Distribution" means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

"Apparatus" means all apparatus (including apparatus as defined in the NRSWA) located in, on, under, over, across, along or adjacent to the Project Land;

"Appeal" has the meaning given to it in clause 10.2(b)(ii);

"Applicable Requirements" means the mandatory requirements of:

- (a) any Law; or
- (b) any licence, consent, permit, authorisation or agreement issued or entered into under any of the foregoing, or of any Relevant Authority,

in each case to the extent that the same comprise legally enforceable obligations and are applicable to the Works, the Services or the Project (including, without prejudice to clause 5.2 (*Transferred DCO Functions*), the DCO);

"Application" has the meaning given to it in clause 10.2(b)(i);

"Appropriate Limit" has the meaning given to it in clause 44.6(g);

"ASD TPA" has the meaning given to it in paragraph 4.1 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Assessment" means inspections and determination of load carrying capacity of a Structure or part of a Structure in terms of either full "Authorised Weight" (AW) loading or specified gross vehicle weights, or other applied vehicle loading (including impact);

"Assets" means all assets and rights required to enable TfL or a successor contractor to own the Project Facilities and to operate and maintain the Project Facilities in accordance with this Agreement, including:

- (a) the Project Facilities;
- (b) any land, tunnel, roads or buildings;
- (c) any equipment or vehicles;
- (d) any books, records, drawings, documentation, hardware, software and source code (including as-built drawings, operating and maintenance manuals, health and safety manuals and other know-how and the records referred to in Schedule 16 (*Records and Reporting*)), and all other records maintained or requested pursuant to clause 44 (*Records and Information*);
- (e) any spare parts, tools, stocks of material, other moveable property and other assets (together with any warranties in respect of assets being transferred);
- (f) any revenues and any other contractual rights; and
- (g) any intellectual property rights,

but excluding any assets and rights in respect of which TfL is full legal and beneficial owner;

"Asset Information" means the data or information relating to the specification, design, construction or acquisition, operation and maintenance, and disposal or decommissioning of an item, thing or entity that has potential or actual value to an organization, including design information and models, documents, images, software, spatial information and task or activity-related information;

"Asset Information Management Process" means the process developed and updated in accordance with paragraph 10 (*Asset Information Requirements*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Assigned Employees" has the meaning given to it in clause 40.6(a)(i);

"Assignment Guarantee" has the meaning given to it in clause 42.5(b)(ii);

"Auditor's Report" means the report set out in paragraph 16 (*Auditor's Report*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Audit Team" means such persons as may be appointed for the time being in accordance with paragraph 2.12 (*Road Safety Audits – Design*) and paragraph 3.1 (*Road Safety Audits – Construction*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*), to carry out a Road Safety Audit for the purposes of Schedule 9 (*Certification and Review Procedure*);

"Authorised Functions" means the General Authorised Functions and the SU Authorised Functions;

"Authorisation Period" means the period commencing on the Effective Date and expiring ten (10) years therefrom or on the termination of this Agreement, whichever is

earlier, or in the case of clause 10.3(a) or clause 10.3(c), the period specified in the notice given by TFL pursuant to clause 10.3(d)(iii);

"Availability Payment" means the amount (expressed in pounds sterling) calculated in accordance with paragraph 2.1 (*Calculation of Availability Payment*) of Schedule 20 (*Payment Mechanism*);

"Availability Period" means the period commencing on the Permit to Use Date and ending on the End Date;

"Base Case" means the financial model agreed between the Parties prior to the Effective Date and contained in the agreed form on the DVD annexed to Schedule 25 (*Base Case*) entitled *Base Case*, signed by the Parties on the Effective Date and which is for the purpose of, amongst other things, calculating the Availability Payment (as may be updated from time to time in accordance with the terms of this Agreement);

"Base Case Equity IRR" means [REDACTED]

"Base Cost" means [REDACTED] being the amount as agreed at the Bid Date and set out in the Base Case which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Permit to Use Date, expressed in real terms as at the Bid Date;

"Base Relevant Insurance Cost" means, the aggregate of the Base Costs during the Insurance Review Period Indexed from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question), less any Base Relevant Insurance Reduction;

"Base Relevant Insurance Reduction" means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or an Insurance Term which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such Insurance Term been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be [REDACTED]); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
 - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the Insurance Term becoming unavailable (the **"Actual Reduction"**);
 - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the Insurance Term becoming unavailable; and
 - (iii) change in RPI since the Bid Date;

"Base Senior Debt Termination Amount" means, subject to clause 3.3 (*TFL liabilities*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from Project Co to the Senior Funders in respect

of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including for the avoidance of doubt any Make-Whole Payment), payable by Project Co to the Senior Funders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible (unless the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the relevant Senior Financing Agreements),

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of Project Co on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Financing Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement; and
- (iv) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by TfL to Project Co as a result of enforcing any other rights they may have;

"Bid Date" means 20 February 2019;

"BIM Execution Plan" means the plan developed and updated in accordance with paragraph 9 (*BIM Execution Plan Requirements*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Birch TPA" has the meaning given to it in paragraph 4.4 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Blackwall Tunnel" means the existing road tunnel underneath the River Thames at Blackwall in east London, linking the London Borough of Tower Hamlets with the Royal Borough of Greenwich, comprising two (2) bores each with two (2) lanes of traffic;

"Boord Street Travelodge Development" means the development contemplated by Royal Borough of Greenwich planning reference 18/0452/F;

"Borrower Security Agreement" means the debenture security agreement entitled the Borrower Security Agreement made between the Borrower and the Security Trustee (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Brenntag Works" has the meaning given to it in paragraph 4.2.1 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Brexit Tariff Change in Law" means any Change in Law (or equivalent in the European Union) which would reasonably be regarded as directly resulting from the United Kingdom's departure from the European Union and such Change in Law (or equivalent in the European Union):

- (a) comes into effect on or after the United Kingdom's departure from the European Union;
- (b) relates directly to the trading relationship between the United Kingdom and the European Union; and
- (c) results in a properly incurred and demonstrable increase in taxes, import duties, tariffs, quotas or fees due and payable to any public sector authority with competent jurisdiction in respect of the direct export from the European Union and import into the United Kingdom of any equipment, plant or materials used solely for the purposes of performing the Works,

and for the purposes of this definition 'demonstrable' shall include, but not be limited to, the provision of any relevant customs receipts (or equivalent);

"Business Interruption Cover" means the business interruption insurance referred to in paragraph 2 (*Business Interruption Insurance*) of Part 2 (*Policies to be taken out during the Availability Period*) to it in Schedule 21 (*Insurance*);

"C&AG" means the Comptroller and Auditor General;

"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

"Carlsberg Tetley Site Lease" means a lease of land and buildings on the South West Side of North Woolwich Road, Silvertown, London granted by Silvertown Homes Limited to TfL dated 18 May 2018;

"Category 0 Structure" means any Structure which conforms in all aspects of design, Assessment and construction to DMRB and MCHW standards and contains no Departures from Standard provided it also conforms to one of the following:

- (a) buried Structures of less than three (3) metres clear span/diameter and having more than one (1) metre cover;
- (b) multi-cell buried Structures where the cumulative span is less than five (5) metres and having more than one (1) metre cover;
- (c) environmental barriers less than three (3) metres high and without overhangs;
- (d) lighting columns within the scope of BD 94/17 (and not situated at a very exposed site as defined in BD 94/17);
- (e) highway signs on posts that are more than seven (7) metres in height but less than twelve (12) metres in height;
- (f) single-span, simply supported structures with a span of less than five (5) metres;
- (g) masonry arches with a span of less than six point five (6.5) metres (for Assessment only);

- (h) earth retaining structures with an effective retained height (i.e. the level of the fill at the back of the structure above the finished ground level in front of the Structure) of less than two (2) metres;
- (i) CCTV masts within the scope of BD 94/17;
- (j) cantilever masts for the traffic signals and/or speed cameras within the scope of BD 94/17; or
- (k) other mast structures that are less than ten (10) metres in height and where the horizontal arm projection is less than three (3) metres;

"Category I Structure" means any Structure other than those in Category 0 Structure, which conforms in all aspects of design, Assessment and construction to DMRB and MCHW standards and contains no Departures from Standard provided it also conforms to one of the following:

- (a) Structures with a single simply supported span of less than twenty (20) metres and having a skew of less than twenty five degrees (25°);
- (b) buried concrete box Structures and corrugated steel buried Structures with less than eight (8) metres clear span;
- (c) earth retaining structures with an effective retained height of two (2) metres or greater but less than seven (7) metres;
- (d) environmental barriers more than three (3) metres high or with overhangs;
- (e) lighting columns situated at a very exposed site as defined in BD 94/17 or otherwise outside the scope of BD 94/17;
- (f) CCTV masts outside the scope of BD 94/17;
- (g) cantilever masts for traffic signals and/or speed cameras outside the scope of BD 94/17; or
- (h) other mast structures that are more than ten (10) metres high but less than twenty five (25) metres high or where the horizontal arm projection is more than three (3) metres;

"Category II Structures" means all those Structures not within the parameters of a Category 0 Structure, Category I Structure or Category III Structure;

"Category III Structures" means complex Structures which require sophisticated analysis or which have any of the following features:

- (a) high structural redundancy;
- (b) unconventional, novel or esoteric design aspects;
- (c) any span exceeding fifty (50) metres;
- (d) any skew exceeding forty five (45) degrees (45°);
- (e) difficult foundation problems;
- (f) moveable bridges;
- (g) access gantries;

- (h) bridges with suspension systems;
- (i) steel orthotropic decks;
- (j) earth retaining structures with an effective retained height of fourteen (14) metres or greater;
- (k) internally grouted duct forms of post-tensioning in concrete structures; or
- (l) road tunnels, tunnel services buildings and Service Tunnels.

"CCLM" has the meaning given to it in paragraph 3.1 of Part 1 (*Interested Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"CCTV" means closed-circuit television;

"CDM Regulations" has the meaning given to it in clause 13.19(a);

"CEMP" has the meaning given to it in paragraph 1.5.1 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"Certificate" means, as the context requires, a certificate in one of the forms included in Annex 1 (*Certificates Prepared by Project Co*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Certification Procedure" means the procedure set out in Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Cessation Plan" means a plan agreed between the Parties or determined by TfL pursuant to:

- (a) clause 36.1 (*Declaration of Ineffectiveness*) to give effect to a Declaration of Ineffectiveness; or
- (b) clause 36.2 (*Public Procurement Termination Event*) to give effect to a Public Procurement Termination Event;

"Change" means a change (whether by addition, amendment, substitution, omission or otherwise) to:

- (a) any of the Technical Requirements;
- (b) the manner in which Project Co undertakes its maintenance or operational activities;
- (c) any improvements, alterations or additions to the Project Facilities to be carried out by Project Co under this Agreement; or
- (d) any other term of this Agreement;

"Change Appraisal" has the meaning given to it in paragraph 6.1 of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Change Appraisal Instruction" means a written notification provided by TfL pursuant to paragraph 4.3(b) of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*) and containing the information specified in paragraph 4.5 of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Change Confirmation Notice" means a notice issued (and counter-signed as appropriate) by TfL to Project Co pursuant to paragraph 4.3(a), paragraph 4.7 or paragraph 7.6(a) of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*) instructing Project Co to proceed with the implementation of a Change or part of a Change;

"Change in Costs" means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of Project Co and/or any Key Sub-Contractors (without double counting), including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of clause 25 (*Change in Law*), clause 26.1 (*Compensation Events*), Schedule 25 (*Base Case*) and/or Part 1 (*TfL Change*) of Schedule 22 (*Change Procedure*), including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) any reasonable professional fees;
- (e) where Project Co is required to finance the Relevant Event, the costs to Project Co of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of Project Co's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Availability Payments;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to Project Co (whether arising from physical damage insurance (or its equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) any increase or decrease in the operations and maintenance expenditure, or life cycle maintenance or replacement costs;
- (h) any increase or decrease in Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which TfL is responsible);
- (i) any amount included in such estimate to take account of contingencies and risk associated with paragraph (d), paragraph (e) or paragraph (f) above;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy;
- (k) Direct Losses; and
- (l) in relation to a TfL Change only, the margin to be earned by Project Co (as determined in accordance with Annex 3 (*Project Co's Margin*) of Schedule 22 (*Change Procedure*)),

provided that all costs other than paragraph (l) above shall be calculated in accordance with the principles set out in Annex 2 (*Calculation of Change in Costs*) of Schedule 22 (*Change Procedure*);

"Change in Law" means the coming into effect after the Effective Date of:

- (a) Legislation, other than any Legislation which on the Effective Date has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union; or
- (b) any applicable judgment of a relevant court of law which changes a binding precedent;

"Change in Revenue" means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of Project Co;

"Change of Ownership" means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in Project Co, Hold Co or any Consortium Hold Co (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a);

"Checker" means a person appointed by Project Co and agreed by TfL for the purposes of checking a Category III Structure, who shall be a chartered civil or structural engineer from an organisation separate to Project Co;

"Checking Team" means the group of engineers within the Designer actually undertaking a check of a Structure;

"Claim" means any claim, action, demand, proceedings or liability;

"Code of Construction Practice" means the document certified by the Secretary of State for Transport as the "Code of Construction Practice" for the purposes of the DCO;

"Collateral Warranty" means separate collateral warranties executed as deeds between:

- (a) TfL (or its nominee) and the D&C Contractor, in the form set out in Part 2 (*Collateral Warranty from the D&C Contractor*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*);
- (b) TfL (or its nominee) and any O&M Contractor, in the form set out in Part 3 (*Collateral Warranty from the O&M Contractor*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*);
- (c) TfL (or its nominee) and each Key Tier 2 Sub-Contractor, in the form set out in Part 4 (*Collateral Warranty from the Key Tier 2 Sub-Contractor*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*); and
- (d) Project Co or the D&C Contractor and each of the relevant Highways Authorities or other parties nominated by TfL, in the form set out in Part 5 (*Collateral Warranty from Project Co*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*);

"Commercial Facilities Agreement" means the agreement entitled the Commercial Facilities Agreement made between, amongst others, the Borrower, the Commercial Lenders and the Commercial Facility Agent (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Commercially Sensitive Information" means the sub-set of Confidential Information listed in column 1 of Part 1 (*Commercially Sensitive Contractual Provisions*) and column 1 of Part 2 (*Commercially Sensitive Material*) of Schedule 24 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of Part 1 (*Commercially Sensitive Contractual Provisions*) and Part 2 (*Commercially Sensitive Material*) of Schedule 24 (*Commercially Sensitive Information*);

"Committed Standby Facility" means a standby facility committed by the Senior Funders at or at a date later than the Effective Date or, without prejudice to clause 3.3(a)(i), as the same may be amended as allowed by clause 3.2 (*Financing Agreements*) for the purposes of financing any unforeseen cost overrun, increased expenses or loss of revenues to be incurred by Project Co;

"Common Terms Agreement" means the agreement entitled the Common Terms Agreement between, amongst others, the Borrower, Hold Co, each Facility Agent, the Intercreditor Agent, the Senior Lenders, the EBL Lenders and the Security Trustee (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Community Engagement Plan" has the meaning given to it in paragraph 2.1 of Part 1 (*Interested Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Community Liaison Groups" has the meaning given to it in paragraph 5.1 of Part 1 (*Interested Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Compensation Date" means either:

- (a) if paragraph 2 (*Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*) applies, the earlier of:
 - (i) the date that the New Agreement is entered into; and
 - (ii) the date on which TfL pays the Adjusted Highest Compliant Tender Price to Project Co, or
- (b) if paragraph 3 (*No Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*) applies, the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

"Compensation Event" means:

- (a) a breach by TfL of any of its obligations or of any warranty under this Agreement; and
- (b) any other action or event expressly stated in this Agreement to be a Compensation Event;

"Compensation Law" means:

- (a) the provisions:

- (i) within or incorporated into the DCO; or
- (ii) applying in respect of the exercise of the powers in or incorporated into the DCO,

whereby compensation is payable as a result of the exercise of these powers by TfL; or

- (b) any other applicable Law whereby compensation is payable in connection with the carrying out of the Works or the acquisition of land or an interest in land or for the use or possession of land for the Project;

"Compliant Tender" means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under paragraph 2.1(c) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*);

"Compliant Tenderer" means a tenderer who is a Suitable Substitute Project Co;

"Comptroller and Auditor General" means the head of the National Audit Office from time to time as defined in the National Audit Act 1983, and includes any successor to all or any of his functions;

"Confidential Information" means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive personal data within the meaning of the Data Protection Laws; and

- (b) Commercially Sensitive Information;

"Conflict Avoidance Panel" means a panel constituted in accordance with paragraph 3.2 to paragraph 3.4 (inclusive) of Schedule 23 (*Disputes*);

"Consortium Hold Co" means each of Aberdeen European Infrastructure III B Limited, Aberdeen European Infrastructure III A Limited, BAM Silvertown Tunnel Holdings, Cintra Silvertown Limited, Brunel UK Investments Limited, Brunel UK Holdings Limited and Silvertown Investco Ltd;

"Construction Certificate" means a certificate based on the form set out in Certificate 11 (*Construction Certificate*) of Annex 1 (*Certificates Prepared by Project Co*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Construction Certification Procedure" has the meaning given to such term in paragraph 1.2 of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Construction Compound" means the surface of Sections of the Site [REDACTED]

"Construction Industry Scheme" means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including The Income Tax (Construction Industry Scheme) Regulations 2005, or any other statute or subordinate legislation relating to the Construction Industry Scheme as from time to time modified or replaced whether before or after the Effective Date;

"Construction Land Drawings" means the three (3) drawings with the drawing title "Sections of the Site and Additional Asset Areas" and drawing numbers ST150030-MCO-ZZZ-ZZ-DRG-XS-0103, ST150030-MCO-ZZZ-ZZ-DRG-XS-0104 and ST150030-MCO-ZZZ-ZZ-DRG-XS-0105 which are included on the DVD referred to in clause 1.2(o);

"Construction Period Insurance" means the Required Insurances in respect of the period from the Effective Date to the Permit to Use Date specified in Part 1 (*Policies to be taken out during the Works*) of Schedule 21 (*Insurance*);

"Construction Phase Plan" has the same meaning as the equivalent uncapitalised term in the CDM Regulations;

"Construction QMS" has the meaning given to it in paragraph 3.1 of Part 2 (*Quality Management Systems*) of Schedule 8 (*Management Systems*);

"Construction Traffic Management Plan" has the meaning given to it in Schedule 8 (*Management Systems*);

"Contact Database" has the meaning given to it in paragraph 4 (*Reporting Requirements*) of Part 1 (*Engagement with Interested Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Contamination" means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour), including any Hazardous Substances;

"Contingent Financing Liabilities" means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) of:

- (a) the Shareholders; and/or
- (b) the Subordinated Lenders; and/or
- (c) any other parties providing equity or subordinated debt,

(in each case excluding any liability of TfL or any TfL Related Party) owed under any of the Financing Agreements at the relevant time to Project Co, Hold Co and/or the Senior Funders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

"Courts" has the meaning given to it in paragraph 5.3 of Schedule 23 (*Dispute Resolution Procedure*);

"CSCS" has the meaning given to it in paragraph 7.8.1 of Part 3 (*Health and Safety Management System*) of Schedule 8 (*Management Systems*);

"Cyber Security Strategy" means the strategy developed and updated in accordance with paragraph 3 (*Information and Cyber Security Requirements*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"D&C Contract" means the contract in the agreed form to be entered into between Project Co and the D&C Contractor on or about the Effective Date;

"D&C Contractor" means:

- (a) BAM Nuttall Limited of St James House, Knoll Road, Camberley, Surrey, GU15 3XW;

- (b) Ferrovial Agroman (UK) Limited of 10th Floor Bsi Building, 389 Chiswick High Road, London, W4 4AL; and
- (c) SK Engineering & Construction Co. Ltd. of 32 Insadong 7-gil, Jongno-gu, Seoul, Korea;

or any other design and construction contractor as Project Co may, subject to the terms of this Agreement, appoint to carry out the Works;

"D&C Direct Agreement" means the agreement entitled the D&C Direct Agreement between the D&C Contractor, the Borrower and the Security Trustee (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"D&C Requirements" means the standards, specifications, procedures and other requirements for design and construction set out, identified or referred to in:

- (a) Schedule 10 (*Design and Construction Requirements*);
- (b) Part 1 (*TfL Technology D&C Requirements*) of Schedule 11 (*TfL Technology Requirements*); and/or
- (c) Part 1 (*User Charging Infrastructure*) of Schedule 14 (*User Charging Interface*),

but excluding Project Co's Works Proposals;

"Daily Land Occupation Fee" means the daily fee payable by Project Co to TfL in respect of the occupation of Sections of the Site set out in Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*);

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by Project Co under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Protection Laws" means Law protecting personal data of natural persons (including the Data Protection Act 2018, GDPR and codes of practice issued from time to time by relevant supervisory authorities);

"Data Report" means the report set out in paragraph 9 (*Data Reports*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Data Room" means the data room provided as part of the Invitation to Negotiate and the Frugon on line register;

"Data Room Information" means the information:

- (a) contained in the Data Room;
- (b) included in or attached to messages or broadcasts circulated by TfL in accordance with the Invitation to Negotiate; or
- (c) referred to in such data room and made available on the Planning Inspectorate's website,

as at the Bid Date;

"DCO" means:

- (a) the development consent order made on 10 May 2018 by the Secretary of State under the Planning Act 2008, which authorises the construction, operation and maintenance of the Project and includes a range of ancillary provisions, including provisions authorising the compulsory acquisition of interests in and rights over land, powers to use and possess land temporarily, traffic management powers, street works powers and provisions authorising the introduction of user charging in relation to the Silvertown Tunnel and the Blackwall Tunnel; and
- (b) the documents listed in Schedule 14 (*Documents to be Certified*) of the DCO, or once such documents have been certified by the Secretary of State for Transport pursuant to Article 65 (*Certification of documents*), such certified documents;

"DCO Application" means the application submitted by TfL on 3 May 2016 for the DCO, including those documents submitted during the DCO examination or decision period;

"DCO Functions" means the powers, rights, entitlements, obligations, duties, requirements, conditions, constraints and other provisions contained in, applied by and arising from the DCO;

"DCO Land Plans" means the plans certified by the Secretary of State for Transport as the land plans for the purposes of the DCO;

"DCO Statement of Conformity" means, in relation to one or more Transferred DCO Functions, a written statement prepared by Project Co:

- (a) confirming that Project Co has complied with such Transferred DCO Functions; and
- (b) summarising how Project Co considers it has complied with such Transferred DCO Functions;

"DCO Works Plans" means the plans certified by the Secretary of State for Transport as the works plans for the purposes of the DCO;

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015;

"Deducted Amounts" means:

- (a) any amounts deducted from the Availability Payment by TfL pursuant to paragraph 11.1 of Schedule 19 (*Handback Requirements*); and
- (b) any amount received by TfL pursuant to a claim on the Handback Bond;

"Deductions" means any Service Shortfall Deductions and Unavailability Deductions to be made in accordance with the provisions of Schedule 20 (*Payment Mechanism*);

"Deemed New Agreement" means an agreement on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments and on the following basis:

- (a) if this Agreement is terminated prior to the Permit to Use Date, then the Planned Permit to Use Date shall be extended by a period to allow a New Project Co to secure the issue of the Permit to Use;
- (b) any accrued Persistent Breach Warning Notices, Final Persistent Breach Warning Notices or Deductions shall not apply, but without prejudice to the rights of TfL to make Deductions;

- (c) if the Ramping Factor is being applied pursuant to paragraph 4.2 of Schedule 20 (*Payment Mechanism*), the Ramping Factor shall be reset; and
- (d) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

"Default Interest" means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due;

"Defects" means in relation to the Additional Assets or the Supplementary Works:

- (a) any defect, error, failure or omission that is the result of Project Co's defective design, defective materials or defective workmanship;
- (b) any defect, error, failure or omission that is the result of Project Co's failure to comply with Project Co's obligations under this Agreement; or
- (c) any failure of the Additional Assets or the Supplementary Works to meet, or to continue to meet, the D&C Requirements or Project Co's Works Proposals,

other than to the extent that such Defect was caused by:

- (i) fair wear and tear; or
- (ii) a failure by any party who has assumed responsibility for the assets within the relevant Additional Asset Area or Section of the Site to operate or maintain such assets in accordance with Good Industry Practice;

"Defects Rectification Period" means, in relation to an Additional Asset or any Supplementary Works:

- (a) the subject of a Handover Certificate:
 - (i) the period commencing on the issuance of the Handover Certificate for the relevant Additional Asset Area or Section of the Site (as applicable); and
 - (ii) ending twelve (12) months after the issuance of the Handover Certificate for the relevant Additional Asset Area or Section of the Site (as applicable);
- (b) not the subject of a Handover Certificate:
 - (i) the period commencing on the Permit to Use Date; and
 - (ii) ending twelve (12) months after the Permit to Use Date;

"Departure from Standard" has the meaning given to such term in paragraph 1.1.2 of Annex 4 (*Relaxations and Departures from Standard Procedure*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Design Certification Procedure" has the meaning given to such term in paragraph 1.2 of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Design and Construction Report" means the report set out in paragraph 5 (*Design and Construction Report*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Design Contract" means the contract between the D&C Contractor and the Designer in respect of the design and examination of the Works;

"Design Data" means all calculations, designs, design or construction information, standards, specifications, plans, drawings, (including fabrication drawings), graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data, used, prepared or to be prepared by or on behalf of Project Co or its Sub-Contractors (or any of their agents or employees) relating to the design, construction, testing, commissioning or completion of the Works or any Project Co Change, TfL Change or the operation, maintenance or improvement of the Project Facilities and any other data which this Agreement expressly states shall be treated as Design Data;

"Design District" means the area within the red dotted line as shown in the drawing STWTN-ATK-GEN-XXXX-SK-Z-0363, and titled Appendix 1, Design District Buildings Site;

"Designer" means (as relevant):

- (a) AYESA LTD. (company number 9440688) whose registered office is at 10 Philpot Lane, London, EC3M 8AA;
- (b) OVE ARUP AND PARTNERS LIMITED (company number 01312453) whose registered office is at 13 Fitzroy Street, London, W1T 4BQ; or
- (c) COWI UK Limited (company number 02962837) whose registered office is at Eastfield, Church Street, Uttoxeter, Staffordshire, ST14 8AA;

"Design Manual for Roads and Bridges" means the manual of requirements, advice and other published documents related to work on motorways and all purpose trunk roads, published by the highway authorities of England, Scotland, Wales and Northern Ireland;

"Design Principles" means the document certified by the Secretary of State for Transport as the "Design Principles" for the purposes of the DCO;

"Design QMS" has the meaning given to it in paragraph 2.1 of Part 2 (*Quality Management Systems*) of Schedule 8 (*Management Systems*);

"Design Statement of Conformity" means, in relation to any aspect of the Works, a written statement prepared by Project Co:

- (a) confirming that Project Co has complied with all relevant Design Principles in carrying out the relevant aspect of the Works; and
- (b) summarising how Project Co considers it has complied with such Design Principles;

"Detailed Design" means a finalised design for any part of the Works, which is complete in all aspects and suitable for construction of the relevant part of the Works;

"Direction" has the meaning given to it in clause 10.2(b)(iv);

"Disclosed Data" means all information relating to the Project provided to Project Co, the Shareholders or any advisers to Project Co or the Shareholders before the Bid Date, including:

- (a) the Invitation to Negotiate;
- (b) the Data Room Information; and
- (c) the results of any investigations and surveys carried out in relation to the Project Land;

"Discount Rate" means [REDACTED];

"Discriminatory Change in Law" means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects;
- (b) Project Co and not to other persons; and/or
- (c) PFI and/or PF2 contractors and not to other persons;

"Dispute" means a dispute or difference of whatsoever nature between TfL and Project Co in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, this Agreement;

"Dispute Resolution Procedure" means the procedure for the resolution of disputes set out in Schedule 23 (*Dispute Resolution Procedure*);

"Disputed Amount" has the meaning given to it in clause 27.4(b);

"Distributions" means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Financing Agreements;
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) the early release of any Contingent Financing Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"Diverse Ventures Site Lease" means the document at Annex 5 (*Diverse Ventures Site Lease*) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Diversionary Works" means works involving the diversion, change in level, protection or removal of Apparatus or other works in relation to Apparatus which are necessary to facilitate the execution of the Project;

"DMRB" means the Design Manual for Roads and Bridges;

"Draft Permanent Rights" has the meaning given to it in clause 7.15(a)(ii);

"EBL Facility Agreement" means the equity bridge loan facility agreement entitled the EBL Facility Agreement between, amongst others, the Borrower, the EBL Lenders and the EBL Facility Agent (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement);

"EBL Financing Agreements" means the EBL Facility Agreement, EBL Hedging Documents and the Equity L/Cs;

"EBL Funder" means a person providing finance to Project Co under the EBL Financing Agreements;

"EBL Hedging Documents" means any or all of the EBL Hedging Documents as defined in the Master Definitions Agreement;

"EDM Procedure" has the meaning given to it in paragraph 4.1 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"EEA" means, from time to time, the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"Effective Date" means date of execution of this Agreement;

"Electricity Adjustment" means the amount (expressed in pounds sterling) calculated in accordance with paragraph 8 (*Calculation of Electricity Adjustment*) of Schedule 20 (*Payment Mechanism*);

"Element" means an element of the Works listed in Annex 1 (*Handback Elements*) of Schedule 19 (*Handback Requirements*);

"Emergency" means an event causing or, in the reasonable opinion of TfL, has the potential to cause:

- (a) death or injury to any individual;
- (b) serious disruption to the lives of a number of people;
- (c) extensive damage to property; or
- (d) contamination of the environment;

"Emergency Change" has the meaning given to it in paragraph 2.1 of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Emergency Change Interim Payments" has the meaning given to it in paragraph 2.3(b) of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Emergency Services" means the police, the fire brigade or the ambulance service;

"Employee Liability Information" means the employee liability information to be provided pursuant to Regulation 11 of TUPE;

"Employee Transfer Information" has the meaning given to it in clause 40.6(a)(i);

"Encumbrance" means any land rights or any mortgage, charge, pledge, lien, assignment, option, right to acquire, right of pre-emption, security interest, trust arrangement, and any other equity or preferential right or any agreement or arrangement to create any of them;

"End Date" means the earlier of the Expiry Date and the Termination Date;

"Enforceable EU Right" means an enforceable EU right within the meaning of section 2 of the European Communities Act 1972 which has legal effect in the United Kingdom on the Effective Date;

"Environment" means all gases, air, vapours, liquids, water (whether above or below surface and including controlled waters as defined in the Water Resources Act 1991 section 104(1) and within drains and sewers) land, property, surface and sub-surface soils, rock, flora, fauna and all other living organisms including man, wetlands ecosystems and all other natural resources or part thereof including artificial or manmade buildings, structures or enclosures and electricity and human health;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such;

"Environmental Manager" has the meaning given to such term in paragraph 6.1 of Part 4 (*Environmental Management Systems*) of Schedule 8 (*Management Systems*);

"Environmental Management Plans" has the meaning given to such term in paragraph 7.7 of Part 4 (*Environmental Management Systems*) of Schedule 8 (*Management Systems*);

"Environmental Management System" has the meaning given to it in paragraph 1.1 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management System*);

"Environmental Performance Reports" has the meaning given to it in paragraph 2.2 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"Environmental Team" has the meaning given to such term in paragraph 6.1 of Part 4 (*Environmental Management Systems*) of Schedule 8 (*Management Systems*);

"Environmental Training Plan" means an environmental training plan as described in paragraph 21.1 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"EPG" means the emergency planning group;

"EPG Terms of Reference" means the terms of reference produced and updated by Project Co pursuant to paragraph 2 of Part 4 (*DSC and EPG*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*) which has been endorsed by TfL as "received" or "received with comments" in accordance with the Review Procedure;

"Equity IRR" means the projected blended rate of return to the Relevant Persons over the Agreement Period, having regard to Distributions made and projected to be made;

"Equity L/C" means each standby letter of credit procured in favour of the Security Trustee securing the Shareholders' payment and subscription obligations under the Subordinated Financing Agreement;

"ES" has the meaning given to it in paragraph 4.3 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"Escrow Account" has the meaning given to the term "Private Placement Escrow Account" and/or "Construction Disbursement Escrow Account" in the Master Definitions Agreement;

"Estimated Change in Project Costs" means in respect of any Relevant Event the aggregate of any Change in Costs and/or (without double counting) Change in Revenue (as relevant);

"Estimated Fair Value of the Agreement" means the amount determined in accordance with paragraph 3 (*No Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*) that a third party would pay to TfL as the market value of the Deemed New Agreement;

"Exceptional Cost" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount [REDACTED] of the Base Relevant Insurance Cost for that Insurance Review Period;

"Exceptional Saving" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount [REDACTED] of the Base Relevant Insurance Cost for that Insurance Review Period;

"Excusing Cause" has the meaning given to it in paragraph 7 (*Excusing Causes*) of Schedule 20 (*Payment Mechanism*);

"Exempt Refinancing" means:

- (a) any Refinancing that was fully taken into account in the calculation of the Availability Payment;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements or EBL Financing Agreements as at Financial Close;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Subcontracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (vi) restrictions imposed by the Senior Funders on the dates at which the Senior Debt can be advanced to Project Co under the Senior Financing Agreements and/or amounts released from the Escrow Account during the Initial Availability Period and which are given as a result of any failure by Project Co to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by Project Co or the Senior Funders to TfL prior to being given;
 - (vii) changes to milestones for drawdown and/or amounts released from the Escrow Account during the Initial Availability Period set out in the Senior Financing Agreements and which are given as a result of any failure by Project Co to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by Project Co or the Senior Funders to TfL prior to being given;
 - (viii) failure by Project Co to obtain any consent by statutory bodies required by the Senior Financing Agreements; or

- (ix) voting by the Senior Funders or EBL Funders and the voting arrangements between the Senior Funders or EBL Funders in respect of the levels of approval required by them under the Senior Financing Agreements or EBL Financing Agreements;
- (d) any amendment, variation or supplement of any agreement approved by TfL as part of any Qualifying Variation under this Agreement;
- (e) any sale of shares in Project Co by the shareholders or securitisation of the existing rights and/or interests attaching to shares in Project Co;
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction;

"Expiry Date" means [REDACTED];

"Fair Value" means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;

"Fee Letter" means each of the letters dated on or around the date of this Agreement, as described in full in the Master Definitions Agreement;

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"Final Handback Inspection" has the meaning given in paragraph 9 (*Final Handback Inspection*) of Schedule 19 (*Handback Requirements*);

"Final Handback Report" has the meaning given in paragraph 10 (*Final Handback Report*) of Schedule 19 (*Handback Requirements*);

"Final Persistent Breach Warning Notice" has the meaning given to it in clause 34.5(b)(i);

"Financial Close" has the meaning given to it in the Master Definitions Agreement;

"Financing Agreements" means all or any of the agreements or instruments entered into or to be entered into by Project Co or any of its Affiliates relating to the financing of the Project (including any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness or any Refinancing);

"Fire Escape Works" has the meaning given to it in paragraph 4.5.1 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Fire Plan" has the meaning given to it in paragraph 9 (*Fire Plan*) of Part 4 (*Environmental Management Systems*) of Schedule 8 (*Management Systems*);

"First Agreement Year" has the meaning given to it in the definition of Agreement Year;

"First Insurance Review Date" means the first Working Day following the first anniversary of the Relevant Insurance Inception Date;

"Fixed Price Quotation" means a fixed price provided by Project Co to TfL for any Change in Costs in relation to a TfL Change which may consist of a single lump sum payment, a number of payments or a change to the Availability Payment;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"FOI Code" has the meaning given to it in clause 44.6(i);

"Force Majeure Event" means the occurrence after the Effective Date of:

- (a) war, civil war, armed conflict or acts of terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the actions of Project Co; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly cause either Party (the **"Affected Party"**) to be unable to comply with all or a material part of its obligations under the Project Documents;

"Force Majeure Termination Sum" has the meaning given to it in paragraph 1.2 of Part 5 (*Compensation on Termination for Force Majeure*) of Schedule 27 (*Compensation on Termination*);

"FORS" has the meaning given to it in paragraph 14.1.1 of Part 3 (*Health and Safety Management System*) of Schedule 8 (*Management System*);

"Funders' Direct Agreement" means the funders' direct agreement dated on or about the Effective Date in the form set out in Part 1 (*Funders' Direct Agreement*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*) made between TfL, Project Co and the Security Trustee;

"Further Defects Rectification Period" means, in relation to any Defect in any Additional Assets or Supplementary Works (as applicable) or any damage caused by any Defect in any Additional Assets or Supplementary Works (as applicable) which Project Co is required to rectify pursuant to clause 17.2 (*Defects*), the period:

- (a) commencing on the date of completion of such rectification works by Project Co; and
- (b) ending twelve (12) months after the date of completion of the rectification works;

"Further Planning Permission" has the meaning given to it in clause 5.4(a);

"Future Service Provider" means each and every service provider (other than TfL) who shall provide any service equivalent to any of the Works or Services immediately after the expiry or early termination of this Agreement;

"GAAR" has the meaning given to it in the definition of Unsuitable Third Party;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of Personal Data and on the free movement of such data;

"General Authorised Function" means:

- (a) each of the functions listed in paragraph 1 (*Highways Act 1980*) and paragraph 3 (Miscellaneous Functions) of Part 3 (*Authorised Functions*) of Schedule 5 (*Allocation of DCO and Other Requirements*) conferred on TfL by the Statutory Provisions and which Project Co is authorised by TfL from time to time to exercise pursuant to clause 10.1(a) or clause 10.1(f), as the case may be; and
- (b) each of the functions conferred on TfL by the Statutory Provisions which Project Co is authorised or required by TfL from time to time to exercise pursuant to clause 10.3(a) or clause 10.3(c) as the case may be;

"General Change in Law" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"GLA/SHL Third Party Agreement" means the agreement between TfL, Silvertown Homes Limited and GLA Land and Property Limited relating to the Silvertown Tunnel dated 22 August 2017, as amended, varied or supplemented from time to time;

"Good Industry Practice" means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person seeking in good faith to comply with its contractual obligations, complying with all Applicable Requirements and engaged in the same type of undertaking and under the same or similar circumstances and conditions;

"Ground Anchors" means mechanical or grouted anchors used to hold, restrain and support tunnel or cut and cover retaining wall structures, either permanently or temporarily;

"Group" means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any group undertaking of that company from time to time and all of them and each of them as the context admits, for which purposes group undertaking has the meaning given to such term by section 1161 of the Companies Act 2006;

"H&S Conviction" has the meaning given to it in clause 34.1(q);

"Handback Bond" means an on-demand bond in favour of TfL in a form acceptable to TfL (acting reasonably) that:

- (a) has been executed and delivered by a provider who is a Handback Bond Provider;
- (b) is for an amount equal to the aggregate of the Rectification Amounts; and
- (c) has an expiry date that is not less than six (6) months after the End Date;

"Handback Bond Provider" means a financial institution which is acceptable to TfL (acting in its absolute discretion) and which either:

- (a) has a long-term credit rating of no less than "A+" or equivalent from each of the Rating Agencies which rate the performance bond provider; or
- (b) at TfL's absolute discretion, has a long-term credit rating of less than "A+" from one or more of the Rating Agencies which rate the performance bond provider;

"Handback Bond Provider Downgrade" means the Handback Bond Provider no longer holds a long-term credit rating of at least "A-" or its equivalent from any of the Rating Agencies which rate the Bond provider;

"Handback Inspections" means the Initial Handback Inspections, the Interim Handback Inspections and the Final Handback Inspections;

"Handback Plan" means the plan prepared in accordance with paragraph 2 (*Handback Plan*) of Schedule 19 (*Handback Requirements*);

"Handback Reports" means the Initial Handback Report, the Interim Handback Report and the Final Handback Report;

"Handover Certificate" means a certificate issued by TfL in the form set out in Part 4 (*Handover Certificate*) of Schedule 17 (*Handover and Permit to Use Requirements*) confirming that the Handover Requirements in relation to:

- (a) the Additional Assets within the relevant Additional Asset Area; or
- (b) all of the Supplementary Works in a Section of the Site (excluding any Additional Asset Areas within the relevant Section of the Site which are the subject of a Handover Certificate),

have been met;

"Handover Requirements" means the handover requirements relating to the Additional Asset Areas or the Sections of the Site set out in Part 1 (*Additional Assets and Handover*) and Part 3 (*Sections of the Site and Handover*) of Schedule 17 (*Handover and Permit to Use Requirements*) respectively;

"Hazardous Substances" means any item or substance which:

- (a) would cause harm to or have a deleterious effect on the Environment or the presence of which has to be notified by virtue of an Applicable Requirement or Schedule 12 (*Environmental Requirements*) to a regulatory authority either specifically or generally; or
- (b) is categorised or listed under Schedule 12 (*Environmental Requirements*) as being prescribed or prohibited or restricted or as requiring precautions to be taken in the use or keeping thereof;

"Health and Safety File" has the meaning given to it in clause 13.19(a);

"Health and Safety Management System" has the meaning given to it in paragraph 2.1 of Part 3 (*Health and Safety Management System*) of Schedule 8 (*Management Systems*);

"Health and Safety Regime" means the Health and Safety at Work etc. Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, Water Resources Act 1991 and any similar or analogous, health, safety or environmental legislation in force from time to time;

"Highest Compliant Tender Price" means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero (0);

"Highway Areas" means, from time to time, the land within the Order Limits that falls within the boundary of a road or highway that:

- (a) is available for use by public road users; or
- (b) is unavailable for use by public road users due only to the existence of Temporary Traffic Management Measures authorised pursuant to Schedule 13 (*Network Occupancy*);

"Highway Authority" has the meaning given to it in the Highways Act 1980;

"Historical Remains" means human remains, fossils, coins, relics or other articles or structures of historical, antiquarian or archaeological interest;

"Hold Co" means RiverLinx Holdings Limited (company number 12161321) whose registered office is at 16 Hockley Court, 2401 Stratford Road, Hockley Heath, Solihull, B94 6NW;

"Hold Co Security Agreement" means the debenture security agreement entitled the Hold Co Security Agreement between Hold Co and the Security Trustee (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Hold Point" means a point identified in a management system procedure where no further work or activity shall proceed without the documented authorisation of the designated person identified in the management system procedure;

"Horus" has the meaning given to that term in Part 3 (*Definitions*) of Schedule 11 (*TfL Technology Requirements*);

"HSE" has the meaning given to it in paragraph 16.1.1 of Part 3 (*Health and Safety Management System*) of Schedule 8 (*Management Systems*);

"IANs" means Interim Advice Notes;

"Incurred Cost" has the meaning given in paragraph 12.1 of Schedule 19 (*Handback Requirements*);

"Independent Certifier" means the person appointed jointly by TfL and Project Co to act as independent certifier to the Project pursuant to the Independent Certifier's Deed of Appointment;

"Independent Certifier's Deed of Appointment" means the deed of appointment between the Independent Certifier, Project Co and TfL entered into on or about the Effective Date and substantially in the form set out in Part 6 (*Independent Certifier's Deed of Appointment*) of Schedule 28 (*Direct Agreements and Other Contracts and Agreements*);

"Indexation Base Month" means July 2018;

"Indexed" means indexed in accordance with clause 1.5 (*Indexation*);

"Information" has the meaning given to it under section 84 of the Freedom of Information Act 2000;

"Information Breach" means a breach by Project Co of any of the provisions of clause 44 (*Records and information*);

"Information Commissioner" has the meaning given in the Data Protection Laws;

"Information Governance Strategy" means the strategy developed and updated in accordance with paragraph 2 (*Information Governance*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Information Management System" means the system developed and updated in accordance with paragraph 1 (*General Requirements*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Information Security Strategy" means the strategy developed and updated in accordance with paragraph 3 (*Information Security Requirements*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Initial Availability Period" has the meaning given to the term "Availability Period" in the Master Definitions Agreement;

"Initial Change Appraisal" has the meaning given to it in paragraph 3.1 of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Initial Handback Inspection" has the meaning given in paragraph 5 (*Initial Handback Inspection*) of Schedule 19 (*Handback Requirements*);

"Initial Handback Report" has the meaning given in paragraph 6 (*Initial Handback Report*) of Schedule 19 (*Handback Requirements*);

"Inspection and Test Plan" has the meaning given in paragraph 1.5 of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*);

"Instalment Dates" has the meaning given to it in paragraph 3.2(a)(i)(A) of Part 7 (*Calculation and Payment of Early Termination Payments*) of Schedule 27 (*Compensation on Termination*);

"Insurance Cost Decrease" means the Insurance Cost Differential if the value thereof is less than zero (0), multiplied by minus one (-1);

"Insurance Cost Differential" shall, subject to the Insurance Review Procedure, be determined as follows:

Insurance Cost Differential = (ARIC - BRIC) - (PIC) where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any Project Insurance Change;

"Insurance Cost Increase" means the Insurance Cost Differential if the value thereof is greater than zero (0);

"Insurance Cost Index" means any index introduced by the United Kingdom Government or the Office of National Statistics after the Effective Date and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

"Insurance Review Date" means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Agreement Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Agreement Period;

"Insurance Review Period" means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two (2) year period commencing on the second anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Agreement Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Agreement Period;

"Insurance Review Procedure" means the procedure set out in paragraph 1 (*Insurance Review Procedure*) of Part 5 (*Insurance Premium Risk Sharing*) of Schedule 21 (*Insurance*);

"Insurance Summary Sheet" has the meaning given to it in paragraph 1.3(c) of Part 5 (*Insurance Premium Risk Sharing*) of Schedule 21 (*Insurance*);

"Insurance Term" means any terms and/or conditions required to be included in a policy of insurance by clause 32.1, clause 32.3 and/or Schedule 21 (*Insurance*) but excluding any risk;

"Insurance Undertaking" has the meaning given to it in the rules from time to time of the Financial Services Authority;

"Insurances" means the insurances which Project Co is required to maintain, or to procure the maintenance of, pursuant to clause 32.1 (*Insurance Requirements*);

"Intellectual Property Rights" means all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unauthorised extraction and/or re-utilisation rights, unregistered designs, inventions, confidential information, know-how or other intellectual property rights subsisting in or relating to the Project Data;

"Intercreditor Deed" means the agreement entitled the Intercreditor Deed entered into between, amongst others, the Borrower, the Senior Funders and the Security Trustee (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Interested Party" means those persons (other than Users) who may be affected by the carrying out of the Works or the performance of the Services or who are duly authorised by an Applicable Requirement to review or otherwise take an interest in the Works or Services, including:

- (a) the Relevant Authorities; and
- (b) those persons listed in Annex 1 (*Initial List of Interested Parties*) of Part 1 (*Interested Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*) and any person who is a successor to, or assignee or transferee of, any such person or who takes over the responsibility of any such person;

"Interest Rate" means [REDACTED] above the Senior Debt Rate;

"Interim Advice Notes" means the guidance documents issued by Highways England (previously Highways Agency) from time to time;

"Interim Handback Inspection" has the meaning given in paragraph 7 (*Interim Handback Inspection*) of Schedule 19 (*Handback Requirements*);

"Interim Handback Report" has the meaning given in paragraph 8 (*Interim Handback Report*) of Schedule 19 (*Handback Requirements*);

"Interim Project Report" means a report to be produced by Project Co covering all matters necessary to enable TfL to understand the circumstances resulting in a default under the Senior Financing Agreements and the actions taken or proposed to be taken in order to resolve the default under the Senior Financing Agreements and detailing as a minimum:

- (a) the circumstances that led to the relevant default under the Senior Financing Agreements (including, where applicable, relevant financial information);
- (b) the steps being taken by Project Co to mitigate or rectify the relevant default under the Senior Financing Agreements;
- (c) Project Co's estimated timescale and estimated costs for mitigation or rectification;
- (d) any additional information which TfL should reasonably be made aware of or may reasonably request; and
- (e) any rights exercised by a Senior Funder under the Senior Financing Agreements in respect of the default under the Senior Financing Agreements;

"Invitation to Negotiate" means the invitation to negotiate issued by TfL originally dated 20 June 2017 (as supplemented and amended by addenda issued from time to time) inviting pre-qualified bidders to submit tenders for the award of this Agreement;

"Irrecoverable VAT" has the meaning given in clause 25.7(c);

"Joint Insurance Account" means the joint bank account in the names of TfL and Project Co, [REDACTED];

"Joint Insurance Cost Report" has the meaning given to it in paragraph 1.2 of Part 5 (*Insurance Premium Risk Sharing*) of Schedule 21 (*Insurance*);

"Judicial Review" means any application for judicial review (including any application for leave) made under part 54 of the Civil Procedure Rules seeking review of any determination, decision, order or omission of TfL or any application for a declaration (not made pursuant to such part 54) which concerns the legality of any determination, decision, order or omission of TfL or any statutory challenge, action or appeal which proceeds on similar principles;

"Junior Debt" means all amount outstanding at the Termination Date under the Subordinated Financing Agreements;

"K-EXIM Facilities Agreement" means the agreement entitled the K-EXIM Facilities Agreement entered into between, amongst others, the Borrower and the K-EXIM Lender (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Key Interested Parties" means those Interested Parties who, in the view of Project Co (acting reasonably), could have particular importance to the Project;

"Key Performance Indicators" means the key performance indicators as set out in Annex 1 (*Key Performance Indicators*) of Part 2 (*Performance Planning and Monitoring*) of Schedule 15 (*Design & Construction Performance Monitoring*);

"Key Sub-Contractor" means each of the D&C Contractor and any O&M Contractor;

"Key Tier 2 Sub-Contractor" means the tunnel boring machine supplier;

"Knight Dragon Design District Works" means the works to be carried out by Knight Dragon Developments Limited in the area shaded blue as shown in the drawing STWTN-ATK-GEN-XXXX-SK-Z-0363, and titled Appendix 1, Design District Buildings Site;

"K-SURE Facilities Agreement" means the agreement entitled the K-SURE Facilities Agreement between, amongst others, the Borrower, the K-SURE Covered Lenders and

the K-Sure Facility Agent (each as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Land Compensation" means all amounts properly paid or payable to third parties:

- (a) under any Compensation Law for the value of land, the value of an interest in land taken, disturbance (including compensation in consequence of dispossession or displacement from land and including amounts payable pursuant to section 28, section 37(5) and section 43 of the Land Compensation Act 1973), severance or other injurious affection under section 7 of the Compulsory Purchase Act 1965 or other compensation in connection with the exercise by TfL of any compulsory purchase powers or temporary possession powers under the DCO; and
- (b) without prejudice to paragraph 3 and paragraph 4 of Part 3 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*), under a Third Party Agreement in connection with any permanent acquisition or temporary possession of land required for the Project,

including professional fees, stamp duty, land registration fees and conveyancing costs in respect of the acquisition of land or an interest in land or for use of land for the Project (whether pursuant to a purchase by compulsion or private treaty or otherwise) and including statutory or agreed interest but excluding any amounts paid or payable in connection with the acquisition of further land pursuant to clause 7.13 (*Works outside the Project Land*);

"Last Agreement Year" has the meaning given to it in the definition of Agreement Year;

"Law" means any Legislation or common law of the United Kingdom, 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 enforceable in the United Kingdom or any other principles of law or equity established by the Courts;

"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 EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom;

"Liaison Procedures" means those procedures developed by Project Co pursuant to paragraph 1.1 of Part 3 (*Liaison Procedures*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Liaison Procedures Register" means the register developed by Project Co pursuant to paragraph 6.1 of Part 3 (*Liaison Procedures*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Liquid Market" means that there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Project Co) in the market for PFI/PF2 contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Funders specifically for the purposes of this Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

"Local Authorities Finance Legislation" means the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, or in each case, any re-enactment or amendment thereof, or any other legislation which regulates capital finance in connection with local authorities;

"Local Borough" means the boroughs of Greenwich, Tower Hamlets and Newham;

"Lock-In Period" means the period from the Effective Date until the date twelve (12) months after the Permit to Use Date;

"London Permit Scheme" means the permit scheme for road works and street works in London made pursuant to the Traffic Management Act 2004;

"London Streets Traffic Control Centre" means the centre responsible for the real time operational control of traffic on the London road network operated by TfL;

"London Streets Tunnel Operations Centre" means the centre operating the traffic and tunnel safety systems for various road tunnels in London operated by TfL;

"Longstop Permit to Use Date" means the date falling eighteen (18) months after the Planned Permit to Use Date;

"LoPS" has the meaning given to it in paragraph 2.2.2 of Schedule 13 (*Network Occupancy*);

"Loss" or **"Losses"** means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract, or at common law or in connection with judgements, proceedings, internal costs or demands;

"LSTCC" means the London Streets Traffic Control Centre;

"LSTOC" means the London Streets Tunnel Operations Centre;

"Major Highway Works" means both major highway works as defined in section 86(3) of the NRSWA and major bridge works as defined in section 88 (2) of the NRSWA;

"Major Road Accident" means any of the following:

- (a) any accident or incident involving a fatality or serious injuries;
- (b) any accident or incident involving cross-over of a vehicle from one (1) carriageway to another;
- (c) any accident or incident involving passenger coaches or other public service vehicles;
- (d) any accident or incident involving a vehicle carrying dangerous substances (e.g. hazardous chemicals, inflammable liquids such as petrol or radioactive materials);
- (e) any accident or incident on or in relation to the Project Facilities resulting in structural damage necessitating Temporary Traffic Management Measures;
- (f) any accident or incident which provokes considerable media attention; and
- (g) any accident or incident in the vicinity of Temporary Traffic Management Measures;

"Major Works" means any activity undertaken, or to be undertaken, in connection with the construction of any structure listed in Table 2 (*Mandated Structures*) in paragraph 1 (*General Structures Requirements*) of Annex 3 (*Structures Requirements*) to Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*);

"Make-Whole Payment" means:

- (a) in relation to termination of the Agreement under clause 33 (*TfL Default*), the Make-Whole Amount (as such term is defined in the Master Definitions Agreement);
- (b) in relation to termination of the Agreement under clause 35.3 (*Voluntary Termination by TfL*) the Modified Make-Whole Amount (as such term is defined in the Master Definitions Agreement);
- (c) following TfL's election pursuant to paragraph 3.3 of Part 7 of Schedule 27 (*Payment of Outstanding Element*) the Modified Make-Whole Amount (as such term is defined in the Master Definitions Agreement) but only where the Termination Sum is not or has not been calculated following either:
 - (i) the procedure in paragraph 3 of Part 2 of Schedule 27 (*No Retendering Procedure*); or
 - (ii) the provisions of Part 5 (*Compensation on Termination for Force Majeure*) of Schedule 27 (*Compensation on Termination*);
- (d) following a TfL Default in payment pursuant to paragraph 3.4 of Part 7 of Schedule 27 (*TfL Default in payment*), the Make-Whole Amount (as such term is defined in the Master Definitions Agreement) but only where the Termination Sum is not or has not been calculated following either:
 - (i) the procedure in paragraph 3 of Part 2 of Schedule 27 (*No Retendering Procedure*); or
 - (ii) the provisions of Part 5 (*Compensation on Termination for Force Majeure*) of Schedule 27 (*Compensation on Termination*); and

in relation to termination of the Agreement in any other circumstances, zero;

"Management System(s)" means any and each management system developed and used in relation to the Project including the Project Co Management System, any management system required pursuant to Schedule 8 (*Management Systems*) and any other management system, including those of Project Co, Sub-Contractors and suppliers of any tier, but excluding, for the avoidance of doubt, any TfL management system;

"Manual of Contract Documents for Highway Works" means the documents published by the highway authorities of England, Scotland, Wales and Northern Ireland and containing requirements of contracts for trunk roads;

"Market Value Availability Deduction Amount" means for any month or part of a month, an amount equal to the Unavailability Deductions in the month immediately preceding the Termination Date, less an amount equal to any Unavailability Deduction that was made for any part of the Project Facilities which was unavailable at the Termination Date but which has subsequently become available whether as a result of TfL incurring Rectification Costs or otherwise;

"Master Definitions Agreement" means the master definition agreement dated on or about the date of this Agreement between, amongst others, Project Co, Hold Co, the Senior Funders and the Security Trustee;

"Maximum Annual Availability Payment" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Maximum Monthly Availability Payment" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"MCHW" means the Manual of Contract Documents for Highway Works;

"ME&P Systems" has the meaning given to it in paragraph 1.1 of Annex 2 (*Requirements for Tunnel ME&P Systems*) of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*);

"MEAF" means a Mechanical and Electrical Technical Appraisal Form;

"Mechanical and Electrical Technical Appraisal Form" means a mechanical and electrical technical appraisal form in the form set out in Annex 2 (*Technical Appraisal Forms*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Model Production and Delivery Table" means the table developed and updated in accordance with paragraph 4 (*Intellectual Property Rights and Use of Models*) of Part 5 (*Information Management*) of Schedule 8 (*Management Systems*);

"Monitoring Agreement" means the monitoring agreement between Socotec Monitoring UK Limited and TfL dated 16 July 2018;

"Monthly DCO Statement of Conformity" means, in relation to a TfL Reporting Period, a written report prepared by Project Co in relation to all Transferred DCO Functions that were relevant to the carrying out of the Works or the performance of Project Co's obligations during the relevant TfL Reporting Period:

- (a) confirming that Project Co has complied with such Transferred DCO Functions;
- (b) summarising how Project Co considers it has complied with such Transferred DCO Functions; and
- (c) marking as "Not Applicable" any Transferred DCO Function Project Co considers were not relevant during such TfL Reporting Period;

"Monthly Third Party Agreement Statement of Conformity" means, in relation to a TfL Reporting Period, a written report prepared by Project Co in relation to all Transferred Third Party Functions that were relevant to the carrying out of the Works or the performance of Project Co's obligations during the relevant TfL Reporting Period:

- (a) confirming that Project Co has complied with such Transferred Third Party Functions;
- (b) summarising how Project Co considers it has complied with such Transferred Third Party Functions; and
- (d) marking as "Not Applicable" any Transferred Third Party Functions Project Co considers were not relevant during such TfL Reporting Period;

"Necessary Consents" means all permissions, consents, approvals, certificates, permits, licences, acceptances, exemptions, filings, registrations, notarisations, declarations, letters of no objection, authorisations, agreements and other matters, together with all conditions attaching thereto, required for the performance of any of Project Co's obligations under this Agreement;

"Net Present Value" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"Network Impact Management Team" means the team of that name (or any replacement team) within TfL responsible for assessing the network impact of proposed traffic management arrangements;

"Network Management Duty" has the meaning given to it in clause 23.2(a);

"Network Occupancy" means the occupation and control of road space on the road network by a works promoter such as a Statutory Undertaker or Project Co, in each case approved to undertake such occupation and control by the relevant Highway Authority or Traffic Authority responsible for the relevant road space;

"Network Occupancy Approval Process" has the meaning given to it in paragraph 2 (*Network Occupancy Approval Process*) of Schedule 13 (*Network Occupancy*);

"New Agreement" means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments and on the following basis:

- (a) if this Agreement is terminated prior to the Permit to Use Date, then the Planned Permit to Use Date shall be extended by a period to allow a New Project Co to secure the issue of the Permit to Use;
- (b) any accrued Persistent Breach Warning Notices, Final Persistent Breach Warning Notices or Deductions shall not apply, but without prejudice to the rights of TfL to make Deductions;
- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date;
- (d) if the Ramping Factor is being applied pursuant to paragraph 4.2 of Schedule 20 (*Payment Mechanism*), the Ramping Factor shall be reset; and
- (e) any other amendments which do not adversely affect Project Co;

"New Project Co" means the person who has entered or who will enter into the New Agreement with TfL;

"NIMT" has the meaning given to it in paragraph 2.3 of Schedule 13 (*Network Occupancy*);

"North Greenwich Interchange" means the transport hub at North Greenwich tube and bus stations and managed by TfL (in its capacity as Relevant Authority);

"Notice Date" means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Agreement is agreed between the Parties pursuant to paragraph 3 (*No Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*);

"Notifiable Environmental Incident" means, in relation to the Project, the occurrence of any of the following incidents:

- (a) damage or danger to the natural environment;
- (b) pollution to water or land;
- (c) poaching or illegal fishing;
- (d) dead fish or fish gasping for air;

- (e) watercourses blocked by a vehicle or fallen tree causing risk of flooding;
- (f) flooding from main rivers or the sea;
- (g) incidents at Environment Agency-regulated waste sites;
- (h) illegal removals from watercourses;
- (i) unusual changes in river flow; and
- (j) collapsed or badly damaged river or canal banks;

"Notifiable Financings" means any Refinancing described in paragraph (a) or paragraph (c) of the definition of "Refinancing" and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting Project Co's or any Affiliate's ability to carry out any such refinancing or other arrangements that would have a similar effect;

"NRSWA" means the New Roads and Street Works Act 1991;

"NRSWA Codes of Practice" means the codes of practice issued from time to time pursuant to part III of the NRSWA;

"NRSWA Regulations" means regulations issued pursuant to part III of the NRSWA;

"O&M Area" has the meaning given to it in clause 7.15 (*O&M Area*);

"O&M Contract" means any contract entered into between Project Co and an O&M Contractor;

"O&M Contractor" means any operating and maintenance contractor as Project Co may, subject to the terms of this Agreement, appoint to carry out the whole or a substantial part of the Services;

"O&M Requirements" means the standards, specifications, procedures, and other requirements for operation and maintenance set out or identified or referred to in Schedule 18 (*Operation and Maintenance Requirements*) as amended from time to time but excluding Project Co's O&M Proposals;

"O&M QMS" has the meaning given to it in paragraph 4.1 of Part 2 (*Quality Management Systems*) of Schedule 8 (*Management Systems*);

"O&M Standards" means the documents listed in Part 4 (*O&M Standards*) of Schedule 18 (*Operation and Maintenance Requirements*) as interpreted and as set out in Part 4 (*O&M Standards*) of Schedule 18 (*Operation and Maintenance Requirements*);

"Objection" has the meaning given to it in clause 10.2(b)(vi);

"OMEMP" has the meaning given to it in paragraph 1.5.2 of Part 4 (*Environmental Management System*) of Schedule 8 (*Management Systems*);

"Operation and Maintenance Report" has the meaning given to it in paragraph 6 (*Operation and Maintenance Report*) of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Operational Compensation" means all amounts properly payable to third parties, whether under Part 1 of the Land Compensation Act 1973 or any applicable statutory modification or re-enactment thereof, and all amounts payable to third parties in respect of nuisance (other than for non-performance of any obligations under this Agreement)

which amounts are payable for claims arising out of the operation of the Project Facilities and including any professional fees, statutory or agreed interest;

"Operational Land Drawings" means the two (2) drawings with the drawing title "Provisional O&M Area" and drawing numbers ST150030-ATK-ZZZ-ZZ-DRG-ZZ-4013 and ST150030-ATK-ZZZ-ZZ-DRG-ZZ-4014 which are included on the DVD referred to in clause 1.2(o);

"Option Period" has the meaning given to it in clause 32.8(c);

"Order Limits" means the order limits shown by a red line on the DCO Works Plans;

"Original Senior Commitment" means the amount committed under the Senior Facilities Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);

"Other Function" has the meaning given to it in clause 10.2(a)(ii);

"Outstanding Principal" means the principal amount outstanding at the Termination Date of each borrowing under the Senior Facilities Agreements;

"Passive UC Infrastructure Completion Certificate" means the completion certificate relating to the Passive User Charging Infrastructure issued by the Independent Certifier pursuant to clause 14.2(f) on installation and completion of the Passive User Charging Infrastructure by Project Co;

"Passive User Charging Infrastructure" means the components of the TfL User Charging System which Project Co is required to design, construct and install as part of the Works in accordance with this Agreement;

"Passive User Charging Infrastructure Design" has the meaning given to it in paragraph 2.1.1 of Part 1 (*User Charging Infrastructure*) of Schedule 14 (*User Charging Interface*);

"Passive User Charging Infrastructure Inspection Date" means a proposed date on or following which the Independent Certifier may inspect the Passive User Charging Infrastructure notified by Project Co;

"Payment Period" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Payment Report" has the meaning given to it in clause 27.3(a);

"Payment Report Response" has the meaning given to it in clause 27.4(a);

"Performance Category" means, in relation to Project Co's performance against each Key Performance Indicator, the following categories:

- (a) **"Non-Compliant"** which applies where Project Co's performance in relation to a Key Performance Indicator is worse than the "Lower Threshold";
- (b) **"Basic Compliance"** which applies where Project Co's performance in relation to a Key Performance Indicator is equal to or better than the "Lower Threshold" and worse than the "Target";
- (c) **"Value Added"** which applies where Project Co's performance in relation to a Key Performance Indicator is equal to or better than the "Target" and worse than the "Upper Threshold"; and

- (d) **"World Class"** which applies where Project Co's performance in relation to a Key Performance Indicator is equal to or better than the "Upper Threshold",

in each case as shown for that Key Performance Indicator in Annex 1 (*Key Performance Indicators*) to Part 2 (*Performance Planning and Reporting*) of Schedule 15 (*Design and Construction Performance Monitoring*);

"Performance Failure" means, in relation to any Key Performance Indicator, that the Performance Category applicable for such Key Performance Indicator is either "Basic Compliance" or "Non-Compliant";

"Performance Management Plan" has the meaning given to it in paragraph 1.4 of Part 2 (*Performance Management Plan*) of Schedule 15 (*Design & Construction Performance Monitoring*);

"Performance Points Notice" has the meaning given to it in paragraph 4.1 of Part 2 (*Performance Planning and Reporting*) of Schedule 15 (*Design and Construction Performance Monitoring*);

"Performance Requirement" has the meaning given to it in paragraph 1.1 of Schedule 20 (*Payment Mechanism*);

"Permanent Land Deed" means, once executed, the agreement between TfL, Silvertown Homes Limited and GLA Land and Property Limited entered into pursuant to clause 14 of the GLA/SHL Third Party Agreement;

"Permanent Rights" means such rights acquired by TfL and such restrictive covenants imposed by TfL prior to the Permit to Use Date pursuant to:

- (a) Article 22 (*Compulsory acquisition of rights*) of the DCO; or
- (b) the Third Party Agreements,

over the Affected Project Land for the purposes of the Project as are agreed or determined pursuant to clause 7.15 (*O&M Area*), including any additional rights acquired by TfL pursuant to clause 7.15(i);

"Permit to Use" means the permit to be issued by the Independent Certifier on satisfaction of the Permit to Use Requirements;

"Permit to Use Date" means:

- (a) in circumstances where the Permit to Use has been issued after the Planned Permit to Use Date, the date of issue of the Permit to Use by the Independent Certifier;
- (b) in circumstances where the Permit to Use has been issued prior to the Planned Permit to Use Date and:
 - (i) Project Co has served a notice in accordance with clause 18.2(k), the later of:
 - (A) the Proposed Early Opening Permit to Use Date (or if Project Co serves a notice in accordance with clause 18.2(l)(i), the Amended Proposed Early Opening Permit to Use Date); and
 - (B) the issue of the Permit to Use by the Independent Certifier; or

- (ii) Project Co has not served a notice in accordance with clause 18.2(k), the Planned Permit to Use Date;

"Permit to Use Requirements" means those requirements listed in Part 5 (*Permit to Use*) of Schedule 17 (*Handover and Permit to Use Requirements*);

"Permitted Borrowing" means, without double-counting, any:

- (a) advance to Project Co under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 3.3 (*TfL liabilities*)), provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to Project Co under any Committed Standby Facility which is made solely for the purpose of financing any cost overruns, increased expenses or loss of revenue which Project Co incurs, provided that such funds are not used in substitution for other sources of committed financing designated for those purposes; and
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 3.3 (*TfL liabilities*)) other amounts accrued or payable under the terms of Senior Financing Agreements,

except where the amount referred to in paragraph (a) to paragraph (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

"Persistent Breach" means a breach for which a Final Persistent Breach Warning Notice has been issued, which has:

- (a) continued for more than a further thirty (30) Working Days; or
- (b) recurred in two (2) or more months within the six (6) months period,

after the date on which such Final Persistent Breach Warning Notice is served on Project Co;

"Persistent Breach Warning Notice" has the meaning given to it in clause 34.5(a)(i);

"Personal Data" means personal data as defined in the Data Protection Laws which is supplied to Project Co by TfL or obtained by Project Co in the course of performing the Project;

"Personal Data Breach" has the meaning given to it in GDPR;

"PF2" means the Government's successor policy to the PFI for the delivery of infrastructure and services through public private partnerships;

"PFI" means a predecessor Government's Private Finance Initiative programme;

"Physical Damage Policies" means any policy referred to in paragraph 1 (*Contractors' "All Risks" Insurance*) of Part 1 (*Policies to be taken out during the Works*) and paragraph 1 (*Property damage insurance*) of Part 2 (*Policies to be taken out during the Availability Period*) of Schedule 21 (*Insurance*);

"PI Insurance" has the meaning given to it in clause 32.3(a);

"PLA" means the Port of London Authority;

"Planned Interventions Christmas Embargo" means the period and times notified by TfL each year in respect of the months of December and January;

"Planned Interventions Team" means the team within TfL made up of the NIMT, WCaP and STOT;

"Planned Permit to Use Date" means [REDACTED], subject to any postponement in accordance with clause 26.1(e), clause 26.2(d)(i), paragraph 9.6 of Schedule 30 (*Ground Conditions*) or paragraph 9.6 of Schedule 31 (*Consents*);

"Portfolio Cost Saving" means any insurance cost saving which arises from Project Co changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero (0);

"Post Termination Service Amount" means for the purposes of paragraph 2 (*Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Monthly Availability Payment which would have been payable in that month under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that month;
- (b) the Rectification Costs incurred by TfL in that month; and
- (c) (where relevant), the amount by which the Post Termination Service Amount for the previous month was less than zero (0);

"Potential Exposure" means, in relation to a Security Event, the maximum amount that TfL is likely to be obliged to pay under Schedule 27 (*Compensation on Termination*) if a termination of this Agreement were to occur during the relevant Agreement Year and which Project Co shall estimate and notify to TfL provided that if TfL does not agree with that estimate, such amount shall be deemed to be the amount calculated by TfL (acting reasonably) unless and until the amount is determined otherwise in accordance with the Dispute Resolution Procedure;

"Pre-emptive Temporary Access Period" has the meaning given in paragraph 2.11.2 of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*);

"Pre-Refinancing Equity IRR" means the nominal post-tax (i.e. post-tax with respect to Project Co, pre-tax with respect to Shareholders) Equity IRR calculated immediately prior to the Refinancing;

"Private Placement Facilities Agreement" means the agreement entitled the Private Placement Facilities Agreement between, amongst others, the Borrower and the Private Placement Lenders (as defined in the Master Definitions Agreement) dated on or about the date of this Agreement;

"Prohibited Act" means:

- (a) offering giving or agreeing to give to TfL or any other public body or any person employed by or on behalf of TfL or any other public body any gift or consideration of any kind as an inducement or reward;

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with any public body; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with any public body;
- (b) entering into this Agreement or any other contract with any public body in connection with which commission has been paid or has been agreed to be paid by Project Co or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to TFL;
- (c) committing any offence:
- (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts;
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with any public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud any public body;

"Project" means the design, construction, financing, maintenance and operation of a road tunnel and associated facilities and connecting roads connecting the Greenwich Peninsula and the Royal Docks as contemplated by this Agreement, including the carrying out of the Works and the provision of the Services;

"Project Accounts" means accounts referred to in and required to be established under the Senior Financing Agreements;

"Project Co Change" has the meaning given to it in paragraph 1.1 Part 2 (*Project Co Changes*) of Schedule 22 (*Change Procedure*);

"Project Co Change Notice" has the meaning given to it in paragraph 1.1 Part 2 (*Project Co Changes*) of Schedule 22 (*Change Procedure*);

"Project Co Cost Proposal" has the meaning given to it in paragraph 9.1(a) of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"Project Co Default" has the meaning given to it in clause 34.1 (*Project Co Default*);

"Project Co Detailed Works Programme" means the detailed works programme for the design and construction of the Works submitted by Project Co in accordance with clause 15.2 (*Project Co Detailed Works Programme*) (as amended from time to time in accordance with this Agreement);

"Project Co Initial Performance Management Plan" means the plan of that name set out in Annex 2 (*Project Co Initial Performance Management Plan*) of Part 2 (*Performance planning and reporting*) of Schedule 15 (*Design & Construction Performance Monitoring*);

"Project Co IPR" means all Intellectual Property Rights, whether existing at the Effective Date or arising hereafter, owned by Project Co or any of its Affiliates;

"Project Co Management Report" has the meaning given to it in paragraph 7.1 of Part 2 (*Reports*) of Schedule 16 (*Records and Reporting*);

"Project Co Management System" has the meaning given to it in paragraph 1.1 of Part 1 (*The Project Co Management System*) of Schedule 8 (*Management Systems*);

"Project Co Mobilisation Plan" means the mobilisation plan in relation to the Works set out in Schedule 3 (*Project Co Mobilisation Plan*);

"Project Co Related Party" means:

- (a) an officer, servant or agent of Project Co, or any Affiliate of Project Co and any officer, servant or agent of such a person;
- (b) any Sub-Contractor and any of their officers, servants or agents; and
- (c) any person on or at the Project Land at the express or implied invitation of Project Co (other than TfL or a TfL Related Party) other than Users;

"Project Co Representative" means the person appointed by Project Co pursuant to clause 4.9 (*Project Co Representatives*) and any replacement person;

"Project Co TCS" means the tunnel control system to be designed and constructed by Project Co pursuant Annex 2 (Requirements for Tunnel ME&P Systems) of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*);

"Project Co Tender Programme" means the programme for the design and construction of the Works set out in Part 1 (*Project Co Tender Programme*) of Schedule 2 (*Programme*), subject to any adjustments in relation to Compensation Events, Relief Events, Changes, Qualifying Changes in Law, Qualifying Events and Schedule 31 Qualifying Events;

"Project Co Test Plan" has the meaning given to it in paragraph 6.1.3 of Part 1 (*TfL Technology D&C Requirements*) of Schedule 11 (*TfL Technology Requirements*);

"Project Co's O&M Proposals" means Project Co's proposals for undertaking the Services set out in Part 5 (*Project Co's O&M Proposals*) of Schedule 18 (*Operation and Maintenance Requirements*);

"Project Co's Warranted Data" means:

- (a) Project Co's registered name is RiverLinx Limited;
- (b) Project Co's registered office 16 Hockley Court, 2401 Stratford Road, Hockley Heath, Solihull, B94 6NW;
- (c) Project Co's company registration number is 12164246;
- (d) Project Co's directors are Timothy John Hesketh, Nicholas William Moore, Kevin Brown, Rosanagh Frances Eden, Jose Angel Tamariz-Martel Goncer, Juan Ramón Pérez Pérez, Youn Jong Park, Alexander Cheasty Kornman and Mark Denning Bradshaw;
- (e) Project Co's shareholders (with respective shareholdings) are RiverLinx Holdings Limited [REDACTED];
- (f) registered name of Hold Co is RiverLinx Holdings Limited;
- (g) registered office of Hold Co is 16 Hockley Court, 2401 Stratford Road, Hockley Heath, Solihull, B94 6NW

- (h) company registration number of Hold Co is 12161321;
- (i) directors of Hold Co are Timothy John Hesketh, Nicholas William Moore, Kevin Brown, Rosanagh Frances Eden, Jose Angel Tamariz-Martel Goncer, Juan Ramón Pérez Pérez, Youn Jong Park, Alexander Cheasty Kornman and Mark Denning Bradshaw; and

[REDACTED]

"Project Co's Works Proposals" means:

- (a) Project Co's proposals for undertaking the Works set out in Part 3 (*Project Co's Works Proposals*) of Schedule 10 (*Design and Construction Requirements*); and
- (b) Project Co's draft user charging design set out in Annex 2 (*Project Co's draft user charging design*) of Part 1 (*User Charging Infrastructure*) of Schedule 14 (*User Charging Interface*);

"Project Data" means all materials, documents, drawings, plans, reports, models, formulae, calculations and other data of any nature acquired, used or brought into existence in any manner whatsoever by or on behalf of Project Co or its Sub-Contractors (or any of their agents or employees) for any purpose relating to the Project;

"Project Documents" means this Agreement, the Funders' Direct Agreement, the Independent Certifier's Deed of Appointment and the Collateral Warranties;

"Project Facilities" means all of the assets, facilities, systems and supporting infrastructure (excluding the Active User Charging Infrastructure and the Traffic Signalling) which Project Co is required to operate and/or maintain pursuant to the O&M Requirements, including the Project Roads and all assets, facilities and supporting infrastructure required to keep the Project Roads open for public use;

"Project Insurance Change" means any net increase (which shall be expressed as a positive number) or net decrease (which shall be expressed as a negative number) in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of Project Co or any Project Co Related Party;
- (b) the effect of any change in deductible unless the following applies:
 - (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
 - (ii) the deductible, further to such change, is either greater than or equal to the maximum in Part 2 (*Required Insurances in the Availability Period*) of Schedule 21 (*Insurance*);
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

"Project Land" means:

- (a) from the Effective Date until the Permit to Use Date, the Site, the Protective Work Areas and the Highway Areas; and
- (b) from the Permit to Use Date until the End Date, the O&M Area;

"Project Roads" means, on and from the Permit to Use Date, those roads within the O&M Area;

"Proposed Early Opening Permit to Use Date" has the meaning given to it in clause 18.2(k);

"Protective Measures" means appropriate technical and organisational measures which may include, but not be limited to, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures;

"Protective Works Areas" means the land which Project Co has the power to temporarily possess under the DCO in order to undertake survey, monitoring and any necessary protective works, including the land in yellow on the DCO Land Plans and the land identified as such on the Construction Land Drawings;

"Protestor" means any person engaged in protest action;

"Provisional O&M Area" means:

- (a) the areas labelled "Surface and Sub-Surface" on the Operational Land Drawings; and
- (b) the areas labelled "Sub-Surface Only" on the Operational Land Drawings limited to the upwards extents of the upper line of the tunnel labelled on drawings ST150030-ATK-ZZZ-ZZ-DRG-ZZ-4013 and ST150030-ATK-ZZZ-ZZ-DRG-ZZ-4014 of the engineering section drawings and plans contained in document reference 2.8 of the DCO and subject to the upwards vertical deviation limits given in Article 5(2)(b) of the DCO (*Limits of deviation*);

"PTU Inspection Date" means a proposed inspection date for the Independent Certifier to carry out an inspection of the Works the purpose of which is to determine whether to issue the Permit to Use;

"Public Procurement Termination Event" means if a court determines that one (1) or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 has occurred;

"Public Sector Body" means all Ministers of the Crown, the Mayor of London (or his statutory successor), the Greater London Authority (or its statutory successor), government departments, crown agencies and authorities, Local Boroughs or similar public sector bodies and any body corporate (other than a limited liability company) owned or controlled by any of them;

"Quality and Assurance Director" has the meaning given to such term in paragraph 4.1 of Part 1 (*Project Co's Management System*) of Schedule 8 (*Management System*);

"Qualifying Bank Transaction" means:

- (a) the syndication by a Senior Funder or EBL Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements or EBL Financing Agreements;
- (b) the grant by a Senior Funder or EBL Funder of any rights of participation, or the disposition by a Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements or EBL Financing Agreements in favour of:
 - (i) any other Senior Funder or EBL Funder;
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - (iii) a local authority or public authority;
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two (2) years) assets of at least [REDACTED] (or its equivalent in any other currency at the relevant time);
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least [REDACTED] (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking;
 - (vii) a Regulated Collective Investment Scheme;
 - (viii) any Qualifying Institution; or
 - (ix) any other institution in respect of which the prior written consent of TfL has been given;
- (c) the grant by a Senior Funder or EBL Funder of any other form of benefit or interest in either the Senior Financing Agreements, EBL Financing Agreements or the revenues or assets of Project Co, whether by way of security or otherwise, in favour of:
 - (i) any other Senior Funder or EBL Funder;
 - (ii) any institution specified in paragraphs (b)(ii) to paragraph (b)(vii) above (inclusive);
 - (iii) any Qualifying Institution; or
 - (iv) any other institution in respect of which the prior written consent of TfL has been given;

"Qualifying Change in Law" means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law;

- (c) a General Change in Law which comes into effect during the Availability Period and which requires any Qualifying Works; and/or
- (d) a Brexit Tariff Change in Law,

which was not foreseeable as at the Effective Date;

"Qualifying Event" has the meaning given to it in Schedule 30 (*Ground Conditions*);

"Qualifying Institution" means a trustee for any other entity listed in paragraph (b)(ii) to (viii) or (c)(ii) or (iii) of the definition of Qualifying Bank Transaction other than a trustee whose acquisition, grant or disposition is made in concert with the Shareholders and/or the Subordinated Lenders for the purpose of giving rise to a Refinancing Gain;

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero (0) that is not an Exempt Refinancing;

"Qualifying Variation" means, either:

- (a) a change in the Works and/or the Services in respect of which either a Tfl Change Notice or a Project Co Change Notice has been served and, in the case of:
 - (i) a Tfl Change Notice, Tfl has issued a Change Confirmation Notice and, where Project Co is not funding all or part of the required Capital Expenditure, Tfl has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and
 - (ii) a Project Co Change Notice, the change has been accepted by Tfl; or
- (b) a Qualifying Change in Law,

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or Services or Qualifying Change in Law have become unconditional in all respects;

"Qualifying Works" means work of alteration, addition, demolition or extension or variation in the quality or function of the Project Facilities which is neither maintenance work nor work which Project Co would otherwise be required to undertake to comply with its obligations under this Agreement;

"Quality Management Systems" has the meaning given to it in paragraph 1.1 of Part 2 (*Quality Management Systems*) of Schedule 8 (*Management Systems*);

"Ramping Factor" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Rating Agency" means Standard & Poor's Rating Services, Fitch or Moody's Investors Services Inc. and any other rating agency nominated by Tfl;

"Recipient" has the meaning given to it in clause 31.1(b);

"Rectification Amounts" means:

- (a) the estimate of the aggregate costs required to undertake any Rectification Works as identified in the Interim Handback Report that has been endorsed as "received" or "received with comments" by Tfl pursuant to the Review Procedure or the Final Handback Report prepared by Tfl pursuant to paragraph 10 (*Final Handback Report*) of Schedule 19 (*Handback Requirements*); plus

- (b) the costs of performing any programmed maintenance to be carried out pursuant to Schedule 18 prior to the Expiry Date;

"Rectification Costs" means, for the purposes of any Termination Date that occurs after the Permit to Use Date, an amount equal to the reasonable and proper costs incurred by TfL in a particular month or part of a month in ensuring that the Project Facilities are available;

"Rectification Works" means the works necessary or required to be carried out in order to renew, reconstruct, upgrade or improve:

- (a) the Elements so that they have the minimum Residual Life specified in Annex 1 (*Handback Elements*) of Schedule 19 (*Handback Requirements*); and
- (b) the Project Facilities so that they comply with paragraph 1.1.1 of Schedule 19 (*Handback Requirements*);

"Referendum" means the referendum on whether the United Kingdom should remain a member of the European Union, held on 23 June 2016 pursuant to the European Union Referendum Act 2015;

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement and/or the EBL Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement and/or the Equity LC);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of the Financing Agreements (other than the Subordinated Financing Agreements and/or the EBL Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements and/or the EBL Financing Agreement) or this Agreement, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of paragraph **Error! Reference source not found.**, paragraph **Error! Reference source not found.** or paragraph **Error! Reference source not found.** above or which has the effect of limiting Project Co's or any Affiliate's ability to carry out any of paragraph **Error! Reference source not found.**, paragraph **Error! Reference source not found.** or paragraph **Error! Reference source not found.** above;

"Refinancing Gain" means an amount equal to the greater of zero (0) and $((A-B) - C)$, where:

- A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project in accordance with Schedule 25 (*Base Case*)) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining Agreement Period following the Refinancing;
- B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and

using the Base Case as updated (including as to the performance of the Project in accordance with Schedule 25 (*Base Case*)) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining Agreement Period following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

"Refinancing Notice" has the meaning given to it in paragraph 3.1 of Schedule 26 (*Refinancing*);

"Regulated Collective Investment Scheme" has the meaning given to it in the rules from time to time of the Financial Services Authority;

"Reinstatement Outline" has the meaning given to it in clause 32.7(b)(i);

"Reinstatement Plan" has the meaning given to it in clause 32.7(b)(v);

"Reinstatement Works" has the meaning given to it in clause 32.7(b)(i);

"Related Dispute" has the meaning given to it in paragraph 6.1 of Schedule 23 (*Dispute Resolution Procedure*);

"Related Dispute Adjudicator" has the meaning given to it in paragraph 6.1 of Schedule 23 (*Dispute Resolution Procedure*);

"Relevant Assumptions" means the assumptions that:

- (a) the sale of Project Co is on the basis that there is no default by TfL;
- (b) the sale is on a going concern basis;
- (c) no restrictions exist on the transfer of share capital;
- (d) that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded,

but that otherwise the actual state of affairs of Project Co and the Project is taken into account;

"Relevant Authority" means:

- (a) any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union; and
- (b) any other person (other than TfL in its capacity as counterparty to the Project Documents and any counterparty to a Third Party Agreement acting in their capacity as counterparty to a Third Party Agreement) whose authority is required for the carrying out of all or any part of the Project or which has any authority or right in respect of the Works or any of the Project Facilities under any Applicable Requirements;

"Relevant Event" means any:

- (a) TfL Change in relation to which TfL elects for payments to be made via an adjustment to the Availability Payments;

- (b) Qualifying Change in Law;
- (c) Compensation Event; or
- (d) other matter as a result of which this Agreement specifies there shall be an adjustment to the Availability Payment in accordance with Schedule 25 (*Base Case*);

"Relevant Incident" has the meaning given to it in clause 32.7(b);

"Relevant Insurance" means the Required Insurances and any other insurances as may be required by Law other than:

- (a) the Construction Period Insurance; and
- (b) the Business Interruption Cover, except to the extent that it relates to Unavoidable Fixed Costs;

"Relevant Insurance Inception Date" means the date on which the Relevant Insurance is first providing active insurance cover to Project Co, being a date no earlier than the Permit to Use Date;

"Relevant Insurance Market" means the insurance market which insures the majority of all PFI/PF2 projects across all of the PFI/PF2 sectors (as determined by the number of PFI/PF2 projects) and, as of Effective Date, the Relevant Insurance Market is in the United Kingdom;

"Relevant Payment" has the meaning given to it in clause 32.8(c);

"Relevant Person" means a Shareholder and any of its Affiliates;

"Relevant Proceeds" has the meaning given to it in clause 32.7(b)(vi)(C);

"Relevant Surveys" means the surveys prepared by:

- (a) Soil Engineering Geoservices Limited and documented in volume 1 to volume 5 (inclusive) and the appendices of the document titled "Report on Ground Investigation for Silvertown Tunnel";
- (b) 40Seven Limited in relation to Areas A (LB Newham) and Areas B and C (RB Greenwich) and documented in the document titled "Utility Survey Reports, drawings and CAD files"; and
- (c) WSP in relation to additional ground investigation from December 2017 to October 2018.

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any accidental loss or damage to the Works or the Project Facilities;
- (d) any failure or shortage of power, fuel or transport;

- (e) any blockade or embargo which does not constitute a Force Majeure Event;
- (f) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other dispute,generally affecting the construction industry, road operations and maintenance industry or a significant sector of them; and
- (g) the discovery of Unexploded Ordnance as specified in clause 13.16(d),

unless any of the events listed in paragraph (a) to paragraph (g) above (inclusive) arises (directly or indirectly) as a result of any wilful default or wilful act of Project Co or any Project Co Related Party;

"Remedial Action Plan" has the meaning given in paragraph 3.1 of Part 2 (*Performance planning and reporting*) of Schedule 15 (*Design & Construction Performance Monitoring*);

"Renewed Authorisation Period" has the meaning given to it in clause 10.1(f);

"Representative" has the meaning given to it in the Master Definitions Agreement;

"Request for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

"Required Action" has the meaning given to it in clause 46.1(c);

"Required Insurance" means the insurances specified in Part 1 (*Policies to be taken out during the Works*) and Part 2 (*Policies to be taken out during the Availability Period*) of Schedule 21 (*Insurance*);

"Residual Life" means the period of time that the Element can reasonably be expected to continue to safely function and perform as intended with regular maintenance but without renewal, replacement or reconstruction of the whole Element or a significant component of the Element;

"Restricted Zone" means any area of land which is burdened by a restrictive covenant in favour of TfL and where such restrictive covenant relates to the protection of the Project Facilities;

"Retained Amounts" has the meaning given in paragraph 11.1 of Schedule 19 (*Handback Requirements*);

"Retained DCO Functions" means the DCO Functions that are identified in paragraph 2 (*DCO allocation table*) of Part 1 (*Development Consent Order*) of Schedule 5 (*Allocation of DCO and Other Requirements*) as:

- (a) "Retained DCO Functions"; and

- (b) "Transferred DCO Functions" to the extent of the residual functions, obligations and rights outside the "Scope of Transfer" identified in such paragraph 2 (*DCO allocation table*) (if any);

"Retained Third Party Functions" means those functions, obligations, rights and benefits of TfL under the Third Party Agreements that are identified in paragraph 3 (*Allocation of Third Party Agreements*) of Part 2 (*Third Party Agreements*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*) as:

- (a) "Retained Third Party Functions"; and
- (b) "Transferred Third Party Functions" to the extent of the residual functions, obligations, rights and benefits outside the "Scope of Transfer" identified in such paragraph 3 (*Allocation of Third Party Agreements*) (if any);

"Revenue" means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of Project Co;

"Review Procedure" means the review procedure set out in Part 2 (*Review Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Review Submission" has the meaning given in paragraph 1.2 of Part 2 (*Review Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Review Submission Schedule" has the meaning given to such term in paragraph 4.1 of Part 2 (*Review Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Revised Senior Debt Termination Amount" means, subject to clause 3.3 (*TfL liabilities*):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from Project Co to the Senior Funders under the Senior Financing Agreements including in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including for the avoidance of doubt any Make-Whole Payment), payable by Project Co to the Senior Funders as a result of a prepayment of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to Project Co and the Senior Funders mitigating all such costs to the extent reasonably possible (unless the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the relevant Senior Financing Agreements),

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of Project Co on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Financing Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co as a result of prepayment of amounts outstanding in respect of

Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;

(iv) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by TfL to Project Co as a result of enforcing any other rights they may have; and

(v) all APB Distributions;

"RIDDOR" means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013;

"Road Safety Audit" means a staged evaluation of the safety of changes to a highway during design and implementation of the relevant works to identify potential road safety problems that may affect any type of road user and to suggest measures to eliminate or mitigate those problems;

"RPI" means

(a) the RPI all items index published by the Office for National Statistics; or

(b) on cessation/modification of the index referred to in paragraph (a) above, an appropriate equivalent index agreed by the Parties at the time or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the modification not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"RTS Regulations" means the Road Tunnel Safety Regulations 2007;

"Safety Documentation" means the Operation and Maintenance Strategy, Operation Strategy, Asset Management Strategy, Tunnel Safety Management System, Incident Response Strategy, Safety Case Report, Safety Consultation Document, EPG Terms of Reference and any other document defined as Safety Documentation in the RTS Regulations;

"Safety Obligations" means all obligations concerning health and safety arising under the Applicable Requirements (including any duty of care arising at Law or mandatory code of practice in Great Britain or other applicable jurisdiction);

"Safety Officer" means the person appointed pursuant to paragraph 4.2 of Part 2 (*Road Tunnel Safety Regulations*) of Schedule 5 (*Allocation of DCO and Other Requirements*) or replaced pursuant to paragraph 6 (*Replacement Officer*) of Part 2 (*Road Safety Tunnel Safety Regulations*) of Schedule 5 (*Allocation of DCO and Other Requirements*);

"Sample Inspections" has the meaning given to it in the NRSWA Code of Practice entitled Code of Practice for Inspections;

"Schedule 31 Qualifying Event" has the meaning given to it in Schedule 31 (*Consents*);

"Schedule of Condition" means the document labelled "Schedule of Condition" in the Data Room Information;

"Schedule of Costs" means the schedule of costs included in Annex 1 (*Schedule of Costs*) of Schedule 22 (*Change Procedure*);

"Schedule of Payments" means:

- (a) in relation to a Fixed Price Quotation, the schedule of payments to be made by TfL in respect of a TfL Change provided by Project Co (which may, if appropriate, consist of a single lump sum payment or periodic payments); or
- (b) where there is no Fixed Price Quotation, a schedule estimated payments and dates when such payments will be made by TfL in respect of a TfL Change provided by Project Co,

in each case in accordance with paragraph 3.2(b) or paragraph 6.2(h) of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*)(as applicable);

"Section of the Site" means each of the areas numbered on the Construction Land Drawings collectively constituting the Site, but in all cases excluding any:

- (a) Highways Areas (but without prejudice to clause 17.1(n));
- (b) Protective Works Areas; or
- (c) areas shaded grey on the Construction Land Drawings,

located within that Section of the Site;

"Security Event" has the meaning given to it in clause 42.6(b);

"Security Trustee" means Crédit Agricole Corporate and Investment Bank or its successor or replacement from time to time;

"Senior Debt" means the financing provided by the Senior Funders under the Senior Financing Agreements;

"Senior Debt Rate" means, at any given time, the blended interest rate that reflects the aggregate interest payable by Project Co on the outstanding Senior Debt at that time or such other lower rate as the Parties may agree;

"Senior Debt Service Costs" means the interest and debt service costs incurred in respect of the Senior Financing Agreements, less:

- (a) sums which are in arrears; and
- (b) all sums reserved by Project Co and which Project Co is entitled to use to make such payments, without breaching the Senior Financing Agreements (disregarding any changes to such amounts or dates that have not been approved by TfL other than changes giving rise to an Additional Permitted Borrowing);

"Senior Facilities Agreements" means the Commercial Facilities Agreement, the K-EXIM Facilities Agreement, the K-SURE Facilities Agreement and the Private Placement Facilities Agreement;

"Senior Financing Agreements" means the Senior Facilities Agreements, the Common Terms Agreement, the Master Definitions Agreement, the Intercreditor Deed, Senior Hedging Documents, the Borrower Security Agreement, the Account Bank Agreement, the HoldCo Security Agreement, the Funders' Direct Agreement, the D&C Direct Agreement and any Fee Letter as at the Effective Date or, without prejudice to clause 3.3 (*TfL liabilities*), as amended as allowed by clause 3.2 (*Financing Agreements*);

"Senior Funder" means a person providing finance to Project Co under the Senior Financing Agreements;

"Senior Hedging Documents" means any or all of the Senior Hedging Documents as defined in the Master Definitions Agreement;

"Senior Representatives" has the meaning given to it in paragraph 2.1 of Schedule 23 (*Dispute Resolution Procedure*);

"Sensitive Built Asset" means a built asset, as a whole or in part, that may be of interest to a threat agent for hostile, malicious, fraudulent and/ or criminal behaviours or activities;

"Service Requirements" has the meaning given to it in paragraph 1.1 of Schedule 20 (*Payment Mechanism*);

"Service Shortfall Deductions" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Service Shortfall Point Conversion Rate" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Service Tunnel" means a tunnel Structure installed by trench-less technology beneath a highway for any purpose (and such Service Tunnel can be regarded as a service crossing if the internal diameter is two (2) metres or less);

"Services" means all the activities to be carried out in accordance with this Agreement following the Permit to Use Date including the operating and maintaining of the Project Facilities to satisfy the O&M Requirements and Project Co's O&M Proposals;

"Services UC Interface Protocol" has the meaning given to it in paragraph 1.1 of Part 3 (*Services UC Interface Protocol*) of Schedule 14 (*User Charging Interface*);

"SGN Works" has the meaning given to it in paragraph 4.3.1 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Shareholder" means any person from time to time holding share capital in Project Co or Hold Co;

"SHW" means the Specification for Highway Works;

"Signalling Commissioning Certificate" means, in relation to each Traffic Signalling System, the commissioning certificate relating to the Traffic Signalling System issued by TfL pursuant to clause 13.8(e) following the commissioning and testing of the Traffic Signalling to certify to completion of the design, construction and installation of the Traffic Signalling in accordance with the D&C Requirements and the terms of this Agreement;

"Signalling Commissioning Date" means, in relation to each Traffic Signalling System, the date (as applicable):

- (a) two (2) Working Days after the date on which TfL has endorsed the Signalling Documentation as "received" or "received with comments" in accordance with the Review Procedure; or
- (b) seven (7) Working Days after the date on which Project Co issues a notice pursuant to clause 13.8(i);

"Signalling Commissioning Period" means, in relation to each Traffic Signalling System, a continuous period of fifteen (15) Working Days commencing on the Signalling Commissioning Date;

"Signalling Documentation" means all details of the signalling configuration software, factory and site acceptance tests, all other inspection and test documentation, tagging information, as built information, O&M manuals, Health and Safety File information and any other Design Data in relation to each Traffic Signalling System;

"Site" means:

- (a) the areas within the red line boundary shown on the Construction Land Drawings but excluding:
 - (i) the Protective Works Areas and the Highway Areas (but without prejudice to clause 17.1(n));
 - (ii) any areas shaded grey on the Construction Land Drawings; and
 - (iii) any Sections of the Site removed pursuant to clause 7.4(h);³ and
- (b) the West Parkside Construction Land;

"Site Access Date" means

- (a) in respect each Section of the Site other than the West Parkside Construction Land, the date which is specified as a "Site Access Date" for that Section of the Site in the Site Access Programme; and
- (b) in respect of the West Parkside Construction Land, the date specified in paragraph 4.16.2(c) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Site Access Expiry Date" means:

- (a) in respect of each Section of the Site other than the West Parkside Construction Land, the date which is specified as a "Site Access Expiry Date" for that Section of the Site in the Site Access Programme, subject to any amendment required pursuant to clause 7.4(d); and
- (b) in respect of the West Parkside Construction Land, the date specified in paragraph 4.16.2(d) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Site Access Programme" means the table set out in paragraph 1 (*Site Access Programme*) of Part 2 (*Site Access Programme*) of Schedule 4 (*Land Requirements*);

"Site Leases" means the Carlsberg Tetley Site Lease, Diverse Ventures Site Lease and the Thames Wharf Site Lease;

"Site Materials" has the meaning given to it in clause 13.11 (*Site Materials*);

"Snagging Completion Certificate" means a certificate issued by TfL in the form set out in Annex 2 (*Snagging Completion Certificate*) of Part 5 (*Permit to Use*) of Schedule 17 (*Handover and Permit to Use Requirements*);

"Snagging Item" means minor defects, minor deficiencies or minor omissions in the Works which:

³ Note to Tenderers: the definition of Site may need to be adjusted to the extent the Preferred Bidder includes as part of its bid submission requirements that there are areas within the Order Limits that the Tenderer does not require.

- (a) do not prevent Project Co from operating and maintaining the Project Facilities safely and in accordance with all Applicable Requirements, Necessary Consents and Good Industry Practice;
- (b) do not prevent Project Co from operating and maintaining the Project Facilities in accordance with the DCO;
- (c) do not introduce risks which could be injurious to health or cause damage to property;
- (d) will not, either directly or through works required to complete or rectify the relevant defect, deficiency or omission, affect Project Co's ability to keep the Project Roads open for public use or interfere with the Services;
- (e) are unlikely to have a detrimental effect on the reputation of TfL;
- (f) would not result in any breach of the Performance Requirements or Service Requirements any time during the first three (3) months following the Permit to Use Date; and
- (g) would not impact on TfL's ability to operate the Active User Charging Infrastructure and collect User Charges;

"Snagging List" has the meaning given to it in clause 18.3 (*Snagging Items*);

"Snagging Programme" has the meaning given to it in clause 18.3 (*Snagging Items*);

"Special Event" means any sporting, social entertainment, seasonal or other planned event which is likely to affect significantly traffic flows on the Highway Areas from the Effective Date until the Permit to Use Date and on Project Roads from the Permit to Use Date until the End Date;

"Specification Appendix" means an appendix providing project specific information referred to in Volume 1 (*Specification for Highway Works*) of the MCHW prepared in accordance with the guidance provided in Volume 2 (*Notes for Guidance on the Specification for Highway Works*);

"Specification for Highway Works" means Volume 1 of the Manual of Contract Documents for Highway Works;

"Specific Change in Law" means any Change in Law which specifically refers to:

- (a) the provision of works or services the same as or similar to the Works or the Services; or
- (b) the holding of shares in companies whose main business is providing works or services the same as or similar to the Works or the Services;

"SRN" means the Strategic Road Network;

"Statutory Provisions" means:

- (a) the provisions of the statutes and regulations set out in Part 3 (*Authorised Functions*) of Schedule 5 (*Allocation of DCO and Other Requirements*);
- (b) subject to clause 10.3(d), the provisions of any statute or regulation which TfL has required Project Co to exercise pursuant to clause 10.3(c); and

- (c) subject to clause 10.3(d), the provisions of any statute or regulation which TfL has authorised Project Co to exercise pursuant to clause 10.3(a);

"Statutory Undertaker" means an undertaker for the purposes of part III of the NRSWA as defined in section 48(4) of the NRSWA;

"Step Change" means a change in O&M Standards which constitutes a variation to or departure from the O&M Standards in their form immediately prior to such change, the implementation of which:

- (a) taken in isolation from any other O&M Standards has caused an increase to the costs reasonably and properly incurred by Project Co in relation to the Services in excess of [REDACTED] (Indexed); or
- (b) in aggregate has caused an increase to the costs reasonably and properly incurred by Project Co in relation to the Services in excess of [REDACTED] (Indexed), or, if such threshold has already been reached, causes a further increase to such costs;

"STOT" means the streets traffic order team within the NIMT responsible for drafting, processing and issuing Traffic Regulation Orders and Temporary Traffic Management Orders;

"Strategic Road Network" means the TLRN and other roads designated as strategic roads in the Traffic Management (Strategic Roads in Greater London) Designation Order 2005, pursuant to the Traffic Management Act 2004;

"Street Authority" has the meaning given to it in section 49(1) of the NRSWA;

"Street Works Licences" has the meaning given to it in Section 50(1) of the NRSWA;

"Structure" means any temporary or permanent:

- (a) bridge, tunnel, buried structure, subway underpass, culvert or any other structure supporting the highway with a clear span or internal diameter greater than 0.9 metres;
- (b) overhead crossing carrying a conveyor or utility service;
- (c) access gantry;
- (d) earth retaining structure where the effective retained height (i.e. the level of the fill at the back of the structure above the finished ground level in front of the structure) is greater than one point five (1.5) metres;
- (e) reinforced/strengthened soil/fill structure with hard facings, where the effective retained height is greater than one point five (1.5) metres;
- (f) reinforced/strengthened soil/fill which is an integral part of another highway structure;
- (g) portal or cantilever sign and/or signal gantry;
- (h) cantilever mast for traffic signal and/or speed camera;
- (i) lighting column;
- (j) high mast of more than twenty (20) metres in height (i.e. from top of post to underside of flange plate) for lighting;

- (k) any mast (other than a mast referred to in paragraph (h) and paragraph (j) above) including for any mast for any camera (including CCTV), radio and telecommunication transmission equipment;
- (l) catenary lighting support system;
- (m) environmental barrier;
- (n) proprietary manufactured structure; and
- (o) highway signs on one or more posts, where such post or posts exceed 7 metres in height (i.e. the vertical distance from top of post to bottom of flange plate or top of foundation, whichever is the lesser);

"SU Authorised Function" means each of the functions listed in paragraph 2 (*NRSWA*) of Part 3 (*Authorised Functions*) of Schedule 5 (*Allocation of DCO and Other Requirements*) conferred on TfL by the Statutory Provisions and which Project Co is authorised by TfL from time to time to exercise pursuant to clause 10.1(a) or clause 10.1(f), as the case may be;

"Sub-Contract" means any sub-contract entered into by a Sub-Contractor;

"Sub-Contractor" means any sub-contractor (of any tier) of Project Co;

"Sub-Contractor Breakage Costs" means Losses that have been or will be reasonably and properly incurred by Project Co as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of the Services or the completion of the Works, including:
 - (i) any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
 - (iv) redundancy payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) Project Co and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

"Subordinated Financing Agreements" means the Shareholder Support Agreement as defined in the Master Definitions Agreement;

"Subordinated Lender" means a person providing finance under a Subordinated Financing Agreement;

"Suitable Substitute Project Co" means a person approved by TfL (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under this Agreement; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Project Co under this Agreement;

"Sustainability Statement" has the meaning given to such term in paragraph 5.1 of Part 4 (*Environmental Management Systems*) of Schedule 8 (*Management Systems*);

"Supplier" has the meaning given to it in clause 31.1(b);

"Supplementary Works" means all of the Works which do not form part of the Project Facilities (including, for the avoidance of doubt, Works to be performed by Project Co pursuant to the Transferred Third Party Functions) but excluding the Additional Assets;

"Surplus Land Lease" means, once executed, the lease granted by TfL to Silvertown Homes Limited and/or GLA Land and Property Limited entered into pursuant to clause 26 of the GLA/SHL Third Party Agreement;

"TAF" means a Technical Appraisal Form;

"Tax" means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Effective Date and imposed by a Relevant Authority;

"TDSCG" means the tunnel design and safety consultation group referred to in the TfL TDSCG Terms of Reference;

"TDSCG Consultation Document" means the document submitted and updated to TfL pursuant to paragraph 1 of Part 4 (*TDSCG and EPG*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"TDSCG Terms of Reference" means the document submitted and updated to TfL pursuant to paragraph 1 of Part 4 (*TDSCG and EPG*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Technical Adviser" means any adviser appointed by the Senior Funders for the purposes of providing technical support or reports;

"Technical Appraisal Form" means a technical appraisal form in the form set out in Annex 2 (*Technical Appraisal Forms*) of Part 1 (*Certification Procedure*) of Schedule 9 (*Certification and Review Procedure*);

"Technical Requirements" means the D&C Requirements, the O&M Requirements and any other standard or specification referred to or set out in this Agreement;

"Temporary Traffic Management Measures" means the use of any temporary Traffic Signs or other measures to temporarily close or reduce the width of any highways, roads, streets, carriageways, footways, footpaths or cycleways or the introduction of any other temporary traffic restrictions;

"Tender Costs" means the reasonable and proper costs of TfL incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement;

"Tender Process" means the process by which Tfl requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new service provider, in accordance with paragraph 2 (*Retendering Procedure*) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*);

"Tender Process Monitor" means a third party appointed by Project Co under paragraph 2.1(f) of Part 2 (*Compensation on Termination for Project Co Default*) of Schedule 27 (*Compensation on Termination*);

"Tendered Price" means the price calculated pursuant to the report on tenders in accordance with paragraph 5 (*Tendered Prices*) of Part 1 (*Tfl Changes*) of Schedule 22 (*Change Procedure*);

"Termination Date" means the date of any early termination of this Agreement in accordance with its terms;

"Termination Date Discount Rate" means a discount rate expressed as:

$$[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1]$$

where:

real base case project IRR = the real pre-tax Project internal rate of return as set out in the Base Case;

i = the agreed assumed forecast rate of increase in RPI for the remaining Agreement Period;

Gilt A = is the real yield to maturity as at Financial Close on a benchmark government Gilt instrument of the same maturity as the average life as determined from the Base Case as at Financial Close of the Senior Debt;

Gilt B = is the real yield to maturity as at the Termination Date on a benchmark government Gilt instrument of the same maturity as the average life as determined from the Base Case as at the date of Termination of the Senior Debt outstanding on that date;

"Termination Notice" means a notice of termination issued in accordance with this Agreement;

"Termination Service Shortfall Threshold" means [REDACTED];

"Termination Sum" means any compensation payable by Tfl to Project Co on an early termination of this Agreement under Schedule 27 (*Compensation on Termination*), excluding the Adjusted Highest Compliant Tender Price;

"Termination Unavailability Threshold" means [REDACTED];

"Tfl Cable Ducting" means the cable ducting required pursuant to paragraph 4 (*Tfl Cables*) of Part 1 (*Tfl Technology D&C Requirements*) of Schedule 11 (*Tfl Technology Requirements*);

"Tfl Change" has the meaning given to it in paragraph 1.1 of Part 1 (*Tfl Changes*) of Schedule 22 (*Change Procedure*);

"TfL Change Notice" has the meaning given to it in paragraph 1.2 of Part 1 (*TfL Changes*) of Schedule 22 (*Change Procedure*);

"TfL Communications and Engagement Manager" means a TfL member of staff with responsibility for liaison between Project Co and relevant communications functions within TfL, as notified by TfL to Project Co from time to time;

"TfL Default" has the meaning given to it in clause 33.1 (*TfL Default*);

"TfL Default Termination Sum" has the meaning given to it in paragraph 1.2 of Part 1 (*Compensation on Termination for TfL Default*) of Schedule 27 (*Compensation on Termination*);

"TfL Group" means Transport for London and any member of its Group;

"TfL Non-Payment Threshold" means:

- (a) prior to the Permit to Use Date, an amount equivalent to the Maximum Annual Availability Payment divided by six (6); or
- (b) following the Permit to Use Date, an amount equivalent to the Maximum Annual Availability Payment for the then current Agreement Year multiplied by $(IF1_t + MMAPUF_t)$ (each as defined in paragraph 2 of Schedule 20 (*Payment Mechanism*), where t is the first Payment Period for the then current Agreement Year) and then divided by twelve (12);

"TfL Payment Report" has the meaning given to it in clause 27.3(c);

"TfL Policies" means TfL's 'alcohol and drugs policy' and TfL's 'workplace violence policy', each as may be amended by TfL and communicated to Project Co from time to time;

"TfL Press Office" means the TfL department with responsibility for responding to journalist enquiries;

"TfL Property" has the meaning given to it in clause 30.1(a);

"TfL Related Party" means an officer, agent, contractor, employee or sub-contractor (of any tier) of TfL acting in the course of his office or employment or appointment (as appropriate) but excluding in each case Project Co, any Project Co Related Party, any surveyors undertaking, or that have previously undertaken, the Relevant Surveys and the Independent Certifier;

"TfL Reporting Period" means a period of twenty eight (28) days during the Agreement Period, provided that:

- (a) the first such period shall commence on the Effective Date and expire on such date as TfL shall notify to Project Co;
- (b) each such period shall thereafter start on the day following the last day of the preceding such period;
- (c) the first and last such period in any Agreement Year may be varied by up to 28 days by notice from TfL to Project Co; and
- (d) the last such period shall end on the End Date.

"TfL Representative" means the representative appointed by TfL pursuant to clause 4.8 (*Representatives*);

"TfL Signalling System" means the "Urban Traffic Control System for Greater London" provided by TfL, being a system for the central control of electronic traffic control devices in Greater London, which will usually comprise primarily, but not necessarily exclusively, traffic signal installations;

"TfL SQA Traffic Regulation Order Documents" means those documents listed in Annex 1 (*Traffic Regulation Order SQA Documents*) of Schedule 13 (*Network Occupancy*);

"TfL TCS" means the tunnel control system used by TfL for the operation and maintenance of its tunnels, including the tunnel CCTV and audio systems which, as at the date of this Agreement, is Horus;

"TfL Traffic Model" means the SATURN model output files provided in the Data Room Information;

"TfL UC Installation Period" means, subject to clause 14.2 (*TfL UC Installation Period*), a continuous period of six (6) consecutive months commencing on the TfL UC Installation Period Commencement Date, as varied pursuant to clause 14.2(k), clause 14.2(l), clause 14.2(n) or clause 14.2(o);

"TfL UC Installation Period Commencement Date" means the later of:

- (a) the proposed date notified to TfL by Project Co in accordance with clause 14.2(c); and
- (b) the date of issue of the Passive UC Infrastructure Completion Certificate;

"TfL User Charging System" means the Active User Charging Infrastructure and the Passive User Charging Infrastructure and any interface system between the two (2);

"TfL's TDSCG Consultation Document" means the document labelled TDSCG Consultation Document in the Data Room Information;

"TfL's TDSCG Terms of Reference" means the document labelled TDSCG Terms of Reference in the Data Room Information;

"Thames Wharf Site Lease" means the document at Annex 4 (*Thames Wharf Site Lease*) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Third Party Agreements" means the agreements listed in paragraph 1.1 of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*);

"Third Party Development" means any project, proposal, development, works or like activity carried out by or on behalf of any third party (including where TfL is acting in a joint venture with another third party) other than TfL acting independently or Project Co, adjacent to, or which otherwise affects or may potentially affect, any part of the Project, but does not include the Knight Dragon Design District Works;

"Third Party IPR" means all Intellectual Property Rights, whether existing at the Effective Date or arising hereafter, other than the Project Co IPR or any Intellectual Property Rights owned by TfL;

"Third Party Agreement Statement of Conformity" means, in relation to one or more Transferred Third Party Functions, a written statement prepared by Project Co:

- (a) confirming that Project Co has complied with such Transferred Third Party Functions; and

- (b) summarising how Project Co considers it has complied with such Transferred Third Party Functions;

"Threshold Equity IRR" means [REDACTED]

"TLRN" means the Transport for London Road Network;

"TLRS" means the Transport for London Lane Rental Scheme;

"TMA Codes of Practice" means the codes of practice issued from time to time pursuant to the Traffic Management Act;

"TMAN" has the meaning given to it in paragraph 2.2.1 of Schedule 13 (*Network Occupancy*);

"TMA Regulations" means regulations issued pursuant to the Traffic Management Act;

"Total Service Shortfall Deduction" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Total Unavailability Deduction" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"TPA Survey Contracts" means the agreement, as part of the Monitoring Agreement, to commission certain monitoring activities and condition surveys pursuant to the obligations in:

- (a) clauses 5.3, 5.4, 5.5 and 5.6 of the Third Party Agreement between TfL and Southern Gas Networks;
- (b) clauses 6.3, 6.4, 6.5 and 6.6 of the Third Party Agreement between TfL and Birch Sites Limited;
- (c) clauses 8.1, 8.2, 8.3, 8.4, 8.6, 8.7 and 8.9 of the Third Party Agreement between TfL and Docklands Light Railway Limited in relation to the Docklands Light Railway; and
- (d) clauses 10.1, 10.2, 10.3, 10.4, 10.6, 10.7, and 10.9 of the Third Party Agreement between TfL and Docklands Light Railway Limited in relation to the Emirates Airline;

"TPL Risk" means a risk which is required to be insured under the third party liability insurance policy;

"Traffic Authority" has the meaning given to it in Section 121A of the Road Traffic Regulation Act 1984;

"Traffic Demand Management Team" means the team of that name (or any replacement team) within TfL responsible for communicating and providing advice and information relating to works that could affect business and customer travel plans;

"Traffic Director" has the meaning given to it in section 21 of the Traffic Management Act;

"Traffic Management Act" means the Traffic Management Act 2004;

"Traffic Management Liaison Meetings" has the meaning given to such term in paragraph 4.5 of Schedule 13 (*Network Occupancy*);

"Traffic Manager" means [REDACTED] or any other part of TfL (or any other body with relevant statutory authority under the Traffic Management Act) which carries out the Network Management Duty from time to time;

"Traffic Regulation Order" means an order made under the Road Traffic Regulation Act 1984;

"Traffic Sign" has the meaning given to it in Section 64 of the Road Traffic Regulations Act 1984;

"Traffic Signs Manual" means the document of the same name published by the Department for Transport relating to guidance on the use of traffic signs and road markings;

"Traffic Signalling" means all traffic signals, signalling equipment and all associated elements required to be installed pursuant to the D&C Requirements;

"Traffic Signalling System" means Traffic Signalling for each separate assembly of electrical and mechanical units (including detectors and actuating, informatic and signalling equipment) in a geographically proximate area that is controlled by electronic hardware, firmware and/or software as a single unit and is configured in such a way as to provide a facility for controlling or giving information to road users;

"Transferee" has the meaning given to it in clause 42.5 (*Assignment by TfL*);

"Transferred DCO Functions" means:

- (a) the DCO Functions that are identified in paragraph 2 (*DCO Allocation Table*) of Part 1 (*Development Consent Order*) of Schedule 5 (*Allocation of DCO and other Requirements*) as "Transferred DCO Functions" to the extent of the "Scope of Transfer" identified in such paragraph 2 (*DCO Allocation Table*); and
- (b) any obligations deemed to be Transferred DCO Functions pursuant to clause 5.10 (*Code of Construction Practice*);

"Transferred Third Party Functions" means those functions, obligations, rights and benefits under the Third Party Agreements that are identified in paragraph 3 (*Allocation of Third Party Agreements*) of Part 2 (*Third Parties*) of Schedule 6 (*Interested Parties, Third Parties and Liaison Procedures*) as "Transferred Third Party Functions" to the extent of the "Scope of Transfer" identified in such paragraph 3 (*Allocation of Third Party Agreements*);

"Transferring Employees" means those employees who are essentially dedicated to the performance of the Services (other than on a temporary basis) immediately before the End Date and who have been identified by Project Co in accordance with the provisions of clause 40.6(b);

"Transferring Staff" has the meaning given to it in clause 40.11(b);

"Transport for London Lane Rental Scheme" means the scheme applying charges for certain street works carried out in the highway and operated by TfL under Section 74A of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012;

"Trespasser" means any person on an area of land, but who is not entitled to be on such area of land;

"TRO" has the meaning given to it in paragraph 16.2 of Schedule 13 (*Network Occupancy*);

"TSCO Deputies" has the meaning given to it in paragraph 4.2 of Schedule 13 (*Network Occupancy*);

"TSCO" means a qualified traffic safety control officer as defined in paragraph 4.2 of Schedule 13 (*Network Occupancy*);

"TSCO Team" has the meaning given to it in paragraph 4.2 of Schedule 13 (*Network Occupancy*);

"TTRO" has the meaning given to it in paragraph 16.2 of Schedule 13 (*Network Occupancy*);

"Tunnel Closure System" means the system designed and installed by Project Co to enable access to the tunnels at the portal entrance to be closed, including any physical barriers or gates and traffic signals;

"Tunnel Design & Safety Consultation Group" means the group responsible for ensuring effective design, construction and operation of Silvertown Tunnel within the context of safety;

"Tunnel Manager" means the person appointed pursuant to paragraph 3.1 of Part 2 (*Road Tunnel Safety Regulations*) of Schedule 5 (*Allocation of DCO and Other Requirements*) or replaced pursuant to paragraph 6 (*Replacement Officer*) of Part 2 (*Road Safety Tunnel Safety Regulations*) of Schedule 5 (*Allocation of DCO and Other Requirements*);

"Tunnel Safety Management System" means the system built into the Project Co TCS by Project Co pursuant to paragraph 9 (*Tunnel control system*) of Annex 2 (*Requirements for Tunnel ME&P Systems*) of Part 1 (*Design and Construction Requirements*) of Schedule 10 (*Design and Construction Requirements*) and thereafter continuously updated and maintained by Project Co, which sets out the real time status of relevant assets within the Project Facilities in the form set out in Annex 1 (*Tunnel Safety Management System*) of Part 2 (*Operation Requirements*) of Schedule 18 (*Operation and Maintenance Requirements*);

"TUPE" means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246);

"UC Interface Protocol" means:

- (a) the Works UC Interface Protocol, as defined in Part 2 (*Works UC Interface Protocol*) of Schedule 14 (*User Charging Interface*); and
- (b) the Services UC Interface Protocol, as defined in Part 3 (*Services UC Interface Protocol*) of Schedule 14 (*User Charging Interface*);

"UKAS" means the United Kingdom Accreditation Service;

"Unavailability Deductions" has the meaning given to it in paragraph 1 (*Definitions*) of Schedule 20 (*Payment Mechanism*);

"Unavoidable Fixed Costs" means the fixed costs incurred by Project Co which first fall due for payment by the Contractor during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by Project Co;
- (b) payments to Project Co's Affiliates;
- (c) payments which are not entirely at arm's length;

- (d) payments to holders of equity in Project Co, subordinated debt holders and any other financing costs other than Senior Debt Service Costs;
- (e) indirect losses suffered or allegedly suffered by any person;
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;
- (g) payments Project Co can recover under contract or in respect of which Project Co has a remedy against another person in respect of the same liability; and
- (h) payments to the extent that Project Co has available to it:
 - (i) reserves which Project Co can draw upon without breaching the Senior Financing Agreement;
 - (ii) standby or contingent facilities or funds of senior debt or equity which Project Co is entitled to have available; and
 - (iii) payments representing any profits of the Project (to the extent not already excluded in paragraph (e) above);

"Undisputed Amount" means any element of a Payment Report or TfL Payment Report (as applicable) which the recipient has not indicated is disputed in a Payment Report Response;

"Unexpected Employee" has the meaning given to it in clause 40.9(c);

"Unexploded Ordnance" means unexploded bombs or other munitions;

"Uninsurable" means, in relation to a risk, either that:

- (a) insurance is not available to Project Co in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"Uninsured Losses" means Losses arising from any risks against which Project Co does not maintain insurance, provided that:

- (a) any Losses which are not recoverable as a consequence of Project Co not taking out and maintaining in force any Required Insurances as required by clause 32 (*Insurance*) shall not be Uninsured Losses; and
- (b) any Losses which are not recoverable as a result of any excess or deductible under any Required Insurances shall not be Uninsured Losses;

"Unsuitable Third Party" means any of:

- (a) any person or party, including any director of that party and/or shareholder holding more than ██████████ of the share capital of that party, whose activities are, in the reasonable opinion of TfL, incompatible with the provision or operation of transport infrastructure or services;
- (b) any person or party, including any director and/or shareholder of that party, who is the subject of (or effectively controlled from a country which is the subject of)

economic or security sanctions imposed by the United Kingdom (including sanctions which take the form of the prevention of the supply of goods or services to or from the country) whether the sanctions are in full force or suspended;

- (c) any person or party, including any direct and/or shareholder of that party, whose activities, in the reasonable opinion of TfL, pose or could pose a threat to national security; or
- (d) any person whose tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:
 - (i) HM Revenue and Customs successfully challenging it under the General Anti-Abuse Rule ("**GAAR**") or the "Halifax" abuse principle;
 - (ii) the relevant tax authority of the United Kingdom or any relevant jurisdiction challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the 'Halifax' abuse principle; and/or
 - (iii) the failure of an avoidance scheme which the person was involved in and which was, or should have been, notified under the DOTAS or Disclosure of Tax Avoidance Scheme or if such person is not established in the United Kingdom, any equivalent or similar regime in a jurisdiction in which the person is established;

"User Charging Design" means the design of that name set out in Annex 2 (*Project Co User Charging Design*) of Part 1 (*User Charging Infrastructure*) of Schedule 14 (*User Charging Interface*);

"Users" means users of the Project Roads for the purposes of road transport;

"Utilities" means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;

"VAT" means any value added taxes;

"Vehicle" means any motor vehicle and other expressions relating to vehicles given in section 185 of the Road Traffic Act 1988;

"Vitiating Act" has the meaning given to it in Part 3 (*Endorsements*) of Schedule 21 (*Insurance*);

"WCaP" means the works coordination and permitting team within TfL responsible for coordination and permitting of street and road works on the TLRN;

"West Parkside Construction Land" means the area of land edged purple and further shown in Inset D on the plan set out in Annex 6 to Part 2 (Third Parties) of Schedule 6 (Interested Parties, Third Parties and Liaison Procedures);

"Witness Point" means a point identified in a management system procedure where the designated person identified in the management system procedure shall be entitled to witness a particular activity carried out in accordance with that management system procedure;

"Working Day" means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;

"Works" means all of the works to be carried out in accordance with this Agreement prior to the Permit to Use Date, including the design, construction, testing, commissioning and completion of the Project Facilities, Additional Assets and Supplementary Works to satisfy the requirements of this Agreement and the carrying out of any other activities to satisfy the D&C Requirements and Project Co's Works Proposals;

"Works Compensation" means all amounts properly payable to third parties under Compensation Law or otherwise in connection with the carrying out of the Works by Project Co and/or any Project Co Related Party arising by way of:

- (a) structural loss or damage or damage by reason of noise or vibration as may be claimed under section 10 of the Compulsory Purchase Act 1965;
- (b) compensation payable pursuant to the terms of any Third Party Agreement where such compensation might otherwise be the subject of a claim pursuant to paragraph (a) above; or
- (c) claims in nuisance and/or negligence,

in each case including professional fees and any statutory or agreed interest but excluding Land Compensation and Operational Compensation;

"Works Compensation Agent" has the meaning given in Paragraph 2.4 of Part 2 (*Land Compensation Principles*) of Schedule 4 (*Land Requirements*);

"Works for Road Purposes" has the meaning given to it in section 86(2) of the NRSWA;

"Works UC Interface Protocol" has the meaning given to it in paragraph 1.1 of Part 2 (*Works UC Interface Protocol*) of Schedule 14 (*User Charging Interface*); and

"WRRR" has the meaning given to it in paragraph 14.1.1 of Part 3 (*Health and Safety Management System*) of Schedule 8 (*Management System*).