

# SILVERTOWN TUNNEL

## Volume 3: Project Agreement – Schedules 2 to 31

### Schedule 31 – Consents

TfL Reference Number: tfl\_scp\_001527

Document Reference: ST150030-COM-MAC-ZZ-SCH-ZZ-0163

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**SCHEDULE 31****CONSENTS****1. Definitions**

For the purposes of this Schedule, the following words and expressions shall have the following meanings:

**"Additional Direct Costs"** means:

- (a) any additional direct costs (excluding any costs relating to the activities set out in paragraph 13.2 (*Activities covered by Time Based Preliminary Costs*) and paragraph 14.2 (*Activities constituting Initial Direct Costs*) reasonably incurred by Project Co or the D&C Contractor as a direct result of a Schedule 31 Qualifying Event, to be calculated in accordance with the principles set out in paragraph 15 (*Calculation of Additional Direct Costs*); and
- (b) a margin of █% of such costs to reflect corporate overheads;

**"Aggregate Assessed Time Based Preliminary Costs"** means, subject to paragraph 5 (*Initial Project Co Days*), the aggregate of the Time Based Preliminary Costs that have accrued pursuant to paragraph 4.2(a);

**"Average Time Based Preliminary Cost"** will be calculated at the Planned Permit to Use Date (and thereafter on a calendar month basis), and means the Time Based Preliminary Costs that constitute any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost and that remains unpaid, divided by the number of Schedule 31 Critical Path Impact Days that resulted in that cost;

**"Average Time Based Preliminary Post PTU Cost"** will be calculated at the actual Permit to Use Date and means the Time Based Preliminary Costs that constitute any part of TfL's Share of the Schedule 30 Aggregate Assessed Qualifying Event Cost or of the Schedule 31 Aggregate Assessed Qualifying Event Cost and that remains unpaid, divided by the number of Schedule 30 Critical Path Impact Days and Schedule 31 Critical Path Impact Days that resulted in that cost;

**"Critical Consent"** means a Necessary Consent listed within Annex 3;

**"Initial Direct Costs"** means the Initial Direct Costs Rate multiplied by the number of Schedule 31 Critical Path Impact Days that cause the TBM to slow down or stop or prevent the TBM from commencing operation following a stoppage;

**"Initial Direct Costs Rate"** means █ pounds (£█) (subject to any reduction agreed in relation to a specific Scheduled 31 Qualifying Event pursuant to the discussions referred to in paragraph 14.5), which shall be the exhaustive daily payment for those activities set out in paragraph 14 (*Initial Direct Costs*);

**"Initial Project Co Days"** means the first five (5) Schedule 31 Critical Path Impact Days arising as a result of each relevant Schedule 31 Qualifying Event, provided that the Initial Project Co Days shall be subject to an aggregate cumulative maximum of thirty (30) such Schedule 31 Critical Path Impact Days after which no further Schedule 31 Critical Path Impact Days arising as a result of any Schedule 31 Qualifying Event shall constitute Initial Project Co Days;

**"Risk Mitigation Strategies"** means the risk mitigation strategies set out at Annex 2 (*Risk Mitigation Strategies*);

**"Schedule 30 Aggregate Assessed Qualifying Event Cost"** has the meaning given to it in Schedule 30 (*Ground Conditions*);

**"Schedule 30 Critical Path Impact Day"** has the meaning given to it in Schedule 30 (*Ground Conditions*);

**"Schedule 31 Aggregate Assessed Qualifying Event Cost"** means the aggregate of:

- (a) the Aggregate Assessed Time Based Preliminary Costs;
- (b) the Initial Direct Costs and the Additional Direct Costs that have accrued to the Schedule 31 Aggregate Assessed Qualifying Event Cost pursuant to paragraph 4.2(b);
- (c) not used; and
- (d) the amount of any Availability Payment that has accrued to the Schedule 31 Aggregate Assessed Qualifying Event Cost as described in, and subject to, paragraph 8 (*Delay to PTU*);

**"Schedule 31 Aggregate Assessed Qualifying Event Cost Risk Share"** means:

Schedule 31 Aggregate Assessed Qualifying Event Cost	TfL's Share

**"Schedule 31 Critical Path Impact Day"** means a period of delay exceeding twenty four (24) hours (represented as "X + (1/24 x T)" where "X" is the number of full 24 hours of delay that have occurred in such period of delay and "T" is the hours of delay that have occurred in such period of delay which are not taken into account by "X", such that a period of delay of 36 hours would constitute 1.5) in relation to the Works where Project Co demonstrates to the reasonable satisfaction of TfL:

- (a) such delay is directly caused by a Schedule 31 Qualifying Event;
- (b) the activities delayed are (by reference to the then current Project Co Detailed Works Programme and Good Industry Practice) on the critical path, or as a result of a Schedule 31 Qualifying Event become on the critical path, to allow the Permit to Use to be issued by the Planned Permit to Use Date, or following the Planned Permit to Use Date will delay Project Co in securing the issue of the Permit to Use; and
- (c) such delay is not concurrent with a Schedule 30 Critical Path Impact Day,

and, to the extent that there are concurrent causes of any periods of such critical path delay which are the responsibility of Project Co pursuant to this Agreement, such periods of delay relating to such concurrent causes shall be disregarded for the purpose of this definition of Schedule 31 Critical Path Impact Day;

**"Schedule 31 Qualifying Event"** means, subject to this Schedule 31 (*Consents*), the failure to obtain a Critical Consent:

- (a) within the timescales defined within Annex 3; and/or
- (b) in compliance with the direct cost assumptions stated within Annex 3;

**"TfL's Share"** means the percentage figure corresponding to that part of the Schedule 31 Aggregate Assessed Qualifying Event Cost at the relevant time, shown in the second column of the table in the definition of Schedule 31 Aggregate Assessed Qualifying Event Cost Risk Share;

**"Time Based Preliminary Cost"** means:

- (a) [REDACTED] pounds (£[REDACTED]) per day in relation to the period between the Effective Date and the date which is [REDACTED] months following the Effective Date; and
- (b) [REDACTED] pounds (£[REDACTED]) per day in relation to the period after the date which is [REDACTED] months following the Effective Date,

which shall be the exhaustive daily payment for those activities set out in paragraph 13 (*Time Based Preliminary Cost*);

## 2. **Schedule 31 Aggregate Assessed Qualifying Event Cost Reimbursement**

2.1 TfL shall reimburse Project Co for TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost in accordance with paragraph 10 (*Invoicing and Payment*).

## 3. **Not used**

## 4. **Assessment of Schedule 31 Aggregate Assessed Qualifying Event Cost**

4.1 Not used.

4.2 If a Schedule 31 Qualifying Event occurs the following shall accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost:

- (a) subject to paragraph 5 (*Initial Project Co Days*), the Time Based Preliminary Cost for each Schedule 31 Critical Path Impact Day arising directly from such Schedule 31 Qualifying Event; and
- (b) the:
  - (i) Initial Direct Costs arising directly from such Schedule 31 Qualifying Event; and
  - (ii) Additional Direct Costs arising directly from such Schedule 31 Qualifying Event.



**5. Initial Project Co Days**

- 5.1 No Time Based Preliminary Costs arising in relation to Schedule 31 Critical Path Impact Days which constitute Initial Project Co Days shall in any circumstance accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost or otherwise be the responsibility of TfL.
- 5.2 All Time Based Preliminary Costs arising in relation to Schedule 31 Critical Path Impact Days which constitute Initial Project Co Days shall be solely for the account of Project Co and TfL shall have no responsibility or liability in respect of such costs.

**6. Not Used****7. Not Used****8. Delay To PTU**

- 8.1 If Schedule 31 Critical Path Impact Days or Schedule 30 Critical Path Impact Days have caused an actual delay to the issuing of the Permit to Use, then:

- (a) the proportion of any Availability Payment which would have been payable by TfL to Project Co pursuant to Schedule 20 (*Payment Mechanism*) but for any such Schedule 30 Critical Path Impact Days shall accrue towards the Schedule 30 Aggregate Assessed Qualifying Event Cost; and
- (b) the proportion of any Availability Payment which would have been payable by TfL to Project Co pursuant to Schedule 20 (*Payment Mechanism*) but for any such Schedule 31 Critical Path Impact Days shall accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost,

but only to the extent that the issue of the Permit to Use has been delayed by more than [REDACTED] such Schedule 30 Critical Path Impact Days or Schedule 31 Critical Path Impact Days in aggregate (and the foregone Availability Payment relating to days up to such threshold of [REDACTED] Schedule 30 Critical Path Impact Days or Schedule 31 Critical Path Impact Days shall in no circumstances accrue towards the Schedule 30 Aggregate Assessed Qualifying Event Cost or the Schedule 31 Aggregate Assessed Qualifying Event Cost (such that in the event that there are [REDACTED] Schedule 30 Critical Path Impact Days, [REDACTED] Schedule 31 Critical Path Impact Days and [REDACTED] actual days delay to PTU, then [REDACTED] days shall accrue towards the Schedule 30 Aggregate Assessed Qualifying Event Cost and [REDACTED] days shall accrue to the Schedule 31 Aggregate Assessed Qualifying Event Cost)).

- 8.2 Notwithstanding any other provision of this Schedule 31 (*Consents*), the Parties acknowledge and agree that on and from the date that Project Co provides any notice pursuant to clause 18.2(k) (the "**Notice Date**") then:

- (a) no Schedule 31 Critical Path Impact Days shall occur pursuant to this Schedule 31 which relate to Schedule 31 Qualifying Events which occurred after the Notice Date; and
- (b) no amounts shall accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost which relate to Schedule 31 Qualifying Events which occurred after the Notice Date.

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**9. Notification And Demonstration**

- 9.1 Project Co shall notify TfL as soon as reasonably practicable following the occurrence of a Schedule 31 Qualifying Event or if Project Co becomes aware that a Schedule 31 Qualifying Event is likely to occur, including full details of the nature of the Schedule 31 Qualifying Event, the date of occurrence (or likely occurrence, as the case may be) and its likely duration.
- 9.2 Following service of a notice by Project Co pursuant to paragraph 9.1, Project Co shall promptly supply to TfL any further information relating to the relevant Schedule 31 Qualifying Event which:
- (a) is discovered or received by Project Co; or
  - (b) is reasonably requested by TfL.
- 9.3 Where Project Co becomes aware that any Schedule 31 Critical Path Impact Day has occurred or any costs are to accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost pursuant to this Schedule, Project Co shall:
- (a) provide TfL with a written notification as soon as practicable, and in any event within fifteen (15) Working Days, after Project Co becomes aware that a Schedule 31 Critical Path Impact Day has occurred or that Project Co has incurred such costs;
  - (b) discuss the Schedule 31 Critical Path Impact Day and any such costs with TfL within seven (7) Working Days of providing notification pursuant to paragraph 9.3(a), including discussing any ways in which Project Co can mitigate the effect of such Schedule 31 Critical Path Impact Day and costs and if Project Co has complied with the Risk Mitigation Strategies, with the aim of achieving agreement between TfL and Project Co on whether or not a Schedule 31 Qualifying Event has occurred and on how such costs may be assessed;
  - (c) provide TfL with a breakdown of any Additional Direct Costs to the level of disaggregation set out in paragraph 15 (*Additional Direct Costs*);
  - (d) demonstrate to the reasonable satisfaction of TfL that any costs or time lost could not reasonably be expected to be mitigated or recovered by Project Co acting in accordance with Good Industry Practice; and
  - (e) if the discussion referred to within paragraph 9.3(b), or any further discussion referred to within this paragraph 9.3(e), does not result in agreement between Project Co and TfL on the topics stated, then TfL will identify any further information that is reasonably required to be provided by Project Co and TfL shall meet again with Project Co within ten (10) Working Days of receipt of such further information to discuss further.
- 9.4 In the event that any written notification is provided by Project Co after the dates referred to in paragraph 9.3(a), then no costs shall accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost in respect of the period for which the notification is delayed.
- 9.5 Not used.

- 9.6 If a Schedule 31 Critical Path Impact Day has caused an actual delay to the issuing of the Permit to Use, then:
- (a) 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 delay, taking into account the likely effect of delay; and
  - (b) 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 delay.

## 10. Invoicing And Payment

- 10.1 Where TfL is required to reimburse Project Co pursuant to paragraph 2 (*Schedule 31 Aggregate Assessed Qualifying Event Cost Reimbursement*), Project Co shall be entitled to submit an invoice to TfL for the amount owed as follows:

- (a) subject to paragraph 10.1(b), Project Co shall be entitled to submit an invoice in relation to any Initial Direct Costs and Additional Direct Costs that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost once the impact of the relevant Qualifying Event has ceased;
- (b) where Project Co demonstrates to TfL's reasonable satisfaction that the impact of a Schedule 31 Qualifying Event is likely to continue for more than three (3) months, Project Co shall be entitled to submit an invoice in relation to any Initial Direct Costs and Additional Direct Costs that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost following the end of each relevant calendar month commencing from the date three (3) months after the Qualifying Event has occurred;
- (c) subject to paragraph 10.2 and paragraph 10.3, Project Co shall be entitled to submit an invoice following the Planned Permit to Use Date (and thereafter on a calendar month basis) in relation to any Time Based Preliminary Costs that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost; and
- (d) subject to paragraph 10.5, Project Co shall be entitled to submit an invoice in relation to the amount of any Availability Payment described in paragraph 8 (*Delay to PTU*) that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost or any part of TfL's Share (as defined in Schedule 30 (*Ground Conditions*)) of the Schedule 30 Aggregate Assessed Qualifying Event Cost, when such Availability Payment would have been due from TfL pursuant to Schedule 20 (*Payment Mechanism*) had the delay described in paragraph 8 (*Delay to PTU*) not occurred.

- 10.2 Where Project Co is entitled to submit an invoice pursuant to paragraph 10.1(c), the amount that Project Co shall be entitled to include in such invoice shall be:

- (a) the Average Time Based Preliminary Cost for each day of actual delay to the Permit to Use and for which Time Based Preliminary Costs accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost (provided that such Time Based Preliminary Costs have not already been included within a previous invoice); or



- (b) for the purposes of the final invoice submitted by Project Co pursuant to paragraph 10.1(c) only, the amount permitted in accordance with paragraph 10.3.

10.3 Where the aggregate of:

- (a) the number of Schedule 31 Critical Path Impact Days (the "**Schedule 31 Entitling Days**"); and
- (b) the number of Schedule 30 Critical Path Impact Days including, for the avoidance of doubt, pursuant to paragraph 7 (*Cumulative Excluded Cost*) of Schedule 30 (*Ground Conditions*) (the "**Schedule 30 Entitling Days**"),

together the "**Entitling Days**", exceeds the actual number of days delay to the Permit to Use (such excess number of Entitling Days being referred to as "**Excess Days**"), Project Co shall be entitled to include in the invoices referred to in paragraph 10.2(b) of Schedule 30 (*Ground Conditions*) and in paragraph 10.2(b) of this Schedule 31 (*Consents*):

- (i) ■■■ per cent (■■■%) of the Average Time Based Preliminary Post PTU Costs for the Excess Days, provided that such ■■■ per cent (■■■%) shall be capable of being invoiced:
- (A) without prejudice to paragraph 10.3(ii)(b)(ii)(B)(bb) below, once only for each of the Excess Days;
- (B) in a proportion relative to the number of Schedule 30 Entitling Days and Schedule 31 Entitling Days (such that in the event that there are ■■■ Schedule 30 Entitling Days, ■■■ Schedule 31 Entitling Days and ■■■ Excess Days, Project Co shall be entitled to invoice for ■■■ per cent (■■■%) of the Average Time Based Preliminary Post PTU Costs for ■■■ of the Schedule 30 Entitling Days and for ■■■ of the Schedule 31 Entitling Days); and
- (ii) in the event that Project Co has:
- (A) identified an opportunity to increase the Excess Days; and
- (B) evidenced, to the reasonable satisfaction of TfL, that:
- (aa) Project Co has incurred additional expenditure in order to implement such increase in Excess Days; and
- (bb) such expenditure is additional to that contained within the Base Case,

Project Co shall be entitled to invoice for the lesser of:

- (aa) the additional expenditure directly incurred to implement such increase in Excess Days; or
- (bb) ■■■ per cent (■■■%) of the Average Time Based Preliminary Post PTU Costs for the increase in Excess Days that has resulted from the implemented opportunity.

As an example, in the event that Project Co has identified an implemented an opportunity to increase the Excess Days, Project Co would indicatively be entitled to invoice for the amounts set out below:

	Without Opportunity	With Opportunity
Entitling Days	█	█
Excess Days	█	█
Actual delay to PTU days	█	█
Assume: Time Based Preliminary Cost (i.e. theoretical Project Co cost reduction) per day	█	█
Assume: Average Time Based Preliminary Post PTU Cost per day (i.e. TfL Share)	█	█
Aggregate theoretical Project Co cost reduction █		█
Expenditure incurred to implement opportunity to achieve increase in Excess Days		█
50 % of reduction in aggregate Average Time Based Preliminary Post PTU Costs due to the increase in Excess Days █		█
Project Co invoice for Entitling Days (assumes Average Time Based Preliminary Cost is also █)	█ █ █	█ █ █
Whilst the sum invoiced by Project Co is the same, the Parties have mutually benefitted from a reduction of █ days to actual PTU		█ █ █

10.4 Following submission of an invoice by Project Co to TfL pursuant to this paragraph 10, the provisions of clause 27.1(b) to clause 27.1(e) (inclusive) shall apply to such invoice.

10.5 If requested by TfL, Project Co shall:

- (a) use its reasonable endeavours to obtain finance for the amount of any Availability Payment described in paragraph 8 (*Delay to PTU*) that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost or any part of TfL's Share (as defined in Schedule 30 (*Ground Conditions*)) of the Schedule 30 Aggregate Assessed Qualifying Event Cost on terms reasonably satisfactory to Project Co, the Senior Funders and TfL; and
- (b) provide evidence to TfL's satisfaction of the steps it has taken pursuant to paragraph 10.5(a),

and, if Project Co is able to obtain such finance, paragraph 10.1(d) shall be disapplied and the Availability Payment shall be adjusted in accordance with Schedule 25 (*Base Case*) to compensate Project Co for the amount of any Availability Payment described in paragraph 8 (*Delay to PTU*) that constitutes any part of TfL's Share of the Schedule 31 Aggregate Assessed Qualifying Event Cost or any part of TfL's Share (as defined in Schedule 30 (*Ground Conditions*)) of the Schedule 30 Aggregate Assessed Qualifying Event Cost.

## 11. Deemed Force Majeure Event

11.1 TfL shall be deemed to be permitted to terminate this Agreement pursuant to clause 35.1 (*Termination on force majeure*) if:

- (a) at least [REDACTED] Schedule 30 Critical Path Impact Days or Schedule 31 Critical Path Impact Days in aggregate have occurred; and
- (b) TfL (acting reasonably) forecasts:
  - (i) that the number of Schedule 30 Critical Path Impact Days or Schedule 31 Critical Path Impact Days in aggregate is likely to exceed [REDACTED]; or
  - (ii) the aggregate of the Schedule 31 Aggregate Assessed Qualifying Event Cost and the Schedule 30 Aggregate Assessed Qualifying Event Cost is likely to exceed [REDACTED] pounds (£[REDACTED]),

provided that only TfL (and not Project Co) shall be entitled to terminate this Agreement pursuant to this paragraph 11.1.

## 12. Miscellaneous

12.1 Where more than one Schedule 31 Qualifying Event gives rise to a Schedule 31 Critical Path Impact Day on the same day or same part thereof:

- (a) the Time Based Preliminary Cost relating to one Schedule 31 Qualifying Event only shall accrue towards the Schedule 31 Aggregate Assessed Qualifying Event Cost for that day or part thereof; and

- (b) only one (1) Schedule 31 Critical Path Impact Day may constitute an Initial Project Co Day per calendar day,

and for the avoidance of doubt nothing in this paragraph 12.1 shall prevent any Initial Direct Costs or Additional Direct Costs from accruing towards the Schedule 31 Aggregate Assessed Qualifying Event Cost where they would otherwise do in accordance with this Schedule 31.

12.2 Project Co shall at all times take all reasonable steps to minimise and mitigate any costs or losses which arise in connection with any Schedule 31 Qualifying Event.

12.3 If:

- (a) in relation to the Critical Consent which is the subject of such Qualifying Event, Project Co has failed to:

- (i) develop any application or submission in accordance with Good Industry Practice;
- (ii) produce and submit:
  - (A) any documentation reasonably required to support the application or submission; or
  - (B) any additional information or documentation reasonably requested by the relevant consenting body,

each within any relevant time periods specified in the Third Party Agreements or the DCO, or where no such time periods are specified, within any time periods reasonably required;

- (iii) undertake reasonable engagement with the relevant consenting entity or body, including, but not limited to, by establishing regular communication channels and holding regular progress meetings;
- (iv) undertake reasonable engagement with any relevant interested third parties in advance of making any applications or submissions;
- (v) consider any reasonable comments of any relevant interested third parties referred to in paragraph 12.3(a)(iv) prior to making any applications or submissions;
- (vi) from the Effective Date until the earlier of the Permit to Use Date and the Termination Date, submit to TfL within five (5) Working Days after the end of each TfL Reporting Period, a report which shall include, but not be limited to:
  - (A) an analysis of the progress of the Critical Consent against the Project Co Tender Programme and the Project Co Detailed Works Programme;
  - (B) any risks that Project Co has identified in relation to obtaining the Critical Consent;

- (C) any areas that Project Co envisages that TfL may be able to assist in relation to obtaining the Critical Consent; and
- (D) any third party engagement carried out to date and planned in relation to such Critical Consent;
- (vii) produce all documentation in relation to any application or submission in accordance with the DCO, Third Party Agreements, Applicable Requirements or any provisions of the Project Agreement;
- (viii) provide all reasonable assistance in any relevant administrative proceedings relating to the issuance or grant of such Critical Consent;
- (ix) request:
  - (A) acknowledgement of any applications; and/or
  - (B) the expedition of any processing or review of any applications or submissions; or
- (x) make any payments due to the relevant consenting body or entity expeditiously; and
- (b) TfL considers (acting reasonably) or it is determined that the cost and time impact of any relevant Schedule 31 Qualifying Event would have been reduced had Project Co not failed to undertake any of the activities referred to in paragraph 12.3(a),

then, unless otherwise agreed by TfL, any reimbursement or payment from TfL to Project Co pursuant to this Schedule 31 (*Consents*) shall be reduced to the extent of the reduction in cost and time impact referred to in paragraph 12.3(b) above that would have been achieved had Project Co complied with the Risk Mitigation Strategies.

12.4 If:

- (a) Project Co has not complied with the Risk Mitigation Strategies; and
- (b) TfL reasonably determines that the cost and time impact of any relevant Schedule 31 Qualifying Event would have been reduced by compliance with such Risk Mitigation Strategies,

then, unless otherwise agreed by TfL, any reimbursement or payment from TfL to Project Co pursuant to this Schedule 31 (*Consents*) shall be reduced to the extent of the cost and time impact referred to in paragraph 12.4(b) above.

12.5 No amounts or thresholds stated in this Schedule 31 (*Consents*) shall be subject to indexation with the sole exception of the Availability Payment, to which the indexation provisions in Schedule 20 (*Payment Mechanism*) shall apply.

12.6 Where an amount which accrues towards the Schedule 31 Aggregate Assessed Qualifying Event Cost or which is otherwise due from TfL to Project Co pursuant to this Schedule 31 (*Consents*) has been recovered by Project Co pursuant to any insurance policy (or should have been recovered by Project Co pursuant to an insurance policy but for a failure to claim under such insurance policy or a failure to otherwise comply with this Agreement), such amount shall not accrue towards the Schedule 31 Aggregate Assessed Qualifying

Event Cost or be otherwise due from TfL to Project Co pursuant to this Schedule 31 (*Consents*), provided that this paragraph shall not prohibit deductibles paid by Project Co from accruing towards the Schedule 31 Aggregate Assessed Qualifying Event Cost where such deductibles are costs which would otherwise so accrue in accordance with this Schedule.

- 12.7 To support Project Co in relation to its obligations to obtain the Necessary Consents, TfL shall:
- (a) make available a minimum of one (1) full time member of TfL staff (between typical office hours (excluding any annual leave or sick leave in accordance with TfL policy)); and
  - (b) in relation to any Review Submissions pursuant to Schedule 9 (*Certification and Review Procedure*) related to a Critical Consent, notify Project Co of any comments on such Review Submission and endorse the Review Submission as soon as possible and in any event within ten (10) Working Days of submission to TfL.
- 12.8 The Parties acknowledge and agree that TfL shall not be required to reimburse or compensate Project Co for any costs or losses pursuant to this Schedule 31 (*Consents*) unless and until such costs or losses are submitted in an invoice in accordance with paragraph 10 (*Invoicing and Payment*), in which case paragraph 0 shall apply.
- 12.9 In the event that Project Co identify an opportunity to reduce the Entitling Days the Parties shall meet within five (5) Working Days to discuss such opportunity.
- 12.10 In the event that once obtained, a Critical Consent is revoked by the relevant consenting body or relevant Third Party, through no act, omission or fault of Project Co, then such revocation, to the extent it directly results in Schedule 31 Critical Path Impact Days or Additional Direct Costs, shall be deemed to be a Schedule 31 Qualifying Event.

### 13. **Activities Covered By Time Based Preliminary Costs**

- 13.1 The Parties acknowledge and agree that:
- (a) any costs arising in connection with any of the activities referred to in paragraph 13.2 (*Activities covered by Time Based Preliminary Costs*) are covered by the daily rate set out in the definition of Time Based Preliminary Costs; and
  - (b) for the avoidance of doubt, the activities (and costs associated with such activities) referred to in paragraph 13.3 (*Activities not covered by Time Based Preliminary Costs*) are not covered by the daily rate set out in the definition of Time Based Preliminary Costs.

#### 13.2 Activities covered by Time Based Preliminary Costs

The activities referred to in paragraph 13.2 (*Activities covered by Time Based Preliminary Costs*) of Schedule 30 (*Ground Conditions*).

#### 13.3 Activities not covered by Time Based Preliminary Costs

The activities referred to in paragraph 13.3 (*Activities not covered by Time Based Preliminary Costs*) of Schedule 30 (*Ground Conditions*).



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**14. Activities Covered By Initial Direct Costs**

14.1 The Parties acknowledge and agree that:

- (a) any costs arising in connection with any of the activities referred to in paragraph 14.2 (*Activities constituting Initial Direct Costs*) are covered by the Initial Direct Costs Rate; and
- (b) for the avoidance of doubt, the activities (and costs associated with such activities) referred to in paragraph 14.4 (*Activities not constituting Initial Direct Costs*) are not covered by the Initial Direct Costs Rate.

14.2 Activities constituting Initial Direct Costs

The activities referred to in paragraph 14.2 (*Activities constituting Initial Direct Costs*) of Schedule 30 (*Ground Conditions*).

14.3 The costs associated with the activities included in paragraph 14.2 (*Activities constituting Initial Direct Costs*) shall include all associated Employment Costs.

14.4 Activities not constituting Initial Direct Costs

The activities referred to in paragraph 14.4 (*Activities not constituting Initial Direct Costs*) of Schedule 30 (*Ground Conditions*).

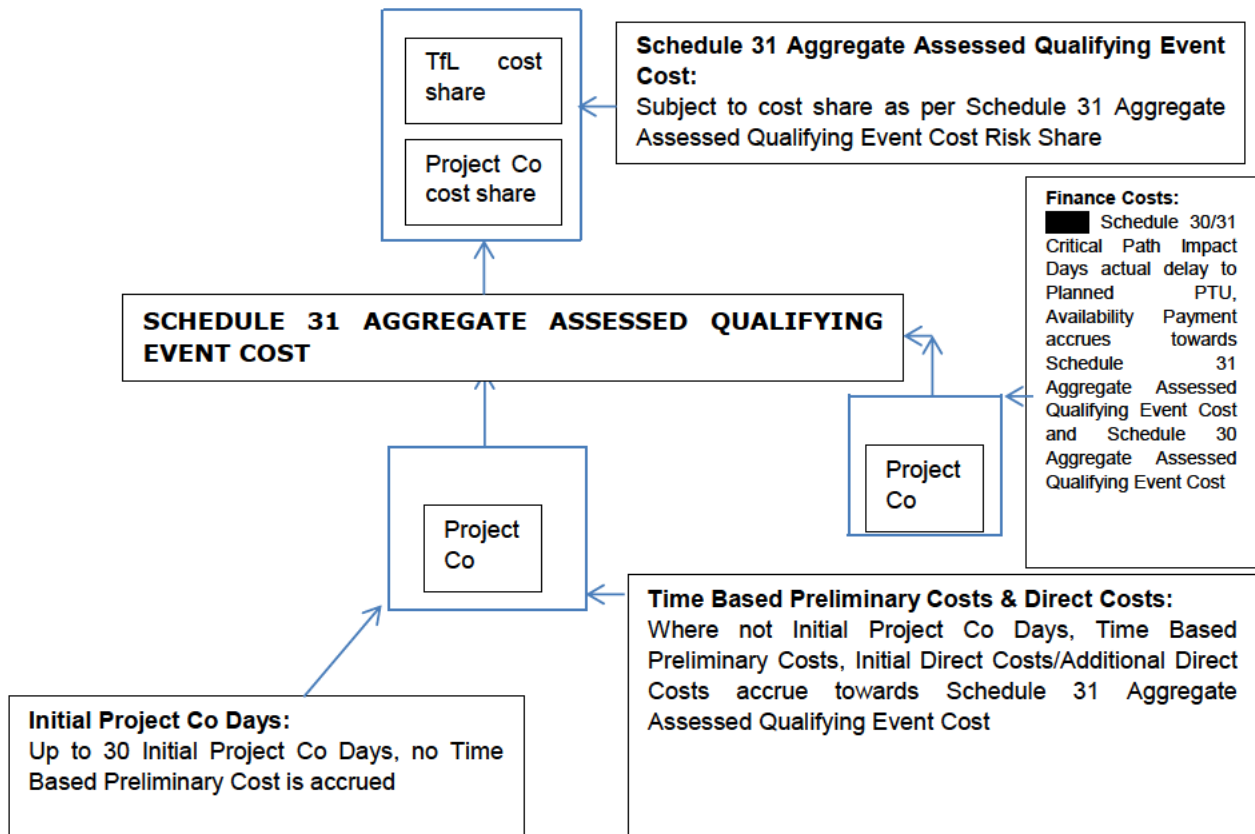
14.5 In the event that a Schedule 31 Qualifying Event has continued for twenty (20) days the Parties shall meet within five (5) Working Days to discuss a reduction to the Initial Direct Costs Rate for such continuing Schedule 31 Qualifying Event to make allowance for Project Co's compliance with the Risk Mitigation Strategies and any other mitigation undertaken by Project Co.

**15. Calculation Of Additional Direct Costs**

Additional Direct Costs are to be calculated in accordance the principles in paragraph 15.1 of Schedule 30 (*Ground Conditions*).

**Annex 1 – Cost Assessment Diagram**

A diagram relating to the cost assessment process set out in this Schedule 31 (*Consents*) is set out below. The Parties acknowledge and agree that in the case of any inconsistency between this Annex 1 and the remainder of Schedule 31 (*Consents*), the remainder of Schedule 31 (*Consents*) shall take precedence.



**Annex 2 – Risk Mitigation Strategies**

**Commercially sensitive information**

**Annex 3– CONSENTS**

**Commercially sensitive information**

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**Annex 4 – Process Flow Chart**

A process flow chart relating to the cost assessment process set out in this Schedule 31 (*Consents*) is set out below. The Parties acknowledge and agree that in the case of any inconsistency between this Annex 4 and the remainder of Schedule 31 (*Consents*), the remainder of Schedule 31 (*Consents*) shall take precedence.

**Commercially sensitive information**