

# Elizabeth Line Committee – Chair’s Action (Approved 9 November 2021)



**Date Issued: 8 November 2021**

**Title: Proposed Novation of Contract C620 and Contract C660**

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**This paper will be published with the next agenda.**

## **1 Summary**

- 1.1 In 2012 Crossrail Limited entered into a contract for the provision of signalling and control systems for the central operating section of Crossrail with Siemens Public Limited Company (Siemens PLC) and Siemens Rail Automation Limited (Siemens Rail) (the Signalling Contract). In 2013, Crossrail Limited entered into a contract for the provision of communications and control systems for the central operating section of Crossrail with Siemens PLC (the Communications Contract).
- 1.2 As part of a corporate restructuring within the Siemens group, the Siemens contracting entities referred to above transferred their business to Siemens Mobility Limited (Siemens Mobility). Accordingly, Siemens has requested that the Signalling Contract and the Communications Contract be novated to Siemens Mobility.
- 1.3 The Crossrail Project Development Agreement (PDA) provides that Sponsor agreement is required before deeds of novation can be entered into. Following the amendments made to the PDA, when the governance of Crossrail transferred to TfL last autumn, there are certain matters which TfL may grant a waiver without Department for Transport approval, and that is the case with these proposed novations. Therefore, in accordance with clause 8.15 of the Sponsors Agreement (set out in the Governance Amendment Agreement), TfL proposes that it waives the obligation on Crossrail Limited, under clause 7.3(g) of the PDA, to obtain the approval of the DfT to the proposed novations.
- 1.4 The use of Chair’s Action is considered appropriate as a decision to enter into the deeds of novation before the date of the next meeting of the Committee on 25 November 2021 is necessary to ensure that any delay does not adversely impact Siemens’ ability to support Crossrail Limited to achieve handover dates.
- 1.5 Members of the Committee are asked to consider the proposal and provide Heidi Alexander, as Chair, with their views on or before 12 November 2021. The contents of this paper and the exercise of Chair’s Action will be reported to the next meeting of the Committee.

## **2 Recommendation**

- 2.1 **The Chair of the Committee, in consultation with available Members, is asked to approve the novation of:**
  - (a) **Signalling Contract C620 dated 9 November 2012 (as amended by various supplemental agreements) for the provision of signalling and control systems for the central operating section of Crossrail from (1) Crossrail**

Limited and (2) an unincorporated joint venture between Siemens Rail Automation Limited and Siemens Public Limited Company to (1) Crossrail Limited and (2) Siemens Mobility Limited; and

- (b) **Communications Contract C660 dated 14 March 2013 (as amended by various supplemental agreements) for the provision of communications and control systems for the central operating section of Crossrail from (1) Crossrail Limited and (2) Siemens Public Limited Company to (1) Crossrail Limited and (2) Siemens Mobility Limited.**

### **3 Background**

- 3.1 **Contract Terms:** The proposed forms of novation are drafted to ensure that Siemens Mobility takes on all responsibilities of Siemens PLC and Siemens Rail under the Signalling Contract and all responsibilities of Siemens PLC under the Communications Contract as if Siemens Mobility had always been named as a party to those contracts in place of the original Siemens contracting entities. The terms of the Signalling Contract and the Communications Contract will not change.
- 3.2 **Parent Company Guarantees (PCGs):** Siemens AG provided PCGs in relation to obligations of the original Siemens contracting entities under the Signalling Contract and the Communications Contract. Siemens AG will provide PCGs in the same form in relation to the obligations of Siemens Mobility under those contracts. As Siemens AG is incorporated in Germany, a German legal opinion is also to be provided to confirm that no further execution or other formalities are required for Siemens AG to be bound by the terms of the PCGs and to confirm that if Crossrail Limited brought enforcement proceedings in Germany, the German courts would recognise the validity of the English law and jurisdiction clause in the PCGs.
- 3.3 **Performance Bonds:** Under the Signalling Contract there were two separate performance bonds in the name of Siemens PLC and Siemens Rail. The bond guaranteeing the obligations of Siemens Rail is to be amended so that the obligations of Siemens Mobility under the novated Signalling Contract are being guaranteed as if Siemens Mobility had originally been named as the *Contractor* under the Signalling Contract. The bond guaranteeing the obligations of Siemens PLC is to be replaced with a bond guaranteeing the obligations of Siemens Mobility on the same terms and in the same amount as the original bond. Under the Communications Contract, a new performance bond is to be entered into guaranteeing the obligations of Siemens Mobility on the same terms and in the same amount as the current bond.
- 3.4 **Subcontracts:** Any subcontracts under the Signalling Contract or the Communications Contract which have not yet reached completion are to be novated to Siemens Mobility.
- 3.5 **Novation of Associated Contracts:** The maintenance contract relating to signalling and communications assets between Rail for London Limited (RfL) and Siemens PLC, and the contract for train carried signalling equipment between Bombardier Transportation UK Limited and Siemens PLC, have already been novated to Siemens Mobility. There is a direct agreement in favour of RfL under the contract for train carried signalling equipment which is also to be novated to Siemens Mobility.
- 3.6 **Financial Risk:** As the parent company guarantor and the terms of the parent company guarantees remain the same, and the performance bonds will be amended or replaced on the same terms, it is considered that Crossrail Limited will not be at any greater financial risk following the novations.

3.7 Other Risk: As the key Siemens personnel who are currently responsible for the delivery of these contracts are Siemens Mobility personnel, and as various associated contracts have already been novated to Siemens Mobility, it is envisaged that novating the Signalling Contract and the Communications Contract is a lower risk option than doing nothing.

**List of appendices to this report:**

None

**List of Background Papers:**

None

Contact Officer: Mark Wild, Chief Executive Officer, Crossrail  
Number: 020 3054 8256  
Email: [MarkWild@tfl.gov.uk](mailto:MarkWild@tfl.gov.uk)