

METRONET RAIL SSL LIMITED
(in PPP administration)

CAPITAL PROJECTS - SSL PROGRAMME

THE DESIGN AND CONSTRUCTION OF
SIGNALLING & CONTROL SYSTEM WORKS
(NEASDEN DEPOT UPGRADE)

CONTRACT DOCUMENT

CONTRACT NUMBER: 001427

DOCUMENT REFERENCE: SUP-PSEE0045-SSL-CNT- 00002

SCHEDULE 2
THE CONTRACT



(in PPP Administration)



THE DESIGN AND CONSTRUCTION OF SIGNALLING & CONTROL SYSTEM WORKS (NEASDEN DEPOT UPGRADE)

CONTRACT NUMBER: 001427

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THIS AGREEMENT is made on the 17 day of March 2008 between

METRONET RAIL SSL LIMITED (in PPP administration) a company registered in England and Wales under number 3923484 whose registered office is at Templar House 81-87 High Holborn London WC1V 6NU acting by the PPP Administrators (as defined below) (the **Employer**) and

THALES RAIL SIGNALLING SOLUTIONS LIMITED company registration number 05805963 whose registered office is at 2 Dashwood Lang Road, Addlestone, Nr Weybridge KT15 2NX (the **Contractor**)

WHEREAS the Employer wishes to have provided the following works:-

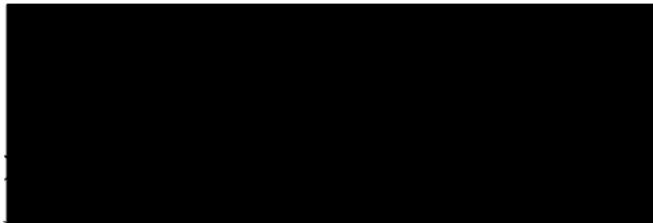
The design, supply, installation, testing and commissioning of the signalling and control system and all associated and incidental works and services which the Contractor is obliged to perform under the provisions of this agreement and which may be reasonably inferred from, and in accordance with, the Works Information

NOW IT IS AGREED THAT

1. The Contractor will provide the works in accordance with the conditions of contract.
2. The Employer will pay the Contractor the amount due in accordance with the conditions of contract.
3. The documents forming part of this agreement are:
 - (i) the Contract Data – Part One;
 - (ii) the Contract Data – Part Two;
 - (iii) The Works Information;
 - (iv) The Site Information;
 - (v) The Accepted Programme; and
 - (vi) The *activity schedule*.
4. In this agreement "PPP Administrators" means Roy Bailey, Alan Robert Bloom, Margaret Elizabeth Mills and Stephen John Harris, all of Ernst & Young LLP in their capacity as joint special PPP administrators of the Employer, and the expression "PPP Administrators" shall include, where the context permits, any additional or successor administrator of the Employer and their respective firms or future firms, employees, agents, advisors, fellow members, partners and personal representatives.
5. The PPP Administrators are the agents of the Employer and shall not incur any personal liability from acting in their capacity as agents or by reason of acting in the name and on behalf of the Employer or otherwise. The PPP Administrators shall incur no personal liability under or in connection with this agreement nor in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum. Nothing in this agreement shall: (i) constitute a waiver of any right of the PPP Administrators to be indemnified, or to exercise a lien, whether under any applicable sections of the Insolvency Act 1986 or otherwise howsoever; or (ii) operate to restrict or affect in any way any right of the PPP Administrators to cease to act as the PPP administrators of the Employer and the provisions of this Agreement shall continue notwithstanding the PPP Administrators ceasing to act. The PPP Administrators have not given, nor entered into, any collateral understandings, representations, warranties or agreements as principal.



EXECUTED AS A DEED BY THE EMPLOYER by



for and on behalf of METRONET RAIL SSL LIMITED (IN PPP ADMINISTRATION) as its agent and without personal liability

) Metronet Rail SSL Limited (in PPP administration)
)
)

Witness's Signature



Name:



Address:

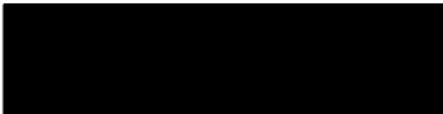
ALLISON QUAY
ONE BISHOPS SQUARE
LONDON E1 6AD

AND AS A DEED BY THE CONTRACTOR

by (name of Director)



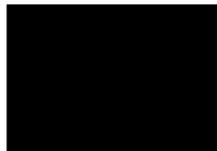
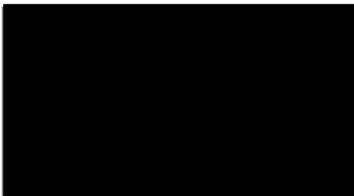
..... (signature of Director)



and .. (name of Director or Company Secretary)



..... (signature of Director or Company Secretary)



SCHEDULE 2.2 CONTRACT DATA

Part One - Data provided by the *Employer*

Statements given in all contracts

1. General
 - The *conditions of contract* are the core clauses utilising **Main Option 'A'** and the clauses for secondary options H, L, N, P, R, T and Z of the second edition 1995 (amended November 1995) of the NEC Engineering and Construction Contract
 - Option H - Parent Company Guarantee
 - Option L - Sectional Completion
 - Option N - Price Adjustment for Inflation
 - Option P - Retention
 - Option R - Delay Damages
 - Option T - Changes in Law
 - Option Z - Additional Conditions of contract
 - The *works* are the Design, Supply, Install, Test and Commission of Signalling & Control System
 - The *Employer* is
 - Name: **Metronet Rail SSL Limited**
(in PPP administration)
 - Address: **Templar House**
81-87 High Holborn
London WC1V 6NU
 - The *Project Manager* is
 - Name: [REDACTED]
 - Address: **Metronet Rail SSL Limited**
4th Floor, Derbyshire House
St. Chads Street, London
WC1H 8AG
 - The *Supervisor* is
 - Name: [REDACTED]
 - Address: **Metronet Rail SSL Limited**
Neasden Site - c/o Edmund Nuttall Limited,
Unit 1 Falcon Park, Neasden Lane,
Neasden, NW10 1RZ
 - The Works Information is contained in **Schedule Three**
 - The Site Information is contained in **Schedule Four**
 - The *boundaries of the site* are as shown on the **Contract Drawings and form part of the Works Information and Site Information.**
 - The *language of this contract* is **English**
 - The *law of the contract* is the Law of **England**
 - The *period for reply* to a communication are as follows:-
 - **two calendar weeks**
 - **Assurance documents will be dealt with in accordance with Schedule 3.7**

Optional Statements

- The *completion date* for the whole of the works is **30 December 2011**
- The *Contractor* is to submit a first programme for acceptance within **4 weeks** of the Contract Date.
- The period within which payments are made is (please refer to Option Z clause Z1.58)

Option H

- **Parent Company Guarantee**
 (A Parent Company Guarantee is required which is to be valid until the end of the period for completion of making good defects)

Option L

- The *completion date* for each *section* of the works are

Section	Description	Completion Date
Section 1	Commissioning of East Stabling (Roads 52-73) including Roads leading to New Maintenance Shed (part of Phase 2).	14 February 2010
Section 2	Completion Testing for Partial Handover of this Section. Commissioning of New Stabling Roads (part of Phase 3)	05 September 2010
Section 3	Completion Testing for Partial Handover of this Section. Commissioning of New Stabling Roads (part of Phase 4), including Partial Handover of this Section.	07 January 2011
Section 4	Commissioning of New Stabling Roads (part of Phase 6), including Partial Handover of this Section.	29 July 2011
Section 5	Commissioning of the entire depot Including the Klondyke. Demonstration of Performance Criteria as stated in the Schedule 3.3 and Complete Full Handover	30 December 2011

If Options L and R are used together

- Delay damages for the *sections* of the works are

Section	Description	Amount per day
Section 1	Commissioning of East Stabling (Roads 52-73) including Roads leading to New Maintenance Shed (part of Phase 2).	[REDACTED]
Section 2	Completion Testing for Partial Handover of this Section. Commissioning of New Stabling Roads (part of Phase 3)	[REDACTED]

Section 3 Completion Testing for Partial Handover of this Section.
Commissioning of New Stabling Roads (part of Phase 4), including Partial Handover of this Section.

[REDACTED]

Section 4 Commissioning of New Stabling Roads (part of Phase 6), including Partial Handover of this Section.

[REDACTED]

Section 5 Commissioning of the entire depot Including the Klondyke.
Demonstration of Performance Criteria as stated in the Schedule 3.3 and Complete Full Handover

[REDACTED]

For the avoidance of doubt, the cap specified in the third paragraph of Appendix 9 shall apply.

Option N

- The proportions used to calculate the Price Adjustment Factor are

Proportion	linked to index for	prepared by
[REDACTED]	Labour using index A 1980 BEAMA Electrical Engineering Labour Contract and Sub-Contract Labour)	British Electrotechnical and Allied Manufacturers' Association (BEAMA)
[REDACTED]	Material, Equipment and Plant using index B, RPIX for Main Contract and Sub-Contract Materials, Equipment and Plant [Table RP05, January 1987 = 100 (CHMK)]	British Electrotechnical and Allied Manufacturers' Association (BEAMA)
[REDACTED]		

- The base date for indices is **01 April 2008**

Option P

- The retention free Amount is **NIL**
- The retention percentage is [REDACTED]

If Option R is used (whether or not Option L is also used)

Delay damages for the whole of the works

Liquidated and / or Ascertained Damages applicable at a rate of [REDACTED] (Two Hundred Thousand Pounds only) per day or part thereof for failure to complete all of the works.

For the avoidance of doubt, the cap specified in the third paragraph of Appendix 9 shall apply.



Option T

- Changes in the Law applicable

Option Z

- The additional conditions of contract are as listed in Appendices 1 to 10 to Contract Data Part One

Contract Data Part one

Additional Contract

Requirements

Appendix 1 Z1

clause Z1.17 (18.3) *Employer* appoints under CDM Regulations
Alan Stamp as Planning Co-ordinator

clause Z1.57 (51.1A.2) address for application payments,
Metronet Rail SSL Limited (in PPP administration), Finance Shared
Services, Accounts Payable Department, 6th Floor Eagle Wing,
Templar House, 81-87 High Holborn, London WC1V 6NU

clause Z1.57 (51.1A.5) address for *Contractor's* invoice with copy of
Corresponding CPAF,
Metronet Rail SSL Ltd (in PPP administration), Finance Shared
Services, Accounts Payable Department, 6th Floor Eagle Wing,
Templar House, 81-87 High Holborn, London WC1V 6NU

Appendix 2 Z2

clause Z2.63.1 documentation retention period if longer than eight
years

METRONET RAIL SSL LIMITED (in PPP administration)
THE NEC ENGINEERING AND CONSTRUCTION CONTRACT
SECOND EDITION NOVEMBER 1995

OPTION A (A FORM OF CONTRACT FOR A PRICED CONTRACT WITH ACTIVITY SCHEDULE)

INDEX

Appendix 1 – Additional Conditions of contract

- Z1 Amendments to NEC clauses (excluding PPP Contract definitions and PPP Contract obligations which are set out in Option Z2)**
- Z2 PPP Contract definitions and PPP Contract obligations**
- Z3 Additional Clauses**
- Z3A Special Conditions of Contract**
- Z4 Amendments to Main Options – Not Used**
- Z5 Amendments to Secondary Options**
- Z6 Amendments to Schedule of Cost Components**
- Z7 Amendments to Shorter Schedule of Cost Components**

Appendix 2 - Form of Parent Company Guarantee

Appendix 3 – Not used

Appendix 4 - Form of Direct Agreement

Appendix 5 – Form of Deed of Novation

Appendix 6 – Form of Collateral Warranty

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NEC: EEC OPTION A

OPTION Z: APPENDIX 1 ADDITIONAL CONDITIONS OF CONTRACT

The additional conditions of contract are:

Z1 Amendments to clauses (excluding PPP Contract definitions and PPP Contract Obligations which are set out in Option Z2)

Amendments to clauses

Z1 The clauses are amended as follows:

1 General

Clause 11 Identified and defined terms

Z1.1 Add new sub-clause 11.1A as follows:

"This contract comprises the documents listed in the form of agreement executed by the Parties."

Z1.2 Add new sub-clause 11.1B as follows:

"Subject to sub-clause 60.1, no alterations or amendments may be made to this contract except where expressly recorded in writing in a document expressed to be supplemental to this contract and signed by the Parties, such documents to be listed in Clause 3 of the Form of Agreement."

Z1.3 Sub-clause 11.2(13)

Replace "Works Information" with "contract".

Z1.4 Sub-clause 11.2(15)

In line 2 delete the words "Works Information" and replace with "the contract"

Z1.5 Sub-clause 11.2(16)

Delete sub-clause and replace with the following

"The Defects Certificate is a list of Defects which the *Contractor* has not corrected which

- the *Contractor* finds before the *defects date* or
- the *Supervisor* finds before the *defects date* and notifies the *Contractor* of in accordance with this contract

or if there are no such Defects, a statement that there are none."

Z1.6 Sub-clause 11.2(24)



Add after the words "which would either delay or be covered by immediately following work" the words

"or which require a material amount of remedial work".

Z1.7 Add the following definitions

Z1.7.1 "11.2(29)A Access means approval of access to stations and track on the Underground Network required by the *Contractor* to provide the *works* and/or any works or activities forming part of the *works* in accordance with the Works Information."

Z1.7.1A "11.2(29)B Affected Party means the Party claiming relief under Z.1.91"

Z1.7.2 "11.2(30)A Business Day means any day from Monday to Friday inclusive, except public holidays in England."

Z1.7.2A "11.2(30)B Consequential Losses means any of the following:

- (i) loss of profits
- (ii) loss of revenue;
- (iii) depletion of goodwill or similar losses;
- (iv) pure economic loss; or
- (v) special, indirect or consequential loss, cost, damages, charges or expenses,

howsoever arising, but excluding in each case any loss cost, expense or damage within the scope of clause Z3.12 (*Liquidated Damages*), clause 83.1A (*Indemnity*) or clause Z2.60 (*Intellectual Property*), and any reduction of price or consideration, abatement, deduction or other contractual relief under the PPP Contract, which in each case shall not be Consequential Losses;."

Z1.7.3 "11.2(31) Good Industry Practice means in respect of any aspect of the *works* and subject always to its statutory safety obligations, whilst always ensuring that risks are reduced to a level which is as low as is reasonably practicable, the exercise of the degree of skill, diligence, prudence and foresight in practice which could reasonably and ordinarily be expected from a skilled and experienced person engaged in

- carrying out the same type of responsibilities of the *Contractor* with respect to such aspect of the *works* or in each case, performing its obligations under the same, reasonably comparable or similar circumstances, and utilising all the information available at the relevant time or
- carrying out responsibilities, whether individually or as a package of responsibilities, which could reasonably be



regarded as being comparable to the responsibilities of the Contractor under this contract with respect to such aspect of the works,

in each case, performing its obligations under the same, reasonably comparable or similar circumstances, and utilising all the information available at the relevant time."

Z1.7.4 "11.2(32) Losses means any direct expense, liability, loss, claim or proceedings whatsoever, other than Consequential Losses, and including for the avoidance of doubt abatements under the PPP Contract.

Z1.7.5 "11.2(33) Affiliate means a Subsidiary or a Holding Company of a person and any other Subsidiary of that Holding Company."

Z1.7.6 "11.2(34) Holding Company means a holding company within the meaning of Section 736 of the Companies Act 1985."

Z1.7.7 "11.2(35) Subsidiary means a subsidiary within the meaning of Section 736 of the Companies Act 1985, and a subsidiary undertaking within the meaning of Section 258 of the Companies Act 1985."

Z1.7.8 Not used.

Z1.7.9 Not used.

Z1.7.10 Not used.

Z1.7.11 Not used.

Z1.7.12 "11.2(40) Insurances has the meaning given to it in clause 84."

**Clause 12
Interpretation
and the Law**

Z1.8 Add new sub-clause 12.1A as follows

"References to "person", "firm" or "company" includes any individual, company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality."

Z1.9 Add new sub-clause 12.1B as follows

"The headings to the sections, clauses and sub-clauses of the conditions of contract are for convenience only and do not affect the construction of the conditions of contract."

Z1.10 Add new sub-clause 12.1C as follows

"In the case of conflict, the clauses in Option Z2 followed by Option Z3A Special Conditions of Contract take precedence over any other clause in this contract."

Z1.11 Add new sub-clause 12.1D as follows

"A reference to legislation includes



- references to any provision of a statute, regulation or legislation from time to time amended, re-enacted or substituted and
- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such legislation."

Z1.12 Add new sub-clause 12.3 as follows

"The *Employer* and the *Contractor* submit, subject to the provisions of this contract, to the exclusive jurisdiction of the courts of England and Wales provided that the *Employer* has the right in his absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the *Contractor* is incorporated or in which any asset of the *Contractor* may be situated."

**Clause 13
Communications**

Z1.13 Add new sub-clause 13.9

Until such time as the *Employer* notifies the *Contractor* in writing, any communication in respect of termination, any claims for compensation events, variations, claims of breach of contract sent to the *Employer* must be copied to the PPP Administrators at the address of Ernst & Young LLP, 1 More London Place, London SE1 2AF.

**Clause 14
The Project
Manager and the
Supervisor**

Z1.14 Delete sub-clause 14.1 and replace with the following

"Subject to sub-clause 60.1, no communication from the *Project Manager* or the *Supervisor*, including comments on the *Contractor's* design, instructions, the Defects Certificate or other certificates, or acceptance by the *Project Manager* or the *Supervisor* of a communication from the *Contractor* or acceptance of the *Contractor's* work by the *Project Manager* or the *Supervisor* removes, amends or varies the *Contractor's* obligations or liability under this contract, including the *Contractor's* responsibility to Provide the Works, his liability for Defects or for his design."

**Clause 17
Ambiguities and
Inconsistencies**

Z1.15 At the end of sub-clause 17.1 add the following

"An instruction under this sub-clause is not a compensation event."

**Clause 18
Health and
safety**

Z1.16 Add new sub-clause 18.2 as follows

"For the purposes of the Construction (Design and Management) Regulations 2007 and any amendment thereto ("the CDM Regulations") the *Employer* is the only client (for the purposes of Regulation 8 of the CDM Regulations) in respect of the *works*."

Z1.17 Add new sub-clause 18.3 as follows

"The *Employer* appoints as part of the *works* the *Contractor* to act as any or all of the following

- "the CDM co-ordinator" pursuant to Regulation 14(1) of the CDM Regulations and
- "the principal contractor" pursuant to Regulation 14(2) of the CDM

Regulations."

Z1.18 Add new sub-clause 18.4 as follows

"The *Contractor* accepts such appointment and agrees to carry out all obligations imposed by the CDM Regulations on the CDM co-ordinator (including the duties specified in Regulations 20 and 21 of the CDM Regulations) and/or the principal contractor (including the duties specified in Regulations 22 to 24 of the CDM Regulations) as the case may be."

Z1.19 Add new sub-clause 18.5 as follows:

"The Parties will provide each other with all necessary assistance that they may reasonably require in order to fulfil their respective obligations under the CDM Regulations, any applicable Standard and pursuant to any appointment made under sub-clause 18.3."

2 The Contractor's Main Responsibilities

Clause 20 Providing the Works

Z1.20 Delete sub-clause 20.1 and replace with the following:

"The *Contractor* shall Provide the Works in accordance with Good Industry Practice (or, to the extent that the contract provides for any higher standard, to that higher standard) and in accordance with the Works Information and the other provisions of the contract."

Z1.21 Add new sub-clause 20.2 as follows

"Without prejudice to any other warranties expressed elsewhere in the contract or implied by law the *Contractor* warrants, represents and undertakes to the *Employer* as follows

20.2.1 The *Contractor* is aware of the purposes for which the *works* are required, as described in the Works Information and acknowledges that the *Employer* is reliant upon the *Contractor's* expertise and knowledge in the provision of the *works*.

20.2.2 The *Contractor* has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the contract.

20.2.3 Not used.

20.2.4 The *Contractor* shall provide the *works* with all due care, skill and diligence to be expected of appropriately qualified and experienced persons (of a professional level if appropriate) with appropriate skill and experience in providing works of a similar scope, type, nature and complexity to those required under the contract.

20.2.5 The *Contractor* shall provide the *works* in accordance with Good Industry Practice and in accordance with the Works Information and the standards referred to in the Works Information (or, to the extent that the contract provides for any higher standard, to that higher standard).

- 20.2.6 The *Contractor* shall provide the *works* using materials and goods that are of sound and satisfactory design and quality and in accordance with the Works Information and the standards referred to in the Works Information.
- 20.2.7 The *Contractor* shall provide the *works* in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons using, operating or subsequently maintaining the *works* or any part of them or using the Site, or of any other person, and in a safe, economic and efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard.
- 20.2.8 All materials and/or goods supplied under the contract and any equipment (or any part thereof) designed or replaced by the *Contractor* will be new and will in all respects be fit for the purposes specified in the Works Information and in particular but without limitation will be capable of operation as part of any system referred to in the Works Information.
- 20.2.9 The *Contractor* has the right to grant to the *Employer* and LUL all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights contemplated by the contract.
- 20.2.10 The *Contractor* has put into effect as from the commencement of the contract the insurances detailed in sub-clause 84.1 and Part A of Appendix 7 and any additional insurances detailed in Part B of Appendix 7.

Z1.22 Not used.

Z1.23 Add new sub-clause 20.4 as follows

"For the purposes of construing the warranties in sub-clause 20.2 references to the *works* will include any part of the *works*. Each warranty will be construed as a separate warranty and will not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other term of the contract."

Z1.24 Add new sub-clause 20.5

"The *Contractor* obtains from or gives to Others all licences, consents, notices and approvals which the Works Information states will be obtained by the *Contractor*. The *Contractor* ensures that the conditions or requirements of licences, consents and other approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that the licences, consents and other approvals which are obtained by the *Contractor* are renewed whenever necessary or appropriate. The *Contractor* provides all reasonable assistance and information to the *Employer* or *Project Manager* within 14 days, or such lesser time as required by this contract, of a request from the *Employer* or the *Project Manager* in relation to the *Employer's* application for any such licences, consents, approvals and permissions or for the discharge of any conditions. The *Contractor* prepares within the timescales set out in the Works Information all necessary documents, method



statements, additional surveys as required to comply with any consents, approvals, licences, permissions and conditions referred to above."

Clause 21
The Contractor's design

Z1.25 Sub-clause 21.2

Delete the full stop at the end of the second bullet point and add new third and fourth bullet points as follows

- "it is not integrated and co-ordinated with the designs of the *Employer* and Others in circumstances where these have been made available to the *Contractor* by the *Employer* within a reasonable timescale in advance of the submission of the *Contractor's* design or
- it does not adequately address reasonable comments and recommendations made by the *Project Manager* within a timescale that reasonably permits the *Contractor* to incorporate them into the design."

Z1.26 After sub-clause 21.2 insert new sub-clause 21.2A as follows

"The *Project Manager* may make comments and recommendations as to the particulars of the *Contractor's* design. The *Contractor* takes account of the *Project Manager's* comments and recommendations in his design, where such comments and recommendations do not prejudice the *Contractor's* ability to submit a design compliant with the terms of the Contract. Acceptance of the *Project Manager's* recommendations and comments does not reduce or amend the *Contractor's* obligations and liability under this contract in respect of his own design."

Z1.27 Amend sub-clause 21.4 so that "the *Contractor* indemnifies the *Employer* against reasonable claims".

Z1.28 Not used

Clause 22
Using the Contractor's design

Z1.29 Clause 22

Delete this clause.

Clause 23
Design of Equipment

Z1.30 Sub-clause 23.1

After the word "acceptance" in the second line insert the following "if required by the Works Information or".

Clause 25
Co-operation

Z1.31 Add new sub-clause 25.2

"The *Contractor* shall, acting reasonably and in accordance with Good Industry Practice, so manage the *works* and co-operate with any persons undertaking any other works which in any way relates to the *works* (Other Contractors) so as to minimise disruption to the *Employer* and to ensure that the *works* are carried out safely, efficiently and quickly and so as to limit as far as is reasonably practicable any claims or disputes arising against the *Employer* or the *Contractor*. Without prejudice to the generality of the foregoing the *Contractor* shall co-ordinate its works with other works being undertaken by and co-operate with Other Contractors.

Where the *Contractor* foresees (or should reasonably do so) that compliance with this clause 25.2 is likely to cause delay, he shall at the earliest practicable opportunity notify the *Employer* (so that such delay may be mitigated) but, providing the *Contractor* has done so and has otherwise complied with this clause 25.2, he shall not bear the risk of such delay.

Z1.32 Add new sub-clause 25.3

"The co-operation and co-ordination referred to in sub-clause 25.2 above shall include but not be limited to

- Subject to the Other Contractors being under (or placed under) appropriate obligations of confidentiality to the *Contractor*, providing copies of all relevant programmes drawings method statements and other construction information to Other Contractors,
- considering any such information received from Other Contractors and taking such information into account in Providing the Works,
- attending as appropriate meetings held by Other Contractors and/or the *Employer* and giving Other Contractors the opportunity to attend the *Contractor's* site meetings,
- adjusting the *Contractor's* programmes and methods of working to fit with those of Other Contractors and providing all such reasonable assistance and access as may be required by Other Contractors in the carrying out of their works. Adjustments to the *Contractor's* programme shall be made, as far as reasonably practicable, whilst not delaying/without delay to the *Contractor's* progress in delivering the works"

**Clause 26
Subcontracting**

Z1.33 Sub-clause 26.2

Delete second sentence and replace with the following

"Subject to sub-clause 26.3 below the *Project Manager* does not withhold his acceptance unreasonably".

Z1.34 Add new sub-clause 26.2.A

"The *Contractor* does not subcontract

- to any division or Subsidiary or Affiliate of the *Employer* or any division or Subsidiary or Affiliate of the *Employer's* parent company or
- to any division or Subsidiary or Affiliate of the *Contractor* or to any division or Subsidiary or Affiliate of the *Contractor's* parent company or to any other company in the same group as the *Contractor*,

without the prior written consent of the *Project Manager* such consent not to

be unreasonably withheld or delayed."

Z1.35 Sub-clause 26.3

Delete the word "unless" in the second line and the first and the second bullet points, and replace with a full stop.

Delete the second sentence of the second full paragraph and last two bullet points and replace with the following

"The *Project Manager* may withhold his acceptance (notice of which is given by the *Project Manager* to the *Contractor* in writing) if any of the following applies or occurs

- the NEC Engineering and Construction Subcontract or the NEC Professional Services Contract (in each case with such amendments as the *Employer* reasonably requires) is not used,
- the subcontract conditions do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- the proposed conditions will not allow the *Contractor* to Provide the Works or
- the *Contractor* has not followed the Subcontractor procurement procedure set out in the Works Information.

Otherwise the *Project Manager* does not withhold his acceptance unreasonably."

3 Time

**Clause 30
Starting and
Completion**

Z1.36 Not used

**Clause 31
The Programme**

Z1.37 Sub-clause 31.2

Insert a new bullet point after the first bullet point as follows

"train and station facility closures, Underground Network possessions (including possessions for testing and acceptance), isolations and speed restrictions,"

Z1.38 After sub-clause 31.3, insert new sub-clause 31.3A as follows

The *Contractor's* method statements contain information relating to the methods of constructing the *works*, including details of the Equipment which the *Contractor* proposes to adopt or use and, if requested by the *Project Manager*, such calculations of stresses, strains and deflections which will arise in the *works* and any parts of the *works* during construction. The *Contractor's* method statements include sufficient details to enable the *Project Manager* to decide whether, if the methods are adhered to, the *works* can be executed in accordance with the Works Information and without



detriment to the safe working of the Underground Network, to the property of the *Employer* and Others or to the *works* during construction and when completed."

**Clause 32
Revising the
programme**

Z1.39 Insert a new sub-clause 32.3

"Without prejudice to the operation of clauses 60 to 63 the inclusion of a compensation event on any revised programme does not constitute valid notice of a compensation event to the *Project Manager* in accordance with the terms of this contract."

Z1.40 Insert a new sub-clause 32.4:

"Without prejudice to the operation of clauses 60 to 63 acceptance by the *Project Manager* of any revised programme does not constitute valid acceptance by the *Project Manager* of any effects of compensation events included within the Accepted Programme by the *Contractor*."

**Clause 33
Possession of the
Site**

Z1.41 At the beginning of sub-clause 33.1 add the words "Subject to sub-clause 33.3"

At the end of sub-clause 33.1 add the following:

"provided that there is an Accepted Programme and the *Contractor* complies with the procedure set out in the Works Information to book possessions of the Site or parts of the Site in accordance with the Works Information where this has not already been booked by the *Employer*".

Z1.42 Add new sub-clause 33.3

"Subject to prior written notice from the *Contractor* the *Employer* shall allow the *Contractor* access to the Company Network or any part thereof if required to comply with its obligations under the contract provided that the *Contractor* complies with the access requirements set out in the Works Information and any Access Code from time to time in force between LUL and the *Employer*. The *Contractor* acknowledges that the *Employer* cannot guarantee uninterrupted or exclusive possession of the Site and that the *Contractor's* possession of the Site is limited by the closures, Underground Network possessions, isolations, speed restrictions and Engineering Hours stated in the Works Information and any other limitation stated in the Works Information.

Provided the *Contractor* has used all reasonable endeavours to plan for and mitigate the effect of any lack of access, it shall not be liable for programme delays arising from restrictions to access affecting the carrying out of the *works*"

**Clause 35
Take over**

Z1.43 Not used.

Z1.44 Delete sub-clause 35.3 and replace with the following

"If the *Employer* takes over part of the *works* before Completion such takeover shall be without prejudice to clauses 42, 43, 44 and 45 (as amended) which shall remain in full force and effect as if the *Employer* had not taken over any part of the *works*, provided that the *Contractor* is not



responsible for any Defects to the extent such Defects are caused by the fault or omission of the *Employer*."

Z1.45 Add new sub-clause 35.5 as follows

"In lieu of any sum to be paid by the *Contractor* or withheld or deducted by the *Employer* under clause R1 (Delay Damages) in respect of any period during which the *works* or a *section* of the *works* may remain incomplete occurring after the Completion Date for the *works* or for that *section* of the *works* as the case may be, the *Contractor* shall pay such sum as bears the same ratio to the sum which would be paid apart from the provisions of sub-clause 35.3 as the total Prices or the Prices for that *section*, as the case may be, less the amount contained therein in respect of the relevant part taken over pursuant to sub-clause 35.3 bears to the total Prices or the Prices for that *section*, as the case may be, or the *Employer* may deduct such sum from the monies due to the *Contractor*."

**Clause 36
Acceleration**

Z1.46 Sub-clause 36.2

Delete the words "or gives his reasons for not doing so"

Z1.47 Add new sub-clause 36.3A as follows

"When the *Project Manager* does not accept a quotation for an acceleration he instructs the *Contractor*

- not to accelerate or
- to accelerate in which case he revises the Completion Date accordingly provided that the revised Completion Date is not earlier than the *completion date*. Such an instruction constitutes a compensation event."

Z1.48 Add following as sub-clause 36.4

"If the *Project Manager* is of the reasonable opinion that the *Contractor* failed to Provide the Works in a regular and diligent manner, the *Project Manager* shall have the right to instruct the *Contractor*, at its own cost, to accelerate the *works* so as to maintain the programme unless the *Contractor* is able to prove such an instruction to accelerate is unnecessary.

4 Testing and Defects

**Clause 42
Searching and
notifying Defects**

Z1.49 Sub-clause 42.2

Add the following additional sentence at the end of this sub-clause

"Notification is within seven days of finding any Defect whether before or after the *defects date* or if the *Contractor* can show that it was not reasonably possible to notify such Defect within the said seven days then as soon as possible thereafter."

**Clause 43
Correcting
Defects**

Z1.50 Sub-clause 43.2

Add the following to the end of this sub-clause

the *Contractor*, provided that an appropriate notice to withhold payment has been served by the *Employer* on the *Contractor*. Such estimates are binding on the *Contractor* unless varied by agreement between the Parties or by any award, decision, order or judgment."

**Clause 51
Payment**

Z1.56 Sub-clause 51.1

Delete the first sentence and replace with the following

"The *Project Manager* certifies payment and issues a Contract Payment Approval Form ("CPAF") to the *Contractor* within two weeks of each assessment date".

**Payment
Application
Procedure**

Z1.57 Add new sub-clause 51.1A as follows

"51.1A.1 Applications for payment, together with all supporting documentation, must be submitted in the following manner, to be received by the *Project Manager*, not fewer than (7) seven working days prior to the *assessment interval* specified in the Contract Data Part one. It shall include:

- the totals for each item forming part of the application plus the final total,
- the reference of the relevant activity (description and item number) and evidence of completion where items are included from the activity schedule,
- any compensation events with cross-reference, as applicable, to supporting:
 - project communications
 - Contractor's communications
 - other documents relating to the compensation event and evidencing the amount agreed
- a fully summated summary of the *works* and compensation events indicating previous gross amounts claimed, retentions and VAT.

51.1A.2 Applications for payment must be addressed to the person stated in Contract Data Part one.

51.1A.3 In respect of any item included in an application, failure to submit all of the required information by the due date will result in such an item in the application either being rejected, or held until the later of the next scheduled valuation date or receipt by the *Project Manager* of the outstanding information, or, in accordance with the provisions of the contract, the *Project Manager* may make an assessment of the amount payable.



- 51.1A.4 Subject to the *Contractor's* compliance with the foregoing, the *Project Manager* shall send the *Contractor* a Contract Payment Approval Form (CPAF) certifying the amount due.
- 51.1A.5 The *Contractor's* invoice together with a copy of the corresponding CPAF must be sent to the person stated in Contract Data Part one.
- 51.1A.6 Payment shall not constitute acceptance by the *Employer* of a variation in price, or quality, or the state of completion of the items.
- 51.1A.7 The *Contractor's* copy of the CPAF notifies the amount the *Employer* proposes paying and the basis on which the amount is calculated. Within seven days of receipt of the CPAF, the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the CPAF, with a copy of the CPAF attached. Payment becomes due on the day the *Employer* receives the *Contractor's* VAT invoice and copy CPAF".

Z1.58 Sub-clause 51.2

Delete the words "Each certified payment is made within three weeks of the assessment date" in the first line and replace with "The final date for the payment of each certified payment is 30 days after the receipt by the *Employer* of the *Contractor's* VAT invoice and copy CPAF."

Z1.59 Add new sub-clause 51.6 as follows

"If the *Employer* intends to withhold payment of a sum due under this contract after the final date for payment, he notifies the *Contractor* not later than five days (the prescribed period) before the final date for payment by specifying

- the amount proposed to be withheld and the ground for withholding payment or
- if there is more than one ground, each ground and the amount attributed to it."

Z1.60 Add new sub-clause 51.7 as follows

"All damages, costs, charges, expenses, debts, sums or other amounts to which the *Employer* is entitled to be paid by the *Contractor* arising from a breach by the *Contractor* of its obligations hereunder may be deducted by the *Employer* from monies due or which may become due to the *Contractor* under this contract."

6 Compensation Events

Clause 60 Compensation Events

Z1.61 Sub-clause 60.1(1)

Delete full stop at end of second bullet point and insert "or". Add two further

bullet points

- "a change which the *Project Manager* acting reasonably, decides does not involve the *Contractor* in extra time or expense or
- changes which the *Project Manager* acting reasonably, decides are de minimis. "

Z1.62 Sub-clause 60.1(2) amend as follows:

(a) replace "possession of" with "access to" and delete the wording "later of the *possession date* and the date required by the Accepted Programme" and replace with "access dates as set out in the summary of works set out in Schedule 1.13 (the **Thales Programme**), unless and until amended by the Accepted Programme; and

(b) after the word "Programme" on the second line insert the following

"except

- where the *Project Manager* postpones access to the Underground Network as the result of operational requirements for a period not exceeding fifteen minutes in respect of Engineering Hours and not exceeding two hours in respect of minor closures or
- where the *Contractor* has failed to notify the *Employer* of its requirements for Access in accordance with the Works Information."

Z1.63 Add at the end of sub-clause 60.1(3)

"except where this is caused by the failure of the *Contractor* to manage and co-ordinate in accordance with the Works Information and sub-clause 25.2".

Z1.64 At the end of sub-clause 60.1(4), add the words "except where the instruction is given as a result of a breach by the *Contractor* of the provisions of the contract or of statutory requirements in relation to health and safety".

Z1.65 Add at the end of sub-clause 60.1(5)

"except where this is caused by the failure of the *Contractor* to manage and co-ordinate in accordance with the Works Information and sub-clause 25.2".

Z1.66 Delete sub-clause 60.1(6)

Z1.67 Sub-clause 60.1(8)

Immediately after "he has previously communicated to the Contractor" insert the following:

"and which the Contractor has acted upon"

Z1.68 Sub-clause 60.1(9)

Add "unreasonably" in between "*Project Manager*" and "withholds"

Delete "for a reason not stated in this contract" and replace with:

"provided that the *Employer* sets out its reasons for withholding such an acceptance"

Z1.69 Sub-clause 60.1(10)

Delete the word "only" in second line and add at the end of the sub-clause "or because the *Supervisor* had reasonable grounds for believing that the search may reveal a Defect having regard to the previous discovery of Defects".

Z1.70 Delete sub-clause 60.1(11)

Z1.71 Sub-clause 60.1(12)

Delete the word "The" in the first line and insert the following before the words "Contractor encounters"

"Subject to sub-clause 63.2A, the"

Insert the following additional bullet point after the first bullet point

"are uninsurable on reasonable commercial terms,"

Delete the final bullet point and insert the following

"could not reasonably have been foreseen by a contractor experienced in the provision of works of a similar size, scope, nature and complexity as the *works*."

Z1.72 Delete sub-clause 60.1(13)

Z1.73 Delete sub-clause 60.1(15)

Z1.74 Delete sub-clause 60.1(17)

Z1.74A Sub-clause 60.1(18)

After the words "breach of contract", insert the words "or act of prevention"

Z1.75 Sub-clause 60.2

Delete the full stop at the end of the fourth bullet point and add the following additional paragraph after the fourth bullet point

"and having taken account of the nature, age, source and likely accuracy of the information referred to in this sub-clause has made due allowance in his programme and the Prices for any physical conditions reasonably foreseeable by a contractor experienced in the provision of works of a similar size, nature and complexity as the *works*."

Z1.76 Add new sub-clause 60.4

"Suspension of performance is a compensation event if the *Contractor* properly exercises his right to suspend performance under the Housing Grants, Construction and Regeneration Act 1996."

**Clause 61
Notifying
compensation
events**

Z1.77 Sub-clause 61.4

Add the following to the end of the first bullet point

"including but not limited to failure by the *Contractor* to comply with

- the requirements of this contract,
- appropriate safety requirements or
- applicable law,"

Add the following to the end of this sub-clause

"Provided that where the *Project Manager* requests the submission of a substantiated quotation in respect of a particular compensation event notified by the *Contractor* after the Contract Date then the submission of a substantiated quotation by the *Contractor* to the *Project Manager* in accordance with this contract is a condition precedent for increasing the Prices and/or extending the Completion Date in respect of that event."

Z1.78 Sub-clause 61.7

Delete this sub-clause and replace with the following

"Any event notified by the *Contractor* to the *Project Manager* after the *defects date* does not qualify as a compensation event."

**Clause 62
Quotations for
Compensation
Events**

Z1.79 Not used

**Clause 63
Assessing
Compensation
Events**

Z1.80 Sub-clause 63.1

Delete the word "The" at the beginning and add the words "Subject to sub-clause 63.2A, the"

Delete the words "are assessed" in the first line and replace with "may be assessed".

Z1.81 Sub-clause 63.2

Delete the word "If" at the beginning and add the words "Subject to sub-clause 63.2A, if"

Z1.82 Add new sub-clause 63.2A

"The Contractor will not be entitled to an increase in the Prices as a result of the occurrence of the events in clause 60.1(12)."

Z1.83 Sub-clause 63.3

Add at end of sub-clause



"In assessing a delay to the Completion Date the *Project Manager* has regard to any instructions to omit any part of the *works*. The *Project Manager* may (having previously changed the Completion Date) in assessing a compensation event change the Completion Date to an earlier date provided that the *Project Manager* may not change the Completion Date to a date earlier than the *completion date* specified in the Contract Data."

Z1.84 Add new sub-clause 63.3A as follows

"Where a delay caused by a compensation event runs concurrently with a delay which is not caused by a compensation event, the period for which the delays are concurrent is taken into account in assessing any delay to the Completion Date due to the compensation event and the cost of such delay is taken into account when assessing any change to the Prices."

Z1.85 Sub-clause 63.4

Delete the words "event is assessed" on the third line and replace with the following

"*Project Manager* may assess the event".

Z1.86 Not used.

Z1.87 Not used

Z1.88 Add new sub-clause 63.12

"Assessments are based upon the assumption that the *Contractor* has complied with his obligations under sub-clause 25.2."

7 Title

Clause 70 The Employer's title to Equipment, Plant and Materials

Z1.89 Replace clause 70 with

"The *Contractor* warrants that it has the right to pass ownership of the *works* and all Plant and Materials and that title to the *works* and all Plant and Materials is good, free and clear of all charges, encumbrances, and claims and Plant and Materials are not subject to any reservation of title to a third party. Title to Plant and Materials shall pass to the Employer upon payment in respect of such Plant and Materials being received by the *Contractor* in cleared funds."

Clause 71 Marking Equipment, Plant and Materials outside the Working Areas

Z1.90 Delete clause 71

8 Risks and insurance

Clause 80

Z1.91 Replace sub-clause 80.1 with

Employer's risks

"The *Employer's* risks are

- Claims, proceedings, compensation and costs payable to a third party which are due to
 - use or occupation of the Site by the works or for the purpose of the works which is the unavoidable result of the works, but not claims, proceedings, compensation and costs which arise from (a) physical conditions which could be classed as a compensation event under sub-clause 60.1(12) or (b) the manner in which the Contractor carries out the works, provided that such manner is not the result of an instruction by the *Employer* or required by the Works Information or other provisions of the contract.
 - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the Contractor or
 - a breach of contract by the *Employer*.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees,
 - radioactive contamination,
 - any act of terrorism,
 - lightning, earthquake, extraordinary storm, fire or flooding (unless caused by the Affected Party or any other person for whom the Affected Party is responsible), except to the extent such loss and damage is covered by the insurance required to be taken out by the *Contractor* under this contract.
- Loss of or damage to the parts of the *works* taken over by the *Employer*, except loss or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect which existed at take over,
 - an event occurring before take over which was not itself an *Employer's* risk,
 - the activities or omissions of the *Contractor* on the Site after

take over or

- any breach of contract or breach of duty by the *Contractor*.
- Loss of or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss and damage due to the activities or omissions of the *Contractor* on the Site after the termination.
- Additional *Employer's* risks stated in the Contract Data.

**Clause 83
Indemnity**

Z1.92 Amend sub-clause 83.1 by the insertion at the beginning of the clause of "Subject to the provisions of clause 83.1A"

Z1.92A Insert a new clause 83.1.Aas follows:

"The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against Losses and Consequential Losses incurred in respect of

- death or injury to any person, due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the *Contractor*, his sub-contractors or agents; and
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible), but only to the extent such loss and damage is covered by the insurance required to be taken out by the *Contractor* under this contract.

"

Z1.93 Sub-clause 83.2

Delete this sub-clause and replace with the following

"The *Contractor's* indemnity under sub-clause 83.1 remains in force for the duration of this contract and for the limitation period."

Z1.94 Add new sub-clause 83.3 as follows

"The *Contractor* is not responsible for and does not indemnify the *Employer* for losses to the extent that such losses are caused by the negligence of the *Employer*, his employees or agents."

Z1.95 Not used.

**Clause 84
Insurance Cover**

Z1.96 Delete sub-clauses 84.1 and 84.2 including the Insurance Table and replace with the following

"84.1. Without prejudice to its liability to indemnify the *Employer* under clause 83 or any other provision of the contract, the *Contractor* will arrange and maintain throughout the duration of the contract (unless otherwise stated)

84.1.1 *Employer's* liability insurance in respect of the *Contractor's*



liability for any person in the *Contractor's* employment in the sum of not less than £10 million per incident or such other minimum level as may from time to time be required by law,

84.1.2 Public and Product liability insurance in respect of the *Contractor's* liability in the sum of not less than £10 million per occurrence or such other sum as may be set out in Appendix 7 with financial loss extension,

84.1.3 Professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the *works* but not less than [REDACTED] in the aggregate per annum for six (6) years from the date of commencement of the contract and at the option of the Employer for every year thereafter at an additional cost agreed between the Parties

84.1.4 Insurance of all materials acquired by or delivered to the *Contractor* for the purposes of performing its obligations under the contract (whether or not the property of the *Contractor* or of the *Employer*, but in the case of the *Employer's* property only as notified in writing to the *Contractor* by the *Employer*) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the *Employer* and/or the *works* are completed,

84.1.5 any other insurances specified in Part B of Appendix 7,

and the insurances referred to in this sub-clause 84.1 and any other insurance which the *Contractor* is obliged to take out under the provisions of the contract are called "the Insurances".

84.2 Without prejudice to sub-clause 84.1, the *Contractor* will ensure that it has sufficient insurances to cover the *Contractor's* legal liability (including liability assumed under the contract) that may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part-performance of the contract and that the Insurances extend to indemnify the *Employer* as principal."

85 Insurance Policies

Z1.97 Delete sub-clauses 85.1, 85.2, 85.3 and 85.4 and replace with the following

"85.1 The *Contractor* shall

85.1.1 provide evidence satisfactory to the *Employer* in the form of a broker's letter of confirmation of insurance, prior to the *starting date* and at least five Business Days prior to each anniversary of the Start Date that the Insurances have been effected and are in force. ,

85.1.2 if required by the *Employer*, procure that prior to cancelling or changing any term of any of the Insurances, the insurer or insurers under any such insurances give the *Employer* not

- less than fourteen days' notice of intention to cancel or make such change,
- 85.1.3 not take or shall not fail to take any 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 of the Insurances,
 - 85.1.4 notify the *Employer* as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified,
 - 85.1.5 notify the *Employer* as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the *works* in excess of [REDACTED] on any of the Insurances and, if requested by the *Employer* and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the *Employer* may reasonably require) within 3 Business Days of the *Employer's* request,
 - 85.1.6 subject to sub-clause 85.4.2, promptly and diligently deal with all claims under the Insurances (or any of them) relating to the *works* and in accordance with all insurer requirements and recommendations and
 - 85.1.7 in relation to any claim settled under the Insurances in respect of the *works*, and to the extent that the proceeds of such *claim* are payable to the *Contractor*, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the *Employer*, any member of the Metronet Group or any third party).
- 85.2 Subject to the insurance being available in the European insurance market at reasonable costs which a prudent company acting in this sector would procure, if the *Contractor* is in breach of sub-clause 84.1, then without prejudice to any of its other rights, powers or remedies, the *Employer* may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the *Employer* may recover such premiums from the *Contractor*, together with all expenses incurred in procuring such Insurances as a debt. Further should the *Employer* be required to extend the period of its insurance coverage due to the negligence or other default of the *Contractor*, the *Contractor* shall pay to the *Employer* the costs of the said extended insurance.
- 85.3 The *Contractor* will comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including without limitation, in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The *Contractor* will bear the cost of all excesses under the Insurances.



85.4 In relation to all the Insurances except that required under clause 84.1.1,

85.4.1 the *Contractor* will not compromise, settle or waive any claim in connection with this contract which the *Contractor* may have under the Insurances without the prior written consent of the *Employer*, such consent not to be unreasonably withheld or delayed and

85.4.2 the *Contractor* agrees that the *Employer* will have the right to control and to supervise all dealings with the media in relation to any incident, event, claim or action.

85.5 The *Contractor's* liability under the contract will not be restricted, limited or altered by any stipulation or arrangement in the contract with regard to insurance or by any approval of insurance policies and all losses and/or damages for which *Contractor* is liable and which are not recovered under insurances will be for the *Contractor's* account."

86 If the Contractor does not Insure

Z1.98 Delete sub-clause 86.1

87 Insurance by the Employer

Z1.99 Delete sub-clauses 87.1, 87.2 and 87.3.

9 Disputes and Termination

**Clause 91
The adjudication**

Z1.100 Delete sub-clauses 91.1 and 91.2.

**Clause 92
The Adjudicator**

Z1.101 Delete sub-clauses 92.1 and 92.2.

**Clause 93
Review by the Tribunal**

Z1.102 Delete sub-clauses 93.1 and 93.2

**Clause 94
Termination**

Z1.103 In the Termination Table in clause 94

Where the Terminating Party is the Employer:

- in the column headed 'Procedure', delete all references to P3 for all reasons.
- in the column headed 'Amount due', delete all references to A4 and A5.
- in the column headed 'Amount due', delete all references to A2 save for where the reason for termination is as for a reason other than R1-R21.

Where the Terminating Party is the Contractor:



- in the column headed 'Reason' replace "R1 – R10" with "R1-R7, R9, R10;
- in the column headed 'Procedure', delete all references to P4 for all reasons.
- in the column headed 'Amount due' delete all references to A4 and A5.

Z1.104 Add a further sub-clause 94.6

"For the avoidance of doubt, the *Contractor* may not terminate this contract by reason only of the PPP administration of the *Employer*."

Z1.105 Add a new sub-clause 94.7

"Without prejudice to the *Employer's* rights to terminate the contract under clause Z2.44 or to terminate the contract at common law, the *Employer* may at any time terminate the contract by giving 28 days' notice in writing to the *Contractor*."

Z1.106 Add a new sub-clause 94.8

"The provisions of clauses 10, 11, 12, 20, 43, 46, 70, 80, 83.1, 83.1A, 84, 85, 94, 95, 96, 97, Z2 and Z3A will survive the termination of the contract and continue in full force and effect, along with any other clauses or schedules of the contract necessary to give effect to them. In addition, any other provision of the contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination of the contract will survive such termination."

**Clause 95
Reasons for
Termination**

Z1.107 In sub-clause 95.1(2), bullet point 4,

Add at the end

"or an administrator has been appointed to it".

Z1.108 In sub-clause 95.2, add the following words after the word "obligations" and before the word "(R11)"

"or a breach of sub-clause Z2.40"

Z1.109 Sub-clause 95.4

Add after "*Project Manager*" the words "and which is not disputed by the *Employer*".

Delete the word "certificate" on the second line and insert "receipt by the *Employer* of the *Contractor's* VAT invoice copy certificate and copy CPAF"

**Clause 96
Procedures on
Termination**

Z1.110 Delete sub-clause 96.2 and replace with the following

"The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Employer* may instruct the *Contractor* to leave the Site, put the

works into a safe condition, remove any Equipment from the Site and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*. The *Contractor* must obey any instruction."

**Clause 97
Payment on
Termination**

Z1.111 Sub-clause 97.1

Delete the third bullet point (this is the third bullet point, not counting the two sub-bullet points to bullet point two) and replace with the following

"other Actual Cost reasonably incurred at the Date of Termination in respect of work completed."

Add a bullet point at the end with the following

"a deduction for amounts paid by the *Employer* for Plant and Materials which have not been delivered to the *Employer*."

Z1.112 Sub-clause 97.3

Except in relation to the items of loss set out below on termination of this contract the *Employer* will not be liable to the *Contractor* for any loss of profit, loss of contract or other losses and/or expenses of whatsoever nature arising out of or in connection with such termination

In the event that this Agreement is terminated pursuant to the provisions of Clause 94.7, the *Employer* shall pay the *Contractor* the aggregate of the following amounts:

- a) the value as at the Termination Date of the aggregate of all payments and/or charges for Milestones and Services delivered pursuant to and in accordance with this Agreement and for which payment has not been received by the *Contractor* at the Termination Date
- b) all costs and expenses incurred by or on behalf of the *Contractor* under and in relation to licences and/or subcontracts for the provision of software, hardware and/or services utilised (or to be utilised) by the *Contractor* to meet its obligations under the Agreement (less the reasonable market value of any items owned by the *Contractor* and retained by the *Contractor* at the *Contractor's* option on the termination of the contract);
- c) Any new items ordered in accordance with the Accepted Programme, provided that Contractor has procured such items at reasonable commercial prices and on reasonable commercial terms;
- d) all costs and expenses incurred by the Contractor as a direct consequence of the termination of leases entered into specifically for the purposes of conducting the *works* provided that the Contractor has entered into such leases at reasonable commercial prices and on reasonable commercial terms; and
- d) all demobilisation and redundancy or staff termination costs reasonably incurred by the *Contractor* and on the assumption that the employment arrangements are on reasonably commercial terms



Z2 PPP Contract definitions and PPP Contract obligations

PPP Contract definitions

Add the following defined terms:

- Z2.1 "**Accounting Period**" means the *Employer's* accounting periods as notified from time to time by the *Employer* to the *Contractor* each such period being of between 25 and 32 days and one of 13 periods during the *Employer's* Financial year;
- Z2.2 "**Adjudicator**" means an independent person appointed to act as an adjudicator in accordance with the Dispute Resolution Procedure;
- Z2.3 Not used.
- Z2.4 "**Company**" means the *Employer* and its successors in title acting for itself or, where notified to the *Contractor*, for any other member of the Metronet Group;
- Z2.5 "**Company Network**" means that part of the Underground Network for which the *Employer* is responsible under the PPP Contract;
- Z2.6 "**Contract Dispute**" means a dispute in any way concerning or relating to or arising out of the contract;
- Z2.7 "**Contract QUENSH Conditions**" means all those contract, quality, environmental, health and safety conditions in force from time to time and contained in the QUENSH manual issued by LUL as may be amended from time to time;
- Z2.8 "**Contractor's Personnel**" means the employees and agents of the *Contractor* and the *Contractor's* Subcontractors or contractors who are involved in the provision of the *works*;"
- Z2.9 "**Corporate IPRs**" means those trade marks, trade names and other IPRs listed in Appendix 8, as may be amended by the *Employer* from time to time by adding to or removing such IPRs from such list;
- Z2.10 "**Documentation**" means the Minimum Records, any aspect of the *Contractor's* or Subcontractor's operations costs and expenses, claims, variations and financial arrangements, operating manuals, maintenance manuals, program listings, data models, flowcharts, logic diagrams, input and output forms, instructions, technical literature (including, without limitation, drawings, designs, blue prints, schematics and plans), equipment and component inventories, source codes, purchase orders, manufacturers' specifications meeting minutes and details and any other functional specifications, and all other related materials in either eye-readable or electronic form, and complete or partial copies of the foregoing, relating to the *works*;
- Z2.11 "**Direct Agreement**" means an agreement substantially in the form attached as Appendix 4;
- Z2.12 "**Engineering Hours**" means the period of time between the time that

traction current is switched off and the time when traction current is switched on;

- Z2.13 **"Infrastructure Manager"** has the meaning ascribed to it in the Railway and Other Guided Transport Systems (Safety) Regulations 2006;
- Z2.14 **"Intellectual Property Rights"** or "IPRs" means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright (including without limitation rights in software and databases), moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;
- Z2.15 **"Lease"** means the lease between LUL and the *Employer* in the form set out in Part III of Schedule 1.5 to the PPP Contract with such amendments as LUL and the *Employer* shall agree and unless the context otherwise requires includes any amendment, restatement, variation, modification, suspension, replacement or novation of it and any deed or instrument made supplemental to it (including where applicable any supplemental lease);
- Z2.16 **"LUL"** means London Underground Limited (a wholly owned subsidiary of Transport for London) and its successors in title and assigns acting for itself or, where notified to the *Contractor*, for any other member of the TfL Group;
- Z2.17 **"LUL or Company Information"** means any information relating to LUL or any other member of the TfL Group or to the *Employer* or to any other member of the Metronet Group or their business or operations including, without limitation, all processes, methods and techniques, operational, manufacturing or construction data, business policies, sales and marketing data, formulae, specifications, software specifications or applications, computer systems and any other information in any media used by or the property of LUL or any other member of the TfL Group, or the *Employer* or any other member of the Metronet Group;
- Z2.18 **"Metronet Group"** means the *Employer*, Metronet Rail BCV Limited (in PPP administration)(and their respective successors in title) and any Holding Company and Subsidiary thereof or of such Holding Company from time to time;
- Z2.19 **"Minimum Records"** means
- (a) all necessary information for the evaluation of claims or variations, whether or not relating to the *Contractor* or to any Subcontractors (and whether or not such Subcontractors are affiliated to the *Contractor*);
 - (b) management accounts, information from management information systems and any other management records;
 - (c) accounting records (in hard copy as well as computer readable data);
 - (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);

- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation files (including documentation covering negotiated settlements);
- (i) schedules on a project by project basis including capital works costs, timetable and progress towards relevant milestone dates;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than [REDACTED];
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against pricing and project plans, in each case which have not already been provided to the *Employer*; and
- (n) test and commissioning results;

Z2.20 "**Nominating Authority**" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

Z2.21 "**Notice of Adjudication**" means any notice given by a Party in relation to a Contract Dispute in accordance with paragraph 1 of the Dispute Resolution Procedure. Every such notice shall contain

- (a) a statement indicating under which clause or clauses of this contract the Contract Dispute arises; and
- (b) a concise summary of the nature and background of the Contract Dispute and the issues arising and a statement of the relief or remedy claimed;

Z2.22 "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through the PPP Contract or through contractual arrangements in substantially similar terms;

Z2.23 "**PPP Contract**" means the amended and restated contract dated 4 April 2003 entered into by LUL and the *Employer* for the provision of infrastructure services;

Z2.24 "**Safety Breach**" means a material breach of any obligation under this contract caused by the gross incompetence or wilful default of the *Contractor* or by any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) or any of its agents which has materially affected the safe operation of the Underground Network or endangered the safety of the employees of LUL or the public or any other person;



- Z2.25 "**Standards**" shall have the meaning given thereto in the Master Definitions Agreement dated 31 December 2002 between LUL, Infracore JNP Limited, Infracore BCV Limited and the *Employer*;
- Z2.26 "**TfL Group**" means Transport for London ("TfL") and successors in title and any Subsidiary thereof from time to time;
- Z2.27 "**Underground Network**" means the stations and depots (wherever situate), assets, systems, track, and other buildings which are used in the maintenance and provision of the underground service known as "London Underground";
- Z2.28 "**Underlease**" means the underlease from the *Employer* to LUL in the form set out in Part III of Schedule 1.5 of the PPP Contract with such amendments as LUL and the *Employer* may agree and unless the context otherwise requires includes any amendment, restatement, variation or modification of it and any deed or instrument made supplemental to it (including where applicable any supplemental underlease);
- Z2.29 Not used
- Z2.30 Not used

PPP Contract obligations

Add the following clauses:

Confidentiality and Announcements

- Z2.31 The *Contractor* acknowledges that:
 - it may receive or obtain LUL or Company Information;
 - it may prepare or create LUL or Company Information; and
 - LUL or Company Information is of a proprietary and confidential nature.
- Z2.32 The *Contractor* shall not and shall ensure that its Subcontractors shall not:
 - Z2.32.1 use LUL or Company Information for any purposes whatsoever other than for the purpose of the performance of the *works* (and in particular shall not use LUL or Company Information to the detriment of LUL or the *Employer*);
 - Z2.32.2 disclose LUL or Company Information to any third party (save as may be required by law or by order of a Court of competent jurisdiction and provided that prior to such disclosure the *Contractor* shall consult with the *Employer* as to the proposed form of such disclosure) without the prior written consent of the *Employer* except that the *Contractor* shall be entitled to the extent strictly necessary to disclose LUL or Company Information:
 - (a) to such of the *Contractor's* Personnel who need to know the LUL or Company Information for the performance of the *works* provided that the *Contractor* shall be responsible for any breach of its obligations hereunder occasioned by any act or omission of such *Contractor's* Personnel; and



- (b) to any governmental or regulatory agency or authority whose decisions, instructions or rulings may properly be enforced against a party to the contract;

Z2.32.3 without the prior written consent of the *Employer* (except where provided in clause Z2.32.2) disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the LUL or Company Information or relating to this contract.

Z2.33 The *Contractor* shall:

Z2.33.1 receive and/or maintain the LUL or Company Information in strictest confidence;

Z2.33.2 inform each of the persons referred to in clause Z2.32 above to whom LUL or Company Information is disclosed of the restrictions contained herein as to use and disclosure of the LUL or Company Information and shall use its best endeavours to ensure that each of them shall observe such restrictions;

Z2.33.3 on the request of the *Employer* (made at any time) deliver to the *Employer* all documents and other materials in its possession, custody or control (or the relevant parts thereof) that bear or incorporate all or any part of the LUL or Company Information.

Z2.34 The obligations set out in clauses Z2.32 and Z2.33 will not apply to any LUL or Company Information which:

Z2.34.1 the *Contractor* can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Contractor* by the *Employer*; or

Z2.34.2 is hereafter lawfully disclosed to the *Contractor* without any obligation of confidence, by a third party who has not derived it directly or indirectly from the *Employer*;

Z2.34.3 is or becomes generally available to the public in any printed publication in general circulation through no act or default on the part of the *Contractor*.

Z2.35 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of clauses Z2.31 to Z2.38 by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of clauses Z2.31 to Z2.38.

Z2.36 The *Contractor* shall not without the prior written consent of the *Employer* (or where appropriate, LUL) advertise or announce that it is carrying out the works for the *Employer* or LUL.

Z2.37 In relation to that part of LUL or Company Information which includes information relating to LUL, the *Contractor* hereby agrees to be bound by sub-clause 48.2 of the Company Contract in all respects as if it were a party



thereto.

Z2.38 At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the LUL or Company Information and if instructed by the *Employer* in writing, remove all electronically held LUL or Company Information, including the purging of all disk-based LUL or Company Information and the reformatting of all disks.

**Contracts
(Rights of Third
Parties) Act 1999**

Z2.39 Any person who is not a party to this contract shall not have any benefit from or any rights under this contract pursuant to the Contracts (Rights of Third Parties) Act 1999; provided that nothing shall prevent (i) LUL from enforcing any rights granted for its benefit under this contract or pursuant to any Direct Agreement referred to in clause Z2.46; or (ii) the PPP Administrators from enforcing any rights granted for their benefit under this contract (including, without limitation clause 5 of the Form of Contract).

**Corrupt Gifts
and Safety
Breach**

Z2.40 The *Contractor* warrants that it and its Subcontractors and suppliers and its and their respective employees and agents have not committed, and shall not commit, any of the following acts:

Z2.40.1 offering or agreeing to give to any servant, employee, officer or agent of the *Employer*, of the Metronet Group or of LUL or the TfL Group any gift or consideration of any kind as an inducement or reward;

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract or arrangement with the *Employer* or LUL or of any other contract between LUL and a third party;

(b) for showing or not showing favour or disfavour to any person in relation to the PPP Contract, this contract or any other contract;

Z2.40.2 entering into the contract or any other such contract in connection with which commission has been paid or agreed to be paid or rebates granted or agreed to be granted by it or on its behalf or to its knowledge unless before this contract is made, particulars of any such commission or rebate and of any agreement or document for the payment thereof have been disclosed in writing to the *Employer* or LUL; or

Z2.40.3 a Safety Breach.

Z2.41 The *Contractor* warrants that it and its Subcontractors and suppliers and its and their respective employees and agents have not committed, and shall not commit, any offence under legislation creating offences in respect of fraudulent acts including The Prevention of Corruption Acts 1889-1916 or at common law in respect of fraudulent acts relating to this contract or the PPP Contract or any other contract with the *Employer* or LUL or defraud or make any attempt to defraud the *Employer* or LUL.

Z2.42 The *Employer* and/or LUL shall have the right in accordance with the audit rights set out in this contract to audit and inspect the records of the *Contractor* and its Subcontractors and suppliers and its and their respective employees and agents in order to confirm and monitor compliance with sub-clauses Z2.40 to Z2.45 at any time during the performance of this contract and thereafter until three years after the expiry of the PPP Contract or disposal of the interest of the *Employer* in the PPP Contract to LUL or to a third party.

Z2.43 If requested by the *Employer*, the *Contractor* shall terminate the employment of any of the *Contractor's* Personnel who is in breach of the provisions of clauses Z2.40 to Z2.45. The *Contractor* shall include a provision in each of its subcontracts entitling it to terminate the employment of the Subcontractor's employees in such circumstances.

Z2.44 If the *Contractor* or any Subcontractor or anyone employed by either of them, or acting on behalf of either of the *Contractor* or of any Subcontractor whether or not acting independently commits an act prohibited by clauses Z2.40 to Z2.45, the *Employer* may in its absolute discretion require the removal from the contract and/or Site of any relevant person, and the *Contractor* shall promptly comply with, or procure compliance with, such requirement, or if so requested by LUL, the *Employer* will terminate this contract by giving to the *Contractor* on not less than fourteen days notice in writing.

Z2.45 The *Contractor* specifically acknowledges that any breach by it of any of the provisions of clause Z2.40 shall entitle LUL to serve a mandatory sale notice on the *Employer* pursuant to the PPP Contract, the effect of which shall, inter alia, oblige the *Employer* to dispose of its business.

Direct Agreement with LUL

Z2.46 It is a condition precedent to the commencement of this contract that the *Contractor* shall deliver to the *Employer* on the signature of the contract a Direct Agreement duly executed by the *Contractor* in the form set out in Appendix 4.

LUL Step in Rights

Not used.

Dispute Resolution

Z2.47 Any dispute or difference of any kind arising out of or in connection with the contract shall be resolved in accordance with the Dispute Resolution Procedure set out in Appendix 10.

Z2.48 Where a dispute arises under the PPP Contract and the LUL Senior Representative:

Z2.44.1 has decided under sub-clause 49.3 of the PPP Contract that the *Employer* has been or is likely to be in default of its obligations pursuant to the PPP Contract and that it is necessary for the *Employer* to take specific action or steps to avoid LUL being in breach or default of its obligations to a third party; and

Z2.44.2 has delivered a Notice of Instruction pursuant to sub-clause



49.4 or sub-clause 23.2(a) of the PPP Contract; and

Z2.44.3 the *Employer* has sent a copy of the Notice of Instruction to the *Contractor* and informed the *Contractor* that in its opinion, if the *Employer* has or is likely to be in default of its obligations pursuant to the PPP Contract, it is because the *Contractor* is or is likely to be in default of its obligations under this contract,

the *Contractor* shall, without prejudice to the right of either Party to refer to the Dispute Resolution Procedure the question of whether or not the *Contractor* is or was in breach or default of its obligations under this contract, immediately and in any event as soon as practicable comply with each and every instruction contained in the Notice of Instruction and shall continue to comply with the provisions of the Notice of Instruction until such time as it is instructed otherwise by the *Employer*.

Z2.49 The Parties acknowledge that the decision of the LUL Senior Representative to issue the Notice of Instruction shall be final and binding and the only recourse the *Contractor* shall have in respect of the Notice of Instruction shall be as set out in clauses Z2.51 and Z2.52.

Z2.50 The Parties agree that issue by the LUL Senior Representative of a Notice of Instruction shall not in any way relieve the *Contractor* or the *Employer* of their obligations pursuant to this contract and the Parties agree that they shall continue to observe and perform all the obligations contained in this contract.

Z2.51 In the event that subsequent to the issue of a Notice of Instruction an adjudicator appointed under the Dispute Resolution Agreement decides:

Z2.51.1 that the LUL Senior Representative did not act reasonably in making his decision;

Z2.51.2 that the *Employer* was not in breach or default of its obligations pursuant to the PPP Contract; or

Z2.51.3 that although the *Employer* was in breach or default of its obligations pursuant to the PPP Contract any of the instructions in the Notice of Instruction that the *Employer* had to and did comply with was in the circumstances unreasonable,

then, to the extent that the *Contractor* had to and did comply with such instructions the issue of the Notice of Instruction shall be treated for the purposes of the PPP Contract as an LUL Breach.

Z2.52 In the event that subsequent to the issue of a Notice of Instruction it is determined pursuant to the Dispute Resolution Procedure that the *Contractor* was not in breach or default of its obligations under this contract, then unless an adjudicator appointed under the Dispute Resolution Agreement decides or has decided as set out in clause Z2.51, to the extent that the *Contractor* has complied or is to comply with any of the instructions in the Notice of Instruction such instruction shall be a compensation event for the purposes of clause 60 above.

Intellectual

Z2.53 The *Contractor* hereby assigns with full title guarantee to the *Employer* and



Property

to LUL all Intellectual Property Rights specifically prepared or developed or created by or on behalf of the *Contractor* in the performance of the contract. For the purpose of this clause, the Intellectual Property Rights specifically prepared or developed or created by or on behalf of the *Contractor* in the performance of the contract shall be limited to application documents (Data base, parameter and customised displays (for the MGM) which are project dependent) which are specific to the project and are delivered to the Employer in the normal course of the project, and the following specific systems: the driver text message system, level crossing communications and train ready to start.

Z2.54 Subject to any assignment granted to the *Employer* and LUL under clause Z2.53, all Intellectual Property Rights developed or owned by the *Contractor*, its employees, Subcontractors (of any tier) or agents and used by the *Contractor* in the performance of the contract, whether acquired or developed or created prior to or during the performance of the contract will remain or be vested in the *Contractor* or such parties provided that the *Employer* and LUL shall have, and the *Contractor* hereby grants to the *Employer* and LUL, a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence to use the same for all purposes, including (without limitation) for the purposes of:

Z2.54.1 understanding the Equipment;

Z2.54.2 operating, maintaining, repairing, modifying, re-figuring, correcting and replacing the Equipment;

Z2.54.3 extending, interfacing with, integrating with, connecting into and adjusting the Equipment;

Z2.54.4 enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Company Network;

Z2.54.5 continuing any element of the *works*; and

Z2.54.6 enabling LUL to perform its function and duties as Infrastructure Manager and Operator of the Underground Network and/or for the purposes of performing obligations or exercising its rights under the Company Contract or Lease or Underlease

and the *Employer* and LUL may sub-license such rights to any third party for all purposes. Such licence shall include the right for the *Employer* and LUL to modify anything in which the Intellectual Property Rights subsist and the right to modify the Standards (to the extent that the *Employer* does not already have such right).

The *Contractor* grants to the *Employer* the right to modify, adapt and enhance all Intellectual Property Rights owned, controlled or used by it in connection with the Contract provided that such rights may only be exercised in the event of a Release Event under clause 6 of the Escrow Agreement set out at Appendix 11 (Form of Escrow Agreement). The *Contractor* shall provide the *Employer* with fully executed copy of the Escrow Agreement within 21 (twenty one) days from the date of this contract.



- Z2.55 The *Contractor* shall provide the *Employer* and LUL with copies of anything in the *Contractor's* possession or control which is referred to or relied upon by the *Contractor* in using and is required in any way for the use of the Intellectual Property Rights licensed to the *Employer*, LUL and any third party in accordance with clause Z2.53 and Z2.54 above
- Z2.56 Intellectual Property Rights in all Documentation and in all other material and items supplied by the *Employer* to the *Contractor* in connection with the contract shall remain vested in the *Employer* or the person owning such rights at the time the Documentation, material or items were supplied. Any Intellectual Property Rights created during the performance of the contract in the Standards shall vest unconditionally in the *Employer*. The *Contractor* shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the *Employer* the rights referred to in this clause.
- Z2.57 The *Contractor* shall ensure that any Intellectual Property Rights which belong to a third party and which are licensed to the *Contractor* among other things for the purposes of its performance of the contract or otherwise utilised by the *Contractor* for those purposes by agreement with the owner of such rights will be licensed or used on such terms that permit the *Employer* and LUL to use such rights for the purposes set out in clause Z2.54 above and to assign such rights to any nominee or successor and to sub-license such rights to any third party for the same purposes. This provision shall not apply to proprietary or standard software under the value of £5,000 which may be purchased and replaced by the *Employer* without the specific consent of the third party owner of such software provided that on Completion or earlier termination of the contract, the *Contractor* provides to the *Employer* all the data stored in such software relevant to the *works* in a format agreed with the *Employer*.
- Z2.58 All sums required to be paid to third parties in respect of the use of any Intellectual Property Rights connected with the performance of the *Contractor's* obligations under the contract shall be paid by the *Contractor*.
- Z2.59 The *Employer* hereby grants the *Contractor* a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the *Employer* which are required by the *Contractor* for the purposes of performing the *works*. Any such licence is granted for the duration of the contract solely to enable the *Contractor* to comply with its obligations under the contract and is conditional upon the *Contractor* using such Intellectual Property Rights in accordance with the Standards, the Contract QUENSH Conditions and such other quality standards as the *Employer* and/or LUL may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the *Employer* may be used in conjunction with any other trademarks without the prior written consent of the *Employer* and/or LUL.
- Z2.60 The *Contractor* shall indemnify and hold harmless the *Employer* and LUL against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any third party and against all costs and damages of any kind which the *Employer* or LUL may incur in connection with any actual or threatened proceedings before

any court or arbitrator. If required by the *Employer* or LUL the *Contractor* shall conduct negotiations with any third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the *Employer* or LUL.

Z2.61 In the event of a claim of infringement of any Intellectual Property Rights the *Contractor* shall use all reasonable endeavours to make such alterations or adjustment to the method of Providing the Works as may be necessary to ensure that the provision of the *works* continues in spite of such claim

Z2.61.1 The *Contractor* acknowledges the *Employer's* ownership of Intellectual Property Rights which may subsist in the *Employer's* data and the *Contractor* shall not delete or remove any copyright notices contained within or relating to such data.

Z2.61.2 The *Contractor* and the *Employer* shall each take reasonable precautions (having regard to the nature of their other respective obligations under the contract) to preserve the integrity of the *Employer's* data and to prevent any corruption or loss of such data.

Z2.62

Z2.62.1 The *Contractor* is permitted to use Corporate IPRs during the duration of the contract for such purposes and to the extent necessary to provide the *works* in accordance with the Works Information, provided that:

Z2.62.1.1 the Corporate IPRs shall only be used in compliance with any relevant Standards; and

Z2.62.1.2 the *Contractor* shall not use the Corporate IPRs in combination with any other trade marks without the prior written consent of LUL; and

Z2.62.1.3 within five Business Days of a written request from the *Employer*, the *Contractor* shall provide the *Employer* with copies or details of items on or in relation to which it uses the Corporate IPRs.

If in the opinion of the *Employer*, such use falls below any of the relevant Standards notified to the *Contractor* under sub-clause Z2.62.1.1 above, then the *Contractor* shall accordingly correct its use of the Corporate IPRs so as to comply with such Standards taking into account the *Employer's* instructions.

Z2.62.2 Where the *Contractor* wears or uses any of the following items then the *Contractor* must use on such items the New Johnston Typeface and the Roundel in the form in which they form part of the Corporate IPRs and in accordance with clause Z2.62.1 above on:

Clothing – general uniforms;

Clothing – special incidents

Engineering and emergency response Rolling Stock and road vehicles

Temporary site signs and work hoardings;

Train and Station signs and notices; and

Trains

Records, Audit and Inspection

Z2.63 Z2.63.1 The *Contractor* will, and will procure that its Subcontractors will, maintain a true and correct set of documents and records including personnel and training records pertaining to all activities relating to their performance of or compliance with the contract and a complete and orderly documentary record of all transactions entered into by the *Contractor* for the purposes of the contract including copies of any Documentation generated by or in the possession of the *Contractor*, all subcontracts and all such other information reasonably required by the *Project Manager* or by LUL or specified in the contract. The *Contractor* agrees, and will procure that its Subcontractors agree to maintain and retain the Documentation for a period of not less than eight years (or such other longer period as may be required by law or as stated in Contract Data Part one) after completion of performance under the contract. The *Employer* and LUL or any authorised representative of either of them will have the right to audit any and all such records at any time during performance of the contract and during the eight year period (or such longer period as may be required by law or as stated in the Contract Data) following completion of performance under the contract.

Z2.63.2 The *Employer* and/or LUL or any authorised representative of either of them or of a third party authorised by either the *Employer* or LUL may from time to time and without prior warning undertake any inspection of the Equipment and shall have the right to audit any or check any and all information and any and all documents and records regarding any matter related to the *Contractor's* or any Subcontractor's performance of or compliance with the contract including without limitation any aspect of the *Contractor's* or sub-contractor's operations costs and expenses subcontracts claims related to variations and financial arrangements. The *Employer* or LUL may in either or both their absolute discretion but will not be obliged to inform the *Contractor* of the objective of the audit prior to its commencement.

Z2.63.3 The *Contractor* will, and will ensure that any Subcontractor will, promptly provide all reasonable co-operation in relation to any inspection, audit or check including:

Z2.63.3.1 granting access to any premises, equipment, (including all computer hardware, software and databases) plant machinery or systems used (whether



exclusively or non exclusively) in the *Contractor's* and/or any Subcontractor's performance of the contract, or where such premises, equipment, plant, machinery or systems are not the *Contractor's* own, using reasonable endeavours to procure such access. ;

Z2.63.3.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit;

Z2.63.3.3 making any contracts, other documents and records referred to in sub-clause Z2.63.1 above (whether exclusively or non exclusively) available for inspection;

Z2.63.3.4 providing a reasonable number of copies of any contracts, other documents or records referred to in clause Z2.63.1 above required by the auditor and/or granting copying facilities to the auditor for the purposes of making such copies;

Z2.63.3.5 providing such auditors with such office space, telephones reasonable facilities and interviews with personnel engaged in the Contractor's performance of or compliance with the contract at each site as are reasonably required to enable such auditors to perform each audit properly in accordance with this clause;

Z2.63.3.6 permitting such auditors to bring personal computers onto sites; and

Z2.63.3.7 complying with LUL's and the Employer's reasonable requests for access to senior personnel engaged in the performance of the contract.

Z2.63.4 Any audit referred to in clauses Z2.63.1 to Z2.63.4 shall be conducted on an open book basis. The *Contractor* shall undertake any obligations and exercise any rights, which relate to the performance of the contract on an open book basis.

Z2.63.5 The *Contractor* shall comply with all of its obligations under the Data Protection Act 1998 (DPA) and if processing personal data shall only carry out such processing for the purposes of providing the *works* in accordance with this contract. For the purposes of this sub-clause Z2.62.5 the words "processing" and "personal data" shall have the meaning attributed to such words in the DPA.

Safety Rules and Compliance with Laws

Z2.64 Z2.64.1 Whilst present on any LUL premises and/or the Site the *Contractor* will ensure that the *Contractor's* Personnel observe at all times all rules and safety requirements applicable to the premises and/or the Site notified to the *Contractor* by the *Employer* or any instructions given by the *Project Manager* in relation to performance of the *works*.



Z2.64.2 The *Contractor* will ensure that the performance of the *works* complies with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law, all European Union legislation, all regulatory requirements and all codes of practice relevant to the *Contractor's* business and/or the *Employer's* business from time to time in force which are or may become applicable to the *works*. The *Contractor* shall promptly notify the *Employer*, if the *Contractor* is required to make any change to the *works* for the purposes of complying with its obligations under this sub-clause Z2.64.2

Z2.64.3 In addition to the general requirements of sub-clauses Z2.64.1 and Z2.64.2 the *Contractor* will comply and will ensure the compliance of its Subcontractors with all health and safety law applicable to the *works* or to the *Contractor* in performing the *works* and with the provisions of the *Employer's* Contract QUENSH Conditions as set out in the Works Information and as amended from time to time and will enable and assist the *Employer* to comply with all relevant health and safety law applicable to the *Employer*.

Z2.64.4 The *Contractor* acknowledges LUL's statutory duty and the *Employer's* contractual duty to provide a safe and efficient public passenger transport service and will at all times during the contract have regard to the *Employer's* statutory duties and the *Contractor* will not in the performance of the contract in any manner endanger the safety of or interfere with the convenience or operation of the Underground Network or the public and will minimise any disruption to the same.

Z2.64.5 The *Contractor*:

Z2.64.5.1 shall promptly notify the *Contractor's* Personnel and the *Employer* of any health and safety hazards that exist or may arise in connection with the performance of the works;

Z2.64.5.2 undertakes to procure that all the *Contractor's* Personnel comply with all of the *Employer's* and LUL's policies and Standards that are relevant to the performance of the works, and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the *Employer* or LUL for all *Contractor's* Personnel working at the Site or accessing the *Employer* or LUL computer systems. The *Employer* shall (but without prejudice to the foregoing undertakings) provide the *Contractor* with copies of such policies Standards and regulations on request.

Z2.64.6 The *Employer* reserves the right to refuse to admit to any Site and/or the Company Network any of the *Contractor's* Personnel who fail to comply with any of the requirements policies,

Standards and/or regulations referred to in this clause Z2.64.

Z3 Additional clauses

Z3 Add the following clauses:

Assignment and Change of Control

Z3.1 Z3.1.1 The *Contractor* shall not assign or otherwise dispose of this contract or any or all of its rights or obligations under this contract Without the prior written consent of the *Employer*, such consent is not to be unreasonably withheld or delayed. The *Contractor* subcontracts in accordance with clause 26. Subject to applicable legislation, the *Employer* may assign this contract to any person at any time without the consent of the *Contractor*, provided the *Employer* has given not less than twenty eight (28) days prior written notice of the assignment to the *Contractor* or such lesser notice period where the assignment is to a TfL nominee which is a member of the TfL group

Z3.1.2 The *Contractor* shall:

Z3.1.2.1 not without the prior written consent of the *Employer* (such consent not to be unreasonably withheld or delayed) undergo any change in the ownership of the *Contractor* where such change relates to [REDACTED] or more of the issued share capital of the *Contractor*; and

Z3.1.2.2 give notice to the *Employer* in the event that there is any change in the ownership of the Holding Company where such change relates to [REDACTED] or more of the issued share capital of the Holding Company, such notice to be given within 10 Business Days of the date on which such change takes effect, except where the provision of such notice would be in contravention of any applicable law or regulation (in which case the *Contractor* shall provide notice as soon as reasonably able to do so). For this purpose "Holding Company" means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as defined by section 840 of the Income and Corporation Taxes Act 1988 but does not include the *Contractor's* ultimate parent company, Thales S.A..

Associated Agreements

Z3.2 Z3.2.1 The *Contractor* shall deliver at its expense, the form of Parent Company Guarantee at Appendix 2 to this contract (from the *Contractor's* UK parent company) unless otherwise agreed with the *Employer* at Appendix 3 to this contract to the *Employer* on signature of this contract executed by the parties (other than the *Employer* and LUL) named in such document.

Z3.2.2 The *Contractor* shall deliver to the *Employer* within 14 days of a written request the form of Deed of Novation at Appendix 5 to this contract and the form of Collateral Warranty (for each Subcontractor or sub-consultant as described in the Works Information) at Appendix 6 of this contract.



Z3.3 It shall be a condition precedent to any obligation of the *Employer* to make any payment under this contract that the *Contractor* has delivered to the *Employer* all of the documents required by sub-clauses Z2.46, Z3.2.1 and Z3.2.2 provided that in relation to the failure to provide Subcontractor or sub-consultant warranties the provisions of this clause shall only apply to payments in respect of work undertaken by a Subcontractor or sub-consultant in respect of which a warranty has not been provided and provided also that any failure or delay by the *Employer* to enforce this condition precedent shall not prevent the *Employer* from relying on the provisions of this clause in the event of a breach of sub-clauses Z2., Z3.2.1 and Z3.2.2.

Contamination

Z3.4 If the *Contractor* discovers that the Site has been contaminated or polluted, or he suspects that the Site has been contaminated or polluted then the *Contractor* is to notify the *Employer* immediately in writing if possible naming the party causing the contamination.

Contractor's Default on Compliance

Z3.5 In the event that the *Contractor* does not fulfil its responsibilities and obligations under the conditions of contract due to the infringement of any rule, law or any order, regulation or bye-law having the force of law and the *Employer* thereby incurs costs to which it would not otherwise be liable, the amount of such costs shall be reimbursed by the *Contractor* to the *Employer*.

Cost control system

Z3.6 The *Contractor* maintains a fully auditable cost control system which enables full compliance with the *Employer's* requirements and reporting procedures.

Delays due to Abatement Notices

Z3.7 The cost to the *works* (including resulting delay in the *works* or completion of the *works* under the conditions of contract) due to any appeal against, or compliance with any Abatement Notice (Abatement Notice being any notice or written communication from any regulatory and/or statutory authority relating to noise, nuisance, the environment and/or safety of the *works* and/or the Site) or any other notice, consent or requirement of a regulatory authority, provided and to the extent that the same is caused by the *Contractor's* performance, non-performance or part performance of this contract, shall be borne by the *Contractor*.

Entire Agreement

Z3.8 Z3.8.1 Subject to sub-clause Z3.8.4 and without prejudice to the *Contractor's* obligations under the contract, the *Contractor* will be responsible for and will make no claim against the *Employer* in respect of any misunderstanding affecting the basis of the *Contractor's* tender in respect of the contract or any incorrect or incomplete information howsoever obtained.

Z3.8.2 This contract sets out the entire agreement and understanding between the Parties to the exclusion of any other terms and conditions (including terms and conditions contained in any other document or previous contract relating to the *works*) and supersedes and extinguishes any related prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature.

Z3.8.3 It is agreed that



- no Party has entered into this contract in reliance upon any representation, warranty, promise or undertaking of any other Party which is not expressly set out or referred to in this contract and
- no Party has any remedy in respect of misrepresentation or untrue statement made by any other Party which is not contained in this contract, or for any breach of warranty which is not contained in this contract.

Z3.8.4 Nothing in sub-clauses Z3.8.2 or Z3.8.3 will exclude or limit any liability for fraudulent misrepresentation.

Euro Compliant

Z3.9 The *Contractor* shall ensure that any software, electronic or magnetic media, hardware or computer system used or supplied by the *Contractor* in connection with the contract shall:

Z3.9.1 be Euro Compliant;

Z3.9.2 not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any date related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system; and

Z3.9.3 not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the *Employer* and/or any other member of the Metronet Group, on which it is used or with which it interfaces or comes into contact;

Z3.10 The *Contractor* shall ensure that any variations, enhancements or actions undertaken by the *Contractor* in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the *Contractor's* compliance with clause Z3.9.

Income and Corporation Taxes Act 1988 Statutory Tax Deduction

Z3.11 No later than 4 weeks after the *starting date* the *Contractor* provides the *Employer* with evidence that the *Contractor* is entitled to be paid without any statutory deduction, or informs the *Employer* in writing that he is not entitled to be paid without the statutory deduction.

Liquidated Damages for Disruption

Z3.12 The *Contractor* will pay and/or *Employer* may deduct from the amount due by way of liquidated damages

Z3.12.1 Such sums as may be identified and calculated in accordance with Appendix 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a breach of the *Contractor's* obligations under the contract from the commencement of the event, effect, delay or failure in question to the cessation of the event, effect, delay or failure in question (irrespective of the intervention of a termination event) except to the extent that any failure referred to in this clause is the direct result of any default or neglect of the *Employer* or a

compensation event under clause 60 of the contract.

Z3.12.2 The amount of liquidated damages in Appendix 9 shall be adjusted by the *Employer* to take account of any relevant default or neglect of the *Employer* or a relevant compensation event under clause 60 of the contract.

Z3.12.3 The *Contractor* acknowledges that:

- under the PPP Contract, the *Employer* is obliged to repair and maintain the infrastructure of the Company Network; and
- any failure by the *Contractor* to perform the works or any breach by the *Contractor* of its obligations under the contract may result in the *Employer* incurring losses under the PPP Contract.

Z3.12.4 The provisions of this clause Z3.12 will not prevent the *Employer* from exercising any of its other rights under the contract.

Z3.12.5 All sums payable by the *Contractor* to the *Employer* pursuant to this clause Z3.12 will be paid as liquidated damages and not as penalties and the Parties acknowledge that such sums are a genuine attempt to pre-estimate loss which will be suffered by the *Employer* in the event of any such failures in performance or breach of the contract. Damages payable under this Clause is the *Employer's* sole financial remedy for any such delay in respect of which such liquidated damages are payable.

Mitigation

Z3.13 The *Contractor* takes all prudent and commercial steps necessary to mitigate and minimise the effect of any actual or potential compensation event that may be assessed under clause 63 in order to reduce or to avoid any effects on the Prices, the total of the Prices or the Completion Date to the maximum extent reasonably practicable.

Omissions

Z3.14 Not used

Severability

Z3.15 If any provision of the contract becomes or is declared illegal, invalid or unenforceable, in whole or in part, for any reason whatsoever by any competent tribunal or authority, such provision or part thereof will be divisible from the contract and shall be deemed to be deleted from the contract in so far as the continued operation of the contract is concerned provided always that if such deletion substantially affects or alters the commercial basis of the contract, the Parties will negotiate in good faith to amend and modify the provisions and terms of the contract as may be necessary or desirable in the circumstances.

Statutory Notices

Z3.16 The *Contractor* informs the *Project Manager* or any Subcontractor who may be affected immediately of any statutory notice served on the *Contractor* or any Subcontractor.

Waiver

Z3.17 The failure by the *Employer* to insist upon strict performance of any part of the contract, or delay in or failure to exercise any rights or remedies herein, or properly to notify the *Contractor* in the event of breach, or the payment



for any *works* hereunder will not be deemed to be a waiver of any right of the *Employer* to insist upon strict performance hereof or of any rights or remedies, nor will any termination of the contract by the *Employer* operate as a waiver of any of its terms.

**Working on and
Adjacent to the
Underground
Network**

- Z3.18 Z3.18.1 The *works* are carried out in such a manner as not to endanger or interfere in any way with the Underground Network. The *Employer* affords the *Contractor* with reasonable facilities to enable him to carry out the *works* provided. The *Contractor* strictly observes all rules, regulations or instructions which are set out in the Works Information or which he may from time to time receive from the *Project Manager* for the working and protection of the Underground Network or for the protection of persons on or adjacent to the Underground Network or Underground Network operations.
- Z3.18.2 The *Employer* shall allow the *Contractor* access to the Company Network or any part thereof if required to comply with its obligations under the contract provided that the *Contractor* complies with the access requirements set out in the Works Information. At the end of Engineering Hours or at the end of any other period of access allowed to the *Contractor* by the *Employer* the *Contractor* returns possession of the Site to the *Employer*. The *Contractor* complies with the procedure set out or referred to in the Works Information in returning the Site to the *Employer*. Return of the Site at the end of Engineering Hours or at the end of any other period of access allowed to the *Contractor* by the *Employer* is not take-over in accordance with this contract.
- Z3.18.3 In all cases where the *works* have to be carried out on the Underground Network adjacent to the Underground Network traffic the *Contractor* must observe special precautions for the protection of such Underground Network traffic in accordance with the requirements stated in the Works Information.

**Z3A Special
Conditions of
Contract**

- Z3A Notwithstanding any other provision of this contract, the *Contractor's* maximum aggregate liability to the *Employer* (including by way of indemnity) arising out of or in connection with this contract shall not exceed fifteen (15) per cent. of the total of the Prices at the Contract Date, provided that the limitation of liability in this clause shall not apply:
 - (a) to liability of the *Contractor* under the IPR indemnity given by the *Contractor* pursuant to clause Z2.60 in respect of the *Employer's* liability to third parties and associated costs and expenses; or
 - (b) to liability of the *Contractor* under the indemnity given by the *Contractor* pursuant to clause 83.1A in respect of death or personal injury due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default of the *Contractor*; or
 - (c) to liability under the indemnity given by the *Contractor* pursuant to



clause 83.1A in respect of loss or damage to property, but only to the extent such loss and damage is covered by the insurance required to be taken out by the *Contractor* under this contract and subject to the limits of such insurance cover.

For the avoidance of doubt the limitations of liability in this clause do not apply for fraud or any other, matter in respect of which a limitation of liability would be unlawful.

Amendments to Main Options

Z4 Not used

Amendments to Secondary Options

Z5

Option G: Performance Bond

Z5.1 Delete paragraph G1.1 in its entirety and replace with "Performance Bond is to be provided as per sub-clause Z3.2.1."

Option H: Parent Company Guarantee

Z5.2 Delete Option H and replace with "Parent Company Guarantee is to be provided as per sub-clause Z3.2.1"

Option R:

Z5.3 Delete clause R1 and replace with

Delay Damages

"R1.1

Subject to the maximum identified in the Contract Data Part One, and the provisions of clause R1.4, in respect of the *works* the *Contractor* pays delay damages at the rate stated in the Contract Data Part One for each day from the Completion Date to the date when the *Project Manager* certifies Completion.

R1.2

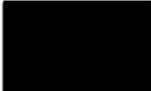
All sums payable by the *Contractor* to the *Employer* pursuant to clause R1.1 shall be paid as liquidated damages and not as a penalty. The rates indicated in the Contract Data Part One represent the *Employer's* genuine pre-estimate of the losses likely to be suffered.

R1.3

If but for this clause R1.3 the *Contractor* would be liable to pay delay damages in respect of two or more *sections* and/or the Completion Date the *Contractor* is only liable to pay delay damages in respect of delay to the *section* or Completion Date for which the *Employer* is entitled to levy the highest rate of delay damages.

R1.4

If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages."



Amendments to Z6
Schedule of Cost
Components

Z6.1 Paragraph 2 Equipment

Delete "percentage" in line 2 and replace with "charge" and add "referred to in paragraph 44" after overheads in line 3.

Paragraph 21

Delete and substitute

"Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required."

Paragraph 22

Delete and substitute

"Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required."

Paragraph 23

Delete and substitute

"The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data. For idle and standby time, the following times are deducted

the first two hours in any one day for items paid at an hourly rate,

the first half day for items paid at a daily rate,

the first third of a week for items paid at a weekly rate and

the first quarter of a month for items paid at a monthly rate."

Paragraph 24

Delete and substitute

"Unless the item is in the published list and the rate includes the cost component, payments for (a) transporting Equipment to and from the Working Areas (b) erecting and dismantling Equipment (c) upgrading or modification needed for a compensation event."

Paragraph 25



Delete and substitute

"Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed."

Add new paragraph 26

"Unless the item is in the published list and the rate includes the cost component, the cost of operatives is included in the cost of people."

**Amendments to Z7
Shorter Schedule
of Cost
Components**

**Paragraph 1
People**

Z7.1 In the first line of the definition of "People" add the following words before the words "The following components of the cost of" in line 1.

"The following components of the cost of people are not to be used if the people are self employed or from a Labour-only subcontract. The Actual Cost of self employed people is to be assessed using the Schedule of Cost Components."



APPENDIX 2 – FORM OF PARENT COMPANY GUARANTEE

To: Metronet Rail SSL Limited (in PPP administration) (the Employer)
Templar House,
81 – 87 High Holborn,
London WC1V 6NU

March 2008

Dear Sirs,

We, Thales Holdings UK plc (the "Guarantor"), understand that you have agreed to enter into Contract No 001427 (the "Contract" which expression shall include any document constituting, amending, supplementing or replacing the same) with Thales Rail Signalling Solutions Limited (the "Contractor") in respect of the design, supply, install, test and commission of the signaling and control system at the Neasden Depot on the condition that the obligations of the Contractor under the Contract be guaranteed by a Guarantor.

We are the parent company of the Contractor, and we warrant to you that this description of our relationship with/to the Contractor is true and accurate.

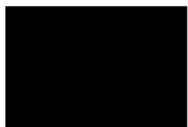
IN CONSIDERATION of the agreement to enter into the Contract by the Employer and of the payment of one pound (£1) by you to us (receipt of which we hereby acknowledge) WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee the proper and punctual performance by the Contractor of all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Contractor and we shall pay on demand all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Contractor.
- (b) We unconditionally agree as a primary obligation to indemnify you from time to time on demand against any losses, damages, costs and expenses incurred by you as a result of or arising from any failure by the Contractor to perform or meet any of its obligations, undertakings or responsibilities under the Contract, or any of Contractor's obligations being or becoming void, voidable or unenforceable or ineffective as against the Contractor, save to the extent that such circumstances arise due to an act, omission or default by you. Our liability for losses, damages, costs and expenses under this indemnity shall not exceed the amount which you would otherwise have been entitled to recover from the Contractor pursuant to the Contract.
- (c) This Guarantee shall be a continuing guarantee made as a primary obligation of the Guarantor and not as surety, and shall remain in full force and effect until all obligations to be performed or observed by the Contractor under or arising out of the Contract have been duly and completely performed and observed and the Contractor shall have ceased to be under any actual or contingent liability to you thereunder.
- (d) Any demand or other notice made by you under this Guarantee shall be duly made 2 business days by posting if sent by special delivery or first class recorded delivery post to us.

- (e) Subject to the provisions of paragraph (f) below, you shall be entitled to enforce this Guarantee without taking any proceedings or exhausting any right or remedy against the Contractor or any other person or taking any action to enforce any other security, bond or guarantee.
- (f) Your entitlement to enforce the performance of this Guarantee shall be suspended until such time as you are no longer in PPP administration or your rights and obligations are transferred to another party, but such suspension of your entitlement to enforce this Guarantee shall not otherwise affect the accrual of our obligations hereunder.
- (g) If any discharge or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or administration or otherwise, our liability to you under this Guarantee will continue or be reinstated as if the discharge or arrangement had not occurred.
- (h) All payments made by us under this Guarantee must be made in full free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges.

PROVIDED THAT

1. We shall be entitled to the benefit of the same defences and exclusions and limitations of liability to any claims made by you under this Guarantee and shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Contractor in the Contract, and furthermore, notwithstanding any other provision of this Guarantee, our maximum aggregate liability under this Guarantee shall not exceed [REDACTED] Pounds Sterling [REDACTED] being the value of the Contract as at the date of this Guarantee.
2. Our obligations hereunder shall remain in full force and effect and shall not be affected or discharged by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Contractor;
 - (b) any alteration in the extent or nature or sequence or method or timing of the works and/or services to be carried out under the Contract;
 - (c) any time being given to the Contractor or any other indulgence or concession to the Contractor or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Contractor under the Contract;
 - (e) the release or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Contractor;
 - (g) the liquidation, administration, receivership or insolvency of the Contractor;
 - (h) any legal limitation, disability or incapacity relating to the Contractor (whether or not known to you);



- (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Contractor under the Contract; or
 - (j) the termination of the Contract.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy of a surety which we may have in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition with you for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us to take or hold any security from the Contractor in respect of any liability of us hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
 4. This Guarantee is irrevocable.
 5. You shall be entitled to assign this Guarantee to any party to whom you shall assign the Contract without the consent of the Guarantor being required but subject to your giving notice of such assignment to the Guarantor.
 6. The parties to this Guarantee do not intend that any of its terms will be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
 7. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that you have the right to bring proceedings in the courts of any other jurisdiction in which any of our assets may be situated.

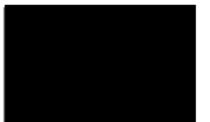
SIGNED AND DELIVERED as a DEED by)
 THALES HOLDINGS UK PLC acting by two)

directors or by one director and the)
 company secretary)



APPENDIX 3 – PERFORMANCE BOND

NOT USED



APPENDIX 4 – FORM OF DIRECT AGREEMENT

THIS AGREEMENT is made as a deed on March 2008 between

- (1) **LONDON UNDERGROUND LIMITED** (company registration number 01900907) whose registered office is at 55 Broadway, London, SW1H 0BD (*LUL*);
- (2) **METRONET RAIL SSL LIMITED (in PPP administration)** (company registration number 3923484) whose registered office is at Templar House, 81-87 High Holborn, London WC1V 6NU acting by the PPP Administrators (as defined below)(**Company**); and
- (3) **THALES RAIL SIGNALLING SOLUTIONS LIMITED** company registration number 05805963 whose registered office is at 2 Dashwood Lang Road, Addlestone, Nr Weybridge KT15 2NX (the *Sub-Contractor*).

WHEREAS

- (A) By a contract dated 1 April 2000 as amended and restated (the *PPP Contract*) LUL has engaged Company to provide certain services and Company has agreed to provide such services to LUL on the terms, and subject to the conditions, set out in the PPP Contract.
- (B) LUL and Company have agreed under the PPP Contract that Company shall not enter into, be a party to, or be a beneficiary under, any Key Sub-Contract unless LUL, or its nominee, enters into a Direct Agreement in respect of that Key Sub-Contract.
- (C) Company under a contract of even date herewith (the *Sub-Contract*) has engaged the Sub-Contractor to design, testing and commissioning of the LockTrack PMI signalling and control system (the *Services*) which is a Key Sub-Contract.
- (D) LUL has the right to exercise Step-in Rights under the PPP Contract to remedy certain matters.
- (E) LUL requires the assurance of direct and enforceable obligations and restrictions appearing herein.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement words and expressions defined in the PPP Contract shall, except where the context otherwise requires, have the meaning assigned to them in the PPP Contract.
 - 1A. In this Agreement "PPP Administrators" means Roy Bailey, Alan Robert Bloom, Margaret Elizabeth Mills and Stephen John Harris, all of Ernst & Young LLP in their capacity as joint special PPP administrators of Company, and the expression "PPP Administrators" shall include, where the context permits, any additional or successor administrator of Company and their respective firms or future firms, employees, agents, advisors, fellow members, partners and personal representatives;
 - 1B. The PPP Administrators are the agents of Company and shall not incur any personal liability from acting in their capacity as agents or by reason of acting in the name and on behalf of Company or otherwise. The PPP Administrators shall incur no personal liability under or in connection with this Agreement nor in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum. Nothing in this Agreement shall: (i) constitute a waiver of any right of the PPP Administrators to be indemnified, or to exercise a lien, whether under any applicable sections of the Insolvency Act 1986 or otherwise howsoever; or (ii) operate to restrict or affect in any way any right of the PPP Administrators to cease to act as the PPP administrators of Company and the provisions of this Agreement shall continue notwithstanding

the PPP Administrators ceasing to act. The PPP Administrators have not given, nor entered into, any collateral understandings, representations, warranties or agreements as principal.

2. Step-in Rights

- 2.1 The Sub-Contractor agrees that, in the event of LUL exercising its Step-in Rights, it will, if so required by notice in writing given by LUL and copied by LUL to the Company, accept the instructions of LUL or its appointee in respect of the performance of the Services upon the terms and conditions of the Sub-Contract.
- 2.2 The parties agree that, as between LUL, the Company and the Sub-Contractor, any written notice given by LUL in accordance with this clause 2 shall be conclusive proof of LUL's entitlement to exercise its rights under this clause 2, of the Company's agreement that the Sub-Contractor is entitled to accept instructions given by LUL (provided that this shall not prevent the Company from being entitled as between the Company and LUL to challenge the validity of LUL's exercise of its Step-in Rights) and of the Sub-Contractor's obligation to accept instructions of LUL as provided in LUL's notice.
- 2.3 The Sub-Contractor further agrees that LUL shall not, subject to sub-clause 5.1(b), by such notice given by LUL in accordance with this clause 2, accept liability for payment of any amounts payable to the Sub-Contractor and/or performance of the Company's obligations under the Sub-Contract.
- 2.4 The Company acknowledges and has agreed to be a party to this Agreement so that:
 - (a) the Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it pursuant to this clause 2; and
 - (b) subject to sub-clause 5.1(b) the Company shall at all times remain liable for payment of all amounts payable to the Sub-Contractor under the Sub-Contract and for performance of the Company's obligations under the Sub-Contract, notwithstanding the service by LUL of such notice and compliance by the Sub-Contractor with the obligations imposed on it by this clause 2.
3. Without prejudice to sub-clause 37.12 (*Use by LUL of MRSSL/Third Party IPRs*) of the PPP Contract, the Sub-Contractor agrees that it shall not exercise any IPRs which it owns so as to prevent or hinder LUL, or any third party appointed by LUL under sub-clause 23.1 (*LUL Step-in Rights*) of the PPP Contract, from exercising its Step-in Rights.
- 4.1 The Sub-Contractor agrees that it will not without first giving LUL not less than twenty eight (28) days prior written notice (which must be copied by the Sub-Contractor to the Company) exercise any right it may have to terminate the Sub-Contract or treat the Sub-Contract as having been repudiated by the Company or to discontinue the performance of any obligations, warranties or covenants to be performed by the Sub-Contractor pursuant thereto.
- 4.2 The Sub-Contractor's right to terminate the Sub-Contract or to treat the Sub-Contract as having been repudiated by the Company or to discontinue the performance of any obligations, warranties or covenants to be performed by the Sub-Contractor under the Sub-Contract shall cease if within the period of notice set out in sub-clause 4.1 LUL shall give notice in writing to the Sub-Contractor (which must be copied by LUL to the Company) requiring the Sub-Contractor to accept the instructions of LUL or its appointee in respect of the carrying out and completion of the Services upon the terms and conditions of clause 5.
- 5.1 Subject to sub-clause 5.2, following service of a notice from LUL under sub-clause 4.2:

- (a) the Sub-Contractor shall (to the exclusion of the Company) thereafter only accept the instructions of LUL or its appointee (as the case may be) and LUL or such appointee shall have the rights and obligations of the Company under the Sub-Contract including any obligations or liabilities which may have been owed to the Sub-Contractor by the Company and which remain to be performed or satisfied;
- (b) all amounts due and payable to the Sub-Contractor or which may subsequently become due to the Sub-Contractor under the Sub-Contract without right of retention or set-off in respect of any prior breach of the Sub-Contract (and which have not been discharged by the Company or any other person) shall be paid by LUL or LUL shall procure that they shall be paid by its appointee (as the case may be); and
- (c) the Sub-Contractor shall continue to perform the Services subject to the terms of the Sub-Contract.

5.2 The parties agree that in the event of LUL exercising its right to give a Step-out Notice to the Company the Sub-Contractor shall, from the relevant date specified in the Step-out Notice accept the instructions of the Company in respect of the performance of the Services upon the terms and conditions of the Sub-Contract.

5.3 The parties agree that if the Sub-Contractor confirms, in a manner reasonably satisfactory to LUL, that it no longer wishes to terminate the Sub-Contract or to treat the Sub-Contract as being repudiated by the Company or to discontinue performance of any obligations, warranties or covenants to be performed by the Sub-Contractor pursuant thereto then from the date of such confirmation and provided LUL confirms (not to be unreasonably withheld or delayed) it is reasonably satisfied that its intervention is no longer required for the future stability of the contractual relationship, the Sub-Contractor shall accept the instructions of the Company in respect of the performance of the services under the terms and conditions of the Sub-Contract.

6. Asset Designation

6.1 LUL may in accordance with the GLA Act at any time following the date of this Agreement designate the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract, including to the extent that property and rights are designed, manufactured, engineered, supplied, installed, tested, commissioned, delivered, or otherwise offered for service under the Sub-Contract, those property and rights, as Key System Assets and those shall constitute key system assets for the purposes of section 216 of the GLA Act. LUL may also in accordance with the PPP Contract at any time following the date of this Agreement designate the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract as a Primary Asset. The parties agree and understand that if LUL so designates in accordance with the GLA Act and/or the PPP Contract, the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract, that the ability of the Company and/or the Sub-Contractor to deal with the Sub-Contract and/or property, rights and liabilities under the Sub-Contract is restricted in accordance with the GLA Act and/or the PPP Contract subject to any consent (including any conditions attaching thereto) as LUL may at any time notify to the Sub-Contractor in relation to the Sub-Contract and/or any property, rights and liabilities under the Sub-Contract so designated.

6.2 LUL may at any time following the designation of the property, rights and liabilities under the Sub-Contract and/or Sub-Contract under sub-clause 6.1 as Primary Assets and/or Key System Assets, de-designate any such property, rights and liabilities and/or Sub-Contract in accordance with the PPP Contract and/or the GLA Act so that they are no longer Primary Assets and/or Key System Assets.

6.3 In the event of LUL exercising its rights under sub-clauses 6.1 and 6.2 it shall notify the Sub-Contractor and the Company as soon as reasonably possible of such designation or the cessation thereof and the date that such designation or cessation thereof shall take effect.

7. Governing Law and Disputes

7.1 This Agreement shall be governed by, and construed in accordance with, English law. Subject to the terms of this clause 7, the parties hereto agree that the Courts of England are to have exclusive jurisdiction to settle any Dispute and for such purposes irrevocably submit to the jurisdiction of the Courts of England.

7.2 The parties irrevocably agree that a judgment or order of any court referred to in this clause in connection with a Dispute is conclusive and may be enforced against them in any other court which has jurisdiction to enforce the relevant judgment or order.

7.3 Any party shall have the right to refer any dispute or difference under this Agreement to adjudication under the procedure set out in Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 amended as follows:

(a) the words "or substantially the same" in the first line of paragraph 9(2) shall be deleted;

(b) delete "and" at the end of line 2 of 13(g)

replace the "." at the end of 13(h) with ", and"

add a further sub-paragraph 13(i) as follows:

"and shall, at the request of either party, hold a hearing at which the parties may present oral submissions and argument and call and cross-examine witnesses of fact and expert witnesses.";

(c) add a further paragraph 23(3) as follows:

"in the event that a payment is made by one party to the other party pursuant to a decision of the adjudicator and such decision is reversed or varied in subsequent litigation, the parties agree that interest shall be payable at the Applicable Rate from the date of payment on any principal sum ordered to be repaid by the Courts"; and

(d) amend paragraph 24 as follows:

(i) in paragraph 24(a) delete the words "in sub-section (2)"; and

(ii) add a new paragraph 24(e):

"In Section 42(4) replace the word "order" in lines 2 and 3 with the word "decision".

7.4 If the parties are unable to agree on a person who shall act as adjudicator of a Dispute that arises hereunder, then the President of London Court of International Arbitration shall, upon the request of the party referring the dispute or difference to adjudication, select a person to act as adjudicator.

7.5 In the event that any term, condition or provision contained in this Agreement shall be held to be contrary, inconsistent or non-compliant with the requirements of sub-sections (1) to (4) of Section 108 of the Housing Grants, Construction and Regeneration Act 1996, such term, condition or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining terms, conditions and provisions. The parties agree to negotiate an equitable adjustment in such invalid or unenforceable term, condition or provision of this Agreement in order to give effect to the underlying purposes of this Agreement.

8. Notices

8.1 Any notice affecting this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it at, or sending it by fax, special delivery, pre-paid recorded delivery or registered post to the address and for the attention of the relevant party. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

- (a) in the case of fax, the business day after the despatch;
- (b) in the case of special delivery, recorded delivery or registered post, two (2) business days from the date of posting.

Such notices shall in the case of LUL be addressed to:

London Underground Limited
55 Broadway
London SW1H 0BD

and in the case of the Company be addressed to

Metronet Rail SSL Limited (in PPP administration)
Templar House
81-87 High Holborn
London WC1V 6NU

with a copy to:

The PPP administrators of Metronet Rail SSL Limited
Ernst & Young LLP
1 More London Place
London SE1 2AF

and in the case of the Sub-Contractor be addressed to:

Thales Rail Signalling Solutions
The Quadrant (5th Floor)
Thomas More Square
17 Thomas More Street
London. E1W 1YW

or such person or address as the relevant party may from time to time notify in writing to the others.

9. Termination

9.1 This Agreement shall terminate or expire on the date of termination or expiration of the Sub-Contract.

10. Rights of Third Parties

10.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms provided that nothing shall prevent the PPP Administrators from enforcing any rights granted for their benefit under this Agreement (including, without limitation, clauses 1B and 8 above).

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and delivered as a deed on the date first above written.



EXECUTED AND DELIVERED as a)
DEED under THE COMMON SEAL of)
LONDON UNDERGROUND LIMITED)
in the presence of:)

Director

Director/ Secretary

EXECUTED and DELIVERED as a)
DEED by)
for and on behalf of **METRONET RAIL SSL**) **Metronet Rail SSL Limited (in**
LIMITED (IN PPP ADMINISTRATION) as its agent) **PPP administration)**
and without personal liability)
Witness's Signature
Name:
Address:
.....
.....

EXECUTED and DELIVERED as a)
DEED BY)
THALES RAIL SIGNALLING SOLUTIONS LIMITED)
in the presence of:)

Director

Director/ Secretary



- 2. With effect from the Transfer Date:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the Contractor releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;
 - 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
 - 2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Contractor against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Contractor against the New Company; and
 - 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Contractor accrued under or in connection with the Contract prior to, on, or subsequent to the date hereof shall include all or any claims, actions or proceedings or losses of the New Company in relation to the Contract as if the New Company was a party to, and had always been a party to, the Contract and shall be exercisable by the New Company against the Contractor;
 - 2.3.2 the Contractor shall not contend in any claim, action or proceeding that any loss of the New Company is not recoverable from or foreseeable by the contractor prior to the date hereof.; and
 - 2.4 the Company transfers its rights and obligations under the Contract to the New Company.
- 3. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms provided that nothing shall prevent the PPP Administrators from enforcing any rights granted for their benefit under this Deed (including, without limitation, clause 1A above).

IN WITNESS of which the parties have executed this deed on the date set out below.

EXECUTED as a Deed by)
for and on behalf of METRONET RAIL SSL)	Metronet Rail SSL Limited (in
LIMITED (IN PPP ADMINISTRATION) as its agent)	PPP administration)
and without personal liability)	
Witness's Signature	
Name:	
Address:	
	
	

Executed as a Deed
by THALES RAIL SIGNALLING



SOLUTIONS LIMITED acting by

two directors or by one

director and the secretary:

Director:

Signature

Name:

● Director/Secretary:

Signature

Name:

Executed as a Deed

by [NEW COMPANY] acting by

two directors or by one

director and the secretary:

● Director:

Signature

Name:

Director/Secretary:

Signature

Name:



APPENDIX 6 – FORM OF SUBCONTRACTOR WARRANTY
SUB-CONTRACTOR WARRANTY AGREEMENT

DATED _____ 2008

- (1) METRONET RAIL SSL LIMITED (in PPP administration)
- (2) THALES SECURITY SOLUTIONS & SERVICES, S.A
- (3) THALES RAIL SIGNALLING SOLUTIONS LIMITED

SUBCONTRACTOR WARRANTY FOR
SIGNALLING & CONTROL SYSTEM WORKS AT NEASDEN DEPOT



- carrying out the same type of responsibilities of the *Contractor* with respect to such aspect of the *works* or in each case, performing its obligations under the same, reasonably comparable or similar circumstances, and utilising all the information available at the relevant time or
- carrying out responsibilities, whether individually or as a package of responsibilities, which could reasonably be regarded as being comparable to the responsibilities of the *Contractor* under this contract with respect to such aspect of the *works*,

in each case, performing its obligations under the same, reasonably comparable or similar circumstances, and utilising all the information available at the relevant time."

- 1.3 **"Equipment"** means the equipment or materials (or any part of the same) which are the subject matter of the Sub-Contract Works and as may be identified in any specification;
- 1.4 **"Intellectual Property Rights"** means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;
- 1.5 **"PPP Administrators"** means Roy Bailey, Alan Robert Bloom, Margaret Elizabeth Mills and Stephen John Harris, all of Ernst & Young LLP in their capacity as joint special PPP administrators of the Company, and the expression "PPP Administrators" shall include, where the context permits, any additional or successor administrator of the Company and their respective firms or future firms, employees, agents, advisors, fellow members, partners and personal representatives;
- 1.6 **"Site"** means the actual place or places owned or operated by or on behalf of the Company and provided or made available by the Company where the Sub-Contract Works are to be performed by the Sub-Contractor, together with so much of the area surrounding the Site as the Sub-Contractor shall with the consent of the Company actually use in connection with the Sub-Contract Works otherwise than merely for the purposes of access, and as may be identified in any specification.

1A. EXCLUSION OF LIABILITY

The PPP Administrators are the agents of the Company and shall not incur any personal liability from acting in their capacity as agents or by reason of acting in the name and on behalf of the Company or otherwise. The PPP Administrators shall incur no personal liability under or in connection with this Deed nor in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum. Nothing in this Deed shall: (i) constitute a waiver of any right of the PPP Administrators to be indemnified, or to exercise a lien, whether under any applicable sections of the Insolvency Act 1986 or otherwise howsoever; or (ii) operate to restrict or affect in any way any right of the PPP Administrators to cease to act as the PPP administrators of the Company and the provisions of this Deed shall continue notwithstanding the PPP Administrators ceasing to act. The PPP Administrators have not given, nor entered into, any collateral understandings, representations, warranties or agreements as principal.

2. SUBCONTRACTOR'S WARRANTIES

- 2.1 The Sub-Contractor warrants and undertakes to the Company that he will execute and complete the Sub-Contract Works in a good and workmanlike manner and in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further covenants with the Company that:
 - 2.2.1 it will provide the Sub-Contract Works in accordance with Good Industry Practice in relation to:
 - 2.2.1.1 the design of the Sub-Contract Works and any other part or parts of the Main Contract Works to the extent that the Sub-Contractor has been or will be responsible for such design; and
 - 2.2.1.2 the selection of goods and materials for the Sub-Contract Works or any part or parts of the Main Contract Works to the extent that such goods and materials have been or will be selected by or on behalf of the Sub-Contractor;
 - 2.2.2 the Sub-Contract Works will, on completion of the Main Contract, satisfy all performance specifications and other requirements contained or referred to in the Sub-Contract;
 - 2.2.3 the Sub-Contract Works will, on completion of the Main Contract, be fit for the purposes for which they are intended to the extent that the Sub-Contract Works or any part of them have been or will be designed by or on behalf of the Sub-Contractor;
 - 2.2.4 the Sub-Contract Works and all materials and goods comprised in them will correspond as to description, quality and condition with the requirements of the Sub-Contract and will be of sound manufacture and workmanship;
 - 2.2.5 the Sub-Contract Works will, on completion of the Main Contract Works, comply with all applicable statutory requirements and Standards contained or referred to in the Sub-Contract;
 - 2.2.6 the Sub-Contract Works will on completion of the Main Contract have a rate of deterioration no more than is reasonably to be expected of well designed and engineered materials and goods;
 - 2.2.7 the Sub-Contract Works will be free from defects in design, materials and workmanship;
 - 2.2.8 the Sub-Contract Works will be performed by appropriately qualified and trained personnel with due care and diligence and to such a high standard of quality as is reasonable for the Company to expect in all the circumstances;
 - 2.2.9 the Sub-Contract Works will be provided in a safe manner and free from any unreasonable or avoidable risk to health and well being of persons using, operating or subsequently maintaining the Equipment or using the Site, or of any other person, and in a safe, economic and efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard.
- 2.3 The Sub-Contractor warrants to the Company and the Contractor that neither the performance nor the functionality of any software provided as part of the Sub-Contract Works is or shall be affected by any date operation in such software, that no value for current date will cause any interruption in operation and that in all interfaces and data storage, all dates shall be specified explicitly or unambiguously.
- 2.4 The Sub-Contractor warrants to the Company and the Contractor that it shall procure that any subcontractors engaged by it who undertake any part of the Sub-Contract Works shall enter into warranties in favour of the Contractor and the Company in terms identical (save as

to the parties) to those set out in this deed so far as the terms contained in this deed are relevant to the scope of the Sub-Contractor's responsibility.

- 2.5 For the purposes of construing the warranties in this clause 2 references to the Sub-Contract Works shall include any part of the Sub-Contract Works. Each warranty shall be construed as a separate warranty and shall not be limited or restricted by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

3. SUBCONTRACTOR OBLIGATIONS

- 3.1 The Sub-Contractor recognises that both the Company and the Contractor have relied or shall rely upon the Sub-Contractor's full and proper performance of its obligations.
- 3.2 The Sub-Contractor shall (and shall procure that any subcontractors engaged by it shall) maintain a true and correct set of records (including personnel and training records pertaining to all activities relating to their performance of the Contract) and a complete and orderly documentary record of all transactions entered into by the Sub-Contractor for the purposes of the Subcontract (including copies of any Documentation generated by or in the possession of the Sub-Contractor, all subcontracts and all such other information reasonably required by the Company or as may be specified in the Sub-Contract or any specification). The Sub-Contractor agrees (and shall procure that any subcontractors engaged by it agree) to retain all such records for a period of not less than eight years (or such other longer period as may be required by law or as stated in the Sub-Contract) after completion of performance under the Sub-Contract. The Company shall have the right to audit any and all such records at any time during performance of the Sub-Contract and during the eight year period (or such other period as may be required by law or as stated in the Sub-Contract) following the expiry of the Sub-Contract.
- 3.3 The Sub-Contractor shall not, and shall ensure that any Sub-Contractors engaged by it shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Company nor favour any employee, officer or agent of the Company with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Company other than as a representative of the Company, without the Company's written approval. Without prejudice to its rights under sub-clause 3.2, the Company shall have the right to audit any and all such records necessary to confirm compliance with this clause at any time during performance of the Sub-Contract and during the 8 year period (or such other longer period as may be required by law or as stated in the Sub-Contract) following the expiry of the Sub-Contract.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Sub-Contractor grants and agrees to grant the Company an irrevocable, royalty-free, non-exclusive licence to use and reproduce all designs, drawings, models plans, specifications, design details, photographs, brochures, reports, notes of meetings, Intellectual Property Rights and Documentation and any other materials prepared by or on behalf of the Sub-Contractor in connection with the Main Contract Works or the Sub-Contract Works (whether in existence or to be made) and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for all purposes relating to the Main Contract Works or the Sub-Contract Works such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Sub-Contractor.
- 4.2 The Sub-Contractor agrees:

- 4.2.1 on request at any time to give to the Company or any persons authorised by the Company access to details of the Intellectual Property Rights, Documentation and materials referred to in sub-clause 4.1 , and at the Company's expense to provide copies of it; and
- 4.2.2 at the Sub-Contractor's expense to provide the Company with a set of all Intellectual Property rights to which the Company is entitled under the provisions of clause Z2.53 and Z2.54 of the Contract with the Contractor, Documentation and of all such material on completion of the Sub-Contract Works.
- 4.3 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Sub-Contract Works shall be paid by the Sub-Contractor and the Sub-Contractor shall indemnify the Company from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Company by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Sub-Contract Works.

5. INSURANCE

- 5.1 The Sub-Contractor warrants to the Company that he has at all relevant times maintained and will continue to maintain the insurances required under the Sub-Contract and that it has at all relevant times observed and will continue to observe all of the conditions of such insurance policies and all of the insurance provisions contained or referred to in the Sub-Contract.
- 5.2 As and when reasonably required by the Company the Sub-Contractor shall produce for inspection satisfactory documentary evidence that the insurances referred to in sub-clause 5.1 are being properly maintained, and confirm that payment has been made in respect of the last preceding premiums due under it.

6. INDEMNITY

- 6.1 The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Sub-Contractor Warranty.

7. NOTICE OF SUBSTITUTION

- 7.1 The Sub-Contractor undertakes to the Contractor and the Company that it shall not, without first giving the Company a minimum of 21 days' previous notice in writing ("the Sub-Contractor's Notice"), exercise any right it may have to terminate the Sub-Contract or to treat the Sub-Contract as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Sub-Contractor pursuant to the Sub-Contract.
- 7.2 The Sub-Contractor's Notice shall specify the grounds upon which the Sub-Contractor claims it is entitled to terminate the Subcontract or treat the Sub-Contract as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Sub-Contractor pursuant to the Sub-Contract.
- 7.3 The Sub-Contractor's right to terminate the Sub-Contract or treat the Sub-Contract as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Sub-Contractor pursuant to the Sub-Contract shall cease if before the expiry of the period stated in the Sub-Contractor's Notice:-

- 7.3.1 any or all breaches of the terms of the Sub-Contract specified in the Sub-Contractor's Notice insofar as they would entitle the Sub-Contractor to terminate the Sub-Contract or treat the Sub-Contract as having been repudiated by the Sub-Contractor or to discontinue the performance of any duties to be performed by the Sub-Contractor pursuant to the Sub-Contract have been remedied; or
- 7.3.2 the Company gives notice in writing to the Sub-Contractor substituting the Company for the Contractor as employer under the Sub-Contract ("a Notice of Substitution").
- 7.4 If the Contractor is in default of or in the event of the termination of the Main Contract the Company shall be entitled (but not obliged) at any time after such default or termination to give the Sub-Contractor a Notice of Substitution.
- 7.5 The Sub-Contractor shall be entitled to rely on a Notice of Substitution given under sub-clause 7.4 as conclusive evidence for the purposes of this clause of the Contractor being in default or the termination of the Main Contract as the case may be.
- 7.6 Upon, but not before, the giving of a Notice of Substitution:-
- 7.6.1 the Sub-Contractor shall accept the instructions of the Company or its appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Sub-Contract Works:-
- 7.6.1.1 upon the terms and conditions of the Sub-Contract; or
- 7.6.1.2 if required by the Company upon the terms and conditions of a new contract between the Sub-Contractor and the Company in the same terms (or as nearly as may be) as the Sub-Contract;
- 7.6.2 the Company or its appointee shall accept liability for performance of the Contractor's obligations under the Sub-Contract including payment of any monies which have not been paid or tendered at the date of a Notice of Substitution. For the avoidance of doubt, the Company shall not be responsible for any payments to the Sub-Contractor for any part of the Sub-Contract Works except as provided in this clause.

8. NOT USED

9. COMMUNICATIONS

- 9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to any party shall be deemed to be duly given or made when delivered (in the case of personal delivery or letter) or when despatched (in the of facsimile) to the other party addressed to him at the address appearing below (or at such address as the other party may hereafter specify for this purpose to the other);

in the case of the Sub-Contractor

Thales Security Solutions & Services, S.A.
Rua Calvet Magalhães, 245. 2770-153
Paço de Arcos, Portugal
Facsimile No: +351 212 484 849

in the case of the Company :

Metronet Rail SSL Limited
(in PPP Administration)
Templar House
81-87 High Holborn
London WC1V 6NU
For the attention of: Mr Brian Murray

with a copy to:

The PPP administrators of Metronet Rail
SSL Limited
Ernst & Young LLP
1 More London Place
London SE1 2AF

in the case of the Contractor

Thales Rail Signalling Solutions Limited
The Quadrant (5th Floor)
Thomas More Square
17 Thomas More Street
London. E1W 1YW
Facsimile number 0203 300 6947

9.2 A written notice includes a notice by facsimile. A notice or other communication received on a non working day or after business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

10. CONCURRENT LIABILITIES

10.1 The rights and benefits conferred upon the Company by this Deed are in addition to any other rights and remedies the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

11. ASSIGNMENT BY THE COMPANY

11.1 The Company may with the consent of the Sub-Contractor, such consent not to be unreasonably withheld, assign:

11.1.1 the benefit of all or any of the Sub-Contractor's obligations under this Deed; and/or

11.1.2 any benefit arising under or out of this Deed.

12. GENERAL

12.1 The Sub-Contractor acknowledges that the Company has or is deemed to have the same (but no greater) rights and remedies against the Sub-Contractor as the Company would have had if the Company had been named in the Sub-Contract in lieu of the Contractor at all material times.

12.2 Nothing contained in this deed shall in any way limit the obligations of the Contractor to the Company arising under the Main Contract or otherwise undertaken by the Contractor to the Company in relation to the Sub-Contract Works.

13. THIRD PARTY RIGHTS

13.1 A person who is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 provided that nothing shall prevent the PPP Administrators from enforcing any right granted for their benefit under this Deed (including, without limitation, clauses 1A and 9.1 above).

14. LAW AND JURISDICTION

14.1 This Deed shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction where the assets of the Sub-Contractor or the Guarantor may be situated.

IN WITNESS of which the parties have executed this deed on the date set out below.

EXECUTED as a Deed by)
for and on behalf of **METRONET RAIL SSL**) Metronet Rail SSL Limited (in
LIMITED (IN PPP ADMINISTRATION) as its agent) PPP administration)
and without personal liability)
Witness's Signature
Name:
Address:
.....
.....

Executed as a Deed

by **THALES SECURITY SOLUTIONS & SERVICES, S.A.**
acting by the duly authorised Chairman of the Board of Directors:

Director:

Signature

Name:

Executed as a Deed

by **THALES RAIL SIGNALLING SOLUTIONS LIMITED** acting by
two directors or by one director and the secretary:

Director:

Signature

Name:

Director/Secretary:



Signature

Name:



2



**SCHEDULE 2.4 (APPENDIX 7)
INSURANCES**

INSURANCE

NB The insurance to be in accordance with clause 84 (Z1.96) of the Contract. The insurance details as at the commencement of the Contract are as follows:-

PART A

**DETAILS OF INSURANCE HELD BY THE CONTRACTOR AT THE
COMMENCEMENT OF THE CONTRACT**

Employer's Liability	Limit of Indemnity [REDACTED] any one occurrence	Renewal Date: 31 December 2008
Insurer	Axa Corporate Solutions	Policy No. XUK0000545L I08A
Professional Indemnity	Limit of Indemnity [REDACTED] any one occurrence and in the aggregate	Renewal Date: 31 December 2008
Insurer	Axa Corporate Solutions	Policy No. 41303370220
Product Liability	Limit of Indemnity [REDACTED] any one occurrence and in the aggregate	Renewal Date: 31 December 2008
Insurer	Axa Corporate Solutions	Policy No. XUK0000545L I08A (LOCAL), 413033370320 (MASTER)
Public Liability	Limit of Indemnity [REDACTED] any one occurrence	Renewal Date: 31 December 2008
Insurer	Axa Corporate Solutions	Policy No. XUK0000545L I08A (LOCAL), 41303370320 (MASTER)
Materials Insurance	Limit of Indemnity re-instatement or replacement value	Renewal Date: 31 December 2008
Insurer	Axa Corporate Solutions	Policy No. 41303365920

For all or any of the above insurances, is cover provided for the following:

Indemnity to Principal Clause	Yes X	No
Financial Loss Extension	Yes X	No
Pollution Cover	Yes X	No
Liability assumed under Contract	Yes x	No
Limitations if you have answered	"Yes"	
Is there a Care, Custody or Control Exclusion?	Yes X	No

If yes, is the policy endorsed to make it perfectly clear that the premises and their contents where the Insured is temporarily performing work shall not be deemed to be in the Insurer's custody and control.

Part B

Other Insurances

Installation All Risk Insurance for the Works

Without prejudice to the insurances specified in clause 84 (Z1.96) of the contract the Contractor is also required to arrange and maintain Installation Insurance in a sum not less than £10 million per occurrence.

Materials Insurance **Limit of Indemnity**

Renewal Date:

All risk of physical damage Re-instatement or replacement value of installed equipment 31 December 2008

Insurer Axa Corporate Solutions Policy No. 150 147 135 20

Does the policy cover permanent and temporary works, materials, plant, tools, equipment and temporary buildings and their contents? Yes

Is the cover on an "All Risks" basis? Yes

If not, please state the extent of the cover, e.g. Fire, aircraft, explosion and storm. NA

Please state the amount of any excess (deductible) indicated on the policy?
Euro 100,000

Is there any restriction or limitation in cover related to this work? No.

APPENDIX 8: CORPORATE IPRs

Corporate IPRs

1. **The Roundel (examples of which are given in Annex 1 to Schedule 1.8 to the PPP Contract) including the following registered trade marks:**

Country	Registration/ Application	Trademark	Class
UK	1321443	BLANK ROUNDDEL	39
UK	1094664	ROUNDDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDDEL	16
UK	2236110	UNDERGROUND & ROUNDDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDDEL	25
UK	1321442	UNDERGROUND ROUNDDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDDEL	14 16 18 25 32
CTM	299206	ROUNDDEL DEVICE	16 25 28 39
CTM	814004	ROUNDDEL DEVICE & UNDERGROUND	18 25 42

2. **The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the *New Johnston Typeface*) (examples of which are attached in Annex 2 to Schedule 1.8 to the PPP Contract).**
3. **The Underground map attached in Annex 3 to Schedule 1.8 to the PPP Contract.**
4. **The following registered trade marks:**

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21

Country	Registration/ Application	Trademark	Class
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

APPENDIX 9: LIQUIDATED DAMAGES AND DISRUPTION

Delay: Liquidated damages for delay in completion of each Section of the works, are specified in Schedule 2.2 Contract Data - Part One (Data provided by the Employer).

Disruption: A maximum sum equivalent to [REDACTED] per 15 minutes shall be payable by the Contractor under Clause Z3.12.1 subject to a maximum amount of [REDACTED] arising out of any one incident. In respect of liabilities as a result of disruption, the maximum aggregate liability at 5% of contract value

An overall cap of aggregate on sum of any damages payable is [REDACTED] of the Contract Value.

APPENDIX 10 - DISPUTE RESOLUTION PROCEDURE

1. Either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this Appendix 10, by giving Notice of Adjudication to the other Party.
2. Should a Party give a Notice of Adjudication, immediately thereafter the Parties shall endeavour to agree, from the list of Adjudicators in Annex A, a shortlist of persons whom they would consider suitable to act as the Adjudicator and invite them (in turn) to accept the reference of the Contract Dispute referred to in the Notice of Adjudication. In the event of the Parties failing to jointly appoint a person willing and suitable to act as Adjudicator within 3 days of the Notice of Adjudication, either Party may apply to the Nominating Authority to appoint an Adjudicator. The Nominating Authority shall endeavour to appoint the Adjudicator within 4 days of receiving the application. In acting pursuant to this Paragraph, the Nominating Authority and its employees and agents shall not be liable to either Party howsoever for any act or omission in so acting, save where the act or omission is shown by the Party to constitute conscious and deliberate wrongdoing committed by the Nominating Authority or its employees or agents alleged to be liable to that Party and if (notwithstanding such exclusion of liability) the Nominating Authority or its employees or agents should be held liable to any third person, the Parties shall hold harmless and indemnify the Nominating Authority in full (including reasonable legal costs) save where conscious and deliberate wrongdoing, committed by the Nominating Authority or its employees or agents, is shown.
3. The terms of remuneration of the Adjudicator shall be agreed by the Parties and the Adjudicator with the object of securing appointment of the Adjudicator within 7 days of the Notice of Adjudication. If either Party (but not both Parties) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the Parties) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's fees shall not exceed the level originally proposed to the Parties by the Adjudicator). If both Parties reject the terms of remuneration proposed by an Adjudicator another person shall be appointed as an Adjudicator in accordance with Paragraph 2.
4. The Contract Dispute shall be deemed to be referred to the Adjudicator on his acceptance of the appointment.
5. The Parties may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in Paragraph 7, or if that period is extended in accordance with Paragraph 8 within such extended period, and the Parties do not jointly extend time for his decision to be made in accordance with Paragraph 7, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person shall be appointed to replace the Adjudicator in accordance with the provisions of Paragraph 2. In the event of the Parties failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, either Party may apply to the Nominating Authority to appoint a replacement Adjudicator. Provided that where the Adjudicator has failed to give notice of his decision within the period referred to in Paragraph 7, or if that period is extended in accordance with Paragraph 8 within such extended period, or within any extended time jointly agreed by the Parties in accordance with Paragraph 7, and either Party has commenced court proceedings pursuant to Paragraph 17, no replacement Adjudicator shall be appointed in accordance with this Paragraph 5 and the Contract Dispute shall be determined by the court in accordance with Paragraph 17. In acting pursuant to this paragraph, the Nominating Authority and its employees and agents shall not be liable to either Party howsoever for any act or omission in so acting, save where the act or omission is shown by the Party to constitute conscious and deliberate wrongdoing committed by the Nominating Authority or its employees or agents alleged to be liable to that Party and if (notwithstanding such exclusion of liability) the Nominating Authority or its employees or agents should be held liable to any third person, the Parties shall hold harmless and indemnify the Nominating Authority in full (including reasonable legal costs) save where conscious and deliberate wrongdoing, committed by the Nominating Authority or its employees or agents, is shown.

6. Immediately following receipt of the Notice of Appointment the Party who gave Notice of Adjudication shall send to the Adjudicator:
 - (a) a copy of the Notice of Adjudication; and
 - (b) a copy of this Contract.
7. The Adjudicator shall conduct the reference in accordance with Annex B and within 28 days of the referral of the Contract Dispute to him, or such longer period as is agreed by the Parties after the Contract Dispute has been referred to him, the Adjudicator shall give written notice of his decision to the Parties.
8. The Adjudicator may extend the period of 28 days referred to in Paragraph 7 by up to 14 days, with the consent of the Party by whom the Contract Dispute was referred pursuant to Paragraph 1.
9. The Adjudicator shall act as expert and not as arbitrator and the Adjudicator's decision shall be binding upon the Parties and the Adjudicator until the Contract Dispute is finally determined by legal proceedings (pursuant to Paragraph 17) or by agreement.
10. Notice of the Adjudicator's decision (stating that it is given under Paragraph 7) shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
11. Unless this Contract has already been terminated, the Parties shall continue to observe and perform all the obligations contained in this Contract, notwithstanding any reference to the Adjudicator, and shall give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the decision of the Adjudicator is revised by the Court pursuant to Paragraph 17 hereof. Either Party may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge shall be regarded and treated as a Contract Dispute for the purposes of this Appendix 10.
- 11A. Although a decision of an Adjudicator shall be binding pursuant to Paragraph 9 and the Parties shall give effect to the Adjudicator's decision pursuant to Paragraph 11 if any decision of the Adjudicator shall be revised by the Court pursuant to Paragraph 17:
 - (a) a Party shall be deemed not to have committed a breach of the Contract by reason of having acted in accordance with the Adjudicator's decision;
 - (b) if a Party has, as a direct and necessary result of having acted in accordance with any part of an Adjudicator's decision that has been revised by the Courts pursuant to Paragraph 17, incurred or suffered liabilities, damages, losses, costs or expenses, the Court revising the Adjudicator's decision shall be entitled to award to that Party such compensation as the Court determines appropriate including the payment or repayment of any sums (together with interest thereon) consequent upon any payments under the payment provisions of the Contract, but neither party shall be entitled to claim or be awarded compensation for any indirect or consequential loss or damage (including but not limited to lost profit or opportunities) that may be incurred or suffered as a result of having acted in accordance with the Adjudicator's decision; and
 - (c) to avoid doubt, no party shall be entitled to claim any other remedy apart from the remedy referred to in Paragraph 11A(b) above as a consequence of any act necessarily or properly undertaken in accordance with any part of the Adjudicator's decision which has been revised by the Courts pursuant to Paragraph 17.

12. In any case where the Adjudicator is appointed as a replacement pursuant to Paragraph 5, the Parties shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces and the reference shall continue as if there had been no change of Adjudicator.
13. Subject to any agreement of the Parties, the Adjudicator shall allocate the costs and fees of the adjudication as between the Parties. Unless the Parties otherwise agree, the Adjudicator shall award such costs and fees on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of the costs or fees. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and shall pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by the Courts pursuant to Paragraph 17.
14. Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator shall award the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and shall pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by the Courts pursuant to Paragraph 17.
15. If the terms of the Adjudicator's appointment provide for the payment of his remuneration and expenses before giving notice of his decision to the Parties pursuant to Paragraph 7, the Parties shall pay such remuneration and expenses in equal amounts, and shall make adjustment payments between themselves following any direction made by the Adjudicator pursuant to Paragraph 14. Where either Party unreasonably delays or refuses to pay the Adjudicator's remuneration the other Party may pay it on the defaulting Party's behalf and the extra payment shall become a debt payable by the defaulting Party.
16. In the event that any term, condition or provision contained in this Contract shall be held to be contrary to, inconsistent or non-compliant with the requirements of sub-sections (1) to (4) of Section 108 of the Housing Grants, Construction and Regeneration Act 1996, such term, condition or provision shall, to that extent be omitted from this Contract and the rest of the Contract shall stand, without affecting the remaining terms, conditions and provisions.
17. If either Party is dissatisfied with the Adjudicator's decision on a Contract Dispute then either Party may, on or before the 42nd day after the day on which it received notice of such decision, commence court proceedings for the determination of the Contract Dispute. If the Adjudicator fails to give notice of his decision on or before the 42nd day after the Date of Appointment then either Party, on or before the 28th day after the day on which the said period of 42 days has expired (or the 28th day after any such later day which the Parties shall have jointly agreed pursuant to Paragraph 7) may commence court proceedings for determination of the Contract Dispute.
18. In relation to any proceedings commenced pursuant to Paragraph 17:
 - (a) neither Party shall be limited in the proceedings before the Court to the evidence or arguments put before the Adjudicator;
 - (b) the Adjudicator shall not be called as a witness nor required to give evidence before the Court on any matter whatsoever; and

- (c) either Party can request the Court to set aside or revise a direction by the Adjudicator in respect of payment by the Parties of his costs or fees of the adjudication (including payment of the remuneration and expenses of the Adjudicator).
19. Nothing in this Contract shall prevent either Party seeking interim relief in any court.
20. Subject to the terms of this Contract, the Parties agree that the Courts of England are to have exclusive jurisdiction to settle any Contract Dispute (including claims for set-off and counterclaims) which may arise in connection with the creation of, validity, effect, interpretation or performance of, or the legal relationships established by this Contract or otherwise arising in connection with this Contract and for such purposes irrevocably submit to the jurisdiction of the courts of England.
21. If, when a Dispute ("a Related Dispute") is referred to an Adjudicator under the Alliance Agreement and/or the Underlying Contract, and the Employer is of the opinion that the Related Dispute has any connection with the Services then the Employer may by notice in writing require that the Consultant shall as soon as is practicable provide such information and attend such meetings in connection with the Related Dispute as the Employer may request.
22. If a Related Dispute has been referred to adjudication under the Alliance Agreement and/or the Underlying Contract and the Employer is of the opinion that the Related Dispute has any connection with a Contract Dispute which is to be (but has not yet been) referred for adjudication under this Contract, the Employer may by notice in writing require that such Contract Dispute be referred to the Adjudicator to whom the Related Dispute has been referred.
23. If the Employer is of the opinion that a Related Dispute has any connection with a Contract Dispute and the Related Dispute is referred to the Court under the Alliance Agreement and/or the Underlying Contract, the Employer, may by notice in writing require that the Consultant provide such information and attend such meetings in connection with the Related Dispute as the Employer may request. The Employer may also by notice in writing require that any such Contract Dispute be dealt with jointly with the Related Dispute and in like manner. In connection with any such Contract Dispute the Consultant shall be bound in like manner as the Employer by any judgment or award in relation to the Related Dispute.
24. If the Employer is of the opinion that a Contract Dispute raises a matter or has any connection with a matter which the Consultant wishes to refer to the Court under the Alliance Agreement and/or the Underlying Contract, the Employer may by notice in writing require that the Contract Dispute be finally determined jointly with any court proceedings to be commenced in accordance with the Alliance Agreement and/or the Underlying Contract. In connection with the Contract Dispute, the Consultant shall be bound in like manner as the Employer by any judgment or award concerning the matter referred to the Court under the Alliance Agreement and/or the Underlying Contract.

ANNEX A

List of Adjudicators

(i) **Legal**

[REDACTED] Keating Chambers, 10 Essex Street, Outer Temple, London WC2R 3AA

[REDACTED], Essex Court Chambers, 24 Lincoln's Inn Fields, London WC2A 3ED

[REDACTED], 20 Essex Street, London WC2R 3AL

[REDACTED], Keating Chambers, 10 Essex Street, Outer Temple, London WC2R 3AA

[REDACTED]C, 20 Essex Street, London WC2R 3AL

[REDACTED], Atkin Chambers, 1 Atkin Building, Gray's Inn, London WC1R 5AT

[REDACTED], Atkin Chambers, 1 Atkin Building, Gray's Inn, London WC1R 5AT

(ii) **Infrastructure (including Electrical & Mechanical, Signal & Control, Power)**

[REDACTED] BSc (Hons), LLB, CEng, FICE, FCI Arb, FConsE, FI FHKIE, MSI Arb, Barrister

[REDACTED] MSc (Construction Law), LLB (Hons), CEng, FIC, FCI Arb, Barrister

(iii) **Construction (including Building, Civil and Track)**

[REDACTED] PhD, CEng, MICE, FIHT, FCI Arb, LIMA

[REDACTED] Msc, CEng, MICE, FCI Arb

(iv) **Communication (including telephones, CCTV & Radio)**

[REDACTED] (Eng), CEng, FICE, FCI Arb

(v) **Health, Safety, Quality and Environmental**

[REDACTED], HASTAM, Love Lane, Aston Science Park, Birmingham B7 4BJ

[REDACTED], Aston University Health & Safety Faculty, Aston Triangle, Birmingham

[REDACTED], Engineering Employers Federation, Broadway House, Broadway, London SW1

[REDACTED], Engineering Employers Federation (South), Station Road, Hook, Hants RG27 9TL

[REDACTED] Managing Partner, Risk Solutions, 1st Floor, Central House, 14 Upper Woburn Place, London WC1H 0JN

(vi) **Insurance**

As recommended by the Nominating Authority.

ANNEX B

Adjudication Rules

1. Forthwith upon the agreement or determination of his terms of remuneration the Adjudicator shall notify the Parties in writing of his appointment ("Notice of Appointment") and the address and the facsimile, if any, at which notices or other communications should be addressed to him.
2. All notices, written submissions and any other written communications between either Party and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and shall in each case be copied simultaneously (delivered or sent as aforesaid) to the other Party. Copies by way of confirmation of all communications by facsimile between the Parties and the Adjudicator shall also be sent by first class post not later than the business day next following the date of the original facsimile transmission.
3. Within 7 days of receipt of the Notice of Appointment each Party may make one written submission to the Adjudicator and within 7 days from the date of receipt of the written submission of the other Party may make a written response to the other Party's submission. Any submission made by a Party shall contain copies of all documents on which that Party wishes to rely (or a list of such documents if they are already in the possession of the other Party). All written submissions and written responses shall either be delivered by hand or sent by facsimile or post in accordance with Paragraph 2 of this Annex B within the relevant periods referred to in this Paragraph 3. The Adjudicator shall consider such written submissions and written responses as may be made by the Parties pursuant to this Paragraph 3.
4. The Adjudicator may take the initiative in ascertaining the facts and the law in relation to the Contract Dispute referred to him.
5. The Adjudicator may with the consent of the Parties seek legal or technical advice from consultants whose Contract by the Adjudicator (including terms of remuneration) is subject to the approval of the Parties.
6. The Adjudicator may, in his discretion, but shall not be obliged to:
 - (a) convene meetings upon reasonable notice to the Parties at which the Parties and their representatives shall be entitled to be present;
 - (b) submit lists of questions to the Parties to be answered in such meetings or in writing within such reasonable time as he may require;
 - (c) require the Parties to provide him with such information, access and other facilities as he may reasonably require for the determination of the Contract Dispute referred to him;
 - (d) otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Contract or this Annex B and shall be reasonable and proper for the just, expeditious and economical determination of the Contract Dispute referred to him; and
 - (e) inspect any part of the Company Network.
7. The Adjudicator shall adopt any other procedures (including any variation of the procedures provided for under this Annex B) which may be agreed between the Parties for determination of the Contract Dispute.

8. The Adjudicator shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision.
9. All information of whatever nature provided to the Adjudicator by either Party shall be copied to the other Party or (where copying is not practicable) the other Party shall be entitled to inspect it.
10. All meetings shall be private and save as expressly provided in this Annex B or as required by law the Adjudicator shall keep confidential the Contract Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the adjudicator

APPENDIX 11 – FORM OF ESCROW AGREEMENT

