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SCHEDULE 1
(Subcontractor Warranty)

PROJECT : No.

THIS AGREEMENT is made the _____ day of _____ 20____

BETWEEN : -

- (1) **LUL Nominee SSL Limited** (Company registration number: 06242508) whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL ("the Employer");
- (2) [] (Company registration number: XXXXXXXX) whose registered office/principal place of business is at [.....] ("the Sub-Contractor"); and
- (3) **Thales Ground Transportation Systems UK Limited** (Company registration number: 5805963) whose registered office/principal place of business is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone nr Weybridge, Surrey, KT15 2NX ("the Contractor").

WHEREAS :-

- (A) The Employer has appointed the Contractor to execute, complete and maintain the following works :-
- (B) The Sub-Contractor has submitted a tender to the Contractor for the carrying out and completion of the sub-contract works ("the Sub-Contract Works") referred to above as more particularly described in the tender and the Contractor has appointed the Sub-Contractor to carry out the Sub-Contract Works under a sub-contract (the "Sub-Contract").

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Employer to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows :-

1. The Sub-Contractor warrants to the Employer that :-
 - (a) the Sub-Contract Works, to the extent designed by the Sub-Contractor, have been and will be designed with the skill and care reasonably to be expected of appropriately qualified and experienced professional designers with experience in carrying out work of a similar type, nature and complexity to the Sub-Contract Works;
 - (b) reasonable skill and care has been and will continue to be exercised in connection with:-
 - (i) the selection of all goods and materials comprised in the Sub-Contract Works in so far as such goods and materials have been or will be selected by the Sub-Contractor;
 - (ii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the Sub-Contract; and
 - (iii) the execution, completion and maintenance of the Sub-Contract Works as specified in the Sub-Contract;

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- (c) the Sub-Contract Works will be reasonably fit for the purposes for which they are intended (awareness of which purposes are stated in the Sub-Contract); and
 - (d) it has all necessary rights to grant the licence in clause 3 of this Agreement.
2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Contractor is granted an extension of time under the contract between the Employer and the Contractor dated ● ("the Main Contract", which expression shall include any document constituting, amending, supplementing or replacing the same) for completion of the Works:-
- (a) so supply the Project Manager and the Contractor with such information as either may reasonably require; and
 - (b) so execute, complete and maintain the Sub-Contract Works in accordance with the provisions of the Sub-Contract

that the Contractor shall not become entitled to any extension of time for completion of the Works or to claim any additional payment under the Main Contract.

3. Intellectual Property

- (a) Escrow Agreement shall mean an escrow agreement between the Employer, Subcontractor and NCC Escrow Limited on the terms set out in the Schedule.
- (b) Intellectual Property Rights shall mean all intellectual property rights in any part of the world and shall include: patents (including supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, registered designs, unregistered rights in designs, semiconductor and topography rights, copyrights and neighbouring rights, database rights, trade secrets, know-how, inventions, technical or commercial knowledge, and manufacturing or business processes, methods and procedures and in each case rights of a similar or corresponding character and all applications and rights to apply for the protection of any of these rights.
- (c) Material shall mean all work undertaken or produced by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works and all work the benefit of which is used in the Sub-Contract Work (including but not limited to drawings, designs, specifications, calculations, sketches, other documents, software, schemes and plans).
- (d) All Intellectual Property Rights shall remain vested in the Sub-Contractor.
- (e) The Sub-Contractor hereby grants to the Employer with the consent and approbation of the Contractor:
 - (i) a perpetual, irrevocable, royalty-free, non-exclusive licence (with rights to transfer, assign and sub-licence) to use in the United Kingdom all Intellectual Property Rights owned, controlled or used by it in connection with the Main Contract; and

(ii) the rights to modify, adapt and enhance all Intellectual Property Rights owned, controlled or used by it in connection with the Main Contract provided that:

- (1) these rights may only be exercised in the event of a Release Event under clause 6 of the Escrow Agreement;
- (2) the Employer agrees to pay the Sub-contractor's reasonable licence fees for such rights which licence fees shall not exceed 5% of the purchase price of the hardware or equipment to which the software relates or 5% of the fee charged by the Sub-contractor for maintenance of the software in respect of which such rights are granted; and
- (3) the Employer shall not use these rights to manufacture or distribute hardware or software on a commercial basis.

(f) Where Intellectual Property Rights in Material (other than in commercial off the shelf software which is standard, freely commercially available and not developed or modified by the Subcontractor ("Off the Shelf Software")) are owned by a third party, the Sub-Contractor will use its best endeavours to either procure ownership of sufficient rights in such Intellectual Property Rights as are required to grant the licence set out in this clause 3 or procure from the owner of such Intellectual Property Rights the grant of a licence on the terms set out above in favour of the Employer.

4. The parties hereby agree that :-

- (a) this Agreement shall be personal to the Sub-Contractor;
- (b) the Employer may assign or sub-license the benefit of this Agreement to any third party;
- (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.

5. (a) Neither the Sub-Contractor nor the Contractor shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Contractor or the Sub-contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Employer, specifying the Sub-Contractor's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.

- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Employer may give written notice to the Sub-Contractor and to the Contractor (a "Step-in Notice") that the Employer or its appointee shall henceforth become the Contractor under the Sub-Contract in accordance with the terms of sub-clause (c) below.

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- (c) With effect from the date of the service of any Step-in Notice:
- (i) the Employer or its appointee shall be substituted in the Sub-Contract as the Contractor thereunder in place of the Contractor and references in the Sub-Contract to the Contractor shall be construed as references to the Employer or its appointee;
 - (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;
 - (iii) the Employer shall become bound by the terms and conditions of the Sub-Contractor in respect of all obligations and duties of the Contractor thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and
 - (iv) the Contractor shall be released from further performance of the duties and obligations of the Contractor under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:
 - (1) the Sub-Contractor against the Contractor in respect of any matter or thing done or omitted to be done by the Contractor on or before the date of the Step-in Notice; and
 - (2) the Contractor against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
- (d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Employer to the Sub-Contractor, the Employer shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Employer unless the Employer shall have served a Step-in Notice pursuant to clause 5(b) above.

6. The Sub-Contractor warrants and undertakes to the Employer that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract Works and that insofar as he is responsible for the design of the Sub-Contract, he has professional indemnity insurance with a limit of indemnity of not less than £[● million] in respect of each and every claim which may be made against the Subcontractor in relation to the Sub-Contract works. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the works provided such insurance remains available at commercially reasonable rates and shall notify the Employer forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms, which arise as a result of the Sub-Contractor's insurance claims record.
7. As and when reasonably requested by the Employer, the Sub-Contractor shall produce for inspection documentary evidence that the insurances referred to in Clause 6 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

8. Disputes

- (a) If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Works which raises issues which are in reasonable opinion of the Contractor the same as or substantially the same as issues raised in a related dispute ("the related dispute") between the Employer and the Contractor and such related dispute has already been referred to the Adjudicator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Contractor may by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Works to the Adjudicator appointed to determine the related dispute. In this event such Adjudicator shall have power to give such directions for the determination of the dispute and the related dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.
 - (b) Any dispute between any of the parties arising under or in connection with this Sub-Contractor Warranty shall be dealt with in accordance with the procedure set out in Clause 9 of the Main Contract.
- 9. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Contractor and under the Sub-Contract.
 - 10. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
 - 11. This Agreement shall be governed by and construed in accordance with English law.

IN WITNESS whereof these presents have been executed and delivered as a deed the day and year first before written.

SIGNED and delivered as a deed
by **LUL Nominee SSL Limited** acting by
two Directors or by one Director and
the Company Secretary:

Director

Signature:

Date:

Director / Company Secretary

Signature:

Date:

SIGNED and delivered as a deed
by **[INSERT NAME OF SUB-CONTRACTOR]** acting by
two Directors or by one Director and
the Company Secretary:

Director

Signature:

Date:

Director / Company Secretary

Signature:

Date:

SIGNED and delivered as a deed
by **Thales Ground Transportation Systems UK Limited** acting by
two Directors or by one Director and
the Company Secretary:

Director

Signature:

Date:

Director / Company Secretary

Signature:

Date:

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TSU



Single Licensee Software Escrow Agreement¹

Date: []
Owner: []
Agreement Number: []

Notice: The parties to this Agreement are obliged to inform NCC Group of any changes to the Package or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Package)

¹ This agreement has been negotiated with the NCC Group. Any proposed amendments should be agreed with the Legal team prior to being sent to either the Owner or NCC Group.

Escrow Agreement Dated:**Between:**

- (1) **Thales Ground Transportation Systems UK Limited** whose registered office is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone nr Weybridge, Surrey, KT15 2NX (Company Registration Number: 5805963) ("**Owner**");
- (2) **LUL Nominee SSL LIMITED** whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (Company Registration Number: 06242508)² ("**Licensee**"); and
- (3) **NCC GROUP ESCROW LIMITED** a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, ENGLAND (CRN: 3081952) ("**NCC Group**").

Background:

- (A) The Licensee has been granted a licence to use the Package which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the software package is the confidential information and intellectual property of the Owner or a third party.
- (C) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1 Definitions and Interpretation

- 1.1 In this Agreement the following terms shall have the following meanings:

"**Agreement**" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"**ATC Contract**" means the contract entered into between the Licensee and the Owner dated ● for works relating to the Sub Surface Railway Upgrade Programme for the Sub Surface Railway comprising of the Circle, District, Hammersmith and City and Metropolitan Lines.

"**Confidential Information**" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"**Full Verification**" means the tests and processes forming NCC Group's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Material.

"**Independent Expert**" means a suitably qualified and independent solicitor or barrister.

"**Integrity Testing**" means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Material.

"**Intellectual Property Rights**" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"**Licence**" means the licence granted to the Licensee to use the Package.

² Where the contracting party is a different TfL Group company then these details will need to be amended accordingly.

"Licence Agreement" means the ATC Contract and/or the MSC (as applicable) under which the Licensee was granted the Licence.

"Material" means the Source Code of the Package and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

"MSC Contract" means the agreement between the Licensee and the Owner dated ● for maintenance support services;

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

"Package" means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement details of which are set out in schedule 1.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Package exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

"Release Events" has the meaning given to it in Clause 6.1 of this Agreement.

"Source Code" means the computer programming code of the Package in human readable form.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Owner or the Licensee.

1.2 This Agreement shall be interpreted in accordance with the following:

- 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement; and
- 1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Owner's Duties and Warranties

2.1 The Owner shall:

- 2.1.1 deliver an initial copy of the Material to NCC Group within 30 days of the first Sectional Functional Completion (as defined under the ATC Contract);
- 2.1.2 deliver a further copy of the Material to NCC Group at the occurrence of the events stated in Schedule 1 and during the term of the MSC Contract only, if requested by the Licensee giving 90 days written notice for a further deposit (and if such further deposit is requested, the Licensee shall pay any costs and expenses reasonably incurred by the Owner in making such deposit);
- 2.1.3 ensure that each copy of the Material deposited with NCC Group comprises the Source Code of the latest version of the Package used by the Licensee;
- 2.1.4 during the term of the MSC Contract only, deliver to NCC Group a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material to ensure that the integrity of the Material media is maintained;
- 2.1.5 deliver a replacement copy of the Material to NCC Group within 14 days of a notice given to it by NCC Group under the provisions of clause 4.1.3;
- 2.1.6 deliver with each deposit of the Material the following information:
 - 2.1.6.1 details of the deposit including the full name of the Package (i.e. the original name as set out under schedule 1 together with any new names given to the Package by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.6.2 password/encryption details required to access the Material;

- 2.1.6.3 any other information or documentation required to be disclosed under any Licence Agreement or to facilitate the use of any of the Material.
- 2.1.7 deliver with each deposit of the Material the following technical information (where applicable):
 - 2.1.7.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - 2.1.7.2 software design information (e.g. module names and functionality); and
 - 2.1.7.3 name and contact details of employees with knowledge of how to maintain and support the Material; and
- 2.1.8 Not used.
- 2.2 The Owner warrants to both NCC Group and the licensee at the time of each deposit of the Material with NCC Group that:
 - 2.2.1 other than any third party object code referred to in clause 2.1.8, any Third Party Material or any Material owned by the Licensee by virtue of the provisions of the Licence Agreement, it owns the Intellectual Property Rights in the Material;
 - 2.2.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement;
 - 2.2.3 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s); and
 - 2.2.4 the Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.8) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Package.
 - 2.2.5 Not used.

3 Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Group of any change to the Package that necessitates a replacement deposit of the Material.
- 3.2 In the event that the Material is released under clause 6, the Licensee shall, subject to the terms of the Licence Agreement:
 - 3.2.1 keep the Material confidential at all times and ensure that any other person to whom the Material is disclosed pursuant to clause 3.2.3 does the same;
 - 3.2.2 use the Material only for the Release Purposes;
 - 3.2.3 not disclose the Material to any person save as permitted under the terms of any relevant Licence Agreement or as otherwise required for the Release Purposes;
 - 3.2.4 hold all media containing the Material in a safe and secure environment when not in use; and
 - 3.2.5 forthwith destroy the Material should the Licensee cease to be entitled to use the Package under the terms of the Licence Agreement.
- 3.3 Not used.

4 NCC Group's Duties

- 4.1 NCC Group shall:
 - 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
 - 4.1.2 inform the Owner and the Licensee of the receipt of any deposit of the Material by sending to

both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10; and

- 4.1.3 notify the Owner and the Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.

- 4.2 In the event of failure by the Owner to deposit any Material with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensee of the Owner's failure to deposit any Material.

- 4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8.

- 4.4 NCC Group has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

5 Payment

- 5.1 The parties shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. NCC Group's fees as published are exclusive of value added tax.

- 5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.

- 5.3 All invoices are payable within 30 days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of 2% per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6 Release Events

- 6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Material to a duly authorised officer of the Licensee if any of the following events ("**Release Event(s)**") occur:

- 6.1.1 Not used.

- 6.1.2 Not used.

- 6.1.3 Not used.

- 6.1.4 Not used.

- 6.1.5 the Owner ceases to carry on its business or the part of its business which relates to the Package; or

- 6.1.6 the Owner assigns its rights to the Intellectual Property Rights in the Material to a third party ("**Assignee**") and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Licensee by failing to enter into either:

- 6.1.6.1 a novation agreement with the Licensee and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee; or

- 6.1.6.2 a new escrow agreement with the Licensee for the Package which offers the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee.

provided that if the Assignee offers to enter into a novation or new escrow agreement within 60 days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within 30 days of such offer being notified to the Licensee, there shall be no Release Event under this clause;

- 6.1.7 termination of the ATC Contract by the Licensee pursuant to clauses 91.1, 91.2, 91.3, 91.8 or 91.9 first bullet, or termination of the ATC Contract or by either party pursuant to clauses 91.5

first bullet or 9.1.6 first bullet and third bullet; or

6.1.8 termination of the MSC Contract by the Licensee pursuant to clause 9.8 of the MSC Contract.

6.2 The Licensee must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration ("Declaration") made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Licence Agreement and any maintenance agreement, if relevant, for the Package was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as NCC Group shall reasonably require.

6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:

6.3.1 NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and

6.3.2 unless within 30 days after the date of despatch of the Declaration by NCC Group, NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,

NCC Group will release the Material to the Licensee for its use for the Release Purposes.

6.4 Upon receipt of the counter-notice from the Owner under clause 6.3.2, NCC Group shall send a copy of the counter-notice and any supporting evidence to the Licensee by courier or other form of guaranteed delivery.

6.5 Upon receipt by the Licensee of the counter-notice from NCC Group or, in any event, within 90 days of despatch of the counter-notice by NCC Group, the Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.

6.6 If, within 90 days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived their right to release of the Material for the particular reason or event specified in the original Declaration.

6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1.1 to 6.1.5, a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.

7 Disputes

7.1 NCC Group shall notify the Owner of the Licensee's request for dispute resolution. Unless the Owner or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Owner or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, NCC Group shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.

7.2 Within 5 working days of the appointment of the Independent Expert, the Owner and the Licensee shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.

7.3 The Independent Expert shall be requested to give a decision on the matter within 14 days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Owner, Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.

7.4 If the Independent Expert's decision is in favour of the Licensee, NCC Group is hereby authorised to release and deliver the Material to the Licensee within 5 working days of the decision being notified by the Independent Expert to the parties.

7.5 The parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8 Confidentiality

- 8.1 The Material shall remain at all times the confidential and intellectual property of its owner.
- 8.2 Subject to the terms of the Licence Agreement, in the event that NCC Group releases the Material to the Licensee, The Licensee shall be permitted to use the Material only for the Release Purposes.
- 8.3 NCC Group agrees to keep all Confidential Information relating to the Material and/or the Package that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9 Intellectual Property Rights

- 9.1 The release of the Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Group. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10 Integrity Testing and Full Verification

- 10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Material received by NCC Group under this Agreement.
- 10.2 As soon as practicable after the Material has been deposited with NCC Group, NCC Group shall apply its Integrity Testing processes to the Material.
- 10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification. The Owner shall be entitled to monitor and participate in the Full Verification. Subject to clause 10.4, NCC Group's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Group in carrying out the Full Verification processes shall be payable by the requesting party. In the event that the requesting party is the Licensee, the Owner's reasonable fees, charges and expenses for participating in the Full Verification shall be borne by the Licensee.
- 10.4 If the Material fails to satisfy NCC Group's Full Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.
- 10.5 Should the Material deposited fail to satisfy NCC Group's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Owner fails to make such deposit of the new, corrected or revised Material, NCC Group will issue a report to the Licensee detailing the problem with the Material as revealed by the relevant tests.

11 NCC Group's Liability

- 11.1 Nothing in this clause 11 excludes or limits the liability of NCC Group for:-
 - 11.1.1 fraud or fraudulent misrepresentation;
 - 11.1.2 death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence;
 - 11.1.3 a breach of clause 8 by NCC or its employees, agents or subcontractors, or
 - 11.1.4 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Without prejudice to clauses 11.1.1 to 11.1.4 (inclusive), the following provisions set out the entire financial liability of NCC Group (including any liability for the acts or omissions of its employees, agents and sub-contractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

- 11.2 NCC Group shall not be liable for any loss or damage caused to the other parties except to the extent

that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited to [REDACTED]

11.3 Subject to clause 11.1 NCC Group shall not be liable to the other parties for any;

- 11.3.1 indirect, consequential and/or special loss or damage;
- 11.3.2 loss of profit (direct or indirect);
- 11.3.3 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
- 11.3.4 loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);
- 11.3.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect); and/or
- 11.3.6 loss or damage arising out of any failure by the Owner to keep full and up to date back-ups and security copies of any Materials delivered under this Agreement,

arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

11.4 NCC Group shall not be liable in any way to the Owner or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.

11.5 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner or the Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

12 Indemnity

12.1 Save for any claim falling within the provisions of clause 11.1.1, the Owner and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Owner and the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.

12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Material as contemplated under this Agreement.

13 Term and Termination

13.1 This Agreement shall continue until terminated in accordance with this clause 13.

13.2 If the Owner or the licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within 30 days. If the Licensee has not paid its invoice by the expiry of the 30 day notice period, this Agreement will automatically immediately terminate. If the Owner has not paid its invoice by the expiry of the 30 day notice period, NCC Group will give the Licensee a period of 15 days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the 15 day optional payment period given to the Licensee, this Agreement will automatically immediately terminate. Any amounts owed by the Owner but paid by the Licensee will be recoverable by the Licensee direct from the Owner as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.

- 13.3 Upon termination under the provisions of clause 13.2, for 30 days from the date of termination NCC Group will make the Material available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such 30 day period NCC Group will destroy the Material.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving 30 days written notice to the Owner and the Licensee. In that event, the Owner and the Licensee shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within 14 days of delivery of such notice, the Owner or the Licensee shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Owner and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Material to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Material to the Owner.
- 13.5 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group. Upon such termination, NCC Group will return the Material to the Owner.
- 13.6 If NCC Group discovers that a Release Event has occurred and the Licensee has failed to exercise its right to claim for release of the Material under clause 6.2, NCC Group shall have the right to terminate this Agreement upon 30 days written notice to the Owner and the Licensee. The Licensee shall have the option of applying for release in accordance with clause 6 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement shall automatically terminate and, unless otherwise instructed by the Owner or the Assignee prior to expiry of the notice period, NCC Group shall destroy the Material.
- 13.7 If the Intellectual Property Rights in the Material have been assigned to a third party and the proviso in clause 6.1.6 applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall destroy the Material.
- 13.8 If the Licence has expired or has been lawfully terminated, then the Licensee shall give notice to NCC Group within 14 days thereof to terminate this Agreement, failing which, the Owner shall be entitled to give written notice to NCC Group to terminate this Agreement. Upon receipt of such a notice from the Owner, NCC Group shall notify the Licensee of the Owner's notice to terminate. Unless within 14 days of NCC Group giving such notice to the Licensee, NCC Group receives a counter-notice signed by a duly authorised officer of the Licensee disputing the termination of the Licence Agreement, then the Licensee shall be deemed to have consented to such termination and this Agreement shall immediately automatically terminate. Any disputes arising under this clause shall be dealt with in accordance with the dispute resolution procedure in clause 7. Upon termination under this clause, NCC Group shall return the Material to the Owner.
- 13.9 Subject to clause 13.8, the Owner may only terminate this Agreement with the written consent of the Licensee.
- 13.10 This Agreement shall automatically immediately terminate upon release of the Material to the Licensee in accordance with clause 6.
- 13.11 If this Agreement is superseded and replaced by a new agreement in respect of the Material, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Material to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Material.
- 13.12 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.12 to 13.14 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.13 On and after termination of this Agreement, the Owner and/or the Licensee (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 13.14 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14 General

- 14.1 A party shall notify the other parties to this Agreement, within 30 days of its occurrence, of any of the following:

- 14.1.1 a change of its name, registered office, contact address or other contact details; and
- 14.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within 14 days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Material, the Owner shall notify:
 - 14.2.1 NCC Group and the Licensee of such assignment and the identity of the Assignee; and
 - 14.2.2 the Assignee of the provisions of clause 6.1.6.
- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Package and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:
 - (i) if delivered by hand or courier, at the time of delivery;
 - (ii) if sent by first class recorded delivery (airmail if overseas), 2 business days after posting (6 days if sent by airmail);
 - (iii) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.
- 14.6 The Owner and the Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.
- 14.7 NCC Group shall be entitled to transfer or assign this Agreement upon written notice to both the Owner and the Licensee.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.

- 14.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of **Thales Ground Transportation Systems UK Limited**

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of **LUL Nominee SSL LIMITED**

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of **NCC GROUP ESCROW LIMITED**

Name: |

Position: | (Authorised Signatory)

Schedule 1**The Package**

The software package known as []³ or any other name(s) as may be given to it by the Owner from time to time.

The Owner shall deposit further copies of the Material pursuant to clause 2.1.2 on the following dates:

- each Sectional Functional Completion (as defined under the ATC Contract);
- System Functional Completion (as defined under the ATC Contract);
- Final Completion (as defined under the ATC Contract);
- as instructed pursuant to Schedule 6, section 2.11 of the MSC Contract.

Schedule 2**NCC Group's Fees**

	DESCRIPTION	OWNER'S FEE	LICENSEE'S FEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	Nil	100%
2	Scheduled Update Fee (2 nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	Nil	100%
3	Unscheduled Update Fee (per unscheduled deposit)	Nil	100%
4	Release Fee (plus NCC Group's reasonable expenses)	Nil	100%

Additional fees will be payable to NCC Group by the Licensee (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of 1 cubic foot;
- Any novation or replacement of this Agreement at the request of the Owner or the Licensee;
- Integrity Testing Fee for deposits consisting of more than 5 media items.

³ Insert name of software.

5812
TSU

SCHEDULE 3

(Form of Parent Company Guarantee)

[TO BE PRINTED ON THALES LETTERHEAD]

LUL NOMINEE SSL
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Neuilly-sur-Seinne, [],
20[]

Dear Sir/Madam,

In this Guarantee capitalised terms shall have the same meaning as in the Contract unless expressly defined in this Guarantee.

We are the ultimate parent company of **Thales Ground Transportation Systems UK Limited** (Company registration number: 5805963) whose registered office/principal place of business is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone nr Weybridge, Surrey, KT15 2NX (the "Contractor"), who has entered into a contract with you dated • for the Automatic Train Control signalling system as part of the Sub Surface Railway Upgrade Programme for the Sub Surface Railway comprising of the Circle, District, Hammersmith and City and Metropolitan lines ("the Contract").

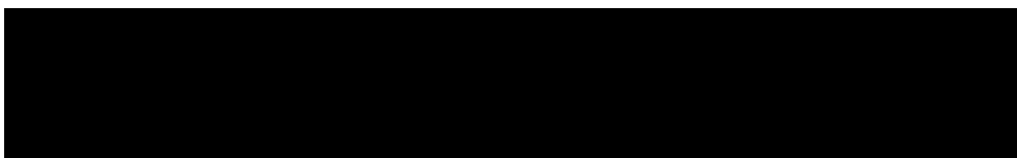
IN CONSIDERATION of the foregoing and of the payment of one pound (£1) by you to us (receipt of which we hereby acknowledge) WE HEREBY AGREE AND UNDERTAKE with you as follows :-

- (a) We guarantee the proper and punctual performance by the Contractor of all of 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 or be responsible for the payment by the Contractor of all sums, liabilities, awards, losses, damages, costs, charges and expenses due and payable by the Contractor under the Contract in accordance with its terms.

- (b) This Guarantee shall be a continuing guarantee and shall remain in full force and effect until 4 years from Final Completion.
- (c) This Guarantee shall only be called by notice sent by prepaid certified mail to our registered office at the address set out above (attention Head of Treasury) return receipt requested and we shall acknowledge receipt immediately on receipt. This notice shall:
 - (i) indicate, that the Contractor is in default of all or part of its obligations pursuant to the Contract and that such default has not been remedied in accordance with the terms and conditions thereof; and
 - (ii) set out a reasonably detailed description of the Contractor's default and the amount of all sums payable as a result thereof, together with evidence of such default, if available.
- (d) 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.

PROVIDED THAT

- 1. We 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. Our rights and obligations hereunder are subject to the terms and conditions of the Contract.
- 2. Notwithstanding any other provision of this Guarantee, our maximum aggregate liability under this Guarantee:



In no event shall our liability pursuant hereto or as a result of our obligations pursuant hereto exceed such amounts (or if amended such amended amounts). Any amount actually paid by us to you pursuant to this Guarantee shall automatically reduce accordingly, pound for pound, that maximum aggregate amount. The amount of our outstanding aggregate liability under this Guarantee shall be restated in writing by both parties from time to time at our request to reflect the reduction thereof.

- 3. Our obligations hereunder shall remain in full force and effect and shall not be affected or discharged by:
 - (i) any alteration or variation to the terms of the Contract made by agreement between you and the Contractor ;

- (ii) any alteration in the extent or nature or sequence or method or timing of the works to be carried out under the Contract ;
 - (iii) 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 ;
 - (iv) 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;
 - (v) the release or waiver of any such bond, security or guarantee ;
 - (vi) any amalgamation or reconstruction or dissolution including liquidation of the Contractor ;
 - (vii) the liquidation, administration, receivership or insolvency of the Contractor ;
 - (viii) any legal limitation, disability or incapacity relating to the Contractor (whether or not known to you) ; or
 - (ix) subject to Clause 1 above any invalidity in, irregularity affecting or unenforceability of the obligations of the Contractor under the Contract.
4. So long as we remain under any actual or contingent liability under this Guarantee and to the extent that the exercise or the potential exercise of any of our rights or obligations under the Guarantee (whenever called) could impair the Contractor's ability to perform its obligations under the Contract, we shall not exercise any right of subrogation or any other right or remedy of a surety (including without limitation or liquidation) which we may have in respect of any payment made by or sum recovered from us pursuant to this Guarantee.
5. This Guarantee is irrevocable.
6. 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, except that when a party requires the Courts of France to enforce any remedy the Courts of France shall also have jurisdiction.
7. For the purposes of this Guarantee we hereby appoint [Thales Ground Transportation Systems UK Ltd (attention Company Secretary, 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Near Weybridge, Surrey, KT15 2 NX,) to accept service of process on our behalf, and service on the said [Thales Ground Transportation Systems UK Ltd] at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.
8. Save that any member of the TfL Group has the right to enforce the terms of this Guarantee as if they were a party to this Guarantee in place of you in accordance with the Contracts (Rights of Third Parties) Act 1999, any person who is not a party to this Guarantee shall not have any benefit from or any rights under this Guarantee pursuant to the Contracts (Rights of Third Parties) Act 1999.

EXECUTED as a DEED by :

Thales S. A.

Name :
Title:

ACKNOWLEDGED AND AGREED TO BY :

LUL Nominee SSL Limited acting by two
directors or by one director and the Company
Secretary:

Director
Signature:

Name:

Director / Company Secretary
Signature:

Name:



SCHEDULE 4

Performance Bond (Letterhead of Bank)

To: LUL Nominee SSL Limited
Windsor House 42-50 Victoria Street London SW1H 0TL

Dear Sir/Madam,

In consideration of the payment of one pound (£1) by you to us (receipt of which we acknowledge) and of your contract dated ● (no. *insert reference*) ("the Contract", which expression shall include any document constituting, amending, supplementing or replacing the same) with Thales Ground Transportation Systems UK Limited ("the Contractor") in respect of ATC SUP Contact we (name of Bank) ("the Bank") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you.

PROVIDED THAT

1. This Bond will come into force on the date hereof and shall be extended in accordance with its terms until the date of certification of Final Completion, upon which date it shall automatically expire.
2. Any demand hereunder shall be substantially in the form of either annex 1A, annex 2, or annex 3A to this Bond, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you hereunder.
- 3.A Any demand in the form of annex 1A shall be accompanied by a copy of a letter from LUL Nominee SSL Limited sent to the *Contractor* by first class recorded post, return receipt requested, 14 or more days before the date of the demand, substantially in the form of annex 1B of this Bond.
3. B Any demand in the form of annex 3A shall be accompanied by a copy of a letter from LUL Nominee SSL Limited sent to the *Contractor* by first class recorded post, return receipt requested, 14 or more days before the date of the demand, substantially in the form of annex 3B of this Bond.
4. Our liability hereunder shall be limited to the maximum aggregate sum of [£●, being ■% of the total of the Prices.

We shall have no liability hereunder in respect of any demand dated after the date of certification of Final Completion.

5. This Bond shall be a continuing bond and our obligations hereunder will remain in full force and effect and will not be affected or discharged by:
- (a) any alteration to the terms of the Contract made by agreement between you and the *Contractor*;
 - (b) any defence, counterclaim, set off or other deduction available to the *Contractor* under the Contract.
 - (c) any alteration in the extent or nature or sequence or method or timing of the *works* to be carried out under the Contract;
 - (d) 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;
 - (e) 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;
 - (f) the release or waiver of any such Bond, security or guarantee.
 - (g) any amalgamation or reconstruction or dissolution including liquidation, the appointment of an administrator or the appointment of a receiver of all or any part of the assets of you or the *Contractor*;
 - (h) the termination of the Contract; or
 - (i) any other event which might operate to discharge a guarantor.
6. This Bond is irrevocable.
7. This Bond is effective immediately from the date hereof and shall expire on the day being three (3) years from the date hereof (such date being the "Expiry Date") except that this Bond shall be automatically renewed on each anniversary of the date of its effectiveness and such Expiry Date shall be automatically extended for a further period of one (1) year beginning from the Expiry Date unless not less than three (3) months prior to such anniversary we give you written notice (a "Non-Renewal Notice") that we will not renew and extend the same.
- 7.A Following issue of a Non-Renewal Notice you may at any time before the then Expiry Date, give us a written demand for the full amount available to be drawn under this Bond provided that any such demand may be made no earlier than 15 days prior to the Expiry Date and may only be made if a substitute bond or other form of alternative security acceptable to you has not been put in place as of 15 days prior to the Expiry Date.
8. All payments to be made by us under or as contemplated by this Bond shall be made free and clear of and without any deduction for any taxes, levies, duties, charges, fees, deductions or withholding of any nature and shall be made without any set-off or counterclaim.

9. You may assign or transfer your rights under this Bond in their entirety (but not in part) to any member of the Tfl Group.
10. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond.
11. This Bond, 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.

(For non-UK resident banks with only a branch or office in the UK:

12. For the purposes of this Bond we hereby appoint of *(to be a London address)* to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment).

EXECUTED as a DEED)
this)
date of
under THE COMMON SEAL of)
(name of Bank) in the)
presence of:)

Director
Director/Secretary

ANNEX 1A

Form of Demand from LUL Nominee SSL Limited to (the bank)
Sent by first class recorded post, return receipt requested

Dear Sirs

LUL NOMINEE SSL LIMITED
CONTRACT NO.

We refer to the Bond given by you to us dated [].

We enclose a copy of a letter from us to [insert name of *Contractor*] ("*the Contractor*") which was sent to the *Contractor* by first class recorded post, return receipt requested on [] which is more than 14 days before the date of this demand, as evidenced by the return receipt.

The *Contractor* has not taken steps, which we consider adequate to remedy the breaches under the terms and within the period specified in the Contract.

Completion of [] has not been certified.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by [your cheque in sterling payable to LUL Nominee SSL Limited *[or]* [electronic bank transfer in cleared funds payable to LUL Nominee SSL Limited at the following bank account: *[insert LUL bank details]*].

Yours faithfully

.....
LUL Nominee SSL Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

ANNEX 1B

Form of letter from LUL Nominee SSL Limited to the Contractor
To be sent by first class recorded delivery post return receipt requested

Dear Sirs

LUL NOMINEE SSL LIMITED
CONTRACT NO.

As explained in [previous letters to you our letter dated to you] are in breach of your obligations under contract No. [], and you have not proposed or implemented sufficient steps to remedy those breaches under the terms and within the period specified in the Contract.

This letter therefore notifies you that unless within the next 14 days you take steps which we consider adequate to remedy the breaches we will be entitled without further notice to you to call for payment under the Bond given on your behalf by [(name of bank)].

Yours faithfully

.....
on behalf of
LUL Nominee SSL Limited

ANNEX 2

Alternative form of demand from LUL Nominee SSL Limited to (the bank)
To be sent by first class recorded delivery post return receipt requested

Dear Sirs

LUL NOMINEE SSL LIMITED
CONTRACT NO.

We refer to the Bond given by you to us dated [] .

An event has occurred of the type described in clause 91.1, the Project Manager has issued a termination certificate pursuant to clause 90.1 attached hereto which entitles us (inter alia) to terminate the Contract in accordance with that clause.

Completion [] has not been certified.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by [your cheque in sterling payable to LUL Nominee SSL Limited] *or* [electronic bank transfer in cleared funds payable to LUL Nominee SSL Limited at the following bank account: *[insert LUL bank details]*].

Yours faithfully

LUL Nominee SSL Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

ANNEX 3A

Form of Demand from LUL Nominee SSL Limited to (the bank)
To be sent by first class recorded delivery post return receipt requested

Dear Sirs

LUL NOMINEE SSL LIMITED
CONTRACT NO.

We refer to the Bond given by you to us dated [].

We enclose a copy of a letter from us to [insert name of *Contractor*] ("the *Contractor*") which was sent to the *Contractor* by first class recorded post return receipt requested on [] which is more than 14 days before the date of this demand as evidenced by the return receipt.

The *Contractor* [has not issued the substitute bond or] extended the Bond in accordance with Clause 7 of the bond.

Completion [] has not yet been certified.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by [your cheque in sterling payable to LUL Nominee SSL Limited] [or] [electronic bank transfer in cleared funds payable to LUL Nominee SSL Limited at the following Bank: [insert *LUL bank details*].

Yours faithfully

.....
LUL Nominee SSL Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

ANNEX 3B

Form of letter from LUL Nominee SSL Limited to the Contractor
To be sent by first class recorded delivery post return receipt requested

Dear Sirs

LUL NOMINEE SSL LIMITED
CONTRACT NO.

The Bond given on your behalf by [*Bank*] is due to expire on [date] the date of certification of Completion. You have not [issued a substitute bond or] extended the bond in accordance with clause 7 of the bond.

This letter therefore notifies you that unless within the next 14 days you issue a substitute bond or extend the bond, we will be entitled without further notice to you to call for payment under the Bond.

Yours faithfully

.....
on behalf of
LUL Nominee SSL Limited

SCHEDULE 5

LOANED PERSONNEL CONDITIONS

1. SCOPE OF AGREEMENT

- 1.1 Subject to the terms and conditions set out in this Schedule, the *Employer* agrees to loan, and the *Contractor* agrees to accept the loan of, suitably qualified and competent personnel and IRSE licensed personnel who are employed by, or on secondment to, the Employer as set out in the Works Information at WI.03 (the "Loan").
- 1.2 With effect from the Contract Date, the *Employer* agrees to use its reasonable endeavours to Loan the Loaned Personnel to the *Contractor* if and to the extent the *Employer*, at its discretion, determines that it has qualified personnel available for such secondments whose services are not at that time required by the *Employer*, and the *Contractor* agrees to assign the Loaned Personnel to positions in which they will be able to perform the functions that are set out in the Works Information at WI.03. PROVIDED THAT in consideration for the supply of the Loaned Personnel under this Contract, the *Contractor* shall not charge Defined Cost under the Contract for the Loaned Personnel. For the avoidance of doubt, nothing in this Schedule shall affect the Prices under the Contract. The Loan of Loaned Personnel shall commence on the dates set out in the Works Information at WI.03
- 1.3 The *Contractor* shall advise the Loaned Personnel of all of the *Contractor's* plant and office rules, regulations, policies (including, without limitation, procurement policies) and safety procedures, and shall direct the Loaned Personnel accordingly. The *Contractor* agrees that (a) it shall not require the Loaned Personnel to do or to refrain from doing any act which would cause the *Employer* to be in breach of this Contract or any Loaned Personnel to be in breach of any of the *Contractor's* rules, regulations, policies or procedures or the Loaned Personnel or the *Employer* to be in violation of any applicable law (including, without limitation, any applicable law relating to health, safety and/or the environment) and (b) the Loaned Personnel shall not be required to comply with any direction or instruction of the *Contractor* that such Loaned Personnel reasonably believes does not comply with any applicable law (including, without limitation, any applicable law relating to health, safety and/or the environment).
- 1.4 The Loaned Personnel may be permanently re-assigned to a base location other than that agreed at the commencement of the assignment with the prior written approval of the *Employer*.
- 1.5 The parties agree that no Loaned Personnel are or shall become employees of the *Contractor* by virtue of this Contract, and the *Employer* and the *Contractor* agree that the *Contractor* shall not employ or seek to employ, whether directly or indirectly any of the Loaned Personnel:

- (a) during the course of this Contract; or
- (b) who have resigned or otherwise been discharged from employment by the *Employer* for a period of not less than [6] months following such resignation or discharge, without the prior written consent of the *Employer*.

Each of the restrictions in this clause shall be enforceable independently of each other and its validity shall not be affected if any of the others is invalid. If any of the restrictions is void but would be valid if some part of the restriction were deleted, the restriction in question shall apply with such modification as may be necessary to make it valid.

- 1.6 Nothing in this Schedule shall constitute a partnership between the *Employer* and the *Contractor* or constitute either as agent of the other for any purpose whatever. Neither party shall have authority or power to bind the other, to act as agent of the other or to contract in the name of or create liability against the other in any way or for any purpose save as expressly authorised in writing by the other.
- 1.7 The *Contractor* may notify the *Employer* that it requires further or additional loaned personnel to be provided in which case the Works Information (WI.03) may be varied by agreement to provide for further Loaned Personnel. For the avoidance of doubt, the *Employer* shall have no obligation to provide any such further loaned personnel and/or services.

2. RESPONSIBILITY

- 2.1 The *Employer* and the *Contractor* agree that the Loaned Personnel shall be under the exclusive supervision, direction and control of the *Contractor* at all times during their Loan under this Contract. The Loaned Personnel shall only be utilised by the *Contractor* for the functions set out for each Loaned Personnel as described in the Works Information at WI.03.
- 2.2 The *Employer* shall continue to pay to the Loaned Personnel their salaries/expenses and other benefits in accordance with their contracts of employment and the *Contractor* shall not vary or attempt to vary the Loaned Personnel's contracts of employment.
- 2.3 The *Employer* makes no guarantee as to the effectiveness or technical, economic or environmental feasibility of any method, technique, or process implemented by the *Contractor* or third parties as a result of the activities of any Loaned Personnel. The *Employer* agrees to loan suitably qualified and, where appropriate, IRSE licensed personnel relevant to the requirements of the *Contractor's* activities.

- 2.4 The *Contractor* is responsible for performing the Contract as if the Loaned Personnel had not been the subject of the Loan. The Contract applies as if the Loaned Personnel were the *Contractor's* employees for the purposes of determining liability and responsibility under the Contract, and the *Contractor* shall continue to be responsible for providing the staff necessary or appropriate to perform its obligations under the Contract.
- 2.5 No secondment of Loaned Personnel from the *Employer* to the *Contractor* in accordance with the provisions of this Schedule, removes, amends or varies the *Contractor's* obligations or liability under the Contract, including the *Contractor's* responsibility to Provide the Works, his liability for Defects and/or Software Defects and for his design, all in accordance with the Works Information.
- 2.6 The *Contractor*, on behalf of itself, its successors and assigns, hereby releases and discharges the *Employer*, its officers, directors, shareholders, employees, the Loaned Personnel, successors and assigns from any and all liabilities and obligations (including but not limited to any loss, damage, costs, expenses, demands or claims), past, present and future, howsoever and whensoever arising, whether known or unknown or currently existing or arising in the future and whether asserted by or on behalf of the *Contractor* or by or on behalf of a third party, arising out of or in any way connected with the Loaned Personnel. The *Employer* and the *Contractor* agree that neither the *Employer* nor any Loaned Personnel shall have any liability to the *Contractor* or to any third party for loss or damage arising out of or in connection with the activities of the Loaned Personnel, including but not limited to:
- (a) loss of or damage to property of the *Contractor* or of any third party (including, without limitation, LUL)
 - (b) loss of profit, loss of revenue or income of any nature whatsoever, loss of goodwill, loss of use, loss of opportunity, down time costs, any costs or increase in costs, the costs of obtaining or maintaining finance (including the making of any scheduled or other repayment or prepayment of debt and the payment of any interest or any other costs, fees or expenses incurred in connection with obtaining or maintaining financing) and any other economic loss, in all cases whether direct, indirect or consequential and whether incurred by the *Contractor* or a third party (including, without limitation, LUL); and
 - (c) insofar as not covered by (b), indirect or consequential damages, costs, losses or expenses of the *Contractor* and/or any third party (including, without limitation, LUL)
- 2.7 The *Contractor* hereby releases and agrees to defend, indemnify and hold the *Employer*, its officers, directors, shareholders, employees, Loaned Personnel, successors and assignees harmless from and against any and all liabilities and

obligations, including (but not limited to) all loss, damage, costs, expenses, demands or claims, past, present and future, howsoever and whensoever arising, whether known or unknown, whether currently existing or arising in the future and whether asserted by or on behalf of the *Contractor* or by or on behalf of a third party, arising out of or in any way connected with the Loaned Personnel and/or the activities of the Loaned Personnel under this Schedule.

- 2.8 Subject to any liability which cannot be excluded by law, the limitations on liability and any agreement to defend, indemnify or hold harmless expressed in this Schedule shall apply even in the event of the fault or negligence of the *Employer* or the Loaned Personnel and shall extend to the *Employer's* officers, directors, shareholders, employees, the Loaned Personnel, successors and assigns.

3. TERMINATION

- 3.1 The *Employer* may withdraw any of the Loaned Personnel by giving the *Contractor* not less than twenty-eight (28) days prior written notice thereof at any time, or, in exceptional circumstances at a shorter period of notice to be agreed with the *Contractor*, agreement to which not to be unreasonably withheld. The *Employer* is not obliged under this Contract to provide the Loaned Personnel for any fixed or specified duration. Subject to the above, the *Employer* shall have the right to second Loaned Personnel hereunder as the *Employer* determines is appropriate in its discretion based on considerations, which the *Employer*, in its discretion, determines are relevant.
- 3.2 The *Contractor* may request the withdrawal of the Loaned Personnel at any time by providing not less than fourteen (14) days prior notice thereof in writing to the *Employer* and including the reasons why the *Contractor* no longer requires the services of the Loaned Personnel. The *Employer* shall reasonably consider such request and, provided the *Contractor* has demonstrated to the satisfaction of the *Employer* that the *Contractor* has employed qualified replacements for the positions to which the Loaned Personnel had been assigned, withdraw the Loaned Personnel.
- 3.3 The *Contractor* may request, acting reasonably, the immediate withdrawal of any Loaned Personnel (and the *Employer* shall comply with that request as promptly and as reasonably as practicable) where (a) the *Contractor* has reasonable grounds to believe, and provides satisfactory evidence thereof to the *Employer*, that such Loaned Personnel has breached in a material respect the *Contractor's* policies that the *Contractor* has previously notified correctly and completely to such Loaned Personnel or (b) the *Contractor* has reasonable grounds to believe, and provides satisfactory evidence thereof to the *Employer*, that such Loaned Personnel has been guilty of personal misconduct which would have given the *Contractor* the right to terminate such Loaned Personnel's employment if such Loaned Personnel were employed by the *Contractor*.

Handwritten signature and a circular stamp containing the letters 'TSU'.

DATED

[2014]

- (1) [EMPLOYER]
- (2) [CONTRACTOR]

FRAMEWORK AGREEMENT

relating to Capital Works and/or Services

BETWEEN:

- (1) **LUL NOMINEE SSL LIMITED**, a company incorporated in England with registered number 6242508 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Employer**"); and
- (2) [**CONTRACTOR**] whose registered office is at [●] (CRN: No. ●) (the "**Contractor**").

RECITALS

- (A) [The Employer and the Contractor have entered into a contract dated ● for the Automatic Train Control signalling system (the "**ATC System**") as part of the Sub Surface Railway Upgrade Programme for the Sub Surface Railway comprising of the Circle, District, Hammersmith and City and Metropolitan lines (the "**ATC Contract**")].
- (B) From time to time the Employer or any other member of the TfL Group or a combination of them may require the Contractor to provide Works and the Contractor has confirmed that it will be willing to provide Works under the terms of this Framework Agreement.
- (C) This Framework Agreement sets out the terms and conditions that shall apply to all contracts for such Works carried out by the Contractor from time to time over the next five years (or any such extended period in accordance with this Framework Agreement).

NOW IT IS AGREED THAT:

1. DEFINITIONS

- 1.1 In this Framework Agreement the following expressions shall have the following meanings and other words and expressions used shall be as defined in the conditions of contract to be used for the Project Contracts:
 - (a) "**Associated Company**" means any division or subsidiary of the Contractor or any division or subsidiary of the Contractor's Holding Company or any other company in the same group as the Contractor;
 - (b) "**Associated Contract**" means:

- (i) this Framework Agreement;
 - (ii) any Project Contract;
 - (iii) [the ATC Contract];
 - (iv) [the Maintenance Support Contract]; or
 - (v) [any other contract that has been entered into, or that may at any time be entered into between: (i) the Employer or any member of the TfL Group (or a combination of them) and (ii) the Contractor or an Associated Company (or a combination of them) which is, or is expressed to be, ancillary to, or associated with any of the contracts referred to in (i) to (iii) above;]
- (c) **“Business Day”** means any day other than a Saturday or Sunday or a public bank holiday in England;
- (d) **“Call-Off Conditions”** means the amended and restated conditions of contract for ECC main Options A, C and E included in Appendices D, E and F as may be amended or supplemented by Special Conditions and the Schedules included in Appendix B;
- (e) **“Call-Off Employer”** means the Employer and/or any member of the TfL Group or a combination of such parties with each other;
- (f) **“Contract Data”** means Contract Data as defined in the ECC;
- (g) **“Dispute”** means any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
- (h) **“Dispute Resolution Procedure”** means the procedure for resolving Disputes under this Framework Agreement which is included in Appendix I;
- (i) **“ECC”** means the Engineering and Construction Contract Third Edition published by the NEC at the date of this Framework Agreement (incorporating 2006, 2011 and 2013 amendments);
- (j) **“Form of Agreement”** means the form of agreement for a Project Contract [substantially in the form] set out in Appendix C.
- (k) **FOI Legislation** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any

amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

- (l) **"Holding Company"** means any company which from time to time directly or indirectly controls the Contractor where "control" is as defined by Section 1124 of the Corporation Tax Act 2010.
- (m) **Information** means information recorded in any form held by or on behalf of the Employer;
- (n) **Information Request** means a request for any Information under the FOI Legislation;
- (o) **"Losses"** means any expenses, liability, losses, claims, proceedings, damages compensation and costs whatsoever or howsoever arising;
- (p) **"Maintenance Support Contract"** means [•]
- (q) **"Maximum Direct Fee Percentage"** means the maximum direct fee percentage set out in the Project Contract Data for a particular Project Contract (as determined by the whichever of the ECC main Options A, C or E is selected);
- (r) **"Maximum Subcontracted Fee Percentage"** means the maximum subcontracted fee percentage set out in the Project Contract Data for a particular Project Contract (as determined by whichever of the ECC main Options A, C or E is selected);
- (s) **"Other Call-Off Employer"** means any Call-Off Employer other than the Employer;
- (t) **"Parties"** means the Employer (including its legal successor and assigns) and the Contractor;
- (u) **["PFI Contract"]** means, in each case, the main project contract entered into or to be entered into by the Employer and/or another member of the TfL Group and the relevant private sector partner in respect of a PFI Project.]
- (v) **["PFI Contractors"]** means those contractors who have entered into or will enter into PFI Contracts.]

- (w) **["PFI Projects"** means, in each case, the main project contract entered into or to be entered into by the Employer and/or any other member of the TfL Group and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);]
- (x) **["Pricing Schedule"** means the schedule of prices in Appendix H];
- (y) **"Prices"** has the meaning given to it in the applicable Call-Off Conditions;
- (z) **"Prohibited Act"** means:
- (i) offering or agreeing to give to any servant, employee, officer or agent of the Employer or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Framework Agreement or any Project Contract or any other contract with the Employer; or
 - for showing or not showing favour or disfavour to any person in relation to this Framework Agreement or any Project Contract or any other contract with the Employer;
 - (ii) entering into this Framework Agreement or any Project Contract or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Contractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Employer;
 - (iii) committing any offence:
 - under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - under any law or legislation creating offences in respect of fraudulent acts, or

- at common law in respect of fraudulent acts

in relation to this Framework Agreement or any Project Contract [or any other contract] with the Employer; or

- (iv) defrauding or attempting to defraud the Employer.
- (aa) **"Project"** means the Works from time to time requested by the Call-Off Employer to be undertaken by the Contractor;
- (bb) **"Project Contract"** means a contract to be entered into between the Call-Off Employer and the Contractor for the purpose of carrying out any Works;
- (cc) **"Project Contract Data"** means the Contract Data (Parts One and Two) in Appendix B of this Framework Agreement;
- (dd) **"Project Manager"** means the person appointed from time to time by the Call-Off Employer to act as project manager for the purposes of a specific Project Contract;
- (ee) **"Request for Tender"** means a request issued by the Project Manager on behalf of the Call-Off Employer identified in the request in the form set out in Appendix A providing:
 - (i) an indication of the scope of the Contractor's potential involvement;
 - (ii) [any Works Information available at that time relating to the Project];
and
 - (iii) a copy of the Contract Data Part One;
- (ff) **"TfL Group"** means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The Employer is a member of the TfL Group;
- (gg) **"Special Conditions"** means any further additional or supplemental provisions or amendments under Secondary Option Z or other conditions included in the Project Contract;
- (hh) **"Subcontractor"** means a person or organisation who has a contract with the Contractor or an Associated Company, including sub-subcontractors of any tier, in connection with the Works and/or this Framework Agreement;

- (ii) **"Underground Network"** has the meaning given to that term in the Call-Off Conditions; and
- (ii) **"Works"** means the works and/or services specified or described in or to be developed pursuant to the Project Contract or in an instruction given in accordance with the Project Contract.

2. INTERPRETATION AND CONSTRUCTION

- 2.1 Words importing the singular include the plural and vice versa.
- 2.2 Words importing gender include any other gender and the neuter. The neuter includes the masculine and the feminine.
- 2.3 References to "includes" or "including" mean without limitation.
- 2.4 References to Appendices are to the Appendices to this Framework Agreement.
- 2.5 The headings of sections, clauses and sub-clauses are included for convenience only and do not affect the interpretation or construction of this Framework Agreement.
- 2.6 Any periods of time referred to in this Framework Agreement and expressed in "days" shall refer to calendar days.
- 2.7 Where an act is required to be done within a specified period after or from a specified date the period shall begin immediately after that date. Where the specified period would include a day which is a public holiday that day shall be excluded.
- 2.8 Any reference to a statute or statutory provision and all statutory instruments, orders, by-laws, directions and notices made pursuant to it (whether made before or after the date of this Framework Agreement), include a reference to the same as from time to time amended, modified, extended, re-enacted, consolidated or replaced.
- 2.9 Any undertaking under this Framework Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.
- 2.10 Any use of the expression "person" or "parties" in this Framework Agreement includes any individual, partnership, local authority, company or unincorporated association or organisation.

- 2.11 Nothing in the Recitals shall affect in any way the interpretation of the provisions of this Framework Agreement or any Project Contract.

3. OPEN BOOK ACCOUNTING

- 3.1 The Contractor will undertake and procure that his Subcontractors undertake their rights and obligations and exercise any rights which relate to the performance of this Framework Agreement on an open book basis.
- 3.2 The Employer or any Other Call-Off Employer and their authorised representatives may upon not less than 2 Business Days notice audit on an open book basis and check any and all information regarding any matter relating to performance of or compliance with this Framework Agreement [and the relevant Project Contract including inspection of the Contractor's technical and organisational security measures for the protection of personal data, any aspect of the Contractor's operations, costs and expenses, subcontracts, claims related to compensation events under clause 60 of the applicable Call-Off Conditions and financial arrangements or any document referred to therein or relating thereto].
- 3.3 All financial transactions and procurement processes are intended to be wholly open book. In practice this will be achieved in three stages:
- (a) a detailed review and evaluation of the Contractor's processes, costing structures and accounts to ensure that systems are in place to enable the Contractor to work within the Framework Agreement and applicable the Project Contract;
 - (b) on-going financial audits to ensure that costs booked to a Project fall within the definition of Defined Cost in the Project Contract; and
 - (c) on-going reviews of the procurement processes to ensure that all parties are operating systems that support the delivery of a Project in accordance with the Framework Agreement and relevant Project Contract.
- 3.4 The rights of the Employer and any Other Call-Off Employer pursuant to this clause 3 shall include the right to audit and check and to take copies of any document or record of the Contractor and/or its Subcontractors.

4. DURATION OF THIS FRAMEWORK AGREEMENT

The appointment of the Contractor under this Framework Agreement shall commence from the date of this Framework Agreement and shall continue for a period of five

(5) years and, if notified in writing by the Employer no later than six (6) months before the end of the 5 year period, a further 5 years.

5. THE GEOGRAPHICAL EXTENT OF THIS FRAMEWORK AGREEMENT

This Framework Agreement applies to Projects in England.

6. NO REPRESENTATION AS TO GUARANTEE OF FUTURE WORKS

This Framework Agreement does not constitute any guarantee that the Employer will or any Other Call-Off Employer will instruct the Contractor to carry out any Works or any particular or future Projects.

7. SCOPE OF THIS FRAMEWORK AGREEMENT

7.1 This Framework Agreement governs the relationship between the Parties in respect of the carrying out of certain upgrade works including [upgrade works to the ATC System by the Contractor for the Employer and for Other Call-Off Employers. Notwithstanding the foregoing, neither the Framework Agreement nor any Project Contract shall amend, vary or form part of the ATC Contract or any other Associated Contract, or any supplemental agreement thereto].

7.2 The Employer and (subject to the following provisions of this clause 7.2) Other Call-Off Employers may at their absolute discretion and from time to time issue a Request for Tender to the Contractor in accordance with the procedure set out in clause 8 during the duration of this Framework Agreement. The Parties acknowledge and agree that the Other Call-Off Employers have the right to order the carrying out of Projects pursuant to this Framework Agreement provided that they comply at all times with the procedure in clause 8.

7.3 The Contractor acknowledges that there is no obligation for the Employer or for any Other Call-Off Employers to order the carrying out of any Projects by the Contractor during the duration of this Framework Agreement.

7.4 The Employer is not able to guarantee the extent of the Works or of the Project Contracts that may be entered into pursuant to this Framework Agreement. As a result, no minimum or maximum values shall apply to this Framework Agreement nor to any Project Contracts.

8. PROCUREMENT OF PROJECT CONTRACTS

8.1 If the Employer or any Other Call-Off Employer requires the provision of a Project it shall issue a request in the form of a Request for Tender. For the avoidance of doubt,

the Parties acknowledge that the Call-Off Employer shall not be obliged to enter into a Project Contract with the Contractor following the issue of a Request for Tender under this Framework Agreement nor to accept any tender or offer made by the Contractor pursuant to any such Request for Tender.

- 8.2 [The Contractor must complete the tender documentation] including Part Two of the Contract Data in accordance with the Project Contract Data and return it to the Project Manager within the tender period (together with details of which members of the Contractor's Staff as defined under the Call-Off Conditions (and other employees of the Contractor) were and/or will be involved with the preparation of the tender documentation and a breakdown of the time spent by each in respect of the same). The tender period will be dependent upon the specific requirements of the Project and will be notified by the Project Manager in the Request for Tender.
- 8.3 Each Project Contract will be procured in accordance with applicable law and entered into on terms and conditions consistent with this Framework Agreement.
- 8.4 [Each Project Contract shall incorporate the Call-Off Conditions for the applicable main Option selected by the Project Manager in accordance with clause 8.5].
- 8.5 [The Project Manager will select one of the following three main Options (as have been amended and restated in the Call-Off Conditions in accordance with secondary option Z) of the ECC to be the basis of the Project Contract:
- (a) Option A: Priced contract with activity schedule
 - (b) Option C: Target contract with activity schedule
 - (c) Option E: Cost reimbursable contract]
- 8.6 Any one or more of the following ECC secondary options (as have been amended and restated in the Call-Off Conditions in accordance with secondary option Z) may then be selected by the Employer. The Employer may select any combination of the secondary options or none at all depending on the particular requirements of the Project:
- [insert secondary option clauses once conditions and Contract Data have been finalised]*
- Option Z: Amendments to the core clauses and additional conditions of contract (This secondary Option will always be selected)
- 8.7 [The Contract Data for each Project Contract will be completed in accordance with the Project Contract Data. Remaining elements of the Contract Data will need to be

completed as part of the procurement process for the Project Contract and will be project-specific.]

- 8.8 [The direct fee percentage tendered by the Contractor and completed in Part Two of the Contract Data for any Project Contract shall not exceed the Maximum Direct Fee Percentage. The direct fee percentage completed in the Contract Data for any Project Contract may be a negotiated percentage which is less than the Maximum Direct Fee Percentage].
- 8.9 [The subcontracted fee percentage tendered by the Contractor and completed in Part Two of the Contract Data for any Project Contract shall not exceed the Maximum Subcontracted Fee Percentage. The subcontracted fee percentage completed in the Contract Data for any Project Contract may be a negotiated percentage which is less than the Maximum Subcontracted Fee Percentage].
- 8.10 The overhead percentages completed within the Project Contract Data for people, working areas, manufacture and fabrication and design shall not exceed the percentages for people, working areas, manufacture and fabrication and design stated in the Project Contract Data.
- 8.11 Where the Project Manager selects main Option A or main Option C pursuant to clause 8.5, the tendered total of the Prices tendered by the Contractor shall in those cases be calculated by reference to the agreed rates, prices and item charges (including in relation to the Data for Schedule of Cost Components) set out within the Project Contract Data and the Pricing Schedule. [The fee percentages applied in calculating the Prices shall not exceed the applicable Maximum Fee Percentages]. The Contractor shall provide with the tender documentation a detailed breakdown of the tendered total of the Prices demonstrating that the agreed rates, prices and charges stated in the Project Contract Data and the Pricing Schedule have been properly applied in such calculation.
- 8.12 The rates, prices and charges in the Project Contract Data [and the Pricing Schedule] are fixed but shall be adjusted by the percentage change in Retail Price Index on 1 August in each year from August 2016 onwards in accordance with the calculation included in the Project Contract Data.
- 8.13 The scope of the Works and, subject to clause 8.11, the Prices for each Project Contract will be agreed during the procurement process and the Call-Off Employer and Contractor shall follow the procurement procedures set out in this Framework Agreement and the applicable law.
- 8.14 Following submission by the Contractor of the tender documentation pursuant to clause 8.2, the Call-Off Employer may either:

- (a) accept the Contractor's tender, in which case clause 8.15 shall apply, or
- (b) notify the Contractor that the tender is not accepted and request that the Contractor submits new tender documentation. In this case the Contractor shall submit new tender documentation in accordance with clause 8.2.

8.15 If, following the submission by the Contractor of the tender documentation pursuant to clause 8.2 or 8.14, the Call-Off Employer wishes to accept the Contractor's tender, the Call-Off Employer and the Contractor will execute the Form of Agreement.

8.16 [The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the process in this clause 8 and the Call-Off Employer shall not be liable for any costs, charges or expenses, which shall be borne by or on behalf of the Contractor whether or not the Contractor enters into a Project Contract with the Call-Off Employer].

8.17 [The Contractor acknowledges and accepts that the design and specification of the Works must be fit for their intended purposes as specified in the relevant Project Contract].

9. RESPONSIBILITY FOR AWARDS

9.1 The Contractor acknowledges that each Call-Off Employer is independently responsible for the conduct of its award of Project Contracts under this Framework Agreement and that the Employer is not responsible or accountable for and shall have no liability whatsoever in relation to:-

- (a) the conduct of Other Call-Off Employers in relation to this Framework Agreement; or
- (b) the performance or non-performance of any Project Contracts between the Contractor and Other Call-Off Employers entered into pursuant to the Framework Agreement.

10. NOT USED

11. PAYMENT

The Contractor shall be paid for the Works it provides to the Call-Off Employer in accordance with the provisions of the relevant Project Contract. For the avoidance of doubt no obligation to make any payment to the Contractor will arise under this Framework Agreement.

12. ASSIGNMENT

- 12.1 The Contractor shall not assign the whole or any part of the benefit of this Framework Agreement or any of its rights hereunder without the prior written consent of the Employer. The Contractor shall not transfer or subcontract all or any part of its obligations under this Framework Agreement without the prior written consent of the Employer.
- 12.2 [The Employer may assign the whole or any part of the benefit of this Framework Agreement or any of its rights hereunder to any person without the consent of the Contractor provided that written notice of any such assignment is given to the Contractor. The Employer may transfer all or any of its obligations under this Framework Agreement to any member of the Tfl Group].

13. TERMINATION

- 13.1 The Employer may for any reason without cause and at its sole discretion terminate this Framework Agreement by providing 90 days' written notice to the Contractor.
- 13.2 The Contractor may not terminate this Framework Agreement without the prior written consent of the Employer which shall be in the Employer's sole discretion.
- 13.3 Either the Employer or the Contractor may terminate this Framework Agreement by written notice if at any time:
- (a) the other party commits any material breach of this Framework Agreement provided that in the case of a remediable breach, the injured party must have provided the defaulting party with prior written notice of the breach and the defaulting party must have failed to remedy the same within 14 days of such prior written notice;
 - (b) the other party (being a person or firm and including any partner in a firm), becomes bankrupt, has a receiving order or administration order made against it, makes any composition or arrangement with or for the benefit of its creditors, makes any assignment for the benefit of its creditors, grants a trust deed for and on behalf of its creditors or is the subject of any applications made under the Insolvency Act 1986 for the sequestration of its estate;
 - (c) the other party (being a company) enters into any form of liquidation (other than for the purpose of solvent reconstruction or amalgamation), has a receiver, administrator or administrative receiver appointed in respect of the whole or any part of its assets, has a winding up order made, makes any assignment or composition with any of its creditors or makes any material change in its

ownership which in the sole discretion of the injured party adversely affects the ability of the other party to undertake any existing or future Project Contract ;
or

(d) the other party ceases or threatens to cease carrying on business.

- 13.4 Existing Project Contracts will be unaffected by termination of this Framework Agreement. Existing Project Contracts may only be terminated in accordance with and subject to the terms and conditions of those contracts.
- 13.5 The liability of the parties under a Project Contract following any termination of this Framework Agreement will be determined solely in accordance with the terms and conditions of those contracts.
- 13.6 Termination of this Framework Agreement for any reason whatsoever will be without prejudice to any rights of action or remedies of either party in respect of any breach of the terms of this Framework Agreement by the other.
- 13.7 [The provisions of Clause 3 (Open Book Accounting)], 11 (Payment), 13 (Termination), 14 (Disputes), 15 (Indemnity), 16 (Waiver), 17 (Entire Agreement), 18 (Agency), 19 (Non Exclusive Agreement), 21 (Third Party Rights), 23 (Data Protection), 24 (Freedom of Information), 25 (Severability), 26 (Confidentiality), 27 (Publicity), 29 (Governing Law and Jurisdiction) and 30 (Prohibited Acts) and any other clauses or Appendices that are necessary to give effect to those clauses survive the termination or expiry of this Framework Agreement. In addition, any other provision in this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement does so.

14. DISPUTES

- 14.1 The Parties shall follow the Dispute Resolution Procedure for the avoidance and resolution of Disputes.

15. INDEMNITY

The Contractor shall indemnify and keep indemnified the Employer against all Losses in respect of, or in any way arising out of any breach of this Framework Agreement or from any negligent act or omission (save to the extent that such Losses may have been caused by the Employer).

16. WAIVER

Failure by either party or another Call-Off Employer to exercise or enforce any right conferred by this Framework Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right or of any other right on any other occasion. A waiver of any default shall not constitute a waiver of any other default.

17. ENTIRE AGREEMENT

17.1 [This Framework Agreement supersedes any previous agreement, arrangement or understanding between the Employer and the Contractor in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the Employer (and other members of the TfL Group) and the Contractor in relation to such matters].

17.2 The Contractor acknowledges and agrees that he has not relied upon any prior representation by the Employer or any other member of the TfL Group in entering into this Framework Agreement. For the avoidance of doubt nothing in this Framework Agreement excludes any liability of the Contractor to the Employer for untrue statements or misrepresentation (whether or not negligent or fraudulent).

17.3 This Framework Agreement may only be varied by a deed in writing signed by the Employer and the Contractor.

18. AGENCY

Nothing in this Framework Agreement shall be deemed to create a relationship of principal and agent between the Employer and the Contractor.

19. NON EXCLUSIVE AGREEMENT

The appointment of the Contractor under this Framework Agreement is non-exclusive and the Employer and any Other Call-Off Employer may at any time in its absolute discretion appoint any other person to provide Works or Projects.

20. COUNTERPARTS

This Framework Agreement may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument

21. THIRD PARTY RIGHTS

- 21.1 Subject to Clause 21.2, the Parties do not intend that any of the terms of this Framework Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act") by any person who is not a party to it.
- 21.2 Any member of the Tfl Group has the right to enforce the terms of this Framework Agreement as if they were a party to this Framework Agreement in the place of the Employer in accordance with the Third Party Act.
- 21.3 Notwithstanding clause 21.2, the Parties are entitled to vary or rescind this Framework Agreement without the consent of any member of the Tfl Group.

22. NOTICES IN WRITING

- 22.1 Any notice in respect of this Framework Agreement (but not for a Project Contract) shall be deemed to have been given if sent or delivered to the person at the address given below or such other person or at such other address as may from time to time be notified by either party to the other in writing.

- For the Employer:

Name: [Insert]

Address: [Insert]

- For the Contractor:

Name [Insert] - Framework Director

Address [Insert]

- 22.2 Any notice shall be deemed to have been given to the other party 4 days after the date of posting (if by letter), on the day of transmission if by facsimile transmission and on the day of delivery if delivered by hand.
- 22.3 In an emergency an oral notice may be given subject to it being confirmed in writing by the issuing party within 3 days.

23. DATA PROTECTION

- 23.1 Without prejudice to clause 3, the Contractor shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from

time to time) and any policies issued by the Employer from time to time in relation to the processing of data and shall not by any act or fault cause the Employer to be in breach of these requirements.

23.2 The Contractor:

- (a) takes appropriate technical and organisational security measures satisfactory to the Employer against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
- (b) provides the Employer and Project Manager with such information as they may reasonably require to satisfy themselves of compliance by the Contractor with the requirements of this clause 23;
- (c) cooperates with the Employer and Project Manager in complying with requests or enquiries made pursuant to the Data Protection Act.

24. FREEDOM OF INFORMATION ACT 2000

24.1 The Contractor acknowledges that the Employer and other members of the TfL Group:

- (a) are subject to FOI Legislation and agrees to assist and co-operate with the Employer to enable the Employer to comply with his obligations under the FOI Legislation, and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Contractor.

24.2 Without prejudice to the generality of clause 24.1, the Contractor agrees and procures that his Subcontractors will agree to:

- (a) transfer to the Employer or such other persons as may be notified by the Employer to the Contractor each Information Request relevant to this Framework Agreement, the Works or any member of the TfL Group that the Contractor or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
- (b) in relation to Information held by the Contractor on behalf of the Employer, provide the Employer with details about and/or copies of all such Information that the Employer requests and such details and/or copies are provided within 6 days of a request from the Employer (or such other period as the Employer

may reasonably specify), and in such forms as the Employer may reasonably specify.

24.3 [The Employer (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Employer].

24.4 [The Contractor acknowledges that the Employer (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor].

25. SEVERABILITY

If any term, condition or provision contained in this Framework Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Framework Agreement.

26. CONFIDENTIALITY

26.1 The Contractor shall, and shall ensure that his Subcontractors and Associated Companies treat all information (including information concerning the Employer, any member of the TfL Group or PFI Contractors) derived from or obtained in the course of the Framework Agreement as confidential and shall take all the necessary precautions to ensure that its employees and Subcontractors and their employees treat such information as confidential.

26.2 Other than for the purpose of carrying out the Works or performing its obligations under any Associated Contracts, the Contractor shall not disclose any information or documents concerning this Framework Agreement to any third party.

26.3 The obligations in this Clause 26 shall not apply to confidential information that is in or comes into the public domain through no fault of the Contractor or those for whom it is responsible or if disclosure is required by law.

27. PUBLICITY

The Contractor shall not append its name or give authority to the appending of its name to any publicity concerning this Framework Agreement or any Project or any Project

Contract or indulge in any publicity concerning this Framework Agreement or any Project or any Project Contract without the prior written consent of the Employer.

28. COMPETITION LAW

Nothing in this Framework Agreement constitutes a breach of the Competition Act 1998 or the Enterprise Act 2002 and the Contractor recognises that in carrying out the provisions of this Framework Agreement and any Project Contract its directors and employees must ensure that they comply with all relevant provisions of those Acts.

29. GOVERNING LAW AND JURISDICTION

This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

30. PROHIBITED ACTS

- 30.1 The Contractor does not and uses his reasonable endeavours to procure that his Subcontractors do not commit any Prohibited Act.
- 30.2 Without prejudice to his rights under clause 3 the Employer may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this Framework Agreement and during the 12 years thereafter.
- 30.3 If the Contractor, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the Contractor or any of his agents commits any Prohibited Act, this constitutes a material breach of this Framework Agreement or a Project Contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 13.3 of this Framework Agreement.
- 30.4 If a Prohibited Act is committed by an employee of the Contractor or by any Subcontractor (or employee or agent of such Subcontractor) then the Employer may (at his sole discretion) choose to serve a warning notice upon the Contractor instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Contractor removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 13.3.

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed by the parties the day and year first above written.

**THE COMMON/CORPORATE SEAL of
[THE EMPLOYER]**
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary

Signature of Director

Print name of Director

EXECUTED AS A DEED
by **[THE CONTRACTOR]**
acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

APPENDIX A

Form of Request for Tender

[TBA]

[APPENDIX B]

Project Contract Data

1 Project Contract Data part one (data provided by the Employer)

1.1 [For each Project Contract the part one Contract Data of the ECC (data provided by the Employer) will be completed as follows depending upon which of the Options A, C or E is selected. Remaining elements of the Contract Data will need to be completed as part of the procurement process for the Project Contract as it will be Project specific].

	Option A	Option C	Option E
Statements given in all Project Contracts The Contractor's liability for Defects due to his design that are not listed on the Defects Certificate is unlimited The Contractor submits revised programmes at intervals no longer than ● weeks The defects date is ● weeks after Completion of the whole of the works The defect correction period is●: The critical defect correction period is●: The currency of this contract is UK£ The assessment dates are: The interest rate is 2% per annum (not less than 2) above the base lending rate of the Bank of England The place where the weather is to be recorded is Central London The weather measurements to be recorded for each calendar month are cumulative rainfall in mm, number of days with rainfall more than 5mm, daily minimum and maximum air temperatures in	Applicable	Applicable	Applicable

	Option A	Option C	Option E
<p>degrees Celsius, the number of days with snow lying at 12:00 GMT.</p> <p>The <i>weather data</i> are the records of past weather measurements for each calendar month which were recorded at Central London and which are available from the Met Office.</p>			
<p>Optional Statements</p> <p>If the no programme is identified in part two of the Contract Data the <i>Contractor</i> is to submit a first programme for acceptance within ● weeks of the Contract Date.</p> <p>If additional insurances are to be provided the <i>Contractor</i> provides these insurances:</p> <p>Professional Indemnity Insurance: [REDACTED]</p> <p>Public Liability Insurance: [REDACTED]</p> <p>Employers Liability Insurance: [REDACTED]</p> <p>(NLT = Not Less Than)</p>	Applicable	Applicable	Applicable
Maximum direct fee percentage:			
Maximum subcontracted fee percentage:			
<p>Daily Rate adjustment for inflation:</p> <p>Each of the daily rates shall be revised as at 1 August in each year from August 2016 onwards according to the following calculation:</p> $X_{cy} = \frac{r \times X}{100}$			

	Option A	Option C	Option E
<p>r o</p> <p>where:</p> <p>X = the relevant daily rate as at the Contract Date;</p> <p>Xcy = the relevant daily rate revised for the year commencing on the applicable 1 August;</p> <p>r n = RPI published for the month of May immediately preceding the applicable 1 August;</p> <p>r o = RPI published for May 2014; and</p> <p>RPI = the UK Retail Price Index.</p>			

2 Contract Data part one (data provided by the Employer) – secondary options

- 2.1 For each Project Contract the part one Contract Data of the ECC secondary options (data provided by the Employer) will be completed as follows depending upon which of the Options A, C or E is selected and which of the secondary options is applicable. Remaining elements of the Contract Data will need to be completed as part of the procurement process for the Project Contract as it will be Project specific.

	Option A	Option C	Option E
<p>If Option Z is used</p> <p>The additional <i>conditions of contract</i> are the amendments to core clauses and additional conditions of contract as set out at Appendices D, E and F of this Framework Agreement.</p> <p>Z2.30 – Liquidated damages for disruption are calculated in accordance with Schedule 9 (to be prepared for each Project Contract).</p> <p>Z1.123/46.1 – Critical Defects are listed in the Works Information (Critical Defects to be listed in the Works Information for each Project Contract)</p>	Applicable	Applicable	Applicable

3 Contract Data part two (data provided by the Contractor)

- 3.1 For each Project Contract the part two Contract Data of the ECC (data provided by the Contractor) will be completed as follows depending upon which of the Options A, C or E is selected. Remaining elements of the Contract Data will need to be completed as part of the procurement process for the Project Contract as it will be Project specific.

	Option A	Option C	Option E
<p>Statements given in all Project Contracts</p> <p>The <i>key people</i> are:</p> <p>Name:</p> <p>Job:</p> <p>Responsibility:</p> <p>Qualifications:</p> <p>Experience:</p> <p>Name:</p> <p>Job:</p> <p>Responsibility:</p> <p>Qualifications:</p> <p>Experience:</p>			
<p>Data for Shorter Schedule of Cost Components</p> <p>The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are:</p> <p>Category of employee:</p> <p>Hourly rate:</p> <p>Category of employee:</p> <p>Hourly rate:</p> <p>Category of employee:</p> <p>Hourly rate:</p> <p>The hourly rates for Defined Cost of design outside the Working Areas are:</p>			

APPENDIX C

Form of Agreement for Project Contract

[TBA]

APPENDIX D

Conditions of Contract under Option A

[TBA]

APPENDIX E

Conditions of Contract under Option C

[TBA]

APPENDIX F

Conditions of Contract under Option E

[TBA]

APPENDIX G

[Project Contract Schedules 1 to [•]]

APPENDIX H

Pricing Schedule

APPENDIX I

Dispute Resolution Procedure

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

“Adjudicator” means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Appendix I.

“Nominating Authority” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“Notice of Adjudication” means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- details of where and when the Dispute arose; and
- the nature of the redress which is sought.

“Referral Notice” means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

“Senior Representative” means a representative of a Party at senior executive level;

W2.A The Employer, the Contractor and the Project Manager follow the procedure set out in W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may in the first instance be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Framework Agreement that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.

W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court

proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.

W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.

W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:

- is a natural person acting in his personal capacity; and
- is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute

W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform

every Party to the dispute of the date that it was received.

W2.6 The Referral Notice includes:

- the facts relied upon by the referring party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this Framework Agreement and such other documents on which the referring party relies.

W2.7 If a matter disputed by the Contractor under or in connection with a subcontract is also a matter disputed under or in connection with this Framework Agreement, the Contractor may, with the consent of the Employer, refer the subcontract dispute to the Adjudicator at the same time as the Framework Agreement referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 of the Call-Off Conditions any reasonable request by the Adjudicator for additional time to decide the Framework Agreement and subcontract disputes.

W2.8 The parties to the Dispute 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 clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, 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 is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.

W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.

W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.

W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to

consider.

- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the Framework Agreement. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.14 The Adjudicator:
- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - reaches his decision in accordance with the law of the Framework Agreement;
 - may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
 - may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.
 -

- W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
 - require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
 - otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the Framework Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
 - inspect any part of the Underground Network.
-
- W2.16 The Adjudicator is 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 is similarly protected from liability.
- W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute 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 are regarded and treated as a Dispute for the purposes of this clause W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

- W2.21** After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to 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 a court pursuant to any legal proceedings.
- W2.22** Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards 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 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 a court pursuant to any legal proceedings.
- W2.23** All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the Business Day next following the date of the original facsimile transmission.
- W2.24** All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25** Any court or the Adjudicator takes into account any failure to comply with clause 10.1 of the Call-Off Conditions when making any award (including an award of costs and/or expenses).
- W2.26** If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.