

ADDITIONAL Z2 CONDITIONS OF CONTRACT

Site and Works Site Passes	Z2.1.1	The <i>Contractor</i> shall comply with the requirements of the Works Information (including without limitation the Works Information (WI.24)) regarding the need for site passes for admission to the Site.
Admission to Site	Z2.2	The <i>Contractor</i> takes all reasonable steps and all steps required by this Contract to prevent unauthorised persons being admitted to the Site and Working Areas. If the <i>Employer</i> gives the <i>Contractor</i> notice that any person is not to be admitted to the Site, the <i>Contractor</i> takes all practicable steps to prevent that person being admitted.
	Z2.3	If and when instructed by the <i>Employer</i> , the <i>Contractor</i> gives to the <i>Employer</i> a list of names and addresses of all persons who are or may at any time be concerned with the <i>works</i> or any part of the <i>works</i> , specifying the capacity in which they are so concerned, and giving such other particulars as the <i>Employer</i> may reasonably require.
Access arrangements	Z2.4.1	The <i>Contractor</i> acknowledges that the <i>Employer</i> does not guarantee uninterrupted or exclusive possession of the Site and that Access is limited in accordance with this Contract.
	Z2.4.2	The <i>Contractor</i> submits a Works Plan to the <i>Project Manager</i> each week in accordance with the Works Information from the <i>starting date</i> until Final Completion.
	Z2.4.3	The <i>Contractor</i> shows on each Works Plan he submits for acceptance <ul style="list-style-type: none"> • the <i>Contractor's</i> Access requirements on a shift by shift basis for the forthcoming five (5) weeks, • Access requests, • Access bookings, • cancelled Access which was previously booked, • changes to booked Access, and • any other information required to be shown on the Works Plan pursuant to the Works Information (WI.24) and clause Z2.4.
	Z2.4.4	The Parties follow the process for agreeing Access requests on the <i>Contractor's</i> Works Plan and producing the Access Plan as set out in the Access Procedure. Reasons for the <i>Project Manager</i> not accepting an Access request within a Works Plan are set out in section 24.3 of the Works Information (WI.24)
	Z2.4.5	The <i>Project Manager</i> may at any time amend the Access Plan provided that <ul style="list-style-type: none"> • the Access has not been booked, and • the <i>Project Manager</i> offers equivalent alternative Access.
	Z2.4.6	The <i>Contractor</i> complies with the Access Procedure.
	Z2.4.7	The <i>Contractor</i> may only apply for Access if it is from a Permitted Access Type.
	Z2.4.7	The <i>Contractor</i> submits an Access request on the Works Plan in accordance with

A the Access Procedure. The *Contractor* identifies in each Access request:

- whether the Access is Priority Type One Access; and
- whether or not the Access request is within the relevant Access Quota.

Z2.4.8 Not used

Z2.4.9 Not used

Z2.4.10 The *Contractor* provides the *Project Manager* without delay such additional information as the *Project Manager* may reasonably require in respect of the *Contractor's* Access requests.

Z2.4.11 The *Employer* confirms Access bookings in accordance with the Access Procedure, subject to the following:

- the *Contractor* having complied with the Access Procedure and clause Z2.4;
- the *Employer* uses reasonable endeavours to obtain bookings for:
 - Type One Access requested in excess of the applicable Access Quotas; and
 - Type Two Access;

but does not warrant or guarantee to the *Contractor* that those bookings will be granted (and failure to obtain such bookings does not constitute a compensation event);

- only those events set out in clauses 60.1(2), 60.1(2A), 60.1(2B) and 14.3B may constitute compensation events in respect of Access; and
- no Disallowed Cost will apply in respect of or in relation to any Non-Priority Type One Access or Type Two Access.

Z2.4.12 The *Project Manager* may instruct the *Contractor* to use Access booked by the *Employer*, provided reasonable written notice is given by the *Project Manager*.

Z2.4.13 The *Contractor* shall use all booked Access unless

- the Access is cancelled or delayed by reason of the events listed under clause 60.1(2B),
- it is unused Contingency Access (as defined in section 24.2(1) of the Works Information (WI.24)) that is not required, or,
- the *Contractor* is instructed by the *Project Manager* not to use the Access,

save that where Access is delayed by reason of the events listed under clause 60.1(2B) the *Contractor* uses any booked Access remaining after the period of delay has ended, provided it is reasonable and practicable to do so.

Z2.4.14 If the *Contractor* breaches its obligations in respect of Access as described in the Contract, or fails to use any booked Access, other than by reason of a compensation event or a Force Majeure Event, without limiting its other obligations or liabilities under the Contract, the *Contractor* shall pay the *Employer* all charges directly incurred by the *Employer* in respect of the *Contractor* not handing back the Site at the end of any period of booked Access, provided that:

- where Access is not dedicated to the *Contractor*, the *Contractor* shall pay to the *Employer* an amount representing such charges divided by the number of Others to whom such Access was made available and who similarly failed; and
- the *Employer* provides the *Contractor* with written substantiation of such charges.

Z2.4.15 The *Contractor* undertakes all preparation work required to ensure that all booked Access is taken up promptly and efficiently.

Z2.4.16 The *Contractor* uses booked Access in an efficient and productive manner so as to ensure optimal use of the Access with minimal disruption and disturbance to Others or damage to the Site. The *Contractor* makes good any such damage at his own cost at the earliest opportunity and to the reasonable satisfaction of the *Employer*.

Z2.4.17 The *Contractor* indemnifies the *Employer* in respect of any claims by Others relating to the disruption, delay or cancellation of their Access due to the *Contractor* not working in accordance with the Contract.

For the avoidance of doubt the *Contractor* does not indemnify the *Employer* in respect of any claims by Others where Access was provided by the *Employer* to the *Contractor* at the detriment of Others (other than those Others under the direction and control of the *Contractor*) or arising out of the *Contractor* discharging his duties as Principal Contractor.

Z2.5 Subject to the right of the *Employer* to terminate under clause 91.8, payment of such sums shall be in full satisfaction of the *Contractor's* liability arising under Z2.4.14 and Z2.4.17 and the *Employer's* sole remedy.

The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).

For the avoidance of doubt, the liabilities and indemnities provided under Z2.4.14 and Z2.4.17 are part of the aggregate cap as clause 88.2A.

Z2.5A The *Employer* will work together with the *Contractor* to provide access to the Bombardier Site as and when required to allow the *Contractor* to Provide the Works in accordance with all reasonable Bombardier Transportation UK Limited requirements.

**Working on and
Adjacent to the Railway**

Z2.6 The *works* are carried out in such a manner as not to endanger or interfere in any way with the railway or any railway operator and in accordance with the *Contractor's* duties as Principal Contractor. The *Contractor* strictly observes all rules, regulations or instructions which he may from time to time receive from the *Project Manager* for the working and protection of the railway or for the protection of persons on or adjacent to the railway or railway operations.

Z2.7 At the end of Engineering Hours or at the end of a period of Access the *Contractor* returns possession of the Site to the *Employer*. The *Contractor* complies with the procedure set out or referred to in the Works Information in returning the Site to the *Employer*.

Z2.8 In all cases where the *works* have to be carried out on or adjacent to railway traffic the *Contractor* must observe special precautions for the protection of such railway traffic in accordance with the requirements stated in the Works Information.

- Environmental Claims Z2.9** The *Contractor* indemnifies the *Employer* against Losses in respect of any Environmental Claims and any Remediation costs and expenses which may arise out of or by reason of the *Contractor's* negligent acts, negligent omissions or breach of statutory duty by the *Contractor*, his employees, Subcontractors or agents.
- Z2.9A** The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses and any Remediation costs and expenses to the extent that such Losses or Remediation costs and expenses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).
- Z2.10** The *Contractor's* indemnity under clause Z2.9 remains in force until twelve (12) months after the *defects date*.
- Z2.11** Environmental Law means all and any laws, including common law, legislation, codes of practice, notices, judgements, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the Environment or the conditions of the work place.
- Z2.12** The Environment means
- land, including but without limitation, surface land, sub-surface strata, seabed and riverbed and natural and man-made structures,
 - water, including but without limitation, coastal and inland waters, surface waters, aquatic sediment, ground water and water in drains and sewers,
 - air, including but without limitation, air inside and outside buildings and other natural and man-made structures above or below the ground, and
 - any living system or organism supported by the media referred to in this sub-clause.
- Z2.13** Environmental Claim means receipt by the *Employer* in connection with any pollution or contamination of the Environment of
- any written claim, proceeding, demand, suit requirement, or notice from a third party, including a Regulatory Authority ("Regulatory Authority" means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the Environment, or Environmental Law) or any order of the Court or competent jurisdiction in connection with an alleged breach of Environmental Law, or
 - any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the *Employer* unless the *Employer* agrees to carry out Remediation voluntarily).
- Z2.14** Remediation means any or all audit, investigation, sampling, analysing, assessing, removing, remedying, cleaning up, treating, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground,

ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

Z2.15 If the *Contractor* discovers that the Site has been contaminated or polluted, or he suspects that the Site has been contaminated or polluted by some other party, then the *Contractor* is to notify the *Employer* immediately in writing naming the other party, where known. The *Contractor* will use reasonable measures to ensure that its employees, Subcontractors and agents similarly notify it of the same.

Z2.15A The *Contractor* shall act in accordance with good industry practice and take reasonable mitigation measures in relation to the presence of any Hazardous Materials at the Site (whether pre-existing or otherwise).

Hazardous Material means anything whether in solid, liquid or gaseous form, or any form of energy, which alone, or in combination with other things, is capable of causing any injury or damage to, or pollution or impairment of, the Environment.

Z2.15B If the *Contractor* or its employees, Subcontractors or agents causes the sudden and accidental discharge, spillage, leak or release of Hazardous Materials or leaves waste at the Site, then the *Contractor* shall be responsible for undertaking Remediation necessary as a result of the same or for any Losses directly arising as a result of the *Employer* undertaking reasonable steps by way of Remediation (the *Employer* being entitled to elect to have conduct of Remediation in such circumstances).

Z2.15C The *Contractor* is not responsible for and does not indemnify the *Employer* for such Remediation or Losses to the extent that such Remediation or Losses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).

Free Issue Materials Z2.16.1 The *Employer* supplies the *Contractor* with the *free issue materials* at the times specified in the Works Information or as otherwise agreed between the Parties to enable the *Contractor* to comply with its obligations under this Contract.

Z2.16.2 The *Contractor* at the time of delivery of the *free issue materials* checks that they are in a good condition. Any damage or loss is reported immediately by the *Contractor* to the *Project Manager*. In the event that this report is not made, the *Contractor* is responsible for any loss or damage existing at the time of receipt which ought reasonably to have been apparent on a visual check of quantities and conditions.

Z2.16.3 The *Employer* provides use of a warehouse in accordance with the Works Information (WI.01).

**Z2.17-
Z2.18** Not used

Contractor's records Z2.19 The *Contractor* maintains a true and correct set of records relating to all aspects of his performance of this Contract, together with a record of all transactions entered into by him for the purposes of this Contract. The *Contractor* ensures that his Subcontractors comply with this requirement and uses its best endeavours to ensure that the subcontractors of its Subcontractors comply with this requirement. Provided always that the *Contractor* is not obliged pursuant to this clause Z2.19 to disclose records that do not relate to aspects of his performance of this Contract or privileged documents or legal advice.

	Z2.20	The <i>Contractor</i> agrees to retain, as a minimum, all records referred to in clause Z2.19 for the duration of this Contract and for the <i>limitation period</i> in such manner as the <i>Project Manager</i> may reasonably instruct. In the absence of such instructions the <i>Contractor</i> shall retain his records in an orderly and logical fashion. The <i>Contractor</i> ensures that his Subcontractors comply with this requirement and uses its best endeavours to ensure that the subcontractors of its Subcontractors comply with this requirement.
	Z2.21	The <i>Project Manager</i> , the <i>Employer</i> and his authorised representatives, LUL and its authorised representatives and any party legally authorised to inspect any part of the Underground Network, may inspect and audit any and all of the <i>Contractor's</i> and Subcontractor's records referred to in clause Z2.19 at any time during the performance of this Contract and during the <i>limitation period</i> . The <i>Contractor</i> uses its best endeavours to ensure that the subcontractors of its Subcontractors comply with this requirement. The <i>Contractor</i> shall also permit the <i>Employer</i> and LUL and its authorised representatives the right to audit or check any claims brought or defended by the <i>Contractor</i> , its Subcontractors and subcontractors of its Subcontractors.
	Z2.21A	The <i>Contractor</i> provides the <i>Employer</i> and/or LUL with a copy of any or all the information, records and documents listed in clause Z2.19 at the <i>Employer's</i> cost within thirty (30) days of the <i>Employer's</i> request for the same.
Cost control system	Z2.22	The <i>Contractor</i> maintains a fully auditable cost control system which enables full compliance with the <i>Employer's</i> requirements and reporting procedures.
	Z2.23	Not used
Assignment and Novation	Z2.24	The <i>Contractor</i> does not assign this Contract without the prior written consent of the <i>Employer</i> . The <i>Contractor</i> subcontracts in accordance with clause 26. The <i>Employer</i> may assign this Contract to any person at any time without the consent of the <i>Contractor</i> , provided the <i>Employer</i> has given prior written notice of the assignment to the <i>Contractor</i> .
	Z2.25	Subject to Z2.24, within seven (7) days of any written request by the <i>Employer</i> to the <i>Contractor</i> , the <i>Contractor</i> executes a deed of novation in favour of any person to whom this Contract is being novated.
	Z2.26	Not used
Associated Agreements	Z2.27	The <i>Contractor</i> shall provide to the <i>Employer</i> , not later than the first Sectional Functional Completion, duly executed an escrow agreement in accordance with the requirements set out in section 3.5.9 of the Works Information (WI.01) and in the form attached at Schedule 2 subject to any amendments required by the escrow holder.
	Z2.28- Z2.35	Not used
Third Party Rights	Z2.36	Save that any member of TfL Group has the right to enforce the terms of this Contract as if they were a party to this Contract in the place of the <i>Employer</i> in accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any other right or remedy of a third party arising at law.
	Z2.37-	Not used

Z2.103

**Confidentiality and
Disclosure of
Information**

Z2.104 Each Party (the "Receiving Party") undertakes to keep confidential, and not to disclose to any third party without the other Party's (the "Disclosing Party") prior written consent any and all Confidential Information disclosed or obtained directly or indirectly, in connection with this Contract subject always to clauses Z2.108A, Z2.108B and Z2.109-Z2.109C. In doing so, each Party shall use at least the same degree of care as it uses with its own confidential information, but in any case no less than reasonable care.

The Receiving Party undertakes to use any Confidential Information of the Disclosing Party solely in connection with this Contract.

The Parties shall not disclose the Confidential Information or any part thereof to any other person, corporation or other third party other than to those employees having a "need to know", provided that the Confidential Information is used solely in connection with the Contract and that such employees are subject to confidentiality obligations at least as stringent as those in the Contract.

This clause Z2.104 shall not apply to any information:

- (a) which is already in the public domain at the time of its disclosure, or thereafter becomes part of the public domain other than in breach of this clause Z2.104;
- (b) which is required by any applicable law, regulation of a recognised stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body but then only to the extent of such required disclosure;
- (c) which was previously known by the Receiving Party lawfully without restriction prior to receipt from the Disclosing Party;
- (d) which is subsequently received from a third party without restriction on its use and disclosure and without breach of these or other confidentiality undertakings;
- (e) which is independently developed by the Receiving Party, provided that the Receiving Party can demonstrate that such development was carried out by persons without access to information the Disclosing Party's Confidential Information; or
- (f) to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being), the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

Notwithstanding this clause Z2.104, the Parties agree that the *Employer* may disclose on a "need to know" basis,

- (i) to LUL, subcontractors to LUL, Her Majesty's Railway Inspectorate and the *Employer's* financiers, bankers and shareholders from time to time, this Contract and Confidential Information relating to it; and
- (ii) to any member of the TfL Group such Confidential Information on technical and operational matters relating to this Contract as is reasonably required by such member of the TfL Group,

and the *Contractor* consents to such disclosure provided that such disclosure is in relation to this Contract and that the recipients of the Confidential Information are subject to confidentiality restrictions similar to those contained in this Contract. Further, the *Employer* may disclose any Confidential Information pursuant to clauses Z2.108A, Z2.108B and Z2.109-Z2.109D and the *Contractor*

consents to such disclosure as set out therein.

- Z2.105** Each Party ensures that all its Subcontractors, suppliers, employees, agents and other third parties to whom Confidential Information is disclosed under the terms of this Contract agree to terms of confidentiality no less stringent than the terms in clause Z2.104 and do not use or divulge any such information obtained, whether directly or indirectly, in connection with this Contract or the *works*, except for the purposes of this Contract or as may be required by law.
- Z2.106** The *Contractor* does not, either alone or jointly with others, publish any material relating to the *Employer*, the *Project Manager*, LUL, this Contract or the *works* without the prior written consent of the *Employer*.
- Z2.106A** In the event that consent is granted by the *Employer* in accordance with clause Z2.106 all material published to the local community should be branded as LUL material.
- Z2.107** The *Contractor* does not, either alone or jointly with Others, make any press, television, radio or other media announcement in connection with this Contract or the *works*, or any dispute arising under or in connection with this Contract unless specifically granted permission to do so in writing by the *Employer*.
- Data Transparency** **Z2.108 A** The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clauses Z2.104-Z2.107 and clauses Z2.109A-Z2.109D, the *Contractor* hereby gives its consent for the *Employer* to publish the Contract Information to the general public.
- Z2.108 B** The *Employer* may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.108A. The *Employer* shall make the final decision regarding both publication and redaction of the Contract Information. The *Employer* acknowledges that certain technical or financial information of the *Contractor* or its group companies, forming part of this Contract or otherwise available to the *Employer*, is a trade secret or otherwise confidential or commercially sensitive.
- Z2.108 C** The provisions of clauses Z2.104-Z2.108B will survive any termination of this Contract for a period of 6 years from termination.
- Freedom of Information** **Z2.109 Z2.109 A** The *Contractor* acknowledges that the *Employer*
- is subject to FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under the FOI Legislation, and
 - may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*.
- Z2.109 B** Without prejudice to the generality of clause Z2.109A, the *Contractor* agrees and procures that his Subcontractors will agree to:

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this Contract, 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
- 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.

Z2.109 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*. The *Employer* acknowledges that certain technical or financial information of the *Contractor* or its group companies, forming part of this Contract or otherwise available to the *Employer*, is a trade secret or otherwise confidential or commercially sensitive.

Z2.109 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*.

Intellectual Property Rights

Z2.110A (a) Intellectual Property Rights owned by the *Contractor* at the Contract Date shall continue to vest in and remain the sole property of the *Contractor*. Intellectual Property Rights owned by the *Employer* at the Contract Date shall continue to vest in and remain the sole property of the *Employer*. Intellectual Property Rights created by or on behalf of either Party in respect of this Contract at any time after the Contract Date shall vest in and shall continue to vest in remain the sole property of the Party that created the Intellectual Property Rights, who shall grant the licence referred to in clause Z2.111.

(b) Without prejudice to any other rights which each Party may have against the other, to the extent relevant, if notwithstanding sub-clause (a), that Party does acquire any proprietary rights in or to any Intellectual Property Rights referred to in sub-clause (a), that Party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other Party, or to its nominee, and to deliver to the other Party such materials as it may reasonably require in this regard.

(c) Each Party shall reproduce on all copies of material embodying the other Party's Intellectual Property Rights such copyright, proprietary or confidentiality notices and legends as appear on material embodying such Intellectual Property Rights at the time such material was provided to that Party by the other Party.

Z2.110B Notwithstanding clause Z2.110A, the *Employer* shall not be entitled to use the *Contractor's* trade marks, service marks, trade names and get-up other than as agreed by the *Contractor*. The *Contractor* hereby agrees to the use by the *Employer* of those trademarks, service marks, trade names and get-up provided

with the Equipment and Materials and the Plant for the purposes of the Contract. For the avoidance of doubt, nothing in this Contract shall permit the *Employer* to use the *Contractor's* trade marks other than in connection with the *Employer's* use of the Software as contemplated by the Contract.

- Z2.111** (a) Subject to clause Z2.118A, the *Contractor* grants to the *Employer* and to LUL a perpetual, irrevocable, royalty-free, transferable (provided the *Employer* has obtained the consent of the *Contractor* (not to be unreasonably withheld)), non-exclusive licence (without the right to sub-licence, other than to other members of the TfL Group or persons, including contractors, working on behalf of it or other members of the TfL Group, in each case provided that it has given prior written notice of the sub-licence to the *Contractor*) to use in the United Kingdom all Intellectual Property Rights owned by it or licensed to the *Contractor* and included in the *works* and/or necessary for the *Employer* and the TfL Group to receive the benefit of the *works*.
- (b) The *Contractor* grants to the *Employer* and to LUL the rights to modify, adapt and enhance all Intellectual Property Rights owned by or licensed to the *Contractor* and included in the *works* and/or necessary for the *Employer* and the TfL Group to receive the benefit of the *works* provided that:
- (i) these rights may only be exercised in the event of a release event under clause 6 of the escrow agreement attached in Schedule 2 ("Release Event");
 - (ii) the *Employer* agrees to pay the *Contractor's* reasonable licence fees for such rights which licence fees shall not exceed 5% of the purchase price of the hardware or Equipment and Materials to which the software relates or 5% of the fee charged by the *Contractor* for maintenance of the software in respect of which such rights are granted;
 - (iii) the *Employer* shall not use these rights to manufacture or distribute hardware or software on a commercial basis;
 - (iv) the rights do not apply to Escrow Materials:
 - referred to in the Contract Data Part Two as not being deposited into escrow; or
 - which the *Contractor*, having used its best endeavours, has been unable to obtain the right from a third party to deposit into escrow.
 - (v) with regard to the Escrow Materials referred to in the Contract Data Part Two as being deposited into escrow, the rights shall be subject to the limitations set out therein.
- (c) Software shall be used by the *Employer* in object code form only (and, after the occurrence of a Release Event, in source code form). The *Employer* shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:
- (i) as provided in clauses Z2.110A to Z2.118A;
 - (ii) as permitted by law; or
 - (iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the *Employer*.
- (d) The *Employer* grants to the *Contractor* a royalty free, non-exclusive licence (without a right to assign or sub-licence save in respect of a sub-licence to any Subcontractor for the purposes of the *works*) to use in the United

Kingdom (and such other countries in which the *works* are performed) all Intellectual Property Rights it owns and has the rights to sub-licence and are used by it in connection with this Contract, for the sole purpose of providing the *works* under this Contract. In the case of Intellectual Property Rights which are licensed to the *Employer* and which the *Employer* has the right to sub-licence, any sub-licences granted under this clause Z2.111(e) shall be granted subject to all the terms, conditions, restrictions and limitations contained in the licence to the *Employer*.

Z2.112 Not used
Z2.114

Z2.114A The *Contractor* indemnifies the *Employer* and LUL at all times during and after termination or expiry of this Contract against any and all Losses incurred or suffered by the *Employer* in relation to any infringement, alleged infringement or unauthorised use of its or any Other's Intellectual Property Rights by the *Contractor* or any person under its control in connection with the *works* or the Contract, provided that the *Employer*:

- (a) gives the *Contractor* written notice of any claims being made or actions threatened to be brought as soon as reasonably practicable thereafter;
- (b) makes no admission in respect of infringement of any Other's Intellectual Property Rights which may be prejudicial to the defence of such claim or action without the prior written consent of the *Contractor*;
- (c) gives the *Contractor* the authority to conduct any litigation in that regard, at its cost; and
- (d) provides the *Contractor* with all reasonable assistance in respect of such litigation.

Z2.114B The indemnity in clause Z2.114A shall not apply to the extent such Losses were caused by:

- (a) the *Employer's* design;
- (b) the *Employer's* design instructions;
- (c) modification of the Equipment and Materials or Software by the *Employer*;
- (d) combination of the Equipment and Materials or Software with equipment, materials or software not supplied by the *Contractor* and contrary to the *Contractor's* instructions; or
- (e) the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).

Z2.115 The *Contractor* notifies the *Employer* as soon as it becomes aware that

- any Intellectual Property Rights used in relation to the *works* are infringed,
- any Intellectual Property Rights used in relation to the *works* are likely to be infringed, or
- the *Employer* is prevented from using the *works* as a result of the infringement of any Intellectual Property Rights.

Z2.116 The *Employer* gives an instruction to obviate any infringement referred to in sub-clause Z2.114A and the *Contractor*:

- (a) obtains from the *Employer* the right to continue using the *works* or any part of the *works*;

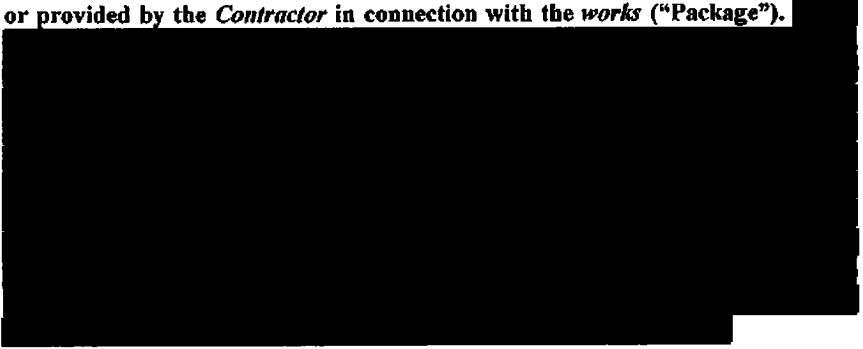
(b) modifies or replaces the *works* or any infringing parts to avoid the infringement; or

(c) removes the infringing part of the *works* and the Prices are reduced accordingly.

Z2.117 An instruction in respect of an infringement of the Intellectual Property Rights of Others is not a compensation event.

Z2.118 Save for the licence granted under clause Z2.111, no Intellectual Property Rights or rights in them shall pass from the *Employer* to the *Contractor*.

Software Z2.118A The *Contractor* warrants that as of the Contract Date, other than Off the Shelf Software or as set out in Contract Data Part Two, no Intellectual Property Rights owned by any Party other than the *Contractor* or Thales Canada are included in the Software or any associated Software documentation comprised in or provided by the *Contractor* in connection with the *works* ("Package").



Z2.119- Not used
Z2.120

Entire Agreement. Z2.121 This Contract sets out the entire agreement and understanding between the Parties. It is agreed that

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

This sub-clause does not exclude or limit any liability for fraudulent misrepresentation.

Z2.122 Not used

Z2.123.1 Not used

Z2.123.2 Not used

Z2.123.3 Not used

Z2.123.4 Not used

Mitigation and Loss Z2.124 Each Party takes all prudent and commercial steps necessary to mitigate and minimise the effect of any actual or potential Losses (including but not limited to costs on or relating to termination of the Contract) as reasonably practicable.

Exclusive Remedies	Z2.125	Each Party's remedies against the other Party for breach of the Contract are solely and exclusively those set out in the Contract.
Omissions	Z2.126	<p>If the <i>Project Manager</i> issues instructions that in the aggregate omit any part of the <i>works</i> that do not exceed 10% of the Prices, the <i>Contractor</i> is not entitled to claim loss of Fee or breach of contract for not Providing the Works in their entirety. If the <i>Project Manager</i> issues instructions in the aggregate that omit any part of the <i>works</i> that exceeds 10% of the Prices,</p> <p>[REDACTED]</p>
Severance	Z2.127	If any provision of this Contract or its application is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications of this Contract are not affected or impaired. If any adjudication or court determines that any provision of this Contract is in any way unenforceable, that provision is amended or modified to the extent necessary to give the provision a valid legal and enforceable effect which is as similar as possible to the ineffective provision and is reasonably consistent with the purpose and intent of this Contract.
Statutory Notices	Z2.128	The <i>Contractor</i> informs the <i>Project Manager</i> or any Subcontractor who may be affected immediately of any statutory notice served on the <i>Contractor</i> or any Subcontractor.
Surviving provisions	Z2.129	<p>The provisions set out in clauses and sub-clauses 10, 11, 12, 13.1, 13.2, 13.3, 17, 45.3, 83.1 (third bullet), 84, 85, 88, Z2.9 to Z2.15C inclusive, Z2.19 to Z2.22 inclusive, Z2.24, Z2.25, Z2.36, Z2.104 to Z2.118A inclusive, Z2.121, Z2.124, Z2.125, Z2.127, Z2.129, Z2.131, Z3.4, Z3.5, Z3.8 and W2 survive termination of this Contract for the duration specified in the relevant clause or if none is specified, the <i>limitation period</i>.</p> <p>The provisions set out in clauses 70 inclusive, survive termination or Final Completion for a period of three years.</p>
Value Added Tax	Z2.130	The tendered total of the Prices is exclusive of any value-added tax. The <i>Employer</i> does not make any payment if the <i>Contractor</i> fails to comply with the <i>Employer's</i> requirements for method of payment, as described in these <i>conditions of contract</i> .
Waiver	Z2.131	No waiver by either Party of any default by the other Party in relation to this Contract operates as or is to be construed as or deemed to be a waiver of further, other or continuing defaults, whether of similar or different nature.
	Z2.132	Not used
	Z2.133	
Change of Control	Z2.134	In so far as the <i>Contractor</i> is legally and contractually permitted to do so, the <i>Contractor</i> will provide the <i>Employer</i> with prior written notice of any Change of Control of the ultimate parent company affecting the <i>Contractor</i> , and/or affecting Thales Canada and if it is not legally or contractually permitted to do so shall provide the <i>Employer</i> with immediate notice following such Change of Control.
	Z2.135	If the Guarantor ceases to be the ultimate parent company of the <i>Contractor</i> , the <i>Contractor</i> shall use its best endeavors to procure from its then ultimate parent company or such other affiliated entity reasonably requested by the <i>Employer</i> a parent company guarantee on terms substantially the same as the parent

company guarantee or such other terms reasonably requested by the *Employer*. The Parties confirm that the parent company guarantee shall remain valid and in place in accordance with its terms until such replacement parent company guarantee is agreed and executed.

Service Failures	Affecting	Z2.136	For the purposes of this clause Z2.136, a "Service Affecting Failure" means all or any part of the <i>works</i> which cannot be used safely or within its normal operational parameters, and significantly adversely affects the delivery of the <i>Employer's</i> business operations or the Underground Network, as determined by the <i>Project Manager</i> .
------------------	-----------	--------	--

The *Contractor* agrees to use all reasonable endeavours to Provide the Works so as to cause minimum disruption to the Underground Network. Where a Service Affecting Failure occurs, the *Contractor* provides all reasonable assistance to the *Employer* as the *Employer* may reasonably request to mitigate and/or minimise the effect of the Service Affecting Failure.

Capital Framework	Works	Z2.137	The Parties endeavour within six (6) months of the Contract Date to agree and enter into a framework for capital works substantially in the form of the framework agreement attached at Schedule 6 and incorporating conditions substantially in the form of the <i>conditions of contract</i> .
-------------------	-------	--------	--

Maintenance Contract	Support	Z2.137 A	The Parties shall endeavour within five (5) months of the Contract Date to agree the spares and repairs catalogue and the QUENSH menu for the Maintenance Support Contract. Once the spares and repairs catalogue has been agreed the Parties shall enter into the Maintenance Support Contract in the form attached in Schedule 7 appending the agreed forms of spares and repairs catalogue and QUENSH menu.
----------------------	---------	-------------	--

TFL GROUP REQUIREMENTS

Responsible Procurement	Z3.1
-------------------------	------

Z3.1.1	The <i>Contractor</i> has regard to the Responsible Procurement Principles and complies at all times with the obligations with regard to the Responsible Procurement Principles set out in the Works Information and/or instructed by the <i>Project Manager</i> from time to time. Compliance with such obligations and instructions does not constitute a compensation event unless the <i>Project Manager</i> issues an instruction and states in his instruction that it constitutes a compensation event.
--------	--

Crime and Disorder	Z3.2
--------------------	------

Z3.2.1	<p>The <i>Contractor</i> acknowledges that the <i>Employer</i> is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to</p> <ul style="list-style-type: none"> • have due regard to the impact of crime, disorder and community safety in the exercise of the <i>Employer's</i> duties, • where appropriate, identify actions to reduce levels of crime and disorder, • without prejudice to any other obligation imposed on the <i>Employer</i>, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to
--------	---

prevent, crime and disorder in its area,
and in the performance of the contract the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that his Subcontractors (and sub-subcontractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy his duty.

London Living Wage Z3.3

Z3.3.1 In this clause:

- "GLA Act" means the Greater London Authority Act 1999;
- "Greater London" means that term as it is used in the GLA Act;
- "London Living Wage" means the basic hourly wage current at the date of this Contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*;
- "Mayor" means the person from time to time holding the office of Mayor of London as established by the GLA Act;
- "RPIX" means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the Parties may agree;

Z3.3.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

Z3.3.3 Without prejudice to the generality of clause Z3.3.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:

- (a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
- (b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and
- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Protection Z3.4

Z3.4.1 Without prejudice to clauses Z2.19-Z2.21A, the *Contractor* at all times complies 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 does not by any act or fault cause the *Employer* to be in breach of these requirements.

Z3.4.2 *The Contractor*

- 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,
- 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 Z3.4, and
- co-operates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest **Z3.5**

Z3.5.1 The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.

Z3.5.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six (6) months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the works from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* shall be entitled to terminate the contract.

Criminal Record **Z3.6**
Declarations

Z3.6.1 In this section:

“Relevant Individual” means any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the works.

“Relevant Conviction” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

- Z3.6.2** The *Contractor* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* shall procure that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this Contract and the *Contractor* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z3.6.3** The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z3.6.4** The *Employer* may in accordance with the audit rights set out in clauses Z2.19-Z2.21A 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 Contract.
- Z3.6.5** If the *Contractor* fails to comply with the requirements under clause Z3.6.2 and/or Z3.6.3, the *Employer* may, without prejudice to his rights under clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with clause Z3.6.2) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under clause Z3.6.2.
- Z3.6.6** A persistent breach of clause Z3.6.2 and/or Z3.6.3 by the *Contractor* shall constitute a material breach of this Contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.9.
- Z3.6.7** If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z3.6.8** Nothing in this clause Z3.6 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this Contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this clause Z3.6.

Best Value Z3.7

- Z3.7.1** The *Contractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the *Employer* are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Contract in order for the *Employer* (and, where appropriate, TfL) to achieve best value.

Prohibited Acts Z3.8

- Z3.8.1** The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z3.8.2** Without prejudice to his rights under clause Z2.19-Z2.21A 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 Contract and during the 12 years thereafter.
- Z3.8.3** 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 Contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.9.
- Z3.8.4** 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 Contract in whole or in part with immediate effect in accordance with clause 91.9.

Work Related Road Risk Z3.9

- Z3.9.1** For the purposes of clause Z3.9 of this Contract, the following expressions shall have the following meanings:

"Approved Driver Training"	the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at: www.fors-online.org.uk ;
"Bronze Accreditation"	the minimum level of accreditation within the FORS Standard, the requirements of which are more

particularly described at: www.fors-online.org.uk;

“Car-derived Vans”

a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Class VI Mirror”

a mirror that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;

“Close Proximity Sensor”

a device consisting of a sensor system that detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged;

“Collision Report”

a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

“Driver”

any employee of the *Contractor* (including an agency driver), who operates Freight Vehicles on behalf of the *Employer* while delivering the *works*;

“DVLA”

Driver and Vehicle Licensing Agency;

“FORS”

the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

“FORS Standard”

the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk;

a Lorry, a Van or a Car-derived Van;

"Freight Vehicle"

a clear thin plastic lens that is press fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot;

"Fresnel Lens"

"Gold Accreditation"

the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"Lorry"

a vehicle with an MAM exceeding 3,500 kilograms;

"MAM"

the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

"Side Guards"

guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

"Silver Accreditation"

the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"Van"

a vehicle with a MAM not exceeding 3,500 kilograms.

**Fleet Operator
Recognition Scheme
Accreditation**

Z3.9.2 Where the *Contractor* operates Freight Vehicles, it shall within 90 days of the Contract Date:

(a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the *Employer*, is an acceptable substitute to FORS (the "Alternative Scheme"); and

(b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

Z3.9.3 The *Contractor* shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the *Contractor* has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in

accordance with the periods set out in the FORS Standard.

Z3.9.4 The *Contractor* shall ensure that those of its Subcontractors who operate Freight Vehicles shall comply with clauses Z3.9.2 and Z3.9.3 as if they applied directly to the Subcontractor.

Safety Equipment on Vehicles

Z3.9.5 The *Contractor* shall ensure that every Lorry, which it uses to Provide the Works, shall:

(a) have Side Guards, unless the *Contractor* can demonstrate to the reasonable satisfaction of the *Employer* that the vehicle will not perform the function for which it was built if Side Guards are fitted;

(b) have a close proximity warning system fitted comprising:

(i) a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the *Contractor* has obtained the *Employer's* approval to use the Fresnel Lens, which approval the *Employer* may withhold in its unfettered discretion; and

(ii) a Close Proximity Sensor.

(iii) have a Class VI Mirror; and

(iv) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Z3.9.6 The *Contractor* shall ensure that every Van, which it uses to Provide the Works, shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Driver Licence Checks

Z3.9.7 The *Contractor* shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the works and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the *Contractor's* risk scale, provided that the *Contractor's* risk scale has been approved in writing by the *Employer* within the last 12 months:

(a) 0 – 3 points on the driving licence – annual checks;

(b) 4 – 8 points on the driving licence – six (6) monthly checks;

(c) 9 – 11 points on the driving licence – quarterly checks; or

(d) 12 or more points on the driving licence – monthly checks.

Driver Training

Z3.9.8 The *Contractor* shall ensure that each of its Drivers who has not undertaken:

(a) Approved Driver Training (or training, which in the reasonable opinion of the *Employer*, is an acceptable substitute) in the last three (3) years,

undertakes Approved Driver Training or the said substitute training within 60 days of the Contract Date; and

- (b) a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the *Employer*, is an acceptable substitute).

Collision Reporting	Z3.9.9	Within fifteen (15) days of the Contract Date, the <i>Contractor</i> shall provide to the <i>Employer</i> a Collision Report. The <i>Contractor</i> shall provide to the <i>Employer</i> an updated Collision Report on a quarterly basis and within five (5) working days of a written request from the <i>Employer</i> .
FORS Reports	Z3.9.10	Within 30 days of its achieving Bronze Accreditation or equivalent within the Alternative Scheme, the <i>Contractor</i> shall make a written report to the <i>Employer</i> at fors@tfl.gov.uk detailing its compliance with clauses Z3.9.5, Z3.9.6, Z3.9.7 and Z3.9.8 of this Contract (the "Safety, Licensing and Training Report"). The <i>Contractor</i> shall provide updates of the Safety, Licensing and Training Report to the <i>Employer</i> at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.
Obligations of the Contractor Regarding Subcontractors	Z3.9.11	<p>The <i>Contractor</i> shall ensure that each of its Subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Contract when operated in the United Kingdom as if those Subcontractors were a party to this Contract:</p> <p>(a) For Lorries – clauses Z3.9.5, Z3.9.7, Z3.9.8 and Z3.9.9; and</p> <p>(b) For Vans – clauses Z3.9.6, Z3.9.7, Z3.9.8 and Z3.9.9.</p>
Failure to Comply with Freight-related Obligations	Z3.9.12	<p>Without limiting the effect of any other clause of this Contract relating to termination, if the <i>Contractor</i> fails to comply with clauses Z3.9.2, Z3.9.3, Z3.9.4, Z3.9.5, Z3.9.6, Z3.9.7, Z3.9.8, Z3.9.9, Z3.9.10 and Z3.9.11:</p> <p>(a) the <i>Contractor</i> has committed a material breach of this Contract; and</p> <p>(b) the <i>Employer</i> may refuse the <i>Contractor</i>, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the <i>Employer</i> for any purpose (including but not limited to deliveries).</p>

Z4 Not used

ACCESS QUOTA PROVISIONS

Z5.1 Not used

Z5.2 The *Project Manager* assesses the *Contractor's* entitlement (if any) to a compensation event under clauses 60.1(2A) and 60.1(2B) in accordance with clause 63 subject to the following:

- (i) An entitlement to a compensation event under clauses 60.1(2), 60.1(2A) and 60.1(2B) (as applicable) is the *Contractor's* sole remedy for denied, cancelled, delayed or disrupted Access.

- (ii) Subject to clause Z5.2A, the Completion Date and/or the Prices will only be adjusted for a compensation event under clauses 60.1(2A) or 60.1(2B) if and to the extent that the *Contractor* provides sufficient evidence to demonstrate on the balance of probabilities that: the shortfall in Type One Access bookings against the applicable Access Quotas in the relevant LUL Accounting Period and/or delayed, disrupted or cancelled Access has caused, or (in the case of future delay) is forecast to cause, delay to planned Completion on the Accepted Programme. For the avoidance of doubt, clause 63.3 applies to the assessment of any such delay.

Z5.2A Notwithstanding clause Z5.2(ii), the *Contractor* shall not be required to demonstrate a delay or forecast delay to planned Completion as a condition to any increase to the Prices for a compensation event under clause 60.1(B), if and to the extent that:

- such increase in the Prices relates only to Defined Cost, plus (subject to clause 11.2(45)) Fee, incurred in relation to Subcontractors and/or agency labour carrying out installation works and/or testing on the Underground Network; and
- the *Contractor* demonstrates that it has used all reasonable endeavours to mitigate the impact and costs of the delayed, disrupted or cancelled Access (including, without limitation, redeploying personnel and using such alternative Access as is available) and the Frustrated Access Conditions are satisfied.

Z5.3 For the avoidance of doubt, for the purposes of clauses 60.1(2A) and 60.1(2B):

- (i) Each request for a Shift of Access is treated as a separate booking.
- (ii) The *Employer* is treated as having fulfilled the relevant Access Quota if it has provided a number of bookings for the relevant category of Access in the relevant period at or higher than the applicable Access Quota, including any alternative Access bookings that are not Type One Access, provided that any such alternative Access to that requested is suitable and does not adversely impact the *Contractor's* ability to Provide the Works.
- (iii) An Access booking will be treated as having been provided in response to the *Contractor's* request and will count towards the applicable Access Quota whether or not used by the *Contractor* and even if subsequently cancelled by the *Contractor*.

Z5.4 Notwithstanding anything to the contrary in clauses 60-65, following the occurrence of one or more compensation events under clause 60.1(2A) and/or 60.1(2B) in an LUL Accounting Period the procedure for notification and assessment of these compensation events is as follows:

- (i) The *Contractor* notifies the *Project Manager* in writing within four (4) Business Days of the *Employer* failing to fulfil requests up to the Access Quota under clause 60.1(2A) or of Priority Type One Access requested and booked within the Access Quota being delayed, disrupted or cancelled under clause 60.1(2B).
- (ii) The *Contractor* submits a notification of any resulting compensation

events under clauses 60.1(2A) or 60.1(2B) not later than ten (10) days after the end of the relevant LUL Accounting Period.

- (iii) The *Project Manager* responds within seven (7) days of the *Contractor's* notification(s) either instructing the *Contractor* to submit a quotation or notifying the *Contractor* that the Prices and the Completion Date are not to be changed for one of the reasons set out in clause 61.4 and/or under clause Z5.2(ii) or because the event so notified is not a compensation event. The instruction states the basis on which the quotation should be prepared.
- (iv) If the *Contractor* fails to notify as required in accordance with sub-clause (i) and/or (ii) above he is not entitled to a change in the Prices or the Completion Date.
- (v) Within seven (7) days after the receipt of the *Project Manager's* instruction to submit a quotation under clause Z5.4(iii) the *Contractor* submits to the *Project Manager* a quotation complying with clauses 62.2 and 62.2A for all compensation events identified in the *Project Manager's* instruction.
- (vi) Within fourteen (14) days after receipt of the *Contractor's* quotation, the *Project Manager* assesses any change to the Prices and the Completion Date.
- (vii) For the avoidance of doubt any failure on the part of the *Project Manager* to respond in accordance with clauses 61.4, 62.6, 64.4 or Z5.4(iii) is not treated as acceptance.

Z5.5 The *Project Manager* may at any time notify the *Contractor* in writing that the *Employer* wishes to provide Access in excess of an Access Quota with a view to reducing the Prices and/or bringing forward the Completion Date ("Additional Opportunity Access"). Within twenty one (21) days following receipt of such a notice the *Contractor* (acting reasonably) provides the *Project Manager* with a quotation giving his assessment of the reduction to the Prices and the earlier Completion Date prepared on the following basis:

- (i) The reduction to the Prices is assessed in accordance with clause 63.1; and
- (ii) The Completion Date is brought forward by the length of time that, due to the Additional Opportunity Access, planned Completion is earlier than planned Completion shown on the Accepted Programme.

The *Project Manager* replies within fourteen (14) days of receipt of the quotation. His reply is:

- (iii) An acceptance of the quotation and an instruction to utilise the Additional Opportunity Access;
- (iv) A rejection of the quotation and a notification that the Additional Opportunity Access will not be given; or
- (v) An acceptance of the quotation subject to the *Employer's* right to challenge the quotation and seek a revised adjustment to the Prices and/or the Completion Date in accordance with clause W2 and an instruction to utilise the Additional Opportunity Access.

The Prices and the Completion Date are revised in accordance with any accepted

quotation.

Z5.6 Notwithstanding clauses 11.2(64A) and 11.2(64B) the *Contractor* may be entitled to an increase in the Prices for a compensation event under clause 60.1(2B) (and shall not be required to demonstrate a delay or forecast delay to the Completion Date as a condition to such increase) for delayed, disrupted or cancelled Access to Designated Network Rail Infrastructure Areas which shall, for the purposes of this provision, clause 60.1(2B) and clause 11.2(21) only, be deemed to be Type One Access (and may, if designated by the *Contractor* as Priority Type One Access, be subject to Disallowed Cost). For the avoidance of doubt:

(i) any resulting entitlement to a compensation event shall be subject to the *Contractor's* compliance with:

(a) the Frustrated Access Conditions; and

(b) clause Z5.7 in relation to the Designated Network Rail Infrastructure Areas only;

(ii) the Completion Dates will not be adjusted;

(iii) any increase in the Prices relates only to the Defined Cost (and, subject to clause 11.2(45), Fee) incurred in relation to Subcontractors and/or agency labour carrying out installation works and/or testing in the Designated Network Rail Infrastructure Area; and

(iv) Access to Designated Network Rail Infrastructure Areas shall not be regarded as Type One Access in any other respect.

Z5.7 Without prejudice to its other obligations under this Contract, whilst Providing the Works pursuant to Access granted to Network Rail Infrastructure, the *Contractor*:

(i) uses reasonable endeavours to comply with any reasonable requirements or requests by Network Rail conveyed through the *Project Manager*;

(ii) takes reasonable and practicable steps to avoid and/or minimise disruption or inconvenience to persons occupying neighbouring or adjoining property; and

If the *Project Manager* notifies the *Contractor* that it has failed to comply with either of the obligations under (i) or (ii) above, the *Contractor* submits a plan to the *Project Manager* for acceptance setting out its proposals for mitigating the impact of such failure and/or avoiding, or minimising the impact of, any similar failure occurring in the future.

Z5.8 The Parties agree and acknowledge:

- (i) that they will collaborate and work together to achieve the Access necessary to deliver the Accepted Programme; and
- (ii) at the request of the *Contractor*, the Parties will meet to discuss any of the *Contractor's* concerns regarding Access to Network Rail Infrastructure and the *Employer* shall use reasonable endeavours to address such concerns directly with Network Rail,

provided always that nothing in this clause Z5.8 gives rise to a compensation event or any other entitlement on the part of the *Contractor*.

Z5.9 If the *Contractor* obtains no booked Access relevant to the *works* whatsoever to either of the two Key Designated Network Rail Infrastructure Areas for a continuous period of six (6) months or more, in circumstances where the *Contractor* has made repeated weekly attempts to obtain such relevant Access over that period ("Total Failure of Network Rail Access"), either Party may give written notice to that effect to the other Party.

Z5.10 As soon as reasonably practicable and in any event within three (3) months of receipt by either Party of the notice referred to in clause Z5.9, and provided that such relevant Access has not been provided to the relevant Key Designated Network Rail Infrastructure Area within this period, the *Contractor* shall submit separate proposals to:

- (i) re-sequence the *works* to avoid or mitigate the impact of the Total Failure of Network Rail Access in the relevant Key Designated Network Rail Infrastructure Area; and
- (ii) omit the minimum element of the *works* directly affected by the Total Failure of Network Rail Access in the relevant Key Designated Network Rail Infrastructure Area from the Works Information including, if applicable, provision of a new permanent migration area boundary.

Z5.11 The proposals referred to in clause Z5.10 above shall include:

- (i) proposed changes to the Prices assessed in accordance with clause 63.1; and
- (ii) any adjustments to the Completion Dates assessed in accordance with clause 63.3.

Z5.12 Within six (6) months from receipt of the initial notice in Z5.9, and provided that the *Contractor* has not received such relevant Access to the relevant Key Designated Network Rail Infrastructure Area at that date, the *Project Manager* responds to *Contractor's* proposal with an instruction to:

- (i) stop or not to start the relevant part of the *works* in the relevant Key Designated Network Rail Infrastructure Area; and
- (ii) re-sequence the *works* to avoid or mitigate the impact of the Total Failure of Network Rail Access in the relevant Key Designated Network Rail Infrastructure Area; and
- (iii) omit the part of the *works* directly affected by the Total Failure of Network Rail Access in the relevant Key Designated Network Rail Infrastructure Area from the Works Information.

Z5.13 The *Contractor* shall be entitled to a compensation event for an instruction by the *Project Manager* under clause Z5.12(i), (ii) or (iii) and the adjustment to the Prices and Completion Dates shall be assessed by the *Project Manager* under clauses 63-65. Provided that:

- (i) in relation to any instruction by the *Project Manager* under clause Z5.12(iii) above to omit the relevant part of the *works*:

- a) notwithstanding clause Z2.126:

- the *Contractor* is not entitled to claim loss of Fee or breach of contract for not Providing the Works in their entirety; and
 - the *works* omitted under the instruction are not taken into account in calculating the aggregate threshold of 10% of the Prices referred to in Z2.126; and

- b) the *Project Manager* may assess an earlier Completion Date if the effect of the omission is to reduce the time required for Completion.

- (ii) In relation to any instruction by the *Project Manager* under clause Z5.12(i) to stop or not to start the relevant part of the *works*, if within a further twelve (12) months the *Project Manager* has not given an instruction to resume or start the relevant part of the *works*, those *works* will be deemed to have been omitted from the Works Information and the adjustment to the Prices and Completion Dates shall be assessed by the *Project Manager* under clauses 63-65 and Z5.13(i)(a).

Z5.14 In the event of a Total Failure of Network Rail Access and either Party has issued a valid notice under clause Z5.9, the *Employer* agrees to discuss with, and advise, the *Contractor* as to how it proposes to:

- (i) enforce any legal or contractual rights it may have against Network Rail in relation to Access to the relevant Key Designated Network Rail Infrastructure Area; and/or
- (ii) seek assurances as to the future provision of Access to the Designated Network Rail Infrastructure Areas.

**PROVISIONS
RELEVANT TO
OUTSTANDING
SCOPE AND
COMPLETION**

Z6

**Completion Submission
before each Sectional
Functional Completion**

Z6.1

Not later than four (4) weeks before the first planned Sectional Functional Completion, the *Contractor* submits to the *Project Manager* a list based on an extract of the DOORS database setting out all of the technical requirements of the *works*. The *Contractor* shall designate in the submission:

- (i) each requirement or item of scope listed in the DOORS database as:

- a. satisfied;

- b. not required for the purposes of Completion of that *section* (which shall, for the avoidance of doubt, include any Planned Deferred Scope); or

- c. Outstanding Scope; and

- (ii) Defects and Software Defects.

For the avoidance of any doubt, any requirement that is partially satisfied will be treated as Outstanding Scope whether or not the relevant *section* is used in Revenue Service.

Z6.2

No later than four (4) weeks before any subsequent Sectional Functional Completion, the *Contractor* submits to the *Project Manager* an updated copy of the Completion Submission, setting out an updated designation for each of the technical requirements of the *works* not yet marked as 'satisfied'.

Z6.3

In respect of each *section*, within two (2) weeks of receipt of the *Contractor's* updated Completion Submission pursuant to clauses Z6.1 and Z6.2 above, the

Project Manager responds with the following:

- (i) the acceptance status for each of the *Contractor's* designations in accordance with section 3.1 of the Works Information (WI.05) (acceptance, acceptance except as noted or non-acceptance);
- (ii) which of the requirements designated as 'Outstanding Scope' the *Project Manager* consents to defer until after the relevant Sectional Functional Completion (which consent shall be at his sole discretion, save only where Sectional Functional Completion has been deemed to have occurred by reason of the *section* having entered Revenue Service);
- (iii) any additional Outstanding Scope (not included in the Completion Submission) and Defects and Software Defects of which the *Project Manager* is aware (by reference to the Works Information);
- (iv) which of those items designated as 'Outstanding Scope' to be deferred, pursuant to sub-clause (ii) above, are Type One Outstanding Scope and which are Type Two Outstanding Scope;
- (v) any dates for completing Type One Outstanding Scope, pursuant to clause Z6.5A; and
- (vi) which of the Defects and Software Defects are Critical Defects.

Z6.3A For the avoidance of any doubt and notwithstanding any other provision of this Contract, subject to clause Z6.17, nothing in these clauses Z6.1-Z6.19 changes the Works Information or limits, restricts or excludes the *Contractor's* obligation to proceed with the *works* (including, without limitation, the issue, or failure to issue, a Completion Submission and/or any acceptance or non-acceptance by the *Project Manager* of the *Contractor's* designation within a Completion Submission).

Z6.4 In the period between receipt of the *Contractor's* Completion Submission and Sectional Functional Completion, the *Contractor* and the *Project Manager* notify each other of any change in their respective designations and any further Outstanding Scope (by reference to the Works Information) if they become aware of any further Outstanding Scope not stated in the Completion Submission and/or response.

Z6.5 Where the *Contractor* fails to issue a Completion Submission in accordance with clauses Z6.1 or Z6.2, the *Project Manager* makes his own assessment of the matters to be included in the accepted Completion Submission. Where the *Project Manager* fails to respond to the Completion Submission in accordance with the timescales set out in clause Z6.3 and the *section* enters Revenue Service then the *Contractor's* designation in accordance with clauses Z6.1 or Z6.2 (as applicable) will be treated as having been accepted and the *Project Manager's* determination in accordance with clause Z6.3(iv) (and notification of additional Outstanding Scope under clause Z6.3(iii)) shall be deferred to the response to Completion Submission for the next *section* or, in respect of the final *section*, shall be referred for resolution in accordance with clause W2.

Z6.5A The *Project Manager's* consent to defer Type One Outstanding Scope under clause Z6.3(ii) above may be conditional upon agreement of dates for completing Type One Outstanding Scope.

Z6.5B For the avoidance of any doubt, subject only to clause Z6.9, the *Project Manager* is not entitled to re-designate scope as Type One Outstanding Scope that has previously been designated by the *Project Manager* as Type Two Outstanding

Scope.

	Z6.5C	The <i>Project Manager</i> may, prior to Revenue Service, re-designate as a Critical Defect any Defect or Software Defect that is subsequently identified to meet the requirements of the definition of Critical Defect in clause 11.2(18) provided that he notifies this within a reasonable time of becoming aware of the need to change the designation of the Defect or Software Defect.
Obligations to complete Outstanding Scope after Sectional Functional Completion	Z6.6	The <i>Contractor</i> uses reasonable endeavours and all available resources included in the tendered total of the Prices to carry out and complete Type Two Outstanding Scope included in the Completion Submission before the final Sectional Functional Completion.
	Z6.7	Subject to the proviso at the end of clause 11.2(51B), the <i>Contractor</i> shall complete all Type One Outstanding Scope by the next following Sectional Functional Completion unless it is either: (i) Planned Deferred Scope; or (ii) deferred by the consent of the <i>Project Manager</i> and in any event by System Functional Completion.
	Z6.8	Not used
	Z6.9	Where the <i>Contractor</i> fails to comply with its duty under clause Z6.6 and, as a result, Type Two Outstanding Scope is still outstanding at the final Sectional Functional Completion, the <i>Employer</i> shall be entitled to refer the issue of any alleged breach of clause Z6.6 to the dispute resolution procedure under clause W2. If the determination by an Adjudicator or the courts is that the <i>Contractor</i> has failed to comply with its duty under clause Z6.6, then such Type Two Outstanding Scope shall be re-designated and treated for all purposes as Type One Outstanding Scope.
	Z6.10	For the avoidance of any doubt, nothing in these clauses Z6.1-Z6.18 limits the <i>Contractor's</i> obligations to correct Critical Defects in accordance with clause 43.1.
	Z6.11	Not used
	Z6.12	Not used
Notification of Non-Disclosed Scope	Z6.13	In the period commencing two (2) weeks after the final Sectional Functional Completion until eight (8) months after System Functional Completion, the <i>Contractor</i> and the <i>Employer</i> and the <i>Project Manager</i> notify each other as soon as they become aware of any item of Outstanding Scope not included in the applicable Completion Submission. If the <i>Project Manager</i> considers that such item of Outstanding Scope is Non-Disclosed Outstanding Scope, he notifies the Parties accordingly identifying such items of Non-Disclosed Outstanding Scope as Type One or Type Two Outstanding Scope and, if Type One Outstanding Scope, subject to clause Z6.17(i), the <i>Contractor</i> Provides the Works so as to complete the Type One Outstanding Scope by Final Completion.
Defined Cost and Fee During the Period after Issue 6.1	Z6.14	In the period from two (2) weeks after the final Sectional Functional Completion until System Functional Completion, the Defined Cost of the following (and, Page 101 of 116

**the final Sectional
Functional Completion**

subject to clause 11.2(45), the Fee) will be assessed by the *Project Manager* in accordance with clause 50 at each assessment date and included in the amount due but does not form part of the Price for Work Done to Date:

- (i) Providing the Works in respect of any Type Two Outstanding Scope;
- (ii) Defects and Software Defects which are notified during this period and are not Critical Defects;
- (iii) Defects and Software Defects (other than Critical Defects) which have been notified and are outstanding;
- (iv) directing, re-profiling or re-structuring resources in accordance with Z6.17(i)(b);
- (v) additional works instructed by the *Project Manager* under clauses Z6.17 or 14.3 to be undertaken in the period from two (2) weeks after the final Sectional Functional Completion.

For the avoidance of doubt, during this period, the Defined Cost plus (subject to clauses 53.8 and 11.2(45)) Fee of Type One Outstanding Scope, Planned Deferred Scope, Non-Disclosed Outstanding Scope (designated as Type One Outstanding Scope under clause Z6.13), Level of Effort in the Level of Effort Period and correction of Critical Defects forms part of the Price for Work Done to Date.

Z6.14A In the period after System Functional Completion until the *defects date*, the Defined Cost of all works performed in this period (and, subject to clause 11.2(45), the resulting Fee) will be assessed by the *Project Manager* in accordance with clause 50 at each assessment date and included in the amount due to the *Contractor* but for the avoidance of doubt does not form part of the Price for Work for Work Done to Date, with the sole exception of the following:

- (i) Providing the Works in respect of any Non-Disclosed Outstanding Scope designated as Type One Outstanding Scope in accordance with Z6.13;
- (ii) correcting Critical Defects which have been notified within eight (8) months after System Functional Completion;
- (iii) the Defined Cost of people engaged in preparing the *Contractor's* final account applications under clause 50.1; and
- (iv) Level of Effort in the Level of Effort Period.

Z6.15 In each application for payment under clause 50.1A in the period from two (2) weeks after the final Sectional Functional Completion, the *Contractor* records separately:

- (i) the Price for Work Done to Date; and
- (ii) the Defined Cost not forming part of the Price for Work Done to Date (and, subject to clause 11.2(45), the Fee).

During the Level of Effort Period the *Contractor* also identifies separately in its applications for payment the Defined Cost (and, subject to clause 11.2(45), Fee) included in the Price for Work Done to Date in respect of the Level of Effort in the Level of Effort Period.

Z6.16 Not used

**Instructions for
Additional or Omitted
Scope and
Compensation Events**

Z6.17 Notwithstanding any other provision of this Contract, during or in relation to the period commencing two (2) weeks after the final Sectional Functional Completion and ending on Final Completion:

- (i) the *Project Manager* may from time to time at his absolute discretion issue instructions to:

- a. omit all or any part of the *works* for any purpose whatsoever, including to allow the *Employer* to carry out such *works* itself and/or to arrange for such *works* to be carried out by a third party, and the Works Information shall be adjusted accordingly;
- b. up to twelve (12) weeks after Final Completion, demobilise resources engaged on the Non-Target Price Works (either generally or in relation to specific people and/or Plant) or direct, re-profile or re-structure those resources (but without limiting the *Contractor's* other rights and obligations under the Contract including in respect of demobilisation);
- c. change the Works Information, including without limitation to require the *Contractor* to perform additional work related to the *works*; and

notwithstanding clause Z2.126, the *Contractor* shall not be entitled to claim loss of Fee or breach of contract for the matters referred to in Z6.17(i)(a), (b) or (c) or for not Providing the Works in their entirety and for the avoidance of doubt those instructions shall not count towards the 10% threshold referred to in clause Z2.126; and

(ii) the Access Quota does not apply to Non-Target Price Works.

	Z6.18	Notwithstanding clauses 60-65, assessment of any increase in the Prices for compensation events excludes any forecast Defined Cost and Fee which, pursuant to these clauses Z6.1-Z6.19, will not form part of the Price for Work Done to Date. For the avoidance of doubt, the <i>Contractor</i> is not entitled to an increase in the Prices for matters affecting the Non-Target Price Works.
Increase in the total of Prices for Level of Effort in the Level of Effort Period	Z6.18A	In each payment certificate during the Level of Effort Period the <i>Project Manager</i> identifies separately the total Defined Cost (and, subject to clause 11.2(45), the Fee) for Level of Effort incurred in the Level of Effort Period.
	Z6.18B	Within four (4) weeks after the Level of Effort Assessment Date the <i>Contractor</i> submits to the <i>Project Manager</i> a quotation for an increase in the Prices for the Defined Cost (and, subject to clause 11.2(45), Fee) for Level of Effort incurred in the Level of Effort Period. Within four (4) weeks of receiving the quotation, the <i>Project Manager</i> assesses the Defined Cost (and, subject to clause 11.2(45), the Fee) for the Level of Effort incurred in the Level of Effort Period. The Prices are increased by that amount, provided that the total increase in the Prices under this clause Z6.18B shall not in any circumstance exceed a total of [REDACTED] (the "Level of Effort Cap").
	Z6.18C	The <i>Contractor</i> and the <i>Employer</i> work together to minimise the Level of Effort resources expended during the Level of Effort Period.
Provisions relevant to Performance Demonstration and	Z6.18D	The <i>Employer</i> within eighteen (18) weeks of (a) Sectional Functional Completion of SMA5 as defined in the Works Information (WI.02) or (b) written notification from the <i>Contractor</i> that the <i>works</i> are ready, where an additional Performance Demonstration is required by the <i>Project Manager</i> in accordance with section

Compensation Event

2.1.1 of the Works Information (WI.14), either:

- (i) undertakes the Performance Demonstration(s) and provides the *Contractor* with confirmation as to whether any further *works* are required to satisfy the Performance Demonstration; or
- (ii) confirms that the Performance Demonstration and/or further *works* related to the Performance Demonstration are no longer required.

Where a repeated Performance Demonstration is required, the *Contractor* provides the *Project Manager* with evidence that the necessary modifications have been completed with the notification referred to at (b) above.

Z6.18E Where the *Employer* fails to comply with Z6.18D(i) or (ii) (as applicable) for a reason that is not in any part due to the *Contractor's* acts or omissions under the Contract, the following shall apply:

- (i) the *Contractor* shall provide the *Employer* with written notice of its failure to comply with Z6.18D (i) or (ii) within the relevant eighteen (18) week period referred to in clause Z6.18D;
- (ii) the *Employer* shall have six (6) weeks from the date of that notice to comply with Z6.18D (i) or (ii); and
- (iii) if, following the expiry of this six (6) week period, the *Employer* has continued to fail to comply with Z6.18D (i) or (ii) above, the *Contractor* shall be entitled to a compensation event pursuant to clause 60.1(29).

The parties agree and acknowledge that, in circumstances where the *Contractor* demonstrates that the *Employer's* delay or failure pursuant to (i) or (ii) above results in the *Contractor* having less than 6 planned software releases between completion of the Performance Demonstrations and final Sectional Functional Completion, the compensation event referred to in clause Z6.18E(iii) above will address, but not be limited to, the requirement for the *Contractor* to undertake additional unplanned software releases and maintain a higher level of resources for these purposes.

Z6.19 The *Contractor* warrants, undertakes and represents to the *Employer* that until the defects date it will:

- (i) supply spares and parts in accordance with section 3.1(v) of the Works Information (WI.01);
- (ii) when instructed by the *Project Manager*, obtain regular updates from its suppliers as to the availability of components and trigger a design review whenever there is a significant change in the status of either cost or availability; and
- (iii) comply with its other obligations in the Works Information in relation to obsolescence (section 2.21.13 of the Works Information (WI.09)) and spares set out in section 3.1 of the Works Information (WI.01).

Without prejudice to its other rights and remedies (including a right to recover damages at common law) if the *Contractor* is in material breach of this warranty and fails to rectify the breach within five (5) days of the *Project Manager's* notification, the *Project Manager* arranges for the spares, replacement parts or obsolescence management to be corrected by Others and the *Contractor* pays the *Employer* for the reasonable cost of the same.

Z7 Not used

ADDITION OPTIONS **Z8**

Z8.1 The *Employer* may at its sole option and discretion exercise any of the Addition Options by notifying the *Contractor* in writing by the relevant Addition Option Date set out in the Addition Options Table. The exercise of the Addition Option is effective from the date of receipt by the *Contractor* of the notice.

Z8.2 Upon exercise of the relevant Addition Option, the Works Information is treated as having been changed to include the works covered by the Addition Option and the total of the Prices and the Completion Dates are adjusted in accordance with the Addition Options Table. The valid exercise of an Addition Option by the *Employer* on or before the relevant Addition Option Date does not amount to a compensation event.

OMISSION OPTIONS

Z9.1 The *Project Manager* may at any time at his sole option and discretion until Sectional Functional Completion of *SMA12* (as described in the Works Information (WI.02)) issue instruction(s) to change the Works Information to omit works included in any of the Omission Options.

Z9.2 If an instruction is issued by the *Project Manager* under clause Z9.1:

- the Works Information is changed in accordance with the instruction;
- the *Project Manager* may assess an earlier Completion Date if the effect of the omission is to reduce the time required for Completion;
- the reduction to the Prices is assessed by the *Project Manager* in accordance with clause 63.1; and

I

[REDACTED]

I

[REDACTED]

I

[REDACTED]

I

[REDACTED]

DISPUTE RESOLUTION

W2

W2A

In the event of any Dispute, the Parties hereby agree to attempt to reach an amicable settlement. The *Employer*, *Contractor* and the *Project Manager* follow

the procedure set out in clauses W2A, W2B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2B

- W2B.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 Contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.
- W2B.2** Within 14 days of receipt of the notice pursuant to clause W2B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.
- W2B.3** The Senior Representatives meet and try to reach agreement to resolve the dispute referred to them pursuant to clause W2B.2.
- W2B.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 W2B.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.
- W2B.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 W2B.1 and any response under clause W2B.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 clauses W2A and W2B, 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 Contract 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 Contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract 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 any reasonable request by the Adjudicator for additional time to decide the main contract 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 three (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 (5) 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 Contract. 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 (7) 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 Contract;
- 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* 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 contract 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 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 option 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 clause 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 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 (6) weeks of the notification of the Adjudicator's decision.

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Defined terms	X1	
	X1.1	(a) The Base Date Index (B) is the latest available index before the <i>base date</i> . (b) The Latest Index (L) is the latest available index before the date of assessment of an amount due. (c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
Price Adjustment Factor	X1.2	If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due. The Price Adjustment Factor calculated at the Final Completion Date is used for calculating price adjustment after this date.
Compensation events	X1.3	Following the <i>base date</i> , the Defined Cost for compensation events is assessed using the <ul style="list-style-type: none">Defined Cost current at the time of assessing the compensation event adjusted to <i>base date</i> by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due.
Price adjustment Options C and D	X1.5	The total of the Prices (and any Prices for compensation events) are not adjusted for inflation in the period until the <i>base date</i> . Following the <i>base date</i> , each time the amount due is assessed, an amount for price adjustment is added to or deducted from the total of the Prices (as the case may be) which is the sum of <ul style="list-style-type: none">the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1 + PAF))$ where PAF is the Price Adjustment Factor for the date of the current assessment andcorrecting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.

Option X2: Changes in the law

Changes in the law	X2	
	X2.1	A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the <i>works</i> and exercising the foresight appropriate to such a contractor ought reasonably to have anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The <i>Project Manager</i> may notify the <i>Contractor</i> of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X4 : Parent company guarantee

Parent company X4
guarantee X4.1

If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the ultimate parent company of the *Contractor's* performance in the form set out in Schedule 3. The guarantee may, in the sole discretion of the *Employer*, be given by an entity other than the ultimate parent company if that entity is acceptable to the *Employer*.

X4.2 If the *Contractor* comprises two (2) or more companies acting in joint venture, consortium, partnership or otherwise, each such company gives to the *Employer* a guarantee by its ultimate parent company of the *Contractor's* performance in the form set out in Schedule 3 (*mutatis mutandis*), and each ultimate parent company is jointly and severally liable to the *Employer* under its guarantee for the performance of the *Contractor*. The joint and several guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date. Any such guarantee may, in the sole discretion of the *Employer*, be given by an entity other than the ultimate parent company if that entity is acceptable to the *Employer*.

Option X5 : Sectional Functional Completion

Sections of the Works X5
X5.1

In these *conditions of contract*, unless stated as a *section*, System Functional Completion or Final Completion:

- each reference and clause relevant to Completion of the *works* shall be construed as a reference to Sectional Functional Completion of any *section* or System Functional Completion or Final Completion of the whole of the *works*; and
- each reference and clause relevant to the Completion Date shall be construed as a reference to the Sectional Functional Completion Date for a *section* or the System Functional Completion Date or Final Completion Date for the whole of the *works*.

Option X6: Bonus for early Completion: Not used

Option X7: Delay damages:

Option X12: Partnering:

Identified and defined X12

Terms X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
(2) An Own Contract is a contract between two (2) Partners which includes this Option.

(3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.

(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this Contract.

(5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

Actions

X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.

(2) Each Partner nominates a representative to act for it in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group and has the casting vote unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

Working together

X12.3 (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

(2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it, subject to any obligations of confidentiality owed by that Partner under his Own Contract.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is not a compensation event.

(7) Not used

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work.

Incentives

X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

X12.5 For the avoidance of doubt, the *Contractor* shall not be obliged to comply with this clause X12 if and to the extent that it increases the cost, time or risk to the *Contractor* of performing its obligations under this Contract.

Option X13: Performance bond

Performance bond X13

X13.1 The *Employer* may, at any time, require the *Contractor* to provide a performance bond. If the *Employer* requires such a bond the *Employer* issues a request to the *Contractor* in writing and the *Contractor* gives the *Employer* a performance bond within two (2) weeks of the *Employer's* request. The bond is provided by either a bank, insurer or a suitable financial institution which has a credit rating of OECD A-1+ by Standard and Poor, or P-1 by Moodys which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 4. A reason for not accepting the bank, insurer or suitable financial institution is that the *Employer* considers that its commercial position or its creditworthiness or credit rating is not strong enough to carry the bond.

X13.2 In the event that a bond is provided in accordance with clause X13.1 and the *Employer* makes a demand (the "Demand") under the performance bond and receives payment thereunder from the bank, insurer or financial institution providing the bond and the *Contractor* is not in default for the amount stated in the Demand, the *Employer* immediately pays or repays all monies wrongly received as a result thereof (and to which it is not otherwise entitled) either to the bank, insurer or financial institution who has paid those monies or to the *Contractor* (whichever the *Employer* in its sole discretion considers is appropriate in the circumstances) with interest thereon at the interest rate from the date of receipt to the date of repayment. The *Contractor* does not have any rights of recourse and does not make any claim against the *Employer* in relation to any Demand made or action taken by the *Employer* in relation to the performance bond if the *Employer* pays or repays any monies to which it is not entitled and interest thereon in accordance with this clause X13.2.

X13.3 In the event that a bond is provided in accordance with clause X13.1 and the bank, insurer or suitable financial institution does not renew or extend a bond, or issue a substitute bond or other form of alternative security acceptable to the *Employer* in accordance with its terms and the *Employer* demands payment under clause 7A of the bond, such monies shall be paid into an interest bearing account of the *Employer* until the bond is renewed, extended or a new bond is issued. Within ten (10) days of receipt of a renewed, extended or new bond by the *Employer*, the *Employer* shall repay such monies to the *Contractor* together with interest accrued.

X13.4 Subject to clause X13.3, the *Employer* applies monies paid under the bond towards and to the extent of the *Contractor's* liabilities arising out of the *Contractor's* default under the Contract occurring prior to the date of the

extension, re-issue or renewal of the bond and the *Employer* shall repay the balance of such monies to the *Contractor* together with interest accrued within ten (10) days of receipt of the renewed, re-issued or extended bond.

Option Z : Additional conditions of contract

Additional conditions of Z1
contract Z1.1

The *additional conditions of contract* stated in the Contract Data are part of this Contract.