



HERBERT  
SMITH  
FREEHILLS

13 September 2018

LONDON UNDERGROUND LIMITED  
and  
THALES TRANSPORT AND SECURITY LIMITED

---

AGREEMENT FOR THE PROVISION OF  
SERVICES IN RESPECT OF THE 'CONNECT'  
NETWORK

---

Herbert Smith Freehills LLP

## TABLE OF CONTENTS

Clause	Headings	Page
	SECTION A: PRELIMINARIES.....	2
1.	DEFINITIONS AND INTERPRETATION.....	2
2.	GENERAL REPRESENTATIONS AND WARRANTIES .....	2
	SECTION B: THE SERVICES .....	4
3.	COMMENCEMENT, TRANSITION PERIOD AND TERM .....	4
4.	TRANSITION.....	6
5.	SERVICES .....	9
6.	PROJECT DELIVERY .....	13
7.	SYSTEM ASSETS.....	17
8.	VARIATION AND CHANGE .....	18
9.	PROCUREMENT OF SYSTEM ASSETS AND SERVICES .....	20
10.	INTERFACING WORKS AND SERVICES .....	20
11.	TERMS OF OCCUPATION AND ACCESS .....	21
12.	SAFETY.....	25
13.	QUALITY ASSURANCE.....	26
14.	ENVIRONMENT .....	26
15.	STANDARDS .....	31
16.	BUSINESS CONTINUITY AND DISASTER RECOVERY .....	31
	SECTION C: PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS.....	31
17.	PAYMENT .....	31
18.	GENERAL TAXATION .....	33
19.	SET-OFF .....	35
	SECTION D: CONTRACT GOVERNANCE.....	35
20.	CO-OPERATION WITH LUL, ITS EMPLOYEES AND CONTRACTORS .....	35
21.	SERVICE MANAGEMENT .....	37
22.	GOVERNANCE .....	37
23.	RECORDS AND INFORMATION.....	40
24.	AUDIT AND INSPECTION .....	42
25.	DISPUTE RESOLUTION .....	44
	SECTION E: CONTRACTOR PERSONNEL AND SUPPLY CHAIN.....	44
26.	TUPE AND EMPLOYEES .....	44
27.	SUB-CONTRACTING AND PERSONNEL.....	45
28.	LUL CONTRACTORS .....	50
29.	NON-SOLICITATION .....	51
30.	TRAINING .....	51
31.	NOT USED .....	51
	SECTION F: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY .....	51

32.	INTELLECTUAL PROPERTY RIGHTS.....	51
33.	LICENCES GRANTED BY THE CONTRACTOR .....	52
34.	LICENCES GRANTED BY LUL .....	54
35.	IPR INDEMNITY .....	54
36.	IPR REGISTER .....	56
37.	ESCROW .....	56
38.	DATA, LUL DATA AND SECURITY REQUIREMENTS.....	57
39.	PRIVACY AND DATA PROTECTION.....	58
40.	RESERVATION OF INTERCEPTION RIGHTS .....	63
41.	PUBLICITY AND CONFIDENTIALITY .....	63
42.	FREEDOM OF INFORMATION AND TRANSPARENCY .....	67
	SECTION G: LIABILITY, INDEMNITIES AND INSURANCE .....	67
43.	LIABILITY .....	67
44.	INSURANCE .....	70
45.	PARENT COMPANY GUARANTEE AND PERFORMANCE BOND .....	70
	SECTION H: REMEDIES AND RELIEF .....	72
46.	DUTY TO WARN.....	72
47.	DEPENDENCY WARNING NOTICES .....	72
48.	NOT USED .....	73
49.	CORRECTIVE ACTION NOTICES .....	73
50.	RECTIFICATION PLAN PROCESS.....	74
51.	ENHANCED CO-OPERATION .....	77
52.	STEP-IN RIGHTS.....	78
53.	DEPENDENCY FAILURES AND RELIEF EVENTS.....	80
	SECTION I: TERMINATION AND EXIT MANAGEMENT .....	84
54.	FORCE MAJEURE .....	84
55.	TERMINATION.....	86
56.	CONSEQUENCES OF EXPIRY OR TERMINATION .....	89
	SECTION J: MISCELLANEOUS AND GOVERNING LAW .....	91
57.	ASSIGNMENT .....	91
58.	PREVENTION OF FRAUD AND BRIBERY .....	92
59.	DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT .....	93
60.	LONDON LIVING WAGE .....	94
61.	WORK RELATED ROAD RISK.....	94
62.	RESPONSIBLE PROCUREMENT .....	95
63.	COMPLIANCE WITH LAWS .....	95
64.	GOVERNING LAW .....	95
65.	NOTICES AND INVOICES.....	95
66.	SURVIVAL .....	96
67.	WAIVER, RIGHTS CUMULATIVE .....	96

68.	LANGUAGE.....	96
69.	ENTIRE AGREEMENT .....	96
70.	THIRD PARTY RIGHTS.....	96
71.	SEVERABILITY .....	97
72.	INDEXATION.....	97
73.	COSTS .....	98
74.	FURTHER ASSURANCE AND CO-OPERATION .....	98
75.	COUNTERPARTS.....	99

## **Schedules**

1.	Definitions
2.1	Technical Specification
2.2	Performance Regime
2.3	Access
2.4	Asset Management
2.5	Security Management
2.6	Standards
2.7	Upgrade Programme Plan
2.8	Acceptance and Approvals
2.9	Service Management
2.10	LUL Safety, Quality and Environmental Requirements
2.11	Business Continuity and Disaster Recovery
2.12	Responsible Procurement
3.1	Dependencies
3.2	Disruption Losses
3.3	Insurance
4.1	Charges and Invoicing
4.2	Financial Model and Financial Reports
5.1	Variation Procedure
5.2	Technical Services Catalogue
6.1	Governance
6.2	Dispute Resolution
6.3	Document Management
6.4	Project Management
6.5	Risk Management
6.6	Exit Management
6.7	Training
7.1	Key Personnel
7.2	Key Sub-contractors
7.3	Staff Transfer
8.1	IPR Register
8.2	Commercially Sensitive Information
8.3	Details of Processing Personal Data
9	Deed of Novation
10	Parent Company Guarantee
11	Performance Bond

THIS CONTRACT is made on 13 September 2018

**BETWEEN**

- (1) **LONDON UNDERGROUND LIMITED** (company registration number 01900907) of 55 Broadway, London SW1H 0BD ("**LUL**"); and
- (2) **THALES TRANSPORT AND SECURITY LIMITED** (company registration number 03132438) whose registered office is at 350 Longwater Avenue, Green Park, Reading RG2 6GF (the "**Contractor**"),

(each a "**Party**" and together the "**Parties**").

**WHEREAS:**

- (A) TfL is a functional body of the Greater London Authority and manages transport services across London and LUL is a subsidiary of TfL responsible for the management and operation of the Underground Network.
- (B) LUL and Citylink Telecommunications Limited (company registration number 03734785) whose registered office is at 3rd Floor, 9–11 Grosvenor Gardens, London SW1W 0BD (the "**Legacy Contractor**") entered into a contract dated 19 November 1999 in respect of the provision of transmission and radio services essential to the operation of the Underground Network (such contract, as varied by LUL and the Legacy Contractor in accordance with its terms, being the "**Legacy Contract**").
- (C) The Legacy Contract provides for the operation and maintenance of a System (with the current deployment of the System under the Legacy Contract being the "**Legacy System**").
- (D) The Legacy Contract provides that the title and risk in respect of all Legacy System Assets (including spares) owned by the Legacy Contractor (or its sub-contractors) and used in order to operate and maintain the Legacy System shall transfer to LUL on the expiry of the Legacy Contract.
- (E) LUL and the Contractor wish to enter into a new contract pursuant to which the Contractor will:
  - a. work with the Legacy Contractor under the Legacy Contract to commence the work required to upgrade the core radio technology of the Legacy System from the Dimetra version 6.1 to Dimetra version 9.0;
  - b. complete upgrades of the core radio technology to Dimetra version 9.0 and from Dimetra version 9.0 to the Dimetra version 9.1 and upgrade and roll-out of the DCS's;
  - c. if requested by LUL to do so, upgrade the core radio technology of the System to Dimetra version 9.3;
  - d. provide the O&M Services in respect of the System after the expiry of the Legacy Contract throughout the Term of this Contract; and
  - e. complete all Upgrade Projects requested by LUL throughout the Term of this Contract.
- (F) For operational reasons, LUL commissioned work from the Legacy Contractor pursuant to the Legacy Contract on 28 June 2018 in respect of the labour and materials (and the associated price) to be purchased in respect of the upgrade of the core radio technology to Dimetra version 9.0 and the replacement of the dispatcher terminals. As is the case with all variations under the Legacy Contract, the Contractor will deliver the work commissioned on behalf of the Legacy Contractor and in order to do this, the Contractor commissioned work from Motorola.
- (G) All work completed by the Contractor in respect of the upgrade of the core radio technology to Dimetra version 9.0 and the replacement of the dispatcher terminals shall be treated as if carried out under this Contract.
- (H) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED AS FOLLOWS:**

**SECTION A: PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
  - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any Laws as amended or repealed to deal with the UK's exit from the European Union;
  - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
  - 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, email, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
  - 1.2.8 unless otherwise provided and save for references in Schedule 10 (*Parent Company Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
  - 1.2.9 references to this Contract are references to this Contract as amended from time to time.
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 the Clauses and Schedule 1 (*Definitions*);
  - 1.3.2 Schedules 2.1 (*Technical Specification*) and 2.2 (*Performance Regime*) and their Appendices and Annexes; and
  - 1.3.3 any other Schedules and their Appendices or Annexes.
- 1.4 The Schedules and their Appendices and Annexes form part of this Contract.

**2. GENERAL REPRESENTATIONS AND WARRANTIES**

- 2.1 LUL represents and warrants that:
- 2.1.1 it has full capacity and authority to enter into and to perform this Contract;
  - 2.1.2 this Contract is executed by its duly authorised representative; and
  - 2.1.3 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws

affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or applicable Law).

2.2 The Contractor represents and warrants that:

- 2.2.1 it has full capacity and authority to enter into and to perform this Contract;
- 2.2.2 it is a company duly organised and validly existing under the laws of England and has all requisite legal power and authority to execute this Contract and carry out the terms, conditions and provisions hereof;
- 2.2.3 this Contract constitutes and the documents to be executed pursuant to the Contract when executed, will constitute, its valid and binding agreements;
- 2.2.4 there are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitral tribunal that might affect its ability to meet and carry out its obligations under this Contract;
- 2.2.5 its execution and delivery of this Contract has been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under any other agreement or instrument to which it is a party or by which it or its property may be bound;
- 2.2.6 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law); and
- 2.2.7 save as expressly otherwise stated herein, it is acting as principal and not as agent or broker for any other person.
- 2.2.8 it has all necessary consents and regulatory approvals to enter into this Contract;
- 2.2.9 it has notified LUL in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 2.2.10 it has all necessary rights in and to the Contractor IPR and the Third Party IPR and any materials made available by the Contractor (and/or any Sub-contractor) to LUL which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt and use of the Services by LUL;
- 2.2.11 the Financial Model:
  - (A) was prepared with reasonable care and skill;
  - (B) was prepared in accordance with Part A of Schedule 4.2 (*Financial Model and Financial Reports*);
  - (C) reflects the Contractor's bona fide estimate of the costs which the Contractor will incur in performing the Services and its other obligations under this Contract, and the Contractor's associated price for providing the Services and complying with such other obligations under this Contract; and
  - (D) accurately reflects the Contractor's assumptions made in the Record of Assumptions;
- 2.2.12 the Record of Assumptions:
  - (A) was prepared with reasonable care and skill; and
  - (B) was prepared in accordance with Part A of Schedule 4.2 (*Financial Model and Financial Reports*);

- 2.2.13 it is not subject to any contractual obligation, compliance with which will or is reasonably likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 2.2.14 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or Key Sub-contractors or for their dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's or Key Sub-contractor's assets or revenues; and
- 2.2.15 the Guarantor has full capacity and authority to enter into and to perform the Parent Company Guarantee.
- 2.3 The representations and warranties set out in Clause 2.2 (*General Representations and Warranties*) shall be deemed to be repeated by the Contractor on the Effective Date and the Service Commencement Date by reference to the facts then existing.
- 2.4 Each of the representations and warranties set out in Clause 2.2 (*General Representations and Warranties*) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 2.5 If at any time a Party becomes aware that a representation or warranty given by it under this Clause 2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 2.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which LUL may have in respect of breach of that provision by the Contractor.
- 2.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## **SECTION B: THE SERVICES**

### **3. COMMENCEMENT, TRANSITION PERIOD AND TERM**

3.1 This Contract shall come into force on the Effective Date.

#### **3.2 Transition Period**

3.2.1 During the period from the Effective Date until 04:00 hours on 21 November 2019 (the "**Transition Period**") the Contractor shall:

- (A) prepare for the performance of the Services from the Service Commencement Date;
- (B) undertake activities relating to the upgrade of the core radio technology of the Legacy System to Dimetra version 9.0 pursuant to the Legacy Contract and the Contractor's sub-contract with the Legacy Contractor (such upgrades to be carried out under this Contract from the Service Commencement Date and completed in accordance with the terms of this Contract);
- (C) undertake activities relating to the upgrade and roll-out of the DCS's pursuant to this Contract;
- (D) carry out the Pre-Priced Variations in respect of the Upgrade Projects described in:
  - (1) Appendix 1 (*Core DCS and DCS Rollout*) to Schedule 2.7 (*Upgrade Programme Plan*);



- (2) Appendix 2 (*APD Delphi to C# Transition – Phase 1*) to Schedule 2.7 (*Upgrade Programme Plan*); and
    - (3) Appendix 21 (*HDSL Modems*) to Schedule 2.7 (*Upgrade Programme Plan*),

in accordance with Clause 6 (*Project Delivery*) and Schedule 2.7 (*Upgrade Programme Plan*) and Schedule 6.4 (*Project Management*);
  - (E) subject to Clause 3.2.4, carry out any Variation requested by LUL in accordance with this Contract that:
    - (1) is requested prior to the Service Commencement Date; and
    - (2) requires work to be carried out on the System by the Contractor under this Contract;
  - (F) in relation to any work being performed by the Legacy Contractor (or the Contractor as its sub-contractor) pursuant to the list of actions agreed by LUL and the Legacy Contractor in the settlement deed entered into by them on 23 August 2018 that is not completed prior to the Service Commencement Date, the Contractor shall complete such work at no cost to LUL (without prejudice to LUL's rights in relation to the work under the Legacy Contract); and
  - (G) in relation to any work being performed by the Legacy Contractor (or the Contractor as its sub-contractor) as a variation under the Legacy Contract that is not (in LUL's reasonable opinion) going to be completed prior to the Service Commencement Date, the Contractor shall prepare and submit a Contractor's Proposal to complete such work under this Contract to LUL in accordance with the Variation Procedure and the pricing for such Variation shall be no higher than the price at which the Legacy Contractor was to complete the work and shall reflect any amounts received and paid by the Legacy Contractor in relation to such work pursuant to the Legacy Contract (without prejudice to LUL's rights in relation to the work under the Legacy Contract). The Parties acknowledge that the preparation of this Contractor's Proposal shall be at no cost to LUL (save to the extent delay is caused by LUL),
- (each a "**Transition Service**" and together the "**Transition Services**").
- 3.2.2 Within ten (10) Working Days following the Effective Date, LUL and the Contractor shall each nominate at least one (1) representative who will coordinate and manage the provision of the Transition Services and any relevant issues arising in respect of the Legacy Contractor's performance of the Legacy Contract and work with each other to address any problems that arise in connection with the Transition Services (such project management activities to be consistent with Schedule 6.4 (*Project Management*)). The representatives shall meet at least once every month to discuss the Transition Services.
  - 3.2.3 LUL shall not be required to make any payments to the Contractor in respect of the Transition Services except as set out in Schedule 4.1 (*Charges and Invoicing*).
  - 3.2.4 If pursuant to Clause 3.2.1(E), LUL requests that the Contractor carries out work on the System during the Transition Period and, in the Contractor's reasonable opinion such work can be completed prior to the Service Commencement Date the Contractor shall be entitled to elect to complete such work as a variation to the Legacy Contract at its sole discretion provided that:
    - (A) the Parties shall, in advance, determine the aggregate amount of Charges that would be payable for such work on the System if it were to be completed as a Variation pursuant to this Contract; and

- (B) if such amount is lower than the charges would be payable to the Legacy Contractor in respect such variation to the Legacy Contract, the Contractor shall, in advance, procure the Legacy Contractor's written agreement that it shall only be entitled to charge LUL such lower amount in respect of that variation.
- 3.2.5 During the period from the Effective Date until (and including) 31 March 2019, in relation to the reporting and response time periods set out in:
  - (A) Part B (*Financial Reporting*) of Schedule 4.2 (*Financial Model and Financial Reports*); and
  - (B) Schedule 6.4 (*Project Management*),
 provided that the Contractor's performance is no worse than would have otherwise been required pursuant to the Legacy Contract and the Contractor is using its reasonable endeavours to comply with the timing requirements described in above, the Contractor shall be deemed not to be in breach of such requirements.

### 3.3 Duration

- 3.3.1 The Contractor shall commence provision of the Services which are not Transition Services at 03.59 hours on 21 November 2019 (the "**Service Commencement Date**").
- 3.3.2 Unless terminated earlier in accordance with its terms, the duration of this Contract includes:
  - (A) the Transition Period;
  - (B) a period of four (4) years from (and including) the Service Commencement Date (the "**Initial Period**");
  - (C) if applicable pursuant to Clause 3.3.3 (*Duration*), the Extension Period; and
  - (D) all Exit Periods,
 and this Contract terminates on the expiry of all of the periods set out at Clauses 3.2.1(A), 3.2.1(B), and 3.2.1(C) (and such date shall be the "**Expiry Date**") (such period of duration from the Effective Date to the Expiry Date being the "**Term**").
- 3.3.3 LUL may elect to extend the Term of the Contract by the Extension Period, so that the Term is seven (7) years following the Service Commencement Date, by giving the Contractor at least twelve (12) months' notice of such extension before the end of the Initial Period.

### 3.4 No exclusivity

The Parties acknowledge and agree that the provision and receipt of the Services between LUL and the Contractor shall be on a non-exclusive basis. Each of LUL and the Contractor shall be free to procure services from and provide services to (as applicable) any Other Service Provider or Third Party and, without limiting the foregoing, LUL may procure the provision of services equivalent to the Services from any Other Service Provider or Third Party during the Term and at any other time. The Parties acknowledge that any impact on the Contract as a result of any downward Variation to the scope of the Services will be determined in accordance with the Variation Procedure.

## 4. TRANSITION

### 4.1 Transitioning Operation and Maintenance of the Legacy System

- 4.1.1 The Parties agree that:

- (A) the Legacy System was designed, built, operated and maintained by the Legacy Contractor under the Legacy Contract up to the Service Commencement Date; and
  - (B) the Contractor was a sub-contractor to the Legacy Contractor in relation to the activities referred to in Clause 4.1.1(A).
- 4.1.2 Pursuant to the Legacy Contract, the title and risk in the Legacy System Assets shall transfer to LUL on the Service Commencement Date.
- 4.1.3 On the Service Commencement Date, all Legacy System Assets will transfer to LUL and the Contractor shall manage, maintain and upgrade all of the System Assets on LUL's behalf in accordance with the terms of this Contract.
- 4.1.4 The Contractor shall perform the Services under this Contract in relation to the System (which shall be, as at the Service Commencement Date, the Legacy System).
- 4.1.5 LUL grants no warranty in respect of the Legacy System (or any Legacy System Asset) and the Contractor acknowledges that:
  - (A) the Contractor has access to, and will at the Service Commencement Date have access to, all of the information and documentation that the Contractor considers necessary or relevant for the performance of the Services or its obligations under this Contract;
  - (B) the Contractor has satisfied itself of all relevant details relating to:
    - (1) the accuracy of the description of the Legacy System in Schedule 2.1 (*Technical Specification*) as at the Effective Date and the Service Commencement Date; and
    - (2) the Legacy System and the Contractor's obligations under this Contract in relation to the delivery, performance and management of the Services;
  - (C) the Contractor has completed all due diligence it deems necessary prior to entering into this Contract; and
  - (D) the Contractor shall not be entitled to make any claim whatsoever (including any claim for additional money) against LUL on the grounds that incorrect or insufficient information on any matter relating to the Services, the Legacy System or this Contract was given to it by any person, whether or not a member of the LUL Group, as at the Effective Date or the Service Commencement Date. The Parties acknowledge that if the Contractor's delivery obligations or Project Charges in relation to a Variation initiated after the Effective Date and before the Service Commencement Date are dependent on the accuracy of the information provided by LUL during the Variation Procedure, this would need to be recorded in the scope of the relevant Milestone Deliverables and/or associated Project Dependencies (as applicable).
- 4.1.6 The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or Charges arising as a result of:
  - (A) any unsuitable aspects of the Legacy System; or
  - (B) any misinterpretation of the Contractor's obligations under this Contract.

## 4.2 Transition Plan

- 4.2.1 On or before 11 January 2019, the Contractor shall prepare and submit to LUL for Approval a draft transition plan which shall, as a minimum set out:
  - (A) the Contractor's proposed process and timescales for the following:

- (1) engagement with the Legacy Contractor to agree a seamless transition of the services provided by the Legacy Contractor to the Services (as provided by the Contractor) by reference to the relevant provisions of the Legacy Contract and associated information provided by the Legacy Contractor under the Legacy Contract; and
    - (2) implementation activities including the setting up of infrastructure, processes and tools, and knowledge transfer;
  - (B) clearly outlines the steps to achieve a successful Transition;
  - (C) includes the activities to be undertaken by the Contractor relating to the development, and collation of documentation including in relation to:
    - (1) the Asset Register, the Asset Management Strategy, the Asset Management Plan and the Maintenance Documents in accordance with Schedule 2.4 (*Asset Management*);
    - (2) the Service Management Plan and Service Record in accordance with Schedule 2.9 (*Service Management*);
    - (3) the Design Baseline in accordance with Schedule 6.3 (*Document Management*);
    - (4) confirming the format and accuracy of Schedule 8.1 (*IPR Register*) and updating it as necessary;
    - (5) confirming the format and accuracy of Schedule 8.3 (*Details of Processing of Personal Data*) and updating it as necessary; and
    - (6) the development of the Final Upgrade Project Descriptions in accordance with Clause 6.1;
    - (7) the development of the Worked Example in accordance with Clause 17.5;
  - (D) the Milestones and associated Milestone Dates for each of the activities in Clauses 4.2.1(A) to 4.2.1(C);
  - (E) describes the resourcing requirements including (where relevant) the individual roles and responsibilities of LUL Personnel, Contractor Personnel, employees of the Legacy Contractor, and employees of relevant Other Service Providers; and
  - (F) identifies the Risks and associated treatments in accordance with Schedule 6.5 (*Risk Management*),
- (such plan, when Approved by LUL, being the "**Transition Plan**").
- 4.2.2 Prior to submitting its proposed draft transition plan to LUL in accordance with Clause 4.2.1, and no later than 20 October 2018, the Contractor shall consult with LUL on the contents of the Transition Plan (including by providing copies of the Contractor's working drafts), and the Contractor shall take into account any amendments reasonably required by LUL.
- 4.2.3 The Contractor shall take all steps reasonably required by LUL in order for LUL to have Approved the Transition Plan on or before 20 January 2019.
- 4.2.4 The Contractor shall:
- (A) comply with the Transition Plan; and
  - (B) ensure that each Milestone set out in the Transition Plan is Achieved on or before its Milestone Date.

#### 4.3 Project Activities under the Legacy Contract in relation to Dimetra

4.3.1 The Contractor shall deliver the upgrade of the System to Dimetra version 9.0 as a Project in accordance with Annex 4 of Appendix 1 (*Core DCS and DCS Rollout*) to Schedule 2.7 (*Upgrade Programme Plan*) and Schedule 6.4 (*Project Management*) and shall, within the three (3) months after the Effective Date, produce and submit to LUL for Approval the relevant Project Artefacts. The Parties acknowledge:

- (A) that there are no Milestone Payments associated with this Project;
- (B) that LUL shall not be entitled to any Cost Transparency Data or Delay Payments in relation thereto; and
- (C) there may be Project Dependencies associated with such Project which shall be set out in the relevant Project Artefacts.

## 5. SERVICES

5.1 The Contractor shall:

- 5.1.1 provide the Transition Services;
- 5.1.2 provide the O&M Services;
- 5.1.3 deliver Projects (including, for the avoidance of doubt, Pre-Priced Variations) in accordance with Clause 6 (*Project Delivery*) and Schedule 6.4 (*Project Management*) to complete:
  - (A) the upgrade of the core radio technology of the Legacy System from the Dimetra version 6.1 to Dimetra version 9.0 by 20 November 2020 in a manner consistent with the relevant requirements set out in Annex 4 of Appendix 1 (*Core DCS and DCS Rollout*) to Schedule 2.7 (*Upgrade Programme Plan*);
  - (B) the Upgrade Project described in Appendix 1 (*Core DCS and DCS Rollout*) to Schedule 2.7 (*Upgrade Programme Plan*);
  - (C) the upgrade of the core radio technology of the System from Dimetra version 9.0 to Dimetra version 9.1 so that the Dimetra version 6.1 core radio technology is Decommissioned, on or before 31 December 2020 (and completing such Decommissioning by 31 March 2021);
  - (D) the Upgrade Project described in Appendix 2 (*APD Delphi to C# Transition – Phase 1*) to Schedule 2.7 (*Upgrade Programme Plan*);
  - (E) Appendix 21 (*HDSL Modems*) to Schedule 2.7 (*Upgrade Programme Plan*);
  - (F) if requested to do so by LUL, the upgrade of the core radio technology of the System from Dimetra version 9.1 to Dimetra version 9.3;
  - (G) if requested to do so by LUL and initiated as a Pre-Priced Variation, each Upgrade Project (other than those set out in Clauses 5.1.3(B) to 5.1.3(E), which, as at the Effective Date, have already been initiated) in accordance with Clause 6 (*Project Delivery*) and the relevant Upgrade Project Description set out in Schedule 2.7 (*Upgrade Programme Plan*);
  - (H) Variations as requested by LUL from time to time; and
  - (I) the Exit Services; and
- 5.1.4 perform any activities which are ancillary and relevant to the performance of the above,  
(together the "**Services**").

- 5.2 The Parties acknowledge and agree that the key objectives that LUL has in procuring the Services from the Contractor are to:
- 5.2.1 deliver the Services safely;
  - 5.2.2 deliver the Services in accordance with the terms of LUL's OFCOM licence;
  - 5.2.3 transfer the provision of the relevant services from the Legacy Contractor (to the extent applicable) to the Contractor without unplanned disruption to the Telecommunications Services, passenger railway services or Users;
  - 5.2.4 have in place systems, processes and supporting resources which allow the Contractor to manage the Services to meet or better the Service Levels;
  - 5.2.5 have in place performance, reporting and contract management processes which enable and promote an efficient and open relationship between LUL and the Contractor;
  - 5.2.6 ensure that the Services represent value for money throughout the Term through ensuring that the Charges are calculated correctly and transparently and the Charges are appropriately adjusted to reflect performance;
  - 5.2.7 ensure that the Services are provided in a manner compliant with Laws relating to health and safety and the environment (including HSE procedures and directives, Contract QUENSH Conditions and any specified requirements within this Contract);
  - 5.2.8 deliver the Services without any damage to the environment, loss of LUL assets, fatalities, significant accidents or incidents involving any personnel (including the Contractor's Personnel, LUL Personnel and LUL passengers);
  - 5.2.9 deliver the Services in such a way to deliver continuous improvement in health, safety, environmental and operational performance of the Underground Network;
  - 5.2.10 support the delivery of the Telecommunications Services in such a way to support LUL's delivery of a safer and more reliable railway (in particular by minimising disruption arising from Failures and maximising their Availability of the Telecommunications Services by preventing Failures as much as reasonably practicable and rectifying them expeditiously);
  - 5.2.11 ensure that the Services are provided in accordance with LUL's target operating model and asset strategy (as notified to the Contractor from time to time);
  - 5.2.12 ensure the successful transition of the provision of the Services from the Contractor to the provision of Replacement Services by one or more Replacement Contractors with minimal disruption to the Telecommunications Services, Users, Other Service Providers, Third Parties and in a manner consistent with the Exit Plan,

(the "**LUL Objectives**").

- 5.3 The Contractor shall:
- 5.3.1 obtain, and maintain throughout the duration of this Contract, all the Required Consents;
  - 5.3.2 ensure that it shall continue to have all necessary rights in and to the Contractor IPR the Third Party IPR and any assets or materials made available by the Contractor (and/or any Sub-contractor) to LUL which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Services by LUL;
  - 5.3.3 minimise any unplanned disruption to the Services, the Users, the Telecommunications Services, or the passenger railway services when carrying out its obligations under this Contract;
  - 5.3.4 provide the Services and perform its obligations under this Contract:

- (A) in accordance with any applicable Law, the terms of the Telecommunications Licences and WTA Licences which LUL has notified the Contractor of, and any Required Consents (and the Contractor acknowledges that as at the Effective Date, it has notice of the relevant terms of LUL's Ofcom Licence 0787214/1);
  - (B) in accordance with the terms of this Contract;
  - (C) any written instructions of LUL permitted under this Contract provided compliance with such instructions would not breach any Law, the terms of the Telecommunications Licences and WTA Licences, Required Consent, any of the Insurances, Good Industry Practice or this Contract;
  - (D) in accordance with the terms of the Insurances;
  - (E) in a manner that is, as far as reasonably practicable, consistent with the LUL Objectives (provided that this Clause shall not operate to increase the scope or extent of such obligations);
  - (F) in a professional manner and with reasonable care and skill;
  - (G) using sufficient and appropriately experienced, trained and qualified personnel;
  - (H) in accordance with Good Industry Practice;
  - (I) in a timely, economic, efficient and reliable manner;
  - (J) in an open and honest manner;
  - (K) in accordance with the Contractor's own established procedures and practices to the extent the same do not conflict with Clauses 5.3.4(A) to 5.3.4(J);
- 5.3.5 ensure that any Documents provided by the Contractor to LUL are comprehensive, accurate in all material respects and prepared in accordance with Good Industry Practice;
- 5.3.6 to the extent it is legally able to do so, hold on trust for the sole benefit of LUL, all warranties and indemnities provided by any Sub-contractor or Third Party in respect of any Documents and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that LUL may notify from time to time to the Contractor;
- 5.3.7 provide LUL with such assistance as LUL may reasonably require during the Term in respect of the supply of the Services provided that this Clause 5.3.7 shall not operate to increase the scope or extent of the Services;
- 5.3.8 gather, collate and provide such information and co-operation as LUL may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract;
- 5.3.9 notify LUL in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
- 5.3.10 ensure that neither it, nor any member of the Contractor Group, brings LUL into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in LUL, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract.
- 5.4 Any obligation in this Contract which requires the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that all Sub-contractors and Contractor Personnel also do, or refrain from doing, such act or thing.

## 5.5 LUL's Overriding Rights

Subject to the provisions of Clauses 17 (*Payment*) and 53 (*Dependency Failures and Relief Events*) and Schedules 2.3 (*Access*), 2.8 (*Acceptance and Approvals*) and 3.1 (*Dependencies*):

- 5.5.1 nothing in this Contract shall restrict LUL in the proper discharge of any statutory duty or discretion or provide the Contractor with any rights in respect of LUL's operation or procurement of public transport passenger services; and
- 5.5.2 the Contractor acknowledges in particular, but without limitation, that LUL may in its sole discretion at any time determine the order, times and other terms of Access to LUL Property in accordance with Schedule 2.3 (*Access*).

## 5.6 Hierarchy

Without prejudice to Clauses 8.1 (*Variation Procedure*) and 8.4 (*Change in Law*), if the Contractor becomes aware of a conflict between any of the requirements of Clause 5.3, it shall inform LUL of the same. The Contract Manager may give written instructions as to which provisions take precedence within any such category referred to above. In the absence of such instructions, the Parties shall meet, discuss (in good faith) and agree the manner in which the Contractor shall perform the Services. For the avoidance of doubt, any written instructions given by the Contract Manager pursuant to this Clause 5.6 shall not be considered to be a Variation to this Contract and the Contractor shall not be entitled to charge LUL for any additional costs incurred. Without prejudice to the generality of the Contractor's obligations pursuant to Clause 5.3 above, the Contractor shall give precedence to the requirements of Clause 5.3 in the order in which they appear.

## 5.7 Continuing Obligation to Provide the Services

5.7.1 The Contractor shall continue to perform all of its obligations under this Contract throughout the Term and shall not:

- (A) during the period between the Effective Date and the Service Commencement Date, cause any reduction in the quality or efficiency of the services being delivered by the Legacy Contractor to LUL pursuant to the Legacy Contract until the expiry of the Legacy Contract; and
- (B) from the Service Commencement Date:
  - (1) disrupt or impair the provision of the Services in accordance with this Contract;
  - (2) suspend the supply of the Services, notwithstanding:
    - (a) any set-off or withholding of the Charges by LUL pursuant to Clause 19 (*Set-Off*) and/or Paragraph 11.20 of Schedule 4.1 (*Charges and Invoicing*);
    - (b) any withholding or deduction of Charges by LUL permitted in accordance with Schedule 4.1 (*Charges and Invoicing*);
    - (c) the existence of an unresolved Dispute; and/or
    - (d) any failure by LUL to pay any Charges,

save where any such disruption or suspension arises as a result of the directions of LUL or if the Contractor is required to do so by any statutory duty or directed by any relevant Regulatory Body to suspend some or all of the Services and the circumstances which led to such direction are beyond the Contractor's control (and do not constitute, in whole or in part, a breach of this Contract by the Contractor), the Contractor's suspension of Services in accordance with such



direction shall not be a breach of this Contract (to the extent and for the duration directed by such relevant Regulatory Body). The Contractor shall be obliged to keep LUL informed throughout any such suspension.

5.7.2 The Contractor shall indemnify LUL for, and pay on demand to LUL an amount equal to:

- (A) all Losses incurred by LUL in relation to; or
- (B) all amounts which would have been paid by the Legacy Contractor to LUL as service credits, liquidated damages or other deductions had the Legacy Contractor not been relieved of its obligation to pay service credits, liquidated damages or other deductions in respect of the reduction in performance or quality of the Legacy Contractor's services or the Legacy System caused by,

a breach by the Contractor of Clause 5.7.1(A) (save to the extent that such loss results from the Contractor's implementation of a LUL Required Variation in accordance with this Contract and the Contractor has, in accordance with the Variation Procedure, demonstrated to LUL the risk of such Loss occurring as a result of such Variation in advance of the Contractor's relevant act(s) or omissions).

## 6. PROJECT DELIVERY

### 6.1 Upgrade Project Descriptions

6.1.1 The Parties acknowledge that, as at the Effective Date, with the exception of the Pre-Priced Variation set out at Appendix 2 (*APD Delphi to C# Transition – Phase 1*) to Schedule 2.7 (*Upgrade Programme Plan*), the Upgrade Project Descriptions and the relevant work breakdown summary described in Schedule 2.7 (*Upgrade Programme Plan*) and as at the Effective Date are included on the Exchanged CD ("**Initial Upgrade Project Descriptions**") require further development by the Parties.

6.1.2 The Contractor shall within thirty (30) Working Days of the Effective Date submit to LUL via the Submissions Procedure updated drafts of each Initial Upgrade Project Description (including an updated work breakdown summary) which shall be consistent with and expand on the Initial Upgrade Project Descriptions (and, when Approved by LUL, will be a "**Final Upgrade Project Descriptions**").

6.1.3 The Contractor shall ensure that:

- (A) each of the Final Upgrade Project Descriptions in respect of Appendix 1 (*Core Site DCS and DCS Rollout*) and Appendices 4 (*Tags*) to 25 (*CER SDP Renovation Activities*):
  - (1) incorporate all of the Milestones and Milestone Dates set out in the Initial Upgrade Project Descriptions and, if applicable, includes all other Milestones and Milestones Dates reasonably required by LUL. For the avoidance of doubt, the Milestone Dates set out in the Initial Upgrade Project Descriptions shall not be changed in the Detailed Upgrade Project Descriptions unless such change is agreed by the Parties in accordance with the Variation Procedure;
  - (2) describe the Charges associated with the Upgrade Project on a Capped-Price Basis, and unless otherwise agreed by the Parties in writing the Charges shall be as set out in the Initial Upgrade Project Descriptions and the Charges shall not increase except as a direct result of the scope of the Upgrade Project identified in the relevant work breakdown summary described in Schedule 2.7

*(Upgrade Programme Plan)* and as at the Effective Date are included on the Exchanged CD having changed and such change has been in agreed by the Parties in accordance with the Variation Procedure;

- (3) reflect the Project Dependencies associated with the Upgrade Project (and unless otherwise agreed by the Parties in writing, such Project Dependencies shall be as set out in the Initial Upgrade Project Descriptions and shall not include any additional Project Dependencies);
  - (4) include a description of each of the deliverables and Documents that the Contractor will produce;
  - (5) describe in reasonable detail the resourcing volumes, activities and the basis of pricing and unless otherwise agreed by the Parties in writing, such resourcing volumes, activities and the basis of pricing shall not exceed the total resourcing volumes set out in the Initial Upgrade Project Description unless the scope of the Upgrade Project has changed and such change has been in agreed in accordance with the Variation Procedure; and
  - (6) identify the Delivery Risks and Contract Risks and associated treatments in accordance with Schedule 6.5 (*Risk Management*); and
- (B) each of the Final Upgrade Project Descriptions in respect of Appendix 3 (*APD Delphi to C# Transition – Phase 2*) and Appendices 26 (*MSN Core Bandwidth Upgrade*) to 40 (*MSN SW*):
- (1) sets out the Last Election Date;
  - (2) sets out the requirements and the rationale for the need for the Upgrade Project to be completed;
  - (3) includes a description of the work to be carried out by the Contractor;
  - (4) includes a description of the relevant technical requirements in respect of the System;
  - (5) sets out the Milestones and Milestone Dates for the Upgrade Project;
  - (6) describes the Project Dependencies (if any) associated with the Upgrade Project;
  - (7) identifies the Delivery Risks and Contract Risks and associated treatments in accordance with Schedule 6.5 (*Risk Management*);
  - (8) includes a description of each of the deliverables and Documents that the Contractor will produce in connection with the Upgrade Project;
  - (9) describes in reasonable details the resourcing volumes, activities and the basis of pricing for the Upgrade Project; and
  - (10) describes the pricing for the Upgrade Project on a Capped-Price Basis, Part-Capped Basis or Estimated Price Basis (and the price

validity date where the Charges are stated to be on a Capped-Price Basis).

6.1.4 Prior to the submission of the draft Final Upgrade Project Descriptions to LUL the Contractor shall, upon LUL's request, provide a copy to LUL of any documentation produced by the Contractor in relation to the development of the draft Final Upgrade Project Descriptions.

6.1.5 LUL and the Contractor shall each use all reasonable endeavours to finalise:

(A) the Final Upgrade Project Descriptions set out in Appendices 1 to 25 to Schedule 2.7 (*Upgrade Programme Plan*) within three (3) months (or such other period as agreed between the Parties in writing) from the Effective Date (except the Upgrade Project Description set out at Appendix 2 (*APD Delphi to C# Transition – Phase 1*) to Schedule 2.7 (*Upgrade Programme Plan*), as the Parties agree that such part of that Upgrade Project Description is in final form); and

(B) the Final Upgrade Project Descriptions set out in Appendices 26 to 40 to Schedule 2.7 (*Upgrade Programme Plan*) within six (6) months (or such other period as agreed between the Parties in writing) from the Effective Date; and

if the Parties do not finalise the Final Upgrade Project Descriptions within that time period, either Party may refer the matter as a Dispute for resolution in accordance with the Dispute Resolution Procedure.

6.1.6 Without prejudice to other provisions of this Contract, the finalisation of the Final Upgrade Project Descriptions shall be carried out in accordance with the Transition Plan, including the Milestones therein.

6.1.7 If LUL Approves a draft Final Upgrade Project Description, the Final Upgrade Project Description shall be deemed to replace the relevant Initial Upgrade Project Description from the date of LUL's notice of Approval and the Parties shall update Schedule 2.7 (*Upgrade Programme Plan*) accordingly (no later than the next annual contract conformance exercise pursuant to Clause 8.6).

## 6.2 Initiating Pre-Priced Variations in respect of Upgrade Projects

6.2.1 The Contractor shall:

(A) from the Effective Date, implement the Pre-Priced Variation in respect of the Upgrade Projects described in:

(1) Appendix 1 (*Core DCS and DCS Rollout*) to Schedule 2.7 (*Upgrade Programme Plan*);

(2) Appendix 2 (*APD Delphi to C# Transition – Phase 1*) to Schedule 2.7 (*Upgrade Programme Plan*); and

(3) Appendix 21 (*HDSL Modems*) to Schedule 2.7 (*Upgrade Programme Plan*),

and LUL shall be deemed to have issued a Variation Approval in respect of such Pre-Priced Variations; and

(B) during the Term, when (and only when) LUL issues a Variation Approval for a Pre-Priced Variation in respect of an Upgrade Project, other than those referred to in Clause 6.2.1(A), implement that Pre-Priced Variation.

6.2.2 Without prejudice to Clause 47.2, LUL may, at any time, request that the Contractor provides a written assessment of the impact on the provision of the

Services and the associated Charges if LUL were to elect not to initiate a Pre-Priced Variation in accordance with Schedule 2.7 (*Upgrade Programme Plan*).

### 6.3 Implementing Projects

- 6.3.1 The Contractor shall ensure that each Project (including Upgrade Projects implemented as Pre-Priced Variations) is implemented in accordance with Schedule 6.4 (*Project Management*) and that each Milestone in respect of a Project is Achieved on or before its Milestone Date.

### 6.4 Achievement of Milestones

- 6.4.1 The Parties shall comply with the provisions of Schedule 2.8 (*Acceptance and Approvals*) and Schedule 6.4 (*Project Management*) to determine whether a Milestone has been Achieved.

### 6.5 Delays

- 6.5.1 If the Contractor becomes aware that there is, or there is reasonably likely to be, a Delay, it shall (without prejudice to LUL's other rights and remedies under this Contract or at Law, including its rights to require a Rectification Plan in relation to a Delay pursuant to Clause 50 (*Rectification Plan Process*) and its rights under Clauses 47 (*Dependency Warning Notices*) and 53 (*Dependency Failures and Relief Events*)):

- (A) immediately notify LUL of:
  - (1) the relevant circumstances and the likelihood of any Delay; and
  - (2) the impact (or likely impact) of such Delay on the Services; and
- (B) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

- 6.5.2 If a Milestone to which Delay Payments apply has not been Achieved on or before the relevant Milestone Date, the Contractor shall be liable for Delay Payments which shall accrue

- (A) on a daily basis from (but excluding) the relevant Milestone Date, with any part day's delay counting as a day, until the date on which the Milestone is Achieved;
- (B) for a maximum period which is the shorter of:
  - (1) twenty five per cent (25%) of the total planned Project duration; and
  - (2) one hundred and twelve (112) days,(the "**Maximum Delay Payment Period**"); and
- (C) at a constant daily rate, such that the aggregate Delay Payment over the Maximum Delay Payment Period is equal to [REDACTED] of the aggregate value of all Milestone Payments for that Project.

*For Example:*

*Where the total Project cost is £100,000 and the planned Project duration is two hundred (200) days:*

*Maximum Delay Payment – [REDACTED]*

*Maximum Delay Payment Period – [REDACTED]*

*Daily Rate - [REDACTED]*

*Based on the calculations above where the upgrade project is delayed by:*

- *fifteen (15) days, the Contractor would be required to pay LUL [REDACTED] in Delay Payments.*
- *twenty-eight (28) days, the Contractor would be required to pay LUL [REDACTED] in Delay Payments.*
- *fifty-five (55) days, the Contractor would be required to pay LUL [REDACTED] in Delay Payments (i.e. the [REDACTED] capped value of the Project).*

6.5.3 In relation to a Project with Milestones to which Delay Payments have been attributed, the Contractor's liability in respect of such Delay Payments shall be LUL's exclusive financial remedy for the Contractor's Delay (without prejudice to LUL's rights or remedies in relation to any breaches (other than due to Delay) by the Contractor of its other obligations or duties under this Contract or at Law).

6.5.4 If the Contractor has not completed the upgrade of the core radio technology of the Legacy System from the Dimetra version 6.1 to Dimetra version 9.0 by 21 November 2020 pursuant to Clause 5.1.3(A), the Contractor shall procure extended support from Motorola for Dimetra version 6.1 in order to provide the O&M Services at no cost to LUL unless such failure to complete the upgrade of the core radio technology of the Legacy System from the Dimetra version 6.1 to Dimetra version 9.0 by 21 November 2020 is due to a Dependency Failure in which case, LUL shall pay to the Contractor any applicable costs associated with securing Relief Event Costs for such extended support in accordance with Clause 53 (*Dependency Warning Notices and Relief Events*), which shall:

- (A) during the first six (6) months of such extended support be equal to the amount properly due to Motorola in respect of such extended support pursuant to the Motorola Sub-contract (which the Parties acknowledge is capped at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in aggregate for the first six (6) months of such extended support); and
- (B) thereafter, be calculated on a cost reimbursable basis.

## **7. SYSTEM ASSETS**

7.1 In accordance with the terms of the Legacy Contract, the Legacy Contractor (and the Contractor as the Legacy Contractor's sub-contractor under the Legacy Contract) has established and maintained the Legacy System Asset Register. Shortly before the Service Commencement Date, the Legacy Contractor shall, pursuant to its obligations under the Legacy Contract, provide the Legacy System Asset Register to LUL. The Legacy System Asset Register shall form the basis of the Asset Register maintained by the Contractor in accordance with its obligations set out in Schedule 2.4 (*Asset Management*).

7.2 The Contractor warrants, represents and undertakes to LUL that:

7.2.1 as at the date of expiry of the Legacy Contract the Legacy System Asset Register; and

7.2.2 from the remainder of the Term thereafter, the Asset Register,

contains all of the information needed by the Contractor for the performance of the Services or its obligations under this Contract as at the Effective Date and the Service Commencement Date (including, if implemented in accordance with Clause 6.2 the Pre-Priced Variations).

## **7.3 System Assets**

- 7.3.1 All assets installed in the System or Spares obtained by or on behalf of the Contractor pursuant to its obligations under this Contract shall be System Assets for the purposes of this Contract.
- 7.3.2 In respect of all System Assets installed or obtained by or on behalf of the Contractor pursuant to its obligations under this Contract, the title and risk shall transfer to LUL:
- (A) in respect of a System Assets (excluding Spares) on the earlier of:
    - (1) the installation of such System Asset in the System; or
    - (2) payment of the relevant Charges in respect of such System Asset; and
  - (B) in respect of a Spare, the date such Spare is received by the Contractor at one of the Contractor's storage facilities,
- and the Contractor shall ensure that its equipment purchase contracts permit the full transfer of title and benefit of any associated warranties, support to LUL.
- 7.3.3 The Contractor warrants, represents and undertakes to LUL that the System Assets referred to in Clauses 7.3.1 and 7.3.2, their installation in or integration into the System and the performance of an Upgrade Project shall be:
- (A) in compliance with the system specifications described in Schedule 2.1 (*Technical Specification*) and the Design Baseline;
  - (B) in compliance with LUL's performance specifications described in Schedule 2.2 (*Performance Regime*);
  - (C) in compliance with all relevant OEM specifications (and the Contractor shall ensure that LUL has the benefit of all applicable OEM warranties in relation to defects);
  - (D) in compliance with the Standards listed in Schedule 2.6 (*Standards*);
  - (E) in accordance with this Contract; and
  - (F) in compliance with applicable Law.
- 7.3.4 Without prejudice to the generality of the foregoing, the Contractor agrees that its warranties, representations and undertakings pursuant to Clause 7.3.3 shall apply in respect of the System Assets procured or installed by or on behalf of the Contractor as sub-contractor to the Legacy Contractor pursuant to the Legacy Contract in relation to the upgrade of the core radio technology of the Legacy System to the Dimetra version 9.0.

#### **7.4 Asset Management**

The Contractor shall comply with the provisions of Schedule 2.4 (*Asset Management*) in relation to the operation, management, maintenance, repair, upgrade and renewal of the System Assets.

### **8. VARIATION AND CHANGE**

#### **8.1 Variation Procedure**

Any requirement for a Variation shall be subject to the Variation Procedure set out in Schedule 5.1 (*Variation Procedure*).

#### **8.2 Maintenance changes**

The Connect Change Control Procedure sets out certain changes to the System which the Contractor may elect to apply. The Contractor shall ensure that such changes are carried out in accordance with the Connect Change Control Procedure and the Contractor

acknowledges that the implementation of such changes or updates (and the impact thereof) shall be at no additional cost to LUL.

### **8.3 Operational processes**

The Contractor shall ensure that all updates to the processes and/or procedures set out or referred to in the Service Management Documents which are followed by the Contractor in performing the Services are submitted to LUL for Assurance and the Contractor acknowledges that the implementation of such changes or updates (and the impact thereof) shall be at no additional cost to LUL.

### **8.4 Change in Law**

8.4.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

- (A) a General Change in Law; or
- (B) a Specific Change in Law where the effect of that Specific Change in Law on the Services or the performance of the Contractor's obligations pursuant to this Contract is reasonably foreseeable at the Effective Date.

8.4.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 8.4.1(B) (*Operational Processes*), the Contractor shall issue a Contractor Proposed Variation in accordance with Schedule 5.1 (*Variation Procedure*).

8.4.3 Any variation in the Charges or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause 8.4.1(B) (*Operational Processes*)) shall be implemented in accordance with the Variation Procedure.

### **8.5 Third Party Services and Downwards Variation**

#### **8.5.1 Third Party Services**

LUL shall have the right to provide itself, or procure from any Third Party, any assets or services to be included in (or otherwise in relation to) the System or other systems, assets or services which interface with the System. In accordance with Clause 9 (*Procurement of System Assets and Services*), in relation to any such assets or services, LUL shall consult with the Contractor in advance and the Contractor shall provide all assistance and information required by LUL or any relevant third party in respect of integrating into and/or interfacing with the System and the Services provided pursuant to this Contract. The Contractor's assurance requirements for any such integration or interfacing shall be no more onerous than reasonably required to address the risk associated with the work and, for common work of this type, the Parties will work together to develop standard assurance requirements, including in respect of original equipment manufacturer support, training, provision of spares, and environmental requirements for the relevant System Asset.

#### **8.5.2 Downward Variations**

LUL shall be entitled to issue a Downward Variation to reduce the volume or scope of the System or Services and any adjustment to the Charges shall be determined in accordance with the Variation Procedure.

### **8.6 Annual conformance of this Contract**

Within ten (10) Working Days after each Financial Year, the Contractor shall (at its own cost) prepare and submit to LUL for Approval in accordance with the Submissions Procedure a conformed copy of this Contract (including for the avoidance of doubt all

Schedules and Annexes), which reflects all variations to this Contract agreed by the Parties prior to such anniversary date (whether as Variations or otherwise agreed in writing by the Parties). For the avoidance of doubt, such conformed copy shall not be of itself an amendment to the Contract and any errors or inaccuracies in such conformed copy shall not be deemed to amend, vary, waive, release restrict or discharge any right or obligation which a Party may have pursuant to this Contract.

## **9. PROCUREMENT OF SYSTEM ASSETS AND SERVICES**

9.1 The Contractor shall, if and to the extent requested to do so by LUL, procure equipment to be used in connection with the System on behalf of LUL by either (at LUL's election):

- 9.1.1 facilitating direct supply by the relevant vendor to LUL; and
- 9.1.2 placing orders on LUL's behalf with the relevant vendor through the Contractor's supply chain in which case LUL shall pay the associated supply chain charges and, (if applicable) other fees agreed in writing by the Parties and the Contractor shall pass through to LUL all title, warranties and other rights that it may receive with respect to such equipment to be used in connection with the System,

and, for the avoidance of doubt, the Contractor shall be entitled to charge LUL for time incurred by its Personnel not included in the O&M Service Charges in procuring such equipment to be used in connection with the System on behalf of LUL.

9.2 If LUL acquires assets which it requires the Contractor to manage as System Assets (whether pursuant to Clause 9.1 or otherwise):

- 9.2.1 to the extent that such assets comply with Schedule 2.1 (*Technical Specification*) and the Design Baseline (where appropriate), the Contractor shall manage and maintain such assets as System Assets in the same manner as System Assets which have been procured by the Contractor, provided that the Contractor may require LUL to pay an additional fee (which has been approved in advance by LUL) in respect of the technical and operational activities which the Contractor is reasonably required to perform in order to accept (in accordance with the Acceptance Procedure) the relevant assets into operational service, such fee to be determined in accordance with the Variation Procedure;
- 9.2.2 the Contractor shall procure OEM Support in respect of such System Assets; and
- 9.2.3 except as specified in Clause 9.2.1 (Procurement of System Assets and Services) and Schedule 4.1 (*Charges and Invoicing*), the Contractor shall not be entitled to any relief or additional Charges in respect of its use and management of such assets (without prejudice to the Contractor's rights under Clause 53 (*Dependency Failures and Relief Events*) in relation to any Relief Events).

## **10. INTERFACING WORKS AND SERVICES**

10.1 To the extent that the Contractor's activities pursuant to this Contract interface with or otherwise affect or may affect the System or the Legacy Contractor's provision of services to LUL pursuant to the Legacy Contract, the Contractor acknowledges that such activities shall, at LUL's sole discretion, be performed as 'Interfacing Works and Services' for the purposes of clause 62A of the Legacy Contract and, accordingly:

- 10.1.1 each party shall take reasonable steps to procure the Legacy Contractor's co-operation with the Contractor when the Contractor is undertaking such works pursuant to this Contract;
- 10.1.2 the Contractor shall provide such information and implementation details (which shall be correct and accurate in all material respects) as LUL reasonably requires in order to determine the potential impact of such activities on the performance of the Legacy System (if any);
- 10.1.3 the Contractor shall ensure that, where the Legacy Contractor, acting reasonably, considers that such activities will impact the Legacy System, the Contractor shall work with the Legacy Contractor to enable the Legacy Contractor to notify to LUL



- of the standards and procedures reasonably required to be adopted by the Contractor in the implementation or operation of such activities in order to prevent any adverse consequences of such impact on the Legacy System; and
- 10.1.4 the Contractor shall comply with any standards and procedures notified by the Legacy Contractor pursuant to Clause 10.1.3.
- 10.2 The Contractor shall indemnify and hold harmless LUL against any demonstrable costs, claims, demands, expenses and damages of whatsoever nature incurred by LUL arising out of or in connection with any claim by the Legacy Contractor under the Legacy Contract caused by any act or failure to act by the Contractor in:
- 10.2.1 carrying out its obligations pursuant to its sub-contract with the Legacy Contractor in relation to the Legacy Contract; and
- 10.2.2 carrying out its obligations under this Contract, except to the extent that such costs, claims, demands, expenses or damages were caused or contributed to by any act by LUL.
- 10.3 For the avoidance of doubt, neither Party shall be entitled to recover damages from the other Party or the Legacy Contractor or under this Contract more than once in respect of the same loss (i.e. no double recovery).
- 11. TERMS OF OCCUPATION AND ACCESS**
- 11.1 General**
- Schedule 2.3 (*Access*) and Schedule 3.1 (*Dependencies*) shall have effect in respect of the Contractor's use and access to the Project Property for the purposes of carrying out the Services. All such Project Property must be used and accessed by the Contractor only for the purposes of exercising its rights and performing its obligations under this Contract.
- 11.2 LUL Property**
- 11.2.1 The Contractor shall be entitled to use and access of LUL Property in accordance with and subject to Paragraph 3 of Schedule 2.3 (*Access*) and where such access also requires access over Third Party Property then Clause 11.4.2 shall apply.
- 11.2.2 No licence or other fees, levies, capital premia, rents or charges shall be payable by the Contractor to LUL in respect of the access provided to LUL Property pursuant to this Contract.
- 11.2.3 If the Contractor concludes that it is necessary or desirable for the purpose of performing its obligations or exercising its rights under this Contract to locate any new System Assets on LUL Property or have new access routes across LUL Property then such requirement shall be considered and if approved by LUL implemented in accordance with the Variation Procedure.
- 11.2.4 LUL shall provide or procure the provision of use and access of LUL Property in order for the Contractor to operate its service desk (for the purposes of the Service Desk pursuant to this Contract and service desk services to other customers). The Parties acknowledge that as at that the Effective Date such LUL Property is located at Palestra at 197 Blackfriars Road, London SE1 8NJ and is occupied by the Contractor pursuant to two licences dated 10 December 2012 and 26 April 2013 and that any renewal of such licences or new leases or licences in respect of replacement LUL Property shall be provided on similar terms.
- 11.3 Legacy Contractor Property and Contractor Property**
- 11.3.1 LUL shall be entitled to use and access of the Contractor Property in accordance with and subject to Paragraph 4 of Schedule 2.3 (*Access*).

- 11.3.2 In relation to any Systems Assets located on Contractor Property or in respect of which access and use of such property are required by the Contractor for the purposes of providing the Services:
- (A) the Contractor shall be responsible for obtaining or maintaining existing property rights (including easements), licences to occupy, access to and/or use of (as appropriate) such property in connection with this Contract (subject always to Clause 11.3.3); and
  - (B) the Contractor shall be responsible for all licence and other fees, levies, capital premia, rents and other payments or charges (including Irrecoverable VAT) payable in consideration of locating or operating System Assets on Contractor Property at the times specified for payment.
- 11.3.3 LUL shall in relation to any Legacy Contractor Property use reasonable endeavours to enforce its rights under the Legacy Contract to permit such use and access by the Contractor and the Contractor shall not do or permit anything to be done that would prevent access for the purposes of performing the Services under this Contract.
- 11.3.4 If the Contractor concludes that it is necessary or desirable for the purpose of performing its obligations or exercising its rights under this Contract to locate any new System Assets on Legacy Contractor Property or Contractor Property or have new access routes across such property then such requirement shall be considered and if approved by LUL implemented in accordance with the Variation Procedure.
- 11.3.5 LUL and the Contractor acknowledge that the rights of the Contractor to the use and access of the Legacy Contractor Property and the Contractor Property will expire prior to the Expiry Date and new rights of use and access will be required and where:
- (A) following such expiry the relevant land or buildings becomes LUL Property then the provisions of Clause 11.2 shall apply to the Contractor's use and access of such land or buildings; and
  - (B) following such expiry the relevant land or buildings becomes Third Party Property then the provisions of Clause 11.4.3 shall apply to the Contractor's use and access of such land or buildings.

#### 11.4 Third Party Property

- 11.4.1 If either LUL or the Contractor concludes that it is necessary or desirable for the purpose of the Contractor in performing its obligations or exercising its rights under this Contract to retain any existing System Assets or locate any new System Assets on Third Party Property then this Clause 11.4 (*Terms of Occupation and Access*) will apply.
- 11.4.2 The Contractor shall be entitled to use and access of Third Party Property in accordance with and subject to this Clause 11.4 and Paragraph 5 of Schedule 2.3 (*Access*).
- 11.4.3 **Existing Systems Assets on Legacy Contractor Property or Contractor Property which becomes Third Party Property**

Where the requirement for use and access to Third Party Property by the Contractor arises due to the expiry of rights in respect of a Legacy Contractor Property or a Contractor Property then:

- (A) From the Effective Date the Contractor shall co-operate with LUL and the Legacy Contractor (where applicable) to identify relevant Legacy Contractor Property and Contractor Property which may in the future become Unavailable Third Party Property for the purposes of this Contract;
- (B) The provisions of Clause 11.5 shall apply in respect of the preparation of a Contingency Plan in respect of such Legacy Contractor Property or a Contractor Property and the Contractor shall comply with LUL's reasonable requirements to ensure that a Contingency Plan is in place in respect of such land and buildings such that it does not constitute Unavailable Third Party Property;
- (C) Where a Contingency Plan provides that use and access to a Third Party Property is required by LUL and the Contractor to allow the Contractor to perform the Services, Clause 11.4.6 shall apply; and
- (D) Subject to sub-clause 11.4.5(C), if Legacy Contractor Property or a Contractor Property will become Unavailable Third Party Property such that the Contractor will be unable to carry out the Services in accordance with the Contract, then LUL:
  - (1) may require the Contractor to implement the Contingency Plan, or such part thereof as relates to the Unavailable Third Party Property, as a Variation; and
  - (2) the Contractor's inability to perform the Services to the extent it is prevented from doing so due to relevant Unavailable Third Party Property will be a Dependency Failure,

provided that: (i) where such expiry results from a breach by the Legacy Contractor or the Contractor of the terms and use of access then the Contractor's own costs shall be excluded from the associated Variation Pricing or Incremental Costs (as applicable), and (ii) in relation to any such Contractor Property the Contractor must notify LUL no later than two (2) months later than the expiry of such rights that such Contractor Property will become Unavailable Third Party Property.

#### **11.4.4 Existing Systems Assets located on LUL Property which becomes Third Party Property**

Where the requirement for continued use and access to Third Party Property by the Contractor relates to System Assets located on LUL Property as at the Service Commencement Date and arises due to the expiry of rights in respect of that LUL Property pursuant to the terms of the existing relevant Property Documentation then:

- (A) The provisions of Clause 11.5 shall apply in respect of the preparation of a Contingency Plan in respect of such LUL Property and the Contractor shall comply with LUL's reasonable requirements to ensure that Contingency Plans are in place in respect of such LUL Property such that it does not become Unavailable Third Party Property for the purposes of this Contract;
- (B) Where a Contingency Plan provides that use and access to a Third Party Property is required by LUL and the Contractor to allow the Contractor to perform the Services, Clause 11.4.4(C) shall apply; and

- (C) Subject to sub-clause 11.4.5(C), if LUL Property will become Unavailable Third Party Property such that the Contractor will be unable to carry out the Services in accordance with the Contract, then LUL:
  - (1) may require the Contractor to implement the Contingency Plan, or such part thereof as relates to the Unavailable Third Party Property, as a Variation; and
  - (2) the Contractor's inability to perform the Services to the extent it is prevented from doing so due to relevant Unavailable Third Party Property will be a Dependency Failure.

#### **11.4.5 New System Assets on Third Party Property**

If either LUL or the Contractor concludes that it is necessary or desirable for the purpose of the Contractor in performing its obligations or exercising its rights under this Contract to locate any new System Assets on Third Party Property or new rights of access across Third Party Property are required in order to access new System Assets then:

- (A) Such requirement shall be considered and if approved by LUL implemented in accordance with the Variation Procedure;
- (B) The Contractor shall not locate any new System Assets on Third Party Property:
  - (1) save as expressly permitted in a Variation Approval; and
  - (2) until LUL has obtained the necessary rights and notified such rights to the Contractor;
- (C) Where a Variation Approval provides that use and access to a Third Party Property is required by the Contractor in order to located new System Assets on Third Party Property to allow the Contractor to perform the Services, Clause 11.4.6 shall apply;
- (D) The Contractor shall not be required to implement a Variation where LUL is unable to provide the necessary rights for use and access under this Clause 11.4.6.

#### **11.4.6 LUL's obligation to obtain rights over Third Party Property**

- (A) LUL shall be responsible for obtaining, at their own cost, property rights (including easements), licences to occupy, access to and/or use of (as appropriate) Third Party Property whether in relation to existing System Assets or new System Assets in connection with this Contract provided that LUL gives no undertaking or warranty that such property rights (including easements), licences to occupy, access and/or use (as appropriate) will be available for such purposes.
- (B) The Contractor shall provide all reasonably required assistance in relation to LUL's obligations under Clause 11.4.6(A) in a timely manner.
- (C) Until the Expiry Date, all licence and other fees, levies, capital premia, rents and other payments or charges, taxes and rates (including Irrecoverable VAT) payable in consideration of locating or operating System Assets on Third Party Property or gaining access over Third Party Property shall be paid by LUL at the times specified for payment in the Property Documentation.

## 11.5 Contingency Plans

- 11.5.1 LUL may at any time following the Effective Date prepare and submit to the Contractor a Contingency Plan. LUL and the Contractor shall liaise with each other as appropriate to discuss the Contingency Plan.
- 11.5.2 The Contractor shall provide all necessary information and assistance to allow LUL to conclude the Contingency Plan within 21 days of such submission (or such other period of time as agreed between the Parties both acting reasonably).
- 11.5.3 Each Party acknowledges that as at the Effective Date the premises at Spur Road are Contractor Property for which the lease expires on 21 December 2022 and the leases for other Contractor Property in Waterloo may expire on, before or after that date. In accordance with Clause 11.4.3 LUL shall maintain a Contingency Plans in relation to such property and if the Contingency Plan requires the Contractor to extend the current lease(s) or move out of such property such Contingency Plan(s) will be implemented in accordance with the Variation Procedure.

## 12. SAFETY

### 12.1 General Provisions

- 12.1.1 The Contractor shall supply the Services and perform all of its obligations under the Contract in a manner which ensures (so far as reasonably practicable) the safety of all employees, agents, contractors (including the Contractor and Connected Persons), passengers and other invitees of any member of the LUL Group who are on or near or may be adversely affected by the System, and any other person to whom the Contractor may owe any duty of care or other responsibility and which takes full account of the risks involved in operating the System and without prejudice to the foregoing, so as not to prejudice LUL's ability to provide a safe Underground Network.
- 12.1.2 The Contractor shall comply with the provisions of Schedule 2.10 (*Safety, Quality and Environmental Requirements*) in relation to the operation, management, maintenance, repair, upgrade and renewal of the System Assets.
- 12.1.3 The Contract QUENSH Conditions list safety critical activities. For the avoidance of doubt, with regard to System Assets (train radio, cable networks, transmission networks) listed within Contract QUENSH Conditions, although the activities are deemed safety critical, the System Assets themselves are not deemed to be safety critical assets and no SIL ratings are applied to these assets. However, these System Assets can be used to provide train movement authority so the safety controls are implemented by the end user of these systems e.g. verbal message discipline by the train driver and line controller when using System Assets. Due to the operational criticality of these assets for the efficient running of the railway, it is important that activities on these System Assets are controlled and undertaken by competent persons. An Institution of Railway Signal Engineers licensing scheme is not mandated for assuring the competency of individual, but this or an alternative equivalent competency scheme must be in place to provide such assurance.

### 12.2 Emergency Preparedness

- 12.2.1 The Contractor shall provide reasonable assistance and co-operation in the planning of and testing LUL's emergency preparedness arrangements that impact on, or require the use of, the Services including the response to any Incident save that where the Contractor acting reasonably considers that complying with its obligation outlined in this Clause 12.2.1 (*Emergency Preparedness*) would have an adverse impact upon its provision of the Services, it shall notify LUL accordingly and the Contractor and LUL shall co-operate to avoid such impact (if

possible). To the extent that such impact cannot be avoided, the Contractor shall (at LUL's option which shall, if notified verbally, be confirmed as soon as reasonably practicable in writing) either be relieved from its obligation to provide the relevant Services which shall, for the purposes of calculating any Contract Payment, be deemed to have been performed or the Contractor's obligations under this Clause 12.2.1 (*Emergency Preparedness*) shall be suspended (as appropriate) to the extent agreed between the Parties, or in default of such agreement as determined under the Dispute Resolution Procedure. Pending receipt by the Contractor of notification from LUL, the Contractor shall not be required to comply with obligations under this Clause 12.2 (*Emergency Preparedness*) (which shall be deemed temporarily suspended).

- 12.2.2 The Contractor shall provide reasonable assistance and co-operation in response to an emergency upon request by LUL or any Connected Person (LUL) or Authorised Third Parties for such assistance or co-operation.

### 12.3 **Legislative and Regulatory Requirements**

#### 12.3.1 **Wireless Telegraphy Act 2006**

The Contractor shall ensure that the relevant System Assets operate in accordance with the LUL Licence (licence number 0787214/1 issued by the Office of Communications) requirements and restrictions, including:

- (A) at the correct frequency and power levels; and
- (B) the compilation, maintenance and availability of records relating to the use of the relevant System Assets are in accordance with paragraph 6 of the LUL Licence.

#### 12.3.2 **Transport and Works Act 1992**

The Contractor shall comply with the Contract QUENSH Conditions and Part II Chapter 1 of the Transport and Works Act 1992 relating to drugs and alcohol.

#### 12.3.3 **Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 2006**

The Contractor shall obtain LUL's written approval or consent (not to be unreasonably withheld and, for the avoidance of doubt, such approval or consent shall not be considered unreasonably withheld where LUL reasonably considers that the giving of such approval or consent would give rise to a breach of the Regulations) in relation to any works, plant or equipment requiring approval under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 2006.

#### 12.3.4 **Fire Precautions (Sub-surface Railway Stations) Regulations 2009**

The Parties shall co-operate to ensure compliance by the Parties with the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 when the Contractor is carrying out any works on LUL Property and when performing any of its other obligations under the Contract.

### 13. **QUALITY ASSURANCE**

The Contractor shall comply with the provisions of Schedule 2.10 (*LUL Safety, Quality and Environmental Requirements*).

### 14. **ENVIRONMENT**

- 14.1 The Contractor shall comply with the provisions of Schedule 2.10 (*LUL Safety, Quality and Environmental Requirements*).

#### **Environmental Losses**

14.2 LUL undertakes to the Contractor:

- 14.2.1 to pay an amount equal to any Environmental Losses arising out of or relating to the presence of, or any discharge, spillage, leak, escape or release into the Environment at any time of Hazardous Material present at any LUL Property or other assets of LUL or which is in the ownership or possession of LUL or any Connected Person (LUL) whether, in any case, before or after the Service Commencement Date unless and to the extent that the Environmental Loss was caused or contributed to by a System Asset or any act or omission of the Contractor or any Connected Person except acts or omissions necessarily arising from the proper performance of its obligations under this Contract; and
- 14.2.2 to observe Good Industry Practice having regard to the circumstances in which such Environmental Losses arose.

14.3 Subject to Clause 14.1 (*Environment*), the Contractor undertakes to LUL:

- 14.3.1 to pay an amount equal to any Environmental Losses arising out of or relating to the presence of, or any discharge, spillage, leak, escape or release into the Environment at any time of Hazardous Material in the ownership or possession of the Contractor or any Connected Person (unless and to the extent that the Environmental Loss was caused or contributed to by any act or omission of LUL or any Connected Persons (LUL) or Invitees), any System Asset or arising from the proper performance of its obligations under this Contract; and
- 14.3.2 to observe Good Industry Practice having regard to the circumstances in which the Environmental Losses in question arose.

In this Clause 14.3 (*Environment*), "**Invitee**" means any person who is expressly authorised to enter into or be present on any LUL Property or Contractor Property and who is not entering or present by reason of a contractual or statutory right, or is a trespasser.

14.4 The covenants in Clause 14.2 (*Environment*) shall not extend to:

- 14.4.1 any claim unless Notice of such claim (setting out reasonable particulars of the grounds on which such claim is based and the amount of the claim) is given in writing by the Contractor to LUL on or before the date falling two (2) years after the Expiry Date and any such claim shall (if not previously satisfied settled or withdrawn) be deemed to have been withdrawn twelve (12) months after the date the claim is notified unless the Dispute Resolution Procedure has been initiated in respect of the claim;
- 14.4.2 (except in respect of costs and Irrecoverable VAT incurred to prevent, eliminate, reduce, limit, mitigate or investigate any such liability) any claim in respect of any contingent liability unless and until such contingent liability becomes an actual liability and is due and payable;
- 14.4.3 subject to Clauses 14.6 and 14.7 (*Environment*), any Environmental Loss which would not have been suffered or incurred if the Contractor had (subject to Clauses 14.11.2 and 14.11.3 and 14.11.4 taken all reasonable steps to avoid or mitigate the Environmental Liability which gave rise to, or in the absence of mitigation, might give rise to, a claim under Clause 14.2;
- 14.4.4 subject to Clauses 14.6, 14.7 (*Environment*), 14.9.1 and 14.9.3 (*Information*) and 14.11.3 (*Procedure Where a Claim is Made in respect of Remedial Action*), any claim in respect of any matter, act, omission or circumstance (or combination thereof) to the extent that the same would not have occurred but for any wilful or negligent act or omission of the Contractor (or any of its employees, agents, consultants, contractors or sub-contractors) which would give rise to a claim under this Contract;
- 14.4.5 any claim unless the aggregate amount of all claims for or for a proportion of which LUL would otherwise be liable under Clause 14.1 (*Environment*) together exceeds [REDACTED] (as increased or decreased on

each anniversary of the Effective Date in line with any increase or decrease in the Retail Price Index) and once exceeded the Contractor shall be entitled to recover all costs and Irrecoverable VAT below such threshold as well as above together with payment of interest at the Applicable Rate from the date the costs were incurred. If at the Expiry Date there are amounts below such threshold which have not yet been recovered, the Contractor shall be entitled to recover the costs and Irrecoverable VAT which have not yet been recovered.

- 14.5 The covenants in Clause 14.3 (*Environment*) shall not extend to:
- 14.5.1 any claim unless Notice of such claim (setting out reasonable particulars of the grounds on which such claim is based and the amount of the claim) is given in writing by LUL to the Contractor before the date falling two (2) years after the Expiry Date and any such claim shall (if not previously satisfied, settled or withdrawn) be deemed to have been withdrawn on the date falling one (1) year after the date the claim is served unless the Dispute Resolution Procedure has been initiated in respect of the claim;
  - 14.5.2 (except in respect of costs and Irrecoverable VAT incurred to prevent, eliminate, reduce, limit, mitigate or investigate any such liability) any claim in respect of any contingent liability unless and until such contingent liability becomes an actual liability and is due and payable;
  - 14.5.3 subject to Clauses 14.6, 14.7 (*Environment*), 14.9.2 and 14.9.3 (*Information*) and 14.11.3 (*Procedure Where a Claim is Made in respect of Remedial Action*), any claim in respect of any matter, act, omission or circumstance (or combination thereof) to the extent that the same would not have occurred but for any wilful or negligent act or omission of LUL (or any of its employees, agents, consultants, contractors or sub-contractors) which would give rise to a claim under this Contract;
  - 14.5.4 subject to Clauses 14.6 and 14.7 (*Environment*) any Environmental Loss which would not have been suffered or incurred if LUL had obtained, or would reasonably be expected to have obtained, knowledge of the relevant circumstances and had taken all reasonable steps to avoid or mitigate the Environmental Liability which has given rise to, or in the absence of mitigation, might give rise to, a claim under Clause 14.3 (*Environment*);
  - 14.5.5 any claim unless the aggregate amount of all claims for or for a proportion of which the Contractor would otherwise be liable under Clause 14.3 (*Environment*) together exceeds [REDACTED] (as increased or decreased on each anniversary of the Effective Date in line with any increase or decrease in the Retail Price Index) and once exceeded LUL shall be entitled to recover all costs and Irrecoverable Vat below such threshold as well as above together with payment of interest at the Applicable Rate from the date the cost were incurred. If at the Expiry Date there are amounts below such threshold which have not yet been recovered, LUL shall be entitled to recover the costs and Irrecoverable Vat which have not yet been recovered.
- 14.6 Subject to Clauses 14.11.2 and 14.11.3 (*Environment*), LUL and the Contractor shall take all reasonable steps to avoid or mitigate any Environmental Losses which give rise to, or in the absence of mitigation might give rise to, a claim under Clause 14.1 or 14.3 (*Environment*).
- 14.7 Neither LUL nor the Contractor shall be liable in relation to any claim hereunder if and to the extent that LUL or the Contractor can show that such claim would not have occurred or was increased or made more costly (to the extent only of such increased cost) as a result of the other volunteering information concerning any actual or potential Environmental Liability to a Competent Authority or other Third Party without the prior written consent of LUL or the Contractor (such consent not to be unreasonably withheld or delayed) except:
- 14.7.1 in case of emergency; or



- 14.7.2 where LUL or the Contractor reasonably believe such disclosure to be required under any Law or Required Consent or for the protection of the public and/or employees.

#### 14.8 Hazardous Materials

Without prejudice to any other provision of this Clause 14, each Party covenants from the Effective Date to exercise due care and to take reasonable precautions in accordance with Environmental Laws and to the standard of a reasonable and prudent operator applying Good Industry Practice with respect to the storage, use and disposal of any Hazardous Materials in their respective ownership with the intention that their relevant operations or activities will not cause significant Harm or Damage to the Environment.

#### 14.9 Information

Without prejudice to Clauses 14.1 and 14.3 (*Environment*), if information becomes available to a Party which indicates that the condition of any part(s) of the System or any discharge, spillage, leak or escape of Hazardous Material may or will cause significant Harm or Damage to the Environment, that Party:

- 14.9.1 shall inform the other Party as soon as reasonably practicable in writing of all such matters;
- 14.9.2 subject to Clause 14.1, 14.3 (*Environment*), 14.11.2 and 14.11.3 (*Procedure Where a Claim is Made in respect of Remedial Action*), shall as soon as reasonably practicable take all reasonable precautions and actions to prevent or minimise or mitigate any such risks or harm all in accordance with Clause 14.11.1 (*Procedure Where a Claim is Made in respect of Remedial Action*) and Good Industry Practice;
- 14.9.3 shall consult as fully as is reasonably practicable as to the scope of any Remedial Action and shall, subject to Clause 14.11.4 (*Procedure Where a Claim is Made in respect of Remedial Action*), (applying Good Industry Practice) comply with any reasonable requests and requirements of the other Party in respect of any Remedial Action;
- 14.9.4 shall supply such information (including copies of relevant documents), permit such access to its plant managers and to the System and give such co-operation as reasonably requested by the other Party (including, without limitation, meeting with and reviewing matters with the other Party), to enable the other Party to assess potential Environmental Liability and to ensure that the relevant Party is discharging its obligations under this Clause.

#### 14.10 Conduct of Environmental Claims

- 14.10.1 If either Party becomes aware of any matter which might give rise to a claim or counterclaim by it (the "**Claimant**") under this Clause, the following provisions shall apply.
- 14.10.2 The Claimant shall as soon as reasonably practicable give written Notice to the other Party of the matter (stating in reasonable detail the nature of the matter and, so far as practicable, the amount likely to be claimed) and shall consult as fully as is reasonably practicable with the other Party with respect to the matter and particularly in relation to any negotiations and/or proceedings arising out of any claim or liability; if the matter has become the subject of any proceedings the Claimant shall give the Notice within sufficient time to enable the other Party to have time to contest the proceedings.
- 14.10.3 The Claimant shall:
- (A) take such action and institute such proceedings, and give such information and assistance (including access to any relevant property, premises and personnel and the right to copy or photograph any assets, documents and works for the purpose of evaluating or disputing any

claim or liability), as the other Party or (if appropriate) its insurers may reasonably request, to:

- (1) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
  - (2) enforce against any person (other than the Claimant) the rights of the Claimant or its insurers in relation to the matter; and
- (B) if the other Party so requests, allow the other Party or its insurers to have the exclusive conduct of the proceedings, in each case on the basis that the other Party shall fully reimburse the Claimant for all reasonable costs incurred as a result of any request or nomination by the other Party or its insurers.
- 14.10.4 The Claimant shall not admit liability in respect of or settle any matter which is or may become the subject of a claim under this Clause 14 without obtaining the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 14.10.5 (A) Without prejudice to the validity of any claim or alleged claim under Clause 14, if either Party becomes aware of any matter that might give rise to a claim by that Party against the other Party under Clause 14.1 or 14.3 (*Environment*) (as appropriate) in relation to electric and/or magnetic fields that Party shall give written Notice of that fact as soon as reasonably practicable to the other Party.
- (B) Each Party shall allow the other Party and its environmental experts and professional advisers to investigate the matter or circumstance alleged to give or which may give rise to a claim under this Clause 14 and whether and to what extent any amount is payable in respect of such claim and for such purpose the other Party shall give that Party all such information and assistance as that Party or its environmental experts or professional advisers may reasonably request.
- 14.10.6 If a claim under this Clause 14 is as a result of or in connection with any claim by or liability to a Third Party then except insofar as that Party expressly waives in writing its rights under Clause 14.1 or 14.3 (*Environment*) (as appropriate) in respect of any such matter the other Party shall be entitled to dispute or contest such claim or liability and to have the conduct of any related proceedings, negotiations or appeals. No admission of liability shall be made by or on behalf of that Party without the prior written consent of the other Party.

#### **14.11 Procedure Where a Claim is Made in respect of Remedial Action**

- 14.11.1 The provisions of Clauses 14.10.1 to 14.10.4 (*Conduct of Environmental Claims*) shall apply in respect of any claim under Clause 14.1 and/or 14.3 (*Environment*) above insofar as it relates to Remedial Action and/or to voluntary action to prevent, reduce, eliminate or mitigate, in respect of a claim under Clauses 14.1 or 14.3 (*Environment*), any Environmental Liability.
- 14.11.2 Subject to Clause 14.11.3 (*Procedure Where a Claim is Made in respect of Remedial Action*) below, LUL and/or the Contractor as appropriate shall consult as fully as is reasonably practicable with and pay reasonable regard to the views of the other in respect of any Remedial Action which forms the whole or part of a claim under Clause 14.1 and 14.3 (*Environment*) above and each Party shall also make available to the other (at the reasonable expense of the requesting Party) all such information and assistance as may be reasonably requested by the relevant Party as being of relevance to such Remedial Action (save where disclosure would involve a breach of confidentiality or waiver of legal privilege).
- 14.11.3 Where either Party intends voluntarily to undertake any reasonable action (including Remedial Action) to prevent, reduce, eliminate, limit, or mitigate, in

respect of a claim under Clause 14.1 and/or 14.3 (*Environment*) (as appropriate) or any Environmental Liability, such Party shall obtain the other's prior written consent (except in emergencies) to such action (such consent not to be unreasonably withheld or delayed) and in assessing whether such action is reasonable (and accordingly whether consent should be given), regard shall be had to the estimated costs (including Irrecoverable VAT) of such action.

14.11.4 Subject to Clause 14.11.2 and Clause 14.11.3 (*Procedure Where a Claim is Made in respect of Remedial Action*) above, LUL or the Contractor shall undertake any Remedial Action (but LUL or, as the case may be, the Contractor shall only be obliged to undertake Remedial Action in respect of Environmental Losses and Hazardous Material for which it is responsible pursuant to, as applicable, Clause 14.2 or 14.3 (*Environment*) given that in all other circumstances the Contractor or LUL shall be under a duty to mitigate, in circumstances where Environmental Losses have arisen, by observing Good Industry Practice) and/or voluntary action to prevent, limit, reduce, eliminate or mitigate, in respect of a claim under Clause 14.1 and/or 14.3 (*Environment*) respectively or any Environmental Liability:

- (A) as soon as reasonably practicable after consultation with the other Party in respect of the same;
- (B) in the most cost effective manner reasonable in the circumstance; and
- (C) using Good Industry Practice.

14.11.5 In the event of a dispute between the Parties in respect of a claim under Clauses 14.10.1 to 14.10.4 (*Conduct of Environmental Claims*) above as to:

- (A) the scope, nature and/or cost of any Remedial Action undertaken; or
- (B) whether action (including Remedial Action) taken by LUL or the Contractor to prevent, eliminate, limit, reduce or mitigate any Environmental Liability was reasonable,

the dispute shall be resolved according to the Dispute Resolution Procedure.

## 15. **STANDARDS**

The Contractor shall comply with the provisions of Schedule 2.6 (*Standards*).

## 16. **BUSINESS CONTINUITY AND DISASTER RECOVERY**

The Contractor shall comply with the provisions of Schedule 2.11 (*Business Continuity and Disaster Recovery*).

## **SECTION C: PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### 17. **PAYMENT**

#### 17.1 **Invoices**

LUL shall, subject to and in accordance with the provisions of this Clause 17 and Schedule 4.1 (*Charges and Invoicing*), pay to the Contractor the Charges calculated on the basis set out in Schedule 4.1 (*Charges and Invoicing*) in respect of all Services to be provided or deemed to be provided under the Contract (except as specifically provided in this Contract).

#### 17.2 **Financial Model and Financial Reports**

17.2.1 The Contractor shall comply with the provision of Schedule 4.2 (*Financial Model and Financial Reports*).

#### 17.3 **Other Payments**

- 17.3.1 Without prejudice to the provisions of Clauses 56 (*Consequences of Expiry or Termination*) and 19 (*Set-off*), any payment (other than any Contract Payment) due by either Party (the "**Payer**") to the other Party (the "**Payee**") under this Contract (including without limitation in respect of Incremental Costs or any of the indemnities contained in this Contract) shall be due and payable by the Payer to the Payee on expiry of (unless otherwise stipulated) thirty (30) days of delivery of a demand and (where appropriate) a valid VAT invoice.
- 17.3.2 The Payer shall pay all such amounts due to the Payee by bank transfer (Bank Automated Clearance System "**BACS**") in immediately available funds to such bank account of the Payee as the Payee shall from time to time designate for that purpose, or such other method as the Parties may agree from time to time.
- 17.3.3 The Payee shall be entitled without prejudice to any other right or remedy, to receive interest on any payment not made on the due date calculated at the Applicable Rate, from the due date up to but excluding the date of payment, both before and after judgment (where relevant).

#### 17.4 **Financial Distress**

- 17.4.1 The Contractor warrants and represents to LUL that as at the Effective Date:
  - (A) the long term credit rating issued for the Guarantor by each of the Ratings Agencies meet the Credit Rating Threshold; and
  - (B) the Contractor meets the Financial Ratio Thresholds.
- 17.4.2 The Contractor shall promptly notify (or shall procure that its auditors promptly notify) LUL in writing if:
  - (A) there is any downgrade in the credit rating issued by any Rating Agency for the Guarantor which results in the Guarantor failing to meet the Credit Rating Threshold (and in any event within five (5) Working Days of the occurrence of the downgrade); or
  - (B) the Contractor fails to meet either of the Financial Ratio Thresholds in any financial reporting period.
- 17.4.3 The Contractor shall:
  - (A) regularly monitor the credit rating of the Guarantor with the Ratings Agencies and the Contractor's Financial Ratio Thresholds; and
  - (B) promptly notify (or shall procure that its auditors promptly notify) LUL in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event, or the fact, circumstance or matter which could cause a Financial Distress Event).
- 17.4.4 For the purposes of determining whether a Financial Distress Event has occurred in respect of the Guarantor, the credit rating of the Guarantor shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Guarantor at or below the applicable Credit Rating Threshold.
- 17.4.5 In the event of a Financial Distress Event occurring which LUL reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract (or if LUL becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), then the Contractor shall, at the request of LUL:
  - (A) meet with LUL as soon as reasonably practicable (and in any event within two (2) Working Days or such longer period permitted by LUL), to review

the effect of the Financial Distress Event on the delivery of the Services and Risks in relation thereto; and

- (B) submit to LUL for Assurance within five (5) Working Days (or such longer period specified by LUL) a draft financial distress mitigation plan setting out how the Contractor will ensure the continued performance and delivery of the Services (and the availability of funding to meet the Contractor's liability under this Contract).

17.4.6 LUL shall be entitled to terminate this Contract under Clause 55.2 (*Termination by LUL*) if the Contractor fails to comply in any material respect with the terms of the financial distress mitigation plan described in Clause 17.4.5(B) (*Financial Distress*).

## 17.5 Variation Worked Example Development

17.5.1 Within ten (10) Working Days of the Effective Date, having consulted with the Contractor, LUL will confirm the proposed scope for the Worked Example.

17.5.2 The Contractor shall, within thirty (30) days of LUL's confirmation pursuant to Clause 17.5.1, prepare and submit to LUL a draft worked example of a notional Variation showing the impacts of such notional Variation on the Financial Model which would result from the application of the relevant provisions of Schedule 4.1 (*Charges and Invoicing*), Schedule 4.2 (*Financial Model and Financial Reports*) and Schedule 5.1 (*Variation Procedure*) and which sets out a clear and detailed account of the processes employed in pricing a Variation, including:

- (A) identification of the relevant assumptions in the Record of Assumptions and the manner in which they are impacted by the Variation;
- (B) identification of the relevant parts and worksheets of the Financial Model impacted by the Variation;
- (C) details of the steps to be followed to make the Variation (this should be in sufficient detail to detail the flow of calculations through the Financial Model);
- (D) demonstration that such steps can be processed in the relevant timescales in accordance with the Variation Procedure;
- (E) net output results of the change in Charges from the Financial Model;
- (F) tracking of the effect of a revised input through the Financial Model, providing an audit trail from output Charges back to input changes; and
- (G) commentary on the rationale for the inclusion/ exclusion of each variable within the scope of the Variation, demonstrating the reasonableness of the revisions,

(the "**Worked Example**").

17.5.3 The Parties shall use all reasonable endeavours to finalise the Worked Example within sixty (60) days of LUL's confirmation pursuant to Clause 17.5.1 and shall be reviewed at each Contract Review Meeting until it is finalised and either Party may refer the matter to the Steering Committee at any time.

## 18. GENERAL TAXATION

### 18.1 Gross-Up

- 18.1.1 If any amount payable by either Party under this Contract by way of indemnity, compensation or reimbursement is subject to any Tax in the hands of the recipient (save this shall not apply to any consideration paid to the Contractor for its services under this Contract or any payment of interest), the amount payable shall be increased to such an amount as (after taking into account the benefit of any deduction or relief from taxation obtained by the recipient in respect of the payment of, or the matter giving rise to, the amount payable by way of indemnity, compensation or reimbursement) is required to put the recipient in the same after-tax position as (taking into account the time value of money) the recipient would have been in had the circumstances giving rise to the indemnity, compensation or reimbursement not occurred. If payment of the amount by the payer is initially made on the basis that it is not subject to Tax in the hands of the recipient and it is subsequently determined that it is, such adjustment shall be made between the Parties as shall be required in order to restore the after-tax position of the recipient to what it would have been had the adjustment not been necessary.
- 18.1.2 Without prejudice to the generality of Clause 18.1.1 (*General Taxation*), if and to the extent that any sum ("**Indemnity Sum**") constituting (directly or indirectly) an indemnity, compensation or reimbursement to any Party ("**Tax Indemnified Person**") but paid by either Party to any person other than the Tax Indemnified Person (save this shall not apply to any consideration paid to the Contractor for its services under this Contract or any payment of interest), shall be treated as taxable in the hands of the Tax Indemnified Person, the indemnifier shall promptly pay to the Tax Indemnified Person such sum (the "**Compensating Sum**") as (after taking into account any Tax suffered by the Indemnified Person on the Compensating Sum and taking into account the time value of money) shall reimburse the Tax Indemnified Person for any Taxes suffered by it in respect of the Indemnity Sum after taking into account any deduction for tax purposes obtained by the Tax Indemnified Person in respect of the payment of, or the matter giving rise to, the Indemnity Sum and the time at which the benefit of such deduction is obtained.

## 18.2 Deductions

- 18.2.1 All payments due to either Party under the Contract shall be calculated and made free and clear of and without deduction for, or on account of, any Taxes, unless such deduction or withholding is required by Law. The payer shall account on a timely basis to the appropriate authority in respect of any such deduction or withholding which is so required.
- 18.2.2 If such deduction or withholding is required by Law, the payer shall (except in the case of interest and any deduction in accordance with Clause 18.4.1 (*Construction Industry Scheme*)) increase the payments to the payee so that the net amount received and retained by the payee after such deduction or withholding (and after taking account of any further deduction or withholding which is required to be made which arises as a consequence of the increase) shall be equal to the full amount which the payee would have received and retained if no such deduction or withholding had applied.
- 18.2.3 To the extent that the payee actually derives an economic benefit from a deduction or withholding which gives rise to an increased payment under Clause 18.2.2 (*Deductions*), the payee shall make such payment as the payee in its absolute discretion certifies will transfer that economic benefit to the payer and will leave the payee in no better and no worse position than it would have been in had no such deduction or withholdings been required. Any payments so made by the payee shall be refundable to the payee to the extent that the relevant benefit is ultimately not actually derived.

## 18.3 VAT

- 18.3.1 All sums payable under this Contract shall be deemed to be exclusive of VAT.
- 18.3.2 Where pursuant to the terms of this Contract a party (the "**Supplier**") makes a supply to another party (the "**Recipient**") and the Supplier (or the representative member of the VAT group of which it is a member) is required to account for VAT to a tax authority in respect of such VAT, the Recipient shall pay to the party making the supply a sum equal to the amount of VAT chargeable on such supply, in addition to and at the same time as the consideration for such supply given in accordance with the provisions of this Contract subject to receipt of a valid VAT invoice in respect thereof.
- 18.3.3 Where a party is required by the terms of this Contract to reimburse or indemnify any other party for any cost, expense or other liability, the payer shall reimburse or indemnify the payee for the full amount of such cost, expense or liability, including such part thereof as represents VAT, save to the extent that the other party is entitled to credit or repayment in respect of such VAT from HM Revenue & Customs.

#### 18.4 **Construction Industry Scheme**

- 18.4.1 The Parties to agree to comply with the construction industry scheme as set out in Part 3, Chapter 3 and schedule 11 Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (the "**CIS Rules**") and any payment made under this Contract will be made net of such deduction (if any) as is required by Law to be made under the CIS Rules.
- 18.4.2 The Contractor confirms, as at the date of this Contract, that its unique taxpayer reference (UTR) is 4420978741 and that it is registered for gross payment under section 63 of Finance Act 2004.

#### 18.5 **Capital Allowances**

- 18.5.1 The LUL Group shall be entitled to obtain the benefit of any capital allowances or enhanced capital allowances which may be available to it in respect of payments made by it under this Contract and the Contractor undertakes that it shall not claim any capital allowances or enhanced capital allowances in respect of any expenditure incurred by it in performing its obligations under this Contract.
- 18.5.2 The Contractor shall use reasonable endeavours at the request of the LUL Group to provide such assistance and information (within its power or control) as the LUL Group reasonably requires in order to make a claim for capital allowances or enhanced capital allowances in respect of payments made under this Contract.

#### 19. **SET-OFF**

- 19.1 LUL may set off any amount owed by the Contractor to LUL under this Contract against any amount due to the Contractor under this Contract.
- 19.2 If LUL wishes to set off any amount owed by the Contractor to LUL against any amount due to the Contractor pursuant to Clause 19.1 (*Set-off*), it shall give Notice to the Contractor within twenty (20) Working Days of receipt of the relevant Invoice, setting out LUL's reasons for withholding or retaining the relevant Charges. For the avoidance of doubt, if LUL sets off any amount owed by the Contractor to LUL against any amount due to the Contractor, and it is not entitled to so, the Contractor shall be entitled to receive interest on the amount due to it in accordance with Schedule 4.1 (*Charges and Invoicing*).

### **SECTION D: CONTRACT GOVERNANCE**

#### 20. **CO-OPERATION WITH LUL, ITS EMPLOYEES AND CONTRACTORS**

- 20.1 The Contractor acknowledges that the Services provided by the Contractor are only one aspect of the work and services necessary to operate the Underground Network and the Contractor shall take all steps as are reasonably required by LUL, Other Service Providers

and Third Parties authorised by LUL to provide directions to the Contractor in connection with the performance of the Services in relation to all activities relating to the subject matter of this Contract and any points of integration, interoperability, interface or dependency between: (i) the Services; and (ii) LUL's systems and associated activities or services provided by or to such Other Service Providers and Third Parties authorised by LUL to provide directions to the Contractor in connection with the performance of the Services, in each case including:

- 20.1.1 the development of the Documents;
- 20.1.2 the planning and delivery of the Upgrade Programme Plan and Upgrade Projects;
- 20.1.3 the design, build, operation and maintenance of any Interfaces;
- 20.1.4 interactions and data flows between the Services or the Telecommunications Services and the services provided by or to Other Service Providers or Third Parties;
- 20.1.5 Testing or any other testing by LUL, relevant Other Service Providers or Third Parties;
- 20.1.6 performance measuring and monitoring;
- 20.1.7 the resolution of Faults and Failures;
- 20.1.8 delivery of operational changes in accordance with Clause 8.2;
- 20.1.9 managing the activities and outputs of the Contractor and (to the extent relevant) Other Service Providers;
- 20.1.10 implementing Variations;
- 20.1.11 compliance with all applicable Laws and Standards from time to time;
- 20.1.12 compliance with its obligations in relation to Safety in accordance with Clause 12 (*Safety*);
- 20.1.13 delivery, testing and invocation of the BCDR Plan or any business continuity and disaster recovery plans of LUL or Other Service Providers or Third Parties; and
- 20.1.14 claims or actions brought by an Other Service Provider or a Third Party (provided always that nothing in this Clause 19.1.5 shall oblige the Contractor to participate in or contribute towards any legal proceedings deriving from such claims or actions),

provided that, subject to Clause 41.9 (*Publicity and Confidentiality*), this Clause 20.1 shall not oblige the Contractor to disclose any Contractor Commercially Sensitive Information to Other Service Providers or any other third party.

- 20.2 The Contractor shall take all reasonable steps to assist LUL in the day to day planning and operation of the Underground Network as it relates to the System.
- 20.3 Subject to Clause 41.9 (*Publicity and Confidentiality*), the co-operation referred to in this Clause 20 shall include promptly providing LUL and LUL Personnel and, to the extent applicable, Other Service Providers or Third Parties with:
  - 20.3.1 Documents or Data reasonably requested by them (to the extent within the Contractor's control or possession);
  - 20.3.2 access to relevant Contractor Personnel during ordinary working hours to answer reasonable questions in relation to delivery of the Services (including their attendance at LUL meetings if reasonably required), provided that for Sub-contractors who are not Key Sub-contractors LUL accepts that this access will be provided on a reasonable endeavours basis only;
  - 20.3.3 the opportunity to attend meetings of the Contractor at which the Services will be discussed; and
  - 20.3.4 participation in any relevant multi-party testing initiatives.



20.4 The Contractor shall give LUL reasonable prior notice in writing of each meeting it has with any Other Service Provider in relation to the Services (or any related subject matter), LUL shall be entitled to attend all such meetings (save where disclosure would involve a breach of confidentiality or waiver of legal privilege), and the Contractor shall not unreasonably withhold its consent for LUL to do so.

20.5 In performing the Services, the Contractor shall (and shall procure that all Sub-contractors shall) take all reasonable steps to avoid prejudicing LUL's relationship with any Other Service Provider or Third Party.

## 21. **SERVICE MANAGEMENT**

The Contractor shall be responsible for delivering and managing the Services in accordance with the requirements set out in Schedule 2.9 (*Service Management*).

## 22. **GOVERNANCE**

22.1 Schedule 6.1 (*Governance*) shall take effect from the Effective Date. The Parties' obligations under Schedule 6.1 (*Governance*) are in addition to, and shall not limit in any way, their respective obligations under the other provisions of this Contract and satisfactory performance of their respective obligations under Schedule 6.1 (*Governance*) or any of them shall not discharge either Party from any failure to perform, or from partial performance of, its obligations under the other provisions of this Contract.

22.2 The Contract Manager and the Contractor's Representative shall be appointed by the respective Parties in accordance with Schedule 6.1 (*Governance*).

### 22.3 **No Discharge**

Each Party shall be solely responsible for ensuring that it performs its obligations under this Contract. Without prejudice to the terms of this Contract and except as specifically provided by this Contract, or pursuant to an express written waiver of the relevant Party's obligations pursuant to this Contract, no review, comment, supervision, approval or disapproval, testing or other exercise of rights, the giving or issue of any approval, agreement, acceptance, consent or certificate by the other Party, the Contract Manager, or any other employee, contractor or agent of the other Party, including in the case of any purported discharge of obligations by the Contractor only, the LUL Group under this Contract (including in relation to documentation) shall by itself operate in any way to relieve the relevant Party of any of its duties, responsibilities, obligations or liabilities under this Contract including, in the case of the Contractor, the Contractor's performance or non-performance of the Services.

### 22.4 **Managing Agent**

22.4.1 LUL may by written Notice to the Contractor (a "**Managing Agent Notice**") appoint a managing agent (a "**Managing Agent**") to manage some or all of LUL's rights under this Contract. Subject to Clause 22.4.2 (*Managing Agent*), with effect from the date specified by LUL in a Managing Agent Notice the Contractor shall (at no additional cost to LUL):

- (A) for the purposes of this Contract and, subject always to the limits set out in any document provided by LUL from time to time setting out limits or restrictions on the authority of the Managing Agent, treat enquiries, requests and instructions of the Managing Agent which relate to the Services or this Contract as enquiries, requests and instructions of LUL, and comply with its obligations under this Contract in relation thereto;
- (B) co-operate with the Managing Agent; and
- (C) without limitation to the foregoing:
  - (1) attend governance meetings chaired by the Managing Agent in lieu of attending similar meetings with LUL;

- (2) provide copies of any reports to which LUL is entitled pursuant to this Contract to the Managing Agent;
- (3) permit the Managing Agent to oversee financial management matters (subject always to Clause 41 (*Publicity and Confidentiality*) and provided that the Contractor shall not be obliged to share Commercially Sensitive Information with its direct competitors); and
- (4) keep records of enquiries, requests and instructions from or to the Managing Agent.

22.4.2 LUL may by written Notice to the Contractor withdraw the appointment of a Managing Agent appointed pursuant to Clause 22.4.1 (*Managing Agent*) and, with effect from the date specified in such Notice, the Contractor's obligations under Clause 22.4.1 (*Managing Agent*) in respect of the relevant third party shall cease and the Contractor shall not treat enquiries, requests and instructions from that relevant third party as enquiries, requests and instructions from LUL.

## 22.5 Transfer of Other Contracts

22.5.1 In respect of any relevant contracts between LUL and an Other Service Provider ("**Other Network Contracts**") LUL may, by Notice to the Contractor, require the Contractor to:

- (A) accept the novation to it of one or more of the Other Network Contracts (each relevant Other Network Contract referred to in such Notice being a ("**Notified Network Contract**"), such novation to have effect from the proposed effective date of the novation (the "**Proposed Novation Date**");
- (B) if a Notified Network Contract is not novated to the Contractor on the Proposed Novation Date, manage that Notified Network Contract from the Proposed Novation Date until the date on which such novation is effective, including by providing such services as may be specified pursuant to the Variation Procedure in relation to such Other Network Contract(s) (the "**Interim Management Services**"); and/or
- (C) manage one or more of the Other Network Contracts (each relevant Other Network Contract referred to in such Notice being a "**Managed Supply Contract**" and the supplier under each such Managed Supply Contract being a "**Managed Contractor**") from such date as LUL may specify (the "**Management Effective Date**"), including by providing such services as may be specified by LUL pursuant to the Variation Procedure in relation to such Managed Supply Contract(s) (the "**Management Services**"),

and the Contractor shall treat such Notice as if it were a Variation Notice in accordance with Schedule 5.1 (*Variation Procedure*). For the avoidance of doubt LUL may, in its absolute discretion, elect to require the Contractor to accept novation or manage each relevant Other Network Contract by raising a LUL Required Variation in accordance with Schedule 5.1 (*Variation Procedure*) and any increase in the Charges shall be determined in accordance with the Variation Procedure.

22.5.2 If the Contractor is required to accept novation in respect of any Notified Network Contract pursuant to Clause 22.5 (*Transfer of Other Contracts*), unless otherwise determined pursuant to the Variation Procedure:

- (A) if the Contractor, acting reasonably, considers that accepting such novation would or is reasonably likely to put it in breach of this Contract or applicable Law or any other agreement to which it is a party, it shall notify LUL of such concerns and if, after consulting with LUL for ten (10)

Working Days the Contractor still considers to be the case it may refuse to accept such novation;

- (B) subject to Clause 22.5.2(A), the Contractor shall promptly enter into a Deed of Novation in the form set out in Schedule 9 (*Deed of Novation*) in respect of each such contract;
- (C) if the relevant counterparty refuses to execute the Deed of Novation, the Contractor shall participate in any necessary negotiations with the counterparty and LUL in good faith to reach agreement;
- (D) during the period, if any, between the date on which the Notified Network Contract is novated and the date of execution of the Deed of Novation (the "**Interim Period**") the Contractor shall provide the Interim Management Services;
- (E) if the Interim Period continues for longer than ninety (90) days, LUL's Notice pursuant to Clause 22.5 (*Transfer of Other Contracts*) shall, upon a written request by either Party, be disregarded. Promptly following such written request, LUL shall notify the Contractor as to whether:
  - (1) the Contractor is required to provide Management Services in relation to the Notified Network Contract, whereupon it shall be deemed a Managed Supply Contract, the date of such Notice shall be deemed the Management Effective Date and the provisions of Clause 22.5.3 (*Transfer of Other Contracts*) shall apply; or
  - (2) the Contractor should cease to provide Interim Management Services in respect of the Notified Network Contract; and
- (F) the Contractor shall not be entitled to any additional Charges or other payment due to the novation of, or otherwise in relation to, each Notified Network Contract in excess of those determined in accordance with the Variation Procedure pursuant to this Clause 22.5.

22.5.3 If the Contractor is required to manage an Other Network Contract as a Managed Supply Contract pursuant to Clause 22.5.1(C) or Clause 22.5.2(E) (*Transfer of Other Contracts*), then, unless otherwise determined pursuant to the Variation Procedure:

- (A) the Contractor shall from the date of the Notice issued by LUL pursuant to Clause 22.5.1(A) or 22.5.2(E) (*Transfer of Other Contracts*) (as appropriate):
  - (1) promptly advise LUL in the event that there is or may be any conflict of interest between the provision of the Management Services and its other obligations under this Contract; and
  - (2) promptly advise LUL of any issues or actions required in relation to the Managed Supply Contract which do not fall within its responsibilities under this Clause 22.5;
- (B) the Contractor shall from the Management Effective Date:
  - (1) provide the Management Services;
  - (2) promptly send to LUL a copy of all notices and other communications between the Contractor and the Managed Contractor which may or will affect LUL's rights and obligations under the Managed Supply Contract, whether the same are sent or received by it; and
  - (3) comply with all reasonable instructions of LUL in relation to its management of the Managed Supply Contracts;

- (C) in no event shall the Contractor have authority to do, or seek or purport to do, any of the following:
  - (1) amend or vary any provisions of the Managed Supply Contract, whether orally or in writing or otherwise;
  - (2) terminate the Managed Supply Contract; or
  - (3) waive any of LUL's rights under, or any of the Managed Contractor's obligations under, the Managed Supply Contract; and
- (D) the Contractor shall:
  - (1) have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised, to bind LUL in any way, and shall not do any act which might reasonably create the impression that the Contractor is so authorised;
  - (2) not enter into any contract, exercise any rights or remedies, assume any obligation or risk, or incur any liability, on behalf (nor affect in any way any right, remedy, obligation, risk or liability) of LUL, nor pledge the credit of LUL;
  - (3) have no authority to and shall not take part in any dispute or institute or defend any proceedings, or settle or attempt to settle or make any admission concerning any dispute, proceedings or other claim relating to the Managed Supply Contract, or any contract in connection with the Managed Supply Contract or relating to the affairs of LUL in relation to the Managed Supply Contract or any of those other contracts;
  - (4) not be held liable for any breach of the Managed Supply Contract save to the extent such breach is caused by an act, failure to act or omission of the Contractor; and
  - (5) immediately inform LUL if any of the foregoing occurs or is suspected to have occurred or is likely to occur.

## 23. RECORDS AND INFORMATION

- 23.1 Subject to Clause 23.3 (*Records and Information*), without prejudice to any other obligations of the Contractor under this Contract, the Contractor shall ensure that a true, complete, accurate and correct set of the Records and Documentation and such other information as may reasonably be requested in writing by LUL is maintained (other than information determined to be commercially sensitive pursuant to Clause 23.3 (*Records and Information*)).
- 23.2 The Contractor shall use an electronic document management system for all contractual and system information required to be stored and maintained by the Contractor under this Contract.
- 23.3 The Contractor shall ensure that:
  - 23.3.1 all documents created and/or maintained in respect of this Contract and contained within the document management system shall be stored and organised in a logical way. The Contractor shall not be required to amend the properties of any document created or maintained in respect of the Legacy Contract if that document does not need to be updated or maintained in order for the Contractor to comply with its obligations under this Contract;
  - 23.3.2 the Records and Documentation and other information kept pursuant to Clause 23 (*Records and Information*) shall be kept in good order and shall be available at all reasonable times for inspection by LUL (it being understood that LUL shall exercise such right of inspection in good faith) and the Contractor shall

ensure that such items of clarification or substantiation as may reasonably be required by LUL in relation thereto are made available to LUL; and

- 23.3.3 LUL is provided with such copies of the current version of any or all of the Records and Documentation and other information referred to in Clause 23.1 (*Records and Information*) as LUL reasonably requires in order for it to exercise its rights and fulfil its obligations hereunder as part of the Services for which the Contract Payments are made (save to the extent that the cost to the Contractor of providing such copies is not reasonable in all circumstances in which event LUL shall pay any unreasonable costs) within a reasonable time of LUL's request (having regard to the nature and quantity of copy documents requested) during the Term and the Record Retention Period,

provided that LUL's right to inspect and receive copies of Records and Documentation and other information under this Clause 23.3 (*Records and Information*) shall not arise in respect of the commercially sensitive parts of Records and Documentation which the Contractor acting reasonably and having regard to LUL's reasonable requirements (in particular, in relation to expiry of this Contract) to inspect and receive Commercially Sensitive Information.

- 23.4 The Contractor shall comply with the provisions of Schedule 4.2 (*Financial Model and Financial Reports*) in relation to the maintenance of Cost Transparency Data and the Financial Model and exercise of rights under Schedule 4.2 (*Financial Model and Financial Reports*) by LUL or any Audit Agents and Schedule 6.3 (*Document Management*) in relation to the creation and maintenance of Documents.
- 23.5 In relation to Documents retained in electronic form, the Contractor shall preserve the original metadata together with all subsequent metadata in a format reasonably accessible to LUL.
- 23.6 The Contractor shall ensure that the Records and Documentation referred to in Clause 23.1 (*Records and Information*) and any other information and records the Contractor is required to keep or ensure are kept under this Contract are retained for the Record Retention Period.
- 23.7 At the expiry of the Record Retention Period in relation to any of the Records or Documentation or other information referred to in Clause 23 (*Records and Information*) above, the Contractor shall (unless LUL notifies the Contractor in writing that the Contractor is not required to do so), deliver to LUL such of the Records, Documentation or other information referred to in Clause 23 (*Records and Information*) (other than Tax Documents) as LUL is, at the expiry of the Record Retention Period, entitled to inspect and receive copies pursuant to Clause 23.3 (*Records and Information*) above.
- 23.8 At the Expiry Date, the Contractor shall (unless LUL notifies the Contractor in writing that the Contractor is not required to do so):
- 23.8.1 deliver to LUL all of the Records, Documentation and other information referred to in Clause 23 (*Records and Information*) (other than Tax Documents); and
  - 23.8.2 deliver to LUL copies of all of the Tax Documents.
- 23.9 The Contractor shall ensure that, where appropriate, the Records and Documentation and information to be made available pursuant to Clause 23 (*Records and Information*) are compiled contemporaneously so as to enable them to be used by LUL in civil or criminal proceedings by or against LUL and shall provide all reasonable assistance (LUL paying the reasonable costs of such assistance) as may be required by LUL in relation to criminal or civil proceedings where the Contractor or the Connected Persons might have information that is relevant to such proceedings save where the Contractor or any Key Sub-contractor (or any employee or director of the Contractor or any Key Sub-contractor) is party to such proceedings.
- 23.10 LUL and the Contractor acknowledge that some of the Records and Documentation and other information to be made available pursuant to Clause 23 (*Records and Information*) will not necessarily be produced by or be owned by the Contractor and the Contractor

agrees that in such circumstances it shall use its reasonable endeavours to ensure that any such Records and Documentation that are not produced by or owned by the Contractor are made available pursuant to Clause 23 (*Records and Information*).

**23.11 Documentation**

The Contractor shall supply LUL with Documentation in accordance with Schedule 6.3 (*Document Management*).

**24. AUDIT AND INSPECTION**

24.1 No later than sixty (60) days prior to the Service Commencement Date, the Contractor shall prepare and submit to LUL for Approval an Audit Plan which identifies, on a Period by Period basis, activities carried out by the Contractor to verify its compliance with the Contract and shall include, as a minimum, how the Contractor will:

24.1.1 verify the accuracy of the Charges and any Service Credits and any other amounts payable by or to LUL under this Contract, including Invoices relating to the same (and proposed or actual variations to such Charges and payments);

24.1.2 verify the Cost Transparency Data;

24.1.3 verify the Contractor's compliance with this Contract and applicable Laws;

24.1.4 identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security;

24.1.5 identify or investigate any circumstances which may impact the Contractor's ability to perform the Services;

24.1.6 verify the accuracy and completeness of any information delivered or required by this Contract;

24.1.7 review any Service Performance Reports and other Documents, Data and/or other records and data relating to the Contractor's performance of the Services and to verify that these reflect the Contractor's own internal reports and records;

24.1.8 review and verify the Contractor's compliance with its obligations under Schedule 2.4 (*Asset Management*);

24.1.9 inspect the Services (or any part of them including System Assets) and the wider service delivery environment (or any part of it);

24.1.10 review the accuracy and completeness of the Asset Register and other items referred to Schedule 6.6 (*Exit Management*);

24.1.11 review the Contractor's quality and safety management systems (including all relevant quality and safety plans and any quality and safety manuals and procedures);

24.1.12 inspect System Assets, including LUL Materials, equipment and facilities; and/or

24.1.13 review the integrity, confidentiality and security of LUL Data and the Contractor's compliance with its obligations under Clause 38 (*Data, LUL Data and Security Requirements*), Schedule 2.5 (*Security Management*), Schedule 2.6 (*Standards*) and Schedule 2.9 (*Service Management*),

and the Contractor shall review and update the Audit Plan at least annually and shall submit such updated Audit Plan to LUL for Approval.

24.2 The Contractor shall invite LUL to attend each of the activities carried out by the Contractor to verify its compliance with the Contract to enable LUL to satisfy itself that the requirements of the Contract are being met.

24.3 LUL, acting on its own behalf and/or through its Audit Agents, may at any time during the Term, without prior warning save that LUL shall use reasonable endeavours to give the Contractor all written Notice reasonably practicable in the prevailing circumstances, undertake any inspection of the System, Records, Documentation or any audit or check of

any aspect of the Contractor's performance of this Contract to assess compliance by the Contractor with the Contractor's obligations under this Contract. LUL acknowledges that if LUL, acting on its own behalf and/or through its Audit Agents, undertakes any inspection of the System, Records, Documentation or any audit or check of any aspect of the Contractor's performance of this Contract without providing the Contractor with any Notice such inspection, such audit or check may have an impact on the costs incurred by the Contractor in respect of such inspection and, if so, subject to Clause 24.8 (*Audit and Inspection*), the Contractor shall be entitled to seek financial redress from LUL in relation to such costs.

- 24.4 LUL or its Audit Agents shall not exercise its rights under Clauses 24 (*Audit and Inspection*) and 24.5 vexatiously and nothing in this Clause 24 shall entitle LUL to have access to information to which it would not otherwise be entitled pursuant to this Contract.
- 24.5 LUL may in its absolute discretion but shall not be obliged to inform the Contractor of the objective of an audit pursuant to Clause 24 prior to its commencement.
- 24.6 Without prejudice to Clause 41 (*Publicity and Confidentiality*), the Contractor shall as soon as reasonably practicable provide all reasonable co-operation in relation to any inspection, audit or check including, to the extent reasonably required:
  - 24.6.1 granting or procuring the grant of access to any premises used in the Contractor's performance of this Contract;
  - 24.6.2 granting or procuring the grant of access to any equipment (including all computer hardware) used (whether exclusively or non-exclusively but where non-exclusively only to the extent used) in the performance of the Contract, wherever situated and whether the Contractor's own equipment or otherwise;
  - 24.6.3 granting access to any data and/or software (including standing data, transaction data processed by the System and security settings) to the extent relating to the performance of this Contract save that nothing in this Clause 24.6.3 (*Audit and Inspection*) shall oblige the Contractor to grant access to Commercially Sensitive Information;
  - 24.6.4 providing a reasonable number of copies of any contracts, other documents or records required by the auditor and/or granting copying facilities to the auditor for the purposes of making such copies as part of the Services for which the Contract Payments are made (save to the extent that the cost to the Contractor of providing such copies or copying facilities is not reasonable in all the circumstances in which event LUL shall pay any unreasonable costs); and
  - 24.6.5 complying with LUL's reasonable requests for access to personnel engaged in the Contractor's performance of the Contract (subject to the reasonable availability of such personnel).
- 24.7 Subject to Clause 24.8 (*Audit and Inspection*), the Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 24, unless the audit identifies a material Default by the Contractor in which case the Contractor shall reimburse LUL for all of LUL's reasonable costs incurred in connection with the audit.
- 24.8 If LUL exercises its rights to a full-scope audit of the Contractor's compliance with Schedule 4.1 (*Charges and Invoicing*) and Schedule 4.2 (*Financial Model and Financial Reports*) under Clause 24 more than once in any twelve (12) month period during the Term of this Contract except where:
  - 24.8.1 the planned verification is set out in the Audit Plan;
  - 24.8.2 the audit is required by any Regulatory Body or applicable Law; or
  - 24.8.3 the requirement to audit arises where LUL reasonably believes that the Contractor has committed a material breach of this Contract,

then LUL shall bear the Contractor's reasonable costs and expenses incurred in respect of the audit unless the audit identifies a material Default by the Contractor in which case the

Contractor shall reimburse LUL for all of LUL's reasonable costs incurred in connection with the audit and the resolution of the identified material Default.

24.9 If an audit undertaken pursuant to this Clause 24 identifies that:

24.9.1 the Contractor has committed a Default or Notifiable Default, LUL may (without prejudice to any other rights and remedies LUL may have under this Contract or at Law) require the Contractor to correct such Default as soon as reasonably practicable; and

24.9.2 LUL has overpaid any Charges, the Contractor shall pay to LUL:

(A) the amount overpaid; and

(B) interest on the amount overpaid at the Applicable Rate, accruing on a daily basis from the date of overpayment by LUL up to the date of repayment by the Contractor,

such payment to be paid within ten (10) Working Days of the Contractor receiving a written request for the same from LUL, and LUL may exercise its right to deduct such amount from the Charges if it prefers to do so;

24.10 If an audit undertaken pursuant to this Clause 24 identifies that LUL is in breach of its obligation to pay the Charges in accordance with Schedule 4.1 (*Charges and Invoicing*), LUL shall pay to the Contractor:

24.10.1 the amount underpaid or withheld; and

24.10.2 interest on the amount underpaid at the Applicable Rate, accruing on daily basis from the date of underpayment or withholding by LUL up to the date of payment by LUL to the Contractor pursuant to this Clause 24.10 (save that LUL shall not be required to pay any interest where such underpayment is due to an invoicing error by the Contractor),

such payment to be paid within ten (10) Working Days of LUL receiving a written request for the same from the Contractor.

## 25. **DISPUTE RESOLUTION**

25.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with Schedule 6.2 (*Dispute Resolution*).

25.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

25.3 In the event of a dispute between the Parties on the question of whether either LUL acted reasonably or unreasonably when required by this Contract to act reasonably or not to act unreasonably, the Contractor shall nevertheless give effect forthwith to any decision, opinion, instruction, direction, certificate or (if applicable) evaluation made or given by LUL unless and until it is decided, in accordance with the Dispute Resolution Procedure, that LUL did not act reasonably or did act unreasonably.

## **SECTION E: CONTRACTOR PERSONNEL AND SUPPLY CHAIN**

### 26. **TUPE AND EMPLOYEES**

#### 26.1 **Employment Indemnity**

Save as limited or otherwise provided in any applicable provisions of this Contract (including in particular Schedule 7.3 (*Staff Transfer*)) the Parties agree that:

26.1.1 the Contractor shall both during and after the Term indemnify LUL against all Employee Liabilities that may arise as a result of any claims brought against LUL by any person where such claim arises from any act or omission of the Contractor or any director, officer, employee, worker (including agency workers and/or contract workers) of the Contractor; and



- 26.1.2 LUL shall both during and after the Term indemnify the Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of LUL or any director, officer, employee, worker (including agency workers and/or contract workers) of LUL.

## 26.2 **Income Tax and National Insurance Contributions**

Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration, remuneration or benefits received under or pursuant to this Contract, the Contractor shall:

- 26.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of such consideration, remuneration or benefits; and
- 26.2.2 indemnify LUL against any income tax, national insurance and social security contributions and any related liability, deduction, contribution, assessment, penalty or claim arising from or made in connection with the provision of the Services by the Contractor or any Contractor Personnel (save as otherwise provided for by Schedule 4.1 (*Charges and Invoicing*) or Schedule 7.3 (*Staff Transfer*)).

## 26.3 **Staff Transfer**

The Parties agree that:

- 26.3.1 Part A of Schedule 7.3 (*Staff Transfer*) shall apply to the commencement of provision of the Services; and
- 26.3.2 Part B of Schedule 7.3 (*Staff Transfer*) shall apply during the Term and in relation to the expiry or termination of some or all of the Services (in whole or in part), whether on termination of this Contract or on a Partial Termination or otherwise on a Service Transfer.

## 27. **SUB-CONTRACTING AND PERSONNEL**

### 27.1 **Key Personnel**

- 27.1.1 The Contractor shall obtain the prior written consent, such consent not to be unreasonably withheld or delayed, of LUL before appointing any Key Personnel.
- 27.1.2 The Contractor shall:
- (A) ensure that all Contractor Personnel:
    - (1) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and due diligence;
    - (2) are appropriately vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.5 (*Security Management*); and
    - (3) comply with all applicable Laws in connection with the provision of relevant Services and all reasonable requirements of LUL concerning conduct at LUL Property and Third Party Property, including the security requirements set out in Schedule 2.6 (*Standards*) and Schedule 2.5 (*Security Management*);
  - (B) subject to Schedule 7.3 (*Staff Transfer*), retain overall control of the Contractor Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of LUL;

- (C) be solely responsible for the management of all Contractor Personnel (excluding Sub-contractor Personnel) and shall be liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of any Contractor Personnel which results in a Default under this Contract shall be a Default of the Contractor;
  - (D) use reasonable endeavours to minimise the number of changes in Contractor Personnel (excluding Sub-contractor Personnel);
  - (E) except in relation to Sub-contractor Personnel, replace (temporarily or permanently, as appropriate) any Contractor Personnel (other than Key Personnel, to whom Clause 27.1.6 (*Key Personnel*) shall apply) as soon as practicable if such Contractor Personnel have been removed or are unavailable for any reason whatsoever;
  - (F) bear the service familiarisation and other costs associated with any replacement (whether temporary or permanent) of any Contractor Personnel (excluding Sub-contractor Personnel); and
  - (G) procure that, save as otherwise notified by LUL in writing:
    - (1) all Contractor Personnel shall vacate LUL Property and Third Party Property immediately upon the termination or expiry of this Contract; and
    - (2) all relevant Contractor Personnel shall vacate the relevant LUL Property and Third Party Property immediately upon termination of the Services.
- 27.1.3 If LUL reasonably believes that any of the Contractor Personnel are unsuitable to undertake work in connection with the Services, it may:
- (A) refuse admission to the relevant person(s) to LUL Property and Third Party Property; and/or
  - (B) direct the Contractor to end the involvement in the provision of the Services of the relevant person(s).
- 27.1.4 The Contractor shall ensure that the Key Personnel fulfil the Key Roles at all applicable times during the Term. Schedule 7.1 (*Key Personnel*) lists the Key Roles and names of the persons who the Contractor shall appoint to fill those Key Roles at the Effective Date.
- 27.1.5 If LUL requires another role to be a Key Role, it shall notify the Contractor of such requirement and the Contractor may not unreasonably withhold or delay its consent to such additional Key Role (and following such consent Schedule 7.1 (*Key Personnel*) shall be updated to reflect the addition of that Key Role in accordance with the Variation Procedure).
- 27.1.6 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (A) requested to do so by LUL, in which case LUL may require the person concerned to complete a handover period of up to three (3) months during which they are shadowed by their replacement (where reasonably possible);
  - (B) the person concerned resigns, retires or dies or is on maternity, paternity, adoption or long-term sick leave or is granted a sabbatical in accordance with their conditions of employment notified to LUL in advance in writing;
  - (C) such person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by that person; or
  - (D) the Contractor obtains LUL's prior written consent (such consent not to be unreasonably withheld or delayed) and procures that the person

concerned completes a three (3) month handover period (or such other period agreed by the Parties in writing) during which they are shadowed by their replacement (where reasonably possible).

27.1.7 The Contractor shall:

- (A) notify LUL promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- (B) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- (C) give as much notice to LUL as is reasonably practicable (and in any event sixty (60) Working Days' notice) of any intention to remove or replace any member of Key Personnel except in the cases of death, unexpected ill health or a material breach by the relevant member of Key Personnel of his or her employment contract;
- (D) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (E) ensure that any replacement for a Key Role:
  - (1) is only employed or engaged with LUL's prior written consent (such consent not to be unreasonably withheld or delayed);
  - (2) has a level of qualifications and experience appropriate to the relevant Key Role; and
  - (3) is fully competent to carry out the tasks assigned to the member of Key Personnel whom he or she has replaced.

27.2 **Sub-contractors**

27.2.1 Not used.

27.2.2 Subject to Clause 27.2.4 (*Sub-contractors*), the Contractor shall not sub-contract any of its obligations under this Contract unless:

- (A) it has given LUL at least twenty (20) Working Days' prior written Notice of the identity of the proposed Sub-contractor and the nature, extent and associated Charges relating to the Services to which the Sub-contract relates; and
- (B) if it is sub-contracting its obligations in relation to a new Service introduced by a Variation which will involve the Contractor entering into Sub-contracts of a value which may exceed [REDACTED] [REDACTED] it has demonstrated to LUL's reasonable satisfaction that it has conducted a competitive process in relation to those Sub-contracts prior to selecting the relevant Sub-contractors.

27.2.3 Subject to Clause 27.2.4 (*Sub-contractors*), the Contractor shall not sub-contract any of its obligations under this Contract to a Key Sub-contractor unless the identity of the proposed Key Sub-contractor and the scope of the sub-contracted obligations is approved in writing in advance by LUL (such consent not to be unreasonably withheld or delayed).

27.2.4 LUL acknowledges and agrees that the Contractor intends to sub-contract elements of the Services to those Key Sub-contractors set out in Schedule 7.2 (*Key Sub-contractors*) and that the Contractor's sub-contracting of its obligations under this Contract to such persons in a manner consistent with this Contract

does not require notice to LUL under Clause 27.2.2 (*Sub-contractors*) or the prior approval of LUL under Clause 27.2.3 (*Sub-contractors*).

### 27.3 Terms of Sub-contracts

The Contractor shall ensure that:

- 27.3.1 each Sub-contract shall include a provision requiring the Sub-contractor to comply with the Contract QUENSH Conditions referred to in Schedule 2.6 (*Standards*); and
- 27.3.2 each Sub-contract (except the Key Sub-contracts with Motorola) should include a provision enabling the Sub-contract to be terminated on twelve (12) months (or less) notice (and LUL acknowledge such termination may result in early termination fees being payable under the Sub-contract); and
- 27.3.3 each Sub-contract which has an unexpired term of greater than twelve (12) months can be novated to LUL at no cost to LUL upon termination or expiry of this Contract.

### 27.4 Terms of Key Sub-contracts

27.4.1 Except to the extent that Schedule 7.2 (*Key Sub-contractors*) sets out LUL's agreement to a waiver for a Key Sub-contractor in respect of some or all of Clauses 27.4.1(A) to 27.4.1(K) (*Terms of Key Sub-contracts*), the Contractor shall ensure that each Key Sub-contract shall include:

- (A) a provision prohibiting the Key Sub-contractor from further sub-contracting its obligations in relation to the provision of the Services without the Contractor's prior written approval, which approval shall not be granted unless the Contractor has complied with Clauses 27.2.2 and 27.2.3 (*Sub-contractors*) as if such further sub-contracting resulted in a Sub-contract;
- (B) a provision requiring the Key Sub-contractor to comply with requirements consistent with Clause 5 (*Services*);
- (C) a provision enabling the Contractor or LUL to step-in on substantially the same terms as are set out in Clause 52 (*Step-In Rights*);
- (D) a provision enabling the Contractor and/or LUL to audit the activities and performance of the Key Sub-contractor pursuant to Clause 23 (*Records and Information*);
- (E) a provision requiring the Key Sub-contractor to comply with requirements consistent with Clause 32 (*Intellectual Property Rights*);
- (F) a provision requiring the Key Sub-contractor to comply with requirements consistent with Clauses 38 (Data, LUL Data and Security Requirements) and 39 (*Privacy and Data Protection*);
- (G) a provision requiring the Key Sub-contractor to comply with requirements consistent with Clause 7.3 (*System Assets*);
- (H) a provision requiring the Key Sub-contractor to comply with restrictions on corrupt gifts and payments consistent with the restrictions in Clause 58 (*Prevention of Fraud and Bribery*);
- (I) a provision requiring the Key Sub-contractor to notify LUL promptly in writing of any material non-payment or material late payment of any sums due to the Key Sub-contractor from the Contractor under the Key Sub-contract (and in any event within ten (10) Working Days from the due date for payment);
- (J) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract

(including, in respect of the Key Sub-contract between the Contractor and Motorola, the Motorola Parent Company Guarantee) to:

- (1) LUL; or
- (2) any Replacement Contractor,

upon the occurrence of a Step-In Trigger Event, Contractor Termination Event, Financial Distress Event or Force Majeure Event, or the Service End Date occurring in respect of the relevant Service Component(s); and

- (K) a right under the Contracts (Rights of Third Parties) Act 1999 for LUL to enforce the terms set out in Clause 27.4.1(A) to 27.4.1(J) (*Terms of Key Sub-contracts*) as if LUL were the Contractor; and
- (L) a provision allowing the Contractor, on twelve (12) months' notice to extend the Key Sub-contract (in its absolute discretion) so that the term of such Key Sub-contract expires seven (7) years following the Service Commencement Date.

27.4.2 The Contractor shall, upon request, provide a copy of each Key Sub-contract to LUL within ten (10) Working Days of such request.

27.4.3 The Contractor shall not terminate or make any material amendments to the terms of any Key Sub-contract without LUL's prior written consent, which shall not be unreasonably withheld or delayed.

27.4.4 If:

- (A) during the Exit Period for the relevant Service(s); or
- (B) a Step-In Trigger Event or Contractor Termination Event occurs,

LUL may by written Notice to the Contractor require the Contractor to novate a Key Sub-contract to LUL and the Contractor shall, and shall ensure that such Key Sub-contractor shall, comply with such request within five (5) Working Days of LUL's Notice (at no additional cost to LUL). For the avoidance of doubt, in respect of any novation pursuant to Clause 27.4.4 above, such novation shall not be effective before the Expiry Date or the Termination Date (as appropriate).

## 27.5 Supply chain protection

27.5.1 The Contractor shall ensure that all Sub-contracts contain a provision:

- (A) requiring the Contractor to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (B) a right for LUL to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period.

27.5.2 The Contractor shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days from the receipt of a valid invoice (except where such Sub-contractor is a SME, in which case the Contractor shall pay any undisputed sums which are due from it to such SME Sub-contractor within ten (10) days).

27.5.3 Notwithstanding other provisions of this Contract, if a Sub-contractor notifies LUL or LUL otherwise becomes aware that the Contractor has not satisfied any sums properly due and payable under any invoices from the relevant Sub-contractor to the Contractor in connection with services relating to this Contract and:

- (A) such invoice is not subject to a genuine bona fide dispute under the relevant Sub-contract; and

- (B) in LUL's reasonable opinion, the Contractor's failure to pay results or is likely to result in a material adverse impact on the Services or this Contract,

then LUL may, at its discretion, elect to pay the relevant undisputed amounts directly to the relevant Sub-contractor and deduct such amounts from payments due and payable by LUL to the Contractor.

#### 27.6 Termination of Sub-contracts

LUL may by written Notice to the Contractor require the Contractor to terminate a Sub-contract if the acts or omissions of the relevant Sub-contractor have caused or materially contributed to LUL's right to terminate this Contract (in whole or in part) pursuant to Clause 55.2 (*Termination by LUL*) (whether or not LUL has exercised such termination right) and the Contractor shall effect that termination (at no cost to LUL).

#### 27.7 Retention of Legal Obligations

Notwithstanding the Contractor's right to sub-contract pursuant to this Clause 27, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

#### 27.8 Right to Exclude Contractor's Personnel

If LUL (acting reasonably and in good faith) has reasonable grounds to believe that any Contractor Personnel (excluding Sub-contractor Personnel) or Key Sub-contractor Personnel has committed an act of fraud, theft, serious misconduct, negligence, breach of the Standards or applicable policies or breach of confidentiality or security then LUL shall notify the Contractor as soon as reasonably practicable of such grounds including a description of the alleged act or omission and the evidence that LUL has to substantiate such allegation and the Contractor shall replace the relevant Contractor Personnel (excluding Sub-contractor Personnel) and shall use all reasonable endeavours to procure that any relevant Key Sub-contractor shall replace the relevant Key Sub-contractor Personnel with a suitable alternative for the purpose of performing its obligations under or in connection with this Contract.

#### 27.9 Contractor Personnel

At least sixty (60) Working Days prior to the Service Commencement Date, the Contractor shall prepare and submit to LUL for Assurance an organisation chart identifying:

- 27.9.1 the names, and job title of all Contractor Personnel (excluding Sub-contractor Personnel) used by the Contractor in the performance of its obligations under this Contract and are at least fifty per cent (50%) utilised in doing so; and
- 27.9.2 a summary of the roles used by the Contractor in the performance of its obligations under this Contract that are less than fifty per cent (50%) utilised in the performance of the Services and the Contractor's obligations under this Contract.

Thereafter, the Contractor shall submit an updated organisation chart:

- (A) on a quarterly basis; and
- (B) in the event that there is any change to the Contractor Personnel (excluding Sub-contractor Personnel) used by the Contractor in the performance of its obligations under this Contract.

### 28. LUL CONTRACTORS

#### 28.1 The Contractor acknowledges and agrees that:

- 28.1.1 LUL will from time to time procure works, equipment, supplies and/or services in respect of the Underground Network from a third party ("**LUL Contractors**"); and

28.1.2 the Contractor may be at a competitive advantage in supplying equipment or services to such LUL Contractors for the purposes of fulfilling their contracts with LUL.

28.2 To the extent requested to do so by LUL, the Contractor undertakes to LUL, that it will supply equipment or services which are relevant to the Services to any LUL Contractor whose activities are similar to, dependent on or otherwise connected with the Contractor's activities pursuant to this Contract, on terms which are not materially more onerous than the terms of this Contract for the purpose of the relevant LUL Contractor fulfilling its contract with LUL (acknowledging that this will include associated overheads and margin calculated in accordance with the rates set out in the rate card for labour rates outside of the Initial Period set out in Appendix 3 of Schedule 4.1 (*Charges and Invoicing*)).

## 29. **NON-SOLICITATION**

Neither Party shall during the period from the Effective Date to the date falling six (6) months after the Expiry Date without the other Party's prior agreement in writing directly or indirectly offer to employ or to engage as an independent contractor or induce any person who has been associated in a technical or managerial capacity with the provision of the Services during the preceding six (6) months to leave that Party's employment (other than staff who have applied for genuine vacancies advertised by that other Party).

## 30. **TRAINING**

30.1 The Contractor shall train or shall have trained its own personnel for all aspects of its performance of the Contract and shall procure that LUL Employees are trained in relation to the operation of the System in accordance with the Training Plan, which shall be prepared and updated in accordance with Schedule 6.7 (*Training*). LUL shall ensure that LUL Employees are available to be trained in accordance with the Training Plan.

30.2 Where training of the Contractor's personnel or sub-contractors' personnel (together in this Clause 30, the "**Contractor's Personnel**") is required to be undertaken or procured by LUL in accordance with Schedule 6.7 (*Training*), the Contractor shall be responsible for booking such training in accordance with the procedures therefor notified to the Contractor by the Contract Manager from time to time. The Contractor shall have no claim against LUL if Access to a Site is denied due to failure to complete training of Contractor's Personnel save to the extent that such failure to complete training is due to breach by LUL of its obligation to provide training pursuant to Clause 30.3 (*Training*) below.

30.3 LUL shall provide training of the Contractor's Personnel in accordance with the provisions of Schedule 6.7 (*Training*).

## 31. **NOT USED**

# **SECTION F: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

## 32. **INTELLECTUAL PROPERTY RIGHTS**

32.1 Nothing in this Contract shall operate to transfer any IPR of either Party (or of either Party's Affiliates or sub-contractors (of any tier)) to any other person save to the extent set out in this Contract.

32.2 Subject to Clause 32.3, all IPR developed or created by a Party, or on behalf of that Party, in the course of carrying out activities pursuant to this Contract shall belong to that Party and/or one or more of its Affiliates or its sub-contractors (of any tier), as appropriate.

32.3 All rights (including IPR) in Data (which terms shall for the purposes of this Clause 32 (*Intellectual Property*) and Clause 33 (*Licences Granted by the Contractor*), exclude any Personal Data) shall vest in the Party that generated that . All rights (including IPR) in LUL Data (but excluding Personal Data) shall vest in LUL. Notwithstanding the foregoing, to the extent the Contractor creates or acquires an interest in any LUL Data, the Contractor hereby transfers such rights to LUL and warrants that such rights shall be free from any Encumbrances with LUL (or its nominee) and any of LUL's sub-licensees shall have the

right to use the LUL Data for any reason whatsoever. For the avoidance of doubt, the extent that LUL Data or Data includes Personal Data, the foregoing shall be subject to Clause 39 (*Privacy and Data Protection*) and shall not be subject to any of the provisions of this Clause 32 (*Intellectual Property*) or Clause 33 (*Licences Granted by the Contractor*).

32.4 The Contractor acknowledges that any licensing or rights to use charges relating to the use of the licence or rights to use described in Clause 33 (*Licences Granted by the Contractor*) have been taken into account when determining the Charges payable by LUL to the Contractor under this Contract and LUL shall not be liable for any additional charges in relation thereto.

32.5 Neither Party shall have any right to use any of the other Party's trademarks, trade names, business names, logos, designs, copyrights and all analogous rights whether registered or unregistered which relate directly or indirectly to the other Party's (or any member of the other Party's Group's) corporate identity on any of its products or services without the other Party's prior written consent.

### 33. LICENCES GRANTED BY THE CONTRACTOR

33.1 The Contractor hereby grants to LUL a non-exclusive, irrevocable, sub-licensable (to any number of tiers), fully paid-up, perpetual licence, which is transferrable to a party to whom LUL assigns, novates, sub-contracts, delegates, transfers, mortgages, charges or otherwise disposes of its relevant rights and obligations under this Contract pursuant to Clause 57 (*Assignment*) of the Contractor IPR and Third Party IPR, in each case for the purposes of:

33.1.1 the design, testing, commissioning, operation, use, manage, maintenance, repair, upgrade, modification and disposal of the System and System Assets in each case in accordance with this Contract during the Term;

33.1.2 allowing LUL or its nominee to:

(A) operate, use, manage, maintain, repair and dispose of the System and the System Assets; and

(B) (in respect of Contractor IPR, but not Third Party IPR) design, test, commission, upgrade and modify the System and the System Assets;

33.1.3 receiving and using the Services;

33.1.4 without prejudice to Clauses 33.1.1 and 33.1.2 (*Licences granted by the Contractor*), the extension of the System in the Underground Network;

33.1.5 any activity related to managing the operational interfaces between the System or System Assets and any other systems or assets used by LUL or any other member of the LUL Group for LUL's business purposes;

33.1.6 the provision of training services and training personnel to carry out any of the activities described in this Clause 33.1;

33.1.7 accessing, using, maintaining, updating, modifying and copying the Documents;

33.1.8 complying with all applicable Laws and Standards;

33.1.9 complying or co-operating with any enquiries made or carried out by the British Transport Police, Network Rail, the RAIB, the Railway Safety Directorate, OFCOM, HMRI or the ORR, or any other person carrying out any regulatory, judicial or quasi-judicial function;

33.1.10 allowing LUL to discharge its obligations and exercise its rights under this Contract (including, without limitation, the exercise of Step-In Rights or any rights under Clauses 23 (*Records and Information*) and 24 (*Audit and Inspection*));

33.1.11 preparing for, inviting and conducting tenders for any of the activities described in Clauses 33.1.1 to 33.1.6 (*Licences granted by the Contractor*) (inclusive), subject to any restrictions in Schedule 6.6 (*Exit Management*); and



33.1.12 allowing LUL or its nominee to receive and use Replacement Services (or any equivalent services),

at all times in accordance with this Contract (if relevant) and provided that LUL shall not disclose Commercially Sensitive Information to any Other Service Provider (including a Replacement Contractor) or Third Party and a licence granted by the Contractor to any Other Service Provider or Third Party in accordance with this Clause 33.1 shall not include a licence to any Commercially Sensitive Information.

33.2 If in the performance of the Services (including the implementation of the Upgrade Projects and the management of Spares), the Contractor installs assets or otherwise transfers title to System Assets to LUL (for example, Spares), in consideration of the sum of [REDACTED] (receipt of which is hereby acknowledged by the Contractor), the Contractor shall upon such installation or transfer of title (whichever is the earlier), be deemed to grant to LUL (and any Other Service Providers or Third Parties nominated by LUL for LUL's benefit) a perpetual, non-exclusive, irrevocable, transferable, royalty-free licence to the Intellectual Property Rights relating to such System Assets (other than any Intellectual Property Rights which are owned by LUL) subsisting in such System Assets to the extent reasonably necessary for the purposes set out in Clause 33.1 (*Licences granted by the Contractor*).

33.3 If, in the modification or configuration of a COTS Product in the conduct of the provision of the Services, the Contractor creates Intellectual Property Rights then:

33.3.1 the Contractor shall own such Intellectual Property Rights;

33.3.2 the Contractor shall provide LUL with a copy of all documentation associated with such Intellectual Property Rights, including a Document fully describing the modification and configuration of such COTS Product, and in relation to any such configuration(s) shall ensure that such Document fully describes and explains the configurations; and

33.3.3 the Contractor hereby grants to LUL (and any Other Service Providers or Third Parties nominated by LUL for LUL's benefit) a perpetual, non-exclusive, irrevocable, transferable, royalty-free licence to such Intellectual Property Rights for the purposes of receiving (or providing to itself) and using the Services and any Replacement Services; and

33.3.4 subject to LUL obtaining a licence or right to use the relevant COTS Product, the Contractor shall provide LUL with a copy of such COTS Product which is modified and configured so that it is identical to the equivalent product used by the Contractor in the provision of the Services at the point of handover to LUL and/or the Replacement Contractor.

33.4 In relation to the Dedicated Contractor Toolsets, the Contractor hereby grants to LUL (and any Other Service Providers or Third Parties nominated by LUL for LUL's benefit) a perpetual, non-exclusive, irrevocable, transferable, royalty-free licence to such Intellectual Property Rights for the purposes of receiving (or providing to itself) and using the Services and any Replacement Services.

33.5 The licences granted under this Clause 33 (including any sub-licence) shall not extend to giving the licensees the right to manufacture any part of the System or any element of its associated Intellectual Property Rights.

33.6 The Parties agree that for the purposes of this Clause 33.6, "**System Features**" are:

33.6.1 those design features and other graphic or artistic works comprised in the graphical user interface (GUI); and

33.6.2 associated business rules and associated workflows,

of the System and System Assets (or any part thereof) which are reasonably necessary to provide that the User interface and the maintenance interface is consistent across the System and any new, additional or replacement system or system assets.

The Parties acknowledge that LUL and APD are entering into a separate arrangement regarding the licensing of APD owned or controlled IPR subsisting in the System Features. The Contractor confirms that there is no Contractor IPR, nor is there any Third Party IPR owned or controlled by Motorola, in the System Features. Without prejudice to the foregoing, if there is Contractor IPR or Third Party IPR owned or controlled by Motorola in the System Features then the Contractor shall not, and shall procure that Motorola shall not, prevent or otherwise restrict LUL and LUL's sub-licensees from licensing and using the System Features.

- 33.7 Upon request from the LUL, the Contractor shall execute such further documents, provide copies of any documents or records and do such other things, as LUL may reasonably request in order for LUL to obtain the full benefit of this Clause 33, at no cost to LUL.

#### **34. LICENCES GRANTED BY LUL**

- 34.1 LUL hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use LUL IPR solely to the extent necessary for performing the Services in accordance with this Contract and exercising its rights and complying with its obligations under this Contract, including the right to grant sub-licences to Sub-contractors on the same terms provided that:

34.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Contractor on the same terms (in all material respects) as set out in Clause 41 (*Publicity and Confidentiality*); and

34.1.2 the Contractor shall not, without LUL's prior written consent, use the licensed materials described in this Clause 34.1 (*Licences Granted by LUL*) for any other purpose or for the benefit of any person other than LUL.

- 34.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 34.1 (*Licences Granted by LUL*) shall terminate automatically on the date of such termination or expiry and the Contractor shall:

34.2.1 immediately cease all use of all LUL IPR and LUL Data (as the case may be);

34.2.2 at the discretion of LUL, return or destroy documents and other tangible materials that contain any LUL IPR or LUL Data, provided that if LUL has not made an election within six (6) months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any LUL IPR or LUL Data (as the case may be); and

34.2.3 ensure, so far as reasonably practicable, that any LUL IPR or LUL Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such LUL IPR and/or LUL Data.

- 34.3 The Contractor acknowledges and agrees that any Intellectual Property Rights licensed to the Contractor pursuant to this Clause 34 shall vest in the LUL and nothing in this Clause 34 shall operate to transfer ownership of such Intellectual Property Rights to Contractor.

#### **35. IPR INDEMNITY**

- 35.1 The Contractor shall at all times, during and after the Term, on written demand indemnify LUL and each other Indemnified Person, and keep LUL and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid (acknowledging the restriction on settling or compromising any third party claim set out at Clause 35.6.1 (*IPR Indemnity*)) by an Indemnified Person arising from any claim against that Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Third Party IPR arising in connection with the provision and receipt of the Services or use by LUL, Other Service Providers or Third Parties of the licences and rights described in Clause 33.1 (*Licences granted by the Contractor*), save for any such claim to the extent that it is caused by:

- 35.1.1 any use by or on behalf of that Indemnified Person of any such Third Party IPR;  
or
- 35.1.2 the use of LUL Software by or on behalf of the Contractor,  
in either case in breach of this Contract or in combination with any item not supplied or recommended by the Contractor pursuant to this Contract or for a purpose not reasonably to be inferred from the Service Requirements or the provisions of this Contract (a **"Contractor IPR Claim"**).
- 35.2 If a Contractor IPR Claim is made, or the Contractor reasonably anticipates that a Contractor IPR Claim might be made, the Contractor shall immediately notify LUL providing full details of the same and may, at its own expense and sole option, either:
  - 35.2.1 procure for LUL or other relevant Indemnified Person the right to continue using the relevant item which is subject to the Contractor IPR Claim; or
  - 35.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
    - (A) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (B) the replaced or modified item does not have an adverse effect on any other Services;
    - (C) there is no additional cost to LUL or the relevant Indemnified Person (as the case may be); and
    - (D) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 35.3 If the Contractor elects to procure a licence in accordance with Clause 35.2.1 (*IPR Indemnity*) or to modify or replace an item pursuant to Clause 35.2.2 (*IPR Indemnity*), but this has not avoided or resolved the Contractor IPR Claim, then:
  - 35.3.1 LUL may terminate this Contract (if subsisting) with immediate effect by written Notice to the Contractor; and
  - 35.3.2 without prejudice to the indemnity set out in Clause 35.1 (*IPR Indemnity*), the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
- 35.4 LUL shall at all times, during and after the Term, on written demand indemnify the Contractor and keep the Contractor indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Contractor arising from a LUL IPR Claim.
- 35.5 If a LUL IPR Claim is made, or LUL reasonably anticipates that a LUL IPR Claim might be made, LUL shall immediately notify the Contractor providing full details of the same and may, at its own expense and sole option, either:
  - 35.5.1 procure for the Contractor or other relevant Indemnified Person the right to continue using the relevant item which is subject to the LUL IPR Claim; or
  - 35.5.2 replace or modify the relevant item with non-infringing substitutes provided that:
    - (A) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (B) the replaced or modified item does not have an adverse effect on any other Services;
    - (C) there is no additional cost to the Contractor or the relevant Indemnified Person (as the case may be); and
    - (D) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 35.6 **Conduct of claims**

Subject to the foregoing, the indemnifying Party (the "**Indemnifying Party**") shall at its own expense, defend (or, at its option, settle) any action brought against the other Party (the "**Indemnified Party**") arising in respect of a LUL IPR Claim or a Contractor IPR Claim (as the case may be) in accordance with the following:

- 35.6.1 the Indemnified Party shall give written Notice to the Indemnifying Party of such third party claim as soon as reasonably practicable on becoming aware of it and will not at any time admit liability or otherwise attempt to settle or compromise such third party claim without the Indemnifying Party's prior written consent;
- 35.6.2 without prejudice to Paragraph 6 of Schedule 6.2 (*Dispute Resolution Procedure*), the Indemnifying Party shall have sole conduct of the defence or compromise of any third party claim and as between the Indemnified Party and the Indemnifying Party shall have the sole right to any costs and damages awarded as a result; and
- 35.6.3 the Indemnified Party shall act in accordance with the instructions of the Indemnifying Party and provide the Indemnifying Party such assistance as it shall reasonably require, at the Indemnifying Party's cost (provided such costs of the Indemnified Party are properly incurred), in respect of the conduct of such defence or compromise.

## 36. **IPR REGISTER**

- 36.1 The Contractor shall produce and maintain an IPR Register in substantially the same form set out in Schedule 8.1 (*IPR Register*) which sets out all Contractor IPR or Third Party IPR and details of any associated licensing arrangements including details of the following:

- 36.1.1 Contractor IPR;
- 36.1.2 Third Party IPR;
- 36.1.3 Toolsets;
- 36.1.4 Dedicated Contractor Toolsets and
- 36.1.5 COTS Product.

The Parties acknowledge that the IPR Register may not be accurate as at the Effective Date and the Contractor shall (if necessary) update the IPR Register and submit it to LUL for Assurance no later than three (3) months prior to the Service Commencement Date in accordance with Clause 4.2.1(C)(4).

- 36.2 Without prejudice to the generality of the foregoing, the Contractor shall update the IPR Register and submit it to LUL for Assurance within fifteen (15) Working Days of:
  - 36.2.1 the completion of any Variation (to the extent necessary to maintain the accuracy of the IPR Register);
  - 36.2.2 each anniversary of the Service Commencement Date;
  - 36.2.3 each Service End Date;
  - 36.2.4 the Expiry Date.
- 36.3 In the event of any inconsistency between Schedule 8.1 (*IPR Register*) and the provisions of Clauses 32 (*Intellectual Property Rights*) to 34 (*Licences Granted by LUL*), the latter shall prevail (irrespective of whether or not LUL has agreed, Approved or Assured such IPR Register).

## 37. **ESCROW**

- 37.1 The Parties acknowledge that:
  - 37.1.1 the Motorola Sub-contract includes a right for LUL (or the Contractor on LUL's behalf) at any time during the Term, to require Motorola to enter into an escrow agreement covering the storage and release of Source Code (and documentation and build materials) relating to the Dimetra software and, in certain circumstance

to require novation of Motorola's escrow agreement with APD from Motorola to LUL;

37.1.2 Motorola's compliance with such request is, to the extent described in such Key Sub-contract, dependent on LUL paying an associated fee to Motorola;

37.1.3 LUL has third party rights under such Key Sub-contract which entitle it to enforce the right referred to in Clause 37.1.1.

37.2 The Contractor shall co-operate with LUL in relation to LUL's enforcement of the right described in Clause 37.1.1, including by enforcing its associated rights against Motorola. In no circumstances will the fee referred in Clause 37.1.2 be payable by the Contractor.

## 38. **DATA, LUL DATA AND SECURITY REQUIREMENTS**

38.1 The Contractor acknowledges that LUL is the sole owner of all rights in the LUL Data and if one of the Parties generates Data, it shall own all rights to such Data (save in respect of Personal Data belonging to a Data Subject in respect of which LUL or a member of the LUL Group is a Data Controller or Data Processor).

38.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Data or the LUL Data.

38.3 The Contractor shall not store, copy, disclose, or use Data or LUL Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by LUL.

38.4 To the extent that Data or LUL Data is held and/or processed by the Contractor, the Contractor shall supply that Data or LUL Data (as the case may be) to LUL as requested by LUL in the format reasonably specified by LUL and in the event that such format specified by LUL is materially different to the format in which the Contractor holds the Data or LUL Data on the date of LUL's request, the Parties agree that any conversion or transformation activities that the Contractor needs to carry out on such Data or LUL Data shall be implemented in accordance with the Variation Procedure.

38.5 The Contractor shall be responsible for the security of the Data or the LUL Data and for preserving the integrity of the Data or the LUL Data and preventing the corruption or loss of Data or LUL Data at all times that the relevant Data or LUL Data (as the case may be) is under the control of any Sub-contractor by taking all necessary steps and following all processes set out and/or required under the Contract in connection with these obligations.

38.6 The Contractor shall perform secure back-ups of all Data under its control or the control of any Sub-contractor and shall ensure that up-to-date back-ups are stored in no less than two (2) physically separate locations in accordance with Good Industry Practice and the BCDR Plan. The Contractor shall ensure that such back-ups are available to LUL (or to such other person as LUL may direct) at all times upon request.

38.7 The Contractor shall ensure that any system on which the Contractor holds any Data or LUL Data, including back-up data, is a secure system that complies with the security requirements set out in Schedule 2.5 (*Security Management*).

38.8 If Data or LUL Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Contractor shall notify LUL immediately and LUL may:

38.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of relevant Data and LUL Data from backups in accordance with Schedule 2.11 (*Business Continuity and Disaster Recovery*) and the Contractor shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of LUL's notice; and/or

38.8.2 itself restore or procure the restoration of relevant Data and LUL Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 2.11 (*Business Continuity and Disaster Recovery*).

38.9 Without prejudice to LUL's rights and remedies under this Contract or at Law (including LUL's rights and remedies under Clause 50 (*Rectification Plan Process*), if at any time the Contractor suspects or has reason to believe that Data or LUL Data has been accessed or is (by reference to the relevant Standards) vulnerable to being accessed, by any unauthorised third party, in any way for any reason, then the Contractor shall notify LUL immediately and inform LUL of the remedial action the Contractor proposes to take.

38.10 The Contractor shall comply with the requirements of Schedule 2.5 (*Security Management*).

**38.11 Malicious Software**

38.11.1 The Contractor shall, in the performance of its obligations under this Contract and as an enduring obligation throughout the Term, and in a manner which complies with Good Industry Practice, use the latest full release versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software on LUL, the System Assets, the System, the Services and the Telecommunications Services.

38.11.2 Notwithstanding Clause 38.11 (*Malicious Software*), the Contractor shall in connection with the performance of its obligations under this Contract, provide such co-operation that LUL reasonably requests to reduce the effect of Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Data or LUL Data, assist LUL to mitigate any Losses.

38.11.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 38.11 (*Malicious Software*) shall be borne by the Parties as follows:

(A) by the Contractor if the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where LUL has waived the obligation set out in Clause 38.11 (*Malicious Software*)) or Data or LUL Data (whilst Data or LUL Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by LUL when provided to the Contractor; and

(B) otherwise by LUL.

**39. PRIVACY AND DATA PROTECTION**

39.1 With respect to the Parties' rights and obligations under this Contract, the Parties acknowledge that LUL is a Data Controller and, to the extent the Contractor receives Personal Data from LUL in connection with its provision of the Services and Processes on behalf of LUL, then the Contractor is a Data Processor.

39.2 Schedule 8.3 (*Details of Processing Personal Data*) to this Contract sets out certain information regarding the Contractor's Processing of Personal Data as required by the Data Protection Legislation. The Parties acknowledge that they may further develop Schedule 8.3 (*Details of Processing Personal Data*) in accordance with Clause 4.2.1(C)(5). In addition, LUL may make reasonable amendments to Schedule 8.3 (*Details of Processing Personal Data*) in accordance with the Variation Procedure.

39.3 In relation to Personal Data which is Processed by the Contractor, the Contractor shall:

39.3.1 Process the Personal Data only in accordance with written instructions from LUL to the extent necessary to perform its obligations under this Contract (and for the avoidance of doubt, LUL hereby instructs the Contractor to carry out such processing as may be necessary from time to time, for the purposes of performing its obligations under this Contract) and shall not use the Personal Data (in whole or in part) for any other purpose, including copying or referring to the Personal Data in training materials, training courses, discussions or

negotiations or contractual arrangements with third parties, or proposals or tenders with LUL (or otherwise), without the prior written consent of LUL unless required to do so by the Data Protection Legislation, in which case the Contractor shall inform LUL of that legal requirement before processing unless that law prohibits such information on important ground of public interest. For the purposes of this clause, the written instructions from LUL are to carry out such processing as is necessary from time to time to perform the Contractor's obligations under this Contract;

- 39.3.2 inform LUL immediately if it is unable to comply with any such instructions from LUL or if it considers that any such instructions do not comply with the Data Protection Legislation, in which case any changes required to LUL's instructions or the Contractor shall be dealt with in accordance with the Variation Procedure;
- 39.3.3 ensure that at all times it has in place appropriate technical and organisational security measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 38 (*Data, LUL Data and Security Requirements*) and shall ensure its Sub-contractors do the same, in accordance with Clause 27 (*Sub-contracting and Personnel*);
- 39.3.4 fully cooperate with the reasonable instructions of LUL in relation to the security of Personal Data and to the extent that such instructions require a change to the measures set out in Clause 38 (*Data, LUL Data and Security Requirements*), such change will be dealt with in accordance with the Variation Procedure and if the Contractor considers that such change will result in security measures that do not comply with the Data Protection Legislation, the Contractor shall inform LUL immediately and any further change required in respect of the security measures will be dealt with in accordance with the Variation Procedure;
- 39.3.5 not disclose or transfer the Personal Data to any third party or Contractor Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of LUL (save where such disclosure or transfer is specifically authorised under this Contract);
- 39.3.6 take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel (excluding Sub-contractor Personnel) and any relevant Sub-contractor:
  - (A) are aware of, subject to, and comply with the Contractor's duties under this Clause 39 and Clauses 41 (*Publicity and Confidentiality*) and 38 (*Data, LUL Data and Security Requirements*);
  - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by LUL or as otherwise permitted by this Contract or required by law; and
  - (C) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in Data Protection Legislation), understand such obligations and comply with them and ensure that such training is updated at reasonable intervals;
- 39.3.7 notify LUL without undue delay and in any event within five (5) Working Days if it, or any Sub-contractor, receives:
  - (A) from a Data Subject (or third party on their behalf):
    - (1) a Subject Access Request (or purported Subject Access Request);
    - (2) a request to rectify, block or erase any Personal Data; or

- (3) any other request, complaint or communication relating to the Data Subject's rights or LUL's obligations under Data Protection Legislation;
  - (B) any communication from the Information Commissioner, the European Data Protection Board, or any other regulatory authority in connection with Personal Data; or
  - (C) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- 39.3.8 provide LUL with reasonable co-operation and assistance (within the timescales reasonably required by LUL) in relation to any complaint, communication or request made as referred to in Clause 39.3.7 (*Privacy and Data Protection*), including by promptly providing:
  - (A) LUL with full details and copies of the complaint, communication or request;
  - (B) where applicable, such assistance as is reasonably requested by LUL to enable LUL to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation;
  - (C) LUL, on request by LUL, with any Personal Data it holds in relation to a Data Subject; and
  - (D) where applicable, such assistance as is reasonably required by LUL to enable LUL to comply with a request from a Data Subject to:
    - (1) rectify, block or erase any Personal Data; and/or
    - (2) inform Third Parties of the need to erase any links to, or copies of, Personal Data in accordance with the requirements of Data Protection Legislation;
- 39.3.9 notify LUL without undue delay and in any event within twenty-four (24) hours of becoming aware of it, by written Notice with all relevant details reasonably available of any actual or suspected Personal Data breach, breach of security and/or of this Contract and/or this Clause 39 in relation to Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any Personal Data, and:
  - (A) keep LUL properly and regularly informed subsequently; and
  - (B) provide LUL with all reasonable assistance in meeting its obligations under the Data Protection Legislation with respect to the notification of personal data breaches;
- 39.3.10 as and when required by, and in accordance with the requirements of Data Protection Legislation, appoint a designated data protection officer within the Contractor's organisation;
- 39.3.11 if reasonably requested by LUL, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 39 and provide to LUL copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy audit carried out at the request of the Contractor itself or LUL;
- 39.3.12 where reasonably requested to do so by LUL, and where Processing operations of Personal Data present specific risks to privacy, assist LUL in relation to its obligations with respect to Privacy Impact Assessments, in accordance with guidance issued from time to time by the Information Commissioner or the



European Data Protection Board or statutory requirements and make the results of such an assessment available to LUL;

- 39.3.13 maintain, and make available to LUL on its reasonable request, documentation, central register or inventory which describes the processing operations for which it is responsible and specifies: the purposes for which Personal Data are processed; the categories of Personal Data and Data Subjects involved; the source of the data; the recipients of the data; and the location(s) of any overseas processing of those Personal Data;
- 39.3.14 co-operate as LUL requires with any investigation or audit in relation to the processing of Personal Data including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary but only to the extent required to access the Personal Data for which LUL is legally responsible (whether in relation to Processing pursuant to this Contract, in relation to Data Protection Legislation or in relation to any actual or suspected breach), whether by LUL (or on its behalf), by any central or local government audit authority, the Information Commissioner, the European Data Protection Board, the police or otherwise and shall do so both during this Contract and after its termination or expiry (for so long as the Party concerned retains and/or otherwise Processes Personal Data); and
- 39.3.15 comply with the following LUL information governance policies:
  - (A) the Information Access Policy;
  - (B) the Information and Records Management Policy;
  - (C) the Information Security Policy; and
  - (D) the Privacy and Data Protection Policy (as referred to in Schedule 2.6 (*Standards*))

and any updated or new data retention and/or deletion policy (or any other similar policy) added to the Standards in Schedule 2.6 (*Standards*) in accordance with the Variation Procedure.

- 39.4 The Contractor shall not Process or otherwise transfer any Personal Data on LUL's behalf in or to any Restricted Countries without prior written consent from LUL. If, after the Effective Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:
  - 39.4.1 the Contractor shall submit a Contractor Proposed Variation to LUL which, if LUL agrees to such Contractor Proposed Variation, shall be dealt with in accordance with the Variation Procedure and Clauses 39.4.2 to 39.4.4 (*Privacy and Data Protection*);
  - 39.4.2 the Contractor shall set out in the relevant Contractor Proposal details of the following:
    - (A) the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
    - (B) the Restricted Countries which the Personal Data will be transferred to and/or Processed in;
    - (C) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
    - (D) how the Contractor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure LUL's compliance with Data Protection Legislation;
  - 39.4.3 in providing and evaluating the Contractor Proposed Variation and Outline Proposal, the Parties shall ensure that they have regard to and comply with then-current LUL, Central Government Bodies, Information Commissioner Office and

European Data Protection Board policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

39.4.4 the Contractor shall comply with such other instructions and shall carry out such other actions as LUL may notify in writing, including:

(A) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties or implementing any other measure specified by LUL to ensure that the transfer to and/or Processing in any Restricted Countries enables LUL to meet its obligations under the Data Protection Legislation in respect of such transfer and/or Processing; and

(B) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

(1) a direct data processing agreement with LUL; or

(2) a data processing agreement with the Contractor,

which shall in each case contain obligations no less onerous on the Sub-contractor or third party than a written contract entered into between the Contractor or a Sub-contractor or third party pursuant to Clause 39.6 (*Privacy and Data Protection*),

and in each case which the Contractor acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which LUL deems necessary for the purpose of protecting Personal Data.

39.5 The Contractor shall use its reasonable endeavours to assist LUL to comply with any obligations under Data Protection Legislation related directly to the Services, including but not limited to obligations with respect to the security of processing, the notification of personal data breaches, and privacy impact assessments, and shall not perform its obligations under this Contract in such a way as to cause LUL to breach any of LUL's obligations under Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

39.6 LUL remains solely responsible for determining the purposes and manner in which Data and LUL Data are to be Processed. The Contractor shall not share any Data or LUL Data with any Sub-contractor or third party without prior written consent from LUL (in this Contract or otherwise) and unless there is a written contract in place with the Contractor (a copy of which shall be submitted in advance to LUL for approval) which requires the Sub-contractor or third party:

39.6.1 only to Process Data and LUL Data in accordance with LUL's written instructions to the Contractor; and

39.6.2 to comply with the same obligations with which the Contractor is required to comply with under this Clause 39,

provided always that no Sub-contractor may assign or sub-contract their rights or obligations under such (Sub-contract and/or may not Process or permit the Processing of Data or LUL Data inside any Restricted Countries without the explicit prior written consent of LUL.

39.7 The Contractor shall not process Personal Data following termination or expiry of this Contract, save as permitted by this Clause 39. Following termination or expiry of this Contract, howsoever arising, the Contractor:

- 39.7.1 may Process Personal Data only for so long and to the extent as is necessary properly to comply with its non-contractual obligations arising under Law;
- 39.7.2 subject to Clause 39.7.1 (*Privacy and Data Protection*), will not retain any copy, abstract, précis or summary of any Personal Data unless the Data Protection Legislation requires storage of the Personal Data and will:
  - (A) on the instructions of LUL, either securely destroy, or put beyond use, or securely and promptly return, to LUL (in such usable format as and to the extent LUL may require) the Personal Data accordingly; or
  - (B) in the absence of instructions from LUL, after twelve (12) months from the expiry or termination of this Contract, securely destroy or put beyond use the Personal Data.

#### 40. **RESERVATION OF INTERCEPTION RIGHTS**

The Contractor acknowledges and undertakes to inform those Contractor Personnel (excluding Sub-contractor Personnel) and Sub-contractors who will be using the Telecommunications Services and any other of the LUL Group's communications facilities that the LUL Group reserves the right from time to time during the Term to:

- 40.1.1 intercept solely for the purposes of monitoring and/or recording any communication made through any such systems capable of transmitting communications including but not limited to telephone, electronic mail and fax; and
- 40.1.2 use any information obtained as a result of any such intercepted communications solely for the purposes permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, as it may be superseded or amended from time to time.

#### 41. **PUBLICITY AND CONFIDENTIALITY**

- 41.1 The Contractor shall not, and shall procure that Contractor Personnel (excluding Sub-contractor Personnel) and Sub-contractors do not, without the prior consent in writing of LUL or save as expressly permitted in this Contract:
  - 41.1.1 subject to Clause 41.3 (*Publicity and Confidentiality*), and whether or not any restriction contained in this Clause 41 is disapplied pursuant to Clause 41.2 (*Publicity and Confidentiality*), advertise or make any announcement (including, without limitation, any communication to the public, to any clients or suppliers of either Party or to all or any of the employees of either Party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Contract or containing any information about LUL (including, without limitation Confidential Information), or that it is carrying out this Contract for LUL (provided that in the case of a mere statement that the Contractor is counterparty to this Contract, such consent shall be deemed to be granted);
  - 41.1.2 use LUL Property for the purpose of advertising or any promotional activity; or
  - 41.1.3 use Intellectual Property Rights in the trademarks or brands of LUL.
- 41.2 LUL shall have the absolute discretion in deciding whether to give its consent as referred to in this Clause 41.
- 41.3 Clause 41.1 (*Publicity and Confidentiality*) shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or Regulatory Body having jurisdiction over either Party and whether or not the requirement has the force of law and provided that (unless prohibited by Law) any such announcement will be made only after consultation with the other Party.

- 41.4 Without prejudice to the provisions of Clause 23 (*Records and Information*), each Party receiving (directly or indirectly) Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") undertakes to:
- 41.4.1 treat it as Confidential Information and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 41.4.2 not to disclose (without the Disclosing Party's prior written consent in writing) to any Third Party any such Confidential Information supplied by that Disclosing Party. The Disclosing Party may require as a precondition for the granting of such consent that any such Third Party provides a confidentiality undertaking to the Disclosing Party in terms satisfactory to the Disclosing Party. Where the Third Party has a need to receive such information for the furtherance of the aims of the Contract and such Third Party provides such a confidentiality undertaking, the Disclosing Party's prior consent shall be deemed to have been given save in the case of any Commercially Sensitive Information where it shall not be deemed to have been given;
  - 41.4.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
  - 41.4.4 shall immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 41.5 The Receiving Party shall not be in breach of its obligation under Clause 41.4 (*Publicity and Confidentiality*) where:
- 41.5.1 Confidential Information or any part of such Confidential Information is in the public domain, or known to the Receiving Party, at the time of its disclosure other than by breach of this Clause;
  - 41.5.2 the Receiving Party is required to disclose the Confidential Information (excluding any Commercially Sensitive Information) by Law, provided that Clause 42 (*Freedom of Information and Transparency*) shall apply to disclosures required under the FOI Legislation;
  - 41.5.3 required to be disclosed by Law, the regulations of any recognised stock exchange or by an order of a court or other tribunal of a competent jurisdiction. If the disclosure of Confidential Information is required by Law, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply;
  - 41.5.4 any legal challenge or potential legal challenge against LUL arising out of or in connection with this Contract;
  - 41.5.5 the examination and certification of the Receiving Party's accounts (provided that the disclosure is made on a confidential basis);
  - 41.5.6 the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
  - 41.5.7 the Receiving Party is required to disclose the Confidential Information to the Secretary of State (or the government department responsible for public transport in London for the time being), the Office of Rail and Road, or any person or body who has statutory responsibilities in relation to transport in London including their employees, agents and sub-contractors;
  - 41.5.8 LUL is the Receiving Party and such disclosure of Confidential Information (excluding Commercially Sensitive Information) is made to a Replacement

Contractor or potential Replacement Contractor in accordance with Paragraph 4.1 of Schedule 6.6 (*Exit Management*);

- 41.5.9 LUL is the Receiving Party, information disclosed by LUL as part of any procurement exercise to which the provision of the Services is relevant (including the procurement of services to succeed, replace, augment or alter the Services) subject to deleting from any such information any information which is Commercially Sensitive Information;
  - 41.5.10 Confidential Information is provided to the actual or potential shareholders (and their respective parent companies) of the Contractor (and their respective professional advisers (including lawyers, auditors and accountants)) in each case as are required in the course of their duties to receive and consider the same for the purposes of the Project or the enforcement or preservation of any rights under this Contract;
  - 41.5.11 Confidential Information is provided by LUL to the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the government of the United Kingdom; or
  - 41.5.12 Confidential Information is provided by the Contractor to any Connected Person, or by LUL to any Connected Person (LUL).
- 41.6 The Receiving Party may disclose the Confidential Information of the Disclosing Party on a confidential basis only to:
- 41.6.1 Contractor Personnel or LUL Personnel (as the context requires or permits) who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Contractor's obligations under this Contract;
  - 41.6.2 the Receiving Party's auditors;
  - 41.6.3 the Receiving Party's professional advisers, consultants, suppliers or other persons engaged by any of such entities for any purpose relating to or connected with this Contract; and
  - 41.6.4 where the Receiving Party is LUL, excluding Commercially Sensitive Information, the proposed successor in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.

If the Receiving Party discloses Confidential Information pursuant to this Clause 41.6, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on LUL under this Clause 41.6.

- 41.7 Nothing in this Contract shall prevent a Receiving Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

**41.8 LUL Obligation of Confidentiality**

- 41.8.1 Notwithstanding Clause 42 (*Freedom of Information and Transparency*), LUL shall have the same obligations as those imposed on the Contractor under this Clause 41 in respect of the Commercially Sensitive Information set out in Schedule 8.2 (*Commercially Sensitive Information*), except that LUL may:
  - (A) disclose the Commercially Sensitive Information where LUL reasonably considers that it is obliged to do so under any of the legislation referred to in this Clause 41;
  - (B) use (but not disclose) the Commercially Sensitive Information to the extent necessary to obtain the benefit of the Contractor's performance

under this Contract (subject to Paragraph 4.1 of Schedule 6.6 (*Exit Management*));

- (C) disclose the Commercially Sensitive Information to any member of the LUL Group (and in such circumstances LUL shall remain responsible at all times for compliance with the confidentiality agreements set out in this Clause 41.8.1 and the undertakings contained in Clause 41.4 (*Publicity and Confidentiality*) by the members of the LUL Group to whom such disclosure has been made); and
  - (D) disclose such Commercially Sensitive Information as may be required to be published in the Official Journal of the European Union.
- 41.8.2 The Contractor shall procure that any Connected Person performs the Contractor's obligations in this Clause as if it were the Contractor, and the Contractor shall be responsible to LUL for any act or omission by a Connected Person in breach of such obligation.
- 41.8.3 LUL shall procure that any Connected Person (LUL) performs LUL's obligations in this Clause as if it were LUL, and LUL shall be responsible to the Contractor for any act or omission by a Connected Person (LUL) in breach of such obligations.
- 41.8.4 Each Party agrees promptly to notify the other Party if that Party becomes aware of any breach of confidence by a Connected Person or a Connected Person (LUL) (as appropriate) and undertakes to enforce any confidentiality undertaking given pursuant to Clause 41.4.2 (*Publicity and Confidentiality*).
- 41.8.5 Upon termination of this Contract for any reason, the Receiving Party will on the Disclosing Party's request and subject to Clause 23 (*Records and Information*):
- (A) transfer onto hard copies or electromagnetic media in industry standard format and programming languages and deliver to the Disclosing Party any Confidential Information in its possession or control;
  - (B) return to the Disclosing Party all copies (whether hard copy or on electromagnetic media) of Confidential Information in its possession or control;
  - (C) destroy, erase or otherwise put beyond use from its records, systems, databases or other forms of archive, all Confidential Information;
  - (D) in the case of the Contractor, procure that all Connected Persons comply with Clauses 41.8.5(A), 41.8.5(B) and 41.8.5(C) (*LUL Obligation of Confidentiality*) above in relation to any Confidential Information in their possession or control;
  - (E) in the case of LUL, procure that all Connected Persons (LUL) comply with Clauses 41.8.5(A), 41.8.5(B) and 41.8.5(C) (*LUL Obligation of Confidentiality*) above in relation to any Confidential Information in their possession or control;
  - (F) within four (4) weeks deliver to the Disclosing Party a certificate signed by the directors of the Receiving Party that this Clause has been performed in all respects.

Notwithstanding the proceeding provisions of this Clause 41.8.5, the Contractor shall be permitted to retain one copy of all Documentation and Data which may contain Confidential Information.

- 41.8.6 The obligations and restrictions contained in this Clause 41 will survive termination of this Contract and continue without limit of time.
- 41.9 Where LUL's right to provide information or documents to others is subject to LUL not providing the Contractor's Commercially Sensitive Information, LUL shall be deemed to have satisfied the requirement not to provide the Contractor's Commercially Sensitive

Information by redacting any such Commercially Sensitive Information from the relevant documents.

## **42. FREEDOM OF INFORMATION AND TRANSPARENCY**

### **42.1 The Contractor acknowledges that LUL:**

42.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with LUL to enable LUL to comply with its obligations under the FOI Legislation; and

42.1.2 may be obliged under the FOI Legislation to disclose information without consulting or obtaining consent from the Contractor which may include the disclosure of Commercially Sensitive Information pursuant to Clause 41 (*Publicity and Confidentiality*).

### **42.2 Without prejudice to the generality of Clause 41 (*Publicity and Confidentiality*), the Contractor shall and shall procure that its Sub-contractors (if any) shall:**

42.2.1 transfer to the Contract Manager (or such other person as may be notified by LUL to the Contractor ) each Information Access Request relevant to this Contract, the Services or any member of the LUL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Access Request; and

42.2.2 in relation to information held by the Contractor on behalf of LUL, provide LUL with details about and/or copies of all such information that LUL requests and such details and/or copies shall be provided within five (5) Working Days of a request from LUL (or such other period as LUL may reasonably specify), and in such forms as LUL may reasonably specify.

### **42.3 LUL shall use all reasonable endeavours to consult with the Contractor prior to disclosing any Commercially Sensitive Information of the Contractor in response to a disclosure request under the FOI Legislation.**

### **42.4 Transparency**

42.4.1 The Contractor acknowledges that LUL is subject to the Transparency Commitment. Accordingly, notwithstanding the Contractor's confidentiality obligations set out in Clause 41 (*Publicity and Confidentiality*), the Contractor hereby gives its consent for LUL to publish the Contract Information to the general public.

42.4.2 LUL 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 LUL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. LUL may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 42.4 (*Transparency*). LUL shall make the final decision regarding publication and/or redaction of this Contract.

## **SECTION G: LIABILITY, INDEMNITIES AND INSURANCE**

### **43. LIABILITY**

#### **43.1 Unlimited liability**

43.1.1 Neither Party limits its liability for:

- (A) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (B) fraud or fraudulent misrepresentation by it or its employees;
- (C) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- (D) any liability to the extent it cannot be limited or excluded by Law.
- 43.1.2 The Contractor's liability in respect of:
- (A) the indemnities in:
- (1) Clause 5.7.2(A) (*Continuing Obligation to Provide the Services*);
  - (2) Clause 18.3.3 (VAT);
  - (3) Clause 26.1 (*Employment Indemnity*);
  - (4) Clause 26.2 (*Income Tax and National Insurance Contributions*);
  - (5) Clause 35 (IPR Indemnity); and
  - (6) Schedule 7.3 (*Staff Transfer*) and the Annexes to Schedule 7.3 (*Staff Transfer*);
- (B) breach by the Contractor of Clause 42 (*Freedom of Information and Transparency*) or Clause 39 (*Privacy and Data Protection*), insofar as they relate to fines, court awards, settlements and legal costs; and
- (C) breach by the Contractor of Clause 41 (*Publicity and Confidentiality*), shall be unlimited.
- 43.1.3 LUL's liability in respect of:
- (A) the indemnities in:
- (1) Clause 26.1 (*Employment Indemnity*),
  - (2) Clause 35 (IPR Indemnity); and
  - (3) Schedule 7.3 (*Staff Transfer*) and the Annexes to Schedule 7.3 (*Staff Transfer*),
- (B) breach by LUL of Clause 41 (*Publicity and Confidentiality*), shall be unlimited.

## 43.2 Financial and other limits

- 43.2.1 Subject to Clauses 43.1.1 and 43.1.2 (*Unlimited liability*):
- (A) the Contractor's aggregate liability in respect of loss of or damage to LUL Property, Third Party Property or other property or assets of LUL (including technical infrastructure, assets or equipment but excluding any loss or damage LUL Data or Data) that is caused by Defaults of the Contractor occurring shall in no event exceed [REDACTED] per claim and in the annual aggregate;
- (B) the Contractor's aggregate liability in respect of all other Losses incurred by LUL under or in connection with this Contract as a result of Defaults by the Contractor during the period from the Effective Date up to but not including the Service Commencement Date shall not exceed [REDACTED]
- (C) the Contractor's aggregate liability in respect of all other Losses incurred by LUL under or in connection with this Contract as a result of Defaults by the Contractor on or after the Service Commencement Date shall not exceed [REDACTED] in any twelve (12) month period.
- 43.2.2 Subject to Clauses 43.1.1 and 43.1.3 (*Unlimited liability*) and without prejudice to LUL's obligation to pay the Charges as and when they fall due for payment:
- (A) LUL's total aggregate liability in respect of all Losses incurred by the Contractor under or in connection with this Contract as a result of early



termination of this Contract shall in no event exceed the amounts determined in accordance with Clause 56.3; and

(B) LUL's aggregate liability:

- (1) in respect of all Losses incurred by the Contractor under or in connection with this Contract as a result of Defaults of LUL shall not exceed:
  - (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
  - (b) in relation to Defaults occurring after the first Contract Year, a rolling twelve (12) month cap such that LUL's aggregate liability in respect of that Default shall not exceed an amount equal to the Charges paid and/or due to be paid under this Contract in the twelve (12) month period immediately prior to the occurrence of the Default, less any amount recovered by the Contractor in respect of another Default which occurred during that twelve (12) month period; and
  - (c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Contractor in the twelve (12) month period immediately prior to the last day of the Term.

43.2.3 The Contractor's aggregate liability:

- (A) during the period from the Effective Date up to but not including the Service Commencement Date incurred pursuant to Clause 5.7.2(B) shall be [REDACTED] and
- (B) from the Service Commencement Date, in any consecutive thirteen (13) Periods, the maximum aggregate Service Credit deduction will be equal to [REDACTED] of the O&M Service Charges for the relevant thirteen (13) Periods (the "**Service Credit Annual Cap**").

43.2.4 The Contractor's liability in respect of Service Credits in respect of a failure to meet a Service Level shall be LUL's exclusive financial remedy for the Contractor's failure to meet that Service Level (without prejudice to LUL's rights or remedies in relation to any breaches (other than breaches of Service Levels) by the Contractor of its other obligations or duties under this Contract or at Law).

43.2.5 In relation to a Project with Milestones to which Delay Payments have been attributed, the Contractor's liability in respect of such Delay Payments shall be LUL's exclusive financial remedy for the Contractor's Delay (without prejudice to LUL's rights or remedies in relation to any breaches (other than due to Delay) by the Contractor of its other obligations or duties under this Contract or at Law).

43.2.6 The aggregate amount of any liability of or sums paid or by the Contractor to LUL in connection with any Service Credits or any Delay Payments shall, in addition to being capped in accordance with Clauses 43.2.3 and 43.2.5 respectively, count towards and be limited by the Contractor's aggregate cap on liability set out in Clause 43.2.1(C) or, to the extent incurred during the period from the Effective Date up to but not including the Service Commencement Date, the Contractor's aggregate liability cap set out in Clause 43.2.1(B).

43.2.7 Neither Party is entitled to recover damages or otherwise obtain restitution more than once in respect of the same Loss incurred under this Contract.

### 43.3 Disruption Losses

- 43.3.1 The Contractor will pay and/or LUL may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 3.2 (*Disruption Losses*) in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the Contractor to provide the Services or a breach of its obligations under this Contract.
- 43.3.2 Subject to Clause 43.4.2 (*Consequential Losses*), the Contractor's aggregate liability for Disruption Losses shall in no event exceed:
- (A) [REDACTED] in aggregate for all Defaults from the Effective Date to the end of the Initial Period; and
  - (B) if LUL elects to extend the Term in accordance with Clause 3.3.3 (*Duration*), [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in aggregate for all Defaults during the Extension Period.

#### 43.4 Consequential Losses

- 43.4.1 Subject to Clauses 43.1.1, 43.1.2 and 43.1.3 (*Unlimited liability*), Clause 43.2 (*Financial and other limits*) and Clause 43.4.2 (*Consequential Losses*), neither Party shall be liable to the other Party for:
- (A) any indirect, special or consequential loss; or
  - (B) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 43.4.2 Subject to Clause 43.2 (*Financial and other limits*), the provisions of Clause 43.4.1 (*Consequential Losses*) shall not restrict LUL's ability to recover any of the following Losses incurred by LUL to the extent that they arise as a result of a Default by the Contractor:
- (A) any additional operational and/or administrative costs and expenses reasonably incurred by LUL in relation to the relevant Default, including costs relating to time spent by or on behalf of LUL in dealing with the consequences of the Default;
  - (B) any wasted Charges in relation to the relevant Default;
  - (C) any Disruption Losses in respect of which LUL and members of the LUL Group are indemnified by the Contractor in respect of; and
  - (D) the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract in respect of the relevant services.

#### 44. INSURANCE

The Contractor shall comply with the provisions of Schedule 3.3 (*Insurance*) in relation to obtaining and maintaining Insurance.

#### 45. PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

##### 45.1 Parent Company Guarantee

The Contractor shall procure that the Guarantor shall deliver to LUL a properly executed and legally enforceable guarantee in the form set out in Schedule 10 (*Parent Company Guarantee*) on the Effective Date or as otherwise agreed in writing which guarantees full performance by the Contractor of its obligations under this Contract and that such Parent Company Guarantee remains in full force and effect for the duration of this Contract save where LUL otherwise consents in writing (which consent LUL may grant, refuse or grant on such conditions as LUL may in its sole discretion determine).

## 45.2 Performance Bond

### 45.2.1 LUL may:

(A) subject to Clause 45.2.4 (*Performance Bond*), at any time during the Term; or

(B) following the occurrence of a Financial Distress Event,

require the Contractor to provide a performance bond in the form set out in Schedule 11 (*Performance Bond*).

45.2.2 If LUL requires such a performance bond in accordance with Clause 45.2.1 (*Performance Bond*), LUL shall issue a request to the Contractor in writing and the Contractor shall procure the delivery of a performance bond to LUL within ten (10) Working Days of LUL's request.

45.2.3 The performance bond shall be provided by either a bank, insurer or a suitable financial institution which has a credit rating of at least OECD A-1 by Standard and Poor, or P-1 by Moodys which the Contract Manager has accepted, for the amount stated in LUL's request. LUL shall be entitled to refuse to accept such bond from any bank, insurer or suitable financial institution if it considers that its commercial position or its creditworthiness or credit rating is not strong enough to carry the bond.

45.2.4 If, in accordance with Clause 45.2.1(A) (*Performance Bond*), LUL requires the Contractor to provide a performance bond other than following the occurrence of a Financial Distress Event, the Contractor shall be entitled to invoice LUL for the reasonable charges of the bond referred to in Clause 45.2.3 (*Performance Bond*) for putting in place such performance bond provided the Contractor has notified LUL of such costs within two (2) Working Days of LUL's request. The Contractor shall bear all of the costs of putting in place the performance bond in the event LUL makes a request in accordance with Clause 45.2.1(B) (*Performance Bond*).

45.2.5 If a bond is provided in accordance with Clause 45.2.1 (*Performance Bond*) and LUL 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, LUL shall immediately pay or repay 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 LUL 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 LUL in relation to any Demand made or action taken by LUL in relation to the performance bond if LUL pays or repays any monies to which it is not entitled and interest thereon in accordance with this Clause 45.2.5 (*Performance Bond*).

45.2.6 If a bond is provided in accordance with Clause 45.2.1 (*Performance Bond*) 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 LUL in accordance with its terms and LUL demands payment under the bond, such monies shall be paid into an interest bearing account of LUL's 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 LUL, LUL shall repay such monies to the Contractor together with interest accrued.

45.2.7 Subject to Clause 45.2.5, LUL shall apply 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 LUL 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.

45.2.8 If:

- (A) the Parties execute a Performance Bond pursuant to Clause 45.2.1 during the Initial Period, and such Performance Bond would expire at the end of the Initial Period; and
- (B) LUL exercises its right to extend the Term of the Contractor pursuant to Clause 3.3.3,

the Contractor shall procure an additional performance bond to apply during the Extension Period. If LUL required the Contractor to provide the Performance Bond during the Initial Period in accordance with Clause 45.2.1(A) (*Performance Bond*) other than following the occurrence of a Financial Distress Event, the Contractor shall be entitled to invoice LUL for the reasonable charges of the bond referred to in Clause 45.2.3 (*Performance Bond*) for putting in place such additional performance bond provided the Contractor has notified LUL of such costs within two (2) Working Days of the date four (4) years after the Service Commencement Date. The Contractor shall bear all of the costs of putting in place the additional performance bond in the event LUL makes a request in accordance with Clause 45.2.1(B) (*Performance Bond*).

## SECTION H: REMEDIES AND RELIEF

### 46. DUTY TO WARN

If the Contractor has reasonable grounds to believe that any development of which the Contractor becomes aware (including a failure on the part of the Contractor to carry out its obligations and responsibilities under this Contract) will have, or threatens to have, a material impact on its ability to carry out the Services or perform its obligations under this Contract, or LUL's ability to receive or use the Services, effectively or in compliance with Laws, the Contractor shall without delay notify LUL and shall ensure that it provides such information to LUL in advance of any discussions with any third party in relation to the relevant circumstances or risks. Following such notification, the Contractor shall provide LUL with all such information and assistance as LUL may reasonably request in relation to the relevant fact, matter or circumstances.

### 47. DEPENDENCY WARNING NOTICES

47.1.1 In respect of any actual or potential Dependency Failure, the Contractor shall:

- (A) if the Dependency Failure is reasonably foreseeable (taking into account the Contractor's obligations under Clause 5.3 (*Services*) (save, for the avoidance of doubt, the provisions of Clause 5.3.4(E)) and Schedule 6.4 (*Project Management*) provide LUL with the earliest possible advance written Notice of the circumstances which may lead to such Dependency Failure by sending to LUL a Notice (an "**Dependency Warning Notice**") setting out details of:
  - (1) the Dependency Failure and its likely effect on the Contractor's ability to meet its obligations under this Contract; and
  - (2) any steps of which it is aware that LUL can take to eliminate or mitigate the consequences and impact of such Dependency Failure; and
- (B) if the Dependency Failure is not reasonably foreseeable (taking into account the Contractor's obligations under Clause 5.3 (*Services*) (save, for the avoidance of doubt, the provisions of Clause 5.3.4(E)) and Schedule 6.4 (*Project Management*), upon the occurrence of that Dependency Failure, provide LUL with prompt notice of such occurrence,

such notice to be supplemented in all cases with written Notice of such Dependency Failure being given to LUL within five (5) Working Days of the Contractor becoming aware of the occurrence of such Dependency Failure, setting out details of:

- (1) the Dependency Failure and its effect on the Contractor's ability to meet its obligations under this Contract; and
- (2) any steps of which it is aware that LUL can take to eliminate or mitigate the consequences and impact of such Dependency Failure.

47.1.2 If the Contractor, having complied with the provisions of this Contract, is refused access to a LUL Property or a Third Party Property and thus prevented from addressing a Fault or Failure, the Contractor contacting LUL in accordance with Schedule 2.3 (*Access*) shall constitute the prompt notice referred to in Clause 47.1.1(B) (*Dependency Warning Notices*) in respect of such refusal of access, and the Contractor shall only be required to provide a Notice pursuant to Clause 47.1.1(B) (*Dependency Warning Notices*) if the access requirement relates to a Project or programme.

47.1.3 The forms of relief to which the Contractor may be entitled as a result of a Dependency Failure are set out in Clause 53 (*Dependency Failures and Relief Events*).

47.2 If any actual or potential Dependency Failure relates to LUL's failure to initiate a Pre-Priced Variation in respect of an Upgrade Project set out in Schedule 2.7 (*Upgrade Programme Plan*) (howsoever arising):

47.2.1 the Contractor shall provide LUL with the earliest possible advance written Notice (and in any event no later than six (6) months before the relevant decision date set out in the Upgrade Programme Plan) of its assessment of the impact on the provision of the Services and the associated Charges as a result of the Dependency Failure should it occur; and

47.2.2 in the event that the Dependency Failure occurs, the Parties shall agree the necessary amendments to this Contract in accordance with the Variation Procedure, but this shall not prejudice the Contractor's entitlement to relief under Clause 53 (*Dependency Failures and Relief Events*).

48. **NOT USED**

49. **CORRECTIVE ACTION NOTICES**

49.1 Where LUL (acting reasonably) considers that the Contractor has not complied with or is likely not to comply with its obligations under this Contract, LUL may issue a Notice which shall:

49.1.1 state the reason or reasons why LUL believes that the Contractor is not complying, or is not reasonably likely to comply, with its obligations under this Contract; and

49.1.2 stipulate a reasonable period for completing the corrective action (which shall be no less than any remedial period prescribed by the Contract (if any) in respect of such default),

(a "**Corrective Action Notice**"). A Corrective Action Notice shall not constitute a Notice served pursuant to Clause 55 (*Termination*).

49.2 Following receipt of a Corrective Action Notice (issued by LUL pursuant to Clause 49.1 or Clause 49.7 (*Corrective Action Notices*)) the Contractor shall respond to the Contract Manager with a plan within no more than ten (10) Working Days (or such other period as may be agreed between the Parties, acting reasonably):

- 49.2.1 stating the action(s) which the Contractor proposes to take in order to correct or avoid the non-compliance described in the Correction Action Notice and the timescale for completing the action(s); or
- 49.2.2 providing an alternative proposal for achieving the objective(s) set out in the Corrective Action Notice together with a timescale and reasoned explanation, (a "**Corrective Action Plan**"), such plan to be in a format agreed by the Parties.
- 49.3 The Contractor shall promptly provide to LUL any further relevant documentation that LUL reasonably requires to assess the Contractor's Corrective Action Plan.
- 49.4 The Contractor shall take into account LUL's reasonable comments when finalising and carrying out any Corrective Action Plan (but for the avoidance of doubt there shall be no obligation on either Party to agree the content of the Corrective Action Plan with the other Party).
- 49.5 The Contractor shall ensure that the Default in respect of which the Corrective Action Notice was issued has been remedied to LUL's reasonable satisfaction and by the deadline set out in any associated agreed Corrective Action Plan. Performance of this Clause 49.4 (*Corrective Action Notices*) shall be without prejudice to any other rights or claims LUL may have under this Contract in relation to the circumstances that gave rise to the issue of a Corrective Action Notice.
- 49.6 The status of all Corrective Action Notices shall be reviewed at the Contract Review Meetings held in accordance with Schedule 6.1 (*Governance*).
- 49.7 If:
  - 49.7.1 the Contractor fails to submit a Corrective Action Plan in accordance with Clause 49.2 (*Corrective Action Notices*);
  - 49.7.2 the Contractor fails to perform a Corrective Action Plan in a manner which is compliant in all material respects with its terms; or
  - 49.7.3 the relevant Default by the Contractor is not resolved within thirty (30) days (or such other period as may be agreed between the Parties),
 (each a "**Corrective Action Plan Failure**"), a Notifiable Default shall be deemed to have occurred.
- 49.8 Without prejudice to Clause 5.7.1(A) (*Continuing Obligation to Provide the Services*), if a Dispute arises as to:
  - 49.8.1 whether a Corrective Action Notice has been properly served by LUL;
  - 49.8.2 whether the Contractor has performed the Corrective Action Plan in accordance with its terms; or
  - 49.8.3 whether the Default has been resolved,
 either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of the Default.
- 50. **RECTIFICATION PLAN PROCESS**
- 50.1 If:
  - 50.1.1 a Corrective Action Plan Failure occurs under Clause 49.7 (*Corrective Action Notices*);
  - 50.1.2 the Contractor fails to comply with its obligations under Clauses 5.3.1, 5.3.2 or 5.3.4(A) (*Services*)
  - 50.1.3 if LUL reasonably considers that the Contractor has not complied with the requirements of Schedule 6.4 (*Project Management*) and there has been a Delay and the Parties have not agreed an updated Project Plan in the following two (2) Project Portfolio Review meetings;

- 50.1.4 the Contractor has incurred in any consecutive six (6) Periods aggregate Disruption Losses in excess of [REDACTED]
- 50.1.5 if more than one (1) Spares Failure for separate instances of the same cause during any consecutive six (6) Periods occurs;
- 50.1.6 more than five (5) Corrective Action Notices are outstanding which have not been resolved in accordance with Clause 49 (*Corrective Action Notices*));
- 50.1.7 the Contractor fails to comply with the Security Management Plan;
- 50.1.8 the Contractor fails to obtain and maintain ISO/IEC27001 certification in accordance with Paragraph 15.1 of Schedule 2.5 (*Security Management*);
- 50.1.9 the Contractor fails to comply with the Safety Plan;
- 50.1.10 the Contractor fails to comply with its Construction Phase Plan;
- 50.1.11 the Contractor fails to maintain Insurance in accordance with the requirements under Schedule 3.3 (*Insurance*);
- 50.1.12 the Contractor fails to comply with its obligations pursuant to Clause 61 (*Work Related Road Risk*);
- 50.1.13 the Contractor fails to provide or comply with the Exit Plan;
- 50.1.14 the Contractor commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults which are the same or materially similar types of Default (regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a **"Notifiable Default"**), the Contractor shall, if requested by LUL and without prejudice to any other rights or remedies of LUL under this Contract or at Law, deliver to the Contract Manager, for Approval by LUL, a plan to remedy such Notifiable Default (a **"Rectification Plan"**). Unless the Notifiable Default also constitutes LUL Termination Event, LUL may not terminate this Contract on the grounds of the Notifiable Default without first following the Rectification Plan Process.

- 50.2 The **"Rectification Plan Process"** shall be as set out in Clauses 50.3 (*Submission of the draft Rectification Plan*) to 50.4.1 (*Approval of the Rectification Plan*).

### 50.3 **Submission of the draft Rectification Plan**

- 50.3.1 The Contractor shall submit a draft Rectification Plan to LUL for Approval as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 50.1 (*Rectification Plan Process*). The Contractor shall submit a draft Rectification Plan for LUL's Approval even if the Contractor disputes that it is responsible for the Notifiable Default albeit such preparation of a draft Rectification Plan shall not amount to an admission of any liability under this Contract by the Contractor.
- 50.3.2 The Contractor shall use its reasonable endeavours to accelerate preparation of the Rectification Plan (for LUL's Approval) at LUL's request if LUL considers that the consequences of the relevant Notifiable Default are sufficiently detrimental to warrant such acceleration.
- 50.3.3 The draft Rectification Plan shall set out:
  - (A) full details of the Notifiable Default that has occurred, including a root cause analysis;
  - (B) the actual or anticipated effect of the Notifiable Default; and
  - (C) the steps which the Contractor proposes to take to:
    - (1) mitigate the effects of such Notifiable Default;

- (2) remedy the Notifiable Default (if applicable); and
  - (3) prevent such Notifiable Default from recurring (if applicable);
- and the timescales for such steps.

50.3.4 The Contractor shall promptly provide to LUL any further relevant documentation that LUL reasonably requires to assess the Contractor's draft Rectification Plan.

#### 50.4 **Approval of the Rectification Plan**

50.4.1 LUL shall notify the Contractor whether it Approves, rejects or requires amendments to be made to the draft Rectification Plan as soon as reasonably practicable and in any event within fifteen (15) Working Days after the receipt of the draft Rectification Plan. Pending the review of the Rectification Plan, the Contractor shall continue to mitigate the effects of the Notifiable Default.

50.4.2 LUL may reject the draft Rectification Plan by Notice to the Contractor if, acting reasonably, it considers that the draft Rectification Plan is not sufficient to enable the Contractor to resolve the Notifiable Default in a reasonable timescale and in a reasonable manner, for example because the draft Rectification Plan:

- (A) is insufficiently detailed to be capable of proper evaluation;
- (B) will take too long to complete, having regard to the nature of the Notifiable Default and its effect on LUL's operation and customers;
- (C) will not prevent reoccurrence of the Notifiable Default; or
- (D) will rectify the Notifiable Default in a manner which is unacceptable to LUL, acting reasonably, on the grounds that it imposes a material operational adverse impact or risk, or a material safety risk.

50.4.3 LUL may require the Contractor to amend the draft Rectification Plan by Notice to the Contractor if, acting reasonably, it considers that the draft Rectification Plan is inadequate. The Contractor shall then revise the draft Rectification Plan in order to incorporate the amendments requested by LUL and shall submit a revised Rectification Plan to LUL as soon as reasonably practicable and in any event within no more than ten (10) Working Days (or such other period as may be agreed in writing between the Parties) after the receipt of the revised Rectification Plan.

50.4.4 Following LUL's Approval of the Rectification Plan:

- (A) the Contractor shall immediately commence work on the actions set out in the Rectification Plan; and
- (B) without prejudice to LUL's rights and remedies under this Contract or at Law, and provided that the Contractor has complied in all material respects with the Rectification Plan, LUL may no longer terminate this Contract solely on the grounds of the relevant Notifiable Default (without prejudice to LUL's other rights and remedies in relation to the termination of this Contract).

#### 50.5 **Rectification Plan Failure**

If:

50.5.1 the Contractor fails to submit a draft Rectification Plan in accordance with Clause 50.3.1 (*Submission of the draft Rectification Plan*) or 50.4.3 (*Approval of the Rectification Plan*);

50.5.2 LUL rejects the Contractor's draft Rectification Plan in accordance with Clause 50.4.2 (*Approval of the Rectification Plan*);

50.5.3 the Contractor fails to perform a Rectification Plan in a manner which is compliant in all material respects with its terms; or



50.5.4 the relevant Notifiable Default is not remedied (including in relation to any remedial steps to prevent such Notifiable Default from reoccurring), resolved or the Parties agree or it is determined in accordance with the Dispute Resolution Procedure is unlikely to be resolved within forty five (45) Working Days (or such other period as may be agreed between the Parties) from the date of LUL's Notice requiring the Contractor to prepare a Rectification Plan,

(each a "**Rectification Plan Failure**"), LUL shall be entitled to exercise its rights under Clause 51 (*Enhanced Co-Operation*).

50.6 Without prejudice to Clause 5.7.1(A) (*Continuing Obligation to Provide the Services*), if a Dispute arises as to:

50.6.1 whether a Notifiable Default has occurred; or

50.6.2 whether a Rectification Plan Failure has occurred,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of the Default.

## 51. **ENHANCED CO-OPERATION**

51.1 If a Rectification Plan Failure occurs LUL may give Notice to the Contractor (an "**Enhanced Co-operation Notice**") giving reasonable details of the Notifiable Default which has not been resolved through the Rectification Plan Process (an "**Enhanced Co-operation Event**") and requiring a meeting between the Contract Manager and the Contractor Representative to discuss the Enhanced Co-operation Event. If LUL serves an Enhanced Co-operation Notice, then the Contractor shall, as directed by LUL and at no additional cost to LUL:

51.1.1 provide all assistance, information and co-operation reasonably requested by LUL in connection with the remedy of the Enhanced Co-operation Event;

51.1.2 devote additional resources and Contractor Personnel (excluding Sub-contractor Personnel) to the resolution of the Enhanced Co-operation Event;

51.1.3 permit LUL to attend relevant Contractor Sites (and/or any relevant Sub-contractor's sites) upon at least one (1) Working Day's prior notice during a Working Day and submit to such observation and monitoring as LUL considers reasonable and proportionate in respect of the Notifiable Default and the Contractor's implementation of the Rectification Plan;

51.1.4 implement any reasonable recommendations made by LUL within the timescales reasonably requested by LUL;

51.1.5 notify LUL of internal meetings of the Contractor in which the Notifiable Default is discussed and give LUL the opportunity to attend such internal meetings (provided that LUL may need to remove itself from period of such meetings for the purposes of the Contractor preserving its legal privilege or complying with its obligations of confidentiality to third parties);

51.1.6 copy LUL in on all electronic communications made by the Contractor in relation to the Notifiable Default (except for electronic communications which the Contractor, acting reasonably, considers it is unable to copy LUL in order to preserve its legal privilege or complying with its obligations of confidentiality to third parties);

51.1.7 report to LUL on its implementation of the Rectification Plan; and

51.1.8 take any other steps that LUL reasonably considers necessary or expedient in order to mitigate or rectify the Enhanced Co-operation Event,

(LUL's rights under this Clause 51 being its "**Enhanced Co-operation Rights**" in relation to such Enhanced Co-operation Event).

- 51.2 The Contractor shall consult and co-operate with any Third Party nominated by LUL in relation to the exercise of its Enhanced Co-operation Rights, provided that this Clause 51.2 shall not oblige the Contractor to disclose any Contractor Commercially Sensitive Information to any other such Third Party.
- 51.3 The Contractor shall indemnify LUL for all reasonably and properly incurred incremental costs, liability and expenses incurred by LUL to the extent they are incurred by LUL in relation to the resolution of an Enhanced Co-operation Event.
- 51.4 LUL shall cease exercising its Enhanced Co-operation Rights upon the resolution of the Enhanced Co-operation Event (or at such earlier time as LUL notifies to the Contractor in writing). Notwithstanding such cessation, the Contractor shall continue to implement any Rectification Plan which is still in effect on such date.
- 51.5 LUL's exercise of its Enhanced Co-operation Rights shall not prejudice the Contractor's obligation to satisfactorily and expeditiously resolve any Notifiable Default.
- 51.6 If:
  - 51.6.1 the Contractor:
    - (A) fails to perform any of the steps required by LUL in an Enhanced Co-operation Notice; or
    - (B) is in material Default of any of its obligations under Clause 51.1 (*Enhanced Co-Operation*); or
  - 51.6.2 the relevant Enhanced Co-operation Event is not rectified within thirty (30) days of the Enhanced Co-operation Notice,
 LUL shall be entitled, at its sole option, to either:
  - (A) terminate this Contract pursuant to Clause 55.2 (*Termination by*); or
  - (B) exercise its Step-In Rights in accordance with Clause 52 (*Step-In Rights*).

## 52. **STEP-IN RIGHTS**

- 52.1 If any of the following events occur:
  - 52.1.1 LUL gives Notice of termination under Clause 55.2 (*Termination by LUL*) or 55.3 (*Discretionary Termination*);
  - 52.1.2 a Default by the Contractor that is materially preventing or materially delaying the performance of the Services or any material part of the Services and which is not a Notifiable Breach;
  - 52.1.3 a Force Majeure Event that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
  - 52.1.4 LUL being advised by a Regulatory Body that the exercise by LUL of its rights under this Clause 52 (*Step-In Rights*) is necessary;
  - 52.1.5 for reasons of the health, safety, security or integrity of persons, property (including the System), the Underground Network or environment in connection with the Services, LUL considers (acting reasonably) it necessary;
  - 52.1.6 a need by LUL to take action to discharge a statutory duty that relates to the performance of this Contract;
  - 52.1.7 an Enhanced Co-operation Event has occurred and the Contractor has failed to remedy such circumstances within thirty (30) days from the date of the Enhanced Co-operation Notice, or such other period as agreed by the Parties, of such event;
  - 52.1.8 the Contractor has failed to comply in any material respect with the terms of any Exit Plan;
  - 52.1.9 there is a Change in Law which renders performance of a material part of the Contractor's obligations under this Contract illegal; or

52.1.10 LUL receiving a notice issued by Motorola pursuant to clause 49.1.4 of the Contractor's Motorola Sub-contract in relation to the termination of that Key Sub-contract,

(each a "**Step-In Trigger Event**"), then LUL shall have the right (but not the obligation) to serve Notice on the Contractor (a "**Step-In Notice**") that it will be taking action under this Clause 52 (*Step-In Rights*) either itself or with the assistance of an Other Service Provider or Third Party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Clause 41 (*Publicity and Confidentiality*)). The Step-In Notice shall set out the following:

- (A) the action LUL wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- (B) the Step-In Trigger Event that has occurred and whether LUL believes that the Required Action is due to the Contractor's Default;
- (C) the date on which it wishes to commence the Required Action;
- (D) the time period which it believes will be necessary for the Required Action;
- (E) whether LUL will require access to the Contractor Sites and Contractor Personnel; and
- (F) to the extent practicable, the impact that LUL anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.

52.2 From the date specified in a Step-In Notice, LUL:

- 52.2.1 may take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- 52.2.2 shall keep records of the Required Action taken and provide information about the Required Action to the Contractor;
- 52.2.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide the Services in relation to which LUL is not assuming control; and
- 52.2.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of LUL's rights under this Clause 52.

52.3 LUL will pay the full amount of the Contract Payment in respect of that period of operation in accordance with the other provisions of this Contract less, where its exercise of its right to step-in under this Clause 52 is consequent upon failure to perform or breach of any of its obligations, by the Contractor, any reasonable costs properly incurred by LUL or such Third Party Operator in such operation.

52.4 Solely for the purposes of an exercise of LUL's rights under this Clause 52, the Contractor hereby grants to LUL and any Third Party Operator the right to use any assets and documentation used in the provision of the relevant Services and any Contractor's plant, spares and facilities (whether belonging to the Contractor or used by the Contractor in connection with this Contract and provided always that this Clause 52.4 shall not oblige the Contractor to disclose any Contractor Commercially Sensitive Information to any such Third Party Operator) and, to the extent legally permissible, to use, test, operate and do all such things as may reasonably be required by LUL to exercise its rights pursuant to and in accordance with this Clause 52, and the Contractor will (without prejudice to this Clause 52) provide all reasonable co-operation and assistance as are required by LUL to enable LUL to exercise its rights under this Clause 52.

52.5 If the Contractor demonstrates to LUL's reasonable satisfaction that the Required Action has resulted in:

- 52.5.1 the Contractor incurring Service Credits in relation to Services not subject to the Required Action; or
- 52.5.2 the non-Achievement of a Milestone,  
in a manner which would not have been the case had LUL not taken the Required Action, then this shall amount to a Relief Event and the Parties shall comply with Clause 53 (*Dependency Failures and Relief Events*) in respect of such Relief Event.
- 52.6 Before ceasing to exercise its step-in rights under this Clause 52 LUL shall deliver a written Notice to the Contractor (a "**Step-Out Notice**"), specifying:
  - 52.6.1 the Required Action it has actually taken; and
  - 52.6.2 the date on which LUL plans to end the Required Action (the "**Step-Out Date**") subject to LUL being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with Clause 52.7 (*Step-In Rights*).
- 52.7 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days (or such other period of time agreed by the Parties in writing) prior to the Step-Out Date, develop for LUL's Approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract and, following LUL's Approval, the Contractor shall implement the Step-Out Plan.
- 52.8 The Contractor shall bear its own costs in connection with any step-in by LUL under this Clause 52, provided that LUL shall indemnify the Contractor and hold fully harmless with respect to all Losses (including for the avoidance of doubt any Losses incurred by the Contractor under or in connection with the Motorola Sub-contract) to the extent they are suffered or incurred by the Contractor as a result of any step-in action taken by LUL under:
  - 52.8.1 Clause 52.1.1 (*Step-In Rights*) to the extent LUL gives Notice of termination under Clause 55.3 (*Discretionary Termination*) or Clause 55.4.1(A) (*Partial Termination*);
  - 52.8.2 Clause 52.1.3 (*Step-In Rights*); or
  - 52.8.3 Clauses 52.1.4, 52.1.5, 52.1.6 or 52.1.9 (*Step-In Rights*) (insofar as the primary cause of LUL serving the Step-In Notice is identified as not being the result of the Contractor's Default).
- 53. **DEPENDENCY FAILURES AND RELIEF EVENTS**
- 53.1 If a Default of the Contractor occurs and a relevant Dependency was not fulfilled prior to such Default, then if, and only to the extent that:
  - 53.1.1 the Default results from a Dependency not being fulfilled (a "**Dependency Failure**"); and
  - 53.1.2 the Contractor has complied with its obligations under Clause 47.1.1 (*Dependency Warning Notices*) in all material respects,  
a "**Relief Event**" shall occur.
- 53.2 If a Relief Event occurs:
  - 53.2.1 the Default shall not be treated as being a breach of this Contract;
  - 53.2.2 LUL shall not be entitled to exercise any rights that may arise as a result of that Default including, but not limited to, its right:
    - (A) to terminate this Contract pursuant to Clause 55.2 (*Termination by*); or
    - (B) to take action pursuant to Clauses 49 (*Corrective Action Notices*), 50 (*Rectification Plan Process*), 51 (*Enhanced Co-Operation*) or Clause 52 (*Step-In Rights*);
  - 53.2.3 if the Default constitutes the failure to Achieve a Milestone by its Milestone Date:

- (A) the Milestone Date shall be postponed by a period equal to the period of Delay that was caused by the relevant Dependency Failure;
  - (B) the Contractor shall be entitled to propose reasonable amendments to the relevant Milestone Date; and
  - (C) if the Parties agree it is appropriate, the Upgrade Programme Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from a Dependency Failure; and
- 53.2.4 if the Default constitutes a failure which is measured by a Service Level, then to the extent that the failure was directly caused by a Dependency Failure, such failure shall not be taken into account when determining the relevant Service Credits for the relevant Period(s), as described in Paragraph 3.3 of Schedule 2.2 (*Performance Regime*).
- 53.3 The Contractor shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Dependency Failure, including any Losses that the Contractor may incur and the duration and consequences of any Delay or anticipated Delay. LUL shall provide all cooperation and information reasonably requested by the Contractor to support such mitigation.
- 53.4 If following the provision by the Contractor to LUL of a Dependency Warning Notice pursuant to Clause 47 (*Dependency Warning Notices*) the Contractor and LUL agree in writing that the Contractor shall undertake workaround or similar activities with the aim of avoiding a Dependency Failure from occurring ("**Dependency Workaround**") and:
  - 53.4.1 the Contractor performs the agreed Dependency Workaround; and
  - 53.4.2 as a result of the Contractor performing the agreed Dependency Workaround, a Dependency Failure does not occur,
 then subject to Clauses 53.5, 53.6, 53.6.3 (*Dependency Failures and Relief Events*) and 53.8.1 (*Incremental Costs*), the Contractor may recover Incremental Costs incurred by it in performing the Dependency Workaround.
- 53.5 The Contractor may claim compensation in respect of a Relief Event or costs incurred in performing an agreed Dependency Workaround if, and only to the extent that:
  - 53.5.1 the Dependency Failure or Dependency Workaround (as applicable) has caused the Contractor to incur Incremental Costs in its delivery of the Services;
  - 53.5.2 the Contractor has provided LUL with written Notice of such Incremental Costs as soon as reasonably practicable and in accordance with the following process:
    - (A) concurrently with the Dependency Warning Notice the Contractor shall provide LUL with:
      - (1) such details of the Incremental Costs as are reasonably available to the Contractor as at such date;
      - (2) to the extent that the Contractor is not reasonably able to assess the full extent of the Incremental Costs at such date:
        - (a) a non-binding estimate of when it will be able to assess the full extent of the amount of Incremental Costs; and
        - (b) a non-binding estimate of such Incremental Costs (if reasonably practicable);
      - (3) the Contractor shall provide regular written updates to LUL in relation to such Incremental Costs on the same basis as Clauses 53.5.2(A)(1) and 53.5.2(A)(2) (*Dependency Failures and Relief Events*) and no less frequently than every two (2) weeks (and at any other time reasonably requested by LUL, provided that the Contractor shall not be obliged to deliver such updates more frequently than on a weekly basis); and

- (4) final details of such Incremental Costs on or before the date which is twenty (20) Working Days after the cessation of the relevant Dependency Failure or completion of the relevant Dependency Workaround (as applicable);
  - 53.5.3 the Contractor has taken all reasonable steps to mitigate such Incremental Costs and has consulted with LUL in relation to such steps; and
  - 53.5.4 LUL has approved in writing the actual Incremental Costs (such approval not to be unreasonably withheld or delayed) or such costs have been determined in accordance with the Dispute Resolution Procedure to be the actual Incremental Costs; and
- (such approved, actual Incremental Costs being the "**Relief Event Costs**" associated with that Relief Event or the "**Dependency Workaround Costs**" associated with that Dependency Workaround).
- 53.6 If a Relief Event has occurred or the Contractor has performed a Dependency Workaround and the Contractor is claiming compensation in relation thereto pursuant to Clause 53.5 (*Dependency Failures and Relief Events*):
- 53.6.1 the Contractor shall provide LUL with all information reasonably requested by LUL in relation to any claim for Relief Event Costs or Dependency Workaround Costs (including any supporting financial data, management information and evidence of relevant resource utilisation); and
  - 53.6.2 LUL shall pay the Relief Event Costs or Dependency Workaround Costs:
    - (A) monthly, in arrears following an Invoice for the same submitted by the Contractor in accordance with Schedule 4.1 (*Charges and Invoicing*); and
    - (B) to the extent such costs relate to incremental man days' effort by Contractor Personnel, at the rate set out in the Rate Card for such personnel.
  - 53.6.3 Without prejudice to Clause 5.7.1(A) (*Continuing Obligation to Provide the Services*), if a Dispute arises as to:
    - (A) whether a Default of the Contractor would not have occurred but for a Dependency Failure; and/or
    - (B) the nature and/or extent of the relief and/or compensation claimed by the Contractor,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Default.
- 53.7 Any Variation that is required to the Services or to the Charges following a Relief Event shall be considered and implemented in accordance with the Variation Procedure and the Contractor shall not be entitled to receive additional relief and/or compensation under this Clause 53 in respect of such Variation (save to the extent that the Parties agree new Dependencies in the associated Variation Approval).
- 53.8 **Incremental Costs**
- 53.8.1 The Contractor's "**Incremental Costs**" in relation to a Relief Event or Dependency Workaround are the Contractor's direct costs which:
    - (A) are caused by the Relief Event or incurred in performing the Dependency Workaround;
    - (B) the Contractor has provided reasonable evidence to LUL that such Incremental Costs have been incurred by the Contractor;
    - (C) exclude:

- (1) any costs or expenses to the extent which they have already been taken into account in the Financial Model;
  - (2) any costs which can reasonably be avoided by the Contractor using its then-current resources covered by the existing Charges (in a manner consistent with the Record of Assumptions), provided that Contractor Personnel (excluding Sub-contractor Personnel) are not required to perform work outside of their standard working hours (which the parties acknowledge and agree may differ between individual Contractor Personnel (excluding Sub-contractor Personnel) and may, depending on the relevant Contractor Personnel (excluding Sub-contractor Personnel), occur at any time of day, on Working Days or otherwise) and provided this shall not expose the Contractor to Service Credits or other loss under this Contract;
  - (3) any costs or expenses which are not reasonably and properly incurred by the Contractor;
  - (4) any costs related to the Contractor's margin on any third party costs (for the avoidance of doubt, the Contractor shall only be entitled to charge such third party costs to LUL on a pass-through basis (i.e. without the addition of the Contractor's margin on such third party costs (without prejudice to the Contractor's ability to charge for its demonstrable activities in managing and supporting such third party's work)));
  - (5) any additional costs or expenses to the extent that they are incurred due to the Contractor's failure to comply with its obligations under this Contract, including its obligations under Clause 5 (*Services*), provided that the Contractor may recover additional amounts incurred by it to avoid or mitigate a Relief Event, as provided in Clause 53.8.1(D) (*Incremental Costs*);
  - (6) any contingent costs or expenses (i.e. costs or expenses that may or may not be incurred by the Contractor depending on a future event), until such cost or expense ceases to be contingent (i.e. is actually incurred);
  - (7) any loss of use, loss of contract, loss of goodwill and/or any indirect or consequential loss; and
  - (8) any loss of profit or loss of revenue (save that LUL acknowledges that fees or charges paid by the Contractor to a Sub-contractor pursuant to an existing contract between such parties may include the relevant Sub-contractor's normal margin in accordance with such contract); and
- (D) may include amounts incurred by the Contractor as a result of the Contractor providing additional Technical Service Catalogue Items, or the Contractor Personnel performing incremental man days' work, to avoid or mitigate the consequences of a Relief Event, or in the performance of a Dependency Workaround, provided that:
- (1) unless otherwise agreed between the parties, the Contractor shall charge for any such incremental man days' work by Contractor Personnel in accordance with the Rate Card; and
  - (2) unless otherwise agreed between the parties, the Contractor shall charge for any such additional Technical Service Catalogue Items in accordance with the Charges for such Technical Service Catalogue Items specified in the Technical Service Catalogue,

provided that the total Incremental Costs for a Relief Event shall be reduced by any amounts described in Clause 53.8.2 (*Incremental Costs*).

- 53.8.2 The total Incremental Costs for a Relief Event shall be reduced by:
- (A) any savings made by the Contractor as a result of the Relief Event;
  - (B) any compensation received by the Contractor from any other person pursuant to the occurrence of the Relief Event; and
  - (C) any insurance proceeds received by the Contractor attributable to the occurrence of the Relief Event.
- 53.8.3 Without prejudice to the other terms of this Contract the Contractor shall be solely responsible for ensuring that it provides the Services as required by this Contract.

## **SECTION I: TERMINATION AND EXIT MANAGEMENT**

### **54. FORCE MAJEURE**

- 54.1 Subject to the remaining provisions of this Clause 54 (and, in relation to the Contractor, subject to its compliance with its obligations in Schedule 2.11 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this Clause 54 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- 54.2 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 54 to the extent that the consequences of the relevant Force Majeure Event:
- 54.2.1 are capable of being mitigated by any of the Services including through compliance with Schedule 2.11 (*Business Continuity and Disaster Recovery*), but the Contractor has failed to do so; and/or
  - 54.2.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 54.3 Subject to Clause 54.4 (*Force Majeure*), as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken to enable continued provision of the Services affected by the Force Majeure Event and appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of this Contract.
- 54.4 A Party whose performance of its obligations under this Contract is hindered, delayed or prevented by a Force Majeure Event:
- 54.4.1 shall forthwith notify the other Party of the details of the Force Majeure Event (including its nature, extent and likely duration), its effect on the obligations of the affected Party and any action the Affected Party proposes to take to mitigate its effect;
  - 54.4.2 shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Contract including:
    - (A) compliance with the BCDR Plan (in the case of the Contractor);
    - (B) the making of any alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense; and



- (C) discussing with LUL other options for resuming the performance of its obligations, which may involve incurring material additional expense;
- 54.4.3 shall forthwith after the cessation of the Force Majeure Event, notify the other Party thereof and resume full performance of its obligations under this Contract; and
- 54.5 If, as a result of a Force Majeure Event:
  - 54.5.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
    - (A) the other Party shall not be entitled to exercise any rights to terminate this Contract as a result of such failure other than pursuant to Clause 55.2 (*Termination by* ) or Clause 55.1.1(D) (*Termination by the Contractor*); and
    - (B) neither Party shall be liable for any Default arising as a result of such failure;
  - 54.5.2 the Contractor fails to perform its obligations in accordance with this Contract:
    - (A) the Contractor shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event; and
    - (B) LUL shall not be entitled:
      - (1) during the continuance of the Force Majeure Event to exercise its rights under Clause 52 (*Step-In Rights*) as a result of such failure;
      - (2) to receive Delay Payments pursuant to Schedule 4.1 (*Charges and Invoicing*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
      - (3) to receive Service Credits or to withhold any of the Service Charges pursuant to Paragraph 4 of Schedule 4.1 (*Charges and Invoicing*) to the extent that a Performance Failure has been caused by the Force Majeure Event.
- 54.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 54.7 Relief from liability for the Affected Party under this Clause 54 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of Notice under Clause 54.6 (*Force Majeure*).
- 54.8 **Definition**

A "**Force Majeure Event**" shall be any of the following and the effects thereof if and only to the extent that such event is not caused by, and the effects are beyond the reasonable control of, the Affected Party and that it is not an event or effect which would have been avoided or reduced (to the extent of such reduction) by proper performance by the Affected Party of any of its obligations under this Contract:

  - 54.8.1 war or civil war (whether declared or undeclared) or armed conflict, invasion and acts of foreign enemies, blockades and embargoes;
  - 54.8.2 civil unrest, commotion or rebellion;
  - 54.8.3 any act, or credible threat, of terrorism provided that the Affected Party has complied with its material obligations under Clause 12 (*Safety*);
  - 54.8.4 lightning, earthquake, or extraordinary storm;

- 54.8.5 nuclear, chemical or biological contamination;
- 54.8.6 explosion, fire or flooding; and
- 54.8.7 unexploded bombs or other munitions and the discovery of fossils or antiquities or human remains.

provided that a Force Majeure Event shall not arise, and neither Party shall be excused from its payment obligations under this Contract, by virtue of lack of funds (for whatever reasons). For the avoidance of doubt, the UK's exit from the European Union shall not be a Force Majeure Event;

## 55. **TERMINATION**

### 55.1 **Termination by the Contractor**

55.1.1 Without prejudice to any other rights or remedies it may have pursuant to this Contract, the Contractor may issue a Termination Notice to LUL to terminate this Contract if:

- (A) the representation and warranty given by LUL in Clause 2.1.1 (*General Representations and Warranties*) is materially untrue or misleading;
- (B) a Force Majeure Event endures for a continuous period of more than ninety (90) days (save that to the extent that a Force Majeure Event affects only certain Services or Telecommunications Services, not the Services or the Telecommunications Services as a whole) the Contractor's right under this Clause 55.1.1(B) shall be limited to a right to effect a Partial Termination in respect of any one or more of the affected Services and/or Telecommunications Services by serving a Termination Notice;
- (C) an Insolvency Event (as defined in Clause 55.2.1(B) (*Termination by LUL*)) save that references therein to "Contractor" shall be deemed to be references to "LUL" and references therein to "LUL" shall be deemed to be references to "Contractor") affecting LUL occurs; or
- (D) if LUL fails to pay (including if a prolonged Force Majeure Event prevents LUL from paying) an undisputed sum due to the Contractor under this Contract which in aggregate exceeds the total amount of the undisputed Charges paid or payable in respect of the preceding three (3) Periods prior to such Termination Notice and such amount remains outstanding thirty (30) days following the receipt by LUL of a Notice of non-payment from the Contractor of undisputed sums due under this Contract and following LUL's receipt of such Termination Notice this Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice)

(each a "**Contractor Termination Event**").

55.1.2 Save as expressly provided in this Contract, the Contractor may not terminate this Contract.

### 55.2 **Termination by LUL**

#### 55.2.1 **Termination Events**

- (A) Subject to 53.2.2(A) but without prejudice to any other rights or remedies it may have pursuant to this Contract, LUL may issue a Termination Notice to the Contractor to terminate this Contract upon the occurrence of any of the following events or circumstances:
  - (1) the Contractor fails to complete the Dimetra upgrade to version 9.0 within the nine (9) months following 20 November 2020;

- (2) the Contractor fails to complete the Dimetra upgrade to version 9.1 within the six (6) months following 31 March 2021;
- (3) a Disaster has occurred which is impacting the Services and has continued to impact or in LUL's opinion is likely to continue impacting, the Services for a period of more than twelve (12) hours and the Contractor has not implemented the BCDR Plan (if required under this Contract);
- (4) the Contractor commits one or more material Default(s) which is:
  - (a) capable of being remedied and the Contractor has failed to remedy the Default within thirty (30) days and has failed to make measurable steps to remedy the Default within fifteen (15) days; or
  - (b) irremediable, and for the avoidance doubt any material Default under Clause 39 (*Privacy and Data Protection*), Clause 41 (*Publicity and Confidentiality*), Clause 42 (*Freedom of Information and Transparency*), Clause 44 (*Insurance*) or Clause 60 (*London Living Wage*), shall be considered a material Default for the purpose of this Clause 55.2.1(A)(4);
- (5) where entitled to pursuant to and in accordance with Clause 17.4 (*Financial Distress*);
- (6) where entitled to pursuant to and in accordance with Clause 58.7 (*Prevention of Fraud and Bribery*);
- (7) the Contractor has incurred in any consecutive thirteen (13) Periods aggregate Service Credits which are greater than the Service Credit Annual Cap;
- (8) the Contractor has incurred in any consecutive thirteen (13) Periods aggregate Service Credits and Disruption Losses which are greater than the Service Credit Annual Cap;
- (9) a Force Majeure Event endures for a continuous period of more than ninety (90) days (save that to the extent that a Force Majeure Event affects only certain Services or Telecommunications Services, not the Services or the Telecommunications Services as a whole, LUL's right under this Clause 55.2.1(A)(9) shall be limited to a right to effect a Partial Termination in respect of any one or more of the affected Services and/or Telecommunications Services by issuing a Termination Notice;
- (10) an Insolvency Event affecting the Contractor occurs;
- (11) there is a Change in Law which renders performance of a material part of either Party's obligations under this Contract illegal;
- (12) where entitled to pursuant to and in accordance with Clause 51.6 (*Enhanced Co-Operation*);
- (13) the representations and warranties given by the Contractor in Clauses 2.2.2, 2.2.3 and 2.2.8 (*General Representations and Warranties*) are materially untrue or misleading;
- (14) in respect of any material breach of the Contractor's obligations pursuant to Schedule 2.5 (*Security Management*);
- (15) immediately or within such period of time as LUL considers reasonably necessary if LUL becomes aware that there had been

a Change of Control, provided that LUL will not be entitled to terminate this Contract under this Clause 55.2.1(A)(15) where the Change of Control has been approved by LUL in advance in writing (such approval shall not be unreasonably withheld or delayed) and, for this purpose, the Contractor will notify LUL in writing immediately on becoming aware that any such Change of Control may take place;

- (16) the Guarantee or any term thereof ceasing to be legal, valid, binding, enforceable or effective for any reason (without the Guarantee having been replaced with a comparable guarantee to the satisfaction of LUL with the Guarantor or with another guarantor which is acceptable to LUL and which in each case is legal, valid, binding, enforceable and effective);
- (B) an "**Insolvency Event**" means in relation to the Contractor, the taking of any steps by the Contractor or any other person relating to any of the following:
- (1) the Contractor and/or the Guarantor making or seeking to make any composition, compromise, assignment or voluntary arrangement with its creditors or any class thereof or becoming subject to an administration order except where such arrangement has been approved by LUL in writing in advance;
  - (2) a liquidator, receiver, administrative receiver, compulsory manager, administrator, or other similar officer being appointed in respect of the Contractor and/or the Guarantor or the whole or a material part of their assets;
  - (3) the Contractor and/or the Guarantor has had or takes any action, procedure or step in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, winding-up or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) except in circumstances where such action, procedure or step is taken for the purposes of a solvent reorganisation which has been approved by LUL in writing in advance;
  - (4) the Contractor and/or the Guarantor threatening to cease to carry on its business or any material part thereof for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986 or any other applicable insolvency or bankruptcy legislation or otherwise being unable to pay its debt as the fall due and/or suspends (or threatens to suspend) making payments on any of its debts and/or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
  - (5) any action, procedure or step has been taken in relation to the enforcement of any security over the whole or a material part of the assets of the Contractor and/or its parent entity and/or the Guarantor and such action, procedure or step could reasonably be expected to result in insolvency and/or have a material adverse effect on the relevant company;
  - (6) the value of the assets of the Contractor, its parent entity or the Guarantor is less than its liabilities (taking into account contingent and prospective liabilities);
  - (7) any expropriation, attachment, sequestration, distress or execution or similar process affects the whole or a material part

of the assets of the Contractor and/or its parent entity and/or the Guarantor; or

- (8) any similar event to those in Clauses 55.2.1(B)(1) to 55.2.1(B)(7) occurring in relation to the Contractor and/or the Guarantor under the law of any applicable jurisdiction for those purposes;

(each a "**LUL Termination Event**").

### 55.3 Discretionary Termination

LUL may issue a Termination Notice to the Contractor to terminate the whole of this Contract (without cause) on giving the Contractor not less than twelve (12) months' notice, provided that such Termination Notice shall not be effective prior to 21 November 2022.

### 55.4 Partial Termination

55.4.1 LUL may:

- (A) for convenience at any time, provided that LUL gives the Contractor not less than twelve (12) months', provided that such Termination Notice shall not be effective prior to 21 November 2022; or

- (B) if a Contractor Termination Event occurs,

effect a Partial Termination in respect of any of the Services by issuing a Termination Notice requiring such Partial Termination which shall take effect on the date specified in the Termination Notice. Without prejudice to LUL's other rights and remedies under this Contract or at Law, if LUL issues a Termination Notice requiring a Partial Termination, the effect of such termination on the remaining Services shall be determined in accordance with the Variation Procedure as a LUL Required Variation.

55.4.2 LUL may terminate this Contract only as expressly provided for herein.

### 55.5 Termination Procedure

55.5.1 Subject to Clause 55.1.1(D) (*Termination by the Contractor*), termination by either Party pursuant to Clauses 55.1.1 (*Termination by the Contractor*), 55.2 (*Termination by LUL*) or 55.3 (*Discretionary Termination*) shall be in accordance with the following procedure.

55.5.2 The Termination Notice given pursuant to Clause 55.1.1 (*Termination by the Contractor*), 55.2 (*Termination by LUL*) or 55.3 (*Discretionary Termination*) shall specify the grounds for termination.

55.5.3 If either Party issues a Termination Notice in accordance with this Clause 55 (*Termination*) then this Contract shall terminate on the date specified in the Termination Notice.

55.5.4 The Contractor acknowledges and agrees that a dispute as to whether an event has occurred enabling LUL to issue a Termination Notice under Clause 55.2 (*Termination by LUL*) or 55.3 (*Discretionary Termination*) shall not affect the effectiveness of the Termination Notice for the purposes of the operation of this Clause 55 and the Contractor shall only be entitled to refer for determination in accordance with the Dispute Resolution Procedure the question of whether LUL was entitled to terminate this Contract in accordance with Clause 55.2 (*Termination by LUL*) or 55.3 (*Discretionary Termination*). In the event that a determination is made that LUL was not entitled to terminate this Contract in accordance with this Clause 55, the Parties agree that LUL shall pay to the Contractor the sums payable under Clause 56.3.1 (*Payments by LUL*).

## 56. CONSEQUENCES OF EXPIRY OR TERMINATION

### 56.1 Exit Management

Each Party shall comply with its obligations in Schedule 6.6 (*Exit Management*) and any current Exit Plan.

## 56.2 Future procurements

Upon LUL's request, the Contractor shall co-operate with and provide reasonable information and assistance to LUL and any relevant Other Service Provider in respect of the re-tendering of some or all of the Services including by providing the assistance set out in Schedule 6.6 (*Exit Management*).

## 56.3 Payments by LUL

56.3.1 In relation to the termination (or, in the case of termination by LUL, Partial Termination) of this Contract:

- (A) by LUL pursuant to Clause 55.3 (*Discretionary Termination*);
- (B) by LUL pursuant to Clause 55.4.1(A) (*Partial Termination*); or
- (C) by the Contractor pursuant to Clause 55.1 (*Termination by the Contractor*),

LUL shall pay the Contractor (in addition to any unpaid Charges for Services received up until the Termination Date) the Breakage and Cancellation Costs in relation to the terminated Services.

56.3.2 In relation to the termination or Partial Termination of this Contract by LUL for any reason other than pursuant to:

- (A) Clause 55.3 (*Discretionary Termination*);
- (B) Clause 55.4.1(A) (*Partial Termination*); or
- (C) Clause 55.1 (*Termination by the Contractor*),

or if the Term expires, the only payments that LUL shall be required to make as a result of such termination (whether by way of compensation or otherwise) are payments in respect of unpaid Charges for Services received up until the Termination Date.

56.3.3 In relation to the termination or Partial Termination by LUL for a continuing Force Majeure Event pursuant to Clause 55.2 (*Termination by LUL*), the costs of termination incurred by the Parties shall lie where they fall and, for the avoidance of doubt, LUL will not be required to pay for any Breakage and Cancellation Costs incurred by the Contractor.

56.3.4 Other than during the eighteen (18) month period following the expiry of the Legacy Contract, LUL may request an estimate of the termination payment for termination on a specified date at any time during the Term provided that no more than two (2) requests may be issued in any six (6) month period. If, following the receipt of an estimate of the termination payment, LUL voluntarily terminates this Contract without cause, the termination payment shall not exceed one hundred and twenty per cent (120%) of the estimate provided by the Contractor (provided such estimate was issued by the Contractor no more than six (6) months prior to the date of LUL's Termination Notice).

## 56.4 Completion of Works

56.4.1 Following a Termination Notice (or during the fourth (4th) year of the Contract, LUL having not elected to extend this Contract in accordance with Clause 3.3.3 (*Duration*)) but prior to expiry of this Contract, LUL may, at its sole discretion, require the Contractor to complete any Variation (or any part thereof), and may require the Contractor to cease work in relation to any Variation (or part thereof).

56.4.2 Subject to LUL paying the Contractor in accordance with the relevant agreed rates, LUL may require the Contractor to continue the provision of any work related to any Variation for a period of time which shall be no greater than six (6)

months following the expiry of the relevant Termination Notice. The Contractor shall comply with such requirements and any other reasonable instructions of LUL promptly and in accordance with the terms of this Contract.

## **56.5 Consequences of failure or delay in novation of Motorola Sub-contract**

56.5.1 LUL acknowledges and agrees that:

- (A) there is no right for the Contractor to terminate the Motorola Sub-contract for convenience, whether in whole or in part;
- (B) accordingly, the Motorola Sub-contract shall continue in full force and effect for a minimum term of seven (7) years from the Service Commencement Date (as such term is defined in the Motorola Sub-contract, notwithstanding any of LUL's rights to terminate at an earlier date in Clause 55 (*Termination*) above), unless it is terminated earlier in accordance with its terms; and
- (C) in the event of any failure or delay in novating the Motorola Sub-contract, Thales would still be liable to pay all sums owed or owing to Motorola under or in connection with the Motorola Sub-contract, notwithstanding such failure or delay.

56.5.2 If this Contract expires or terminates in accordance with its terms LUL shall:

- (A) procure that LUL or another LUL Group Company or a Replacement Contractor executes the Motorola Deed of Novation with effect on or before the date of such expiry or termination of this Contract (whichever is the earlier;
- (B) if Motorola executes the Motorola Deed of Novation, comply or procure that the relevant LUL Group Company or Replacement Contractor complies, with its obligations under clause 50.5 (*Novation of the Contract to other Parties*) of the Motorola Sub-contract on and from the date effective date of the Motorola Deed of Novation; and
- (C) during and after the Term, on written demand indemnify the Contractor and keep the Contractor indemnified, against all Losses suffered, incurred by, awarded against or agreed to be paid by the Contractor under or in connection with the Motorola Sub-contract as a result of LUL's failure to comply with its obligation under Clause 56.5.2(A) and, if Motorola executes the Motorola Deed of Novation, its obligation under 56.5.2(B).

## **SECTION J: MISCELLANEOUS AND GOVERNING LAW**

### **57. ASSIGNMENT**

57.1 The Contractor shall not give, sell, assign, novate or otherwise dispose of this Contract or any or all or any part of any of its rights or obligations under this Contract without the prior written consent of LUL.

57.2 LUL may assign (whether absolutely or by way of security and whether in whole or in part), novate, sub-contract, delegate, transfer, mortgage, charge or otherwise dispose in any manner whatsoever of its rights and obligations under this Contract as it may see fit to:

57.2.1 a member of the LUL Group;

57.2.2 a successor body to LUL;

57.2.3 another public body which is given the same, similar, some or all of LUL's statutory obligations; or

57.2.4 a third party approved in advance by the Contractor, (such approval not to be unreasonably withheld or delayed).

Within ten (10) Working Days of a written request from LUL, the Contractor shall, at the Contractor's own expense, execute such agreement as LUL may reasonably require to give effect to any such transfer of all or part of its rights and/or obligations under this Contract to one (1) or more persons nominated by LUL.

## 58. PREVENTION OF FRAUD AND BRIBERY

58.1 With respect to any of the matters which are the subject of this Contract or in connection with this Contract and any matters resulting from it, the Contractor undertakes that it and its group undertakings and any person acting on its or their behalf, including directors, officers, employees and agents (together, "**Representatives**"), either in private business dealings or in dealings with the public or government sector, directly or indirectly:

58.1.1 have not given, made, offered, or received (or agreed to give, make, offer or receive); and

58.1.2 will not give, make, offer or receive (nor agree to give, make, offer or receive), any payment, gift or other advantage which:

- (A) would violate any applicable Laws;
- (B) was intended to, or did, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
- (C) was made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or
- (D) which a reasonable person would otherwise consider to be unethical, illegal or improper, (a "**Corrupt Act**").

58.2 With respect to any of the matters which are the subject of this Contract or in connection with this Contract and any matters resulting from it, the Contractor undertakes that it and its Representatives will not:

58.2.1 request any action, inaction or services that would violate applicable Laws; or

58.2.2 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.

58.3 The Contractor represents that, save as disclosed to LUL, neither it nor any of its Representatives: has been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any Corrupt Act by any law enforcement, regulatory or other governmental agency or any customer or Contractor; or has admitted to; or been found by a court in any jurisdiction to have engaged in, any Corrupt Act, or been debarred from bidding for any contract or business; or are Public Officials or persons who might otherwise reasonably be considered likely to assert a corrupt or illegal influence on behalf of LUL. The Contractor agrees that if, at any time, it becomes aware that any of the representations set out at in this Clause 58.3 is no longer correct, it will notify LUL of this immediately in writing.

58.4 LUL or its nominee shall be entitled to have access to, inspect and audit all Invoices and accompanying documents issued by, and the financial books and records of, the Contractor solely in order to verify compliance with Clauses 58.1 to 58.7 (*Prevention of Fraud and Bribery*). The Contractor undertakes that it will co-operate fully and promptly with any such audit or inspection conducted by or on behalf of LUL pursuant to this Clause 58.4.

58.5 The Contractor undertakes that it and its Representatives will report to LUL, where permitted by Law, any suspected violations of Corruption Law in connection with any matters to which this Contract relates (which for the avoidance of doubt includes acts or omissions which may affect directly or indirectly LUL or any member of the LUL Group).



The Contractor consents to LUL making any disclosures of this information as may reasonably be required, provided that, to the extent it is legally permitted to do so, where LUL intends to so disclose gives the Contractor reasonable notice of this disclosure and, where notice of disclosure is not prohibited and is given in accordance with this Clause 58 it takes into account the reasonable request of the Contractor in relation to the content of such disclosure.

- 58.6 The Contractor undertakes to fully and effectively indemnify, keep indemnified and hold harmless each member of the LUL Group from and against all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any alleged or actual violations of any Corruption Law by a member of the Contractor Group or any Sub-contractor.
- 58.7 Without prejudice to any other express remedies referred to elsewhere in this Contract or any remedies available at Law or in equity, in the event of a breach by the Contractor of any of the undertakings contained in Clauses 58.1 to 58.7 (*Prevention of Fraud and Bribery*), LUL may terminate this Contract:
- 58.7.1 if the Contractor refuses to take any actions reasonably requested by LUL to reduce the risk of any further breach of Clauses 58.1 to 58.7 (*Prevention of Fraud and Bribery*) to remedy or address the consequences of the breach that has occurred;
- 58.7.2 if such breach involves a Corrupt Act by the Contractor or its Representatives; or
- 58.7.3 if LUL reasonably concludes that it should terminate this Contract to ensure that it is in compliance with Corruption Law.

59. **DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT**

- 59.1 Without prejudice to LUL's rights of termination implied into this Contract by applicable Law, in the event that:
- 59.1.1 a court makes a Declaration of Ineffectiveness; or
- 59.1.2 a Public Procurement Termination Event,
- LUL shall promptly notify the Contractor. The Parties agree that the provisions of Clause 56 (*Consequences of Expiry or Termination*) and this Clause 59 shall apply as from the date of receipt by the Contractor of the relevant notification in accordance with this Clause 59.1. Where there is any conflict or discrepancy between the provisions of Clause 56 (*Consequences of Expiry or Termination*) and this Clause 59 or the Cessation Plan, the provisions of this Clause 59 and the Cessation Plan shall prevail.
- 59.2 The Declaration of Ineffectiveness or Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness or Public Procurement Termination Event.
- 59.3 As from the date of receipt by the Contractor of the relevant notification pursuant to Clause 59.1 (*Declaration of Ineffectiveness and Public Procurement Termination Event*), the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, LUL shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 59.3.1 an orderly and efficient:
- (A) cessation of the Services; or
- (B) (at LUL's request) a transition of the Services to LUL or such other entity as LUL may specify; or

- (C) in the case of a Public Procurement Termination Event, the part of the Services which are affected by such Public Procurement Termination Event; and
  - 59.3.2 minimal disruption or inconvenience to LUL or to public passenger transport services or facilities,
- in accordance with the provisions of this Clause 59 and to give effect to the terms of the Declaration of Ineffectiveness or Public Procurement Termination Event. The Parties acknowledge that in the event of a Declaration of Ineffectiveness, LUL may require the Contractor to continue to provide the Services, including the delivery of relevant Upgrade Projects, pending LUL's successful appointment of and transition to a Replacement Contractor
- 59.4 Upon agreement, or determination by LUL, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
  - 59.5 LUL shall pay the Contractor's reasonable, demonstrable costs:
    - 59.5.1 in the case of a Declaration of Ineffectiveness:
      - (A) that have been properly incurred or committed in the performance of the Contract prior to LUL's notification in accordance with Clause 59.1 (*Declaration of Ineffectiveness and Public Procurement Termination Event*) that a court has made a Declaration of Ineffectiveness in relation to the Contract;
      - (B) that have been properly incurred or committed in relation to the upgrade of the core radio technology of the Legacy System to the Dimetra version 9.0 pursuant to the Legacy Contract and the Contractor's sub-contract with the Legacy Contractor; and
      - (C) in assisting LUL in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by LUL provided that LUL shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this Clause 59; or
    - 59.5.2 in the case of a Public Procurement Termination Event, in assisting LUL in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by LUL provided that LUL shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this Clause 59.

## 60. **LONDON LIVING WAGE**

Without prejudice to any other provision of this Contract, the Contractor shall:

- 60.1.1 ensure that none of the London Living Wage Employees is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- 60.1.2 ensure that none of the London Living Wage Employees is paid less than the amount to which they are entitled in accordance with their respective contracts of employment;
- 60.1.3 provide and procure the provision by London Living Wage Employees to LUL with/of such information concerning the London Living Wage as LUL may reasonably require from time to time; and
- 60.1.4 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

## 61. **WORK RELATED ROAD RISK**

The Contractor shall comply fully with Appendix 1 (*Work Related Road Risk*) to Schedule 2.10 (*TfL Safety, Quality and Environmental Requirements*). If the Contractor fails to comply with such Appendix LUL may refuse entry to a LUL Site in accordance with such Appendix.

**62. RESPONSIBLE PROCUREMENT**

The Contractor shall comply with the provisions of Schedule 2.12 (*Responsible Procurement*).

**63. COMPLIANCE WITH LAWS**

- 63.1 Without prejudice to Clauses 12 (*Safety*), 14 (*Environment*) and 8.3 (*Change in Law*), each Party shall perform this Contract in accordance with all applicable Laws and Legislation from time to time in force.

**64. GOVERNING LAW**

- 64.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 64.2 Without prejudice to Clause 25 (*Dispute resolution*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

**65. NOTICES AND INVOICES**

- 65.1 Any notice or warning affecting this Contract and any Invoices (together, "**Notices**") shall unless otherwise specifically provided in this Contract be in writing and signed by or on behalf of the Party giving it and may be served:
- 65.1.1 by hand delivery during normal office hours;
  - 65.1.2 prepaid recorded delivery or registered post,  
to the address and for the attention of the relevant Party as set out in Clause 65.3 (*Notices and Invoices*); or
  - 65.1.3 via the document transmittal system specified by LUL in writing from time to time.
- 65.2 Proof of posting or despatch of any Notice shall be deemed to be proof of receipt:
- 65.2.1 in the case of any Notice served hand:
    - (A) on delivery provided delivery is during normal office hours on a Working Day; or
    - (B) otherwise 9:00am on the next Working Day; or
  - 65.2.2 in the case of any Notice served by recorded delivery or registered post, forty-eight (48) hours from the date of posting; or
  - 65.2.3 in the case of any Notice served by a document transmittal system pursuant to Clause 65.1.3 (*Notices and Invoices*), at 9:00am on the first Working Day after sending.
- 65.3 Notices referred to in Clause 65.1 (*Notices and Invoices*) shall:
- 65.3.1 in the case of LUL be addressed to: the person appointed as Contract Manager pursuant to Schedule 6.1 (*Governance*), London Underground Limited, 14 Pier Walk, London SE10 0ES; and
  - 65.3.2 in the case of the Contractor be addressed to: the person appointed as Contractor Representative pursuant to Schedule 6.1 (*Governance*), Thales Transport and Security Limited, Quadrant House 4 Thomas More Square, Thomas More Street, London E1W 1YW,

or such person or address as the relevant Party may from time to time Notify in writing to the other on no less than five (5) Working Days' notice.

65.4 This Clause 65 shall not apply to communications which the provisions of Schedule 6.1 (*Governance*) require or permit to be made in a different manner.

65.5 Revocation of Notices shall be effected in the same manner as for the Notices themselves.

66. **SURVIVAL**

The provisions of Clauses 1 (*Definitions and Interpretation*), 2 (*General Representations and Warranties*), 14 (*Environment*), 17 (*Payment*), 18 (*General Taxation*), 19 (*Set-off*), 23 (*Records and Information*), 24 (*Audit and Inspection*), 25 (*Dispute resolution*), 26 (*TUPE and Employees*), , 29 (*Non-Solicitation*), 32 (*Intellectual Property Rights*), 33 (*Licences Granted by the Contractor*), 35 (*IPR Indemnity*), 39 (*Privacy and Data Protection*), 41 (*Publicity and Confidentiality*), 42 (*Freedom of Information and Transparency*), 43 (*Liability*), 45 (*Parent Company Guarantee and Performance Bond*), 55 (*Termination*), 56 (*Consequences of Expiry or Termination*), 64 (*Governing Law*), 65 (*Notices and Invoices*), 66 (*Survival*), 70 (*Third Party Rights*), 71 (*Severability*), 74 (*Further Assurance and Co-operation*) and Schedules 1 (*Definitions*), 3.1 (*Dependencies*), 4.1 (*Charges and Invoicing*), 4.2 (*Financial Model and Financial Reporting*), 6.2 (*Dispute Resolution Procedure*), shall survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive termination or expiry of this Contract shall survive termination or expiry as aforesaid.

67. **WAIVER, RIGHTS CUMULATIVE**

67.1 The failure of either Party at any time to enforce any provision of the Contract shall in no way affect its right to require complete performance by the other Party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or be a waiver of the provision itself.

67.2 Save as expressed to the contrary in this Contract, each Party's rights and remedies under this Contract are cumulative.

68. **LANGUAGE**

English shall be the language of this Contract and all documentation or information required or produced in the course or in connection with the Contractor's performance of this Contract shall be in English.

69. **ENTIRE AGREEMENT**

69.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter whether written or oral.

69.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

69.3 Nothing in this Clause 69 shall exclude any liability in respect of misrepresentations made fraudulently.

70. **THIRD PARTY RIGHTS**

70.1 The Parties intend that the provisions of Paragraphs 1.6, 5.5 and 5.10 and of Part B (*Employment Exit Provisions*) of Schedule 7.3 (*Staff Transfer*) and Paragraph 7.7 of Schedule 6.6 (*Exit Management*) and any other provision of this Contract which expressly purports to confer a right on a person other than the Parties (together "Third Party Provisions") confer benefits on and are enforceable by the persons named in such

provisions (each such person a "**Third Party Beneficiary**"), in each case, by virtue of the Contracts (Rights of Third Parties) Act 1999.

70.2 Subject to Clause 70.1 (*Third Party Rights*), 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 right or remedy of any person which exists or is available otherwise than pursuant to that Act.

70.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of LUL, which may, if given, be given on and subject to such terms as LUL may determine.

70.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 70.1 (*Third Party Rights*) may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

70.5 **Recovery of loss by the LUL Group**

70.5.1 In the event of any Default by the Contractor which results in any Loss being suffered by a member of the LUL Group, such Loss will be treated as if it had been suffered by LUL.

70.5.2 LUL will be able to recover any Loss from the Contractor subject to any limits on the Contractor's liability contained in this Contract. For this purpose, any Loss suffered by members of the LUL Group (other than LUL) will not be treated as being indirect, special or consequential in terms of Clause 43.4 simply because it has been suffered by members of the LUL Group and not by LUL directly.

70.5.3 If and to the extent that LUL is unable to recover any Loss suffered by other members of the LUL Group under Clause 70.5.2, each member will be entitled to recover such Loss directly from the Contractor and to enforce this Contract against Supplier for this purpose under the Contracts (Rights of Third Parties) Act 1999.

71. **SEVERABILITY**

Without prejudice to Clauses 55 (*Termination*), 56 (*Consequences of Expiry or Termination*) and 8.3 (*Change in Law*), should any provision of this Contract be held to be invalid or unenforceable, then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable provision the effect of which is the closest possible to the intended effect of the invalid or unenforceable provision.

72. **INDEXATION**

72.1 Any amounts or sums in this Contract which are expressed to be "subject to Indexation" shall be adjusted in accordance with the provisions of Paragraph 2.1 of Schedule 4.1 (*Charges and Invoicing*) to reflect the effects of inflation.

72.2 **Withdrawal of index**

If any index or any of the publications or the information derived from any such publication and referred to in this Contract ceases to be published, then such alternative index or publication or information which the Parties agree produces as nearly as possible the same result or gives the same information shall be substituted therefor, and if the reference date used in the compilation of any such index or information shall change the figure taken to be shown in such index or information shall be the figure which would have been shown in the index or information if the original reference date had been retained.

72.3 **Change in the basis of index**

If there has been a material change in the basis of information from which the index is compiled which produces a significant change to the indexation provisions contained in this Contract or it becomes impossible, by reason of any change after the date hereof in the method used to compile any such index or information or for any other reason whatever, to calculate the amounts by which the sums to be indexed hereunder should be adjusted by reference to any such index or information or any alternatives thereto, the Parties shall agree such alternative method of adjusting the last available reference charge payable under this Contract as a basis for the making of subsequent payments under this Contract as most closely reflects the intent of the index or information in question.

**72.4 Reference to Dispute Resolution**

If any dispute or difference shall arise between the Parties as to the construction or effect of this Clause 72 or as to the calculation of the sums payable in the circumstances referred to in Clause 72.3 (*Change in the basis of index*), (and a dispute shall be deemed to have arisen if the Parties have not reached agreement within forty-two (42) days of the occurrence of the event referred to in Clause 72.1 (*Withdrawal of Index*) or 72.3 (*Change in the basis of index*)) the same shall be determined in accordance with the Dispute Resolution Procedure.

**72.5 Effect of determination under Dispute Resolution**

If so determined pursuant to the Dispute Resolution Procedure, the index or information in respect of which the dispute or difference has arisen between the Parties may be amended, or replaced by a substitute index or information, or replaced by other provisions providing for the adjustment of sums or payments under this Contract, as may be provided in such determination, and any necessary payments and repayments shall be made between the Parties together with interest at the Applicable Rate in order to give effect to such determination with effect from the date on which it is determined that the circumstances or events giving rise to dispute or difference between the Parties occurred.

**73. COSTS**

Unless expressed to the contrary in this Contract, each Party shall bear its own costs and expenses in connection with the preparation, negotiation and registration of, and performance of its obligations under, this Contract and all matters related to or connected with it.

**74. FURTHER ASSURANCE AND CO-OPERATION**

74.1 Each Party shall with all due diligence on or after the Effective Date (and whether before or after the Service Commencement Date) execute all such deeds and documents and perform all such acts and things and provide such assistance and information as each Party may reasonably require to carry out the terms of this Contract and to assure to each Party the rights and benefits hereby agreed to be granted.

74.2 The Contractor shall at all times co-operate with LUL, its other contractors from time to time, the police, the other emergency services and Authorised Third Parties for purposes relating to the safety or security of the Underground or persons using it or working on any part of it.

74.3 The Contractor shall not obstruct, interrupt or hinder or permit any obstruction, interruption or hindrance by Connected Persons or any of their respective servants or agents to: any LUL Property; the Underground Network or any part of it; other LUL Contractors; the property, business or undertaking of any Third Party including DLR and any train operating company, other than to the reasonable extent that such obstruction, interruption or hindrance directly results from the Contractor's proper performance of its obligations or exercise of its rights hereunder (the Contractor having used its reasonable endeavours to minimise such effect).



