

VOLUME 2. INDEX

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FORM OF AGREEMENT

THIS AGREEMENT is made the 31st day of July 2015

BETWEEN:

- (1) **LUL Nominee SSL Limited** (Company number 06242508) whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL ("the *Employer*" which expression shall include its successors in title and assigns); and
- (2) **Thales Ground Transportation Systems UK Limited** (Company number 05805963) whose registered office is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone near Weybridge, Surrey, KT15 2NX ("the *Contractor*").

WHEREAS:

- (A) The *Employer* wishes to have provided the *works* as part of the Sub Surface Railway Upgrade Programme for the Sub Surface Railway comprising of the Circle, District, Hammersmith and City and Metropolitan lines.
- (B) The *Employer* has accepted a tender by the *Contractor* for the *works* and correction of Defects and Software Defects therein in accordance with the *conditions of contract* (as amended).

NOW IT IS AGREED THAT:

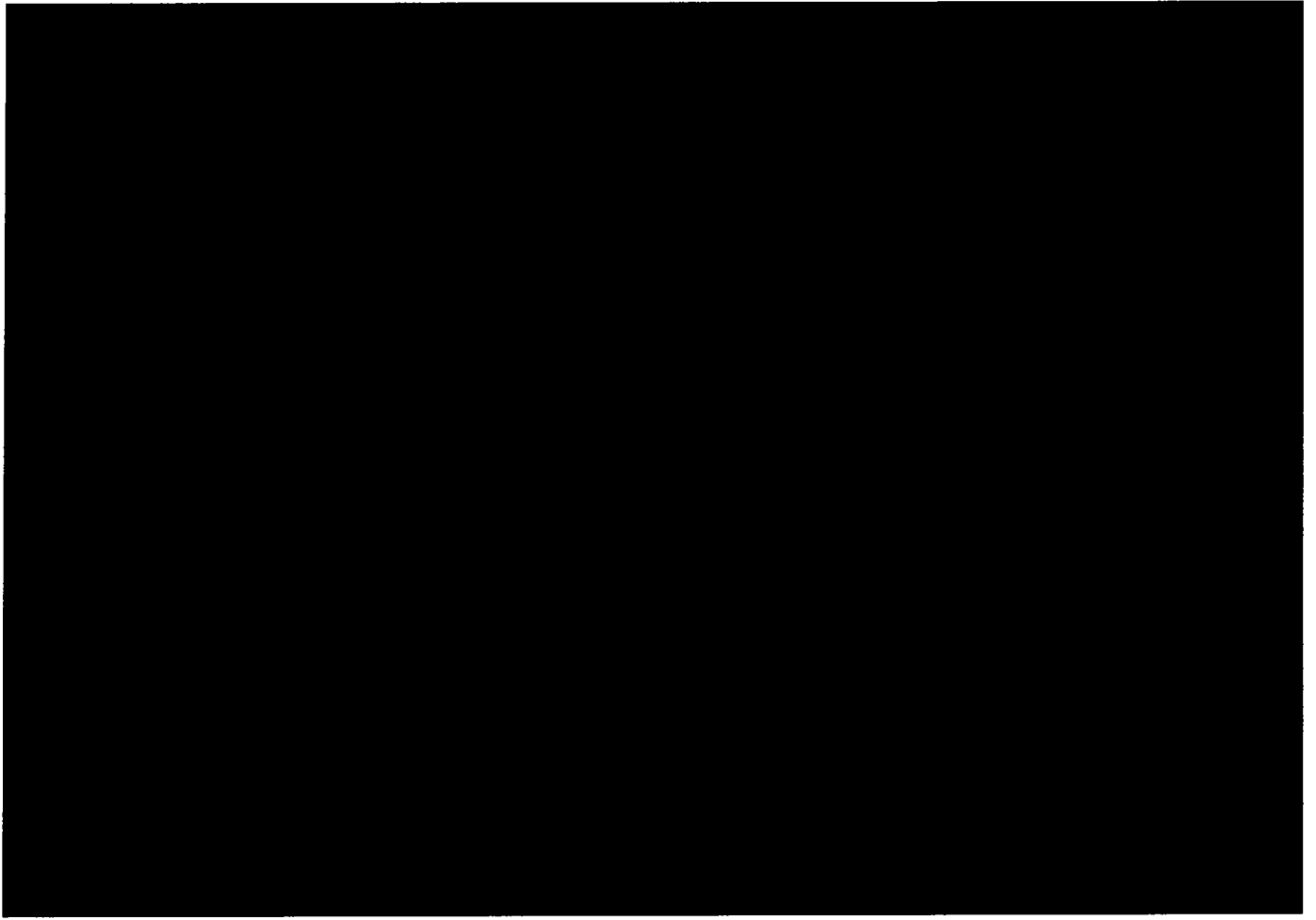
1. Terms and expressions defined in the *conditions of contract* (as amended) and italicised terms identified in the Contract Data have the same meanings herein.
2. The *Contractor* Provides the Works in accordance with the *conditions of contract* (as amended).
3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract* (as amended).
4. The documents forming the Contract (Volumes 2-4 inclusive) are:
 - (a) this Form of Agreement duly executed by the Parties as a deed and included in Volume 2 of this Contract;
 - (b) the NEC Engineering and Construction Contract *conditions of contract* Third Edition June 2005 (with amendments dated June 2006, September 2011 and April 2013) core

clauses and main and secondary option clauses as amended by the *additional conditions of contract* (Z1 to Z9 clauses) and as shown in the consolidated conditions of contract included in Volume 2 of this Contract;

- (c) Schedules 1 to 7 inclusive to the *conditions of contract* included in Volume 2 of this Contract;
- (d) the completed Contract Data Part One (and Annexes) included in Volume 2 of this Contract;
- (e) the completed Contract Data Part Two (and Annexes with the exception of Annex C Activity Schedule) included in Volume 2 of this Contract;
- (f) the Works Information;
- (g) the Activity Schedule; and
- (h) the Site Information.

Any ambiguity or inconsistency that exists between the documents comprising this Contract shall be resolved in accordance with the order of priority shown above and the higher ranked document shall take precedence.

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



CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION C

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006, 2011 and 2013 amendments to the NEC3 suite of contracts)

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In this Contract the core clauses are the ECC core clauses and the clauses set out in the ECC as main option clauses: Option C. The Z clauses referred to in Contract Data Part One are included in sequence and are printed in **bold type** in this Contract.

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THE CONFORMED CONDITIONS OF CONTRACT

1 General

Actions	10	
	10.1	The <i>Employer</i> , the <i>Contractor</i> and the <i>Project Manager</i> shall act as stated in this Contract fairly and reasonably and in a spirit of mutual trust and co-operation. The Adjudicator shall act as stated in this Contract and in a spirit of independence.
Identified and defined terms	11	
	11.1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials. The secondary option <i>Z additional conditions of contract</i> (including amendments to the NEC3 core, main and secondary option clauses) are shown in bold.
	11.1A	This Contract comprises the documents listed in the form of agreement executed by the Parties and the rights, duties and obligations contained therein.
	11.1B	No alterations or amendments may be made to the <i>conditions of contract</i> except where expressly recorded in writing by a document expressed to be supplemental to the <i>conditions of contract</i> and signed by the Parties.
	11.2	<p>(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i>. The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes.</p> <p>(2) Access Plan has the meaning in the Works Information (WI.24).</p> <p>(3) Access means access to the Underground Network, Network Rail Infrastructure and the Old Dalby Site.</p> <p>(4) Access Procedure means the procedure, processes and constraints governing the <i>Contractor's</i> rights of Access under this Contract (including the provisions in the Works Information (WI.02 and WI.24)).</p> <p>(4A) Access Quota is the lesser of:</p> <p>(i) the relevant quota of Type One Access Shifts identified in sub-section 24.7 of the Works Information (WI.24) for use in the relevant period; and</p> <p>(ii) the amount of Type One Access Shifts actually requested by the <i>Contractor</i> for use in that period.</p> <p>(4B) The Access Quota Conditions are:</p> <ul style="list-style-type: none">• the Access bookings were properly requested by the <i>Contractor</i> in accordance with the Access Procedure (including without limitation the timescales set out in the Works Information (WI.24));• the Access bookings requested but not received were Type One Access;• the <i>Contractor</i> is able to demonstrate that it could have appropriately resourced and utilised the Access bookings requested but not received;• the Access bookings requested but not received were within the relevant Access Quota; and

- the Access bookings requested but not received were required by the *Contractor* to carry out the *works*.

(4C) Not used.

(4D) Associated Maintenance Contractor means the *Contractor* or any Associated Company appointed by the *Employer* from time to time under a separate agreement to provide maintenance services in connection with the *works*.

(4DD) Bombardier Site means the premises of Bombardier Transportation UK Limited in Derby.

(4E) Business Day means any day but excluding Saturday, Sunday and English Bank Holidays.

(5) The Act means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

(5A) Activity Schedule is the *activity schedule* unless later changed in accordance with this Contract.

(6) Defined Cost is the amount of:

- payments due from the *Contractor* to Subcontractors (other than Thales Canada) for work which is subcontracted and the cost of the components in the Schedule of Cost Components for work which is not subcontracted, plus
- payments due from Thales Canada to its Subcontractors for work which it has subcontracted, and Thales Canada's cost of the components in the Schedule of Cost Components for work which is not so subcontracted,

less (in both cases) any Disallowed Cost.

(7) Adjudicator means any adjudicator appointed from time to time in accordance with clause W2.

(8) Associated Company means any division or subsidiary of the *Contractor* or any division or subsidiary of the *Contractor's* parent company or any other company in the same group as the *Contractor*.

(8A) ATC System means the automatic train control system comprising the transmission or communication based train control system (CBTC) and additional system components for operational communications all as more particularly described in the Works Information.

(8B) CAMS means the web-based contract administration management system for the ATC System project as more particularly described in the Works Information (WI.03).

(8C) CAMS Communications means those categories of communications provided for in the contract that the *Project Manager* notifies are to be made exclusively through CAMS.

(9) CDM Regulations means the Construction (Design and Management) Regulations 2015 including any approved code of practice and any guidance requirements issued by the Health and Safety Executive.

(10) Completion is when the *Contractor* has satisfied the requirements included in the definitions of Sectional Functional Completion, System Functional Completion or Final Completion (as applicable) to achieve Completion.

Save where appears otherwise from the context, unless stated as relating only to Sectional Functional Completion, System Functional Completion or Final Completion, any reference in this Contract to Completion includes, as the case may be, a reference to Sectional Functional Completion, System Functional Completion and Final Completion.

(11) The Completion Date means the relevant following *completion date* unless later changed in accordance with this Contract:

- The Sectional Functional Completion Date is the *sectional functional completion date* for that *section* unless later changed in accordance with this Contract;
- The System Functional Completion Date is the *system functional completion date* unless later changed in accordance with this Contract; and
- The Final Completion Date is the *final completion date* unless later changed in accordance with this Contract.

Save where appears otherwise from the context, unless stated as relating only to Sectional Functional Completion, System Functional Completion or Final Completion, any reference in this Contract to the Completion Date includes, as the case may be, a reference to the Sectional Functional Completion Date, System Functional Completion Date and the Final Completion Date.

(11A) Completion Submission means the submission issued pursuant to and in accordance with clause Z6.1 and Appendix B of the Works Information (WI.14).

(12) Confidential Information means information not generally available to the public disclosed or caused to be disclosed, either orally or in writing, pursuant to this Contract (including, without limitation, any financial data, business and other plans, specifications, equipment designs, electronic configurations, design information, product architecture, algorithms, quality assurance plans, inventions (whether or not the subject of pending patent applications but excluding patents or patent applications published by the relevant patent office), ideas, discoveries, formulae, models, requirements, standards, trade, know-how and manufacturing secrets, drawings, samples, devices, computer programs, demonstrations, technical information) which is marked confidential, or otherwise specified as confidential at the time of disclosure or which, in the circumstances, would reasonably appear to be confidential.

(13) The Contract Date is the date as stated in the form of agreement.

(14) Contract Information means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to clause 5, which shall consist of the *Contractor's* name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.

(15) Contractor's Organisation Chart is the *contractor's organisation chart* set out in Annex E of the Contract Data Part Two as amended in accordance with clause 24.1-24.3, showing only those individuals fulfilling the roles of Contractor's Staff. Information in the Contractor's Organisation Chart is not Works Information.

(16) Contractor's Staff include all individuals employed or appointed to the roles

set out in the Contractor's Organisation Chart.

(17) Change of Control means a change of ownership of the *Contractor* or Thales Canada (or the Holding Company if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* or Thales Canada or Holding Company (or parent company as the case may be).

(18) Critical Defect means a Defect or Software Defect which the *Project Manager* decides:

- at any time, prevents or substantially affects Revenue Service from beginning or continuing;
- at any time prior to Sectional Functional Completion of the last *section*, while not preventing Revenue Service, is critical to the operation, maintenance and/or safety of the Underground Network; or
- in the period between Sectional Functional Completion of the last *section* until the *defects date*, while not preventing Revenue Service, is critical to the safety of the Underground Network.

The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

(18A) Customer means a customer of the Underground Network.

(19) A Defect is a reduction in the quality, condition, appearance or performance of the *works* arising due to a failure by the *Contractor* to Provide the Works in accordance with the requirements of this Contract or undertake the *Contractor's* design in accordance with the requirements of this Contract.

(20) The Defects Certificate is a list of Defects and Software Defects which the *Contractor* has not corrected which

- the *Contractor* finds before the *defects date*; or
- the *Project Manager* finds before the *defects date* and notifies the *Contractor* of in accordance with this Contract;

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

(21) Disallowed Cost is cost which the *Project Manager* decides

- is not justified by the *Contractor's* accounts and records,
- should not have been or was not required to have been paid to a Subcontractor pursuant to or in accordance with his subcontract,
- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Works Information,
 - comply with this Contract,
 - comply with a subcontract,
 - obtain the best value terms and conditions from responsible Subcontractors, suppliers or people in respect of any element of cost provided that where the *Contractor* has complied with the Works Information (WI.03) as regards procurement and/or subcontracting, and the *Project Manager* has accepted the name of the Subcontractor and the proposed subcontract, the *Contractor* shall be deemed to have obtained best value terms and conditions from responsible Subcontractors, or,

- proceed regularly or diligently with the *works*
- is in respect of delayed, disrupted or cancelled Priority Type One Access which
 - was not requested in accordance with the Access Procedure,
 - was delayed, disrupted or cancelled due to the default of the *Contractor* (including where the *Contractor's* default was the cause of an Emergency),
 - the *Contractor* did not make a bona fide attempt to use (which includes having the notified physical presence on Site required to utilise the Priority Type One Access), except where the *Contractor* was instructed by the *Project Manager* not to use the Access,
 - was not required by the *Contractor* to carry out the *works*

provided that

- the Priority Type One Access was not
 - delayed by less than fifteen (15) minutes at the commencement of Engineering Hours,
 - curtailed by less than twenty (20) minutes immediately before the end of Engineering Hours, or,
 - (in respect of stations only) cancelled within fifteen (15) minutes of the end of Engineering Hours
- was incurred only because the *Contractor* did not give an early warning which this Contract required him to give, and
- results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*

and/or the cost of

- correcting Defects and Software Defects before System Functional Completion caused by the *Contractor*
 - not complying with the accepted quality plan referred to in the Works Information or in this Contract,
 - arising from a persistent failure which has previously been corrected by the *Contractor* and the failure reoccurs from the same or substantially similar cause as opposed to a different cause, or,
 - not complying with a requirement for how he is to Provide the Works stated in the Works Information,
- Equipment and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information or an instruction from the *Employer* and/or the *Project Manager*,
- fines for contravening laws / regulations / procedures,
- payments that should have been made under a subcontract or purchase order / agreement without said documents having been executed,
- wherever the Contract requires an acceptance by the *Project Manager* before the *Contractor* can proceed but has not been accepted by the *Project Manager* for a reason provided in writing,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when

the *Project Manager* requests,

- preparation for and conduct of an adjudication or proceedings of the courts,
- costs incurred by the *Contractor* through providing the replacement person during the six (6) week handover period described in clause 24.3, and/or,
- costs that arise from a change in law in Canada that is enacted after the Contract Date other than where the change in law is in respect of clause X2.1,

provided that the cost of an Unforeseeable Event shall not be disallowed.

(22) **Dispute** means any dispute, controversy or claim arising out of or in connection with this Contract.

(23) **Economic and Consequential Loss** means:

- (a) any special, indirect, incidental or consequential damages of any kind; and
- (b) any loss of an economic or financial nature (whether direct or indirect) including but not limited to any loss of use, profit, income, revenue (including but not limited to abatements, adjustments or loss of bonus) business, anticipated savings or reputation, whether actual or prospective, even if foreseeable and/or arising from the indemnifying Party's negligence.

(24) **Emergency** has the meaning given in the Works Information (WI.24).

(24A) **Emergency Access** has the meaning given in the Works Information (WI.24).

(25) **Engineering Hours** has the meaning given in the Works Information (WI.24).

(26) **Equipment and Materials** are items intended to be included in the *works*.

(26A) **Escrow Materials** means software packages and associated proprietary system documentation specifically required to be deposited in escrow as specified by the Works Information (WI.01).

(27) **The Fee** (subject to sub-clause 63.13 and 11.2(45)) is the sum of the amounts calculated by applying the relevant *fee percentages* as follows to the relevant category of Defined Cost:

- (i) the *Thales UK subcontracted fee percentage* to the Defined Cost of work subcontracted by the *Contractor* (other than to Thales Canada);
- (ii) the *Thales UK-Canada administration fee percentage* to the Defined Cost of work subcontracted by the *Contractor* to Thales Canada;
- (iii) the *Thales UK direct fee percentage* to the Defined Cost of other work by the *Contractor*;
- (iv) the *Thales Canada subcontracted fee percentage* to the Defined Cost of work subcontracted by Thales Canada; and
- (v) the *Thales Canada direct fee percentage* to the Defined Cost of other work by Thales Canada.

For the avoidance of doubt, the *fee percentages* referred to at (i), (iii), (iv) and (v) above each comprise two components, namely the Margin Fee Component and the applicable Overhead Fee Component.

(27A) Final Completion is the later of:

- eight (8) months from the date of System Functional Completion; and
- when the *Contractor* has:
 - completed all of the *works* which the Works Information states are to be completed (subject to any amendments pursuant to clause Z5.12, clause Z6.17 or clause 14.3) by the Final Completion Date; and
 - provided and/or placed in escrow all Escrow Materials (save only for those Escrow Materials which, pursuant to Contract Data Part Two Annex F, are not required to be placed into escrow).

(27AA) Financial Year means each year commencing on 1st April and ending on 31st March the following calendar year.

(28) FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation.

(29) Force Majeure Event means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a Party affected by such an event or circumstances and which have an adverse effect on the Party affected by such an event or circumstances and such Party's ability to perform its obligations under this Contract and is not an event or circumstances (i) whose effect the Party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under the Contract or (ii) which the Party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation or requisition by or under the order of any government or public or local authority, sabotage, or general military call up;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism;
- (d) lightning, earthquake or violent storm;
- (e) fire or explosion;
- (f) flooding;
- (g) tunnel collapse;
- (h) derailments within the Site;
- (i) compliance with the provisions of sections 118 to 121 of the Railways Act;
- (j) nuclear, chemical or biological contamination including ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

- (k) strikes, lock outs other than where such action is being undertaken by the affected Party's own workforce, Subcontractors or suppliers, or other industrial action by any members of the TFL Group, it being understood that only the *Contractor* may claim a Force Majeure Event in the event that the *Employer's* or a member of the TFL Group's own personnel are undertaking such industrial action;
- (l) the discovery of fossils, antiquities or other material, which in each case is required to be exhumed, or unexploded bombs or other explosives;
- (m) industry-wide unavailability of supplies, in as much as these occurrences are not imputable to the fault of the Party relying on them;
- (n) any act of government other than a change in law.

(30) Frustrated Access Conditions means:

- the Access was requested by the *Contractor* in accordance with the Access Procedure (including without limitation the timescales set out in the Works Information (WI.24));
- the Access was requested and booked within the applicable Access Quota;
- where the Access is delayed or disrupted, the *Contractor* uses reasonable endeavours to use the Access (which includes having the notified physical presence on Site required to utilise the Access), unless otherwise instructed by the *Project Manager*;
- where the Access is cancelled, unless otherwise instructed,
 - the *Contractor* uses reasonable endeavours to:
 - redeploy its personnel, and
 - use such alternative Access as is available for the period covered by the cancelled Access booking (including having the appropriate physical presence on Site required to utilise such alternative Access);
- the Access was required by the *Contractor* to carry out the works
- the Access was not delayed, disrupted or cancelled due to the default of the *Contractor* (including where the *Contractor's* default was the cause of an Emergency);
- the Access was not delayed or disrupted during Traffic Hours;
- if in respect of Access which is delayed at the commencement of Engineering Hours, the Access was delayed by greater than fifteen (15) minutes at the commencement of Engineering Hours;
- If in respect of Access which is curtailed immediately before the end of Engineering Hours, the Access was curtailed by greater than twenty (20) minutes immediately before the end of Engineering Hours;
- if in respect of stations only, the Access was not cancelled within fifteen (15) minutes of the end of Engineering Hours; and
- if the *Contractor* has notified the *Project Manager* in writing within four (4) Business Days that the Access has been delayed, disrupted or cancelled.

(31) Guarantor means Thales S.A, (Registered No. 552 059 024), whose registered office is at Tour Carpe Diem, Esplanade Nord, Place des Corolles, 92400 Courbevoie 552 059 024 RCS Nanterre, France.

(31A) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* or Thales Canada where "control" is as defined by Section 1124 of the Corporation Tax Act 2010;

(32) Information means information recorded in any form held by or on behalf of the *Employer*.

(32A) Information Request means a request for any Information under the FOI Legislation.

(33) Intellectual Property Rights means all intellectual property rights in any part of the world and shall include: patents (including supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, registered designs, unregistered rights in designs, semiconductor and topography rights, copyrights and neighbouring rights, database rights, trade secrets, know-how, inventions, technical or commercial knowledge, and manufacturing or business processes, methods and procedures and in each case rights of a similar or corresponding character, all applications and rights to apply for the protection of any of these rights and Confidential Information relating to these rights together with any material embodying these rights.

(33A) The G0-T Key Date is the date by which work is to meet the G0-T Condition stated. The G0-T Key Date is the *G0-T key date* stated in the Contract Data and the G0-T Condition is the *G0-T condition* stated in the Contract Data unless later changed in accordance with this Contract.

(33B) Level of Effort means the time related Defined Cost of direct (permanent or non-permanent) labour engaged in management of the *works* including but not limited to project management and management of the following functions:

- (i) contracts;
- (ii) site works;
- (iii) finance;
- (iv) suppliers; and
- (v) engineering.

(33C) Level of Effort Assessment Date is the earlier of:

- (i) nine (9) months following final Sectional Functional Completion;
- (ii) the date on which the total Defined Cost (and, subject to clause 11.2(45), the Fee) included in the Price for Work Done to Date for Level of Effort incurred in the Level of Effort Period is equal to or exceeds the Level of Effort Cap; and
- (iii) Final Completion.

(33E) Level of Effort Period is the period commencing on final Sectional Functional Completion and expiring on the Level of Effort Assessment Date.

(34) Loaned Personnel means the loaned personnel listed in the Works Information (WI03) as such list may be amended from time to time.

(34A) Loaned Personnel Conditions means the conditions set out at Schedule 5.

(35) Losses means any expense, liability, loss (excluding Economic and Consequential Losses) claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgements directly incurred.

(35A) LUL is London Underground Limited whose registered office is at Windsor House 42-50 Victoria Street SW1H 0TL, Registered Company Number 1900907.

(35AA) LUL Accounting Period means the *Employer's* accounting periods as issued from time to time by the *Employer* each such period being of between 25 and 32 days and one of 13 periods during the *Employer's* Financial Year.

(36) Maintenance Support Contract means the agreement to provide maintenance services in connection with the *works* to be entered into between the *Employer* and the *Contractor*.

(37) The Margin Fee Component is the *margin fee component* (being a component of the applicable *fee percentage*).

(37A) Network Rail Infrastructure means the infrastructure owned or operated by Network Rail.

(37AA) Designated Network Rail Infrastructure Area has the meaning given to that term in the Works Information (WI.24).

(37B) Key Designated Network Rail Infrastructure Area has the meaning given to that term in the Works Information (WI.24).

(37BB) Network Rail means Network Rail Infrastructure Limited (company number 02904587).

(37C) Nominating Authority means the President or Vice President or other duly authorised officer of the London Court of International Arbitration.

(37D) Non-Disclosed Outstanding Scope means Outstanding Scope:

- of which the *Contractor* was aware, or ought reasonably to have been aware, at the relevant Sectional Functional Completion, but which was not notified by the *Contractor* in the relevant Completion Submission; or
- which the *Employer* or the *Project Manager* could not reasonably have identified as Outstanding Scope.

(37E) Non-Scheduled Closures means any periods of full or partial line closure that are not Scheduled Closures.

(37F) Non-Priority Type One Access means any Type One Access which is not Priority Type One Access.

(37G) Non-Target Price Works means the *works* referred to in clause Z6.14 and Z6.14A the Defined Cost of which does not form part of the Price for Work Done to Date.

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

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

(39) Off the Shelf Software means commercial off the shelf software which is standard, freely commercially available and not developed or modified by the *Contractor*.

(39A) Opportunity means any opportunity to:

- reduce the total of the Prices;
- bring forward Completion Dates; or
- improve the performance of the *works*.

(39B) The Opportunities Register is a register of the Opportunities which are listed in the Contract Data and the Opportunities which the *Employer* or the *Contractor* has notified and the *Project Manager* has registered pursuant to clause 16A. It includes a description of the Opportunity and may also include key dependencies and any actions or conditions which would need to be taken or satisfied to realise or maximise the Opportunity.

(39C) Addition Option means any *addition option* identified as such in the Addition Options Table, to be undertaken by the *Contractor* only if exercised by the *Employer* in writing in accordance with the option's terms.

(39D) Addition Option Date means the latest *addition option date* for exercise of the Addition Option set out in the Addition Options Table.

(39E) Addition Options Table is the *addition options table*.

(39F) Omission Option means any *omission option*, to be omitted only if instructed by the *Project Manager* under Z9.1.

(39FF) Operationally Critical Documents has the meaning given to that term in the Works Information (WI.14).

(39G) Old Dalby Site means the test track at Old Dalby, Leicestershire.

(40) Others are people or organisations who are not the *Employer*, the *Project Manager*, the Adjudicator, the *Contractor*, or any employee, Subcontractor or supplier of the *Contractor*.

(40A) Other Signalling Contractor means any signalling or related communications contractor appointed from time to time by the *Employer* or any other member of the TfL Group before the *defects date* to undertake the design, development, supply, installation, testing, commissioning or bringing into service of any other signalling or related communications system (or part thereof) which is not included in the ATC System project but which interfaces with, or may interface with, the *works* and/or ATC System. Other Signalling Contractors are 'Others' under the Contract.

(40AA) Outstanding Scope means, with the exception of items of the *works* designated in the Completion Submission and accepted by the *Project Manager* as satisfied and/or not required for the relevant *section*, any *works* in the relevant *section* and all previously completed *sections* which, at the relevant date, have not yet been carried out and/or are not compliant with the Works Information.

(40B) Overhead Fee Component means the relevant following overhead fee component (being a component of the applicable *fee percentage*):

- the *Thales UK direct fee percentage overhead component*; and/or
- the *Thales UK subcontracted fee percentage overhead component*; and/or
- the *Thales Canada direct fee percentage overhead component*; and/or the

Thales Canada subcontracted fee percentage overhead component
(as applicable).

(41) [REDACTED]

(42) The Parties are the *Employer* and the *Contractor*.

(42A) Pay Less Notice means the notice referred to in clause 51.2B.

(42B) Performance Demonstration has the meaning given to that term in the Works Information.

(42BB) Permitted Access Type means Type One Access or Type Two Access.

(42C) Planned Deferred Scope means *works* stated as such in the Works Information (WI.02).

(42D) Not used

(43) Plant is items provided by the *Contractor* and used by him to Provide the Works and which the Works Information does not require him to include in the *works*.

(44) The Prices are the lump sum prices (including an amount calculated by applying the *fee percentages* for Thales UK and/or Thales Canada where relevant) for each of the activities in the Activity Schedule unless later changed in accordance with this Contract.

(45) The Price for Work Done to Date is, subject to clauses Z6.14 and Z6.14A, the Defined Cost for the *works* which the *Contractor* has paid up to the relevant assessment date, plus the Defined Cost which the *Project Manager* forecasts will be paid by the *Contractor* up to 4 weeks after the assessment date (to the extent not already provided for in an earlier forecast or payment) including (where applicable), save for where clause 53.8 applies, the Fee,

[REDACTED]

(45A) Principal Contractor means the principal contractor as defined in the CDM Regulations.

(45AA) Priority Type One Access means Type One Access which the *Contractor* (in his sole discretion) designates as critical when requesting the Access in accordance with the Access Procedure and, subject to such designation, may include Access to Designated Network Rail Infrastructure Areas if and to the extent deemed to be Type One Access under clause Z5.6.

(46) Prohibited Act means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:**
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with LUL or the *Employer*; or**
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with LUL or the *Employer*; or**
- (b) entering into this Contract or any other contract with LUL or the *Employer* with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and of the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*; or**
- (c) committing an offence**
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;**
 - (ii) under legislation creating offences in respect of fraudulent acts, or**
 - (iii) at common law in respect of fraudulent acts;****in relation to this Contract or any other contract with LUL or the *Employer*;**
or
- (d) defrauding or attempting to defraud LUL or the *Employer*.**

(47) To Provide the Works means to do the work necessary to complete the *works* in accordance with this Contract and all incidental work, services and actions which this Contract requires.

(48) Published Time has the meaning given in the Works Information (WI.24).

(48A) Referral Notice means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5.

(48AA) Repairs means repairing, replacing or procuring repair or replacement of individual hardware components of Equipment and Materials which are either malfunctioning, or not functioning in accordance with the manufacturer's specifications due to wear and tear or physical loss or damage. A Defect or a Software Defect is not a Repair.

(48B) Responsible Procurement Principles mean the seven (7) principles of responsible procurement more particularly described in the Works Information (WI.13) as may be further updated from time to time.

(49) Revenue Service means train services where the paying public is being carried.

(49A) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Project Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(50) Safeguarding Works means the works performed under the Safeguarding Agreements.

(50A) Safeguarding Agreements means the agreements between the *Employer* and the *Contractor* for Safeguarding Works dated 11 December 2014 (ASR2) and 11 February 2015 (ASR3).

(51) Safety Breach means a material breach of the Contract caused by the gross incompetence, wilful default or reckless disregard to the safety of the *Contractor* (or anyone employed or acting on behalf of the *Contractor*) which has materially affected (or which had the reasonable potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network or the safety of Customers, the *Employer's* staff or any other person.

(51A) Senior Representative means a representative of a Party at senior executive level who has no direct involvement in the project.

(51B) Sectional Functional Completion is when:

- the *Contractor* has
 - done all the work which the Works Information states he is to do by the Sectional Functional Completion Date, save only for Type One Outstanding Scope which the *Project Manager* has notified may be deferred and carried out after Sectional Functional Completion and any Type Two Outstanding Scope;
 - completed design, installation, testing and commissioning of the ATC System so that initial Revenue Service can begin with the ATC System for a particular *section* or element as described in the Contract Data and the Works Information; and
 - corrected notified Critical Defects in the *section* and all other *sections* that have achieved Sectional Functional Completion or agreed a date for their correction with the *Project Manager*; and
 - subject to clause 43.1, corrected notified Defects or Software Defects (other than Critical Defects) in the *section*,

provided that notwithstanding the above if a *section* enters initial Revenue Service the *section* is deemed to have achieved Sectional Functional Completion.

(51C) Shift means a single period of Engineering Hours from traction current off time to traction current on time (as identified more fully in accordance with the Works Information (WI.24)).

(52) The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in this Contract.

(53) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(53A) Site Instruction means an instruction issued on Site and in writing by a delegate of the *Project Manager* in accordance with clause 14.3C.

(54) Scheduled Closures are the periods of full or partial line closure described in the *closures schedule* as amended from time to time by the *Project Manager* and notified to the *Contractor*.

(55) Software means the stand-alone software or the software bundled with or embedded in Equipment and Materials.

(56) Software Defect means a failure of the Software to enable the functionality to be achieved as described in the Works Information.

(57) Standards means the standards imposed on the *Contractor* as set out or referred to in the Works Information, as amended from time to time.

(58) A Subcontractor is a person or corporate body who has a contract or purchase order with the *Contractor* or an Associated Company to provide part of the *works*, or to supply Equipment and Materials and/or services specifically for the *works*. The following shall not be treated as Subcontractors but as components in the Schedule of Cost Components:

- the provision of people, labour and other consultancy services charged on a labour only basis (directed by and as a substitute for employees of the *Contractor*);
- the purchase of off-the-shelf Plant or Equipment and Materials which have undergone or require no customisation, specific design or modification for the *works*; or
- charges as defined by Item 4 of the Schedule of Cost Components.

(59) System Functional Completion is the later of:

- two (2) weeks after Sectional Functional Completion of the final *section*; and
- when the *Contractor* has:
 - corrected all notified Critical Defects;
 - completed all Type One Outstanding Scope listed in the Completion Submission accepted by the *Project Manager* at the final Sectional Functional Completion;
 - provided the completed and updated final versions of Operationally Critical Documents;
 - completed as-built drawings and any other *works* which the Works Information states are to be carried out between the final Sectional Functional Completion and System Functional Completion; and
- when the *works* have been demonstrated (by reference to the Performance Demonstration) to have achieved the performance requirements referred to in the Works Information (WI.14) provided that if at any time the *Employer* implements a working timetable which clearly validates the inter-station run times calculated through the performance simulation analysis (as described in WI.28) prepared to comply with WI.28 (or in excess thereof), the *works* shall be deemed to have satisfied the requirements of the Performance Demonstration.

(59A) System Interface Works means interfacing work, services and/or tasks performed by the *Employer*, other members of the TfL Group and/or by Others at the behest of the *Employer* or other member of the TfL Group in relation to systems, networks, equipment or devices which interface with the *works*.

(60) Thales Canada is Thales Canada Inc., carrying on business as Thales Canada, Transportation Solutions, incorporated under the laws of Canada and whose registered business address is currently at 105 Moatfield Drive – Suite 100, Toronto, Ontario, M3B 0A4 Canada.

(61) **Thales Canada's Subcontractors** has the same meaning as "Subcontractors" in sub-clause 11.2(58) save that all references to the *Contractor* therein shall be deemed to be references to Thales Canada

(62) **TfL Group** means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.

(63) **Traffic Hours** has the meaning given in the Works Information (WI.24).

(64) **Transparency Commitment** means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received.

(64A) **Type One Access** means Access that is requested by the *Contractor* and booked by the *Employer* in accordance with the Access Procedure within the timescales prescribed therein and being of the types set out in section 24.4.1 of the Works Information (WI.24) but excluding:

- Emergency Access;
- Scheduled Closures and Non-Scheduled Closures;
- Access to Network Rail Infrastructure (save to the extent that Access to Designated Network Rail Infrastructure Areas is deemed to be Type One Access under clause Z5.6);
- Contingency Access (as defined in the Works Information (WI.24)); and
- Traffic Hours Access.

(64B) **Type Two Access** means any Access that is not Type One Access. Type Two Access includes Access to Network Rail Infrastructure (save to the extent that Access to Designated Network Rail Infrastructure Areas is deemed to be Type One Access under clause Z5.6), the Old Dalby Site.

(64C) **Type One Outstanding Scope** means:

- any Outstanding Scope in the Works Information as required to Provide the Works for Completion in the *section* and previously completed *sections*; and
- Planned Deferred Scope.

(64D) **Type Two Outstanding Scope** means any Outstanding Scope other than Type One Outstanding Scope.

(65) **Underground Network** means the stations and depots (wherever situated), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

(65A) **Unforeseeable Event** means an event, other than a Force Majeure Event, caused by a risk which an experienced contractor could not reasonably have foreseen or, if foreseeable, against which measures to prevent loss, damage or injury from occurring could not reasonably have been taken by such contractor.

(66) **The Working Areas** are those parts of the *working areas* which are

- necessary for Providing the Works and

- used only for work in this Contract
- unless later changed in accordance with this Contract.

(67) Works Information is information which either

- specifies and describes the *works* or states any constraints on how the Contractor Provides the Works
- and is either
- in the documents which the Contract Data states it is in or
 - in an instruction given in accordance with this Contract.

(67B) Works Plan has the meaning given to that term in the Works Information (WI.24).

Interpretation and the Law 12

- 12.1 In this Contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.1.A Words which mean persons or parties include firms, corporations and any organisation having legal capacity.
- 12.1.B The headings to the sections, clauses and sub-clauses of the *conditions of contract* are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.
- 12.2 This Contract is governed by the *law of the contract*.
- 12.3 A reference in the *conditions of contract* to legislation includes
- that legislation as from time to time amended, re-enacted or substituted; and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such legislation.
- 12.4 The *Employer* and the *Contractor* submit, subject to the provisions of this Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the *Employer* has the right in his absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the *Contractor* is incorporated or in which any asset of the *Contractor* may be situated.
- 12.5 Unless stated as “calendar days” or “Business Days” a period of time stated in days is calculated in accordance with Section 116 of the Act.

Communications 13

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification and reply which this Contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.

- 13.3 If this Contract requires the *Project Manager* or the *Contractor* to reply to a communication, unless otherwise stated in this Contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, he states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the extension which has been agreed to the *Contractor*.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*.
- 13.7 A notification which this Contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this Contract is not a compensation event.

**Contract
Administration
Management System**

- 13A Notwithstanding clauses 13.1-13.2, unless the *Project Manager* gives an instruction suspending the operation of CAMS, CAMS Communications are only effective if made through CAMS and the Parties follow any procedure necessary to give effect to CAMS. The *Employer* shall provide the *Contractor* with free and continuous access to CAMS. If the *Contractor's* access to CAMS is withdrawn by the *Employer* or the *Project Manager*, the *Contractor* and the *Employer* shall immediately be entitled to recover all shared contract data stored on CAMS.

The Project Manager

- 14
- 14.1 The *Project Manager's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.1A Subject to clauses 14.3, 14.3A-C, 60, Z5.12 Z6.17 and Z9.2, no communication from the *Employer* or the *Project Manager*, given in accordance with the provisions of this Contract, including comments on the *Contractor's* design and method statements, instructions, notices, approvals, the Defects Certificate or other certificates, removes, amends or varies the *Contractor's* obligations or liability under this Contract, including the *Contractor's* responsibility to Provide the Works, his liability for Defects or Software Defects or for his design.
- 14.2 The *Project Manager*, after notifying the *Contractor*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Project Manager* in this Contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes
- the Works Information;
 - the G0-T Key Date; or
 - the *closures schedule* or a Scheduled Closure listed in the *closures schedule*
- 14.3A The *Project Manager* may give an instruction to the *Contractor* under clause 43.1 to correct a Defect after Completion.

14.3B The *Project Manager* may at any time and in his absolute discretion instruct any adjustment to the Access Quotas which instruction shall be a compensation event.

14.3C The *Project Manager* may delegate authority in accordance with clause 14.2:

(a) to any number of named delegates to issue Site Instructions to individuals to be nominated by the *Contractor* provided that the *Contractor's* maximum entitlement to Defined Cost plus Fee for each such instruction shall not exceed £2,000 (and the Prices for any resulting compensation event are not increased by more than that amount); and

(b) to a maximum of two named delegates to issue Site Instructions which are not subject to the cap referred to in sub-clause (a) provided that the *Project Manager* confirms such Site Instruction in writing within 48 hours.

In relation to any Site Instruction issued under clause 14.3C(a), if upon receipt of the Site Instruction the *Contractor* reasonably considers that its maximum entitlement to Defined Cost and Fee for such instruction would exceed £2,000, the *Contractor* is not under any obligation to comply with the Site Instruction and shall inform the *Project Manager's* delegate as soon as practicable.

In relation to any Site Instruction issued under sub-clause 14.3C(b), if the *Project Manager* does not provide written confirmation of a Site Instruction within 48 hours the Site Instruction is deemed to have been withdrawn. The *Employer's* liability in relation to each such withdrawn instruction shall not exceed the Defined Cost and Fee incurred in the period until deemed withdrawal and (if the Site Instruction gives rise to a compensation event) the Prices for any resulting compensation event are not increased by more than that amount. The Completion Date or the G0-T Key Date is not adjusted by reason of any Site Instructions which are deemed to have been withdrawn in accordance with this clause.

14.4 The *Employer* may replace the *Project Manager* after he has notified the *Contractor* of the name of the replacement.

14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110(6) of the Act.

**The Programme
Support Partner**

14A.1 The *Programme Support Partner* assists the Parties in working collaboratively in a spirit of mutual trust and cooperation.

14A.2 The Parties cooperate with the *Programme Support Partner* in order to allow him to perform his role in the best interests of the Contract.

14A.3 The *Employer* and the *Contractor* agree that the *Programme Support Partner*:

- a) whenever carrying out his duties, is deemed not to act for either the *Employer*, the *Project Manager* or the *Contractor*;
- b) save where provided otherwise in his appointment, has no liability to either Party in respect of the performance of his duties;
- c) has no authority to issue any instruction, notification nor make any determination or assessment nor relieve either Party of any duties, obligations or responsibilities under the Contract; and
- d) any act, omission, error, approval, check, certificate, consent, statement, examination, inspection, instruction, notice, proposal, request, test, or similar act by the *Programme Support Partner* (including without limitation absence of disapproval) does not relieve the *Contractor* from any responsibility he has

under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances in documents prepared or used on behalf of the *Employer*.

14A.4 The *Employer* may at its sole discretion replace the *Programme Support Partner* at any time. The replacement of the *Programme Support Partner* does not amount to a compensation event.

14A.5 For the avoidance of doubt, the *Contractor* shall not be obliged to comply with this clause 14A if and to the extent that it increases the cost, time or risk to the *Contractor* of performing its obligations under this Contract.

Adding to the
working areas 15
15.1

The *Contractor* may submit a proposal for adding to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that

- the proposed addition is not necessary for Providing the Works or
- the proposed area will be used for work not in this Contract.

Early warning 16
16.1

The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could:

- increase the total of the Prices,
- delay Completion,
- delay meeting the G0-T Key Date,
- impair the performance of the works in use, or

The *Contractor* may give an early warning by notifying the *Project Manager* of any other matters which could increase his total cost including Defined Cost. The *Project Manager* enters early warning matters on the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.

16.3 At a risk reduction meeting those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken in relation to any registered risks and who, in accordance with this Contract, will take them and
- deciding which risks have now been avoided or passed and can be removed from the Risk Register.

16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting in relation to any registered risks and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.

Opportunities Register

16A

- 16A.1 The *Contractor* and the *Employer* use reasonable endeavours to notify the other and the *Project Manager* as they become aware of any Opportunity not included on the Opportunities Register. The *Project Manager* enters Opportunities in the Opportunities Register.
- 16A.2 At any time either the *Employer* or the *Contractor* may instruct the other and the *Project Manager* to attend an Opportunities realisation meeting.
- 16A.3 At an Opportunities realisation meeting, those who attend co-operate in:
- making and considering proposals as to how the registered Opportunities can be realised or maximised;
 - seeking new Opportunities;
 - deciding what actions need to be taken or conditions satisfied to realise or maximise Opportunities and who, in accordance with the Contract, will take them; and
 - deciding which Opportunities have been realised or maximised.
- The *Project Manager* revises the Opportunities Register to record the decisions made at each Opportunities realisation meeting and issues the revised Opportunities Register to the Parties.

Ambiguities and Inconsistencies 17

17.1

The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this Contract. The ambiguity or inconsistency is resolved in accordance with paragraph 4 of the form of agreement executed by the Parties unless both the *Contractor* and the *Project Manager* otherwise agree in writing. Where not agreed, unless resolved in accordance with paragraph 4 of the form of agreement, the *Project Manager* issues an instruction resolving the ambiguity or inconsistency.

Health and safety 17A

17A.1

The *Employer* appoints the *Contractor* to act as Principal Contractor as more particularly described in the Works Information (WI.11), for the purposes of the CDM Regulations save in respect of the Old Dalby Site where the *Employer* nominates Others to act as the Principal Contractor for the purposes of the CDM Regulations. The *Contractor* has no liability to the *Employer* in respect of Losses incurred by the *Employer* or Others where the *Contractor* is unable to grant access to the *Employer* or Others on the grounds of compliance with the CDM Regulations.

17A.2

Where multiple projects (pursuant to the CDM Regulations) are being undertaken in close proximity to and/or on the Site and involve a number of Principal Contractors, the *Contractor* is only accountable and responsible for the safety of activities under its direct control. The *Employer* is responsible for co-ordinating access and the requirements for compatible multi-contractor working which the *Contractor* will support in accordance with the CDM Regulations; specifically its general duty to co-operate with any other person working on or in relation to a project, at the same or on an adjoining site and to organise co-operation between contractors (including successive contractors on the same site).

17A.3

The *Contractor* warrants to the *Employer* that he

- allocates adequate resources to enable the *Employer* to comply with his

obligations under the CDM Regulations,

- co-operates with the *Principal Designer* and *Principal Contractor* for the Old Dalby Site,
- provides to the *Employer*, or such other person as the *Employer* may direct as soon as reasonably practical following a request any information regarding the *works* that may be required in connection with the CDM Regulations, and
- assists the *Employer* in performing his duties under the CDM Regulations so as to minimise any delay to, or additional costs in connection with, the *works* and so as to enable any other party with duties under the CDM Regulations with regard to the *works* to perform such duties timeously.

17A.4 Neither Party causes the other Party to commit a Safety Breach or a Prohibited Act or to be in breach of the CDM Regulations, health and safety laws or any other applicable safety legislation and each Party advises the other Party if it becomes aware of the other Party being in breach of such requirements.

17A.5 Nothing in this Contract shall prevent the *Contractor* from discharging its duties as *Principal Contractor* and the *Contractor* has the right to refuse any instruction from the *Employer* or the *Project Manager*, if, at the *Contractor's* sole discretion (but taking into account the *Employer's* statutory safety obligations) it considers complying with such an instruction would contravene the *Contractor's* duties as *Principal Contractor*.

Illegal and impossible
requirements 18 18.1

The *Contractor* notifies the *Project Manager* as soon as he becomes aware that the Works Information requires him to do anything which is illegal or impossible. If the *Project Manager* agrees, he gives an instruction to change the Works Information appropriately.

Safeguarding Works 19A

19A.1 Subject to clause 19A.2, from the Contract Date:

- (a) any Safeguarding Works are deemed to have been provided in all respects under the terms of this Contract subject to clause 19A.1(c) and;
- (b) amounts paid to the *Contractor* in respect of the Safeguarding Works and/or pursuant to the Safeguarding Agreements will be taken to have been paid in respect of the costs of the Safeguarding Works under this Contract and those costs are deemed to be the Price for Work Done to Date in respect of those works inclusive of Fee and are not to be re-opened save in relation to the Defined Cost of such works incurred in the period from 1 July 2015 until the Contract Date; and
- (c) subject to clause 19A.1(b), the Parties' respective rights and liabilities under the Safeguarding Agreements in respect of the Safeguarding Works are subsumed into, and governed by, the terms of this Contract.

19A.2 For the avoidance of doubt, in respect of the Safeguarding Works, the *Contractor* is entitled to payment of:

- the amount stated in Contract Data Part Two (inclusive of Fee) being the amount paid by the *Employer* in respect of the period up to and including 30 June 2015 under the Safeguarding Agreements (receipt of which is hereby acknowledged by the *Contractor*);
- the additional amount due under the Safeguarding Agreements respect of the period up to and including 30 June 2015 stated in Contract Data

Part Two; and

- the Defined Cost (plus, subject to clause 11.2(45), Fee) of the *works* performed by the *Contractor* in the period from 1 July 2015 until the Contract Date.

These amounts are the *Contractor's* sole entitlement to payment in respect of the Safeguarding Works and the *Contractor* has no further entitlement to payment under this Contract and does not bring any claims (including, without limitation, claims for fee and/or contract overhead and/or compensation events) under this Contract in respect of those works.

19A.3 Not used

19A.4 The *Contractor* is deemed to have allowed in the tendered total of the Prices for providing the Safeguarding Works in all respects in accordance with this Contract and shall not be entitled to a compensation event in relation to any additional works needed to ensure that the Safeguarding Works comply with this Contract. In the event that, after the Contract Date, the *Project Manager* issues an instruction to change the Works Information amounting to a change to the Safeguarding Works, the *Contractor* may be entitled to a compensation event subject to clause 60.1(1).

2 The Contractor's main responsibilities

Providing the Works 20

20.1

The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information.

For the avoidance of doubt, and subject to any amendment in accordance with the terms of this Contract, the Works Information includes (without limitation), the following:

- design (including interface design);
- development and documentation of Software and Equipment and Materials;
- proving design, Software and Equipment and Materials;
- supplying Equipment and Materials for installation by Others on rolling stock;
- supplying and installing Equipment and Materials on the Underground Network;
- supplying spares;
- providing training and other services; and
- testing, commissioning and migration.

20.2

The *Contractor* warrants, undertakes and represents to the *Employer* that the works

- meet the requirements of, and are constructed in accordance with
 - the Works Information;
 - any method statements accepted by the *Project Manager*;
 - any *Contractor's* design which has been accepted by the *Project Manager*;
- are constructed, manufactured and fabricated in a good and workmanlike manner using Equipment and Materials which are of satisfactory quality, sound and free from Defects or Software Defects; and
- are fit for their intended purpose, as stated in this Contract.

20.3

The *Contractor* advises the *Project Manager* on the practical implications of the design of the works and on subcontracting arrangements.

20.4

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the works in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until *Final Completion*. An explanation of the changes made since the previous forecast is submitted with each forecast.

20.5

The *Contractor* warns the *Project Manager* if he reasonably considers any construction method or design prescribed in the Works Information or instructed by the *Project Manager* to be dangerous or to be unsafe or hazardous to any party involved with the construction of the works or to any subsequent occupier or user of the works.

20.6

Where a conflict arises between the fitness for purpose warranties given under

clauses 20.2 and 21.5 and any duty to perform with reasonable skill and care, the fitness for purpose warranties take priority.

The Contractor's design 21

21.1 The *Contractor* designs the parts of the *works* which the Works Information states he is to design.

21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. The *Project Manager* may reject any *Contractor's* design which is not in accordance with this Contract. The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.

21.2A The *Project Manager* may make comments and recommendations as to the particulars of the *Contractor's* design. The *Contractor* takes notice of the *Project Manager's* comments and recommendations in his design. Acceptance of the *Project Manager's* recommendations and comments does not reduce or amend the *Contractor's* obligations and liability under this Contract in respect of his design.

21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

21.4 Not used

21.5 The *Contractor* in designing the parts of the *works* which he is required to design warrants, undertakes and represents that he will

- exercise reasonable skill and care in carrying out the design,
- provide a design which
 - is in accordance with the Works Information,
 - is in accordance with the Standards,
 - complies with applicable law,
 - is integrated and co-ordinated with the designs of Others as stated in the Works Information, and
 - is fit for its intended purpose, as stated in this Contract or if not stated the *Contractor* provides a design which achieves not less than the national standards, including in relation to quality and fitness for purpose, normally associated with such works in the United Kingdom; and
- only specify substances or materials for incorporation into the *works* which are in accordance with relevant BSI standards and codes of practice and, general good building practice, and which have not been declared deleterious in any publication of the Building Research Establishment current at the time of specification or incorporation into the *works*.

21.6 Subject to clause Z2.110A, the *Contractor* obtains from or gives to Others all licences (including but not limited to licences of software, hardware and any computer product application or system), consents, notices and approvals necessary or appropriate to enable him to Provide the Works, other than those which the Works Information states will be obtained by the *Employer*. The *Contractor* ensures that the conditions or requirements of licences (including but

not limited to licences of software, hardware and any computer product, application or system), consents, notices and other approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that such licences, consents, notices and other approvals are renewed whenever necessary or appropriate.

**Errors or inaccuracies in
information required to
provided by the
*Employer*** 22
22.1

Without prejudice to its other obligations under the Contract, if the *Contractor*, acting as a reasonably competent and experienced contractor in Providing the Works (including related management processes defined or referenced in the Contract), becomes aware of any error or inaccuracy in information the *Employer* is obliged to provide pursuant to, or stated in, the Works Information, he shall:

- notify the *Project Manager* as soon as practicable after he becomes aware of any error or inaccuracy in such information; and
- after becoming aware, take all steps reasonably required to mitigate the impact of the error or inaccuracy.

Design of Plant 23
23.1

The *Contractor* submits particulars of the design of an item of Plant to the *Project Manager* for acceptance if the *Project Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with

- the Works Information,
- the *Contractor's* design which the *Project Manager* has accepted or
- the applicable law.

People 24
24.1

The *Contractor* employs the people identified in the Contractor's Organisation Chart for the duration of the Contract. Changes to the list of Contractor's Staff in the Contractor's Organisation Chart are only made following the procedure set out in clauses 24.2 and 24.3 except if any member of the Contractor's Staff retires, is dismissed by the *Contractor*, dies or voluntarily leaves the employment of the *Contractor* (save for where such person transfers to another division of the company or company within the same group of companies as the *Contractor*) or can no longer work due to illness/disability.

24.2

The *Project Manager* and *Contractor's* Project Director shall meet at the request of either party to discuss the Contractor's Staff in the Contractor's Organisation Chart. Any change to the Contractor's Staff in the Contractor's Organisation Chart shall be recorded in writing by the *Contractor* and a revised Contractor's Organisation Chart issued for acceptance by the *Project Manager*. The *Project Manager* decides whether to accept the revised Contractor's Organisation Chart within one (1) week of issue. The only reasons for not accepting the revised Contractor's Organisation Chart are as follows:

- it is not in accordance with the matters discussed at a preceding meeting between the *Project Manager* and the *Contractor's* Project Director;
- the relevant competency, qualifications or experience of the proposed replacement are not as good as those of the person who is to be replaced; or
- roles have been removed from the list of Contractor's Staff without the *Project Manager's* consent.

24.3 If a member of the Contractor's Staff is replaced (other than replacement for a reason set out in clause 24.1), then the first six (6) weeks of cost associated with the replacement person is deemed not Defined Cost and shall not be applied for nor invoiced by the Contractor. The Project Manager may agree to reduce or waive this requirement.

24.4 The Project Manager may, having stated his reasons, instruct the Contractor to remove a member of the Contractor's Staff. The Contractor then arranges that, after one (1) day or an alternative period as instructed by the Project Manager, the member of the Contractor's Staff has no further connection with Providing the Works.

24.5 The Employer may at his sole discretion provide the Loaned Personnel in accordance with the Loaned Personnel Conditions and the Works Information (WI.03).

**Working with the
Employer and Others**

25.1 The Contractor co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others and shares the Working Areas with Others as stated in the Works Information.

25.1A Without prejudice to clause 25.1, the Contractor cooperates with, and provides reasonable assistance to, any Other Signalling Contractor as stated in the Works Information or, where not stated, notified by the Project Manager from time to time. The Contractor makes available to an Other Signalling Contractor any information reasonably necessary (other than Confidential Information which is commercially sensitive or a trade secret) to allow an Other Signalling Contractor to integrate and/or interface its own system with the works and/or the ATC System. The Contractor is entitled to make a reasonable charge for complying with this clause 25.1A.

25.2 The Employer and the Contractor provide services and other things as stated in the Works Information. Any cost incurred by the Employer as a result of the Contractor not providing the services and other things which he is to provide is assessed by the Project Manager and paid by the Contractor.

25.3 If, during the weekend of Sectional Functional Completion, the Employer arranges a closure of up to 52 hours for trial operations, the Contractor agrees to cooperate with the Employer and provide all reasonable assistance to enable the trial operations to be performed. Such cooperation and assistance during the closure does not under any circumstances give rise to a compensation event. The performance or failure to perform trial operations is not in itself a reason to avoid Sectional Functional Completion.

Subcontracting

26.1 If the Contractor subcontracts work, he is responsible for performing this Contract as if he had not subcontracted. This Contract applies as if a Subcontractor's employees and equipment were the Contractor's.

26.2 The *Contractor* submits to the *Project Manager* for acceptance the name of each proposed Subcontractor for a subcontract meeting the criteria for a 'Critical Subcontract' in section 15.2 of the Works Information (WI.03) and details of all subcontracts proposed to be awarded to those proposed Subcontractors (including a complete draft subcontract). Wherever appropriate, the *Contractor* uses the NEC Engineering and Construction Subcontract, Supply Contract or Professional Services Contract. A reason for the *Project Manager* not accepting any Subcontractor or subcontract is that

- he or it will not allow the *Contractor* to Provide the Works; or
- he or it is unable to meet, to the *Project Manager's* reasonable satisfaction, the criteria set out in the Works Information.

The *Project Manager* does not withhold his acceptance unreasonably.

26.2A The *Contractor* does not subcontract

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

without the prior written consent of the *Project Manager*, which shall not be unreasonably withheld. For the avoidance of doubt the *Project Manager* has already consented to the *Contractor* subcontracting to the Subcontractors listed in Contract Data Part Two.

26.3 Unless otherwise notified by the *Project Manager* (which shall be at his sole discretion), the *Contractor* ensures that the terms of any subcontract with a Subcontractor require the Subcontractor to enter into:

- a subcontractor warranty in the form included in Schedule 1,
- except in the case of an Associated Company, a parent company guarantee in the form provided by the *Employer*, from the ultimate holding company of the Subcontractor in respect of any of the Subcontractor's obligations under any subcontractor warranty required under this sub-clause, and
- in the case of any Subcontractor providing software, other than Off the Shelf Software, for incorporation or operation of the works a software escrow agreement on similar terms to the *Contractor's* escrow agreement attached in Schedule 2

and the *Contractor* uses his reasonable endeavours to obtain and provide the same if required by the *Employer*.

In addition, in the case of Subcontractors supplying Equipment and Materials, the *Contractor* shall use his reasonable endeavours to provide to the *Employer* any warranty or guarantee in relation to repairing or replacing defective products or parts in such Equipment and Materials which such Subcontractor has provided to the *Contractor*, the benefit of which the *Contractor* is able to transfer to the *Employer*.

Other Responsibilities 27

27.1 The *Contractor* obtains approval of his design from Others where necessary as stated in the Works Information.

- 27.2 The *Contractor* provides completed and updated versions of the Operationally Critical Documents, provided that:
- only one iteration of the Operationally Critical Documents is required following the final Sectional Functional Completion;
 - further updates are outside the planned scope of the *works*;
 - at all times up to and including that iteration, the Operationally Critical Documents shall be considered part of the *works* and shall be completed to the satisfaction of the *Project Manager* in accordance with the Contract acceptance process prior to Final Completion.
- 27.2A The *Contractor* provides access to work being done and to Equipment and Materials being stored for this Contract for
- the *Project Manager* and
 - Others notified to him by the *Project Manager*.
- 27.3 The *Contractor* obeys an instruction which is in accordance with this Contract and is given to him by the *Project Manager*.
- 27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information.

3 Time

Starting and Completion 30

- 30.1 The *Contractor* commences the work on the *starting date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Project Manager* decides the date of Completion and the date of achievement of the G0-T Condition. The *Project Manager* certifies Completion within one (1) week of Completion and certifies achievement of the G0-T Condition for the G0-T Key Date within one (1) week of the G0-T Condition being achieved.
- 30.3 The *Contractor* does the work so that the G0-T Condition is met by the G0-T Key Date.

The programme 31

- 31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.
- 31.2 The *Contractor* shows on each programme which he submits for acceptance
- the *starting date*, G0-T Key Date and Completion Date;
 - **Scheduled Closures;**
 - planned Completion;
 - the order and timing of
 - the operations which the *Contractor* plans to do in order to Provide the Works;
 - when the *Contractor* plans to submit particulars of the design required by the Works Information;
 - when the *Contractor* plans to submit particulars of the design of any items of Equipment and Materials required by the Works Information;
 - when key items of Plant, Equipment and Materials are required, to be identified from the *Contractor's* procurement plan;
 - the work of the *Employer* and Others either as stated in the Works Information or as later agreed with them by the *Contractor*; and
 - all milestones as described in the Works Information;
 - the dates when the *Contractor* plans to meet the G0-T Condition and to complete other work needed to allow the *Employer* and Others to do their work,
 - provisions for
 - float,;
 - time risk allowances;
 - the procedures set out in this Contract; and
 - the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - acceptances from the *Project Manager* which are necessary for Completion to be achieved before the Completion Date or for the

G0-T Condition to be met before the G0-T Key Date;

- the design information or other information provided by the *Project Manager* or Others;
- Equipment and Materials and other things to be provided by the *Employer*;
- details of third party approval submissions and related approvals, allowing sufficient time for each stage of the process and also allowance for resubmission;
- for each operation, a resource-loaded programme showing the forecast resources required for that operation; and
- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.

31.3 Within ten Business Days of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which this Contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Works Information.

The *Project Manager* provides a full and proper explanation as to why he does not accept a programme. If, on five (5) consecutive submissions the *Project Manager* does not accept the *Contractor's* programme the matter is escalated to the Senior Representatives in accordance with clause W2B. For the avoidance of doubt, the *Project Manager's* acceptance of the programme does not indicate acceptance of any entitlement to a revision of the Completion Dates, G0-T Key Date or Prices.

31.3A The *Contractor's* method statements contain information relating to the methods of constructing the works, including details of the Equipment and Materials which the *Contractor* proposes to adopt or use and, if requested by the *Project Manager*, such calculations of stresses, strains and deflections which will arise in the works and any parts of the works during construction. The *Contractor's* method statements include sufficient details to enable the *Project Manager* to decide whether, if the methods are adhered to, the works can be executed in accordance with the Works Information and without detriment or damage to the railway infrastructure, to the property of the *Employer* and Others or to the completed works.

31.4 The *Contractor* shows the start and finish of each activity on the *activity schedule* on each programme which he submits for acceptance.

Revising the programme 32
32.1

The *Contractor* shows on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- the effects of any agreed decisions in relation to mitigation activities

		reached and approved by the <i>Project Manager</i> at risk reduction meetings,
		<ul style="list-style-type: none"> • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects or Software Defects, and • any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.
	32.2	The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance <ul style="list-style-type: none"> • within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to, • when the <i>Contractor</i> chooses to and, in any case, • at no longer intervals than 4 weeks from the <i>starting date</i> until Final Completion.
Possession of the Site	33	Not used
Instructions to stop or not to start work	34	
	34.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.
Take over	35	
	35.1	<p>(a) For the purposes of this Contract the <i>Employer</i> takes over the whole of the works when the <i>Project Manager</i> certifies Sectional Functional Completion of the final section, or when the <i>Project Manager</i> certifies termination, whichever is the earlier.</p> <p>(b) The <i>Employer</i> takes over a section or an element of the works when the <i>Project Manager</i> certifies Sectional Functional Completion of that section or element of the works.</p> <p>(c) Return of the Site to the <i>Employer</i> or to LUL at the end of any period of Access alone does not constitute take over in accordance with this Contract.</p> <p>(d) Without prejudice to sub-clause (a), the <i>Employer</i> may take over any part of the works prior to Completion or termination if the <i>Project Manager</i> certifies take over of that part.</p>
	35.2	Not used
	35.3	Subject to clause 17A, the <i>Employer</i> , or Others who have the consent of the <i>Employer</i> , may use any part of the works or occupy any part of the Site before Completion. Such use or occupation does not constitute take over unless certified by the <i>Project Manager</i> .
	35.4	Not used
Acceleration	36	
	36.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit a quotation for an acceleration to achieve Completion before the Completion Date. The <i>Project Manager</i> states changes to the G0-T Key Date to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices, a revised Works Plan and a revised programme showing the earlier Completion Date and the changed G0-T Key Date. The <i>Contractor</i> submits details of his assessment with each quotation.

- 36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*.
- 36.3 When the *Project Manager* accepts a quotation for an acceleration, he changes the Completion Date, the G0-T Key Date and the Prices accordingly and accepts the revised programme.
- 36.4 Not used
- 36.5 The *Contractor* submits a Subcontractor's proposal to accelerate to the *Project Manager* for acceptance.
- 36.6 The *Project Manager* may instruct the *Contractor* to accelerate the works in accordance with the agreed quotation, revised programme and revised Works Plan.

4 Testing and Defects

Tests and inspections	40	
	40.1	The sub-clauses in this clause only apply to tests and inspections required by the Works Information and the applicable law.
	40.2	The <i>Contractor</i> and the <i>Employer</i> provide materials, facilities and samples for tests and inspections as stated in the Works Information.
	40.3	The <i>Contractor</i> and the <i>Project Manager</i> each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The <i>Contractor</i> notifies the <i>Project Manager</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Project Manager</i> may watch any test done by the <i>Contractor</i> .
	40.4	If a test or inspection shows that any work has a Defect or Software Defect , the <i>Contractor</i> corrects the Defect or Software Defect in accordance with this Contract and the test or inspection is repeated.
	40.5	The <i>Project Manager</i> does his tests and inspections without causing unnecessary delay to the work.
	40.6	The <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect or Software Defect is found. The <i>Contractor</i> pays the amount assessed.
	40.7	When the <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect or Software Defect is found, the <i>Project Manager</i> does not include the <i>Contractor's</i> cost of carrying out the repeat test or inspection.
Testing and inspection before delivery	41	
	41.1	The <i>Contractor</i> shall not bring to the Site those Equipment and Materials which the Works Information states are to be tested or inspected before delivery until the <i>Project Manager</i> has notified the <i>Contractor</i> that they have passed the test or inspection. If a test or inspection certificate exists and has been made available to the <i>Project Manager</i> , then the <i>Project Manager</i> is not required to issue a notification to the <i>Contractor</i> .
Searching and notifying Defects	42	
	42.1	Until the <i>defects date</i> , the <i>Project Manager</i> may instruct the <i>Contractor</i> to search for Defects or Software Defects . Searching may include: <ul style="list-style-type: none">• uncovering, dismantling, re-covering and re-erecting work,• providing facilities, materials and samples for tests and inspections done by the <i>Project Manager</i> and• doing tests and inspections which the Works Information does not require.
	42.2	Until the <i>defects date</i> , the <i>Project Manager</i> notifies the <i>Contractor</i> of each Defect or Software Defect which he finds and the <i>Contractor</i> notifies the <i>Project Manager</i> of each Defect or Software Defect which he finds.
Correcting Defects	43	
	43.1	Without prejudice to the <i>Project Manager's</i> and <i>Contractor's</i> general obligations under clause 42.2 to notify the other of Defects and Software Defects when they

are found:

Critical Defects before Sectional Functional Completion

- Critical Defects arising before Sectional Functional Completion are notified in the Completion Submission and are corrected as a condition to Sectional Functional Completion unless: (i) the *Project Manager* consents to the correction of Critical Defects being deferred until after Sectional Functional Completion (which consent may, for the avoidance of doubt, be conditional upon agreement of dates for their correction); or (ii) Sectional Functional Completion has been deemed to have occurred by reason of the *section* having entered Revenue Service, in which case the relevant Critical Defect(s) shall, for the purposes of this clause 43.1, be treated as Critical Defects outstanding at Sectional Functional Completion.

Defects and Software Defects (other than Critical Defects) arising before Sectional Functional Completion

- The *Project Manager* notifies the *Contractor* before each Sectional Functional Completion of other Defects and Software Defects (not being Critical Defects) that may be deferred until after Sectional Functional Completion together with the priority in which they are to be corrected provided that, where Sectional Functional Completion has been deemed to have occurred by reason of the *section* having entered Revenue Service, the *Contractor* uses reasonable endeavours and all available resources included in the tendered total of the Prices to correct those Defects and Software Defects (other than Critical Defects) and in any event before Final Completion;

Critical Defects after Sectional Functional Completion

- In respect of Critical Defects outstanding at Sectional Functional Completion with agreed dates for their correction, the *Contractor* corrects these Critical Defects by the agreed date(s).
- In respect of Critical Defects outstanding at Sectional Functional Completion without agreed dates for their correction, or arising after Sectional Functional Completion and prior to System Functional Completion:
 - the *Contractor* uses all reasonable endeavours and all available resources (including, without limitation, those included in the tendered total of the Prices) to correct these Critical Defects as soon as possible and in any event not later than the next Sectional Functional Completion or System Functional Completion (as applicable);
 - provided that if, notwithstanding clause 11.2(51B), a Critical Defect occurs within two weeks of the date Sectional Functional Completion is achieved, or deemed to have been achieved, for a *section*, which causes the *Employer* to remove that *section* from Revenue Service, that *section* shall be deemed for all purposes not to have achieved Sectional Functional Completion until that Critical Defect has been rectified and the relevant *section* has re-entered Revenue Service (and for the avoidance of any doubt this process shall be repeated until no Critical Defect which causes the *Employer* to remove that *section* from Revenue Service, arises within two (2) weeks of any subsequent Sectional Functional Completion for that *section*);

Defects and Software Defects (other than Critical Defects) after Sectional Functional Completion

- In respect of other Defects and Software Defects (not being Critical

Defects) outstanding at Sectional Functional Completion or arising after Sectional Functional Completion and prior to System Functional Completion:

- the *Contractor* uses reasonable endeavours and all available resources included in the tendered total of the Prices to correct these Defects and Software Defects and in any event by Final Completion; but
- the *Contractor* is not obliged to correct those Defects or Software Defects as a condition to System Functional Completion.

Defects and Software Defects after System Functional Completion but before Final Completion

- In respect of Defects and Software Defects arising after System Functional Completion but before Final Completion:
 - the *Contractor* corrects all Critical Defects as soon as possible;
 - the *Contractor* corrects Defects and Software Defects which are not Critical Defects if notified after System Functional Completion within a reasonable time after receiving an instruction from the *Project Manager* to do soand in any event not later than Final Completion.

Defects and Software Defects arising after Final Completion

- In respect of Defects and Software Defects arising after Final Completion:
 - the *Contractor* corrects all Critical Defects as soon as possible; and
 - the *Contractor* corrects Defects and Software Defects (which are not Critical Defects) notified after Final Completion within a reasonable time after receiving an instruction from the *Project Manager* to do so

and in any event not later than two (2) weeks after the *defects date*.

- 43.1A Software Defects other than Software Defects in SIL 4 Software can be corrected or bypassed in order to achieve the functionality as described in the Works Information, as long as such correction or bypass is fully documented and tested by the *Contractor*.
- 43.1B Software Defects in SIL 4 Software shall be corrected by the *Contractor*. Such correction shall be fully documented and tested by the *Contractor* and accepted by the *Project Manager*.
- 43.2 The *Project Manager* issues the Defects Certificate at the later of:
- (i) the *defects date*;
 - (ii) where any Critical Defects have been notified by the *Project Manager* or the *Contractor* and remain uncorrected at the *defects date*, on the date the last such Critical Defect is corrected; and
 - (iii) where the *Contractor* receives any instructions from the *Project Manager* to correct Defects or Software Defects and such Defects or Software Defects remain uncorrected at the *defects date*, the date the last Defect or Software Defect is corrected.
- 43.3 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of any part of the *works* which he has taken over if they are needed for correcting a Defect or Software Defect. In this case the reasonable period for correcting the Defect, begins when the necessary access and use have been provided.

- 43.4 The cost of searching for or correcting Defects and Software Defects that occur after System Functional Completion is not Disallowed Cost.
- Accepting Defects 44**
- 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect or Software Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.
- Uncorrected Defects 45**
- 45.1 If the *Contractor* is given access in order to correct a notified Critical Defect but he has not corrected such notified Critical Defect within a period and/or by a date agreed with the *Project Manager* the *Project Manager* assesses the *Contractor's* cost of correcting the Critical Defect within the agreed period and/or by the agreed date and any excess over the amount assessed by the *Project Manager* shall be deemed to be Disallowed Cost. Alternatively, the *Project Manager* may extend the agreed period in respect of the Critical Defect and instruct the *Contractor* to correct the Critical Defect within the extended period. Such an instruction is not a compensation event.
- 45.2 Not used
- 45.3 The *Contractor* remains liable for Defects and Software Defects listed on the Defects Certificate (other than those which, pursuant to clause 44, the *Project Manager* has instructed the *Contractor* not to correct) after
- the issue of the Defects Certificate, and
 - the termination of this Contract for any reason.
- 45.4 Subject to clause 45.1, the *Project Manager* notifies the *Contractor* that he intends to have a Critical Defect which the *Contractor* has failed to correct in accordance with its obligations under the Contract corrected by Others. If the *Contractor* has not corrected the uncorrected Critical Defect within five (5) Business Days of such notification, the *Project Manager* has the uncorrected Critical Defect corrected by Others and the *Contractor* pays the *Employer* for the reasonable cost of such correction.

5 Payment

Assessing the 50
amount due 50.1

The *Project Manager* assesses the amount due at each assessment date. The assessment dates occur

- at the *assessment date* in each LUL Accounting Period until Final Completion,
- at Final Completion,
- four (4) weeks after the *Project Manager* issues the Defects Certificate and
- after Final Completion,
 - when an amount due is corrected and
 - when a payment is made late.

50.1A The *Contractor* submits an application for payment in a form prescribed by the Works Information not less than fourteen (14) days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

50.2 The amount due is

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

50.3 If no programme is identified in the Contract Data or the *Contractor* fails to submit a revised programme to the *Project Manager* in accordance with this Contract, the amount due in the assessment period in which the programme was due to be submitted is retained in assessments of the amount due until the *Contractor* has submitted a first programme, or revised programme, to the *Project Manager* for acceptance showing the information which this Contract requires and the *Project Manager* has accepted the programme.

50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted under clause 50.1A. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.

50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.

50.6 Payments of Defined Cost made by the *Contractor* to Thales Canada in Canadian Dollars and any Fee due to the *Contractor* on such payments are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate any *Contractor's* share using the *exchange rate*.

For the avoidance of doubt, for the purposes of calculating the *Contractor's* share only, the *exchange rate* will be used:

- in assessing the Thales Canada element of compensation events (in accordance with clause 63.1); and
- in the share assessments, for converting the payments of Defined Cost made by the *Contractor* to Thales Canada (and any Fee on such

payments) and included in the Price for Work Done to Date from Canadian Dollars into the *currency of this contract*.

For the purposes of payment of the *Contractor's* share only, the *Thales Canada* proportion of the *Contractor's* share is converted from the *currency of the contract* into Canadian Dollars at the prevailing rate at the date of the assessment and included in the amount due as a payment in that currency.

Payment 51
51.1

The *Project Manager* certifies a payment not later than five (5) days after each payment due date and issues a certificate and a Contract Payment Approval Form ("CPAF") to the *Contractor*. The first payment is the amount due (subject to any amounts already paid under the Safeguarding Agreements). Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this Contract.

51.1A

Within seven (7) days of receipt of the certificate, the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate, with a copy of the certificate and a copy of the CPAF attached. The *Contractor* issues a corrected VAT invoice and CPAF, where required, within seven (7) days of receipt of a Pay Less Notice. The date on which payment becomes due is the later of:

- the assessment date; and
- fourteen (14) days after the date of receipt by the *Project Manager* of the *Contractor's* application for payment in accordance with clause 50.1A.

The final date for payment is twenty eight (28) days after the date on which payment becomes due.

51.1B

The *Project Manager's* certificate is the *Employer's* notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.

51.2

Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

51.2A

If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

51.2B

If either Party intends to pay less than the notified sum, he notifies the other Party not later than three (3) days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

51.3

If an amount due is corrected in a later certificate either

- by the *Project Manager*, whether in relation to a mistake or a compensation event or
- following a decision of the Adjudicator or the courts,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

51.4 If the *Project Manager* does not issue a certificate which he should issue, interest is paid on the amount which he should have certified. Interest is assessed from the date by which he should have certified the amount until the date when he certifies the amount and is included in the amount then certified.

51.5 Interest is calculated at the *interest rate* and is compounded annually.

Defined Cost 52

52.1 All the *Contractor's* costs which are not included in the Defined Cost are deemed to be included in the Fee. Amounts included in Defined Cost are at open market or competitively tendered prices with all discounts, rebates and taxes which can be recovered deducted.

52.2 The *Contractor* keeps full and detailed

- accounts of his payments of Defined Cost,
- proof that payments have been made (including, without limitation, in accordance with the supplementary notes to the Schedule of Cost Components),
- communications about and assessments of compensation events for Subcontractors, and
- other records as stated in the Works Information.

52.3 The *Contractor* allows the *Project Manager* to inspect at any time within working hours the accounts and records which he is required to keep. Without limiting the foregoing, the *Project Manager* shall inspect the accounts and records in accordance with CAP9 in the Works Information (WI.03).

The *Contractor's* share 53

53.1 The *Project Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage and monetary ranges. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

53.2 If the Price for Work Done to Date is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the *Contractor* pays his share of the excess [REDACTED]

53.2A [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 53.3 The *Project Manager* assesses the *Contractor's* share at the following times:
- at Final Completion;
 - eight (8) months after System Functional Completion; and
 - when the *Project Manager* has assessed the final Price for Work Done to Date and the final total of the Prices.
- 53.4 If at any assessment date before Final Completion the Price for Work Done to Date is greater than the total of the Prices the *Contractor's* share is retained from the amount due to the *Contractor*.
- 53.5 Not used
- 53.6 In the assessment eight (8) months after System Functional Completion the *Project Manager* assesses the *Contractor's* share using his forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due to the *Contractor*.
- 53.7 The *Project Manager* again assesses the *Contractor's* share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
- [REDACTED]

The Activity Schedule 54

- 54.1 Information in the Activity Schedule is not Works Information or Site Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Activity Schedule is that
- it does not comply with the Accepted Programme,
 - any changed Prices are not reasonably distributed between the activities or
 - the total of the Prices is changed.

6 Compensation events

Compensation events 60
60.1

The following are compensation events.

(1) The *Project Manager* gives an instruction changing the Works Information except

- a change made in order to accept a Defect or Software Defect, or
- a change to the Works Information provided by the *Contractor* for his design which is made at his request or to comply with other Works Information provided by the *Employer*.

(2) The *Employer* does not give a Scheduled Closure as described in the *closures schedule* or the *Project Manager* gives an instruction changing the *closures schedule*.

(2A) The *Contractor* has requested but not received in any LUL Accounting Period a number of Access bookings equivalent to the applicable Access Quota provided the Access Quota Conditions are satisfied in respect of the Access booking(s) not received.

(2B) A period of Access within the relevant Access Quota is delayed, disrupted or cancelled by

- the *Employer's* or LUL's station personnel (including the *Employer's* track access controller or possession master) preventing the Access,
 - the *Employer* or LUL responding to an Emergency, or
 - traction current remaining on beyond the Published Time,
- provided:
- the Access is Priority Type One Access; and
 - the Frustrated Access Conditions are satisfied.

(3) The *Employer* or Others do not provide something which they are to provide by the date for providing it required by the Accepted Programme and/or the Works Information.

(4) The *Project Manager* gives an instruction to stop or not to start any work or to change the G0-T Key Date except where the event is a Force Majeure Event.

(5) The *Employer* or Others (excluding any Associated Maintenance Contractor)

- do not work within the times shown on the Accepted Programme or
- do not work within the conditions stated in the Works Information.

(6) The *Project Manager* does not reply to a communication from the *Contractor* within the period required by this Contract.

(7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

(8) The *Project Manager* changes a decision which he has previously communicated to the *Contractor*.

(9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect or Software Defect) for a reason not stated in this Contract.

(10) The *Project Manager* instructs the *Contractor* to search for a Defect or Software Defect and no Defect or Software Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.

(11) A test or inspection done by the *Project Manager* causes unnecessary delay.

(12) The *Contractor* encounters physical and/or environmental conditions which

- are within the Site,
- are not weather conditions,

and could not reasonably have been foreseen by a contractor acting in accordance with clause 60.2.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

(13) A *weather measurement* is recorded

- within a calendar month meaning a complete named month,
- before the Final Completion Date,
- at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in ten (10) years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten (10) years is taken into account in assessing a compensation event.

(14) An event which is an *Employer's risk* stated in this Contract.

(15) The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.

(16) The *Employer* does not provide materials, facilities and samples for tests as stated in the Works Information.

(17) The *Project Manager* notifies a correction to an assumption about the nature of a compensation event.

(18) A breach of contract by the *Employer* which is not one of the other compensation events in this Contract.

(19) An event which is a Force Majeure Event and is not a breach of Contract by the *Contractor* and is not one of the other compensation events stated in the Contract provided that the *Contractor* is not entitled under this clause 60.1(19) to any change in the Prices.

(20) The *Employer* does not provide the Loaned Personnel listed in the Works Information (WI.03) except where the *Employer* demonstrates that the Loaned Personnel are no longer required.

(21) The *Contractor* exercises his right under the Act to suspend performance.

(22) Physical or operational information or data which the *Employer* is obliged to provide pursuant to the Works Information or as stated in the Works Information is inaccurate or incorrect, provided that:

- it is used in accordance with the Works Information for the purposes of the *Contractor's* design; and
- the *Contractor* can demonstrate that it could reasonably have required the information or data to have been relied upon as the basis for the *Contractor's* design

but without limiting any obligation under the Contract for the *Contractor* to verify such information.

(23) The *Contractor's* access to CAMS is withdrawn by the *Employer* or the *Project Manager*.

(24) The *Employer* ceases to provide any of the Loaned Personnel and does not provide a replacement in accordance with Schedule 5 except where the *Employer* demonstrates that the Loaned Personnel are no longer required.

(25) The *Employer* ceases to provide the Working Area at Westferry Circus and does not provide reasonable alternative accommodation.

(25A) The *Employer* ceases to provide a warehouse and does not provide reasonable alternative accommodation.

(26) The *Employer* issues a request pursuant to secondary option X13 for the *Contractor* to provide a performance bond provided that it will not be a compensation event in circumstances where the credit rating for the ultimate parent company of the *Contractor* at the time of the *Employer's* request has fallen below a Standard & Poor's credit rating of "BBB-" or a Moody's credit rating of "Baa3" (and provided always that the Completion Date and G0-T Key Date will not be changed).

(27) System Interface Works adversely affect the *Contractor's* ability to Provide the Works unless caused by a fault, error or omission on the part of the *Contractor*.

(28) A change in any Standards with which the *Contractor* is required to comply.

(29) The *Employer* fails within within the relevant eighteen (18) week period to comply with either clause Z6.18D(i) or (ii) and continues to fail to comply for a period of six (6) weeks from receipt of the notice referred to in clause Z6.18E(i).

60.1A The Parties agree that, following a cancellation of Access referred to in clause 60.1(2B), a compensation event will only arise in respect of any delay or disruption to, or cancellation of, alternative Access arrangements to the extent that the *Contractor* has not already made a claim in relation to the original Access booking for the same period of time.

60.2 In judging the physical and/or environmental conditions, the *Contractor* is assumed to have taken into account

- the Site Information
- publicly available information referred to in the Site Information, and
- other information which an experienced contractor could reasonably be expected to have or to obtain,

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

60.3 If there is an inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

Notifying compensation 61
events 61.1

For compensation events which arise from the *Project Manager* giving an instruction

or changing an earlier decision, the *Project Manager* notifies the *Contractor* of the compensation event at the time of the event. He also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* puts the instruction or changed decision into effect.

61.2 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect.

61.3 The *Contractor* notifies an event which has happened or which he expects to happen to the *Project Manager* as a compensation event if

- the *Contractor* believes that the event is a compensation event, and
- the *Project Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within six (6) weeks of becoming aware of the event, he is not entitled to a change in the Prices or the Completion Date or the G0-T Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not.

61.4 If the *Project Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor*, including but not limited to failure by the *Contractor* to comply with
 - the requirements of this Contract,
 - appropriate safety requirements, or
 - applicable law,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting the G0-T Key Date, or
- is not one of the compensation events stated in this Contract

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the G0-T Key Date are not to be changed.

If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

If the *Project Manager* does not notify his decision to the *Contractor* within either

- two (2) weeks of the *Contractor*'s notification or
- a longer period to which the *Contractor* has agreed

the *Contractor* may notify the *Project Manager* to this effect. A failure by the *Project Manager* to reply within two (2) weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project*

Manager notifies a correction.

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

Quotations for 62
compensation events 62.1

After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.

- 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and G0-T Key Date assessed by the *Contractor*. The *Contractor* submits details of his assessment with each quotation. If the programme for remaining work is affected by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

- 62.2A If the *Contractor* includes assumptions in his quotation other than those notified by the *Project Manager* under clause 61.6, he brings these to the *Project Manager's* attention when he submits the quotation. If the *Project Manager* accepts the *Contractor's* assumptions, then he re-states those assumptions when he accepts the quotation or when he makes his own assessment. If any of the re-stated assumptions is later found to have been wrong, the *Project Manager* notifies a correction.

A reason for not accepting the *Contractor's* assumptions is that the effects of the compensation event are not too uncertain to forecast reasonably.

- 62.3 The *Contractor* submits quotations within four (4) weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within four (4) weeks of the submission. His reply is

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction or a proposed changed decision will not be given or

a notification that he will be making his own assessment.

- 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three (3) weeks of being instructed to do so.

- 62.5 The *Project Manager* extends the time allowed for

- the *Contractor* to submit quotations for a compensation event and
- the *Project Manager* to reply to a quotation

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

- 62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply

to the notification within four (4) weeks, and unless the quotation is for a proposed instruction or a proposed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Project Manager*.

Assessing compensation 63
events

63.1 Unless otherwise stated in these *conditions of contract*, the changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting Fee.

The date when the *Contractor* submits his quotation or (if earlier) when he should have submitted his quotation, divides the work already done from the work not yet done. In assessing the effects on forecast Defined Cost, regard may be had to recorded information existing at the date of the assessment.

63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this Contract.

63.3 Subject to clause 63.6A, a delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to the G0-T Key Date is assessed as the length of time that, due to the compensation event, the planned date when the G0-T Condition will be met is later than the date shown on the Accepted Programme.

63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, Completion Date and the G0-T Key Date are their only rights in respect of a compensation event.

63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the *Project Manager* may assess the compensation event as if the *Contractor* had given early warning.

63.6 Assessment of the effect of a compensation event includes cost and time risk allowances for matters which have a significant chance of occurring and are at the *Contractor's* risk under this Contract.

63.6A



- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that the additional Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed **without regard to any rules of interpretation which may require or indicate that an ambiguity or inconsistency is to be construed against the drafter, and the *Employer* and the *Contractor* are treated as co-drafters of the relevant provisions.**
- 63.9 If a change to the Works Information makes the description of the G0-T Condition incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 Not used
- 63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted;
 - a change to the *closures schedule*; or
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event;
- the Prices are reduced.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.



The *Project Manager's* assessments 64

The *Project Manager* may assess a compensation event

- if the *Contractor* has not submitted a required quotation and details of his assessment within the time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this Contract requires him to submit or

- if when the *Contractor* submits quotations for a compensation event the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in **this Contract**.

64.2 The *Project Manager* may assess a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme; or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by **this Contract**.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

64.4

If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within two (2) weeks of the notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

Implementing 65 compensation events 65.1

A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment, or
- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

65.3 Not used

65.4 The changes to the Prices, the Completion Date and the G0-T Key Date are included in the notification implementing a compensation event.

7 Title

The Employer's title to Plant, Equipment and Materials	70 70.1	<p>Whatever title the <i>Contractor</i> has to any item of Equipment and Materials passes immediately to the <i>Employer</i> and henceforth shall not be within the ownership of the <i>Contractor</i>, and the <i>Contractor</i> shall not be entitled to dispose of, or otherwise transfer the same, in accordance with the following (and where more than one of the following may apply to an item of Equipment and Materials, on the first to occur of the following) (the "Relevant Event"):</p> <ol style="list-style-type: none">(1) in respect of those items of Equipment and Materials referred to in Contract Data Part One item 7 ("Scheduled Items") on the relevant Scheduled Item of Equipment and Materials being included in an amount certified for payment by the <i>Project Manager</i> in accordance with clause 51.1;(2) in respect of any Equipment and Materials identified in an invoice issued by the <i>Contractor</i> to the <i>Employer</i> in accordance with clause 51.1A, payment being made by the <i>Employer</i> for any part of that invoice which relates to that Equipment and Materials; and(3) in respect of any Equipment and Materials on the relevant item of Equipment and Materials being delivered to the Site.
Warranty as to title	70.2	<p>The <i>Contractor</i> warrants to the <i>Employer</i> that it shall have, and shall be able to and shall vest in the <i>Employer</i>, full legal and beneficial title to all items of Equipment and Materials under clause 70.1.</p>
	70.3	<p>On the <i>Project Manager's</i> request the <i>Contractor</i> shall provide to the <i>Project Manager</i>:</p> <ol style="list-style-type: none">(a) a description and documentary evidence of the <i>Contractor's</i> right to pass ownership of any Scheduled Item on each Relevant Event. The <i>Contractor</i> shall further provide in respect of any such Scheduled Item a certificate (the "Vesting Certificate") in a form to be agreed between the <i>Project Manager</i> and the <i>Contractor</i> and shall ensure that such Scheduled Item has been properly secured wherever situated and that it is the property of the <i>Employer</i>; and(b) such documentary evidence as the <i>Project Manager</i> shall notify to the <i>Contractor</i> that the <i>Employer</i> reasonably requires of the <i>Contractor's</i> compliance with clause 70.3(a), but the <i>Contractor</i> shall be responsible for ensuring its own compliance therewith. <p>The <i>Contractor</i> shall be solely responsible for, and shall take all responsible and proper steps for protecting, preserving and securing the Scheduled Items.</p>
Storage of items in which title has passed	70.4	<p>For Equipment and Materials that have been completed such that they are available to be incorporated in the <i>works</i>, and for which title has passed and which have not been delivered to Site, the <i>Contractor</i> shall ensure that within 24 hours of acceptance by the <i>Project Manager</i> of such Equipment and Materials, then such Equipment and Materials are</p> <ol style="list-style-type: none">(a) clearly marked as belonging to the <i>Employer</i>, and(b) stored separately to items of equipment and materials belonging to the <i>Contractor</i> or Others.

Possession of Equipment and Materials	70.5	Unless otherwise agreed by the Parties, such agreement not to be unreasonably withheld, the <i>Employer</i> shall not be entitled to take possession of any Equipment and Materials from the Working Areas until the earlier of a Relevant Event or payment in full in respect of that item of Equipment and Materials has been received by the <i>Contractor</i> .
Insolvency option	70.6	Subject to the applicable laws, on the occurrence of an event as described in clause 91.1 in respect of the <i>Contractor</i> , the <i>Employer</i> shall, without prejudice to its other rights under this Contract, have the option (but no obligation) to purchase any Equipment and Materials in respect of which a Relevant Event has not occurred (the "Option"). The Option shall be exercisable by the <i>Employer</i> by notice in writing referring to this clause 70.6 and delivered to the <i>Contractor</i> within seven (7) days of the occurrence of an event as described in clause 91.1, and may be exercised more than once in respect of different Equipment and Materials. The Option price payable by the <i>Employer</i> on the exercise of the Option shall be the amount payable by the <i>Employer</i> for the relevant Equipment and Materials calculated in accordance with this Contract. Title to such Equipment and Materials shall pass upon receipt of payment in full by the <i>Contractor</i> .
Marking Plant, Equipment and Materials outside the Working Areas	71 71.1	Not used
Removing Plant	72 72.1	The <i>Contractor</i> removes Plant from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the Site	73 73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

Employer's risks 80 80.1

The *Employer's* risks are:

- Claims, proceedings, compensation and costs payable which are due to
 - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
 - negligence, breach of statutory duty or interference with any legal right by the *Employer*, LUL or by any person employed by or contracted to him except the *Contractor* or
 - a fault of the *Employer* or LUL or a fault in his design.
- Loss of or damage to Equipment and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Equipment and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees, or
 - radioactive contamination.
- Loss of or damage to the Equipment and Materials provided by the *Contractor* as detailed in section 3.2.3 (S Stock train borne ATC System Equipment) and section 3.2.4 (Engineer's Vehicle ATC System Equipment) of the Works Information (WI.01) after delivery to the *Employer*.
- Loss of or damage to the parts of the *works* taken over by the *Employer*, except loss or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect or Software Defect which existed at take over,
 - an event occurring before take over which was not itself an *Employer's* risk or
 - the activities of the *Contractor* on the Site after take over.
- Loss of or damage to the *works* and any Plant, Equipment and Materials retained on the Site by the *Employer* after a termination, except loss and damage due to the activities of the *Contractor* on the Site after the termination.
- Loss or damage to the *works* to the extent directly caused by reason of the *Employer* and/or Others occupying the Site and or using the *works* in accordance with clause 35.3 before take over.
- Additional *Employer's* risks stated in the Contract Data.
- Acts of vandalism other than where such action is caused by the *Contractor*, or any employee, Subcontractor or supplier of the *Contractor*.
- Any modification to Software, or any material modification to Equipment and Materials which is undertaken by the *Employer* or Others (other than those Others under the direction and control of the *Contractor*). For the avoidance of doubt modifications to configurable

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data that the *Employer* is allowed to undertake is not an *Employer's* risk, save for modifications pursuant to clause 45.4.

- Failures, Defects and Software Defects arising from the *Employer's* or LUL's failure to maintain, reasonably operate and use the *works*.
- Damage to the *works* arising in consequence of negligence or improper manipulation of or repair to the *works* by the *Employer* or Others.



- Subject always to clause 84.6B, loss of or damage to existing structures belonging to LUL (including trains) which do not form part of the *works*.
- Damage to onboard equipment supplied by the *Contractor* and installed by the *Employer* or Others during the installation.

The Contractor's risks 81

81.1 From the *starting date* until the Defects Certificate has been issued the *Contractor's* risks are all risks other than those identified as the *Employer's* risks.

81.2 Not used

81.3 Not used

Repairs 82

82.1 Without prejudice to the provisions of this Contract relating to the correction of Defects and Software Defects, until Sectional Functional Completion and unless otherwise instructed by the *Project Manager*, the *Contractor* promptly replaces loss of and repairs damage to the *works*, Equipment and Materials included in the relevant *section*. After Sectional Functional Completion, Repairs are effected under the Maintenance Support Contract, save where any or all of the exceptions to the *Employer's* risk under the fifth main bullet of clause 80.1 apply and provided always that any Defect or Software Defect is corrected under and in accordance with this Contract.

Indemnity 83

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

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible), and
- subject to the limitation on liability in clause 88.2AA, legal liability arising under or in connection with this Contract caused by the matters referred to in the Insurance Table in clause 84.2 as required to be insured against under the Professional Indemnity Insurance

which may arise out of the negligent acts, omissions or breach of statutory duty of the *Contractor*, his employees, Subcontractors or agents or Others under the direction and control of the *Contractor*.

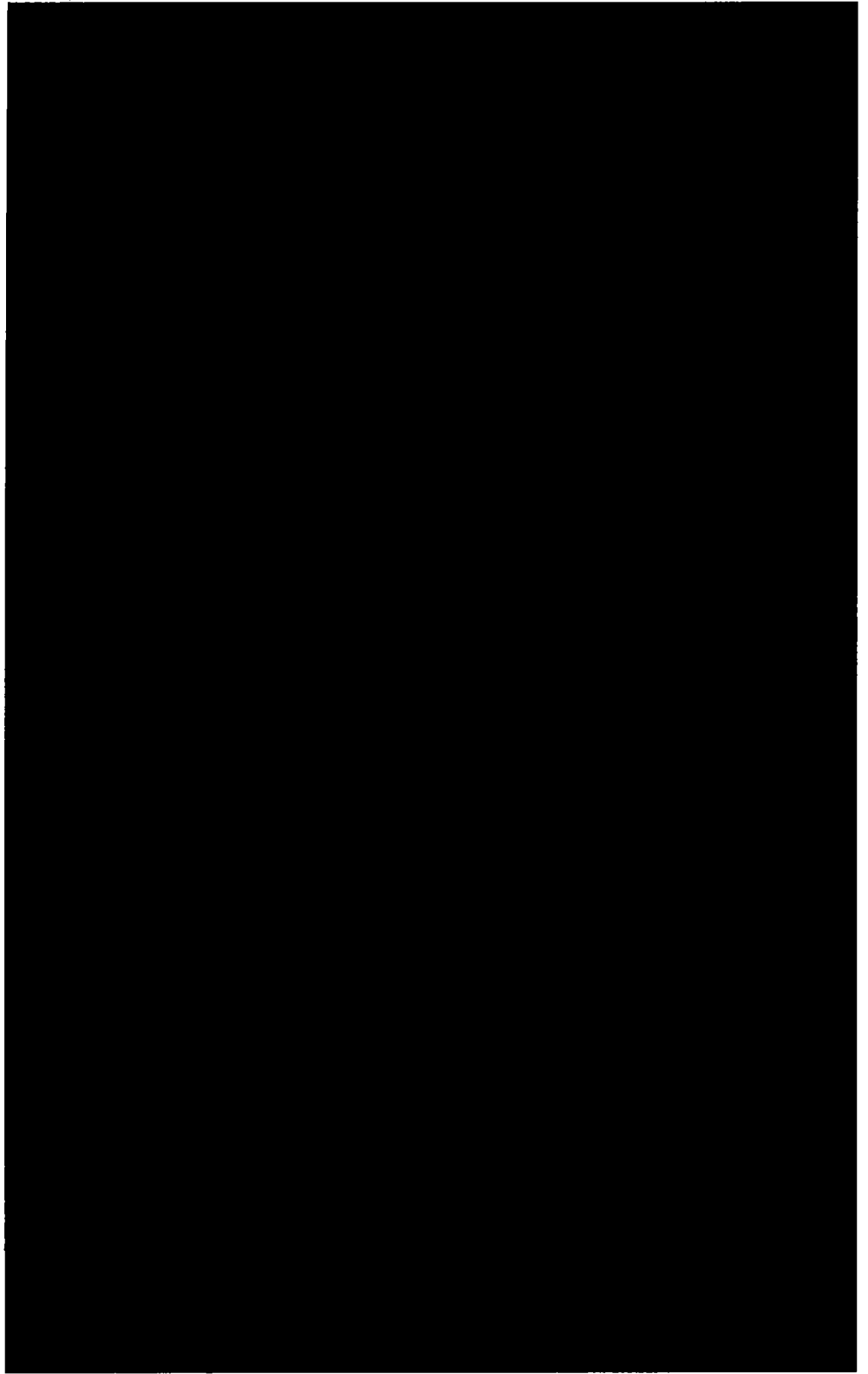
- 83.1A The *Employer* is responsible for and indemnifies the *Contractor*, his employees and agents against Losses incurred in respect of death or injury to any person, which may arise out of the negligent acts, negligent omissions or breach of statutory duty of the *Employer* or its employees or agents or Others not under the direction and control of the *Contractor*.
- 83.2 The *Contractor's* indemnity under clause 83.1 (first and second bullets) remains in force for the duration of this Contract and the indemnity under clause 83.1 (third bullet) remains in force for the period the *Contractor* is required to maintain Professional Indemnity Insurance under clause 84.5.
- 83.3 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).

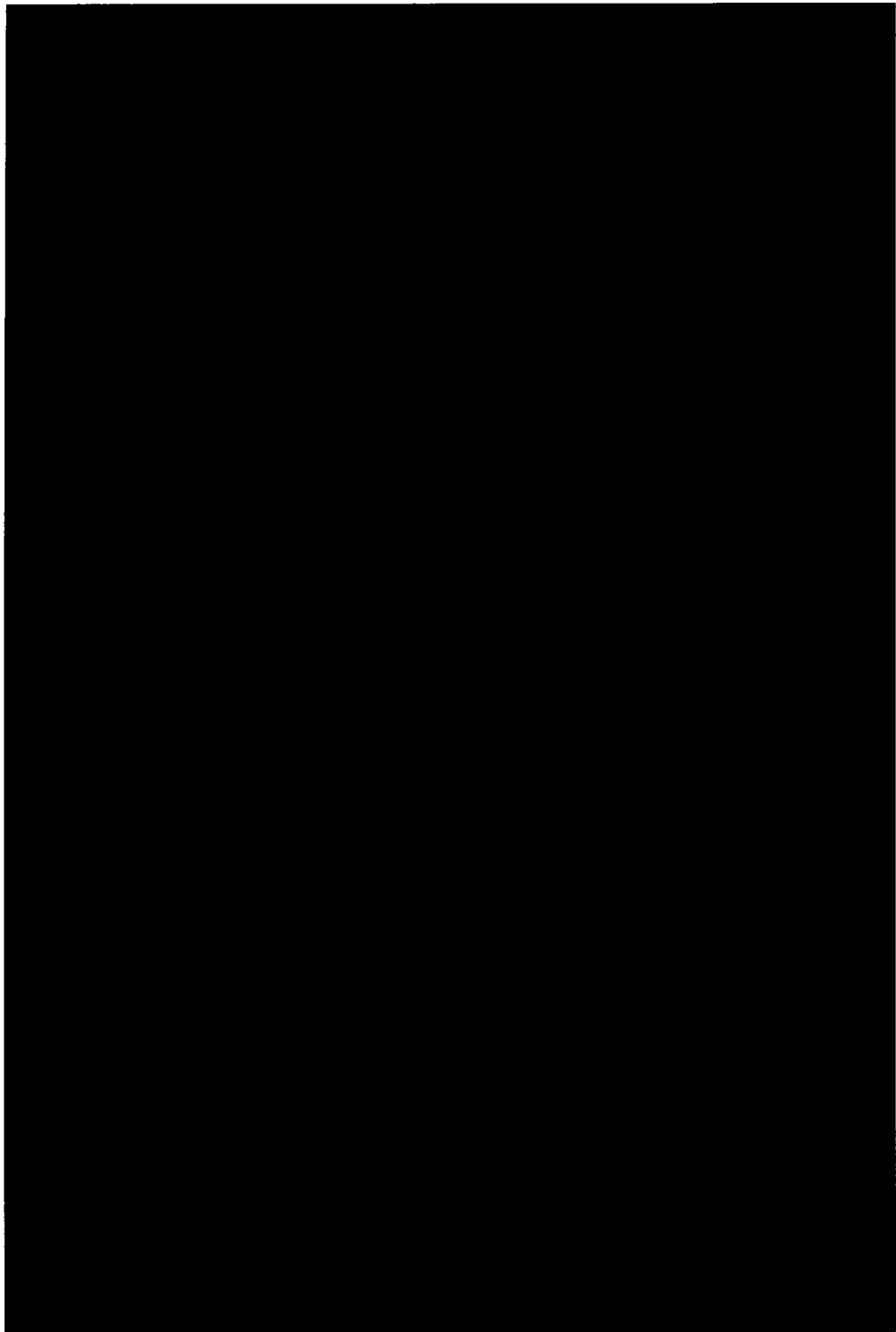
Insurance cover 84

- 84.1 The Parties provide the insurances in accordance with the Insurance Table and as stated in the Contract Data. Subject to clauses 84.5, 84.5A and 84.6A the insurances are maintained until the Defects Certificate or a termination certificate has been issued, whichever is the later (or for such other period as is stated in the Contract Data).

- 84.2 The Insurance Table is as follows:







84.3 Not used

84.4 The *Contractor* does not, without the prior written approval of the *Employer*, which shall not be unreasonably withheld, settle or compromise with the insurers any claim which the *Contractor* may have against the insurers and which relates to a claim by the *Employer* against the *Contractor*, or by any act or omission, lose or prejudice the *Contractor's* right to make or proceed with such a claim against insurers. The *Contractor* does not by any act, omission or default prejudice, lose

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or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.

84.5 The *Contractor* provides professional indemnity insurance covering all his liabilities under this Contract in respect of the *Contractor's* design. The *Contractor's* Professional Indemnity Insurance

- is under the usual and customary terms and conditions prevailing for the *Contractor's* activities,
- does not include any term to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers,
- does not include any other term which might adversely affect the rights of any persons (other than the *Contractor* and the *Employer*) to recover from the insurers under any applicable law relating to the rights of third parties,
- is with a reputable insurer lawfully carrying out such insurance business in the UK or European Union, United States of America or Canada,
- is in an amount not less than that stated in the Contract Data for any one occurrence or series of occurrences arising out of any one event in the annual aggregate, and
- is maintained by the *Contractor* from the *starting date* until the end of the *limitation period*,

provided that such insurance is available upon commercially reasonable terms and premiums.

84.5A For each *section* of the *works*, the *Employer* provides Public and Product Liability Insurance in accordance with the Insurance Table until the Defects Certificate has been issued only to the extent that the *Contractor* is Providing the Works on the Site.

84.6 Not used

84.6A For each *section* of the *works*, the *Employer* provides Construction All Risks Insurance in accordance with the Insurance Table until Sectional Functional Completion for each *section* and thereafter until the Defects Certificate has been issued only to the extent that the *Contractor* is Providing the Works on the Site.

84.6B The *Contractor's* liability for physical damage to the *Employer's* existing structures (which do not form part of the *works* but, for the avoidance of doubt, includes trains) is limited to [REDACTED]

84.7 The insurance requirements under this Contract do not relieve the *Contractor* from any of his other obligations and liabilities under this Contract.

84.7A The Public and Product Liability Insurance which the *Employer* is obliged to provide in accordance with clause 84.1 and 84.5A does not provide cover for liability for gradual pollution or contamination or asbestos.

84.8 The Construction All Risks Insurance which the *Employer* is obliged to provide in accordance with clauses 84.1 and 84.6A does not provide cover for Plant owned or hired by the *Contractor*.

84.9 The Parties comply with the terms and conditions of the insurance policies.

- 84.10 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- 84.11 The *Contractor* and the *Employer* give immediate notice to each other if either party fails to effect or maintain, or in the event that there is cancellation of, any of the insurance policies which the Contract requires each of them to maintain.
- Insurance by the Contractor 85**
- 85.1 The *Contractor* submits evidence of cover for insurances provided by the *Contractor* to the *Employer* through provision of a broker's letter before the date of this Contract and on an annual basis thereafter. The *Employer* accepts evidence of cover if it complies with this Contract.
- 85.1A The *Employer's* acceptance of evidence of insurance cover provided by the *Contractor* does not change the responsibility of the *Contractor* to provide the insurances stated in the Contract Data.
- 85.2 Not used
- 85.3 Not used
- If the Contractor does not insure 86**
- 86.1 The *Employer* may insure a risk which this Contract requires the *Contractor* to insure if the *Contractor* does not submit evidence of cover. The cost of this insurance to the *Employer* is paid by the *Contractor*.
- Insurance by the Employer 87**
- 87.1 The *Project Manager* submits evidence of cover (including redacted copies of the Construction All Risks and Public and Product Liability policies) for insurances provided by the *Employer* to the *Contractor* on or before the Contract Date and on an annual basis thereafter. The *Contractor* accepts evidence of cover if it complies with this Contract.
- 87.2 The *Contractor's* acceptance of evidence of insurance cover by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this Contract requires the *Employer* to insure if the *Employer* does not submit evidence of cover. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- 87.3A Not used
- 87.4 Unless the Parties otherwise agree, the *Contractor* submits:
- all claims under the Construction All Risks Insurance and
 - insofar as they relate to liability of the *Contractor*, all claims under the Public/Product Liability insurances.
- The *Contractor* and the *Employer* provide on request by each other such information, documents and records in connection with such claims as the *Employer*, its insurers and the *Contractor* may require. The Parties authorise the insurers to pay all monies from such insurance to the relevant party. The

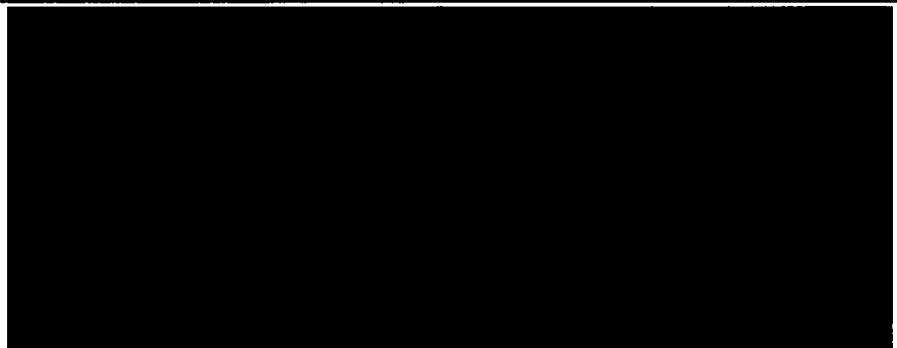
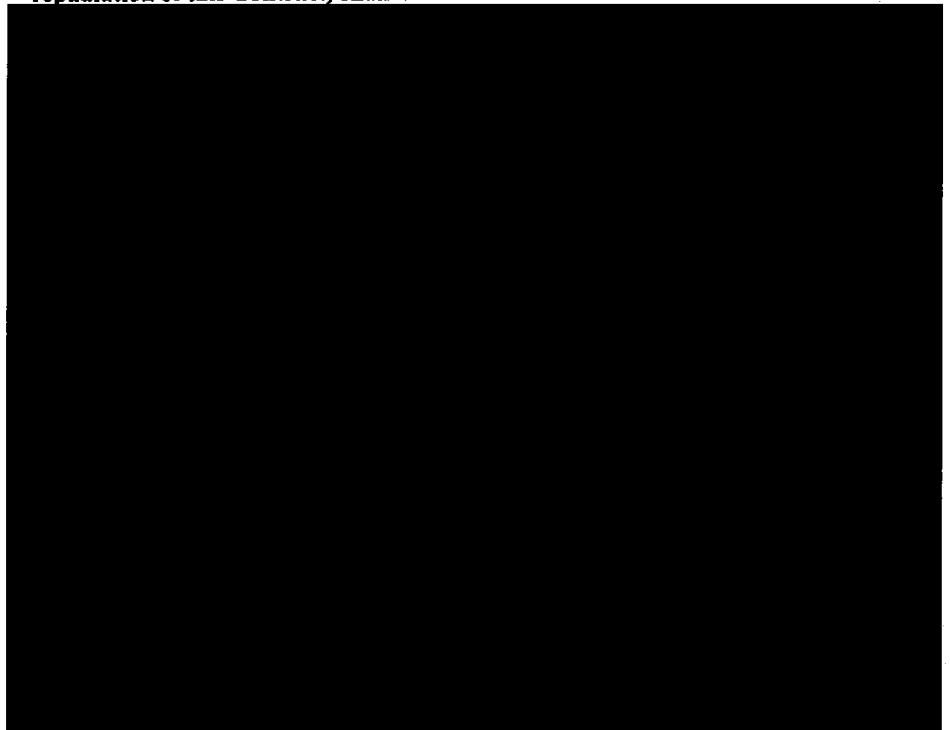
Contractor complies with any claims procedures notified by the *Employer* from time to time. In the event that there is any delay in payment of an insurance claim by insurers each party agrees to provide reasonable endeavours to assist one another with a view to expedite such a claim. The *Employer* will not unreasonably withhold insurance payments due to the *Contractor*.


Aggregate Liabilities 88

88.1A With the exception of bodily injuries or death, neither Party shall be liable for any Economic and Consequential Loss.

88.1B Notwithstanding any provision to the contrary in this Contract, any amounts due in accordance with clauses Z2.4.14 and Z2.4.17 shall not be classified as Economic and Consequential Loss.

88.2A Notwithstanding any other caps on the liability of the *Contractor* or anything to the contrary contained in this Contract, and subject to clause 88.2B below, the *Contractor's* total aggregate liability arising out of or in connection with the performance of its obligations under the Contract, whether based on breach of contract, statutory warranty or otherwise (including but not limited to amounts due under clauses Z2.4.14 and Z2.4.17 and liability following termination or repudiation of this Contract) shall in no event exceed:





88.2B The *Contractor* does not exclude or restrict its liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability has been reached or exceeded:

- (a) payments made by the *Contractor* in relation to its liability under the Contract to the extent corresponding payments are received by the *Contractor* pursuant to insurance policies required to be maintained under the Contract;
- (b) interest due under this Contract as a result of late payment of amounts;
- (c) save as provided otherwise in clause 88.2A(e)(iii), liability directly arising from the *Contractor* committing a Prohibited Act or Safety Breach or from its breach of CDM Regulations, or Health and Safety Laws;
- (d) liability directly arising from the *Contractor's* abandonment, with no intent of resuming, of the *works* where the *Contractor's* reasons are disputed by the *Employer* and referred to the Adjudicator and the Adjudicator's decision is that the *Contractor's* reasons for abandonment are not due to the actions or omissions of the *Employer* for which the *Employer* is culpable; and
- (e) liability directly arising from the *Contractor's* abandonment, with no intent of resuming, of the *works* where the *Contractor* has not given the *Employer* four (4) weeks' notice.

88.3 For the avoidance of doubt, the following are not subject to nor count towards any cap on liability:

- the *Contractor's* share assessed as due from the *Contractor* in accordance with clause 53; and
- the *Contractor's* Defined Cost as defined in clause 11.2(6).

Force Majeure 89

89.1 If either Party is prevented from, hindered or delayed in performing any of its obligations under the Contract by a Force Majeure Event then:

- that Party's obligations under the Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that Party is so prevented, hindered or delayed;
- as soon as reasonably possible (and in any event within seven (7) days) after commencement of the Force Majeure Event that Party shall notify the other Party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under the Contract;
- if that Party fails to give the notice referred to in this clause 89 it shall forfeit its rights under this clause 89;
- that Party shall use all reasonable efforts to mitigate the effects of the

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Force Majeure Event upon the performance of its obligations under the Contract;

- **as soon as reasonably practicable (but within seven (7) days) after the cessation of the Force Majeure Event that Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under the Contract; and**

except for Loss of or damage to the *works*, Equipment and Materials, as expressly provided for in clause 80.1 third bullet, which remain an *Employer's* risk, if any additional costs are incurred by either the *Contractor* or the *Employer* as a direct result of a Force Majeure Event taking place, then such costs will be borne by the respective Party which has incurred them.

- 89.2 If the Force Majeure Event continues for more than twenty-six (26) weeks after its commencement the other Party may terminate the Contract by giving not less than twenty-eight (28) days' notice in writing to the other Party.
- 89.3 For the avoidance of doubt, in the event that a Force Majeure Event occurs, the *Employer* will adjust the Completion Date and the G0-T Key Date as appropriate. In accordance with clause 89.1 the *Contractor's* entitlement arising from a Force Majeure Event is limited to additional time only as any additional costs incurred by the *Contractor* arising from the Force Majeure Event are a *Contractor's* risk.

9 Termination

Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works, he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate promptly if the reason complies with **this Contract**.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1 - R29	P1 and P2	A1, A2, A4, A6 and A8
	R1 - R14, R10A, R15, R19 and R23-R27	P1, P2 and P3	A1 and A3
	R17, R18 and R21	P1 and P3	A1 A2, A5 and A8
	R29	P1, P2 and P3	A1 and A7
The <i>Contractor</i>	R1 - R10A, R16 and R20	P1 and P4	A1, A2, A4, A6 and A8
	R17, R18 and R21	P1 and P4	A1, A2, A5 and A8

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen (13) weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three (3) weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three (3) weeks of receipt of the VAT invoice, copy certificate and copy CPAF. Within 7 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice and copy CPAF in the amount of the certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to **complete the works**.

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its

equivalent.

(1) If the other Party is an individual and has

- presented his petition for bankruptcy (R1),
- had a bankruptcy order made against him (R2),
- had a receiver appointed over his assets (R3) or
- made an arrangement with his creditors (R4).

(2) If the other Party is a company or partnership and has

- had a winding-up order made against it (R5),
- had a provisional liquidator appointed to it (R6),
- passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R9),
- had an administration order made against it (R8),
- had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R7) or
- made an arrangement with its creditors (R10).

(3) If the other Party has become insolvent as defined in section 113 of the Act (R10A).

91.2

The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and failed to demonstrate to the reasonable satisfaction of the *Project Manager* that processes and procedures are in place to put the default right within four (4) weeks of being notified of that default by the *Project Manager*, or a period to be proposed by the *Contractor* for the acceptance of the *Project Manager*, whose acceptance is not to be unreasonably withheld, or, having put the default right, has at any subsequent time defaulted in the same or a similar manner and failed to demonstrate to the reasonable satisfaction of the *Project Manager* that processes and procedures are in place to put the default right within four (4) weeks of being notified of that same or similar default.

- substantially failed to comply with his obligations (R11),
- not provided a bond or guarantee which this Contract requires (R12), or
- appointed a Subcontractor in breach of the provisions of this Contract (R13).

91.3

The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in the following way.

- substantially hindered the *Employer* or Others (R14) and not stopped defaulting within four (4) weeks of the notification.

91.3A

The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* breached any of its obligations where:

- (i) the *Contractor* has failed to remedy the breach within a continuous period of thirty (30) days after the notice, or
- (ii) the same or a substantially similar breach has occurred and been notified by the *Project Manager* more than two (2) times in any consecutive three (3) month period from any initial notice of such breach from the *Project Manager*

provided however, that the cumulative effect in each case has a materially adverse effect on the *Contractor's* ability to continue to perform its obligations under this Contract.

(R15)

- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen (13) weeks of the date of the certificate receipt by the *Employer* of the *Contractor's* VAT invoice, copy certificate and copy CPAF (R16).
- 91.5 Either Party may terminate if
- a Force Majeure Event has substantially affected the *Contractor's* work for twenty six (26) weeks (R17), or
 - the Parties have been released under the law from further performance of the whole of this Contract (R18).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to restart or start has not been given within twenty-six (26) weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R19),
 - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R20) and
 - either Party may terminate if the instruction was due to any other reason (R21).
- 91.7 Not used (R22)
- 91.8 The *Employer* may terminate if the *Contractor* exceeds his aggregate liability cap as set out in clause 88 (R23).
- 91.8A The *Employer* may terminate if:
- there has been a Change of Control of the ultimate parent company of the *Contractor* or of Thales Canada and the *Contractor* has failed to notify the *Employer* in accordance with clause Z2.134 (R24); or
 - there has been a Change of Control of the *Contractor* or of Thales Canada and such Change of Control materially impairs the *Contractor's* ability to perform its obligations under this Contract and the Guarantor fails to take over the obligations of the *Contractor* (R25).
- 91.9 The *Employer* may terminate the *Contractor's* appointment in the event of:
- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under clause Z3.8 (R26),
 - a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of clause Z3.5 (R27),
 - Not used (R28),
 - the *Contractor* failing to achieve the G0-T Condition within 3 months after the G0-T Key Date (R29).

- termination** 92.1 On termination, the *Employer* may complete the *works* and may use any **Equipment and Materials** to which he has title (P1).
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Employer* may instruct the *Contractor* to leave the Site, remove any **Plant, Equipment and Materials** from the Site and assign the benefit of and/or enter into a **novation** of any subcontract or other contract related to performance of this Contract to the *Employer*.
- P3 The *Employer* may use any **Plant** to which he has title to complete the *works*. The *Contractor* promptly removes the Plant from the Site when the *Project Manager* notifies him that the *Employer* no longer requires it to complete the *works*.
- P4 The *Contractor* leaves the Working Areas and removes the **Plant**.
- 92.3 On termination or expiry of this Contract for whatever reason and without affecting any other rights or remedies of either Party, the *Contractor* shall, at the *Employer's* cost, provide to the *Employer* any and all reasonable assistance required by the *Employer* in connection with the transferring of the provision of any element of the *works* or any services associated with the *works* to the *Employer* or a third party nominated by the *Employer* and in accordance with any exit plan agreed by the Parties.
- 