

**13 August 1998**  
**as amended and restated on 27<sup>th</sup> November 2002 and further amended and**  
**restated on 20<sup>th</sup> March 2007**

**LONDON UNDERGROUND LIMITED**

**EDF ENERGY POWERLINK LIMITED**

**POWER ASSET DEVELOPMENT COMPANY LIMITED**

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**AMENDED AND RESTATED**  
**POWER SERVICE CONTRACT**

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**THIS CONTRACT** was made as a deed on 13 August 1998 and was amended and restated on 27<sup>th</sup> November 2002 to reflect, *inter alia*, changes made in respect of the power quality works and the Power Upgrade Works and further amended and restated on 20<sup>th</sup> March 2007.

**BETWEEN:**

**LONDON UNDERGROUND LIMITED ("LUL")** whose registered office is at 55 Broadway, London SW1H 0BD; and

**EDF ENERGY POWERLINK LIMITED** (formerly known as Seeboard Powerlink Limited) ("**Powerlink**") (Company Registration No. 3221818) whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN; and

**POWER ASSET DEVELOPMENT COMPANY LIMITED ("PADCo")** (Company Registration No. 2340677) whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN.

**WHEREAS**

(A) LUL currently operates and maintains a system whereby it is responsible for the generation of and procuring the supply and delivery of electricity and compressed air to it so as to enable it to operate the Underground Network.

(B) LUL wishes to procure from the Contractor electricity supply, operation and maintenance and delivery and other services so as to pass this responsibility to the Contractor.

(C) LUL and the Contractor have agreed that the Contractor will provide the services referred to in Recital (B) for the benefit of LUL and others and each of LUL and the Contractor will act upon the terms more particularly contained in this Contract.

(D) In addition to the services referred to in Recital (B) LUL wishes to procure from the Contractor the Power Upgrade Works.

(E) LUL and the Contractor have agreed that the Contractor will provide the Power Upgrade Works when instructed by LUL, subject to the terms of this Contract, for the benefit of LUL and others and each of LUL and the Contractor will act upon the terms more particularly contained in this Contract.

(F) LUL and the Contractor acknowledge that to the extent that the Contractor's obligations under this Contract involve a requirement for initial improvement of the System and the Power Upgrade Works the responsibility to carry out those works and associated maintenance and renewal obligations will be subcontracted to PADCo under the New Assets Contract. In consideration for PADCo undertaking such works, certain payments will be made directly to PADCo by LUL under this Contract.

(G) The Contractor and PADCo each acknowledge and agree that the purpose of this Contract is for the Contractor to enable and manage the delivery of electricity and compressed air to the Underground Network in accordance with the terms of this Contract in order to enable the provision of services by LUL on the Underground Network and compliance with the statutory obligations of LUL to operate and provide to the general public at all times a safe, economic, reliable, efficient and regular passenger transport system (the "**Key Objective**").

(H) The Contractor, PADCo and LUL have agreed that the Contractor will deliver the Key Objective through the cost effective operation, maintenance, renewal and upgrade of electrical equipment as required by the terms of this Contract and in accordance with Good Industry Practice, through timely and appropriate levels of investment in the System and through the provision of appropriate resources.

(I) In delivering the Key Objective the Contractor, PADCo and LUL have agreed that the Contractor will, at all times, have regard to LUL's stated business objectives, stated environmental commitments and Railway Safety Case and will act at all times in accordance with the requirements of the Safety Management System.

(J) This Contract is entered into under the private finance initiative.

(K) Pursuant to a Supplemental Deed dated 20 March 2007 and made between LUL, Powerlink, PADCo and TfL, certain amendments to this Contract were made with effect from 20 March 2007 (the latter date being the Supplemental Deed Date for the purposes of this Contract).

**IT IS AGREED** as follows:

#### **INTERPRETATION**

1.1 In this Contract the words and expressions defined in Schedule 1 (Definitions) shall, except where the context otherwise requires, have the meaning assigned to them there.

1.2 This Contract shall be interpreted in accordance with the provisions of Schedule 2 (Interpretation).

#### **CONDITIONS PRECEDENT**

2.1 All rights and obligations of LUL under this Contract (other than arising from Clauses 2.3, 2.5, 40 and 41) shall be conditional upon the matters in Schedule 2.1 (Conditions Precedent) provided that the Contractor shall not commence provision of the Services until the Starting Date.

2.2 All rights and obligations of the Contractor and PADCo under this Contract (other than arising from Clauses 2.3, 2.5, 40 and 41) shall be conditional upon the

matters in Schedule 2.2 (Conditions Precedent) provided that the Contractor shall not commence provision of the Services until the Starting Date.

2.3 LUL and the Contractor shall each use reasonable endeavours to ensure that the Conditions Precedent on which their respective rights and obligations are conditional are fulfilled as soon as reasonably practicable.

2.4 LUL shall be entitled, by notice to the Contractor, to waive the Conditions Precedent referred to in Clause 2.1 in whole or in part. The Contractor shall be entitled, by notice to LUL, to waive the Conditions Precedent referred to in Clause 2.2 in whole or in part.

2.5 LUL and the Contractor each agree that they will give written confirmation to the other Party:

- (a) of the status of their efforts to satisfy the Conditions Precedent set out in Schedules 2.1 (Conditions Precedent) and 2.2 (Conditions Precedent), respectively, as soon as reasonably practicable after receipt of a request therefore from such other Party; and
- (b) forthwith upon satisfaction or waiver of each of the Conditions Precedent set out in Schedule 2.1 (Conditions Precedent) or 2.2 (Conditions Precedent) respectively, together with full details of the circumstances constituting any such satisfaction. Such confirmation shall provide specific notice that all of the relevant Conditions Precedent have been satisfied or waived when all of the relevant Conditions Precedent have been so satisfied or waived.

2.6 If any of the Conditions Precedent has not been satisfied or waived on or before six months after the Date of Contract LUL may by notice pursuant to Clause 28.9 terminate this Contract (without prejudice to any obligations either Party has already accrued under Clauses 2.3, 2.5, 40, 41 and 52).

2.7 If any of the Conditions Precedent has not been satisfied or waived on or before the first anniversary of the Date of Contract, the Contractor may by notice pursuant to Clause 28.1 terminate this Contract (without prejudice to any obligations either Party has already accrued under Clauses 2.3, 2.5, 40, 41 and 52).

### **STARTING DATE**

3.1 The Starting Date shall be 16 August 1998 assuming that delivery is made of the last of the certificate specifying that all the Conditions Precedent are satisfied or waived prior to that date. Each Party shall give a certificate to the other Party confirming that the Conditions Precedent in Schedule 2.1 (in the case of the Contractor) and Schedule 2.2 (in the case of LUL) when such Conditions Precedent are satisfied or waived.

3.2 The Contractor shall make no payments to LUL on the Starting Date to reflect expenses incurred by LUL but accruing to the benefit of the Contractor save as expressly provided in this Clause. As soon as reasonably practicable after the Starting

Date LUL and the Contractor shall jointly agree a valuation for the stocks and spares on which a stock take has been done prior to the Starting Date and also on any stock held by LUL in respect of the Jubilee Line extension at the Starting Date. In the absence of such agreement the provisions of Schedule 37 (Dispute Resolution) shall apply. Following the stock take and valuation, within 28 days of the valuation of the stocks and spares being agreed (or determined) LUL will set off such sums against the Availability Charge for the first and any subsequent Periods unless otherwise agreed and to the extent that the stocks and spares purchased by the Contractor from LUL or third parties costs more or less than £1 million there shall be a Price Adjustment to reflect the actual cost of stocks to the Contractor. The Contractor shall not be obliged to pay for any stocks or spares which, in the Contractor's reasonable professional opinion are of insufficient quality, or which the Parties agree the Contractor will not use in the performance of its obligations under this Contract. The Contractor shall only be obliged to purchase from LUL stocks and spares up to a value of £1 million. It shall be in the Contractor's sole discretion as to whether or not it buys stocks and spares whose value would cause the Contractor to exceed this figure. For the purpose of this Clause, stocks and spares will not include gas or gas oil but will include gas cylinders. The Contractor shall not receive from LUL any stocks or spares which it has not paid for pursuant to this Clause.

3.3 The Contractor shall co-operate with LUL in the preparation of Technical Interface Procedures to fully describe and apportion the responsibility for all activities where routine interfaces between LUL and the Contractor will occur as provided for in Schedule 15.1(d) (Technical Interface Procedures). In any event within 3 months of the Starting Date LUL shall agree with the Contractor any of the Technical Interface Procedures that relate to the initial Technical Interface Procedures list of titles set out in Schedule 15.1(d) which have not already been agreed, and in default of agreement the provisions of Schedule 37 (Dispute Resolution) shall apply. The Adjudicator acting in accordance with the provision of Schedule 37 shall have regard (inter alia) to the safe, economic operation of the System and the cost as well as the benefit of any of the requirements of the Technical Interface Procedures.

## **CONTRACT DURATION**

4.1 Save as otherwise provided in this Contract this Contract shall expire 30 years after the Starting Date.

4.2 This Clause is without prejudice to early termination under Clause 28.

4.3 The Contractor's obligation to provide and LUL's obligation to pay for the Services shall commence on the Starting Date and cease without prejudice to Clause 45 on the Expiry Date.

## **SUPPLY OF ELECTRICITY**

### **Supply from Lots Road and Greenwich during implementation of Emergency Supply Plan.**



5.1 Subject to Clauses 5.2, 5.3 and 25.24 the Contractor shall (as part of the Services for which the Availability Charge is paid under Clause 21.1) process the fuel provided by LUL pursuant to Clause 5.2 on behalf of LUL and provide the Supplied Electricity at the metering points set out in Clause 22.1(a) to meet demand connected to the Generating Stations from the Starting Date until the later of the date of completion of the works required to meet the Critical Completion Date and the date of completion of the works required to meet the completion of Phase 1 and as such demand is reduced in accordance with the Emergency Supply Plan.<sup>1</sup>

5.2 LUL agrees to provide to the Contractor all fuel requirements for the purposes of generation of electricity on LUL's behalf at the Generating Stations from the Starting Date up to the date of Completion of the Emergency Supply Plan at no cost to the Contractor. For the avoidance of doubt, subject to the Contractor's compliance with its obligations to notify under Clause 5.3, all charges leviable by TransCo under the Network Code shall be payable by LUL.

5.3 During the period identified in Clause 5.2, the Contractor shall assist LUL in relation to its fuel requirements on the following basis:

- (a) the Contractor shall provide LUL with the information requested and at the times and in the forms specified in Schedule 5.3 (Fuel Supply);
- (b) at least four months before the proposed starting date of any gas supply contract, the Contractor and LUL will agree a forecast of gas consumption (the ***Gas Supply Contract Forecast***) based on the programme for the Emergency Supply Plan as set out in Schedule 9.1 and progress against that programme. This forecast shall include the minimum and maximum levels of gas consumption per Period together with any limit in the event of an emergency. As at the Starting Date, the Gas Supply Contract Forecast is set out in Schedule 5.3 (Fuel Supply);
- (c) up to the date of Completion of the Emergency Supply Plan, the Contractor will notify LUL as soon as reasonably practicable, and in any event within five Working Days if it becomes aware of any change of more than 10% between the Gas Supply Contract Forecast and its forecast of gas consumption for the Generating Stations based on the progress of the programme for the Emergency Supply Plan, of any such likely variation;
- (d) if any change notified by the Contractor under Clause 5.3(c) above arises because of a planned staged transfer of load in advance of that provided for that Stage under the Emergency Supply Plan, LUL may instruct the Contractor to delay the load transfer up to the Stage Completion Date;
- (e) the Contractor shall comply with any instruction from the relevant gas supplier properly made under the relevant gas supply contract to interrupt the gas

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<sup>1</sup> Power Quality Variation.

supply up to a maximum of 60 days per year or such other number of days interruption per year as may be agreed between the Parties in accordance with the terms of the relevant gas supply contract. The Contractor shall transfer to gas oil only in the event of:

- (i) any interruption to gas supplies; or
- (ii) start up or testing of the Generating Stations; or
- (iii) any other failure in the operation of the Generating Stations which requires a transfer to gasoil; or
- (iv) during periods of security alert; or
- (v) during Engineering Hours and on Christmas Day, to the extent of one burner in each boiler.

Once the Contractor has transferred to gasoil under this Clause 5.3(e) the Contractor shall as soon as reasonably practicable transfer from gasoil to gas supply. The Contractor shall be relieved of its obligations to provide the Supplied Electricity in the event that gasoil supplies are exhausted.

5.4 The Contractor will for as long as it holds the Lots Road Licences discuss and agree with LUL the value which the Parties shall attribute to the Supplied Electricity for the purposes of calculating the Fossil Fuel Levy. LUL agrees to pay the Fossil Fuel Levy required in relation to such agreed value or in relation to any other value as required by the Collector. The Contractor will provide such information and in such form as is necessary for the Parties to agree such value.

### **Procured Electricity**

- 5.5(a) LUL agrees that in relation to any supplier of any Procured Electricity the obligation of that supplier to supply will be to deliver electricity to the busbar side of the circuit breakers at any Bulk Supply Point connected to the relevant REC system as set out in the connection agreement for that Bulk Supply Point or such other point as LUL and the Contractor reasonably agree. Without prejudice to Clause 5.9 below, the Parties agree that the Contractor in relation to its obligations under the Contract will have no contractual relationship with any supplier of Procured Electricity.
- (b) LUL, in its tendering for any supply of Procured Electricity (subject to applicable Law), shall require that any supplier of Procured Electricity, where required by a Purchaser, provide a supply to that Purchaser or enter into arrangements with a User for payment for the supply of electricity to the Purchaser on the basis set out in Clause 5.5(c) below. If applicable Law prevents LUL from tendering for any supply of Procured Electricity on this basis the Contractor will be entitled to a Price Adjustment under Clause 23.38 to reflect any consequent inability of the Contractor to market capacity and/or supplies to Purchasers or Users.

- (c) (i) Any supply contract entered into between a supplier of Procured Electricity and a Purchaser or User under Clause 5.5(b), should have the following as its minimum requirements:
- (A) the carrying out by the supplier of Procured Electricity of all calculations and other administrative steps necessary for the administration of the local settlement function so that LUL would be charged for its half-hourly consumption at the relevant Bulk Supply Point, and any Purchaser or User would be charged for the half-hourly consumption of the relevant Purchaser at the Purchaser's connection point with the System, grossed up by the Loss Factor for that Purchaser;
  - (B) unless other commercial arrangements can be reached between LUL's supplier of Procured Electricity and the Purchaser or User, all identifiable costs (including but not limited to pool selling price, distribution use of system and transmission use of system charges) for any Purchaser or User which are incurred at the point of connection of the Purchaser to the System (as grossed up by the Loss Factor) will be charged and recovered from the Purchaser or User;
  - (C) recovery by the supplier of Procured Electricity of reasonable costs in relation to the function described under (c)(i)(A) above;
  - (D) credit requirements and/or payment arrangements in relation to any User and/or Purchaser as a reasonably prudent supplier would apply.
- (ii) In the event that LUL following tender for the supply of Procured Electricity is unable to enter into a supply contract with a supplier of Procured Electricity on the basis set out in Clauses 5.5(b) and (c)(i) the Contractor shall procure that a supplier of Procured Electricity enter into a supply contract with LUL by which the supplier would agree to perform the local settlement function at the Bulk Supply Point on the terms set out in Clause 5.5(c)(i) and on other terms compliant with LUL's invitation to tender and the provisions of Schedule 5.5 shall apply.
- (d) If it becomes necessary in order to facilitate compliance with Clause 5.5(c)(ii), LUL will to the extent that in its reasonable opinion it is permissible to do so under applicable Law derogate from the requirement to seek competition under the Procurement Rules. Where in LUL's reasonable opinion a derogation is not permissible the Contractor will be entitled to a Price Adjustment under Clause 23.38 to reflect any consequent inability of the Contractor to market supplies to Purchasers or Users.

- (e) In the event that there is a Change of Law by which direct commercial supplies of electricity to Purchasers can be provided without a local settlement function at the Bulk Supply Point, Clauses 5.5(b), (c) and (d) shall cease to apply. For the avoidance of doubt there shall be no change to the provisions of Clause 10 unless required by the relevant Change of Law.
- (f) Any Price Adjustment made pursuant to Clauses 5.5(b) or (d) or Schedule 5.5 shall not affect the Contractor's obligations under Clause 10 unless otherwise agreed pursuant to the Variation.

### **Support Services for Procured Electricity**

5.6 The Contractor shall, at the request of LUL, provide support services for the procurement and management of Procured Electricity in accordance with Clauses 5.7 to 5.9. These support services to LUL may include but are not limited to:

- (a) recontracting for electricity supply, as more specifically detailed in Clause 5.7;
- (b) appointment and administration of a meter operator and data collector;
- (c) general technical and commercial support for the delivery of electricity, insofar as the Contractor is not already obliged to provide such advice pursuant to this Contract.

5.7 Where LUL wishes the Contractor to support LUL in recontracting for Procured Electricity, at least 3 months before the termination of LUL's supply contract or on early termination if earlier, LUL shall consult with the Contractor to discuss its Procured Electricity requirements and if required the Contractor shall provide some or all of the following services:

- (a) the Contractor shall provide advice on achieving the most competitive offer and shall prepare the electricity supply proposal for tender and initiate the applicable procurement procedures;
- (b) on receipt of tender proposals the Contractor shall prepare an evaluation report to assist LUL in the selection of the preferred tenderer(s) (but not so as to provide any recommendation on the selection of the preferred tenderer(s));
- (c) the Contractor shall provide support to LUL in its negotiations with the preferred tenderer(s) and shall review and report on the final supply contract (but not so as to provide any recommendation on the final selection of the supplier).

5.8 LUL will pay the Contractor in accordance with the provisions of Clause 22.2 for the provision of the Services described in Clauses 5.6 to 5.9 on the basis of the rates contained in Schedule 5.10 (Support Services), as adjusted in accordance with Schedule 5.10.

### **Connection Agreements**

5.9 LUL agrees to consult with the Contractor before entry into or renewal of an agreement with any REC for the connection of the System to any assets owned by that REC (a **Connection Agreement**) and also in relation to agreement of a variation to any of the terms of a connection agreement. Where LUL wishes to include any obligations within a connection agreement which impact on the Contractor's obligations under the Contract and which are not contained in or substantially the same as any contained in the Connection Agreement, the Parties shall agree the basis on which the Contractor and LUL will perform such additional requirements. As at the Starting Date the Contractor's obligations in relation to the connection agreements shall be those contained in Schedule 5.9 (Connection Agreements). For the avoidance of doubt, LUL shall pay the Contractor in accordance with Clause 5.8 for any advice given in relation to aspects of connection agreements other than those for which the Contractor assumes responsibility under this Clause 5.9 and Schedule 5.9 (Connection Agreements) or under Schedule 5.1 (Performance Specification) and any works required to be performed other than those described in this Clause 5.9 and Schedule 5.9 (Connection Agreements) or under Schedule 5.1 (Performance Specification) shall be subject to a Variation.<sup>2</sup>

### **Costs of Greenwich following Completion of the Emergency Supply Plan**

#### 5.10 Following Completion of the Emergency Supply Plan:

- (a) where the Contractor is required to operate the Greenwich Generating Station for the generation of Emergency Power (and not for testing) upon delivery by the Contractor of the statement showing the half hourly integrated demand for Emergency Power required under Clause 22.1(a), LUL will pay the Contractor the replacement costs of any fuel used in such generation;
- (b) the Contractor shall not charge LUL in relation to testing (which shall include the twice-yearly testing in accordance with Schedule 18.9 (Testing)) of Greenwich Generating Station planned by the Contractor (other than as set out in (c) below);
- (c) the Contractor shall only charge LUL in respect of testing of Greenwich Generating Station required by LUL or under Law and not otherwise planned by the Contractor (**Additional Testing**) where the number of hours for the Additional Testing when taken together with the testing planned by the Contractor under Clause 5.10(b) would exceed 288 hours per annum (whether virtual machine hours or actual running hours during testing (on the basis of a start-up of the Greenwich Generating Station requiring three virtual machine hours per turbine)). Any such requirement of LUL or under Law will be subject to a Price Adjustment under Clause 23.38.

In this Clause, **a virtual machine hour** shall be the deemed wear and tear of one running hour of one turbine for testing.

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<sup>2</sup> Power Quality Variation.

5.10A In the event that Greenwich Generating Station is operated as a Central Emergency Power Supply for the maximum period required by Schedule 5.1 (Performance Specification) the Contractor shall use all reasonable endeavours to ensure immediate restocking of fuel to maximum capacity needed within seven days.

## **DELIVERY OF ELECTRICITY**

### **Obligation to Deliver**

6.1 Subject to Clause 6.2 and to the provisions of paragraph 8 of Schedule 43.3 (Contract Management), the Contractor shall deliver all Supplied Electricity and insofar as delivered to the Bulk Supply Points, all Procured Electricity (each subject to the provisions of Clause 12) to those Delivery Points where the relevant electricity is required.

6.2 The Contractor shall not be obliged to deliver more electricity than the System is required by this Clause 6 to be capable of delivering.

### **Capacity to Deliver**

6.3 Subject to Clauses 6.5 and 6.6, the Contractor shall ensure that the System is at all times capable of delivering electricity up to the Defined Capacity at each Relevant Point in the System.

6.4 Subject to Clauses 6.5 and 6.6, the Contractor shall take all reasonable efforts to ensure that the System is, when required by LUL, capable of delivering electricity up to the Reserve Service Capacity at each Relevant Point in the System. The Contractor shall notify LUL in advance when the Reserve Service Capacity will not be fully available. The obligation to notify will be discharged by inclusion in the Four Weekly Report delivered pursuant to paragraph 4.1 of Schedule 43.3 (Contract Management) of relevant details. Where notification by this means is not reasonably practicable the Contractor will use such other reasonable methods as the Parties may employ.

- (a) The Contractor shall ensure that sufficient installed capacity of Static VAR Compensators and Harmonic Filters is available following completion of Phase 1 to ensure compliance with the Performance Specification and Clause 5.9.
- (b) The Contractor shall take all reasonable efforts to ensure that the installed capacity of Static VAR Compensators and Harmonic Filters on the basis of the tables set out in Appendices 1.10.1 and 1.10.2 to Schedule 5.1 is available at all times following completion of Phase 1. The Contractor shall notify LUL in advance when the installed capacity of the Static Var Compensators and Harmonic Filters will not be available. The obligation to notify shall be discharged by inclusion in the Four Weekly Report delivered pursuant to paragraph 4.1 of Schedule 43.3 (Contract Management) of relevant details.

Where notification by this means is not reasonably practicable the Contractor shall use such other reasonable methods as the Parties may employ.<sup>3</sup>

6.5 Clauses 6.3 and 6.4 shall not oblige the Contractor to deliver electricity up to the Defined Capacity or to take reasonable efforts to deliver electricity up to the Reserve Service Capacity, at a 22/11 kV Switchhouse, a Substation or a Transformer Room to the extent that doing so would cause the Defined Capacity and/or the Reserve Service Capacity to be exceeded at any of the following points provided the Contractor would otherwise have been in compliance with Clauses 6.3 and 6.4:

- (a) at any of the Bulk Supply Points from which electricity flows to the 22/11 kV Switchhouse in question (except if the Contractor has failed to adhere to the Operation and Maintenance Regime as it relates to the Generating Stations before the Completion of the Emergency Supply Plan); or
- (b) at any of the 22/11 kV Switchhouses whose operations govern delivery of electricity to the Substation or Transformer Room in question.

6.6 Where the Installed Capacity at any Relevant Point is the same as the Firm Service Capacity and there is no ability within the System to switch to transfer load (assuming compliance with all other obligations under the Contract), the Contractor will be deemed not to be in breach of its obligations under Clauses 6.3 and 6.4 for 48 hours after the occurrence of any event which would otherwise have given rise to a breach provided the Contractor has taken all reasonable efforts to restore the relevant Capacities on a secure basis.

### **Quality of Electricity**

6.7 Subject to Clauses 6.8 and 6.9, all electricity delivered to LUL shall meet the requirements set out in the Performance Specification when measured at the Delivery Points or the other points set out in paragraphs 2.2.2.2 and 2.2.2.7 of the Performance Specification.

6.8 At any time when the Contractor is delivering electricity at levels above the Defined Capacity which make use of the Reserve Service Capacity at any Relevant Point, the Contractor shall not be in breach of the Contract to the extent that doing so causes the electricity not to conform with the requirements of paragraph 4.2 of Schedule 5.1 (Performance Specification) provided it has taken reasonable efforts to conform with them.

6.9 The Contractor shall not be in breach of Clauses 6.1 or 6.7 to the extent that any failure to deliver to LUL in accordance with Clauses 6.1 or 6.7 is caused by a change by LUL of any of the matters listed in paragraph 2.2.2.1(a) - (g) (subject to paragraph 2.2.2.1(i) - (iv)) of the Performance Specification or a failure by LUL to perform its obligations under this Contract, or to maintain LUL's Distribution System from the Delivery Point to the point of measurement (if different from the Delivery

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<sup>3</sup> Power Quality Variation

Point). The burden of proving whether or not the Contractor is in breach shall be as set out in Clause 6.10.

6.10 Where the Contractor is able to demonstrate there has been no change to the configuration and operation or capability to deliver of any relevant equipment or reasonably associated equipment in the System at the relevant Delivery Point from the most recent time when the Contractor was delivering electricity in accordance with paragraphs 2.2.2.2 or 2.2.2.7 but the electricity delivered is in breach of paragraphs 2.2.2.2 or 2.2.2.7 of the Performance Specification the burden of proof will be on LUL to demonstrate that LUL has satisfactorily discharged the tests contained in Schedule 6.9 (Testing) before the Contractor is liable for any breach of Clauses 6.1 or 6.7. In all other cases, the Contractor will be liable for any breaches of Clause 6.1 or 6.7, subject to the provisions of this Contract in relation to liquidated damages, Service Delivery Points and breach of Contract. This Clause 6.10 is without prejudice to the Contractor's and LUL's rights in relation to Schedule 37 (Dispute Resolution).

6.11 The Contractor shall when reasonably requested by LUL:

- (a) provide information which the Contractor is required to keep and make available to LUL under the terms of this Contract in relation to the current operational status of the System and its impact on or interface with LUL's Distribution System, out of the timescales provided under this Contract provided obtaining and providing such information would not result in more than a reasonable level of minor administrative costs to the Contractor; and/or
- (b) advise or discuss with LUL in relation to the operation, maintenance or renewal of LUL's Distribution System or the Underground Network insofar as it is affected by or interfaces with or affects the System and where necessary or agreed implement any actions agreed as a result of such advice or discussion provided that the Contractor shall be entitled to require LUL to pay on a reasonable basis for any advice and any such resulting actions which it would not otherwise be obliged to give or to perform under the terms of this Contract will be Variations provided that if the Costs arising from any resulting actions are less than £50,000 Clause 23.38 (a) shall apply.

6.12 Any secondment of staff made by one Party to the other Party shall be in accordance with the standard terms and conditions from time to time of the Party providing the secondee.

6.13 Any act or omission of an Indirect User which has an adverse effect on the System shall be a breach of or failure to comply with an LUL Dependency and if it leads to an Adverse Consequence the Contractor shall be entitled to claim under Clause 28A.

## **OPERATION AND MAINTENANCE OF THE SYSTEM**

### **General**



7.1 Subject to the express provisions of this Contract, LUL grants to the Contractor the right, and the Contractor undertakes to LUL:

- (i) from the Starting Date:
  - (a) to (on an exclusive basis) operate and maintain; and
  - (b) to (on an exclusive basis) renew in order to comply with its obligations in accordance with Clause 16.1;

the System and the IT Systems (as at the Starting Date, or where the Contractor takes over the operation and maintenance of a new part of the System or the IT Systems, the System or the IT Systems including the relevant addition); and

- (ii) to commission and implement all or a particular part (as applicable) of the Power Upgrade Works in accordance with the Final Implementation Details for the relevant PUW Variation;

in each case in accordance with its obligations under this Contract and to meet the requirements of this Contract, and having regard to any licence obligations pursuant to licences (if any) held by it under The 1989 Act and in particular, but without limitation, so as to ensure that the System and the IT Systems retain their utility and are reasonably fit for the purpose of delivering Power having regard to the requirements of this Contract (and any applicable Derogations or Concessions at the relevant time) and LUL's statutory obligations to operate a safe, reliable, economic and efficient railway service on its Underground Network. LUL undertakes to notify the Contractor if, after the Date of Contract, there is any change to LUL's statutory obligations to operate a safe, reliable, economic and efficient railway service on its Underground Network which would result in the Contractor no longer being in compliance with the requirements of this Clause and, to the extent necessary will effect a Variation pursuant to Clause 23 to ensure that the terms of this Contract are not inconsistent with such statutory obligations. If LUL does not effect a Variation, the Contractor shall be entitled to issue a Proposal Notice pursuant to Clause 23.36.

7.2 The Contractor shall comply with:

- (a) the Operation and Maintenance Regime; and
- (b) the Renewal and Upgrading Regime;

(together called the *Regimes*).

7.3 Any changes to either of the Regimes shall be made in accordance with the procedure set out in the Regimes except to the extent the change (or deviation where the Regime concerned is insufficient to cover the situation) is immediately required to comply with the Contractor's obligations in relation to safety or to respond to an emergency situation, in which case the Contractor shall be entitled to make the change or deviation immediately provided that the Contractor will notify the Contract

Manager as soon as reasonably practicable of the change. Any change or deviation made as a result of a safety or emergency situation shall relate to that safety or emergency situation only and any implementation of such change or deviation shall be subject to the change control procedures in the Regimes if the change or deviation is to be a permanent one. The Contractor will not be released from any liability by virtue of the change or deviation permitted by the Regimes save as expressly permitted by such change or deviation.

7.4 Subject to Clauses 7.3 and 7.5, the Contractor shall not implement any new or altered process or procedure in relation to either of the Regimes which requires approval under paragraphs 12 and 13 of Schedule 43.3 (Contract Management) until such approval has been granted on the basis set out in those paragraphs.

7.5 The Contractor shall amend either of the Regimes to implement any request in relation to the Regime made by LUL to which the Contractor has no reasonable objection and which does not constitute a Variation or result in any additional cost to the Contractor other than a reasonable level of minor administrative costs.

7.6 Subject to Clause 7.3, the Contractor shall seek the Contract Manager's prior written consent through the Concession Procedure (but so that such consent will not be unreasonably withheld) for any temporary departure from either of the Regimes. The Contractor will not be released from any liability under this Contract by virtue of any such consent given by the Contract Manager save as expressly permitted thereby.

### **Corrective Action Request**

7.7 If there is a breach of either of the Regimes or of any other requirement of this Contract (whether or not identified as a result of any audit or inspection) LUL may issue a Corrective Action Request to the Contractor. This shall specify the breach in question, and require the Contractor, within a reasonable period, to specify (by written notice to LUL) the steps and timetable which the Contractor reasonably considers necessary to remedy the breach as soon as practicable. LUL and the Contractor shall discuss and agree the steps and timetable proposed by the Contractor. If these are not agreed within four weeks, LUL shall be entitled to specify the steps and timetable (acting reasonably). This Clause 7.7 is without prejudice to the Contractor's right to refer the existence of the relevant breach to dispute resolution under Clause 37. If LUL specifies such steps and timetable and the Contractor complies with the same and it is subsequently agreed or determined that the Contractor was not in breach of the Contract, the Contractor shall be entitled to Disruption Costs if any.

7.8 The Contractor shall comply with any Corrective Action Request on the basis set out in Clause 7.7 and the other obligations specified in paragraph 16 of Schedule 43.3 (Contract Management).

### **New or Altered Works, Plant, Equipment, Practices and Procedures**

7.9 Where the prior approval of LUL is required in accordance with paragraphs 12 or 13 of Schedule 43.3 (Contract Management), the Contractor shall not deploy any new or altered works, plant or equipment, items or process relating to the

maintenance, renewal, modification or extension of the System or for the purposes of performing the Services without first obtaining such prior approval on the basis set out in those paragraphs. Subject to the express provisions of Schedule 5.1 (Performance Specification), LUL shall consult with the Contractor prior to deploying any new or altered works, plant or equipment, items or process which LUL considers would have a material effect on the electrical protection, loading or ease of operation or maintenance of the System or the IT Systems (including in relation to the operation of signalling in Substations).

### **Cable Ducts**

7.10 Subject to Clause 7.10A, to the extent that the New Road and Street Works Act 1991 permits, LUL shall appoint the Contractor as its agent and/or the Contractor shall procure that PADCo acts as LUL's agent under the New Road and Street Works Act 1991 and LUL will pay all Costs and costs (including VAT) arising under the Street Works (Sharing of Costs of Works) (England) Regulations 2000 (the *Regulations*) subject to a reasonable contribution by the Contractor where as a result of the major works required the System is renewed or upgraded by the relevant authority (as defined in the Regulations) in a manner which reduces the costs which the Contractor would have otherwise incurred within the next year to meet its obligations under the Contract or the Contractor otherwise receives a material benefit from the major works (taking into account any remaining life of the replaced equipment and the Contractor's obligations under the Contract). The Contractor shall comply with the requirements set out in the Performance Specification in relation to the New Roads and Street Works Act 1991. LUL agrees to make available to the Contractor the records in its possession at the Starting Date indicating the apparatus which forms part of the System. LUL agrees to inform the Contractor as soon as reasonably practicable if it receives any notification under section 80 of the New Roads and Street Works Act 1991 from a person executing works. If the Contractor and/or PADCo is not permitted under the New Road and Street Works 1991 Act to act as LUL's agent, the Contractor shall be entitled to issue a Proposal Notice under Clause 23.36.

7.10A Unless the Parties otherwise agree, LUL shall not be entitled to appoint the Contractor as its agent (or to have PADCo act as LUL's agent) nor shall the Contractor be obliged to act (nor have PADCo act) in such capacity under the New Road and Street Works Act 1991 where a Third Party Contractor is undertaking Third Party Works.

7.11 The Contractor may, with LUL's prior written consent (which in the case of a proposal to use spare space for the Contractor to comply with its obligations under the Contract shall not be unreasonably withheld and if consent is given it will be on and subject to the provisions of Clause 30.10, and in the case of all other proposals shall be within LUL's sole discretion) use any spare space within Cable Ducts belonging to LUL or TfL or over which LUL or TfL has control. If LUL determines that spare space can be used by the Contractor for commercial exploitation under the terms of Clause 10 LUL will use the Easement as the documentary basis for grant of rights in the relevant space but shall be entitled to make all such changes as it determines in its

sole discretion in respect of such document (but LUL shall not be entitled to amend the existing Easement).

## **SWITCHING AND CONTROL SYSTEMS**

### **Electrical Switching**

8.1 Subject to Clauses 8.2, 8.3, 8.4 and 8.5 the Contractor shall ensure that for the Contract Duration, all Electrical Switching is carried out and that the Contractor performs its obligations under the Contract so as to permit LUL to carry out the Interface Switching necessary in order to meet LUL's operational requirements.

8.2 The Parties agree that the Electrical Switching and Interface Switching shall be carried out in accordance with the provisions of this Contract.

8.3 The Contractor shall assume responsibility for implementing Electrical Switching (either in whole or in part) at the times and otherwise in accordance with the Control System Handover Programme (which will be proposed by the Contractor and agreed with LUL in accordance with the programme for Initial Works). The Contractor shall thereafter carry out and be responsible for all Electrical Switching necessary for the performance of its obligations under this Contract.

8.4 The Contractor undertakes to LUL that it shall not perform any Interface Switching or interfere in the performance by LUL of such Interface Switching and LUL undertakes to the Contractor that it shall not perform any Electrical Switching which is the responsibility of the Contractor, except as specifically requested in accordance with Schedule 15.1(d) (Technical Interface Procedures).

8.5 The implementation by LUL of Electrical Switching, or by the Contractor of Interface Switching, in accordance with each Party's obligations under the Contract shall not relieve the Contractor of its responsibility for Electrical Switching or LUL of its responsibility in relation to Interface Switching unless and to the extent that any breach of the instructing Party's obligations under this Contract was caused or contributed to by any failure by the instructed Party, its employees or agents to take all reasonable steps to implement Electrical Switching or Interface Switching, as applicable in accordance with the instructing Party's instructions under the Technical Interface Procedure or other relevant contractual provision.

### **Control Equipment Initial Works**

8.6 The Contractor shall within 5 years after the Starting Date renew the Electrical Control Equipment and the Line Specific Electrical Control Equipment (other than the Excluded Control Equipment) in accordance with paragraph 7 of Schedule 5.1 (Performance Specification) and Schedule 13.1 (Initial Works).

8.7 Prior to putting such renewed Line Specific Electrical Control Equipment into service the Contractor shall arrange verification and operational tests of the Line Specific Electrical Control Equipment which it has renewed to demonstrate compliance with the Performance Specification and Schedule 13.1 (Initial Works) and

shall give sufficient advance notice of the proposed test dates to the Contract Manager. The operational tests shall be as specified in Schedule 13.1 (Initial Works) to demonstrate that such renewed Line Specific Electrical Control Equipment complies with the Performance Specification and Schedule 13.1 (Initial Works). The Contract Manager shall only be entitled to reject the relevant renewed Line Specific Electrical Control Equipment (by giving notice to that effect to the Contractor) if it fails such operational tests.

8.8 The Parties shall co-operate to ensure that the Services and the operation of the Underground Network are not disturbed or interrupted as a result of the works required under Clause 8.6.

### **Maintenance of Renewed Line Specific Electrical Control Equipment**

8.9 The Contractor shall be responsible for the maintenance of the Line Specific Electrical Control Equipment existing as of the Starting Date and that which has been renewed under this Clause 8 (excluding Line Specific Electrical Control Equipment for the Jubilee Line Extension being provided pursuant to Known Third Party Works (contract reference 114 as listed in Schedule 23.51) so that it is available to LUL and suitable for the purpose of Interface Switching. However, the Contractor shall not be responsible for further renewal of any piece of the Line Specific Electrical Control Equipment once it has passed the point of economical repair (assessed in accordance with the Regimes) provided in the case of the Line Specific Electrical Control Equipment installed by the Contractor that the equipment in question has lasted for a minimum of 20 years from installation (excluding for the avoidance of doubt any consumables or parts of such equipment which are replaced on a routine or regular basis pursuant to the Operation and Maintenance Regime for such equipment). After such date as the Line Specific Electrical Control Equipment installed by the Contractor has passed the point of economical repair (and if LUL has not replaced or required the Contractor to replace the Line Specific Electrical Control Equipment), the Contractor shall only be in default or in any way liable under this Contract in respect of such equipment if the Contractor does not act reasonably in the maintenance of such equipment, taking account of, inter alia, availability of hardware and software support. The Contractor shall give notice at least 5 years in advance of the date when it reasonably expects as assessed to the extent practicable in accordance with the Regimes any item of such equipment (the *Expired Equipment*) to require further renewal. LUL shall within 24 months of the date of the Contractor's notice issue a Variation Notice in accordance with Clause 23 advising the Contractor as to how the Expired Equipment is to be replaced (by LUL, or by the Contractor) and the effect (if any) upon Schedule 5.1 (Performance Specification).

8.10 Where LUL determines that the Line Specific Electrical Control Equipment shall be replaced by LUL, the Contractor shall co-operate with LUL in facilitating the replacement of such equipment and permit such access as is necessary to enable LUL or its agents to make connections to the System, including the Electrical Control Equipment and to conduct any tests that are necessary before commissioning new Line Specific Electrical Control Equipment. LUL may issue a Variation Notice requiring that responsibility for maintenance of such new Line Specific Electrical

Control Equipment shall pass to the Contractor subject to compliance with the Known Third Party Works Adoption Procedures.

### **Emergency Situation**

8.11 LUL and the Contractor shall make available to each other as set out in the Technical Interface Procedures, the Electrical Control Equipment and Line Specific Electrical Control Equipment under their respective control. Such equipment shall be tested in accordance with the Technical Interface Procedures and Schedule 18.9 (Testing).

### **Plant out of Service List**

8.12 Subject to the provisions of Clause 15.2 the Contractor shall ensure that from the Starting Date and for the remainder of the Contract Duration a list of plant out of service and technical limitations is kept for all equipment in the System. This list shall be compiled by electrical equipment type and by fault category and shall be supplied to the Contract Manager in accordance with and shall comply with the requirements of paragraph 4.1(f) of Schedule 43.3 (Contract Management).

### **Operational Log**

8.13 Both Parties shall ensure that from the Starting Date and for the remainder of the Contract Duration that each keeps an Operational Log in accordance with the provisions of Schedule 8.11 and that the Contract Manager and the Contractor are provided with a copy of such log in accordance with the provisions of paragraph 5.1 and 5.2 of Schedule 43.3 (Contract Management) and at such other times as the Contract Manager or the Contractor may reasonably require.

### **EMERGENCY POWER**

9.1 Subject to Clause 9.2, the Contractor shall provide and maintain availability of Emergency Power to meet the requirements of paragraph 2.6 and 5 of Schedule 5.1 (Performance Specification).

9.2 The Contractor shall not as at the Starting Date be required to provide and maintain availability of Emergency Power as set out in paragraphs 2.6 and 5 of Schedule 5.1 (Performance Specification), but shall be responsible for providing elements of Emergency Power on completion of relevant Stages of the Emergency Supply Plan, from the dates specified in Schedule 9.1 (Emergency Supply Plan) for the Contract Duration.

9.3 Subject to the terms of this Contract, the Contractor shall restore supply and delivery of Supplied Electricity and/or delivery of Procured Electricity as soon as practicable after any disruption to or failure in such supply and/or delivery. The Contractor shall when providing Emergency Power and/or restoring supply and/or delivery of Supplied Electricity or Procured Electricity comply with the Contingency Plan, the Performance Specification and any applicable Technical Interface Procedures.

9.4 The Contractor shall provide such information to, and cooperate with, LUL to conduct an investigation following any failure in delivery and/or supplies which requires the provision of Emergency Power. The Contractor shall ensure that sufficient information about the causes and likely duration of any such failure are available to LUL in accordance with the requirements of this Contract and that such information is to the best of the Contractor's knowledge full and accurate.

9.5 In order to evidence availability of Emergency Power, the Parties shall implement the regime for testing and monitoring the arrangements for Emergency Power set out in Schedule 18.9 (Testing). If the Contractor does not receive from LUL a test response for any Local Emergency Power Supply on the due date for that Station as determined in accordance with Schedule 18.9 (Testing), it shall notify LUL as soon as reasonably practicable, and in any event prior to the date of the next scheduled test for that Station. LUL will use reasonable endeavours to provide the missing test response before the date of the next scheduled test. If an Emergency Supplies Failure occurs at the affected Local Emergency Power Supply before LUL provides the missing test response and on or before the date of the next scheduled test, the Emergency Supplies Fee will not be reduced under Clause 21.13 or subject to an Emergency Supplies Refund under Clause 21.18 in relation to the Local Emergency Power Supply which is the subject of the missing test result for any period prior to the date on which the missing test result should have been received.

9.6 The Contractor shall be entitled to issue a Proposal Notice pursuant to Clause 23.36 in relation to Costs and increased working time which cannot reasonably be avoided by the Contractor and which are necessary to implement the Emergency Supply Plan, in relation to any change to any of the Qualifications and Assumptions set out in Schedule 9.1 (Emergency Supply Plan).

#### **USE OF SYSTEM AND REGULATION**

10.1 Without prejudice to the Contractor's right to use the System as permitted by Clause 10.2 and unless requested by LUL to do so, the Contractor shall not itself use, or permit any other party to use, the System to make or receive supplies of electricity other than pursuant to this Clause. For the avoidance of doubt the Contractor shall not at any time use the Generating Stations for any purpose other than to meet its obligations to LUL under the Contract.

10.2 Subject to Clause 10.5A the Contractor shall be entitled to deliver electricity via the System (whether or not the Contractor is the supplier) to Purchasers and/or for Users up to the limit of the Excluded Capacity and up to such further limit of Capacity as may be added by the Contractor to the System under Clause 10.17 provided the Contractor demonstrates to the reasonable satisfaction of LUL in each case and in accordance with Clause 10.5 that the delivery of electricity to a Purchaser or for a User will not adversely affect the provision of Services to LUL or compliance by the Contractor with its obligations under this Contract.

10.3 The Contractor shall notify the Contract Manager before entering into any contract:

- (a) to deliver electricity to a Purchaser; or
- (b) to deliver electricity for a User; or
- (c) to connect a Purchaser to the System;

as part of the Four Weekly Report, provided that if the nature of the request requires immediate action in the interests of the Parties, notification shall be given by the Contractor to the Contract Manager immediately with written notice as soon as reasonably practicable.

10.4 The Contractor shall notify the Contract Manager in writing if the Contractor:

- (a) receives from a third party a formal written request to be connected to the System; or
- (b) receives from a third party a formal written request to use the System for the purposes of delivery of electricity supplied by that third party to a third party customer.

10.5 All notifications in accordance with Clause 10.3 shall be accompanied by such information as is necessary to demonstrate:

- (a) that implementation of the proposals will not adversely affect the provision of the Services to LUL or compliance by the Contractor with its obligations under this Contract; and
- (b) that implementation of the proposals will be within the limit of Excluded Capacity (as amended in accordance with the Contract); and
- (c) the Loss Factor attributed to the Purchaser; and
- (d) that the results of the credit checks referred to in Clause 10.6 are satisfactory.

The Contractor shall supply any such further information as may be reasonably requested by LUL to demonstrate compliance with Clause 10.2.

10.5A To the extent that any proposal by the Contractor pursuant to Clause 10.2 requires access to or use of (other than for access to repair, maintain or renew any equipment pursuant to the provisions of this Contract including any previously agreed pursuant to this Clause 10.5A) the Underground Network or any other property of LUL or TfL (other than the Properties), the Contractor shall not be entitled to any such use of the Underground Network or such other property of LUL or TfL for the purpose of using the System (notwithstanding compliance with Clause 10.2) without the consent of LUL, and the Contractor shall enter into such agreements or arrangements concerning such access to or use as LUL may specify save that there shall be no change to the commercial terms in this Clause 10.

10.6 Before entering into any contract with a Purchaser and/or User, and unless the Contractor is required to enter into the contract under the terms of the 1989 Act, the



Contractor shall conduct such credit checks on the proposed User or Purchaser as any reasonably prudent electricity distributor would conduct in the circumstances.

10.7 If the Contract Manager is reasonably satisfied that the matters in Clause 10.5 have been demonstrated and subject to compliance with Clause 10.5A he shall inform the Contractor in writing as soon as reasonably practicable and in any event within 30 days after notification in accordance with Clause 10.3 (or, if later, provision of information pursuant to Clause 10.5) and the Contractor may then proceed with implementing the proposals in accordance with the provisions of this Clause 10.

10.8 If in the Contract Manager's opinion the matters in Clause 10.5 have not been adequately demonstrated or Clause 10.5A has not been complied with or consent is refused under Clause 10.5A he shall inform the Contractor of his decision and the detailed reasons for it in writing as soon as reasonably practicable, and in any event within 30 days after notification in accordance with Clause 10.3. The Contractor shall not implement any proposals under Clause 10.3 without the consent of the Contract Manager (such consent provided on the basis set out in this Clause 10) unless directed to do so under the terms of the 1989 Act or unless the Contract Manager has failed to respond within the specified time period, which shall be deemed to constitute consent provided the Contractor has, at least 5 days prior to the expiry of the 30 day period delivered a written reminder to LUL and provided that no such deemed consent shall apply in relation to Clause 10.5A.

10.9 As soon as reasonably practicable the Contractor shall propose and the Parties shall agree a proforma agreement in relation to connection of a Purchaser and/or use of the System for a User to which (subject to the terms of this Clause 10) LUL shall not unreasonably withhold consent. Following such agreement the Contractor shall be entitled to propose changes to LUL either (i) to such proforma, or (ii) on an individual basis, to which LUL will (subject to the terms of this Clause 10) not unreasonably withhold consent. Without prejudice to the foregoing, the Contractor shall not enter into an agreement with a User or Purchaser permitting any such person to connect to or to use the System to make or receive supplies of electricity unless the agreement with the User or Purchaser contains, as a minimum, the following terms:

- (a) a limit on the amount of Capacity reserved in the System for the User and/or Purchaser to an amount which does not exceed, when taken with all other existing demands for other Purchasers and/or Users the Excluded Capacity (as increased from time to time); and
- (b) the right for the Contractor to disconnect and reconnect any Purchaser and/or pursuant to any agreement with a User any person who has a connection to the System, at the entry and exit points, in order that the Contractor can fulfil its obligations to LUL in relation to the Contingency Plan and otherwise under this Contract; and
- (c) as a condition precedent to an agreement for connection of a Purchaser, the installation of meters to the standard set out in Clause 12 and obligations for

access to and provision of the information to the Contractor, the relevant User and/or to LUL; and

- (d) a Loss Factor attributable to any Purchaser.

LUL shall be deemed to be unreasonably withholding consent where the proposed proforma agreement or any proposed change in relation to connection of a Purchaser and/or use of the System for a User is in accordance with current market practice except to the extent that it is contemplated otherwise in or required for compliance with this Clause 10.

10.10 The Parties agree that any such agreement with a Purchaser or User shall be on terms that:

- (a) it (or in accordance with Clause 10.10(b), the novated contract) may continue for a period up to (but not exceeding, unless the Contract Manager otherwise agrees) five years after the Expiry Date; and
- (b) LUL will, to give effect to Clause 10.10(a) above, either:
- (i) in the case of expiry of the Contract Duration or early termination in circumstances other than those specified in (ii) below enter into a novation agreement in any reasonably prescribed form and subject to Clause 10.10A, and pay the Contractor the amounts that the Contractor would have received under the relevant agreement by way (at LUL's election) of a lump sum in advance or continuing shared revenue or in LUL's sole discretion, grant the Contractor the right to use the System in order to continue delivery of electricity to or for the Purchaser or User on the basis of the shared revenue arrangements specified in Clause 10.11; or
  - (ii) in the case of Contractor Default Termination enter into a novation agreement or grant a use of System right as prescribed under Clause 10.10(b)(i), but so that whether the Contractor receives payment by way of lump sum or shared revenue, the Contractor shall only be entitled to recover after taking account of the costs and benefits of Taxation Third Party Costs incurred in making the connection and/or use of system rights.

For the avoidance of doubt, the Contractor shall not be entitled to any payment pursuant to this Clause 10.10 for Third Party Costs to the extent that the Contractor has been compensated for such Third Party Costs pursuant to Schedule 29.2 (Termination Payments).

10.10A In the case of any such contracts novated pursuant to Clause 10.10(b), the Contractor agrees to fulfil all its obligations in relation to each novated contract prior to the date with effect from which each novated contract is novated to LUL. The Contractor will confirm that it has so fulfilled its obligations (and the Purchaser or User will agree to this) in the tripartite

agreement to be entered into between LUL and the Contractor in relation to each novated contract. In the event that the Contractor is unable to make such confirmation on the date on which each novated contract is novated to LUL, LUL shall be entitled to withhold from any sums due to the Contractor under Clause 10.10 any sums in respect of liabilities outstanding at the effective date of the novation.

10.11(a) Subject to 10.11(b) the Contractor shall be entitled to charge on an arm's length basis each Purchaser or User for the delivery of electricity but shall account for and pay to LUL in accordance with Clause 22 50 per cent of the Net Purchasers' Revenues or Net Users' Revenues, as the case may be, received by the Contractor on a yearly basis;

(b) If in order to deliver electricity to a Purchaser or for a User the Contractor expends non-recurring expenditure, the Contractor shall be entitled (before accounting to LUL for 50% of any remaining amounts) also to recover (on a cashflow, and not on an accounting basis) the full amount of its Third Party Costs in respect of such non-recurring expenditure from Net Purchasers' Revenues or Net Users' Revenues received from the Purchaser or User **PROVIDED THAT** the Contractor shall only be entitled to make such deduction to the end of the third year after such Third Party Costs were incurred.

10.12 For the purposes of this Clause 10, **Third Party Costs** shall mean any of the items referred to under (a), (b), (f), (g), (j) and (k) of the definition of Costs reasonably and properly incurred for the purposes of making the connections and/or granting the use of system rights. **Net Purchasers' Revenue** and **Net Users' Revenue** shall mean revenues received from the Purchaser or User (as the case may be) less any of the items referred to under (b), (g), (h), (j) and (k) of the definition of Costs so far as reasonably and properly incurred for the reason of delivery of electricity to or for the Purchaser or User, and in addition any statutory liabilities, data collection costs, or penalties imposed by the Electricity Regulator or the Collector in relation to the disconnection of any Purchaser and/or pursuant to any agreement with a User, any other person who has a connection to the System.

10.13 LUL, acting reasonably, shall be entitled to access to all relevant books of financial and supporting information and documentation to enable LUL fully to satisfy itself that the amounts of Third Party Costs in respect of such non-recurring expenditure to be deducted by the Contractor and/or any of the amounts deducted pursuant to the definition of **Net Purchasers' or Net Users' Revenue** have been reasonably and properly incurred or paid and the amounts paid to LUL pursuant to this Clause 10.13 are correct and in accordance with the requirements of this Clause 10.13.

10.14 Subject to Clause 10.10, LUL shall not be liable to the Contractor or any Purchaser or User for any Consequential Loss that may be suffered by the Contractor or any Purchaser or User in relation to any agreement of the Contractor with a User or Purchaser except as provided in Clause 28.12 and the Contractor shall indemnify LUL

against any such claim made against LUL for Consequential Loss by a User or Purchaser.

10.15 The Contractor and LUL shall each use all reasonable endeavours to ensure that the Lots Road Licences are maintained in full force and effect for so long as is required by The 1989 Act (which shall include the payment of any necessary fees) and shall not voluntarily take any steps which would result in the Lots Road Licences being modified to include more onerous conditions or otherwise result in a more onerous regulatory regime being imposed on the System. Each Party shall inform the other immediately it becomes aware for any reason of a proposal to modify the Lots Road Licences. Subject to Clause 32, the Parties shall co-operate fully with each other with regard to any proposed modification to the Lots Road Licences to include more onerous conditions or otherwise result in the imposition of any more onerous regulatory regime on the System. On the earlier of the Lots Road Licences no longer being required under The 1989 Act or the completion of the Emergency Supply Plan, both Parties will cooperate to surrender the Lots Road Licences to the Electricity Regulator.

10.16 Save as otherwise provided in this Contract, the Contractor's exercise of its right under this Contract to use the System for delivering electricity for Users or to Purchasers is at the Contractor's own risk. Other than that arising under Clause 10.10, LUL shall in relation to any agreement of the Contractor with a User or Purchaser have no liability except in the case of death or personal injury caused by LUL's negligence or as provided in Clause 28.12 to the Contractor for any such Purchasers or Users, or to any other person affected thereby arising out of the use of the System for that purpose (and subject to Clause 25 and the provisions of this Clause 10.16 the Contractor shall indemnify LUL against any LUL Losses arising under this Clause 10.16 to the extent that the LUL Loss arises out of delivery to Purchasers or for Users under any agreement of the Contractor with a User or Purchaser or the act or omission of any User or Purchaser in connection thereto).

10.17 Without prejudice to Clause 10.2 the Contractor shall inform the Contract Manager by such reasonably practicable methods as the Parties may choose to employ of any plans to do works which are not the subject of a Variation which will increase the limit of Capacity within the System at any Relevant Point. Any Capacity added to the System other than to enable the Contractor to perform its obligations under this Contract to deliver electricity to LUL shall become Excluded Capacity. The Contractor shall give the Contract Manager the opportunity to offer to share a proportion of the costs of the works in return for a proportion of the Capacity which will be added to the System at the Relevant Point and which would otherwise become Excluded Capacity. The Contractor shall review any proposals of the Contract Manager, but shall be under no obligation to accept them. This Clause shall be without prejudice to LUL's rights under Clause 23.

10.18 If:

- (a) LUL or pursuant to Clause 28.12 a third party steps into the operation of generation of electricity at Lots Road Generating Station under Clause 28.12 to

such an extent that the Contractor is no longer using its Lots Road Licence which relates to generation; or

- (b) the Contract is terminated early by either Party under Clause 28;

the Contractor will on request by LUL continue to hold the Lots Road Licence which relates to supply (subject to a Change of Law or other event which renders this illegal or impossible) for the period set out in Clause 10.19. LUL agrees to pay all losses, costs and expenses reasonably incurred by the Contractor in relation to compliance by the Contractor with its obligation under this Clause 10.18 and compensate the Contractor in accordance with Clause 28.12.

10.19 The Contractor's obligation shall apply in relation to:

- (a) Clause 10.18(a), from the date of the step-in notice until the earliest of:
- (i) the date of the step-out notice; or
  - (ii) the date of the expiry of the Suspension Period as defined in the Lots Road Licence which relates to supply; or
  - (iii) the cessation of generation at Lots Road;
- (b) Clause 10.18(b), from the Expiry Date until the earliest of:
- (i) the cessation of generation at Lots Road; or
  - (ii) the date of expiry of the Suspension Period as defined in the Lots Road Licence which relates to supply; or
  - (iii) the appointment by LUL of a replacement contractor; or
  - (iv) three months.

#### **COMPRESSED AIR AND SIGNALLING POWER**

11.1 The Contractor shall, from the Starting Date, provide compressed air to LUL in accordance with the provisions of this Contract.

11.2 The Contractor shall, from the Starting Date, provide signalling power to LUL in accordance with the provisions of this Contract.

#### **METERING**

12.1 The Contractor shall be responsible for maintaining, repairing, renewing and where relevant installing Metering Equipment described in paragraph 6 of Schedule 5.1 so as to ensure that it complies with the requirements of paragraph 6 of Schedule 5.1 (Performance Specification).

12.2 At any time when LUL is receiving Procured Electricity, LUL's obligation to pay its supplier for that electricity shall be the Input to the System less the amount of electricity used for supplies to any Purchasers for whose consumption LUL is not under a legal obligation to pay the Contractor calculated by applying the Loss Factor to the metered consumption for that Purchaser. Save as expressly provided in this Clause 12, the Contractor shall not be required to make any contribution towards LUL's payment for Procured Electricity.

12.3 The Contractor shall ensure that:

(a) Metering Equipment is provided for any Purchaser to the standard for a Purchaser of that size and type as required by the Balancing and Settlement Code (BSC) (as amended and restated from time to time);

(b) the agreement with any Purchaser includes a Loss Factor.

12.4 If LUL suffers any loss as a result of:

(a) a breach of Clause 12.3(a) to the extent that Metering Equipment provided at installation was not at installation to the standard for a Purchaser of that size and type as required by the Balancing and Settlement Code (BSC) (as amended and restated from time to time); or

(b) a breach of Clause 12.3(b), the Contractor shall indemnify LUL to the extent of such loss and such sums shall for the avoidance of doubt not contribute towards the Performance Liability Limit.

12.5 The Contractor shall use all reasonable endeavours to ensure that any agreement entered into by the Contractor permitting use of the System by a User shall contain as a minimum requirement obligations in relation to the accuracy of the Metering Equipment and an indemnity or other remedy for breach of contract in favour of the Contractor in the event of any loss suffered by the Contractor and/or LUL as a result of the inaccuracy of the Metering Equipment as against the standard set out in Clause 12.3 or such other standard as agreed between the Parties. The Contractor agrees to enforce any rights it has against the User and to the extent that the Contractor receives any amount from the User following such enforcement after taking account of any Tax for which the Contractor would not have been liable but for the recovery from the User and also taking into account the treatment for Tax of the payment to LUL under its use of system agreement the Contractor shall pay LUL for any loss suffered by LUL as a consequence of the inaccuracy of the Metering Equipment in respect of that User and such sums shall for the avoidance of doubt not contribute towards the Performance Liability Limit.

12.6 The Contractor shall use its best endeavours to ensure that its use of electricity in the System (including in the Generating Stations) is reasonable in all the circumstances, and that electricity paid for by LUL pursuant to this Contract but used by the Contractor is used solely for the purposes of performance of the Contract.

12.7 LUL may at any time require the Contractor to commission an independent report from an independent firm of electrical engineers approved by LUL (acting reasonably) (or in the absence of agreement nominated by the President of the Institution of Electrical Engineers) on the level of and reason for electrical losses in the System. If the report shows that the electrical losses exceed 14% of the Input to the System (or any higher percentage taking into account any Loss Factor agreed in relation to a Purchaser and/or User (the *Permitted Losses*)) for any reason other than LUL's use and operation of the Underground Network the Contractor shall pay the costs of the report and indemnify LUL in respect of such additional electrical losses in excess of the Permitted Losses until such time as the Contractor demonstrates to the reasonable satisfaction of LUL that the electrical losses either are equal to or lower than the Permitted Losses or, to the extent they exceed the Permitted Losses they do so only by reason of LUL's use and operation of the Underground Network.

12.8 If the Contractor becomes liable under Clause 12.7 to indemnify LUL for increased charges for fuel (provided by LUL to the Contractor pursuant to Clause 5) or Procured Electricity, the Contractor shall also pay interest at the Commercial Interest Rate from the time when any payments in respect of which the Contractor is obliged to indemnify LUL were made by LUL to the time when the Contractor makes payment to LUL.

12.9 The provisions of paragraph 6 of Schedule 5.1 (Performance Specification) shall apply in relation to the reading of Metering Equipment, treatment of metering inaccuracies and the procedures for sealing, repairing, recalibrating and certifying Metering Equipment.

12.10 The provisions of Schedule 18.9 (Testing) shall apply in relation to the testing of Metering Equipment.

#### **COMPLETION OF INITIAL WORKS**

13.1 The Contractor shall complete the Initial Works by the relevant Completion Dates specified in Schedule 25.4 (Initial Works) (save where extended in accordance with Clause 13A).

13.1A The Contractor shall complete the works the subject of Phase 1 by the Completion Date for Phase 1 and the works the subject of Phase 2 by the Completion Date for Phase 2 (save where either is extended in accordance with the provisions of this Contract including Clause 13A)<sup>4</sup>

13.2 The Contractor shall, subject to the provisions of this Contract, be responsible for ensuring that it has obtained such rights of access and complied with such Technical Interface Procedures and all other requirements as are necessary to ensure that completion of the Initial Works occurs by the relevant Completion Date.

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<sup>4</sup> Power Quality Variation

13.3 During the period from the Starting Date to the relevant Completion Date, the Derogations from the requirements of Schedule 5.1 (Performance Specification) listed for the Initial Works in Schedule 20A (Derogations) shall apply.

13.4 If any of the Initial Works is not implemented by the relevant Completion Date (other than as a result of the provisions of Clause 31 (Force Majeure) or a breach or failure to provide a LUL Dependency) then without prejudice to LUL's other rights under this Contract, the provisions of Clause 20 (Service Delivery Points and Liquidated Damages) shall apply.

13.5 The Contractor shall be entitled to issue a Proposal Notice pursuant to Clause 23.36 in relation to Costs and increased working time which cannot reasonably be avoided by the Contractor, and which are necessary to complete any package of the Initial Works, in relation to any changes to the Qualifications and Assumptions contained in Schedule 13.1 (Initial Works) which relate to the Initial Works.

#### **EXTENSIONS OF TIME**

13A.1 The Contractor shall not be entitled to make a claim for an extension of time under this Clause 13A in circumstances where the occurrence of a Potential Delay Event has resulted in LUL or the Contractor (as the case may be) issuing a Variation Notice, a Third Party Works Adoption Variation Notice, an Instruction Notice, a Direction Notice or a Proposal Notice. In such circumstances, any claim for an extension of time shall be made in accordance with the procedure set out in Clause 23 or Schedule 23.16A (Adoption Procedures) as applicable. Where the issue of a Variation Notice, a Third Party Works Adoption Variation Notice, an Instruction Notice, a Direction Notice or Proposal Notice causes a Potential Delay Event, the Contractor shall be entitled to claim under Clause 23.39 or 23.42. Where a Variation or Third Party Works Adoption Variation does not proceed following a Variation Notice, a Third Party Works Adoption Variation Notice, an Instruction Notice, a Direction Notice or a Proposal Notice the Contractor shall be entitled to claim under this Clause 13A.

13A.2 The Contractor shall give written notice (except in cases of emergency when shorter, oral notice may be given but which shall be confirmed in writing as soon as reasonably practicable thereafter) to the Contract Manager (substantially in the form set out in Schedule 13A (Notice of Extension of Time)) promptly after any Potential Delay Event occurs and the Contractor becomes aware of the same.

13A.3 On receipt of any notice pursuant to Clause 13A.2, the Contract Manager shall allocate a unique number to the claim (which he shall notify to the Contractor) and he shall also maintain a sequentially numbered register of all claims made, and extensions of time granted pursuant to this Clause 13A. All subsequent correspondence between the Parties in relation to any claim made, or extension of time granted, under this Clause 13A shall bear the allocated number.

13A.4 Any notice given pursuant to Clause 13A.2 shall:

- (a) state the likelihood and probable extent of the delay; and



- (b) specify whether the Contractor considers it is, or may become, entitled to an extension of time.

13A.5 The Contractor shall use, and continue to use, its reasonable endeavours, to avoid or reduce the effects or likely effects of any Potential Delay Event on its ability to comply with its obligations under this Contract provided that this does not entitle the Contractor to, or oblige LUL to provide, (subject to the provisions of this Contract) any rights of access, facilities and/or other services from LUL beyond those provided in or pursuant to this Contract.

13A.6 The Contractor shall as soon as practicable but in any event within 14 days of the date of the notice given under Clause 13A.2 submit by further written notice to the Contract Manager:

- (a) full and detailed particulars of the cause and extent of the delay and the effects of the delay on the Contractor's ability to comply with its obligations under this Contract;
- (b) details of the documents that will be relied upon to support any claim of the Contractor for an extension of time based on the Potential Delay Event;
- (c) details of the measures which the Contractor has adopted and/or proposes to adopt to avoid or reduce the effects of the Potential Delay Event upon its ability to comply with its obligations under this Contract;
- (d) the proposed dates that the Contractor reasonably estimates for achieving any relevant Completion Dates, Stage Completion Date or Stage Final Completion Date or any completion date in respect of any works that are the subject of a Variation or a Third Party Works Adoption Variation; and
- (e) any consequent changes proposed to the Contract including any extension of any Derogation Period and any proposed additional rights of access, facilities and/or other services needed from LUL.

13A.7 Where a Potential Delay Event has a continuing effect or where the Contractor is unable to determine whether the effect of the Potential Delay Event will actually cause it not to be able to comply with its obligations under this Contract, such that it is not practicable for the Contractor to submit full and detailed particulars in accordance with Clauses 13A.6, the Contractor shall instead submit to the Contract Manager within 14 days of the notice given under Clause 13A.2:

- (a) a statement to that effect with reasons together with interim written particulars (including details of the likely consequences of the Potential Delay Event on the Contractor's ability to comply with its obligations under this Contract and an estimate of the likelihood and likely extent of the delay); and
- (b) thereafter at intervals of not more than 14 days further interim written particulars until the actual delay caused (if any) is ascertainable, whereupon the Contractor shall as soon as practicable, but in any event within 28 days

thereof, submit to the Contract Manager the items referred to in Clauses 13A.6.

13A.8 If the Potential Delay Event notified by the Contractor under Clause 13.A.2 is:

- (a) a cause of disturbance to the progress of the Contractor's work under this Contract or the documents referred to in it for which LUL, its agents, employee and/or its contractors or subcontractors or the Contract Manager is responsible, including a failure to provide or breach of any LUL Dependency; or
- (b) the occurrence of any Discriminatory Change of Law or Safety Change; or
- (c) the occurrence of a Force Majeure Event (or the consequence thereof) preventing performance of the Contractor's obligations under this Contract; or
- (d) the occurrence of a Supervening Event; or
- (e) any other event, the occurrence of which entitles the Contractor, pursuant to any express provision of this Contract, to make a claim for an extension of time under this Clause 13A; or
- (f) a delay in obtaining Required Consents in relation to the decommissioning of Lots Road in accordance with Schedule 9.1 (Emergency Supply Plan) provided the Contractor has complied with the requirements in Schedule 9.1 Appendix 2 (Emergency Supply Plan) and further provided that the Parties have not previously agreed any relief for the Contractor pursuant to Schedule 9.1 (Emergency Supply Plan);

then to the extent that any such Potential Delay Event prevents performance of the Contractor's obligations under this Contract the Contract Manager shall grant an extension of time (as is fair and reasonable in the circumstances, having due regard to the requirements of the Contractor as detailed in the notice delivered pursuant to Clause 13A.6 and the reasonable endeavours of the Contractor in accordance with Clause 13A.5) to comply with its obligations under this Contract including, if applicable, an extension of any Completion Date or completion date in respect of any works that are subject of a Variation or Third Party Works Adoption Variation and an extension to the relevant Derogations in Schedule 20A (Derogations) and in relation to Clause 13A.8(f), will discuss with the Contractor (who shall act reasonably in such discussions) alternative courses of action, or where some other course of action is not agreed a Variation to the scope of Schedule 9.1 (Emergency Supply Plan) to relieve the Contractor from its obligation to obtain the Required Consents and complete the decommissioning of Lots Road, subject to agreement as to any consequential Price Adjustment in respect of the reduced obligations and risk to the Contractor.

13A.9 Notwithstanding the provisions of this Clause 13A but without prejudice to Clause 31 the Contractor shall not in any circumstances be entitled to an extension of time under this Clause 13A to the extent that the Potential Delay Event is attributable to any breach by the Contractor (or its agents or subcontractors) of its obligations

under the Project Agreements or by an event which is not described in Clause 13A.8 and, without prejudice to the generality of the foregoing, the Contractor shall not be entitled to an extension of time under this Clause 13A to the extent that the cause of the delay is:

- (a) non-availability or shortage of the Contractor's equipment, labour, utility services equipment, plant, goods or materials; or
- (b) without prejudice to Clauses 31.4(d) or 31.4(e) inclement weather conditions adversely affecting the Contractor's ability to comply with its obligations or the progress of the work on, under, or in connection with, this Contract (including, without limitation, thunderstorm or rainstorm warning signals); or
- (c) subject to Schedule 18.11 (Access), the Contractor's failure to take advantage of access provided by LUL to shared facilities and/or access to the Site in accordance with the dates agreed with the Contract Manager.

13A.10 The Contract Manager shall as soon as reasonably practicable and in any event within 30 days, or such further time as may be reasonable in the circumstances, of:

- (a) receipt of final, full and detailed particulars under Clause 13A.6 of the cause and actual effect of any Potential Delay Event; or
- (b) where an event has a continuing effect or where the Contractor anticipates a significant delay before the actual effect of a Potential Delay Event becomes ascertainable and the Contract Manager considers (acting reasonably) an interim extension of time should be granted, receipt of particulars contained in Clause 13A.7 or such other particulars from the Contractor as in the Contract Manager's opinion (acting reasonably) are sufficient for him to determine whether the Contractor should be granted such an interim extension of time (to be considered on the basis set out in Clause 13A.8);

grant and notify to the Contractor such extension by written notice (substantially in the form set out in Schedule 13A (Notice of Extension of Time)). The Contract Manager in granting any extension shall take into account all the circumstances known to him at that time, provided that:

- (c) if the Contract Manager disputes whether the Potential Delay Event constitutes a potential ground upon which an extension of time may be granted in accordance with this Clause 13A, the Contract Manager shall as soon as reasonably practicable notify the Contractor in writing accordingly; and
- (d) the Contract Manager may in the absence of any claim assess and determine (on an interim basis) the delay that he considers (acting reasonably) has been (or is likely to be) suffered by the Contractor as a result of any of the events described in Clause 13A.8, in which case he shall notify the Contractor in writing of such determination.

13A.11 If the Contract Manager grants the Contractor an interim extension of time pursuant to Clause 13A.10(b) or 13A.10(d), within 30 days of receipt by the Contract Manager of the information detailed in Clause 13A.6, the Contract Manager shall grant a final extension of time in accordance with this Clause 13A.

13A.12 Prior to completion of the Initial Works, LUL will conduct a review each Period of the extensions of time which are required by the Contractor as a result of the Variations proposed by the Contractor under Clause 23.36 which relate to the Initial Works and shall (taking into account all such Variations during all previous Periods) grant an extension of time in accordance with Clause 13A to any Completion Date (including the Critical Completion Date and Final Completion Date, where applicable) as is reasonable.

13A.12A Prior to completion of the Power Upgrade Works, LUL will conduct a review each Period of the extensions of time which are required by the Contractor as a result of the Variations proposed by the Contractor under Clause 23.36 which relate to the Power Upgrade Works and shall (taking into account all such Variations during all previous Periods) grant an extension of time in accordance with Clause 13A to any PUW Completion Date as is reasonable.

13A.13 Any extension given by the Contract Manager under this Clause 13A to a Completion Date or completion date in respect of any works that are the subject of a Variation or Third Party Works Adoption Variation shall not of itself entitle the Contractor to any extension to any other Completion Date or completion date in respect of any works that are the subject of a Variation or Third Party Works Adoption Variation or any other such period (unless and to the extent that the Potential Delay Event impacts on the Contractor's ability to achieve any other Completion Date or completion date in respect of any works that are the subject of a Variation or Third Party Works Adoption Variation or any other such period) and subject to the provisions of Clause 13A.12 and Clause 13A.12A the Contractor shall be obliged to make a claim under this Clause 13A for an extension of time to each such date or period that it considers it is, or may become, entitled under this Clause 13A.

13A.14 Any extension of time granted by the Contract Manager to the Contractor shall, except as expressly provided elsewhere in this Contract, be in full compensation and satisfaction for any loss sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted.

13A.15 Without prejudice to the preceding provisions of this Clause 13A, the Contract Manager shall be entitled to grant an extension of time at any time, whether prospective or retrospective, whether interim or in full, and whether or not the Contractor shall have made any claim for an extension of time and the Contract Manager shall not be bound by or limited to the grounds (if any) in the Contractor's claim. The Contract Manager shall notify the Contractor in writing of any extensions of time granted pursuant to this Clause 13A.14.

## **SAFETY AND SECURITY**

## Safety

14.1 The Contractor shall provide the Services and perform all its obligations under the Contract in a manner which ensures (so far as reasonably practicable) the safety of all of LUL's employees, agents, contractors (including the Contractor), passengers and other invitees who are on or near or may be affected by the System, and any other person to whom the Contractor or LUL may owe any duty of care or other responsibility in relation to the System and which takes full account of the risks involved in operating the System and, without prejudice to the foregoing, so as not to prejudice LUL's ability to provide a safe Underground Network.

14.2 Without prejudice to the generality of Clause 14.1, the Contractor shall in performing its obligations under this Contract comply with:

- (a) (i) all relevant health and safety law applicable to the Services or to the Contractor in performing the Services and (ii) shall, where applicable and the Contractor is reasonably able to do so, enable and assist LUL to comply with all relevant health and safety law applicable to LUL, LUL's Distribution System or the Underground Network and which is affected by the performance by the Contractor of this Contract; and
- (b) all principles and guidance published from time to time by regulatory authorities which are applicable to the Contract or the System or the Contractor in his performance of the Contract and with which the Contractor could reasonably be expected to comply; and
- (c) all requirements specified from time to time by LUL in order to ensure the safety of the Underground Network and any and all of LUL's employees, agents, contractors (including the Contractor), passengers and other invitees who are on or near or may be affected by the Underground Network or the System. The requirements of this Clause 14.2(c) as of the Starting Date are set out in the Contract Safety and Environmental Conditions and the Safety Reference Manual identified as such by the Parties initialling a copy for identification purposes.

Subject to Clause 32 the Contractor shall comply with all such obligations at no additional cost to LUL.

14.3 In any case where LUL has a legislative or regulatory responsibility or liability in relation to the Services or the System which cannot be discharged or fulfilled by the Contractor in the performance of its obligations under the Contract and which has been brought to the Contractor's attention, the Contractor shall obtain LUL's approval or consent in accordance with the procedures set out in Schedule 43.3 (Contract Management) before implementing any arrangements or carrying out any works which may materially affect LUL's liability under or ability to comply with such requirements and shall comply with any requirements imposed by LUL (consistent with the requirements of such legislative or regulatory requirements) to enable LUL to ensure its own compliance. As at the Date of Contract, such Law or Legislation and

the requirements of LUL in relation thereto include (but may not be limited to) those matters set out in Schedule 14.3 (Legislative and Regulatory Requirements).

14.4 In any case where LUL and the Contractor have separate and direct legislative or regulatory responsibilities or liabilities but where the arrangements put in place or activities carried out by either Party to discharge or fulfil such requirements are required to be compatible in order for both Parties to discharge or fulfil such requirements, without prejudice to any other provision of this Contract, the Parties shall co-operate and exchange information as necessary to enable each other to do so and each Party shall take all steps reasonably required in relation to the manner in which such compatibility is to be achieved.

14.5 Without prejudice to Clauses 23 and 32, the Contractor shall at all times when exercising any rights of access to or carrying out any works on any premises of LUL or TfL (other than the Properties) comply with the provisions of the Contract Safety and Environmental Conditions which LUL notifies the Contractor shall apply to the Underground Network and which are applicable to the performance of its obligations under this Contract.

14.6 Without prejudice to Clauses 23 and 32 the Contractor shall at all times when performing the Services or any of its obligations or rights under the Contract at the Properties comply with the provisions of the Contract Safety and Environmental Conditions which LUL notifies the Contractor shall apply to the Properties and which are applicable to the performance of its obligations under this Contract.

14.7 LUL will notify the Contractor from time to time:

- (a) of any corporate safety objectives issued by LUL or TfL;
- (b) of any additional requirements in relation to health and safety or any amendments to or reissue of the Contract Safety and Environmental Conditions or the Safety Reference Manual.

14.8 The Contractor shall implement and operate a Safety Management System to meet as a minimum the requirements set out in Schedule 14.8 (Safety Management System). The Contractor shall ensure that the Safety Management System to be used satisfies all LUL's reasonable requirements in respect of Schedule 14.8 (Safety Management System) before it is implemented. The Contractor shall within two years after the Starting Date obtain certification of that Safety Management System by an accrediting body that has been agreed between LUL and the Contractor or such other accredited body as may be approved by LUL and shall maintain such certification throughout the Contract Duration. The Contractor shall provide LUL with all amendments to such Safety Management System forthwith after any such amendment has been made and prior to implementation. Without prejudice to the other provisions of this Contract, including in particular Clauses 23 and 32 the Contractor shall make all such amendments to its Safety Management System as LUL may reasonably request for the purposes of ensuring compliance with this Clause 14.

14.9 For the purposes of Clause 14.8 and until the Contractor's Safety Management System is certified in accordance with Clause 14.8, the Contractor shall adopt, and comply with the LUL Safety Management System which shall be the Safety Management System applied by LUL in relation to the System as at the Starting Date. The Parties agree where necessary to cooperate to achieve such end.

## **Security**

14.10 The Contractor shall prepare, put in place, maintain and operate in accordance with at all times:

- (a) a Security Plan to meet the requirements in relation to security of the System and the IT Systems as set out in the Performance Specification and in Schedule 14.9(a) (Security Plan) (such plan to be approved by the Contract Manager (such approval not to be unreasonably withheld or delayed) when first proposed and when amended from time to time); and
- (b) a Contingency Plan to meet as a minimum the requirements set out in Schedule 14.9(b) (Contingency Plan) providing for the operation of the System and the IT Systems during the continuance of any fault or failure in the System or the IT Systems including the delivery of Emergency Power and the recovery of normal supply and/or the delivery of Power. A copy of the Contingency Plan must be provided to and approved by the Contract Manager when first developed and when amended from time to time and any such approval is not to be unreasonably withheld or delayed.

14.11 Without prejudice to the other provisions of this Contract, including in particular Clauses 23 and 32, the Contractor shall amend each plan referred to in Clause 14.10 to reflect any changes reasonably requested by the Contract Manager for the purposes of complying with this Clause 14 and shall conduct and co-operate in the conduct of such tests of the plans as the Contract Manager may reasonably require to ensure that those plans are effective and operational.

14.12 Subject to Clauses 15.8 to 15.11 and Clause 34, LUL shall ensure that any Contractor's information which is in the control of LUL is securely maintained and free from improper access.

## **OTHER OBLIGATIONS OF THE CONTRACTOR**

### **General**

15.1 Without prejudice to any other provision of this Contract, the Contractor shall perform its obligations under this Contract in such a way that it:

- (a) complies with the following requirements and practices:
  - (i) any Law and any Required Consents;

- (ii) the Performance Specification and the other terms of this Contract (except as specified in the Derogations in Schedule 20A (Derogations)). For the avoidance of doubt LUL hereby grants to the Contractor the rights contained in the Performance Specification;
  - (iii) the Technical Interface Procedures;
  - (iv) the terms of the Insurances;
  - (v) Good Industry Practice; and
  - (vi) any written instructions of LUL permitted under this Contract provided compliance with such instructions would not breach any Law, Required Consent, policy of Insurance, Good Industry Practice or this Contract;
- (b) shall (so far as not inconsistent with the foregoing) do so in a manner which enables and assists LUL to comply with the requirements and practices set out in Clause 15.1(a) to the extent applicable to LUL and notified by LUL to the Contractor;

in each case, to the extent that the same relate to the provision of Services or performance of its obligations hereunder. Nothing contained in Clause 15.1(a)(vi) shall permit LUL to require the Contractor to do something which would otherwise constitute a Variation or Third Party Works Adoption Variation except in accordance with the Variation or Third Party Works Adoption Variation procedure.

15.1A Where LUL fails to comply with any Law and such non-compliance leads to any Adverse Consequence as defined under Clause 28A, it shall be a breach of an LUL Dependency.

### **LUL/Infraco Estate Plans**

15.1G In producing the Contractor's Property Plans the Contractor shall identify how its property schemes might affect operational or adjoining property (including the identification of locations where additional adjoining property may be required, details of potentially surplus property and any works relating to non-operational property which might affect the relevant third party). The Contractor shall, within 10 Working Days of LUL's request, provide LUL with up to date hard copies of the Contractor's Property Plans.

15.1H LUL may submit to the Contractor from time to time an LUL/Infraco Estate Plan. The Contractor shall review the information contained in each LUL/Infraco Estate Plan submitted by LUL against the Contractor's Property Plans. Within one month of receipt of a LUL/Infraco Estate Plan, the Contractor shall submit in writing to LUL details of any discrepancies and/or conflicting or potentially conflicting activities and proposals between the LUL/Infraco Estate Plan and the Contractor's Property Plans.



15.1I Unless otherwise agreed with LUL, the Contractor shall not in providing the Services or performing any of its obligations under this Contract rely on any information in the LUL/Infracore Estate Plan that property is or shall become available for use by the Contractor. LUL accepts no responsibility, duty of care or liability whatsoever (whether in contract or tort including negligence or otherwise) in connection with the LUL/Infracore Estate Plan save in relation to fraudulent misrepresentation and makes no representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information contained in the LUL/Infracore Estate Plan.

15.1J The Contractor shall not be responsible for any losses suffered or incurred by LUL resulting from the Contractor's actions as described in Clauses 15.1H and 15.1I (save in the event of the Contractor acting in a way which is reckless or grossly negligent with regard to the interests of LUL in the discharge of its obligations under Clause 15.1H).

15.1K If LUL provides to any third party (including any Infracore) an LUL/Infracore Estate Plan which has been reviewed by the Contractor pursuant to Clause 15.1H, it shall ensure that the LUL/Infracore Estate Plan contains no statement or reference to the Contractor having reviewed such LUL/Infracore Estate Plan, nor any trade mark or logo of the Contractor.

### **LUL Space Allocation**

15.1L LUL may notify the Contractor of the applications under the LUL Space Allocation Process from time to time. The Contractor shall comply with the LUL Space Allocation Process as notified by LUL. The Contractor's Representative shall consult and liaise with the SPAP Manager to ensure that the Contractor carries out its obligations under the Contract in a manner which complies with the LUL Space Allocation Process.

15.1M The Contractor shall not be responsible for any losses suffered or incurred by LUL resulting from the Contractor's actions in the administration of the LUL Space Allocation process (save in the event of the Contractor acting in a way which is reckless or grossly negligent with regard to the interests of LUL in the discharge of its obligations under Clause 15.1L).

15.1N If LUL provides to any third party (including any Infracore) the output of the Contractor's input into the LUL Space Allocation Process, whether by including within the Space Allocation Process information or separately, it shall ensure that the relevant information or output contains no statement or reference to the Contractor having provided such input, nor any trade mark or logo of the Contractor.

### **Derogations**

15.2 Where any Derogation is identified in Schedule 20A (Derogations) or subsequently agreed, the Contractor shall be entitled to the relief from liability and any other consequences specified in Schedule 20A (Derogations) or the Final Implementation Details for Variation ECM V0055, as applicable. In the

circumstances identified in each Derogation the Contractor shall not be liable to LUL or suffer any abatement of the Availability Charge on the basis set out in Clause 28A.3.<sup>5</sup>

### **Hierarchy**

15.3 If the Contractor becomes aware of a conflict between any of the above requirements in Clause 15.1, it shall inform LUL of the same. As between Clauses 15.1(a)(ii), (iii) and (vi), the Contract Manager shall be entitled to give written instructions as to which provisions take precedence. The Parties shall meet, discuss (in good faith) and agree the manner in which the Contractor shall perform the Services. Notwithstanding this, prior to such agreement, the Contractor shall give precedence to the requirements of Clause 15.1(a) in the order in which they appear.

### **Responsibility for provision of the Services**

15.4 The Contractor shall be solely responsible for ensuring that it provides the Services as required by this Contract. Except as specifically provided in this Contract, no review, comment, supervision, approval or disapproval of documentation or services and no testing or other exercise of rights under this Contract by LUL shall relieve the Contractor of any liability it would otherwise have or impose any duty or liability on LUL in relation to the way in which the Services are subsequently provided.

### **Statutory Compliance**

15.5 Without prejudice to Clause 32:

- (a) the Contractor shall obtain, maintain in full force and effect, comply with and pay all fees required to be paid in relation to all Required Consents. LUL shall obtain (subject to any assistance of the Contractor specifically provided for in this Contract), maintain in force and effect, comply with and pay all fees required to be paid in relation to the LUL Approvals including all those required in relation to the Railway Safety Case; and
- (b) subject to Clause 15.5(a) and in accordance with the provisions of this Contract, the Contractor shall give all notices and pay all fees including licence fees required to be given or paid by any enactment or any regulation or bye-law of any relevant authority in relation to the provision of the Services as required for the proper performance of the Contractor's obligations under this Contract.

### **Co-operation with LUL, its Employees and Contractors**

15.6 The Contractor acknowledges that the Services provided by the Contractor are only one aspect of the work and services necessary to operate the Underground

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<sup>5</sup> Power Quality Variation.

Network and subject to the provisions of Schedule 18.11 (Access), the Contractor shall take all steps (at no additional cost to the Contractor) as are reasonably required by the Contract Manager to co-ordinate the execution of the Services with the works or services provided by LUL's employees, agents and other contractors including the provision by the Contractor of all reasonable facilities and opportunities for carrying out such work and services and in particular, but without limitation, the right and opportunity to make all appropriate adjustments to and connections to the Assets forming part of the System and shall not cause them unnecessary inconvenience.

15.7 The Contractor shall take all reasonable steps (at no additional cost to the Contractor unless specifically required under the provisions of this Contract) to assist LUL in the day to day planning and operation of the Underground Network as it relates to the System.

### **Computer Virus**

15.8 It shall be an LUL Dependency that all IT Systems made available by LUL to the Contractor at the Starting Date are free from Computer Viruses. The Contractor shall ensure that all IT Systems redelivered to LUL at the Expiry Date are free from Computer Viruses.

15.9 The Contractor shall at all times during the term of this Contract use reputable, up to date commercially available anti-viral software (*Anti-Viral Software*) and shall keep LUL informed during the term of this Contract on the type of anti-viral software the Contractor is using. The Contractor shall use all reasonable endeavours to ensure that any IT Systems used in any way in connection with the Contract remain free from Computer Viruses. LUL shall take the same steps in relation to any computer systems used in connection with this Contract, or in relation to any disks or other material transferring data which in either case interface with or transfer information to the IT Systems used by the Contractor.

15.10 Each Party shall have no remedy against the other in relation to infection of any IT System or LUL's computer systems by Computer Viruses, except in relation to a breach of either Party's obligations under Clause 15.8, or as set out in Clause 15.11.

15.11 The Contractor shall not be liable to LUL in respect of breach of any of its obligations under this Contract, and shall not suffer any abatement of the Availability Charge if having complied with its obligations to use Anti-Viral Software and to use reasonable endeavours under Clause 15.9 any of its IT Systems (other than SCADA System installed by the Contractor) are infected by Computer Viruses to the extent that this prevents the Contractor from performing its obligations under the Contract.

### **Account Agreement**

15.12 The Contractor shall at all times comply with its obligations under the Account Agreement.

### **Accounting Treatment**

15.13 Subject to Clause 15.15 the presentation of the Contractor's activities in its statutory accounts will satisfy the following conditions:

- (a) (apart from expenditure on assets, ownership of which is retained by the Contractor in accordance with this Contract and Management Assets which are fixtures), the Contractor's expenditure pursuant to this Contract will not be capitalised but will be treated as a revenue expense; and
- (b) expenses falling to be dealt with under Statement of Standard Accounting Practice No. 9 and, if that Statement is withdrawn or replaced, generally accepted accounting principles applicable, if any, to the accrual of the costs of performance of a long-term contract of the nature of this Contract will not be accrued for any accounting period prior to that in which they are actually incurred, unless required to be so under generally accepted United Kingdom accounting principles, and no general provision will be made in respect of any other expense provided that the meaning of expense in this paragraph does not include deferred tax or depreciation.

15.14 Subject to Clause 15.15 the presentation of the activities of PADCo will satisfy the following condition: PADCo's expenditure on the acquisition of assets to be made available to the Contractor under the New Assets Contract will be capitalised.

15.15 The accounting treatment required to be adopted under Clause 15.13 and/or 15.14 will be modified to the next best accounting treatment, which would not lead the auditors to the relevant company to qualify that company's accounts as not showing a true and fair view in order for the Variable Tax Assumptions to prove correct, in the event and to the extent of a Change of Law or accounting practice which necessarily means that accounting in accordance with the original conditions described in Clauses 15.13 and 15.14 would result in the qualification of the relevant statutory accounts as not showing a true and fair view.

#### **RESIDUAL CONDITION OF THE SYSTEM**

16.1 The Contractor shall operate maintain and renew the System so that:

- (a) at the time when the Contract expires under Clause 4.1 the System satisfies the Ultimate Reversionary Requirements specified in paragraph 11 of Schedule 5.1 (Performance Specification); and
- (b) (without prejudice to any other provisions of this Contract and save as provided in Schedule 20A (Derogations)) at any other time after the Starting Date, the System satisfies the Intermediate Reversionary Requirements specified in paragraph 11 of Schedule 5.1 (Performance Specification),

provided that in determining the age and existence of relevant Assets within the System the Asset Register shall be prima facie evidence, rebuttal of which can be made through a site inspection.

16.1A LUL and the Contractor acknowledge and agree that where the implementation of any Variation includes, or Third Party Works Adoption Variation relates to, the replacement, renewal and/or upgrade of an Asset, such a replacement, renewal and/or upgrade may result in an overall cost or benefit to the Contractor. The Parties shall co-operate and provide each other with all assistance and information requested in order to facilitate the agreement of the compensation (if any) for any such cost or benefit. Any such compensation shall be effected by way of:

- (a) an adjustment to the Intermediate Reversionary Requirements and Ultimate Reversionary Requirements;
- (b) a Price Adjustment; and/or
- (c) any other mechanism as the Parties may agree,

such that neither Party is advantaged or disadvantaged by the replacement, renewal and/or upgrade of an Asset.

16.1B The Parties shall use all their best respective endeavours to agree the compensation referred to in Clause 16.1A prior to the agreement of the Final Implementation Details or Final Third Party Works Adoption Implementation Details (as applicable) for any Variation or Third Party Works Adoption Variation (or within such other timescale as the Parties may agree acting reasonably). Either Party may refer the matter for determination in accordance with the provisions of Schedule 37 (Dispute Resolution) at any time, provided that the dispute to be determined shall be on the basis that only paragraphs (a) and/or (b) of Clause 16.1A should apply.

16.2 The Contractor shall submit to LUL the reports specified in paragraph 4.5 of Schedule 43.3 (Contract Management).

16.3 If any report referred to in Clause 16.2 demonstrates that the requirements specified in paragraph 11 of Schedule 5.1 (Performance Specification) are not satisfied as at the date of the report, then the Contractor shall propose and the Contractor and LUL will use all reasonable endeavours to agree the steps, programme, costs and timetable which are necessary for the Contractor to rectify the failures identified in the report (the **IRR Failures**). If they fail to agree the steps, programme, costs and timetable, they shall be determined by requesting a technical report from an independent firm of electrical engineers approved by LUL (or in the absence of such approval, nominated by the President of the Institution of Electrical Engineers) which shall confirm firstly, that the steps, programme and timetable proposed by the Contractor will meet the Intermediary Reversionary Requirements, and secondly, if these are satisfactory, that the costs proposed by the Contractor will meet the steps, programme and timetable. If the first test is not met, the relevant firm will detail the necessary steps, programme, consequent costs and timetable. If the first but not the second test is met, the relevant firm will consider the costs only.

16.4 The Contractor shall implement such programme (as agreed or determined) in order to remedy any such IRR Failures. Subject to Clause 16.5, LUL shall be entitled

to withhold by way of an equally spread reduction to the Availability Charge over the duration of the IRR Failures programme (so that, for so long as any finance provided by Third Party Lenders is outstanding, the reduction under this Clause 16.4 and any withholding made under Clause 22.8.3 shall not in aggregate in any Period be more than 60% of the Availability Charge due in that Period before any deductions under Clause 21) an amount equal to the IRR Failure Costs (as so agreed or determined) which remain outstanding (less any previous withholding which has not been refunded or applied towards remedying such a failure). LUL shall pay (on the day such moneys would otherwise have been due and payable to the Contractor) any such amounts so withheld into a separate interest bearing bank account in the joint names of LUL and the Contractor, such moneys to be released on the joint signatures of LUL and the Contractor from such account in accordance with Clause 16.5.

16.5 LUL shall ensure that any amounts withheld pursuant to Clause 16.4 shall at the request of the Contractor be released to the Contractor 30 days after notice to LUL from the Contractor certifying completion of identifiable steps in the programme (demonstrated by the Contractor to the reasonable satisfaction of the Contract Manager) to reimburse the Contractor's Costs, all as detailed in the programme (as agreed or determined in accordance with Clause 16.3). Interest on moneys in such bank account accrued to the date the Contractor becomes entitled to payment under this Clause 16.5 shall belong to LUL. Interest accrued on sums to be released in accordance with this Clause 16.5 shall thereafter belong to the Contractor. If it is agreed or determined that any sums in such bank account are not released in accordance with this Clause 16.5 to the Contractor when it has become so entitled due to LUL's action or default, LUL shall pay the Contractor interest at the Commercial Interest Rate on amounts so withheld (including accrued interest from the due time for payment).

16.6 The Contractor shall procure that during the month ending two years before the expiry of the Contract Duration, LUL receives a technical report prepared by an independent firm of electrical engineers approved by LUL (or in the absence of such approval, nominated by the President of the Institution of Electrical Engineers) such report being addressed to LUL and the Contractor and dealing with, inter alia, the then current condition of the Assets and the System and the extent to which the Assets and the System in their condition at the time of the report would fail to meet the Ultimate Reversionary Requirements on the expiry of the Contract Duration (the **Reversion Report**). The costs of such report shall be met by the Contractor. The Contractor shall propose the steps, programme, costs and timetable which are necessary to meet the Ultimate Reversionary Requirements. If it fails to agree these with LUL, acting reasonably, within 30 days of making such proposal, the independent firm of electrical engineers shall be instructed to confirm that the steps, programme and timetable proposed by the Contractor will meet the Ultimate Reversionary Requirements, and secondly, if these are satisfactory, that the costs proposed by the Contractor will meet the steps, programme and timetable. If the first test is not met, the relevant firm will detail the necessary steps, programme, consequent costs and timetable. If the first but not the second test is met, the relevant firm will consider the costs only.

16.7 LUL may, at any point during the last two Contract Years before the expiry of the Contract Duration, elect to withhold by way of an equal reduction to the Availability Charge over the remainder of the Contract Duration from the amounts payable to the Contractor under this Contract up to 40% of the total amount of the URR Failure Costs, such moneys to be credited (on the day such moneys would otherwise have been due and payable to the Contractor) to a separate interest bearing bank account in the joint names of the Contractor and LUL. LUL shall upon request by the Contractor procure the release (on the joint signatures of LUL and the Contractor) of all the moneys so credited (together with interest accrued thereon at the Deposit Rate) upon the Contractor demonstrating to the reasonable satisfaction of the Contract Manager that the Contractor has spent on maintenance and renewal of Assets and the System since the withholding was made, the balance of the total amount of required expenditure required to be spent in the Reversion Report and the sums claimed by the Contractor.

16.8 The Contractor shall procure that 9 months before the expiry of the Contract Duration, the same independent firm of engineers (failing which another independent firm of engineers appointed in accordance with the requirements of Clause 16.6) provides LUL with an interim report detailing the Contractor's progress in meeting the steps, programme and timetable to meet the Ultimate Reversionary Requirements by the expiry of the Contract Duration. If the independent firm of engineers report that the Contractor has failed to a material extent to meet the steps, programme or timetable, LUL shall be entitled to require that firm to determine any additional steps and their associated costs required to meet the Ultimate Reversionary Requirements (the ***Additional URR Failure Costs***). LUL may elect to withhold from the amounts payable to the Contractor up to 40% of the Additional URR Failure Costs, such moneys to be credited to the account referred to in Clause 16.7 on the same terms as those described in Clause 16.7.

16.9 If the report under Clause 16.8 indicates a material failure to meet steps, programme or timetable the Contractor shall procure that the Reversion Report is updated by the same independent firm of engineers (failing which another independent firm of engineers appointed in accordance with the requirements of Clause 16.6) to confirm whether, as at the date of expiry of the Contract Duration, the Ultimate Reversionary Requirements are met. If such report states that the Ultimate Reversionary Requirements are not then met (***URR Failures***), the independent firm of engineers will be required to confirm the aggregate reasonable costs (the ***URR Costs***) to remedy any failures to meet the Ultimate Reversionary Requirements. LUL shall be entitled to retain after the end of the Contract Duration any amount withheld (if and to the extent equal to or less than the URR Costs) and the Contractor shall be obliged to pay to LUL any shortfall, between the amount withheld and the URR Costs.

16.10 If the report under Clause 16.8 does not indicate a material failure to meet steps, programme or timetable, the Contractor shall not be required to procure a further report pursuant to Clause 16.9, but the Contractor shall rectify any failure to comply with the Ultimate Reversionary Requirements arising after the date of the report in Clause 16.8 and shall complete all steps identified in the report in Clause 16.6. If the Contractor fails to rectify any failure to comply by the Expiry Date, LUL

shall be entitled to retain after the end of the Contract Duration any amount withheld (if and to the extent equal to or less than the URR Costs) and the Contractor shall pay to LUL any shortfall between any amounts still held pursuant to Clause 16.7 and the costs of compliance with this Clause 16.10.

16.11 If the Contract Manager so requires, the Contractor shall from time to time commission and submit to LUL a report by an independent firm of consulting engineers nominated by LUL, and to whom the Contractor has no reasonable objection (including as to the terms of appointment), on whether the Assets and the System comply with the requirements of Clause 16.1. The cost of any such report shall be borne by the Contractor except that the cost of that report shall be met by LUL if the report confirms that the Contractor has met in all material respects the requirements of Clause 16.1(a) or (if the report is finalised no later than twenty five months before the expiry of the Contract Duration) Clause 16.1(b).

16.12 LUL shall not withhold from amounts due to the Contractor under this Contract any sums pursuant to Clause 16.4 or Clause 16.7 in respect of IRR Failure Costs or (as the case may be) URR Failure Costs, if within 30 Working Days of the date of agreement or determination of the amount of the IRR Failure Costs or URR Failure Costs, the Contractor delivers to LUL a performance bond (with a maximum liability equal to the IRR Failure Costs, or, as relevant, the URR Failure Costs) in respect of the Contractor's obligations under Clauses 16.3 and 16.4 or, as the case may be, Clause 16.6 and 16.10 from a bank or other financial institution with a long term credit rating by Standard & Poor's or Moody's of no less than AA, substantially in the form set out in Schedule 16.12.

16.13 Where the Contract terminates before the expiry of the Contract Duration:

- (a) the Contractor and LUL shall jointly agree to appoint an independent firm of consulting engineers (the *Expert*) (who in default of agreement shall be nominated by the President of the Institution of Engineering and Technology or any successor or amalgamated entity), to determine the extent (if any) to which the Contractor fails to meet the Intermediate Reversionary Requirements at the Termination Calculation Date or the Step-in Date (as defined in the Direct Agreement) whichever is earlier. Subject to the proviso to Clause 16.1, where objective information in relation to the Intermediate Reversionary Requirements is available or can be made available through a reasonable sample jointly agreed by the Parties or in the absence of agreement, determined by the Expert, the Expert shall use such information. Where no such information can be made available without a complete audit of the System or the criteria for assessment themselves are based on reasonable belief, the Expert shall be entitled to make its own relevant investigations and enquiries as it thinks fit as to compliance with the Intermediate Reversionary Requirements and take into account all relevant information concerning the performance of the Contractor under the Contract, including compliance by the Contractor with the Operation and Maintenance Regime and the Renewal and Upgrading Regime, the Annual and Five Yearly Operating Plans and the Safety Management System. Evidence in relation to compliance will be



obtained by the Expert from the Annual Reports and the Four Weekly Reports prepared by the Contractor. The Parties shall be entitled to make representations to the Expert with regard to compliance by the Contractor with the Intermediate Reversionary Requirements. The Expert will not be required to review performance data which predates the last report delivered under paragraph 4.5 of Schedule 43.3 (Contract Management) confirming that the Contractor complied with the Intermediate Reversionary Requirements or, if later, the time at which the last money was released from retention as a result of rectification work to meet the Intermediate Reversionary Requirements. Where the Expert determines in accordance with the criteria in this Clause 16.13 that the Contractor does not meet the Intermediate Reversionary Requirements the Expert will consult with both parties to determine the requisite rectification works and their costs;

- (b) except in the case of Contractor Default Termination and subject to the provisions of Clause 31 the Contractor shall be entitled to propose the steps and associated costs to meet the Intermediate Reversionary Requirements. If these are not agreed, the Expert will confirm whether the steps will meet the Intermediate Reversionary Requirements, and if not will detail the necessary steps and associated costs. If the steps meet the Intermediate Reversionary Requirements, the Expert will look only at the costs;
- (c) in the case of Contractor Default Termination the Expert shall determine the necessary steps and costs to meet the Intermediate Reversionary Requirements;
- (d) except in the case of Contractor Default Termination the Contractor shall be entitled to implement the requisite rectification works on the following basis:
  - (i) for as long as LUL is continuing to pay the Contractor the Availability Charge, LUL shall be entitled to withhold and release moneys in accordance with the provisions of Clauses 16.4 and 16.5 (as applied mutatis mutandis); and
  - (ii) the Contractor shall have an obligation to pay the outstanding costs as agreed or determined by the Expert to meet the Intermediate Reversionary Requirements if these have not been met at the end of the agreed programme or, if earlier, the Expiry Date;
- (e) in the case of Contractor Default Termination the Contractor shall, if required by LUL, pay LUL the costs determined by the Expert in accordance with Clause 16.13(c). LUL may elect to apply the provisions of Clause 16.13(d).

16.13A If the Expert has made a determination under this Clause 16 any revision of his determination shall be by way of arbitration in accordance with Schedule 37 (Dispute Resolution) and the provisions of Schedule 37 (Dispute Resolution) shall apply as if a Notice of Arbitration has been given by one Party to the other Party pursuant to paragraph 13 of Schedule 37 (Dispute Resolution).

16.14 The following provisions shall apply at the Expiry Date in relation to insurance proceeds from policies relating to physical damage to the System and/or the assets and/or the IT System and/or the IT Assets:

- (a) where the Contractor has incurred any Costs prior to the Expiry Date in or towards reinstating or repairing assets or in accordance with Schedule 25 to meet the requirements of the Contingency Plan which are insured for physical damage, the Contractor shall be entitled to retain any insurance proceeds which as at the Expiry Date have either been received or are receivable in relation to the Costs incurred by the Contractor in or towards reinstating or repairing the relevant assets;
- (b) where physical damage which is insured has occurred in relation to any asset but the Contractor at the Expiry Date has not incurred any Costs in reinstating or repairing that asset, any insurance proceeds which as at the Expiry Date have either been received or are receivable in relation to the physical damage of the relevant asset shall to the extent they exceed any Taxation for which the Contractor may be liable in respect thereof but taking into account the treatment for Tax of the payment to LUL be for LUL's account, provided that LUL shall subtract from any amount payable by the Contractor to LUL pursuant to this Clause 16 in respect of failure to meet the Intermediate Reversionary Requirements or/as the case may be Ultimate Reversionary Requirements the amount of any such insurance proceeds.

16.15 On the Expiry Date following a termination event under Clause 28, in relation to SPL Related Contracts, LUL will subject to Clauses 16.16 and 16.18 at its option either:

- (a) enter into a novation of the relevant SPL Related Contract with effect from the Expiry Date (excluding any liability of the Contractor to make payment under the SPL Related Contract which arises before the Expiry Date);
- (b) pay the costs to the Contractor of meeting its obligations under the relevant SPL Related Contract to the extent arising after the Expiry Date; or
- (c) pay to the Contractor any breakage costs to the extent they are reasonable,

provided that LUL shall not be obliged to take any of the steps in Clauses 16.15 (a), (b) or (c) in relation to any SPL Related Contract that:

- (d) has been entered into in breach of Clause 35;
- (e) to which PADCo is a party and has not been agreed with LUL as a SPL Related Contract which is subject to Clause 16.15(a),(b) or (c); or
- (f) which has not been entered into on arms' length terms and in accordance with Good Industry Practice.

16.16 The Contractor agrees to fulfil all its obligations in relation to each SPL Related Contract prior to the date with effect from which each such SPL Related Contract is novated to LUL. The Contractor will confirm that it has so fulfilled its obligations (and the third party will agree to this) in the tripartite agreement to be entered into between LUL and the Contractor in relation to each SPL Related Contract. Where any SPL Related Contract will result in the delivery or acceptance of plant or equipment after the Expiry Date following a termination event under Clause 28, the Contractor agrees to cooperate with LUL in such delivery and/or acceptance, and not to release any retention made under the SPL Related Contract without consultation with LUL.

16.17 To the extent the Contractor has paid for any item of plant or equipment prior to the Expiry Date following a termination event under Clause 28 but as at the Expiry Date such plant or equipment has not been delivered or accepted, LUL (and any Expert appointed pursuant to this Clause 16) will take reasonable account of such payment for plant or equipment when assessing the Contractor's compliance with the Intermediate Reversionary Requirements and any payment required to be made for failure to meet them as at the Expiry Date.

16.18 To the extent the Contractor has received a substantial benefit from the SPL Related Contract prior to the Expiry Date following a termination event under Clause 28 and has not paid under the SPL Related Contract for the substantial benefit, the Contractor and LUL shall consider the effect of the receipt of such substantial benefit by the Contractor and non-payment therefore and shall agree how such substantial benefit received by the Contractor shall be taken into account.

## **PROPERTIES**

### **Repair and Other Obligations**

17.1 The Contractor shall throughout the Contract Duration (at no additional cost to LUL and without prejudice to its other obligations under this Contract relating to the Properties):

- (a) subject to the relevant provisions of the Property Maintenance Plan Principles repair and, subject to Clause 17.7 where necessary rebuild or renew the Properties to a standard which will enable the Contractor duly and punctually to perform and observe its obligations under this Contract (other than those in Clauses 17.1, 17.2, 17.3 and 17.4);
- (b) comply with paragraphs 8 and 10 of Schedule 5.1 (Performance Specification) and Schedule 18.11 (Access); and
- (c) comply with the Property Maintenance Plan Principles.

17.2 In relation to the Properties, which term shall for the purposes of this Clause 17.2 only exclude cables, the Contractor shall ensure that, on the Expiry Date, the Properties are fit for their use as permitted under the Contract for a period of five years after the Expiry Date on the assumption that they will receive proper care and

maintenance during that period (except where, with the agreement of the Contract Manager, (such agreement can include the duration of use) portable structures are in use). The obligations in this Clause 17.2 will be subject to a Derogation for five years from the Starting Date.

17.3 To the extent necessary to enable the Contractor to comply with its obligations or to exercise its rights under the Contract, LUL shall throughout the Contract Duration at no cost to the Contractor repair Adjacent Property provided that LUL shall be under no such obligation to the Contractor:

- (a) subject to Clause 17.4 until a reasonable period of time shall have elapsed after receipt by it from the Contractor of written notice specifying the particular disrepair; or
- (b) if and to the extent that any consent or waiver which LUL needs to obtain before carrying out any of the works of repair is not granted to LUL.

17.4 LUL's obligation in Clause 17.3 to repair Adjacent Property shall arise notwithstanding that the Contractor may not have given notice to LUL of any particular disrepair in the following circumstances:

- (a) where the Adjacent Property forms part of or is located within a train running tunnel; or
- (b) where the Contractor having complied in relation to the Property adjacent to such Adjacent Property with the provisions of paragraph 4 of the Property Maintenance Plan Principles could not reasonably be expected to have become aware of the particular disrepair or to have appreciated its nature or extent having regard to the nature of the disrepair, the visible signs of disrepair and the visible condition of the Property,

and the burden of proof shall be on LUL to demonstrate that any particular disrepair of Adjacent Property does not fall within this Clause 17.4. For the avoidance of doubt the Contractor is under no obligation to provide personnel with specialist property inspection expertise.

### **Hand back**

17.5 In the event that LUL exercises its right contained in the Leases, Easement and Licences or agreements for such Leases, Easement or Licences to require the Contractor to hand back all or part of the Properties, the Contractor shall comply with the provisions set out in Schedule 17.3 (Property Handback Requirements) relating to each such hand back.

### **Excluded Equipment**

17.6 The Excluded Equipment at the Date of Contract in relation to the Properties shall be as set out in Schedule 17.4 (Excluded Equipment).

## **Rebuilding**

17.7 The Contractor's obligations in Clauses 17.1, 17.2, 17.3 and 17.4 shall not include rebuilding or renewing the whole or substantially the whole of the structure for which the Contractor is responsible of the building on any Property except in the circumstances provided for in Clauses 17.8 to 17.12.

17.8 At any time during the Contract Duration the Contractor may give notice in writing to the Contract Manager (a ***Rebuilding Notice***) that in the opinion of the Contractor, acting reasonably, it is reasonably evident that it is or is likely within the next two years to become necessary or desirable to rebuild or renew the whole or substantially the whole of the structure for which the Contractor is responsible of the building on any Property because it is or will not be reasonably practicable for the Contractor:

- (a) to continue to repair and maintain the Property in accordance with Clause 17.1 at reasonable expense; or
- (b) to ensure at a reasonably acceptable level of risk the security of the Property or the safety of the persons entering the Property or in its vicinity,

due to the age and/or condition of the building on the Property.

17.9 Notwithstanding the provisions of Clause 17.8 (and where there is conflict the provisions of this Clause shall prevail) any Rebuilding Notice relating to Greenwich Generating Station shall additionally be substantiated in a professional structural survey, by a Chartered Surveyor and/or Chartered Structural Engineer, a Railway Safety Case review and an analysis of the costs involved evidencing value for money.

17.10 The Contract Manager, acting reasonably, will notify the Contractor within one month after receiving a Rebuilding Notice whether he agrees that rebuilding or renewing is necessary or desirable. Any dispute shall be dealt with by dispute resolution under Clause 37.

17.11 If it is agreed or determined that it is necessary to rebuild or renew the whole or substantially the whole of the structure of any Property LUL will by giving notice in writing to the Contractor not later than two months after such agreement or determination elect either:

- (a) to require the Contractor to carry out the rebuilding or renewal to the minimum standard necessary to enable the Contractor to thereafter repair and maintain at reasonable expense (or at the election of LUL, to a higher standard); or
- (b) to terminate the Lease or Licence of the Property; or
- (c) in the case of Greenwich Generating Station only, to require the Contractor to carry out such rebuilding or renewal as LUL considers reasonably necessary or as required by Law, Required Consent or LUL Approval, provided that LUL

shall also grant to the Contractor such Derogations as are reasonably necessary in light of the level of rebuilding or renewal required by LUL.

17.12 Any election by LUL in accordance with Clause 17.11, and in the case of an election under Clause 17.11(b) the obligation of the Contractor to comply with Clause 17.13, shall be treated in all respects as a request for a Variation in accordance with Clause 23.

17.13 If LUL elects in accordance with Clause 17.11(b):

- (a) LUL shall as soon as reasonably practicable provide to the Contractor other land or property (in the form of the After Acquired Property Document) to enable the Contractor to develop alternative facilities on such other land or property to enable it to provide the Services in accordance with the Contract;
- (b) the Contractor shall offer to surrender and LUL shall accept the surrender of the Lease or Licence of the Property when such other land or property has been vested in the Contractor pursuant to the After Acquired Property Document and all necessary alternative facilities have been fully completed commissioned and tested;
- (c) if the surrender of the Lease or Licence of the Property has not been completed by the date (in this Clause 17.13 the **Relevant Date**) two years and three months after the date of the relevant Contractor's notice under Clause 17.8 then from the Relevant Date until the date when such surrender shall be completed LUL shall pay to the Contractor on demand from time to time (not more frequently than monthly) all sums certified by the Contractor acting reasonably as being equal to the costs which the Contractor shall incur during such period in maintaining the Property in accordance with the Contract less such maintenance costs as the Contractor estimates acting reasonably that it would have incurred had the Property been renewed or rebuilt.

17.14(a) The provisions of Clauses 17.2, 17.5, 17.7, 17.8, 17.9, 17.10, 17.11, 17.12 and 17.13 shall not in any circumstances apply to Lots Road Generating Station.

- (b) Clause 17.1 shall apply to Lots Road Generating Station with the following qualifications:
  - (i) the Contractor shall only be required to comply with the Property Maintenance Plan Principles to the extent that they relate to the Contractor's obligations in this Contract in respect of Lots Road Generating Station and do not extend such obligations;
  - (ii) in no circumstances shall the Contractor be required to rebuild or renew Lots Road Generating Station; and

- (iii) the obligations in Clause 17.1 shall only apply to Lots Road Generating Station during the period until termination or expiry of the Lots Road Lease.
- (c) The Contractor shall comply with Schedule 17.3 in respect of Lots Road Generating Station save where Schedule 17.3 conflicts with the requirements of the Decommissioning Report.

### **Agreement for Lease, Easement and Licences**

17.15 The provisions of this Clause 17 shall only apply to a Property which is the subject of:

- (i) a completed Lease, Easement or Licence; or
- (ii) an Agreement for Leases, Easement and Licences if the Contractor has been granted licence to occupy or licences to use such Property prior to the grant of the relevant Lease, Easement or Licence pursuant to such Agreement for Leases, Easement and Licences.

### **PROPERTY DEPENDENCIES**

#### **Interpretation**

17A.1 In this Clause 17A *Adverse Matter* means any of the matters referred to in Clause 17A.3 and *Excluded Matter* means any of the matters referred to in Clause 17A.4.

#### **LUL Dependency in relation to Properties**

17A.2 It shall be an LUL Dependency that the Contractor shall have the full use and enjoyment of each of the Properties (including all appurtenant rights granted or purported to be granted to the Contractor in relation to each of the Properties) in accordance with the terms of this Contract free from any Adverse Matter to the extent that any such Adverse Matter results or would result in any of the Adverse Consequences set out in Clause 28A.2.

#### **Adverse Matters**

17A.3 Subject to Clauses 17A.5 and 17A.7, the existence or occurrence of any of the following shall be an Adverse Matter provided it is not an Excluded Matter:

- (a) any interruption (whether permanent or temporary), action, cost, claim or demand or any threat of any of the foregoing by LUL or TfL or any person claiming under or in trust for LUL or TfL or by title paramount;
- (b) the expiry or sooner determination for whatever reason before the Expiry Date of any Superior Lease or Superior Agreement as referred to in any Lease, Licence or Easement or the Agreement for Leases, Easement or Licences;

- (c) in relation to the Town and Country Planning Legislation in force from time to time:
  - (i) the absence of or non-compliance with any necessary planning permission;
  - (ii) any condition attaching to any planning permission; or
  - (iii) any agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 or Section 33 of the Local Government (Miscellaneous Provisions) Act 1980 or similar Legislation in force from time to time;
- (d) any matter which would be disclosed in written replies from the relevant local authority to all the questions contained in Parts I and II of the latest edition and revision for the time being of Con.29 (being the appropriate form of Enquiries of a local authority) made before the Starting Date;
- (e) any matter registered or capable of being registered as a local land charge before the Starting Date;
- (f) any monetary claim in respect of any Property;
- (g) any resolution, proposal, scheme or order (whether formally adopted or not) for the compulsory acquisition of the whole or any part of any Property provided that the Contractor will pay to LUL any compensation it may receive in respect of the Contractor's interest in the Property less any Taxation for which it may be liable thereon but taking into account the treatment for Tax of the payment to LUL (but not any compensation for disturbance);
- (h) any disrepair of or defect in any Adjacent Property or any Excluded Equipment at or in any Property provided that if any disrepair of or defect in any such Adjacent Property or any such Excluded Equipment results (whether directly or indirectly) in damage to or destruction of any Asset (or part of an Asset) for the maintenance of which the Contractor is responsible under the Contract or any other property of the Contractor or for which it is responsible at a time when LUL was not obliged to repair such disrepair or defect under Clause 17.4 because of lack of notice from the Contractor then the Contractor will not make any claim for Disruption Costs in respect of the cost of repairing such Asset (or part) or such other property under Clause 28A. For the avoidance of doubt nothing in this Clause shall:
  - (i) prevent the Contractor claiming Disruption Costs in respect of any other Adverse Consequences arising out of any disrepair of or defect in any such Adjacent Property or any such Excluded Equipment; or
  - (ii) limit in any way the Contractor's right to claim the benefit of Clause 28A.3 in full; and



- (i) any interruption (whether permanent or temporary) to the Contractor in obtaining access to or egress from any Property as a result of non-observance or non-performance by LUL of its procedures for access as contained in Schedule 18.11 (Access).

### **Excluded Matters**

17A.4 Subject to Clauses 17A.3(a), 17A.5, 17A.6 and 17A.7, any of the following shall be an Excluded Matter:

- (a) any provision in any Existing Agreement, Superior Lease or Superior Agreement as referred to in the relevant Lease, Easement or Licence (or Agreement for Leases, Easement or Licences) and which in the relevant Lease, Easement or Licence (or Agreement for Leases, Easement or Licences) the Contractor has expressly agreed to observe and/or perform or be bound by (but not any other provision in any such Existing Agreement, Superior Lease or Superior Agreement);
- (b) any matter which has been disclosed in writing to the Contractor by LUL or its solicitors prior to the Date of Contract in respect of LUL's title to the Generating Station at Greenwich;
- (c) any Adverse Matter to the extent that such matter results from any breach by the Contractor of any obligation or condition on its part to be observed and/or performed pursuant to this Contract; and
- (d) any Adverse Matter to the extent that such matter results from a change of use of a Property by the Contractor (such use of a Property to be with LUL's consent in accordance with Clause 10) save where enquiry in writing was made of LUL as to the possible existence of any Adverse Matter in the context of the proposed change of use and such Adverse Matter was not disclosed in writing to the Contractor in the response to such enquiry. For the avoidance of doubt the Parties agree that the mere use of the Properties to deliver electricity to Purchasers or for Users rather than for LUL will not itself constitute a change of use.

### **Other provisions**

17A.5 Disclosure of a matter to the Contractor or the Contractor otherwise having actual or constructive notice of a matter shall not prevent a matter being an Adverse Matter save to the extent that such matter is an Excluded Matter:

17A.6 The grant of any Lease, Easement or Licence (or Agreement for Leases, Easement or Licences) in respect of any Property subject to any right, easement, quasi-easement, privilege, restriction, covenant, stipulation, agreement, declaration or other matter of whatever nature shall not prevent that matter being an Adverse Matter save to the extent that any such matter is an Excluded Matter pursuant to Clause 17A.4.

17A.7 The following matters in respect of Superior Agreements referred to in the Easement shall not be Excluded Matters:

- (a) prohibitions or restrictions on alienation of the Superior Agreement;
- (b) any provisions in the Superior Agreement which relate to or refer to plans, drawings or specifications proper copies of which have not been supplied to the Contractor and details of which have been notified in writing by the Contractor to LUL prior to the Date of Contract or which are materially inaccurate;
- (c) obligations requiring the Cables or other plant, equipment or property to be removed at the end or during the term of the Superior Agreement;
- (d) any provisions requiring the Cables or other plant, equipment or property to be relocated in certain circumstances;
- (e) prohibitions or restrictions on laying new Cables or installing other plant, equipment or property;
- (f) any requirement for Cables to be laid across or under a road after the Date of Contract.

#### **DEPENDENCIES RELATING TO EXERCISE OF LUL RIGHTS IN THIS CONTRACT**

17B.1 It shall be an LUL Dependency that LUL and/or TfL shall not exercise any of the rights referred to in Clause 17B.2 to the extent that the exercise of such right would result in any of the Adverse Consequences set out in Clause 28A.2.

17B.2 The rights referred to in Clause 17B.1 are the following:

- (a) all access and other rights excepted and reserved to LUL (e.g. services), but excluding any right of access exercisable in consequence of breach of obligation by the Contractor;
- (b) the right to vary any rights granted to the Contractor in accordance with paragraph 3.2.3 of the Third Schedule to the General Properties Lease and any corresponding provisions in the other Leases, Easement and Licences;
- (c) any right to deal with or redevelop Adjacent Property including any right to carry out works at any of the Properties;
- (d) any right to terminate the relevant Lease, Easement or Licence (or Agreement for Leases, Easement or Licences) except:
  - (i) upon the Expiry Date;
  - (ii) when use of the Property has permanently ceased;

- (iii) to the extent that LUL has provided alternative premises to the Contractor either at its own expense or in accordance with the Variation procedure;
- (e) any right to require the Contractor to (i) permanently relocate cables except to the extent that LUL has provided alternative facilities to the Contractor either at its own expense or in accordance with the Variation procedure or (ii) temporarily relocate cables except to the extent that LUL has provided alternative facilities to the Contractor or funded the costs by way of Advance Payment; and
- (f) any right to delay or withhold access to or egress from any Property or to require the Contractor to comply with conditions pursuant to the provisions of Schedule 18.11 (Access).

## **INFORMATION PLANNING AUDIT AND REPORTING**

### **Audit and Inspection**

18.1 LUL and Authorised Third Parties shall be entitled to carry out inspections of the System and the IT Systems and, subject to the provisions of Schedule 18.11, the Contractor shall provide all access, information and co-operation required by LUL and Authorised Third Parties for these purposes.

18.2 LUL shall be entitled to carry out inspections of the System and the IT Systems and audit checks without giving warning to the Contractor to ascertain whether the Contractor is complying with all or any of its obligations under this Contract. The Contractor shall, subject to the provisions of Schedule 18.11, provide all access, information and co-operation required by LUL for these purposes.

18.3 The provisions relating to audit and inspection are set out in paragraph 15 of Schedule 43.3 (Contract Management).

18.4 LUL undertakes not to exercise its rights under this Clause in a manner which is vexatious, and to provide, where appropriate, advance notice.

### **SQE Systems**

18.4A The Contract Manager and/or his nominee(s) shall be entitled (subject to them complying with the requirements of the accredited body) to attend and witness any tests, inspections or audits of an SQE System carried out by the relevant accredited body or its agents or nominee(s) and in this respect the Contractor shall:

- (a) give LUL such written notice as is reasonable in the circumstances (such notice not to be less than 10 Working Days unless LUL, acting reasonably, otherwise agrees) of any such test, inspection or audit and its location; and

- (b) provide a reasonable level of cooperation as to time and place and make all other reasonable arrangements in order to enable the Contract Manager and/or his nominee(s) to attend any such test, inspection or audit.

18.4B Where a Key Subcontractor does not or ceases to have:

- (a) a safety management system which as a minimum satisfies those requirements of Schedule 14.8 which are applicable to the works and services to be provided by the Key Subcontractor;
- (b) a quality management system which, as a minimum, satisfies those requirements of the Contract Quality Conditions which are applicable to the works and/or services to be provided by the Key Subcontractor and which complies with ISO 9000 (or such other equivalent standard which replaces or supersedes ISO 9000); or
- (c) an environmental management system which complies with ISO 14001 (or such other equivalent standard which replaces or supersedes ISO 14001),

(each a *Certified System*) and which in each case has obtained certification from an appropriate accrediting body agreed by LUL and the Contractor the Contractor shall promptly modify its SQE Systems to the extent necessary for each SQE System to include the works, plant, equipment and/or services to be provided by the Key Subcontractor.

18.4C If the Contractor proposes to exercise its right under Clause 18.4B to modify its SQE Systems it shall give reasonable notice in writing of such intention to LUL and the identity of the Key Subcontractor and/or class of Key Subcontractors to which the proposed modified SQE Systems will apply.

18.4D Where pursuant to Clause 18.4B a Key Subcontractor has obtained certification of a Certified System the Contractor shall require, and shall use its best endeavours to procure, (unless otherwise directed by LUL) that:

- (a) the Key Subcontractor complies with all the conditions included in or attached to the certification and maintains such certification until the expiry or termination of its Key Subcontract;
- (b) subject to Clause 18.4E and 18.4F LUL shall be entitled to audit each Certified System of the Key Subcontractor; and
- (c) the Contract Manager and/or his nominee(s) (subject to them complying with the requirements of the relevant accredited body) shall be entitled to attend and witness any tests, inspections or audits of a Certified System of a Key Subcontractor carried out by the relevant accredited body or its agents or nominee(s).

18.4E If LUL wishes to audit a Certified System in accordance with Clause 18.4D(b) it shall give written notice of such intention to the Contractor at least 5 Working Days

prior to commencing such audit. The Contractor shall provide a reasonable level of cooperation as to time and place and make all other reasonable arrangements in order to enable the Contract Manager and/or his nominee(s) to attend any such test, inspection or audit.

18.4F Where LUL has served notice pursuant to Clause 18.4E the Contractor shall require, and shall use its best endeavours to procure, (unless otherwise directed in writing by LUL), in respect of the Key Subcontractor who is the subject of such notice, that the Key Subcontractor:

- (a) cooperates with LUL or its nominees and provides all assistance reasonably requested by LUL in respect of such audit;
- (b) provides LUL or its nominees with access to its premises at reasonable times (subject to LUL or its nominees complying with all applicable safety requirements notified to them by the Key Subcontractor); and
- (c) promptly directs LUL or its nominees to the specific location of any documentation reasonably requested by LUL or its nominees in connection with such audit and LUL may, at its cost, take copies of such documentation as is necessary for the purposes of conducting the audit.

18.4G In respect of the tests, inspection or audits referred to in Clause 18.4D(c) the Contractor shall require and shall use its best endeavours to procure (unless otherwise directed by LUL) that the Key Subcontractor shall:

- (a) give LUL such written notice as is reasonable in the circumstances (such notice not to be less than 10 Working Days unless LUL, acting reasonably, otherwise agrees) of any such test, inspection or audit and its location;
- (b) provide a reasonable level of cooperation as to time and place and make all other reasonable arrangements in order to enable the Contract Manager and/or his nominee(s) to attend any such test, inspection or audit.

18.4H The Contractor shall procure (unless otherwise directed in writing by LUL) that the right of LUL directly to enforce its rights specified in Clauses 18.4B to 18.4G against the Key Subcontractor is included in any Key Subcontracts (including any draft agreements (including any draft Key Subcontracts) forming part of the tender documentation for the subcontracting of any elements of a Variation).

## **Reporting**

18.5 The Contractor shall supply to LUL such reports as are required under Schedule 43.3 (Contract Management).

18.6 The Contractor shall also provide to LUL details as soon as reasonably practicable of any matter materially affecting (or likely to materially affect) the provision of Services under this Contract.

## **Long-Term Strategy**

18.6A The Contractor shall develop and implement a long term asset management strategy that demonstrates its capability and commitment to satisfy the Key Objective for the period commencing on the Date of the Supplemental Deed and ending on the expiry of this Contract in accordance with Clauses 18.6B to 18.6M (the *Long Term Strategy*).

18.6B The Long Term Strategy shall include a description of:

- (a) the Contractor's long term strategic and business objectives;
- (b) all of the factors considered by the Contractor in the development of the Long Term Strategy;
- (c) the procedure and methodology adopted by the Contractor in the development of the Long Term Strategy;
- (d) the Contractor's capability and commitment to satisfy the Key Objective and the means by which this will be achieved including a detailed description of the strategies to be followed by the Contractor in managing the Assets, IT Assets, New Assets and in renewing and upgrading such Assets, IT Assets, New Assets until the expiry of the Contract together with appropriate supporting evidence; and
- (e) the risk management policies and procedures that will be implemented by the Contractor in relation to the Contractor implementing the strategies referred to in Clause 18.6B(d).

## **Development, Approval and Review of the Long Term Strategy**

18.6C The Parties shall meet by the third Friday in January 2007 to develop a Long Term Strategy, and by the third Friday in January in each successive calendar year in order to identify any revisions necessary or desirable to the Long Term Strategy. The meeting shall be for the purposes of either:

- (a) establishing the first Long Term Strategy; or
- (b) considering the revision (if any) of successive Long Term Strategies.

The Contractor shall deliver an outline of the Long Term Strategy to LUL no later than the third Friday in February (and by such date in each year where the necessity or desirability of revision of the Long Term Strategy is agreed upon). The outline of the Long Term Strategy shall describe for each of the matters set out in Clauses 18.6B(a)-(e), the underlying technical, commercial, operational and programming principles which the Contractor shall apply in the development of that part of the Long Term Strategy (the *Outline Long Term Strategy*). In the case of revision of a Long Term Strategy, the Contractor shall submit to LUL a revised outline Long Term Strategy that clearly indicates the amendments (if any) that have been made to the existing

Long Term Strategy (the *Revised Outline Long Term Strategy*) and which also contains all of the information required in respect of each of the matters set out in Clause 18.6B(a)-(e).

18.6D Following receipt by LUL of the Outline Long Term Strategy or Revised Outline Long Term Strategy each Party agrees that its appropriate representatives shall meet in person with appropriate representatives of the other Party by no later than the second Friday of March in each relevant calendar year or as otherwise agreed by the Parties to discuss the format and content of the Outline Long Term Strategy or Revised Outline Long Term Strategy (as applicable).

18.6E The Contractor shall give full consideration to all written comments (if any) provided by LUL by 31 March in each relevant calendar year or as otherwise agreed between the Parties at the meeting held in accordance with Clause 18.6D) in respect of the Outline Long Term Strategy or Revised Outline Long Term Strategy (as applicable). The Contractor shall incorporate or address all such comments provided by LUL in the Draft Long Term Strategy prepared pursuant to Clause 18.6F unless the Contractor, acting reasonably, considers a comment to be unreasonable.

18.6F The Contractor shall prepare and submit to LUL by no later than 31 May in each relevant calendar year, a draft of the Long Term Strategy that satisfies the requirements of Clause 18.6B(a)-(e) (*Draft Long Term Strategy*) together with a schedule detailing all written comments made by LUL in respect of the Outline Long Term Strategy or Revised Outline Long Term Strategy and indicating where those comments have been incorporated into or addressed by the Draft Long Term Strategy. Where the Contractor has not incorporated or addressed a comment in the Draft Long Term Strategy in accordance with Clause 18.6E, the Contractor shall provide detailed reasons for its decision not to incorporate or address that comment. By 30 June in each relevant calendar year, LUL shall either approve the Draft Long Term Strategy by giving written notice of such approval to the Contractor, or if LUL, acting reasonably, considers that:

- (a) the Contractor's compliance with the Draft Long Term Strategy would result in the Contractor failing to meet its contractual obligations under the Contract; and/or
- (b) the Draft Long Term Strategy does not adequately demonstrate the Contractor's capability and commitment to satisfy the Key Objective,

LUL shall be entitled to reject the Draft Long Term Strategy and provide the Contractor in writing with detailed reasons as to the grounds on which it rejected the Draft Long Term Strategy in accordance with (a) and/or (b) above. LUL shall be entitled, at any time, to specify the amendments that it considers should be incorporated into the Draft Long Term Strategy in order for the grounds in (a) and (b) above not to apply.

18.6G If LUL has rejected a Draft Long Term Strategy then the Contractor, by 31 July in each relevant calendar year, shall amend the Draft Long Term Strategy to

address each ground in a revised draft of the Draft Long Term Strategy unless the Contractor, acting reasonably, considers that the ground is unreasonable and shall submit the revised draft of the Draft Long Term Strategy together with a schedule detailing all of the grounds raised by LUL and indicating where those grounds have been addressed in the draft Long Term Strategy. Where the Contractor has not addressed (or only partially addressed) a ground on the basis of unreasonableness, the Contractor shall provide detailed reasons for its decision not to address that ground.

18.6H Where Clause 18.6(G) applies, the Parties shall repeat the process in Clause 18.6F (save that instead of LUL approving or rejecting the Draft Long Term Strategy by 30 June it must do so within 15 Working Days of receipt of that Draft Long Term Strategy). If LUL rejects subsequent Draft Long Term Strategies the Parties shall repeat the process in 18.6G (save that instead of the Contractor submitting a second Draft Long Term Strategy by 31 July it must do so within 21 Working Days of receipt of LUL's comments). If the Parties fail to agree the Long Term Strategy by 31 August in each relevant calendar year, the Contractor shall continue to provide the Services in accordance with its previous strategies (if any) and otherwise in accordance with the Contract until LUL approves the Long Term Strategy or the matter is agreed or determined pursuant to Clauses 18.6J or 18.6K.

### **Review of Long Term Strategy**

18.6I Where:

- (a) LUL has approved a Draft Long Term Strategy pursuant to Clauses 18.6F or 18.6H; or
- (b) the form of the Draft Long Term Strategy has been agreed or determined pursuant to Schedule 37A,

the Draft Long Term Strategy shall be deemed to be the Long Term Strategy and shall take effect from:

- (c) in the case of Clause 18.6I(a) from the date of such approval; and
- (d) in the case of Clause 18.6I (b) the date of such agreement or determination,

and, until such time, the Contractor shall act in accordance with the Long Term Strategy as previously approved, agreed or determined.

### **Management Escalation and Dispute Resolution Procedure**

18.6J Where Clause 18.6H applies either Party may refer the matter to Senior Representatives in accordance with the procedure set out in paragraphs 1 and 2 of Schedule 37A (Management Escalation and Expert Determination Procedure). For the avoidance of doubt, the Parties agree that the dispute resolution procedure set out in Schedule 37 (Dispute Resolution) does not apply to any failure to agree the Long Term Strategy.



18.6K If both Parties agree not to use the Management Escalation Procedure or if the Management Escalation Procedure fails to resolve the matter either Party may refer the matter for expert determination in accordance with the procedure set out in paragraphs 3 to 21 of Schedule 37A (Management Escalation and Expert Determination Procedure).

### **Mutual Obligation to Consult**

18.6L The Parties shall consult with each other throughout the development of the Long Term Strategy and any revisions thereto in order to facilitate the production of the Long Term Strategy within the time limits set out in Clauses 18.6A to 18.6H.

### **Contractor's Continuing Obligations**

18.6M Neither any comment, consent and/or approval given by LUL pursuant to Clauses 18.6A to 18.6H nor the fact that the Contractor is acting in accordance with the Long Term Strategy shall in any way relieve the Contractor of its obligation to continue to perform all of its obligations under and in accordance with this Contract.

### **Provision of Management Accounts**

18.6N Without prejudice to paragraph 4.4(b) of Schedule 43.3 (Contract Management), the Contractor and PADCo shall each submit to LUL, on a monthly basis, copies of their respective unaudited management accounts. Each set of unaudited management accounts shall be delivered to LUL as soon as reasonably practicable upon its completion, and in any event no later than 15 Working Days after the end of the month to which it relates. Each set of unaudited management accounts must include, at a minimum:

- (a) a statement of revenue and expenditure for the relevant month;
- (b) a balance sheet as at the end of the relevant month;
- (c) a statement of cash flows for the relevant Period including a calculation of any cover ratios as most recently produced for the Third Party Lenders.

18.6O Nothing in Clause 18.6N prejudices LUL's right under paragraph 4.4(a) Schedule 43.3 (Contract Management) to receive copies of the Contractor's statutory accounts.

### **Planning and Co-ordination**

#### **LUL Information**

18.7 LUL shall provide the Contractor with estimates of its future requirements in relation to the Services as set out in paragraph 6 of Schedule 43.3 (Contract Management).

18.7A No later than 10 Working Days following the commencement of each Period, the Contractor shall submit to LUL for inclusion into the Master Projects Database (unless otherwise agreed in writing by LUL acting reasonably):

- (a) Programmes in respect of all capital works (regardless of value but excluding operations and maintenance), prepared in accordance with the MPD Guidelines;
- (b) any revisions to the Programmes which have been submitted to LUL in a previous Period; and
- (c) for each Programme a report as to the actual progress of the Contractor compared with the forecast progress as set out in that Programme.

18.7B In preparing the Programmes and any revisions thereto to be submitted to LUL pursuant to Clause 18.7A, the Contractor shall:

- (a) comply with the MPD Guidelines (and any changes thereto) as provided by LUL to the Contractor from time to time;
- (b) prepare the Programmes and any revisions thereto using Primavera P3e software or such other software as LUL may reasonably require from time to time;
- (c) ensure that the Programmes and revisions thereto are submitted by electronic transmission;
- (d) ensure that each Programme sets out in a clear manner:
  - (i) all of the activities, at a pre-agreed level, to be undertaken by the Contractor and its Key Subcontractors in relation to matters referred to in Clause 18.7A(a);
  - (ii) all LUL Dependencies the Contractor reasonably considers are applicable to the subject matter of the Programme following agreement with LUL;
  - (iii) any activities that the Contractor reasonably considers are dependent on the performance of or consent, approval or authorisation from, a third party;
  - (iv) an estimate of the cost and resource to be assigned to a pre-agreed level of activity included in the Programme that is appropriate for the complexity and stage of the project;
  - (v) a proper and accurate report of the earned value; and  
in respect of Variations:

- (vi) a proper and accurate report of the earned value based on the actual cost of each pre-agreed level of activity.

18.7C Where at any time:

- (a) the Contractor is able to demonstrate to the satisfaction of LUL, acting reasonably, that its compliance with Clauses 18.7A and 18.7B (including a change to the MPD Guidelines) has directly caused it to incur a material increase in Costs; or
- (b) LUL is able to demonstrate, acting reasonably, that the Contractor's compliance with Clauses 18.7A and 18.7B has directly caused a material reduction in the Contractor's Costs,

there will be a Price Adjustment to reflect the increase or reduction (as the case may be) in the Costs of the Contractor.

### **Annual and Five Year Operating Plans**

18.8 The Contractor shall produce, deliver and, subject to the other terms of this Contract, implement an Annual Operating Plan and a Five Year Operating Plan (each a *Plan* and together the *Plans*) in accordance with Clauses 18.8 to 18.11R. Each Plan shall reflect and be consistent with the Long Term Strategy (and each Annual Operating Plan must reflect and be consistent with the corresponding Five Year Operating Plan) and include the following:

- (a) an appropriately detailed programme of renewal and upgrade works to the Assets, IT Assets and New Assets which is consistent with the renewal and upgrade strategy contained in the Long Term Strategy and in respect of the Annual Operating Plan consistent with the Five Year Operating Plan and which is planned to be undertaken by the Contractor in respect of the Annual Operating Plan during the calendar year covered by the Annual Operating Plan and in respect of the Five Year Operating Plan planned to be undertaken during the five calendar year period covered by the Five Year Operating Plan (*Renewal and Upgrade Programme*);
- (b) appropriately detailed financial information relating to the Contractor's renewal and upgrade programme, limited to:
  - (i) the Contractor's actual expenditure to date;
  - (ii) the Contractor's planned annual expenditure until the Expiry Date which shall be identified as individual cost streams in respect of each asset group (such asset groups shall as a minimum include HVAC Switchgear, DC Switchgear, Transformer/Rectifier Units, Auxiliary/Signal Transformers, Battery Banks (substations, transformer rooms, switch houses), Battery Chargers (substations, transformer rooms, switch houses), Frequency Changers, Air Compressors, Local Emergency Supply Equipment (OLBI's or equivalent), Local

Emergency Supply Batteries, Remote Terminal Units, AC Distribution Boards, HV Cables and Pilot Cables or as otherwise modified from time to time as part of the agreement or determination of the Long Term Strategy and Plans);

- (iii) information to show the impact of each relevant Variation and Third Party Works Adoption Variation on the Contractor's planned expenditures under (ii) above; and
  - (iv) all unit cost assumptions used by the Contractor for the purposes of the Long Term Strategy;
- (c) an appropriately detailed description of all projects and works planned to be undertaken by the Contractor and its Key Subcontractors in respect of the Annual Operating Plan during the calendar year covered by the Annual Operating Plan and in respect of the Five Year Operating Plan the five calendar year period covered by the Five Year Operating Plan respectively including those works being undertaken in connection with:
- (i) the Renewal and Upgrade Programme developed pursuant to Clause 18.8(a); and
  - (ii) any material Authority Notices or Implementation Notices that have been issued and any material Variation Notices, Third Party Works Adoption Variation Notices, Direction Notices and Instruction Notices outstanding and being progressed;
- (d) an appropriately detailed description of the resources that the Contractor has available or anticipates having available (and the methods by which it anticipates such resources shall be procured) to undertake and complete all of the projects and works identified in Clause 18.8(c) by the relevant timeframes including a description of the personnel, plant, equipment available and access arrangements together with appropriate supporting evidence;
- (e) financial projections and a cost profile in respect of each aspect of the projects and works identified in Clause 18.8(c);
- (f) the procedures and methodologies to be adopted and followed by the Contractor and its Key Subcontractors in the implementation of each Plan;
- (g) the Standards and Specification Review Programme;
- (h) an appropriately detailed description of all risk elimination and mitigation measures and strategies which have been or are anticipated to be developed, implemented and maintained by the Contractor in relation to each of the projects and works identified in Clause 18.8(c) in order to effectively manage all risks identified in the registers of risk prepared by the Contractor.

## **Approval and Review Process for the Annual Operating Plan and Five Year Operating Plan**

18.9 The Contractor shall prepare and submit to LUL by the fourth Friday in April of each calendar year commencing 2007 an outline of the Annual Operating Plan and an outline of the Five Year Operating Plan (*Outline Annual Operating Plan* and *Outline Five Year Operating Plan* respectively) for the calendar year commencing the following 1 January. The Outline Annual Operating Plan and the Outline Five Year Operating Plan shall each contain, for each of the matters set out in Clauses 18.8(a)-(h), an outline of the general principles and framework which the Contractor shall apply in the development of that part of the Annual Operating Plan and Five Year Operating Plan respectively.

18.10 As soon as reasonably practicable, and in any event no later than the second Friday in May of each calendar year (unless otherwise agreed by the Parties) following receipt by LUL of the Outline Annual Operating Plan and the Outline Five Year Operating Plan, appropriate representatives from each Party shall meet in person to discuss the format and content of the Outline Annual Operating Plan and Outline Five Year Operating Plan.

18.11A The Contractor shall give full consideration to all written comments (if any) provided by LUL (to be provided by 31 May of each calendar year) in respect of the Outline Annual Operating Plan and Outline Five Year Operating Plan. The Contractor shall incorporate or address all such comments provided by LUL in the Interim Annual Operating Plan and Interim Five Year Operating Plan prepared in accordance with Clause 18.11B unless the Contractor, acting reasonably, considers a comment to be unreasonable.

18.11B As soon as reasonably practicable, and in any event no later than 30 June of each calendar year the Contractor shall prepare and submit to LUL:

- (a) a draft Annual Operating Plan and a draft Five Year Operating Plan which shall:
  - (i) each contain, in respect of each of the matters set out in Clause 18.8(a)-(h), the underlying principles that the Contractor shall apply in the development of the Annual Operating Plan and the Five Yearly Operating Plan (*Interim Annual Operating Plan* and *Interim Five Year Operating Plan* respectively); and
  - (ii) be sufficiently developed so that the Final Draft Annual Operating Plan and the Final Draft Five Year Operating Plan will be complete by the timeframe specified in Clause 18.11E; and
- (b) a schedule detailing all of LUL's written comments on the Outline Annual Operating Plan and the Outline Five Year Operating Plan and indicating where those comments have been incorporated into the Interim Annual Operating Plan and the Interim Five Year Operating Plan. Where the Contractor has not incorporated or addressed (or only partially incorporated

or addressed) a written comment into the Interim Annual Operating Plan and/or the Interim Five Year Operating Plan (as the case may be) the Contractor shall provide detailed reasons for its decision not to incorporate that comment.

18.11C As soon as reasonably practicable and in any event no later than the third Friday in July of each calendar year (unless otherwise agreed by the Parties), appropriate representatives from each Party shall meet in person to discuss the format and content of the Interim Annual Operating Plan and Interim Five Year Operating Plan.

18.11D The Contractor shall give full consideration to all written comments (if any) provided by LUL by 31 July of each calendar year in respect of the Interim Annual Operating Plan and Interim Five Year Operating Plan. The Contractor shall incorporate all such comments provided by LUL into the Draft Annual Operating Plan and Draft Five Year Operating Plan unless the Contractor, acting reasonably, considers a comment to be unreasonable.

18.11E As soon as reasonably practicable, and in any event no later than 30 September of each calendar year the Contractor shall prepare and submit to LUL:

- (a) a final draft Annual Operating Plan and a final draft Five Year Operating Plan which shall (assuming compliance by LUL with Clauses 18.10 to 18.11C) each contain, in respect of each of the matters set out in Clause 18.8(a)-(h), content and substance which is sufficiently developed, in LUL's reasonable opinion, to demonstrate in all material respects that it will meet the programme for delivery of such plans. Content and substance shall automatically be deemed less than sufficiently developed in respect of a draft Annual Operating Plan and/or a draft Five Year Operating Plan in the event that it does not contain the key completion milestone deadlines and standards of work to be carried out and in respect of a draft Annual Operating Plan if it does not contain the level of expenditures (***Final Draft Annual Operating Plan and Final Draft Five Year Operating Plan*** respectively and each a ***Final Draft Plan***); and
- (b) a schedule detailing all of LUL's written comments on the Interim Annual Operating Plan and the Interim Five Year Operating Plan and indicating where those comments have been incorporated into the Final Draft Annual Operating Plan and the Final Draft Five Year Operating Plan. Where the Contractor has not incorporated or addressed (or only partially incorporated or addressed) a written comment into the Final Draft Annual Operating Plan and/or the Final Draft Five Year Operating Plan (as the case may be) the Contractor shall provide detailed reasons for its decision not to incorporate that comment.

18.11F NOT USED

18.11G NOT USED

18.11H NOT USED

18.11I As soon as reasonably practicable and in any event no later than 31 October of each calendar year, LUL shall in respect of each Final Draft Plan either:

- (a) approve the Final Draft Plan by giving written notice of such approval to the Contractor; or
- (b) if LUL considers that:
  - (i) the Final Draft Plan is not consistent with the Long Term Strategy; and/or
  - (ii) the Final Draft Plan does not adequately take into account the Contractor's obligations under this Contract,

LUL shall be entitled to reject the Final Draft Plan and provide the Contractor in writing with a detailed explanation as to the grounds on which it has rejected the Final Draft Plan in accordance with (b)(i) and/or (ii) above. LUL shall be entitled, at any time, to specify the amendments that it considers should be incorporated into a Final Draft Plan in order for the grounds in (b)(i) and/or (ii) above not to apply. If LUL does not approve or reject the Final Draft Plan in accordance with this Clause 18.11I immediately after 31 October the Contractor may implement those elements of the Final Draft Plan that are time critical and which LUL has agreed.

18.11J If LUL has rejected a Final Draft Plan the Contractor shall:

- (a) by 30 November of each calendar year amend the Final Draft Plan to address each of the grounds raised by LUL, unless the Contractor acting reasonably, considers that a ground is unreasonable;
- (b) submit the revised Final Draft Plan to LUL for approval, together with a schedule detailing all of the grounds on which LUL rejected the Final Draft Plan and indicating where those grounds have been addressed in the revised Final Draft Plan. Where the Contractor has not addressed (or only partially addressed) a ground on the basis that the Contractor considers it unreasonable, the Contractor shall provide detailed reasons for its decision not to address that ground.

18.11K Where Clause 18.11J applies, the Parties shall repeat the process in Clause 18.11I (save that instead of LUL approving or rejecting the revised Final Draft Plan by 31 October it must do so within 15 Working Days of receipt of that revised Final Draft Plan). If LUL rejects the revised Final Draft Plan the Parties shall repeat the process in 18.11J (save that instead of the Contractor submitting a second revised Final Draft Plan by 30 November it must do so within 21 Working Days of receipt of LUL's comments). If by 31 December the Parties have not reached agreement on the revised Final Draft Plan the Contractor shall continue to work in accordance with the existing Annual Operating and/or Five Year Operating Plan (if any and as relevant), provided that the Contractor shall implement those elements of the Final Draft Plans that have become time critical and have been agreed as referred to in Clause 18.11I, until LUL approves the revised Final Draft Plan after repeat of the processes outlined

in this Clause 18.11K or the matter is agreed or determined pursuant to Clause 18.11N, 18.11O and/or 18.11P.

18.11L NOT USED.

18.11M Where:

- (a) LUL has approved a Final Draft Plan pursuant to Clause 18.11I(a) or a revised Draft Plan pursuant to Clause 18.11K; or
- (b) the form of a Final Draft Plan has been agreed or determined pursuant to Schedule 37A,

the Final Draft Plan shall be deemed to be the Annual Operating Plan or Five Year Operating Plan (as the case may be) from:

- (c) in the case of Clause 18.11M(a) the date of such approval by LUL; and
- (d) in the case of Clause 18.11M(b) the date of such agreement or determination,

and the Contractor shall act in accordance with each Plan as approved, agreed or determined.

18.11N Where a revised Final Draft Plan has been rejected by LUL pursuant to Clause 18.11K either Party may refer the matter to Senior Representatives in accordance with the procedure set out in paragraphs 1 and 2 of Schedule 37A (Management Escalation and Expert Determination Procedure). For the avoidance of doubt, the Parties agree that the dispute resolution procedure set out in Schedule 37 (Dispute Resolution) does not apply to any failure to agree pursuant to either Clause 18.11I(b)(i) and/or (ii).

18.11O If both Parties agree not to use the Management Escalation Procedure or if the Management Escalation Procedure fails to produce agreement between the Parties then either Party may refer the matter for expert determination in accordance with the procedure set out in paragraphs 3 to 21 of Schedule 37A (Management Escalation and Expert Determination Procedure).

18.11P Notwithstanding Clause 18.11N, if at any time after 31 May of any calendar year LUL considers that:

- (a) Any Annual Operating Plan Draft and/or Any Five Year Operating Plan Draft being prepared by the Contractor in accordance with Clauses 18.8 to 18.11K is not consistent with the Long Term Strategy; and/or
- (b) Any Annual Operating Plan Draft and/or Any Five Year Operating Plan Draft being prepared by the Contractor in accordance with Clauses 18.8 to 18.11K does not adequately take into account the Contractor's obligations under this Contract,



LUL may refer the matter to Senior Representatives in accordance with the procedure set out in Schedule 37A (Management Escalation and Expert Determination Procedure).

### **Mutual Obligation to Consult**

18.11Q The Parties shall consult with each other throughout the development of each Annual Operating Plan and each Five Year Operating Plan in order to facilitate the production of each Plan within the time limits set out in Clauses 18.8 to 18.11K.

### **Contractor's Continuing Obligations**

18.11R Neither any comment, consent and/or approval given by LUL pursuant to Clauses 18.8 to 18.11Q nor the Contractor's compliance with and/or acting in accordance with the Annual Operating Plan or the Five Year Operating Plan shall in any way relieve the Contractor of its obligation to continue to perform all of its obligations under and in accordance with this Contract.

### **Compliance with finalised plans**

18.12 The Contractor shall comply with the Annual and Five Yearly Operating Plans in effect from time to time in so far as such compliance with the Annual and/or Five Yearly Operating Plans does not conflict with the rights or obligations of the Contractor under this Contract. In the event of any such conflict, the provisions of this Contract shall prevail.

18.13 The finalisation of an Annual or Five Yearly Operating Plan which departs from the Five Yearly Operating Plan previously in effect shall not of itself relieve the Contractor from any accrued liability in respect of failure to comply with the relevant plan unless such non-compliance is agreed with LUL. LUL shall also be required to take into account the reasons for the departure from the previous Five Year Plan so that the Contractor shall not be liable to LUL where the reasons for the departure were due to circumstances beyond its control.

### **Change of Circumstances**

18.14 The Parties agree to inform each other forthwith upon becoming aware of any change of circumstances which is likely to require a departure from the terms of the current Annual or Five Yearly Operating Plan in accordance with a procedure to be agreed between the Parties.

18.15 The Contractor shall forthwith upon becoming aware of such a change in circumstances prepare, as appropriate, an amendment to the relevant Annual and/or Five Yearly Operating Plan and provide LUL with a copy of such amendment. The provisions of Clauses 18.9 to 18.13 shall, as appropriate apply mutatis mutandis to that proposed amendment (without prejudice to any accrued liability in respect of failure to comply with the relevant plan).

### **Records**

18.16.1 The Contractor shall maintain and update drawings, records and technical information in accordance with paragraph 10 of Schedule 5.1 (the Performance Specification).

18.16.2 LUL shall provide a records management service to the Contractor at no charge in accordance with the terms set out in Schedule 18.16.

## **Testing**

18.17 Without prejudice to Schedule 23.16A (Adoption Procedures) and Clause 23.56, the Contractor shall be primarily responsible for the carrying out of tests on the Assets and the System (including new Assets prior to their incorporation into the System) in accordance with the provisions of Schedule 18.9 (Testing) or in relation to the Initial Works and Power Upgrade Works in accordance with the completion and acceptance testing regime specified in Schedule 9.1 (Emergency Supply Plan) or 13.1 (Initial Works and Power Upgrade Works).

18.18 The Contractor shall submit to the Contract Manager its proposed philosophy and programme for initial and periodic tests of the Assets and the System and shall report to LUL at such intervals as LUL may reasonably require on the result of that programme.

18.19 In addition, LUL shall be entitled to carry out (or require the Contractor, in conjunction with LUL to carry out) such tests as LUL may specify on the Assets and the System (including new Assets prior to their incorporation into the System but not in relation to the Initial Works or the Power Upgrade Works, which shall be tested in accordance with Schedule 9.1 (Emergency Supply Plan) or 13.1 (Initial Works and Power Upgrade Works)) and the provisions of Schedule 18.9 (Testing) shall apply in relation to any such tests.

18.20 The Contractor shall comply with all requirements under Clauses 18.17, 18.18 and 18.19 and co-operate fully with LUL in arrangements for testing.

18.21 The Contractor shall be entitled to be present and observe any testing carried out by LUL pursuant to Clause 18.17, 18.18 and 18.19. LUL shall (subject to the provisions of Schedule 18.9 (Testing) in relation to notification) be entitled to be present and observe any testing carried out by the Contractor pursuant to Clauses 18.17, 18.18 and 18.19.

18.22 Not used.

18.23 If any tests provided for under this Contract reveal that any Assets are not operating in accordance with the Performance Specification the Contractor shall promptly repair renew or replace them, such repair, renewal or replacement to be at no cost to LUL except where LUL has caused the relevant Asset failure, in which case the provisions of paragraph 5 of Schedule 25 shall apply. Where LUL has caused such Asset failure if the costs including Irrecoverable VAT of repair, renewal or replacement are below £50,000 the Contractor shall pay such costs and repair, renew or replace the Asset or Assets pending receipt of the insurance proceeds and invoice

LUL. If LUL reimburses the Contractor and subsequently insurance proceeds covering any part or all of such costs or repair, renewal or replacement are received, the Contractor shall pay such insurance proceeds (less Taxation thereon, after giving credit for any tax deduction available to the Contractor for the payment to LUL) to LUL. If the costs (including Irrecoverable VAT) of repair or replacement are in excess of £50,000 the Contractor shall repair, renew or replace the Assets on receipt of relevant insurance proceeds or on payment by LUL. The Contractor shall use all reasonable endeavours to recover such insurance proceeds and where LUL has caused the relevant Asset failure, LUL shall use reasonable endeavours to assist the Contractor in respect of such recovery.

18.24 No item of new or replacement equipment which fails a test shall be put into operation in the System without compliance with the procedure set out in Schedule 18.9 (Testing).

### **Asset Register and Contract Register**

18.25 The Contractor shall subject to Clause 15.2 (Derogations) establish and maintain an up to date Asset Register (to be updated as set out in Schedule 43.3 (Contract Management)) substantially in the form of the LUL Asset Register or as the Parties may otherwise agree and containing the information referred to in Clause 18.26.

18.26 As soon as reasonably practicable after the Starting Date, the Asset Register shall specify the Assets (which for the purposes of this Clause 18.26 only shall be deemed to include the IT Assets), their value or initial cost exclusive of VAT, the manufacturer or supplier, the owner of them, the basis on which they are owned or licensed, the date of acquisition, its age (if not new when acquired) and maintenance history, the terms upon which the operator of them or it has the right to use them or it and any other information relevant to the provisions of Clause 30 or, in relation to IT Systems, Clause 34. The Asset Register shall be in such a form as to distinguish New Assets from all other Assets.

18.27 The Contractor shall maintain a Contract Register (to be updated as set out in Schedule 43.3 (Contract Management)) which shall list all contracts entered into by the Contractor in relation to the performance of the Contractor's obligations under this Contract (other than any contracts relating to employment or general office administration and any other category of contracts that the Contract Manager shall from time to time specify).

18.28 The Contractor shall (at no additional cost to LUL) at LUL's request provide it with up to date hard copies of the Contract Register. Furthermore the Contractor shall provide LUL (on request by it) with reasonable details of any contract in the Contract Register which has been entered into subject to any confidentiality obligations therein and so as not to disclose any commercially sensitive information. The Contractor shall use reasonable endeavours to obtain consent where necessary.

18.29 At any time following service of a notice to terminate or the date six months prior to expiry of the Contract Duration, the Contractor will provide LUL with up-to-date copies of all contracts entered into by the Contractor in relation to the performance of its obligations under this Contract (including for the avoidance of doubt all SPL Related Contracts) (whether or not entered into the Contract Register), as well as any document contained in or referred to in any such contract.

18.30 The Contractor shall (at no additional cost to LUL) give LUL on line “read only” access (as agreed between the Parties) to the Asset Register and the Contract Register at all times by means of an electronic link and terminal supplied and maintained by the Contractor to enable LUL to inspect the contents thereof and if required from time to time by LUL, promptly deliver up-to-date hard copies of such Asset Register and Contract Register to LUL and in any event at the end of each Contract Year deliver to LUL an up-to-date hard copy of the Asset Register and the Contract Register clearly identifying all changes that have occurred during that Contract Year to the Asset Register and the Contract Register.

18.30A The Contractor shall ensure that the Contract Register contains the following information as a minimum in relation to each contract:

- (a) details of the aspects of the Services (including Variations) which are contracted;
- (b) the name of each contractor or supplier;
- (c) the date the contract was awarded;
- (d) the current status of the contract (e.g. whether the contract is in progress or completed or otherwise);
- (e) whether the annual value of the contract exceeds £250,000 (indexed to RPI as from the Date of the Supplemental Deed); and
- (f) details relating to the duration of the contract (including the position in respect of renewal and extension).

18.30B The Contract Register shall set out the contracts so as to distinguish the following:

- (a) Key Subcontracts with a KS Direct Agreement in place;
- (b) Key Subcontracts without a KS Direct Agreement in place; and
- (c) those contracts which are not Key Subcontracts.

### **Access**

18.31 The access arrangements set out in Schedule 18.11 (Access) shall have effect.

### **TUPE AND EMPLOYEES**

19.1 The Parties acknowledge that this Contract and the contracting-out of the Services to the Contractor are governed by the Transfer Regulations. The contract of employment of each of the Transferred Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under an occupational pension scheme) shall be transferred to the Contractor with effect from the Starting Date, which shall be the “time of transfer” under the Transfer Regulations.

19.2 If, for any reason, the time of the transfer is later than the Starting Date, the reference to the Starting Date in this Clause shall be taken as a reference to that later date.

19.3 The Contractor shall indemnify and hold harmless LUL against all costs, claims, losses, liabilities and expenses whatsoever which affect LUL, arising out of any act or omission of the Contractor, its servants or agents, in connection with the employment of and (without prejudice to Clause 19.10) collective agreements concerning the Transferred Employees or the Re-Transferred Employees by the Contractor at any time from the Starting Date to the Expiry Date, including but not limited to any claim in respect of personal injury or death, breach of statutory duty, any other claim in tort, any claim for damages for breach of contract or for compensation for unfair or wrongful dismissal or redundancy or failure to provide comparable occupational pension benefits or failure to consult with employees, employee representatives or unions.

19.4 LUL shall perform and discharge all costs and expenses relating to emoluments, contributions to TfL’s pension scheme, Taxation, bonus or commission payable or accruing in respect of the Transferred Employees up to the Starting Date and shall indemnify the Contractor and keep the Contractor indemnified against all costs, claims, losses, liabilities and expenses arising from LUL’s failure so to discharge.

19.5 With effect from the Starting Date LUL and the Contractor shall enter into an agreement in the terms set out in Schedule 19.2 (Payroll Services) for the provisions of payroll services unless otherwise agreed.

19.6 LUL shall indemnify and hold harmless the Contractor against all costs, claims, losses, liabilities and expenses whatsoever which affect the Contractor arising out of any act or omission of LUL, its servants or agents in connection with the employment of and collective agreements concerning the Transferred Employees by LUL including but not limited to Transferred Employees on fixed term contracts at any time prior to the Starting Date including but not limited to any claim in respect of personal injury or death, breach of statutory duty, any other claim in tort, any claim for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy or failure to consult with employees, employee representatives or unions provided that the indemnity in this Clause 19.6 shall not apply to any liability arising out of any claim made by a Transferred Employee against the TfL pension scheme.

19.7 LUL and the Contractor acknowledge and agree the following in relation to the indemnities given to each other under Clauses 19.3 and 19.6 and to claims from third parties (*Third Party Claims*) which may lead to claims under such indemnities:

- (a) a Party with notice of a Third Party Claim (the *Indemnified Party*) shall notify the other Party as soon as reasonably practicable;
- (b) the Indemnified Party shall not compromise or settle a Third Party Claim without the other Party's consent, which shall not be unreasonably withheld or delayed;
- (c) the Indemnified Party shall take all such steps as are reasonable including those reasonably required by the other Party to mitigate any costs, claims, liabilities and expenses claimed under the indemnity and to avoid, dispute, resist, appeal, compromise, admit or contest any Third Party claims;
- (d) the Indemnified Party shall, where reasonably required, transfer to the other Party conduct of any Third Party Claims or, if no such transfer is required, consult where reasonably required with the other Party about the conduct of the proceedings; and
- (e) the Indemnified Party shall take all steps reasonably required by the other Party in connection with the conduct and defence of any proceedings.

19.8 If it is subsequently determined by a court or other tribunal of competent jurisdiction or as a result of a change of law prior to the Starting Date that the Transfer Regulations do not apply to the Transferred Employees, LUL shall use its best endeavours to ensure that the Contractor is able to use the Transferred Employees in the provision of the Services, and the Contractor will meet LUL's payroll costs subject to Clause 19.11 in respect of the Transferred Employees that it uses. For the avoidance of doubt LUL shall not be required to increase salaries to demonstrate that best endeavours have been used to ensure that the Contractor is able to use the Transferred Employees in the provision of the Services.

19.9 The employees whose contracts of employment will transfer to the Contractor are those listed in Schedule 19.9 (Pensions and Employee Matters) save where changes are made or arise in accordance with the following provisions of this Clause 19.9:

- (a) the Contractor acknowledges that vacancies may arise in the ordinary course of business as a result of resignation, transfer and promotion in accordance with LUL's contractual obligations, dismissals for medical or disciplinary or death;
- (b) LUL may replace the employees on this list or change their job descriptions with the prior written consent of the Contractor, such consent not to be unreasonably withheld or delayed;
- (c) LUL shall use all reasonable endeavours prior to the Starting Date to ensure that the number of Transferred Employees does not fall below 315 and does

not exceed 335; the Contractor acknowledges that the circumstances described in Clause 19.9(a) are beyond LUL's reasonable control; and

- (d) except in the case of dismissals for medical or disciplinary reasons LUL shall not take any steps to move or transfer employees on the list other than where transfer or promotion is in accordance with LUL's contractual obligations without the prior written consent of the Contractor, such consent not to be unreasonably withheld or delayed. In every case LUL will inform the Contractor of any changes to the list.

19.10 If the number of employees of LUL who transfer under the Transfer Regulations to the Contractor on and from the Starting Date exceeds 335, LUL shall indemnify the Contractor for all costs, claims, losses, liabilities and expenses arising out of the termination of the employment and any collective agreements in respect of but not limited to the excess number of employees within 12 months of the Starting Date including all costs, claims, losses, liabilities and expenses incurred in employing such employees before termination of their employment. Such costs, claims, losses, liabilities and expenses will be determined by averaging the total costs, claims, losses, liabilities and expenses notionally payable in respect of the number of employees who transfer if all such employees were dismissed from the Starting Date and multiplying that figure by the number of excess employees. If a collective agreement not disclosed in writing to the Contractor has effect as if originally made between the Contractor and any trade union as a result of the Transfer Regulations, LUL will indemnify the Contractor in respect of any costs, claims, losses, liabilities and expenses arising from the continuation of such collective agreement. The Contractor shall use all reasonable measures to mitigate its loss provided that it can do so without inconvenience or unreasonable cost.

19.11(a) LUL has not, without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) increased the salaries or entered into any agreement to make payments or make any change to the terms and conditions of employment or other benefits of the Transferred Employees except where such increase or agreement or change would have arisen in the ordinary course of LUL's business or which has been disclosed in writing to the Contractor prior to the 31 October 1997. If the aggregate effect as at the Starting Date or later in relation to negotiations prior to the Starting Date of such salary increases, or agreements or changes to terms and conditions of employment and benefits increases employment costs in respect of the Transferred Employees by more than the increase in the Retail Price Index between 31 October 1997 and the Starting Date, LUL will pay to the Contractor any additional employment costs as a lump sum in the case of one off payments, or as a Price Adjustment in accordance with Clause 23A provided that no such payment or Price Adjustment shall be made in respect of any amount in excess of the offer made to the Transferred Employees by LUL prior to the Starting Date where such amount is offered by the Contractor after the Starting Date.

- (b) Clause 19.11(a) does not apply to Lots Road Closure Termination Payments.

- (c) LUL shall pay to the Contractor by way of a lump sum payment any amount over £173,000 (one hundred and seventy three thousand) properly paid by the Contractor in Lots Road Closure Termination Payments and for the avoidance of doubt this payment shall be made regardless of any delay in the Completion of the Emergency Supply Plan.

19.12 LUL shall within seven days after the Starting Date transfer to the Contractor the staff files relating to the Transferred Employees' employment with LUL (the *Employee Records*) and the Contractor shall:

- (a) keep the Employee Records in safe custody and a reasonable manner;
- (b) not destroy or dispose of any Employee Records before the Expiry Date; and
- (c) not destroy or dispose of any Employee Records on or after the Expiry Date unless the Contractor has first notified LUL of the proposed destruction or disposal of such Employee Records and (unless LUL has specified that it does not wish to have them) shall transfer them to LUL.

19.13 LUL and the Contractor shall make available to each other subject to the duties of confidentiality to their employees any documents (including the Employee Records) relevant to the liabilities owed by the other Party to the Transferred Employees or which they owe to each other by virtue of the indemnities in this Clause 19 and such documents shall be made available:

- (a) for the purposes of inspection and for the taking of copies;
- (b) within a reasonable time of being requested; and
- (c) free of charge.

19.14 Where documents are made available under Clause 19.13, LUL or the Contractor (as the case may be) shall upon written request provide written authentication to the other Party of any such documents and verbal clarification as to the content, existence and the extent of the documents and (where reasonable in all the circumstances) shall loan to the other Party any of the documents.

19.15 At any time during the twelve month period before the Expiry Date or at any time after expiry or termination of this Contract, LUL may require the Contractor to provide within a specified period of it being requested to LUL (or to any contractor or contractors nominated by LUL) such information as is reasonably required by LUL or such other contractor(s) relevant to the potential employment liabilities of LUL or any new contractor arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees providing the Services, their salaries and other conditions of employment, ages and lengths of service;



- (b) the method of organisation of the employees providing the Services and documentary evidence relating to such organisation;
- (c) the proposals for consultation with affected employees; and
- (d) details of collective agreements and union recognition agreements,

and shall in addition provide to LUL upon request any communication with any potential or intended new contractor or the Contractor's employees or their representatives relating to the effect on such employees of the expiry or termination of this Contract.

19.16 The Contractor shall provide LUL upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 19 may be addressed.

19.17 The Contractor undertakes and agrees that it shall not in the 10 months prior to expiry or termination of this Contract (or, where notice to terminate is given of less than 10 months, during any such period of notice):

- (a) reorganise or substantially alter the numbers or method of organisation or identity of the employees providing the Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Contractor which is not related or confined to the employees providing the Services or the expected expiry or termination of this Contract; or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees providing the Services, except where such increases or changes would have arisen in the ordinary course of the Contractor's business and are not related to the expiry or termination of this Contract either because they are applied to all of the Contractor's employees (whether or not providing the Services or otherwise) or are the result of a bona fide business reorganisation of the Contractor which is not related or confined to the employees providing the Services or expiry or termination of the Contract.

19.18 LUL shall indemnify the Contractor and keep the Contractor indemnified against all Losses arising out of or in connection with:

- (a) any change in the working conditions, terms and conditions of the Re-Transferred Employees to his or her detriment or any of them occurring on or after the Expiry Date; and
- (b) any claim by any Re-Transferred Employee after the Expiry Date in connection with their employment on or after the Expiry Date (whether in contract or in tort or under statute (including the Treaty of Rome and any directives made under the authority of that Treaty) for any remedy including, without limitation, in respect of unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination).

## **Pensions and other employee matters**

19.19 The provisions relating to pensions and other employee matters set out in Schedule 19.9 (Pensions and Employee Matters) shall have effect.

## **SERVICE DELIVERY POINTS AND LIQUIDATED DAMAGES**

### **Service Delivery Points**

20.1 Where any of the events detailed in Table B of Schedule 20.1 (Service Delivery Points) occur, the Contract Manager may impose on the Contractor the number of Service Delivery Points specified in Schedule 20.1 (Service Delivery Points) for that event except to the extent that such failure is the direct result of:

- (a) failure by LUL to provide or comply with an LUL Dependency or by the negligence of LUL, its officers, employees or agents, servants, contractors and subcontractors of any tier;
- (b) a Force Majeure Event or the consequences thereof;
- (c) the Contractor complying with any of its obligations under (and to the extent in accordance with the requirements of) Clauses 13, 14.2(c), 15.1(a)(vi), 23 and 32 and Schedule 23.16A;
- (d) the exercise by LUL of its rights under Clause 28.12, save to the extent provided in Clause 28.12;
- (e) planned maintenance (where derogation from the Performance Specification has been agreed with the Contract Manager) and to the extent that such planned maintenance is effected in the manner agreed with the Contract Manager; or
- (f) for the duration of the relevant Derogation Period or Concession, a matter which is the subject of a Derogation or Concession as applicable.

20.2 Subject to Clauses 20.5, 20.6B, 23.3A(A)(b) and 23.49.2(b) if in any LUL Financial Year:

- (a) the total number of Service Delivery Points incurred by the Contractor is greater than or equal to [REDACTED] and
- (b) the LDs Threshold is reached,

LUL may issue a Formal Warning to the Contractor at any time, substantially in the form set out in Schedule 20.2 (Formal Warning).

20.2A [REDACTED] Service Delivery Points incurred and applied in respect of an LUL Financial Year by LUL shall be capable of carrying forward to the next LUL Financial Year.

20.3 Subject to Clauses 20.5, 20.6B, 23.3A(A)(b) and 23.49.2(b), if the Contractor receives a Formal Warning in each of any [REDACTED] LUL Financial Years, LUL shall be entitled to serve a notice to terminate upon the Contractor pursuant to Clause 28.

20.4 Subject to Clauses 20.5, 20.6B, 23.3A(A)(b) and 23.49.2(b), if at any time the Contractor:

- (a) receives [REDACTED] Formal Warning; or
- (b) incurs [REDACTED] Service Delivery Points in any [REDACTED] consecutive Periods,

LUL shall be entitled in its absolute discretion to carry out (and shall notify the Contractor accordingly) any further audits or inspections in addition to the provisions relating to audits or inspections provided for in Schedule 43.3 (Contract Management) in order to examine any relevant failures in the Contractor's performance of the Contract and the Contractor shall reimburse LUL for the reasonable cost of such increased activities. The Contractor's obligation to reimburse LUL under this Clause shall in the case of Clause 20.4(a) above cease after [REDACTED] Periods and in the case of Clause 20.4(b) above cease after [REDACTED] Periods provided that in either case the Contractor does not during the relevant LUL Financial Year or those Periods again become liable to reimburse LUL for increased activities under this Clause. Nothing in this Clause 20.4 shall prevent LUL imposing properly incurred Service Delivery Points in accordance with this Clause 20, whether for relevant or other failures.

20.4A Service Delivery Points can be incurred by the Contractor only as a result of the failure to perform or breach of an obligation under this Contract as set out in Table B of Schedule 20.1. No more than one category of Service Delivery Points shall be applied to the same occurrence of a failure to perform or breach. Without prejudice to reference 28 of Table B of Schedule 20.1, Service Delivery Points shall be applied once only per occurrence of a failure to perform or breach. Service Delivery Points which have been incurred will be applied to the Period in which the relevant failure to perform or breach occurred. Pending resolution of a dispute in relation to the same in accordance with the procedures set out in Schedule 20.1 (Service Delivery Points), Service Delivery Points shall (without prejudice to the determination of such dispute) be deemed to have been so incurred but only for the purposes of the calculation of the Asset Management Performance Bonus pursuant to Clause 20.11, until otherwise agreed or determined. Where liquidated damages have been incurred for the occurrence of a failure to perform or breach no Service Delivery Points may be incurred, in respect of such occurrence of a failure to perform or breach.

20.5 The identification, notification and incurring of Service Delivery Points shall be dealt with as set out in Schedule 20.1 (Service Delivery Points) and the other provisions of that Schedule shall have effect.

### **Liquidated Damages**

20.6 The Contractor shall pay by way of liquidated damages:

- (a) such sums as may be identified and calculated in accordance with Schedule 20.6 (Liquidated Damages) in respect of any Failure set out in Table A of Schedule 20.1 provided that the Contractor shall not be liable to pay liquidated damages in respect of the performance of the Power Quality Compensation Equipment and its consequential impact on the System for any period to the date of completion of Phase 1 and for the period after such date its liability for liquidated damages in respect of the Power Quality Compensation Equipment and its consequential impact on the system is subject to (i) the provisions of Clause 15 of this Contract, and (ii) the following limits on liability (without prejudice to the limits of the Contractor's liability contained in Clauses 25.5 and 25.12 to 25.15):
- (aa) such liquidated damages being capped at [REDACTED] per LUL Financial Year; and
  - (bb) all such liquidated damages arising through the remainder of the Contract Duration being subject to an aggregate cap of [REDACTED]
- (b) such sums identified and calculated in accordance with:
- (i) Schedule 9.1 (Emergency Supply Plan);
  - (ii) Schedule 13.1 (Initial Works); and
  - (iii) Schedule 25.4 (Initial Works and Variation ECM V0055 - Liquidated Damages Caps)

(but subject to the limits of liability set out in Clauses 25.18 and 25.19) in respect of delay in completion of Initial Works and Variation ECM V0055.<sup>46</sup>

The Contractor shall not be required to pay any liquidated damages to the extent that any Failure or delay which would otherwise cause the Contractor to be liable for the payment of liquidated damages is the result of:

- (i) failure by LUL to provide or comply with an LUL Dependency or by the negligence of LUL, its officers, employees or agents, servants, contractors and subcontractors of any tier;
- (ii) a Force Majeure Event or the consequence thereof;
- (iii) the Contractor complying with any of its obligations under (and to the extent in accordance with the requirements of) Clauses 13, 14.2(c), 15.1(a)(vi), 23 and 32 and Schedule 23.16A;
- (iv) the exercise by LUL of its rights under Clause 28.12 save to the extent provided in Clause 28.12;

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<sup>46</sup> Power Quality Variation

- (v) planned maintenance (where a derogation from the Performance Specification has been agreed with LUL or the Contract Manager) and to the extent that such planned maintenance is effected in the manner agreed with the Contract Manager; or
- (vi) for the duration of the relevant Derogation Period or Concession, a matter which is the subject of a Derogation or Concession.

20.6A Where any Failure occurs which has a recorded duration in excess of 24 hours the performance liquidated damages payable in respect of such Failure shall be reduced, in relation to each respective period of recorded duration, on the basis set out in the table below:

<b>Period of recorded duration of Failure</b>	<b>Amount of reduction</b>
██████████	██████
██████████	██████
██████████	██████
██████████████████	██████

20.6B Liquidated damages which have been agreed or finally determined in accordance with Schedule 20.6 in relation to a Failure set out in Table A of Schedule 20.1 shall be applied to the LUL Financial Year in which the relevant Failure occurred. Pending resolution of a dispute in relation to the same the liquidated damages shall (without prejudice to the determination of such dispute) be deemed to have been incurred in the LUL Financial Year in which the relevant Failure occurred but only for the purposes of the calculation of the LDs Threshold in relation to the Asset Management Performance Bonus pursuant to Clause 20.11, until otherwise agreed or determined. For the purpose solely of calculating whether the LDs Threshold has been reached (without prejudice to the operation of Clause 20.6), no account shall be taken, in relation to a Failure or series of cascading Failures which are attributable to a single event or incident giving rise to liquidated damages, of any liquidated damages in excess of the Single Event LDs Threshold.

20.7 All sums payable by the Contractor to LUL pursuant to Clause 20.6 shall be paid as liquidated damages and not as a penalty and the Parties acknowledge that such sums are a genuine attempt to pre-estimate the loss which will be suffered by LUL in the event of any such failures in performance or breach of this Contract.

20.8 Where any liquidated damages become due under Schedule 9.1 (Emergency Supply Plan), 13.1 (Initial Works) or 25.4 (Initial Works and Variation ECMV0055 – Liquidated Caps) (subject to the provisions of Clause 25.18 and 25.19) the Contractor shall in addition, be liable to any liquidated damages which arise under any other

provision of Clause 20.6 even if they also relate to the Initial Works in question and the Contractor hereby agrees and acknowledges that the sums calculated under Schedule 9.1 (Emergency Supply Plan), 13.1 (Initial Works) and 25.4 (Initial Works and Variation ECMV0055 – Liquidated Caps) and those calculated under Schedule 20.6 (Liquidated Damages) are in respect of distinct risks and occurrences and represent a genuine attempt to separate the damages arising therefrom.

20.9 Any liquidated damages which may become payable by the Contractor to LUL pursuant to Clause 20.6 shall subject to the provisions of Schedule 20.6 (Liquidated Damages), be deducted from the Availability Charge. To the extent at the Expiry Date there is Liability Headroom under the Performance Liability Limit the Contractor shall pay liquidated damages agreed or determined in accordance with Schedule 20.6 (Liquidated Damages) not already received by LUL pursuant to the provisions of Clause 22.3.2.

20.10 Without prejudice to the imposition of Service Delivery Points pursuant to Clause 20.1 or the adjustments to the Availability Charge that can be made pursuant to Clause 21 or the rights of LUL to terminate this Contract in accordance with Clause 28.9 or the right of LUL to claim under the indemnity in Clause 25 (other than in respect of delay to the Initial Works), the liquidated damages prescribed in this Clause 20 shall be the sole remedy of LUL (and, save as aforesaid, shall be in full satisfaction of any liability of the Contractor to LUL) in respect of any breach of this Contract and LUL agrees that the Contractor shall have no further obligation to compensate LUL under this Contract in respect of any Losses incurred by LUL in relation to or arising out of the act or event giving rise to the liability for liquidated damages under this Contract. Any dispute between the Contractor and LUL as to the incurring of Service Delivery Points or the applicability of liquidated damages, in each case pursuant to this Clause 20, shall be pursued in accordance with Schedules 20.1 (Service Delivery Point) and 20.6 (Liquidated Damages), and where necessary referred for determination in accordance with Schedule 37 (Dispute Resolution). The Parties undertake that any dispute will be undertaken in good faith.

20.11 The Contractor shall be entitled to receive a bonus (the *Asset Management Performance Bonus*) in accordance with and subject to the following provisions of this Clause 20.11. Any Asset Management Performance Bonus which becomes payable shall be paid as a lump sum during the second Period after the end of the LUL Financial Year to which it relates. In any single LUL Financial Year the Asset Management Performance Bonus shall be calculated as follows:

If:

- (a) ■ Service Delivery Points are incurred in the relevant LUL Financial Year, the Asset Management Performance Bonus shall be ■
- (b) the number of Service Delivery Points incurred in the relevant LUL Financial Year is less than or equal to ■ the Asset Management Performance Bonus shall be ■

- (c) the number of Service Delivery Points incurred in the relevant LUL Financial Year is greater than [REDACTED] but less than or equal to [REDACTED], the Asset Management Performance Bonus shall be [REDACTED]
- (d) the number of Service Delivery Points incurred in the relevant LUL Financial Year is in excess of [REDACTED] no Asset Management Performance Bonus shall be payable;
- (e) the LDs Threshold is reached in the relevant LUL Financial Year, no Asset Management Performance Bonus shall be payable.

All monetary figures contained in paragraphs (a)-(c) above shall be indexed to RPI as from the Date of the Supplemental Deed.

20.12 In the event of a dispute between LUL and the Contractor as to:

- (a) the Service Delivery Points (if any) that should be applied in the relevant Period in accordance with Clause 20.1 above; and/or
- (b) the liquidated damages (if any) that should be applied towards the calculation of whether the LDs Threshold has been reached in the relevant LUL Financial Year,

LUL shall not be obliged to pay out that part of any bonus which may be affected by the outcome of the dispute until such time as such dispute is finally agreed or determined in accordance with Schedule 37 (Dispute Resolution). If the agreement or determination in respect of the dispute is that the part of the bonus affected by the dispute should have been paid at the time referred to in Clause 20.11, then Clause 22.4 shall apply with the "due date" being the date on which that part of the bonus should have been paid.

**PRICE**

**Availability Charge**

21.1 LUL shall subject to the provisions of this Clause 21 pay to the Contractor the Availability Charge for each Contract Year on the basis set out in Schedule 21.2 (Availability Charge) in respect of all Services to be provided under the Contract in that Contract Year (except as specifically provided in this Contract).

[REDACTED]

21.3 Subject to Clause 21.2 the Availability Charge for each Period shall be calculated by reference to the Availability Charge Components set out in Clause 21.5.





[REDACTED]

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**RIGHTS AND OBLIGATIONS OF PADCO**

21A.1 The Parties agree that the provisions of Clauses 21.24, 21.25, 21.26, 28B, 29, 29A, 30.13(e), 58, Schedule 29.2 (Termination Payments) and the definitions of Acceleration Amount, Lenders Liabilities, Lenders Outstandings, Termination Calculation Date, Hedging Agreements, Market Breakage Costs, Financing Agreements, Financing Documents and Third Party Lenders, may not be amended without the consent of PADCo. Where agreement is reached between LUL and the



Contractor in respect of any other matter under the Contract, including any amendment of the Contract, the consent of PADCo shall be deemed to be given in respect of such matter.

21A.2 Subject to Clause 21A.1 above, PADCo's sole rights in respect of this Contract are to enforce Clauses 21.25, 21.26, 21A, 23A.10A, 28B, 29.9 to 29.11, 29A, and 30.13(e), 58.9 and 58.11 directly against LUL and for the avoidance of doubt PADCo shall not be entitled to terminate this Contract other than as provided in Clause 28B.

21A.3 The Contractor and LUL shall not be entitled to enforce any rights (apart from the rights of LUL under Clauses 21.24, and 30.13(e)) which they might otherwise have under the terms of this Contract against PADCo.

## **PAYMENT AND BILLING**

### **Delivery of Statement**

### **Delivery of Statement**

22.1 The Availability Charge Components for every Period shall each be payable to the Contractor by LUL per Period (subject to Clause 22.7) and in arrears. LUL shall, not more than 19 days after the end of each Period, provide the Contractor with a completed CPAF. The Contractor shall, not more than 20 days after the end of each Period, provide LUL with an Invoice in respect thereof. Subject to Clause 29, all such payments shall be due and payable 20 days after either the latest date for receipt by LUL of an Invoice under this Clause 22.1 or the date of receipt, whichever is the later. In addition, the Contractor shall supply LUL with a statement detailing:

- (a) the half-hourly integrated demand in kWh measured at the metering points for Lots Road Generating Station and Greenwich Generating Station being the generator output meters less the house transformer meters at each site and shall be presented in paper form and in an agreed software form; and
- (b) metered dc traction consumption data which shall be grouped together for each line on the Underground Network and shall be presented in paper form.

22.2 Any other payment due by LUL to the Contractor under this Contract shall (unless otherwise stipulated) be due and payable by LUL to the Contractor on expiry of 30 days of delivery of a demand in respect thereof.

### **Payment**

22.3.1 LUL shall pay all amounts due to the Contractor or PADCo under this Contract in pounds Sterling. Payments shall be made by bank transfer (Bank Automated Clearance System **BACS**) in immediately available funds to such bank account of the Contractor or PADCo as the Contractor or PADCo as the case may be, shall from that time designate for that purpose, or such other method as the Parties and, if relevant, PADCo may agree from time to time.





**Disputed Items**

22.7 If any item or part of an item shown on a statement, certificate or invoice rendered by either LUL or the Contractor is disputed or subject to question (in each case, in good faith) by the other, then the payment by the other of the remainder of the items on that statement, certificate or invoice shall not be withheld on those grounds and, to the extent that it shall subsequently be agreed or determined that the amount withheld shall have been properly payable to the other party, the party entitled to that amount shall also be entitled to interest at the Commercial Interest Rate from and including the date that the amount was due up to but excluding the date of payment (both before and after judgement). If any item or part of an item shown on such a statement, certificate or invoice is paid but is disputed or questioned, and is subsequently agreed or determined not to have been properly payable, then the party to whom it was paid shall refund it together with interest at the Commercial Interest Rate from and including the date of receipt up to but excluding the date of repayment (both before and after judgement).

**Set-Off**

22.8.1 All payments made by LUL under the Project Agreements shall be made in full and without withholding, deduction or counterclaim save:

- (a) as expressly provided in this Contract;
- (b) in respect of moneys which are agreed to be due, and subject to Clause 22.8.3 not the subject of further appeal in accordance with Schedule 37 (Dispute Resolution); or
- (c) as required by Law in respect of Taxation.

22.8.2 Without prejudice to the arrangements set out in Clause 29A.1 LUL agrees that it has no rights of set-off whatsoever in respect of any payment due from LUL to the Contractor or PADCo under Clauses 29 and 29A except that amounts payable from LUL to the Contractor under Clause 29.20(a) (other than Availability Charge deferred pursuant to Clause 22.6, or outstanding amounts of Availability Charge and interest upon both) may be set-off against amounts payable from the Contractor to LUL under Clause 29.21.

22.8.3 If Contractor Default Termination has occurred (but not in respect of Clause 28.9(r)) and a notice to terminate is served and following such notice LUL makes a claim against the Contractor which is agreed to be due or determined in accordance with Schedule 37 (Dispute Resolution) by an Adjudicator but the Contractor wishes to pursue its claim to arbitration, LUL shall be entitled to withhold against the Availability Charge over the remainder of the Contract Duration until the Expiry Date (so that, for as long as any finance provided by Third Party Lenders is outstanding, the withholding by way of reduction to the Availability Charge in this Clause 22.8.3 and any withholding made under Clause 16.4 shall not in aggregate in any Period be more than 60% of the Availability Charge due in that Period before any deductions under Clause 21) an amount equal to the value of the claim. For the avoidance of doubt, this Clause is without prejudice to the limitation of liability in Clause 25.4. Where any arbitration undertaken by the Contractor pursuant to Schedule 37 (Dispute Resolution) is subsequently determined in the Contractor's favour, LUL shall repay any withholding from the Availability Charge with interest at the Commercial Interest Rate from the date of the withholding. For the purposes of calculating the amount in Schedule 29.2 Part 1 (Termination Payments) as at the Termination Calculation Date, the Contractor shall treat any withholding made by LUL under this Clause 22.8.3 as a deduction to the Performance Liability Limit (provided it would be so under Clause 25.5) equal to the amount of the claim by LUL.

## **VARIATIONS**

### **General**

23.1 In this Clause:

- (a) LUL's right to require the Contractor to implement Variations is set out in Clause 23.2;
- (b) the exceptions from that right are set out in Clauses 23.3, 23.3A and 23.3C and 23.27(c);
- (c) the Contractor's obligations in relation to the financing of Variations are set out in Clauses 23.11, 23.12, 23.13 and 23.13A;
- (d) the Contractor's obligation to comply with the Cost Optimisation Principles, and, to the extent not inconsistent therewith, to maximise the favourable and minimise the unfavourable financial impact on LUL of implementing Variations is set out in Clauses 23.14, 23.15 and 23.16; the method for determining whether any Price Adjustment falls to be made and if so for quantifying it is set out in Clauses 23.13, 23.13A, 23.17, 23.18, 23.18A, 23.19, 23.20 and 23.31A;
- (e) the requirement to make other necessary changes to the Contract is set out in Clause 23.23;
- (f) the procedure for LUL to specify the Variation is set out in Clauses 23.24, 23.25, 23.26, 23.27 and 23.27A;

- (g) the procedure for determining the Final Implementation Details in respect of a Variation is set out in Clauses 23.28, 23.28A, 23.28B, 23.29, 23.30 and 23.31;
- (h) the changes that apply when the Variation is to be implemented before the Final Implementation Details are determined are set out in Clauses 23.32, 23.32A, 23.32B and 23.33;
- (i) the effect of applicable time limits is determined in Clauses 23.34 and 23.35;
- (j) the procedure that applies when Variations are suggested by the Contractor is set out in Clauses 23.36, 23.37, 23.38 and 23.39;
- (k) the requirement for an Authority Notice to be issued by LUL before the Contractor commences implementing a Variation is set out in Clauses 23.40, 23.41, 23.42, 23.43, 23.44 and 23.45;
- (l) the rights of LUL to procure any works and/or services from third parties are set out in Clauses 23.46, 23.47 and 23.47A; and
- (m) the Known Third Party Works Adoption Procedures in relation to assets where the Contractor has not performed a Variation are set out in Clauses 23.48 to 23.54.

### **LUL's Right to Vary**

23.2 LUL shall, subject to Clauses 23.2A, 23.3, 23.3A, 23.3C and 23.27(c), be entitled to require the Contractor to implement any Variation under this Contract. LUL may exercise the rights conferred by this Clause 23.2 by serving:

- (a) a Variation Notice followed by an Authority Notice; or
- (b) an Instruction Notice,

on the Contractor in accordance with Clauses 23.24 to 23.33 below.

23.2A LUL shall, subject to Clauses 23.3, 23.3A, 23.3C, and 23.27(c), be entitled to require the Contractor to implement a Variation the purpose of which is to prescribe the methodology (including the timing) which the Contractor applies in respect of its performance of the Services only if and to the extent that (i) it relates to the Safety Management System, or to Clause 14, or (ii) LUL grants a derogation from, or amends, the Performance Specification to meet the reasonable requirements of the Contractor arising from an alteration to the methodology (including the timing) in which it performs the Services. Where LUL exercises its rights under this Clause 23 to require the Contractor to implement a Variation (the purpose of which is to prescribe the methodology (including the timing) which the Contractor applies in respect of its performance of the Services) which does not increase the Costs of provision of the Services there will be no Price Adjustment unless the Variation affects Taxation or the amount of the taxable profits or losses of the Contractor or PADCo for any Period. If the change to methodology (including the timing) which the Contractor applies in

respect of its performance of the Services increases the Costs of the Contractor or results in Incremental Risk or the Variation affects Taxation or the amount of the taxable profits or losses of the Contractor or PADCo for any Period, there shall be a Price Adjustment and the Cost Optimisation Principles shall apply.

23.2B Subject to Clauses 23.2C and 23.2D below, the Contractor shall competitively tender all elements of any Variation (unless otherwise directed by LUL in its absolute discretion).

23.2C Notwithstanding Clause 23.2B above, the Contractor shall not be obliged competitively to tender any of the following elements of a Variation:

- (a) any initial work to assess the feasibility of the Variation;
- (b) the operation and maintenance and renewal of the System once the works associated with the Variation have been commissioned or, in respect of Third Party Works, adopted in accordance with Schedule 23.16A (Adoption Procedure);
- (c) the management, administration and co-ordination of all elements of the Variation (including those which are competitively tendered) required in order to fulfil the Contractor's obligations to LUL in respect of the Variation which shall be limited to:
  - (i) the undertaking of the Outline Proposal, preparation and compilation of Implementation Details, tender and procurement process, obtaining necessary approvals, commissioning, financial modelling and reporting requirements (including in respect of the Master Projects Database);
  - (ii) the management and co-ordination of design surveys and System modelling;
  - (iii) the contract management and administration required to be performed by the Contractor in its capacity as client for all Subcontracts and any other resources required relating to the Variation; and
- (d) that assurance which the Contractor reasonably requires to undertake to ensure that the works and/or services which are the subject of the Variation are in accordance with the terms of this Contract.

23.2D Where LUL directs that the Contractor shall not be required to competitively tender the capital works component of a Variation, the Contractor shall not be required to competitively tender any element of a Variation.

### **Exceptions**

23.3 Subject to Clause 23.3A, the Contractor shall not be obliged to implement any Variation with an estimated capital cost (including Irrecoverable VAT) of less than £1 million (indexed to RPI as from the Date of the Supplemental Deed) if:

- (A) after the provision of written evidence by the Contractor to demonstrate the matters referred to in paragraphs (a) or (b) below, the Parties agree or it is determined under Schedule 37 (Dispute Resolution) that:
  - (a) to do so (or the result of implementation of the Variation) would be impossible (other than as a result of the Contractor being unable to raise sufficient additional finance) or illegal; or
  - (b) it is (or as a result of implementation of the Variation would be) unsafe to do so; or
- (B) LUL has not confirmed to the Contractor in writing that it will fund the cost of the Variation by way of (i) Advance Payments in accordance with Clause 23.13 and Clause 23.13A (where applicable) or the timing and manner of such Advance Payments has not been agreed or determined in all material respects and/or as relevant (ii) a Price Adjustment; or
- (C) the Contractor and/or LUL after making timely application have not obtained all material consents and clearances necessary (i) to commence work on the Variation and (ii) thereafter from time to time for the then current stage of implementation of the Variation including the LUL Approvals and the Required Consents.

23.3A The Contractor shall not be obliged to implement any Variation either (i) with an estimated capital cost (including Irrecoverable VAT) of equal to or more than £1 million (indexed to RPI as from the Date of the Supplemental Deed) or (ii) which would involve connecting to the System equipment or apparatus of a type or character or in an application which had not previously been used as part of the System (or utilising previously connected System equipment or apparatus in a new application) if:

- (A) after the provision of written evidence by the Contractor to demonstrate the matters referred to in paragraphs (a), (b) or (c) below are true, the Parties agree or it is determined under Schedule 37 (Dispute Resolution) that:
  - (a) any of the statements referred to in Clause 23.3(A)(a) and (b) are true in relation to the Variation; or
  - (b) the threshold levels specified in this Contract in respect of Service Delivery Points and/or liquidated damages which can lead to the Contractor incurring a Formal Warning would need to be amended (and have not been so amended) so as to ensure that there is no greater likelihood of the Contractor reaching the relevant threshold as a result of the implementation of the Variation; or
  - (c) the Incremental Risk of the Variation is greater than or equal to an average of 10 per cent. and the Risk Protections do not

mitigate the Incremental Risk to below an average of 10 per cent (the amount of the Price Adjustment may be the principal Risk Protection only where the Variation increases the capacity and/or scale of the System); or

- (B) LUL has not confirmed to the Contractor in writing that it will fund the cost of the Variation by way of (i) Advance Payments in accordance with the Contract provisions or the timing and manner of such Advance Payments has not been agreed in all material respects or determined and/or, as relevant, (ii) a Price Adjustment; or
- (C) the statement referred to in Clause 23.3(C) is true in relation to the Variation.

23.3B For the purpose of Clause 23.3(C), in the event that the Contractor fails to obtain the Third Party Lenders' technical advisor's consent the Contractor shall provide LUL with correspondence with the Third Party Lenders' technical advisor which sets out the detailed reasons for such refusal.

23.3C If the Contractor reasonably estimates in its Outline Proposal or prior to the issue of the Implementation Details that the capital cost (including Irrecoverable VAT) of any Variation (other than any Variation pursuant to an Instruction Notice in excess of the Variation Cap) exceeds the Variation Cap the Contractor shall not be obliged to implement any such Variation unless otherwise agreed between the Parties.

23.3D For the purpose of determining whether the Variation Cap or Known Third Party Adopted Works Cap has been reached a number of Variations or Known Third Party Adopted Works or a combination of Variations and Known Third Party Adopted Works which substantially relate to the same subject matter (whether or not contained in one or more Variation Notice or Instruction Notice less than or equal to the Variation Cap or Known Third Party Adopted Works Cap) shall prima facie be considered to form part of the same Variation or Known Third Party Adopted Works.

23.3E Notwithstanding any other term or provision of this Contract, neither the Known Third Party Adopted Works Cap nor the Variation Cap shall apply in relation to any works which are adopted or are to be adopted under Schedule 23.16A (Adoption Procedures).

23.4 ***NOT USED***

23.5 ***NOT USED***

23.6 ***NOT USED***

23.6A. ***NOT USED***

23.7 ***NOT USED***

23.8 ***NOT USED***



23.9 *NOT USED*

23.9A *NOT USED*

23.10 *NOT USED*

### **Insurance Proceeds Receivable**

23.11 Where the Contractor takes into account (in accordance with the definition of Cost Optimisation Principles) any insurance proceeds less any Taxation attributable thereto but taking into account the treatment for Taxation of the application of such proceeds receivable (but not yet received) in calculating the lowest reasonable whole life cost of the Variation, the Contractor shall be entitled (pending receipt of such insurance proceeds) to obtain funding for the Variation and any Advance Payments to be made by LUL shall be made on the basis that no such insurance proceeds will be received. The Contractor shall use all reasonable endeavours to recover such insurance proceeds and, to the extent that they are received, the Contractor will apply so much of such insurance proceeds as exceeds any Taxation attributable to such proceeds (after taking into account all credits, reliefs, allowances and deductions available in respect of the payment to LUL) to repay to LUL the amount of any Advance Payments made.

### **Prohibition on Financing Terms which would inhibit Variations**

23.12

- (a) Unless otherwise agreed by LUL, the Contractor shall not grant any assignment of or other security over assets attributable to Variations and/or Third Party Works Adoption Variation to which it does not possess legal or beneficial title.
- (b) Unless otherwise agreed by LUL (acting reasonably) the Contractor shall not grant any assignment of or other security over revenues arising from Variations and/or Third Party Works Adoption Variations (or assets attributable to Variations or Third Party Works Adoption Variations to which it possesses legal or beneficial title) except as set out in the Financing Agreements.

### **Advance Payments**

23.13 The following shall apply in relation to any Advance Payment Trigger:

- (a) the amounts, nature, terms and timing of such Advance Payments shall be as agreed between the Parties or as determined in accordance with Clause 37 (Dispute Resolution) to be necessary to provide the financing required to (i) implement a Variation or a Third Party Works Adoption Variation (as applicable); or (ii) to implement a proposal by the Contractor under Clause 23.36 (which is not a Variation) or (iii) to fund the Costs arising from a Discriminatory Change of Law or Safety Change;

- (b) the Advance Payments shall only be used by the Contractor to meet the Costs of (i) implementing a Variation or a Third Party Works Adoption Variation (as applicable); or (ii) implementing a proposal by the Contractor pursuant to Clause 23.36 (where not a Variation) or (iii) the funding of the Costs arising from a Discriminatory Change of Law or Safety Change as they arise upon presentation to LUL by the Contractor of invoices notwithstanding the resolution of any dispute as to the relevant Costs payable and such invoices shall be paid in accordance with Clause 22;
- (c) the Contractor shall have the right to rerun the Contractor's Financial Model under Clause 23A to calculate a Price Adjustment in respect of any Advance Payment as follows:
  - (i) in respect of any Variation prior to the Supplemental Deed Date and any Variation or Third Party Works Adoption Variation on or after the Supplemental Deed Date which is not a Relevant Variation (as defined in Clause 23.13A(a)) or in respect of Advance Payments in the circumstances described in (ii) or (iii) of Clause 23.13(a), payments by way of Advance Payments (where these are payments against invoices) will be payable on the assumption that the Advance Payments and the Costs which they fund will not in any Period alter the profits or losses for tax purposes of the Contractor (other than the Contractor being liable to tax on any margin it makes) and that the related adjustments to the Asset Rent payable by the Contractor to PADCo and additional Costs incurred by PADCo will not alter the profits or losses for tax purposes of PADCo in any Period other than PADCo being chargeable to tax on any margin it makes (*tax neutral*), provided that, in the case of a Variation or Third Party Works Adoption Variation, the Variation or Third Party Works Adoption Variation does not require any resultant assets to be capitalised by PADCo or the Contractor. If either they cease to be tax neutral, the Contractor reasonably believes that they will cease to be tax neutral or if requested by the Contractor (LUL's consent not be unreasonably withheld), the Contractor will rerun the Contractor's Financial Model to calculate the Price Adjustment associated with the Advance Payment and the Contractor's right to rerun the Contractor's Financial Model to calculate the Price Adjustment shall be the only remedy if the Contractor and/or PADCo is not tax neutral; and
  - (ii) on the occurrence of the end of a Variation Cumulation Period as defined in Clause 23.18.

#### 23.13A

- (a) The Parties intend that where:

- (i) there is a Variation or Third Party Works Adoption Variation on or after the Supplemental Deed Date (whether pursuant to an Authority Notice or Instruction Notice or otherwise);
- (ii) the capital (judged from LUL's perspective) works component of the Variation or Third Party Works Adoption Variation is to be exclusively funded by way of an Advance Payment or Advance Payments; and
- (iii) the Variation or Third Party Works Adoption Variation is to be carried out without PADCo acquiring any resultant assets and without any adjustment to the Asset Rent

(a "**Relevant Variation**") then:

- (iv) the making of the Advance Payment(s),
- (v) the incurring by the Contractor of Costs which they fund,
- (vi) the incurring by PADCo of any additional Costs arising from the Relevant Variation, and/or
- (vii) the disposal or severance of any assets of PADCo arising from the Relevant Variation

(each of (iv) to (vii) above being a "**Relevant Matter**") should not alter the taxable profits or losses in any period of the Contractor or PADCo, except:

- (viii) to the extent of the profit margin in the Advance Payment(s);
  - (ix) if the alteration is caused by the disposal or severance of assets arising from a Relevant Variation, to the extent that the alteration does not exceed any (aa) balancing charge, (bb) reduction in capital allowances, (cc) chargeable gain or (dd) income profit, in each case attributable to the amount or value actually received or receivable by PADCo for the relevant assets; or
  - (x) to the extent that the alteration (whether an increase or decrease in taxable profits or losses) reflects the fact that the Contractor in whole or in part obtains relief on capital (judged from its perspective) expenditure earlier than it is subject to tax in respect of amounts received or receivable from LUL to fund such capital expenditure, and for the avoidance of doubt this paragraph does not apply to the extent the alteration reflects a difference between the aggregate amount of such relief and such amounts subject to tax over the life of the Relevant Variation or to the extent that the alteration reflects that such relief is obtained later than such amounts are chargeable to tax.
- (b) Accordingly, if in relation to a Relevant Variation the Contractor considers a Relevant Matter would give rise to an alteration of the taxable profits or losses

in any Period of the Contractor or PADCo (except to the extent mentioned in Clause 23.13A(a) paragraphs (viii), (ix) or (x)), the Contractor shall include in its Implementation Details or Known Third Party Works Adoption Implementation Details (as applicable) details of the nature and quantum of any such alteration applicable to the Contractor and/or PADCo which would arise from the implementation of the Relevant Variation (including from any payment profile specified by LUL in its Variation Details or Third Party Works Adoption Variation Details in respect of the Relevant Variation).

- (c) The Parties shall, on the basis of the details included in the Implementation Details or Known Third Party Works Adoption Implementation Details (as applicable) under Clause 23.13A(b), agree or have determined the amount, terms and timing of the relevant Advance Payments so as, to the extent necessary, to compensate the Contractor and/or PADCo for the real commercial cost of any adverse tax effect of the implementation of the Variation or Third Party Works Adoption Variation, except to the extent mentioned in Clause 23.13A(a) paragraphs (viii), (ix) or (x). As an example, where the Contractor obtains relief on capital expenditure (judged from its perspective) later than it is subject to tax in respect of amounts received or receivable from LUL to fund such capital expenditure (that is, the reverse of the situation described in Clause 23.13A paragraph (x)), then the Contractor will be compensated for the real commercial cost to it of the effect of the timing difference over the life of the Relevant Variation, rather than by reference to the effect of the timing difference on a single accounting period.
- (d) This Clause 23.13A is without prejudice to Clause 32 and Schedule 33 of this Contract.
- (e) Clause 23A.8 shall not apply to a Relevant Variation insofar as it relates to the Contractor (without prejudice to its continued application insofar as the Original Assumption relates to PADCo).
- (f) Clause 23.13(c) shall apply to a Variation or Third Party Works Adoption Variation that is not a Relevant Variation.
- (g) No amount shall be taken account of under Clauses 23A, 25.6 or Schedule 33 to the extent that it is taken account of under Clause 23.13A(c).
- (h) The foregoing provisions of this Clause 23.13A are without prejudice to the Contractor's right to a Price Adjustment in respect of the non-capital (judged from LUL's perspective) works component of the Variation or Third Party Works Adoption Variation.

### **Obligation to Minimise Costs**

23.14 The Contractor shall comply with the Cost Optimisation Principles and, to the extent not inconsistent therewith, shall take all reasonable efforts to minimise the adverse and maximise the favourable financial impact on LUL of any Variation (without prejudice to the operation of Schedule 33 in respect of the scope of the

Services prior to the Variation, Clauses 23.15 and 23A) save that, if implemented pursuant to an Instruction Notice, the Contractor shall only be obliged to comply with the foregoing to the extent reasonably practicable in the circumstances. Without prejudice to the foregoing, following delivery of a Variation Notice or, subject to Clauses 23.32 and 23.32A to the extent reasonably practicable following delivery of an Instruction Notice the Contractor shall:

- (a) in any Outline Proposal and any Implementation Details, suggest any alternatives to the requirements expressed by LUL which the Contractor believes would achieve the same or similar objectives set out in a Variation Notice or Instruction Notice more cost effectively (whether by way of new technology or otherwise);
- (b) in any Outline Proposal and any Implementation Details, set out the manner of implementation of each Variation which, to the extent not inconsistent with the other provisions of this Clause 23, minimises the Incremental Risk and the disruption to the Services;
- (c) advise LUL of any new technology which materially alters the method by which the Contractor will perform the Variation in the context of the Services as a whole and any impact on delivery of electricity under Schedule 5.1 (Performance Specification) that the new technology would have. For the purposes of this Clause 23.14(c), “new technology” shall mean new inventions but not developments of existing technology or more efficient working practices;
- (d) take all reasonable efforts to plan its programme of capital expenditure and renewal and maintenance of assets of this Variation (taking into account any new technology as defined in Clause 23.14(c)) in such a way as to minimise the cost of any possible Variations which LUL has told it pursuant to Clause 23.45 are in contemplation;
- (e) subject to the provisions of Clauses 23.11 to 23.13 take all reasonable efforts in preparing the Implementation Details to optimise the financing of the Variation in the event that LUL requests the Contractor to seek to obtain third party finance (including by way of debt), unless LUL by notice otherwise requires provided that the Contractor shall not be in breach of this Clause 23.14(e) by virtue of complying with its obligations under the Financing Agreements;
- (f) advise LUL when would be the most economical time to implement the Variation;
- (g) comply with Clause 23.15, provided that the Contractor’s obligations in relation to considering the costs of and Benefits for Taxation of the bid for the Variation are set out exhaustively in Clause 23.15; and
- (h) apply the principles and assumptions in Part B of Schedule 33 save as agreed otherwise between the Contractor and LUL;

Provided that paragraphs (g) and (h) shall not apply to a Relevant Variation as defined in Clause 23.13A(a).

23.15 Except in respect of any Relevant Variation as defined in Clause 23.13A(a), in complying with the Cost Optimisation Principles the Contractor shall, if requested by LUL:

- (a) analyse and present in the Outline Proposal a summary of the best reasonably obtainable options for optimising the tax treatment of, and of the methods of financing of (if requested by LUL), the costs of assets and services, provided that in deciding upon what is reasonably obtainable the Contractor shall be entitled to take into account the value and scope of works comprised in the Variation in relation to the costs of securing the optimal taxation treatment and shall consult with LUL so far as reasonable in all the circumstances to determine whether the optimal treatment could best be reasonably obtained by arrangements to which LUL is a party and provided further that the Contractor shall have no obligation to seek external professional advice in relation to such analyses or the summary to be included in the Outline Proposal; and
- (b) after submission of the Outline Proposal, shall investigate in consultation with appropriately qualified external advisers the costs and benefits of the best reasonably obtainable options for optimising the tax treatment of, and of the financing of (if requested by LUL), the works comprised in the Variation and tax efficient structures but without obligation to incur costs on external advice disproportionate to the value and scope of the works comprised in the Variations and shall incorporate the results of that analysis in pricing, and where the bid for the Variation is not accepted by LUL then LUL shall indemnify the Contractor for those costs of external advice which it was obliged to incur under this sub-paragraph (b),

provided that in complying with its obligations under this Clause the Contractor shall not be obliged to (i) commit tax losses or other amounts for surrender, or to purchase losses or other amounts, in respect of group relief or consortium relief, or to procure that PADCo commits tax losses or other amounts for surrender, or to purchase losses or other amounts, in respect of group or consortium relief or (ii) to enter into arrangements which would adversely affect or prejudice financially the existing tax or accounting structure of the Project prior to the Variation.

23.16 LUL shall be entitled to require the Contractor to implement a Variation in a manner which departs from the Cost Optimisation Principles but any adverse impact on the Contractor of LUL doing so whether in terms of performing the Services, Incremental Risk, increased maintenance, replacement and other Costs or alterations to the standards of service or otherwise which can reasonably be expected shall be taken into account for the purposes of adjusting the payments under and making other adjustments to this Contract (including the Performance Specification) in accordance with this Clause.

### **Project Control Procedures**

23.16A Where the Contractor implements any Variation it shall do so in accordance with:

- (a) fully developed project management control procedures with particular regard to cost and programme management against pre-defined criteria; and
- (b) a suitably base-lined, detailed, logically linked, fully resourced and costed P3(e) Programme approved by LUL and incorporated into the Master Projects Database.

### **Price Adjustment for Variations**

23.17 Without prejudice to Clause 23.55.5 if the Costs arising out of a Variation during the period commencing on the date when LUL requests the Contractor to prepare Implementation Details in respect of that Variation and ending on the earlier of the date when LUL withdraws the Variation Notice or issues an Authority Notice in respect of that Variation exceed the Individual Threshold (other than Variations which are pursuant to an Instruction Notice and funded by way of Advance Payment), either (i) there shall be a Price Adjustment; or (ii) (without prejudice to any right of the Contractor to a later Price Adjustment taking into account any Costs which have been paid) LUL shall provide the Contractor with payments in respect of its Costs for the amount by which the Costs arising out of a Variation during the period commencing on the date when LUL requests the Contractor to prepare Implementation Details in respect of that Variation and ending on the earlier of the date when LUL withdraws the Variation Notice or issues an Authority Notice in respect of that Variation exceed the Individual Threshold (subject to any cap on Costs agreed in accordance with Clause 23.41).

23.18 Without prejudice to Clause 23.55.5 there shall be a Price Adjustment for Minor Variations at the expiry of two years from the Starting Date or if earlier the date at which the Costs arising from the accumulated Minor Variations exceed the Cumulative Threshold (each a *Variation Cumulation Period*). The first Variation Cumulation Period shall commence on the Starting Date and each subsequent Variation Cumulation Period shall commence at the end of the previous one. Price Adjustments shall be agreed or determined at the end of each Variation Cumulation Period. The final Variation Cumulation Period shall end on the Expiry Date.

23.18A In the event that LUL and the Contractor agree amendments to the Variation after the relevant Authority Notice has been issued:

- (i) and the Contractor demonstrates to the reasonable satisfaction of LUL that the amendments (whether taken individually or when aggregated with other amendments) have directly caused or will directly cause the Contractor to reasonably and unavoidably incur material increases in Costs; or
- (ii) LUL is able to demonstrate, acting reasonably, that the amendments have (whether taken individually or when aggregated with other amendments) directly caused or will directly cause a material reduction in the Contractor's Costs:-

then there shall be, as appropriate, an adjustment to the Advance Payment and/or a Price Adjustment to reflect the increase or reduction (as the case may be) in the Costs of the Contractor. Any amendment to the Variation after the relevant Authority Notice has been issued shall be documented by way of formal amendments to the Variation.

### **Purpose of Price Adjustment**

23.19 Subject to Clause 23.20 the Price Adjustment shall:

- (a) be such as to ensure that the Contractor is financially no better and no worse off (as described in Clause 23.20) than if it had not been required to implement (taking into account the effect of any Advance Payments):
  - (i) the Variation and all Minor Variations for which an adjustment has not yet been made where Clause 23.17 applies;
  - (ii) the accumulated Minor Variations where Clause 23.18 applies; or
  - (iii) any Third Party Works Adoption Variation pursuant to Schedule 23.16A (Adoption Procedures);

except to the extent that the Contractor has failed to:

- (i) comply with its obligations under Clause 23.14 (Cost Minimisation) or under paragraph 6.15 of Schedule 23.16A (Adoption Procedures) (as applicable); or
  - (ii) implement the Variation or Third Party Works Adoption Variation in accordance with its terms;
- (b) ensure the provisions of Clause 23A.3 are satisfied when calculated using the Contractor's Financial Model current at the date of the relevant Price Adjustment revised to include that Price Adjustment and the anticipated changes in Costs (including reductions in Costs) and revenue of the Contractor as a result of implementing the Variation and any relevant Minor Variation in accordance with the Final Implementation Details, or implementing the Third Party Works Adoption Variation in accordance with the Final Third Party Works Adoption Implementation Details or adopting the Known Third Party Adopted Works or adopting the Third Party Works Assets (or any combination Known Third Party Adopted Works thereof);
- (c) be calculated otherwise in accordance with Clause 23A.

23.20 The Contractor shall be financially no better and no worse off as set out in Clause 23.19(a) if the Price Adjustment satisfies the criteria in Clause 23A.3 as set out in the then applicable Contractor's Financial Model and Clause 23.19(b) has been complied with.



23.21 NOT USED

23.22 NOT USED

### **Other Consequences**

23.23 Subject to Clause 23.14, the terms of the Contract (other than those relating to the charges payable) shall be adjusted to the extent necessary to reflect the implementation of the Variation. The adjustments shall be determined in accordance with the procedure set out in this Clause 23.23. If pursuant to a request from LUL in respect of a Variation the Contractor raises additional finance from external financing or from its shareholders (by way of debt or equity), then if such finance forms part of the Final Implementation Details, or in respect of a Change of Law, if such finance is used to finance the effect of a Discriminatory Change of Law or Safety Change or used to finance the effect of a change to the Tax Assumptions under Schedule 33, LUL agrees that the agreements creating such external finance will form part of the definition of Financing Agreements, and in the case of debt finance provided by its shareholders part of the definition of “Initial Shareholder Debt” and “Shareholder Debt”, and in the case of equity financing, part of the definition of “Shareholder Equity” and “Initial Shareholder Equity”.

### **Procedure**

23.24 If LUL wishes to invoke its rights under Clause 23.2 it shall serve a Variation Notice or an Instruction Notice on the Contractor.

23.25 A Variation Notice means a notice in the form of Schedule 23.25 (Variation Notice) which specifies:

- (a) the Variation which LUL is considering making to the Services which the Contractor is required to provide or (subject to Clause 23.2) to the manner in which they are provided; and
- (b) the specific requirements of LUL in relation to the implementation of the Variation (which whilst not exhaustive must contain all material information to enable the Contractor to price the proposed Variation), which shall consist of the matters referred to in Clause 23.27 (Variation Details).

23.26 An Instruction Notice means a notice in the form of Schedule 23.26 (Instruction Notice) which specifies:

- (a) the Variation which LUL requires to be made to the Services which the Contractor is required to provide or (subject to Clause 23.2A) to the methodology in which they are provided (i) as a result of an emergency or (ii) as a result of an immediate safety situation or (iii) where LUL (acting reasonably) considers it inappropriate to issue a Variation Notice in accordance with Clause 23.25 or (iv) otherwise where the Contractor has refused to perform a Variation pursuant to Clause 23.3(C) and/or Clause 23.3A(A)(b) and/or (c) and/or Clause 23.3A(C) and/or Clause 23.27(c) except

that LUL shall not be entitled to serve an Instruction Notice following a refusal by the Contractor to implement a Variation pursuant to Clause 23.3(C) and/or Clause 23.3A(C) if the refusal is due to the fact that the Third Party Lenders have not consented to the implementation of the Variation by the Contractor and/or PADCo or where the implementation would cause a breach of the terms of the Financing Agreements or where the implementation of the Variation would put the Contractor in breach of Clause 15.1(a)(i) other than in respect of any Required Consents required from LUL which LUL waives in writing prior to implementation of the Variation;

- (b) any specific requirements of LUL in relation to the implementation of the Variation, which may include any of the matters referred to in Clause 23.27 (Variation Details); and
- (c) indicates that work on the implementation of the Variation is to commence as soon as possible (or on a specified date) even though the Implementation Details may not be finalised.

### **Variation Details**

23.27 The matters as to which LUL may impose requirements (as referred to in Clause 23.25(b) and 23.26(b)) shall include:

- (a) a detailed description of the Variation to the Services and of its objectives;
- (b) detailed draft amendments to the Performance Specification, which can reasonably be expected to be undertaken by the Contractor exercising Good Industry Practice and according to which the Services are to be provided following the Variation;
- (c) the requirements as to contractual incentives and liquidated damages to apply to the Contractor and/or any subcontractor in relation to the implementation of the Variation and/or the provisions of the Services following its implementation and increases to the Performance Liability Limit and/or Contractual Risk Commitment and/or the amounts set forth in the table contained in Schedule 29.3 (each to build up in accordance with a reasonable profile) to take account of any additional contractual incentives and/or liquidated damages all of which shall:
  - (i) subject to Clause 23.3 and 23.3A be reasonably commensurate with the contractual incentives and liquidated damages in the Contract as at the date of the Variation Details; and
  - (ii) take reasonable account of the impact of the Variation on the System as at the date of the Variation Details; and
  - (iii) take account of any Risk Protections required to mitigate any Incremental Risk to an average of below 10 per cent; and

- (iv) take account of the likelihood of the Contractor incurring Service Delivery Points or Formal Warnings after the implementation of the Variation or adoption of the Known Third Party Adopted Works so that the Contractor will not incur additional Service Delivery Points or Formal Warnings after such implementation or adoption which the Contractor would not have incurred in the event that the Variation was not to be implemented or Known Third Party Adopted Works adopted; and
- (v) be subject to the provisions of Clause 23.27A.

The Contractor shall discuss in good faith the proposal made by LUL in respect of this Clause 23.27(c). If LUL and the Contractor cannot reach agreement in principle on such increase (and, inter alia, the impact of the increase on the payments on termination set out in Schedule 29.2) or any alternative arrangements within 20 Working Days LUL shall not be entitled to require the Contractor to perform the relevant Variation. If the Parties agree to increase the Performance Liability Limit and/or Contractual Risk Commitment and/or the amounts set forth in the table contained in Schedule 29.3 (Termination Payments) the Parent Company Guarantor (unless otherwise agreed between the Contractor and LUL) shall guarantee such increase to the Performance Liability Limit and/or Contractual Risk Commitment and/or the amounts set forth in the table contained in Schedule 29.3 and the Contractor will procure a certificate from the Parent Company Guarantor to this effect.

For the avoidance of doubt, without prejudice to Schedule 20.6 LUL and the Contractor agree that LUL can impose requirements for additional liquidated damages for Underground Network Failures only where the Variation arises from an addition or extension to the Underground Network;

- (d) only to the extent LUL is acting reasonably and to the extent it is consistent with the provisions of Clause 23A and Schedule 33 and would not lead to a qualification to the Contractor's accounts, a statement by LUL as to whether it requires the Contractor to apply accounting methods and policies and standards of engineering design and security and risk margins which are equivalent to those applied in relation to the provision of the Services before the Variation took effect (except to the extent that the nature of the Variation makes it necessary to adopt a different approach) or whether the Contractor is to apply a different approach in which case the Contractor can elect to make consequential amendments to the Performance Specification;
- (e) a statement by LUL as to whether it requires that the Contractor only be entitled to claim to be excused from liability in respect of the performance of the Services affected by the Variation on grounds or to an extent that are equivalent to those which applied before the Variation took effect, or whether the Contractor is to apply a different approach which should be reasonable in all the circumstances;

- (f) only to the extent LUL is acting reasonably, in conformity with Clause 23.14, a statement of any subcontracting policy which LUL requires that the Contractor adopt in relation to all elements of the Variation (save for those matters specified in Clause 23.2C) and a detailed statement (subject to the requirements of Law and Legislation) of the extent to and manner in which competitive tendering techniques are to be deployed including:
- (i) the manner in which LUL shall review and monitor any tendering process that the Contractor is required to perform;
  - (ii) the scope of each package of works and/or services subject to the competitive tendering process;
  - (iii) the evaluation criteria (and weightings) to be used by the Contractor in the competitive tendering process; and
  - (iv) the extent to which the Contractor shall be entitled to use any existing framework agreements and/or call-off arrangements with subcontractors including any such arrangements with Key Subcontractors;
- (g) only to the extent LUL is acting reasonably, any specific information which LUL wishes the Contractor to take into account in applying the Cost Optimisation Principles to the Variation;
- (h) a statement by LUL specifying the payment profile which LUL proposes to govern the quantum and timing of payments to the Contractor (such statement to be used by the Contractor, to the extent possible, in the Contractor's pricing of the Variation); and
- (i) a statement by LUL (having regard to the complexity, size and stage of the proposed Variation) specifying:
- (i) the form and content in which LUL requires the Contractor to itemise the proposed Costs of implementing the proposed Variation as part of its Implementation Details;
  - (ii) any other requirements which LUL wishes to specify in respect of the manner and content of the Contractor's presentation of its proposed Costs in its Implementation Details;
  - (iii) the form and content in which LUL requires the Contractor to itemise the programme setting out the proposed activities of the Contractor and its Key Subcontractors to implement the proposed Variation as part of its Implementation Details; and
  - (iv) any other requirements which LUL wishes to specify in respect of the manner and content of the Contractor's presentation of such programme in its Implementation Details.

23.27A Where LUL requires the Contractor to price the proposed Variation taking into account the Variation Details imposed by LUL (the ***Original Variation Details***) and the Contractor does not agree to LUL's requirements as to contractual incentives, liquidated damages and/or the matters referred to in Clause 23.27(f) and/or (h) the Contractor shall be entitled to discuss its counter proposal with LUL, but LUL may, subject to Clause 23.13 and 23.13A, require that the Contractor price the proposed Variation on the basis of the Original Variation Details. If, following such pricing LUL decides to modify the Variation Details to impose a different level of contractual incentives, liquidated damages or modify its requirements in relation to the matters referred to in Clause 23.27(f) and/or (h) (which are different from the Original Variation Details), the Contractor (unless it has failed otherwise to comply with the Cost Optimisation Principles), shall be entitled to the opportunity to price the proposed Variation on the basis of the modified Variation Details.

### **Variation Notice Procedure**

23.28 If LUL serves a Variation Notice on the Contractor, the Contractor shall (as soon as reasonably practicable and in any event within thirty days) reply with an Outline Proposal or a notice stating that it is unable or unwilling to perform the Variation due to a Permitted Refusal. Where the Contractor replies with an Outline Proposal it shall indicate whether it anticipates requesting LUL to agree to an extended deadline for provision of the Implementation Details and Implementation Statement for the relevant Variation pursuant to Clause 23.28A.

23.28A Where LUL receives an Outline Proposal in relation to the Variation, LUL shall be entitled to request the Contractor (such request to contain all the requirements of LUL in relation to the Variation, if not contained in the Variation Notice) to provide the Implementation Details accompanied by an Implementation Statement for that Variation. The Contractor shall, subject to Clause 23.41 as soon as reasonably practicable thereafter and in any event within no later than 60 Working Days (or such longer or shorter period as the Parties may agree acting reasonably) from LUL's request to provide the Implementation Details, respond with the Implementation Details accompanied by an Implementation Statement.

23.28B Where LUL receives a notice from the Contractor pursuant to Clause 23.28 and LUL agrees with the Contractor's grounds for refusing to perform the Variation LUL shall withdraw the Variation Notice. Where LUL disagrees with the applicability of the grounds stated by the Contractor to the Variation either Party may refer the matter for determination in accordance with Schedule 37 (Dispute Resolution). Where the Contractor has refused to perform a Variation pursuant to Clause 23.3(C) and/or Clause 23.3A(A) (b) and/or (c) and/or Clause 23.3A(C) and/or Clause 23.27(c) LUL shall be entitled to require the Contractor to carry out the Variation pursuant to an Instruction Notice except that LUL shall not be entitled to serve an Instruction Notice following a refusal by the Contractor to perform a Variation pursuant to Clause 23.3(C) and/or Clause 23.3A(C) if the refusal is due to the fact that the Third Party Lenders have not consented to the implementation of the

Variation by the Contractor and/or PADCo or where implementation would cause a breach of the terms of the Financing Agreements or where the implementation of the Variation would put the Contractor in breach of Clause 15.1(a)(i) other than in respect of any Required Consents required from LUL which LUL waives in writing prior to implementation of the Variation. Subject to the foregoing, in the event that LUL requires the Contractor to carry out the Variation pursuant to an Instruction Notice and the Contractor's grounds for refusing to perform a Variation are agreed or determined in accordance with Schedule 37 (Dispute Resolution) not to have been valid then:

- (a) Clause 23.32A shall be deemed at all times not to apply and not to have applied, subject to paragraphs (b) and (c) below;
- (b) where the Final Implementation Details have been agreed by the Parties or determined those Final Implementation Details shall be treated as being the Final Implementation Details applying and to have applied at all times in respect of the Variation; and
- (c) where the Final Implementation Details have not been agreed or determined the Contractor shall continue to implement the Variation on the same basis as set out in the proposed method of implementing the Variation provided by the Contractor pursuant to Clause 23.32(a)(ii) or (where applicable) as set out in any Implementation Details and Implementation Statement provided by the Contractor pursuant to Clause 23.32(b)(ii) until such time as the Final Implementation Details have been agreed or determined under Schedule 37 (Dispute Resolution) at which time such Final Implementation Details shall be deemed to be the Final Implementation Details which shall be deemed to apply and to have applied at all times.

23.29 LUL shall reply to the Implementation Details and the Implementation Statement provided pursuant to Clause 23.28A as soon as reasonably practicable and in any event no later than 20 Working Days (or such longer or shorter period as the Parties may agree acting reasonably) from LUL's receipt of the Implementation Details and the Implementation Statement. If LUL's reply states that the Implementation Details specified by the Contractor are acceptable to LUL and, if the Implementation Details contain alternative proposals, specifies which of them LUL wishes to accept the Implementation Details shall constitute the Final Implementation Details for that Variation.

23.30 If the reply given by LUL pursuant to Clause 23.29 states that aspects of the Implementation Details are not acceptable to LUL, LUL shall notify the Contractor to that effect, stating in reasonable detail the reasons why LUL takes that view. Where LUL notifies the Contractor pursuant to this Clause 23.30 the Contractor shall propose modifications to the Implementation Details which are designed to meet as far as possible any reservations expressed by LUL. LUL may, at any time, propose modifications to the Implementation Details that would address its reservations. The Final Implementation Details for the Variation shall be those which the Parties agree, or which are determined under Schedule 37 (Dispute Resolution) to be the best

method of meeting the requirements of this Clause 23 and the purpose and scope of the Variation.

23.31 Any Variation which is required by way of a Variation Notice shall be implemented in accordance with the Variation Details issued pursuant to Clause 23.27 and the Final Implementation Details (subject to the issuance of an Authority Notice under Clause 23.40 to 23.45) and otherwise in accordance with this Contract.

23.31A A Price Adjustment shall be calculated in accordance with Clause 23.19.

23.31B Notwithstanding any other provisions of this Contract, LUL shall be entitled, in its absolute discretion, to withdraw a Variation Notice or an Instruction Notice at any time and without cause and in such case LUL shall pay to the Contractor its Costs incurred in carrying out tasks in accordance with the requirements of such a Variation Notice or Instruction Notice.

### **Instruction Notice Procedure**

23.32 If LUL issues an Instruction Notice the procedure set out in Clause 23.24 to 23.31B above shall apply with the following amendments:

- (a) the Contractor shall on receipt of any Instruction Notice within 24 hours:
  - (i) sign and return the Instruction Notice;
  - (ii) notify LUL of its proposed method of implementing the Variation; and
  - (iii) where reasonably practicable, commence implementation of the Variation unless the Contractor believes such Variation is impossible, illegal or unsafe to implement in which case the Contractor shall give evidence to demonstrate such claim;
- (b) the Contractor shall as soon as possible thereafter and in any event no later than within 60 Working Days (or such longer or shorter period as the Parties may agree acting reasonably):
  - (i) provide a written estimate of the Costs of implementing the Variation; and
  - (ii) provide full Implementation Details and an Implementation Statement;
- (c) LUL shall fund the Contractor's Costs of implementing the Instruction Notice by way of Advance Payments on the terms set out in Clauses 23.13 and 23.13A (where applicable);
- (d) a Price Adjustment shall be calculated in accordance with Clause 23.19.

23.32A In respect of a Variation pursuant to an Instruction Notice but subject to Clause 23.32B:

- (a) if the Contractor, acting reasonably, estimates pursuant to Clause 23.32(b)(i) that the capital cost (including Irrecoverable VAT) of the Variation is equal to or exceeds the Variation Cap the Contractor shall not be liable for any liquidated damages pursuant to Clause 20.6, Service Delivery Points or any associated reduction in the Availability Charge in respect of the non-performance of the Assets or works which are the subject of the Instruction Notice for the duration of this Contract or their direct effect on the System arising as a result of the implementation of the Instruction Notice; or
- (b) if the Contractor, acting reasonably, estimates pursuant to Clause 23.32(b)(i) that the actual capital cost (including Irrecoverable VAT) of the Variation is below the Variation Cap the Contractor shall not be liable for any liquidated damages pursuant to Clause 20.6, Service Delivery Points or any associated reduction in Availability Charge in respect of the non-performance of the Assets or works which are the subject of the Instruction Notice or their direct effect on the System arising as a result of the implementation of the Instruction Notice until the Final Implementation Details are agreed or determined.

23.32B Clause 23.32A does not apply where the works which are the subject of an Instruction Notice arise as a direct result of any failure by the Contractor to perform any of its obligations under this Contract.

23.33 Any Variation (other than a Variation carried out pursuant to an Instruction Notice under Clause 23.28B, which shall be carried out in accordance with the terms of that Clause) which is required by way of an Instruction Notice shall be implemented by the Contractor on the terms notified by the Contractor pursuant to Clause 23.32(a)(ii) until such time as the Contractor has provided full Implementation Details in accordance with Clause 23.32(b)(ii), from which time the Contractor shall implement the Variation in accordance with those Implementation Details until such time as the Final Implementation Details in respect of that Variation are agreed or determined under Schedule 37 (Dispute Resolution).

### **Time limits**

23.34 Notwithstanding the above time limits and procedures, nothing in this Clause shall prevent LUL and the Contractor agreeing a Variation in any other manner.

23.35 The Parties agree to use all reasonable endeavours to implement the requirements of this Clause 23 without unnecessary delay.

### **Variations proposed by the Contractor**

23.36 The Contractor may propose a Variation at any time by issuing a Proposal Notice to LUL substantially in the form of Schedule 23.36. LUL will provide an initial response to the Proposal Notice within one month of receipt thereof.

23.37 If LUL wishes to consider making or make the Variation it shall issue a Variation Notice or an Instruction Notice and the other provisions of this Clause 23



shall apply accordingly. Subject to Clause 23.38, LUL shall be under no obligation to do so.

23.38 Where the Proposal Notice either (i) relates to a Variation arising out of a Change of Law (without prejudice to the fact that there will be no adjustment to amounts payable under this Contract except as specified in Clause 32) or a Force Majeure Event or (ii) arises because of a change to any of the Qualifications and Assumptions or (iii) arises under Clause 7.1 or (iv) arises in any of the circumstances set out in Schedule 23.38, LUL shall be obliged to agree the Price Adjustment on the basis set out in Clause 23A and/or issue a Variation Notice (which it shall not be able to revoke), and the Parties shall use best endeavours to agree the Implementation Details as soon as reasonably practicable. LUL shall be required to issue an Authority Notice as soon as the Final Implementation Details are agreed.

The following shall apply in relation to this Clause 23.38:

- (a) Where the Costs are less than [REDACTED] the Contractor shall not be required to comply with the Cost Optimisation Principles, but shall provide to LUL reasonably detailed information evidencing the Costs it will incur. After having incurred such Costs the Contractor shall provide to LUL reasonably detailed information evidencing such Costs. The Contractor and LUL shall discuss the optimum means of funding any such Variation.
- (b) Where the Costs exceed [REDACTED] the Contractor shall:
  - (i) where the Costs relate to a Variation so far as reasonably practicable comply with the Cost Optimisation Principles. LUL shall not be entitled to offer the works to a third party where the Contractor fails to so comply but LUL shall be entitled to take into account in calculating the Costs of the Variation only those Costs which the Contractor would have incurred had it complied with the Cost Optimisation Principles; and
  - (ii) where there is a Price Adjustment and no Variation provide reasonably detailed information evidencing the Costs it will incur. After having incurred such Costs the Contractor shall provide to LUL reasonably detailed information evidencing such Costs.
- (c) **NOT USED**
- (d) LUL shall not be entitled to require any further or different requirements under Clause 23.27 to those already existing under the Contract except to the extent that such changes are fundamental following such Variation proposed by the Contractor.

23.39 Pending receipt of such Variation Notice or an Instruction Notice in relation to the relevant Change of Law, and after receipt but before agreement of the Final Implementation Details (and issue of an Authority Notice, where applicable) the Contractor shall not be liable for failure to comply or any delay in complying with any

term of the Project Agreements to the extent that such failure or delay arises by virtue of the Contractor's compliance with any Change of Law.

### **Authority to Proceed**

23.40 The Contractor shall not implement a Variation made pursuant to a Variation Notice until an Authority Notice has been issued by LUL in relation to it. LUL may issue an Authority Notice at any time following the issuing of a Variation Notice if the Implementation Details have been agreed or determined in all material respects. In that event, the provisions of Clauses 23.32 and 23.33 shall with effect from that date apply to the implementation of the Variation as if the Variation Notice had been an Instruction Notice.

23.41 Following delivery by the Contractor of the Outline Proposal, LUL shall be entitled to request a budget (which shall include a budget for the costs of the Third Party Lenders' technical and legal advisers) for the Costs to be incurred by the Contractor in the period commencing from date of submission of the Outline Proposal to agreement or determination of the Final Implementation Details and shall agree with the Contractor a cap on such Costs and a cap on the Third Party Lenders' technical and legal advisers' costs. If the Costs in such period or the costs of technical or legal advisers reach any cap imposed by LUL, LUL shall be entitled to withdraw the Variation Notice or set a higher cap. If LUL should elect (i) not to give the Contractor a higher cap on either the Costs of development and agreement of the Implementation Details or Third Party Lenders' advisers' costs or (ii) not to proceed with the Variation LUL shall reimburse the reasonable Costs of the Contractor after submission of the Outline Proposal in respect of the period up to when the cap is reached. If the Variation does not proceed as a result of the Implementation Details or Implementation Statement being materially different from the Outline Proposal by reason of the Contractor's negligence or wilful default in preparing the Outline Proposal the Costs shall be for the Contractor's account.

23.42 The Contractor shall not be liable for failure to comply or any delay in complying with any term of this Contract (as drafted either before or after a Variation), to the extent that as a consequence of the implementation of a Variation and to the extent permitted under its terms, the Contractor is unable to comply with the relevant terms of this Contract (including the relevant Completion Dates for the Initial Works or completion date in respect of any works that are the subject of a Variation) despite taking all reasonable steps to the contrary and any relevant completion date and Derogation Period shall be extended accordingly as part of the terms of the Variation. If the Contractor is required to implement the Variation before final agreement of the Implementation Details under Clauses 23.40 to 23.45 or by means of an Instruction Notice, the Contractor shall take all reasonable steps to minimise disruption to the Services pending agreement or determination of the Final Implementation Details.

23.43 LUL shall notify the Contractor as soon as reasonably practicable, and in any event within 10 Working Days of the date LUL requests the Contractor to provide the

Implementation Details, of any LUL Dependencies which LUL will be unable to provide as a result of the Variation.

23.44 Subject to Clause 23.43, LUL shall not be liable for failure to comply or any delay in complying with any term of this Contract (as drafted either before or after the Variation) including in relation to the provision of the LUL Dependencies to the extent that the works carried out for the purpose of implementing the Variation make LUL unable to do so despite LUL taking all reasonable steps to the contrary.

23.45 Without prejudice to Schedule 43.3 (Contract Management) and without prejudice to LUL's rights under this Clause 23, LUL shall notify the Contractor, no later than 3 Periods prior to expiry of each Contract Year, of any Variations and/or Third Party Works Adoption Variations it is contemplating implementing in the next Contract Year and its best estimate of intended Variations and/or Third Party Works Adoption Variations over the next 5 Contract Years. From time to time the Parties shall meet to discuss LUL's plans and intentions for Variations and/or Third Party Works Adoption Variations with a view to facilitating both the effect thereof and the implementation of this Clause 23 and/or Schedule 23.16A (Adoption Procedures) in relation thereto. Without prejudice to the foregoing, prior to the issue of any Variation Notice or Instruction Notice or Direction Notice and/or Third Party Works Adoption Variation Notice LUL shall use all reasonable efforts to consult with the Contractor as to the matters contemplated in Clause 23.27 and/or paragraph 7.3 of Schedule 23.16A (Adoption Procedures) (as applicable).

### **Third Party Works**

23.46 Without prejudice to the Contractor's right to operate, maintain and renew in accordance with Clause 7.1, LUL shall be entitled, in its absolute discretion, to procure any Third Party Works without first offering to the Contractor the opportunity to carry out any such Third Party Works.

23.46A Without prejudice to Clause 25.5 and notwithstanding any other provision in this Contract, in no circumstances shall the maximum aggregate liability of the Contractor to LUL howsoever arising (but excluding any liability caused by wilful default, fraud, recklessness or gross negligence) out of or in connection with the performance of a Third Party Works Adoption Variation (whether by breach of contract indemnity or warranty; tort; breach of statutory duty or otherwise), exceed the aggregate amount of the Advance Payments received or receivable by the Contractor in respect of the relevant Third Party Works Adoption Variation. Such maximum aggregate liability shall apply only in respect of the performance of a Third Party Works Adoption Variation as aforesaid and not to the obligations of the Contractor in respect of the Services or otherwise under the Contract in respect of any Adopted Third Party Works following the date of their adoption in accordance with Schedule 23.16A (Adoption Procedures).

23.47 Where LUL wishes to procure any Third Party Works then the provisions of Schedule 23.16A (Adoption Procedures) shall apply. Where the Contractor is required to provide certain services in respect of a project, where the principal activity is being

carried out by a Third Party Contractor as contemplated in paragraphs 1.1, 2.1, 3.1 and 4.1 of Schedule 23.16A (Adoption Procedures) or LUL wishes the Contractor to adopt Third Party Works as contemplated in paragraph 5.1 of Schedule 23.16A (Adoption Procedures) then LUL shall be required to issue a Third Party Works Adoption Variation Notice and Schedule 23.16A (Adoption Procedures) shall apply.

23.47A.1 Notwithstanding Clause 23.46, the Contractor shall and each Contractor Affiliate shall, subject to applicable law, be given an opportunity to participate (to be equal to the opportunity afforded to any other participants) in any competitive tender process or other procurement procedure undertaken by LUL for the carrying out of Third Party Works provided that the Contractor or the Contractor Affiliate:

- (a) does not involve in any capacity or otherwise engage in responding to any competitive tender for, or procurement of, Third Party Works any employees contractors and/or other personnel that LUL acting reasonably considers as operational personnel;
- (b) ensures that no employee, contractors or other personnel involved in any capacity or otherwise engaged in responding to any competitive tender for, or procurement of, Third Party Works have been involved in providing Services that are related to the proposed Third Party Works for at least 3 months prior to the date the competitive tender or the procurement procedure commenced; and
- (c) implements an effective information barrier policy to regulate information flow and restrict the bid team's access to commercially sensitive information arising under or in connection (directly or indirectly) with the works or services that are the subject of the tender process or other procurement procedure undertaken by LUL.

23.47A.2 LUL shall be entitled to review the relevant information barrier policy and suggest any amendments which it, acting reasonably, considers appropriate. The Contractor must adapt or as relevant procure that the Contractor Affiliate adapts its information barrier policy so as to fully take into account any amendments suggested by LUL. LUL, acting reasonably, shall be entitled to carry out inspections and audits upon reasonable notice to ascertain whether the Contractor or the Contractor Affiliate (as relevant) is complying with the information barrier policy and whether the policy is effective.

23.47A.3 In the event that LUL, acting reasonably, is not satisfied that the Contractor is fully complying with its obligations under Clauses 23.47A.1 and 23.47A.2 it may acting reasonably exclude any bid team (or a member thereof) of the relevant Contractor Affiliate or, as relevant, the Contractor from participating in the tender process or other procurement procedure undertaken by LUL for the carrying out of the relevant Third Party Works but without prejudice to the Contractor's rights or the relevant Contractor Affiliate's rights to participate in any future competitive tender process or other procurement procedure in accordance with Clause 23.47A.1.

23.47A.4 LUL shall ensure that any contract it enters into with a third party in relation to Third Party Works shall contain provisions requiring the third party to perform its obligations under the contract in accordance with Good Industry Practice or to a no less onerous standard and LUL shall not vary, permit to be varied or waive such provisions.

23.47A.5 LUL shall be responsible under this Contract for the acts and omissions of the Third Party Works Contractors as if they were the acts and omissions of LUL.

### **Known Third Party Works Adoption Procedures**

23.48 Subject to Clause 23.49, the Known Third Party Works Adoption Procedures will apply (to the extent relevant) to any Known Third Party Works or Known Third Party Adopted Works.

23.49.1 In respect of Known Third Party Adopted Works if the actual capital cost (including Irrecoverable VAT) of the contract in respect of such Known Third Party Adopted Works exceeds the Known Third Party Adopted Works Cap, the Contractor shall not be obliged to adopt any such Known Third Party Adopted Works unless otherwise agreed between the Parties.

23.49.2 The Contractor shall not be obliged to adopt any Known Third Party Adopted Works if the Parties agree or it is determined under Schedule 37 (Dispute Resolution) that:

- (a) the Incremental Risk of the Known Third Party Adopted Works is greater than or equal to an average of 10 per cent. and the Risk Protections do not mitigate the Incremental Risk to below an average of 10 per cent. except that in no circumstances should the amount of the Price Adjustment be the principal Risk Protection; or
- (b) the threshold levels specified in this Contract in respect of Service Delivery Points and/or liquidated damages which can lead to the Contractor incurring a Formal Warning would need to be amended (and have not been amended) so as to ensure that there is no greater likelihood of the Contractor reaching the relevant threshold as a result of the adoption of the Known Third Party Adopted Works.

23.50 LUL agrees to provide the Contractor with all information reasonably requested by the Contractor in relation to rights against third parties in existence at the Starting Date in relation to services or works performed on the System, or goods supplied as part of the System including those in Schedule 30.9.3 (Related Contracts), as amended and updated prior to the Starting Date. LUL agrees to use all reasonable endeavours to assign the benefit of such rights to the Contractor with effect from the Starting Date or where it has been unable to do so, will following a request by the Contractor, elect to either pursue any such right on behalf of the Contractor (and at the Contractor's expense) or to permit the Contractor to pursue any such right against a third party in LUL's name or the Contractor's name. If LUL elects to pursue any such right against a third party on behalf of the Contractor, the Contractor shall not be

liable in respect of any settlement of any such claim effected without its consent provided that such consent shall not be unreasonably withheld or delayed.

23.51 Where Known Third Party Works are being carried out under a contract between a third party and LUL the Known Third Party Works Adoption Procedures will apply as set out in Schedule 23.16 (Known Third Party Works Adoption Procedures). Subject to this Clause 23.51, if and when they have passed the acceptance procedures provided for them in the relevant contract and subject to compliance with the Known Third Party Works Adoption Procedures, the relevant assets listed in Part 2 of Schedule 23.51 (Known Third Party Works) (for the purposes of this Clause known as new assets) shall become part of the System and the Contractor shall have the corresponding rights and responsibilities in relation to them provided for under this Contract.

23.52 The relevant new assets shall be held by the Contractor in accordance with Clause 30.5A. LUL shall provide to the Contractor such notice of testings or meetings as is reasonable in the circumstances of such testings or meetings. Subject to paragraph 7.1 of Schedule 23.16 (Known Third Party Works Adoption Procedures), in the event that after assignment to the Contractor of any rights LUL has against any third party in respect of the New Assets further documentation is necessary to preserve the Contractor's rights against such third party, LUL shall do all such actions that are necessary provided that LUL shall not be obliged to perform any such actions which would incur more than minor administrative cost to LUL.

23.53 Without prejudice to Schedule 23.16 (Known Third Party Works Adoption Procedures) LUL will provide details in relation to the further information in Schedule 23.51 Part 3 (Known Third Party Works) prior to handover of the new assets in accordance with Schedule 23.16 (Known Third Party Works Adoption Procedures) and will continue to inform the Contractor of any changes to such information, and take reasonable account of its comments. Where any right of release of any retention bond or letter of credit or similar will remain with LUL, LUL agrees after the Starting Date to consult with the Contractor before it releases any such retention or letter of credit or similar.

23.54 LUL acknowledges that the Contractor shall not be obliged to fund any work carried out under a contract between a third party and LUL.

### **Provision of Services to third parties**

23.55.1 Subject to Clause 44, LUL may, upon notice to the Contractor and the Third Party Lenders, request that the Contractor provides some or all of the Services to any third party nominated by LUL. Unless LUL remains liable to pay the Availability Charge for those Services as well as the termination payment under Clauses 29 and 29A in all circumstances where such termination payment may be payable, such event shall be a Supervening Event under Clause 28B.1(b). LUL shall in all circumstances (including for the avoidance of doubt notwithstanding satisfaction of the provisions of Clauses 28B.6 or 28B.3) remain liable for the performance, including all consequences for failure to perform, of all the obligations and exercise of all rights of

LUL under this Contract other than payment obligations properly transferred pursuant to this Clause 23.55, unless all such obligations of LUL under this Contract have been assumed by any such third party in whole but not in part only.

23.55.2 As a condition to such provision of Services to a third party the Contractor and the Third Party Lenders shall, acting reasonably, be entitled to require that all necessary interface and connection and other relevant agreements are in place and the Contractor shall use all reasonable endeavours to procure the consent of the Third Party Lenders to such agreements.

23.55.3 Where the exercise by LUL of its rights under this Clause 23.55 or the occurrence of a Supervening Event would result in additional Costs to the Contractor such additional Costs will be the subject of a Variation. Where the exercise by LUL of its rights under this Clause 23.55 or the occurrence of any Supervening Event would result in an increase in the costs of Taxation of the Contractor or PADCo or a failure in whole or in part to obtain payments for consortium relief which are shown in the Contractor's Financial Model as at the Starting Date and which would have been made if PADCo had in fact had accounting periods equivalent to those assumed by Schedule 33 (Tax Principles and Assumptions), there will be a Price Adjustment.

23.55.4 Following the occurrence of any Supervening Event and/or any agreement to provide the Services to a third party nominated by LUL pursuant to this Clause 23.55, in addition to the rights granted to the Contractor and PADCo under Clause 28B the following provisions shall apply:

- (i) the provisions of Clause 28.10(e) shall cease to apply and the provisions of Clause 28.10(b) and (d) will be amended so that, subject to the provisions of the Financing Agreements, the Contract will terminate no more than 30 days after the date of service of a notice under Clause 28.10(d), and no more than 30 days after the date of service of a notice under Clause 28.10(b);
- (ii) the provisions of Clause 28.1(a) will be amended so that the insolvency events contained in Clause 28.9(g) to (j) will apply to the Company and the Supplemental Obligor (as defined in Clause 28B) *mutatis mutandis*;
- (iii) if (a) in any 12 month period three or more payments from LUL to the Contractor under this Contract are not made within 35 days of receipt of Invoice, or (b) two payments from LUL to the Contractor under this Contract are not made within 35 days of receipt of Invoice and both payments are outstanding at the same time, or (c) at any time following payment of the Acceleration Amount becoming due or after the Third Party Lenders are repaid the long term, unsecured and unguaranteed debt rating of the Company or (as the case may be) the Supplemental Obligor ceases to be at least A with Standard and Poor's or at least Aa1 with Moody's Investors Service then:
  - (a) LUL shall cease to be entitled to exercise its rights under Clause 22.6 to defer payments;

- (b) the definition of Individual Threshold and the Administrative Threshold for the purposes of Clause 32 shall each be amended so as to equal zero and the definition of Cumulative Threshold for the purposes of Clause 23 shall be amended so as to equal zero and all outstanding balances under Clauses 23 and 32 and interest at the Commercial Interest Rate shall be paid to the Contractor within 30 days; and
  - (c) the thresholds of £250,000 in Clause 28A.6 and £500,000 in Clause 26.6(e) shall each cease to apply and all outstanding balances under Clause 26.6(e) and 28A.6 and interest at the Commercial Interest Rate shall be paid to the Contractor within 30 days.
- (iv) if at any time any payment from LUL to the Contractor under this Contract is not made on the due date thereof and notice is given by the Contractor to LUL that such payment is outstanding and such payment is not made within 30 days thereof then until LUL or (as the case may be) the Supplemental Obligor has provided security (on terms satisfactory to the Contractor) with a term of at least 365 days from the date of issue and of an amount equal to the aggregate amount of Availability Charge forecast to be payable by LUL over the 12 months following the date of issue of the security (on the assumption that no deductions are made) and such payment is made together with interest thereon at the Commercial Interest Rate in respect of the period from the due date for payment to the date of actual receipt the Contractor will be entitled to suspend performance of any capital works it is undertaking under or for this Contract (whether the Initial Works, pursuant to any Variation, for the purposes of meeting the Ultimate Reversionary Requirements and/or the Intermediate Reversionary Requirements or other) that are not critical to the Railway Safety Case provided that the Contractor shall be liable to meet the Ultimate Reversionary Requirement and/or Intermediate Reversionary Requirements up to the date of such suspension. If the Contractor exercises such right of suspension, then it shall be entitled to an extension of any applicable timescale for such works and shall neither be in breach of this Contract nor liable in any way to LUL by virtue of or arising out of any suspension.
- (v) if (after the occurrence of any of the circumstances contemplated in Clause 23.55.4(iii) above) (a) in any 12 month period three or more payments from LUL to the Contractor under this Contract are not made within 35 days of receipt of Invoice, or (b) any two payments from LUL to the Contractor under this Contract are not made within 35 days of receipt of Invoice so that both payments are outstanding at the same time, or (c) at any time following payment of the Acceleration Amount becoming due or after the Third Party Lenders are repaid the long term, unsecured and unguaranteed debt rating of the Company or (as the case may be) the Supplemental Obligor ceases to be at least BBB- with Standard and Poor's at least Baa3 with Moody's Investors Service then:



- (a) LUL shall cease to be entitled to exercise its rights under this Contract to deduct or withhold from, or otherwise set off against, any payments due to the Contractor any liquidated damages that are payable by the Contractor to LUL unless and to the extent that any such sums are agreed or determined to be due and payable;
  - (b) within 10 Working Days thereof, LUL or (as the case may be) the Supplemental Obligor shall provide security (on terms satisfactory to the Contractor) with a term of at least 365 days from the date of issue and or an amount equal to the aggregate amount of Availability Charge forecast to be payable by LUL over the 12 months following the date of issue of the security (on the assumption that no deductions are made therefrom), such security to be renewed 10 Working Days prior to the date of expiry of the term of the security (and so on until the Expiry Date), and if not so renewed to be callable;
  - (c) Clause 28.3 shall be deemed amended so that, in each of sub-clauses (b) and (c) thereof, the references to 30 days shall be replaced within 15 days.
- (vi) If within 10 Working Days of the circumstances set out in Clause 23.55.5(v) arising security is not posted (or, as the case may be, renewed) in accordance with Clause 23.55.5(v)(b), the Contractor shall be entitled to terminate this Contract.

23.55.5 Prior to the occurrence of any Supervening Event under Clause 28B.1(b) and/or the provision of the Services to a third party pursuant to this Clause 23.55 where it is expected that more than one person will become liable to pay any amounts under this Contract, LUL (if retaining any payment obligations) and each proposed transferee/third party shall agree and acknowledge, in form and substance satisfactory to the Contractor and PADCo:

- (a) its agreed portion of all such amounts, including as appropriate any termination payment payable under Clauses 29 and 29A and the Acceleration Amount;
- (b) that on any termination of this Contract howsoever caused (irrespective of whether termination arose due to its acts or omissions) it shall be liable to pay the full amount of its agreed portion of such termination payment (and/or Acceleration Amount) under this Contract in all circumstances where the Contractor, PADCo or the Third Party Lenders, as the case may be, are entitled to such payment under the terms of this Contract; and
- (c) that any transfer under this Clause 23.55 of LUL's payment obligations under this Contract will not result in a separate and divisible contract and accordingly it will be no defence to payment of its agreed portion of such termination

payment (and/or Acceleration Amount) that the circumstances giving rise to such payment were not caused by it.

Failure to comply with the provisions of this Clause 23.55.5 shall result in the Acceleration Amount becoming due and payable from LUL in accordance with Clause 28B.9.

23.56 Without prejudice to Clauses 23.47 and 23.48 and subject to Clauses 23.49, 23.50 and 23.51 where LUL requires the Contractor to permit LUL and/or its contractors and/or any other person authorised by LUL to have access to the System, the Properties and/or the Assets to enable works to be carried out (whether involving replacement of the Assets or otherwise or the performance of any services or the discharge of any other duties or obligations in relation to the works), the Contractor shall co-operate with LUL and/or its contractors and/or any other person authorised by LUL in permitting the carrying on of such works (which shall include the performance of any services or the discharge of any other duties or obligations in relation to such works by LUL and/or its contractors and/or any other person authorised by LUL) and shall subject to Schedule 18.11 (Access) permit such access as is necessary to complete the works in timescales which are, in the reasonable opinion of the Contract Manager, appropriate, provided that to do so shall not cause the Contractor to be in breach of any of its obligations under the Project Agreements (the Contractor having taken reasonable steps to avoid such breach). LUL shall procure that the works are carried out by itself or its agents in compliance with Good Industry Practice. The Contractor shall permit LUL or its agents, in each case acting in accordance with Good Industry Practice, to make such connections as are necessary to other parts of the System and to conduct any tests that are necessary before commissioning. Where the Contractor agrees to adopt the relevant Third Party Works Assets in accordance with paragraph 5 of Schedule 23.16A (Adoption Procedures) such Third Party Works Assets shall be Assets acquired by LUL after the Starting Date under Clauses 30.5B, 30.6 or 30.12 (as applicable) and following their adoption in accordance with paragraph 5 of Schedule 23.16A (Adoption Procedures):

- (a) such Assets shall be made available to the Contractor upon substantially the same terms; and
- (b) the Contractor shall have the same obligations in respect of such Assets as in respect of the initial Assets (including responsibility for operation, maintenance and meeting the requirements of Clause 16 in relation to all such Assets).

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**QUALITY ASSURANCE AND TRAINING**

24.1 The Contractor shall prepare, put in place, maintain and operate a Quality Management System to meet as a minimum the requirements set out in the Contract Quality Conditions and to comply with ISO 9000.

24.2 The Contractor shall obtain certification of its Quality Management System within two years of the Starting Date from an accredited body approved by LUL and shall maintain such certification for the Contract Duration.

24.3 The Contractor shall provide a copy of its Quality Management System and all plans implemented in accordance therewith to the Contract Manager when first developed and thereafter at the beginning of each Contract Year, and further, shall provide LUL with all amendments to such Quality Management System forthwith after any such amendment has been made.

**Training**

24.4 The Contractor and LUL shall each provide to the other training in accordance with Schedule 18.11 (Access). The Parties shall comply with each other's reasonable requests to provide vocational training (in so far as the Parties are authorised or accredited to provide such training) but each shall be entitled to charge on a reasonable basis for vocational training provided to the other.

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## ENVIRONMENT

### Environmental Covenants

26.1 Without prejudice to Clause 32 and subject to the provisions of Clauses 26.2 and 26.3, the Contractor shall in performing its obligations under this Contract comply in all material respects (such that there are no matters or things which taken together will give rise to a liability in excess of £25,000) with and shall ensure that the System complies (in all material respects (as above)) with all Environmental Laws and shall take such Remedial Action as is reasonably necessary to ensure such compliance.

26.2 LUL covenants that it has complied with and has ensured that the System complies in all material respects (such that there are no matters or things which taken

together will give rise to a liability in excess of £25,000) with all Environmental Laws on and prior to the Starting Date. The Contractor's remedies for any breach of this undertaking by LUL shall be limited to Environmental Loss in accordance with Clause 26.3 and:

- (a) relief from liability under this Contract for breach of this Contract and otherwise under the indemnity contained in Clause 25.1 (but only if and to the extent that the non-compliance with Environmental Laws make performance of this Contract more difficult or expensive or renders such performance redundant) (and for the avoidance of doubt, for the purposes of Clause 13A, any breach by LUL of the undertaking shall be a Potential Delay Event); and
- (b) LUL shall continue to pay the Availability Charge without abatement to the extent that the Contractor would but for that breach have been able to provide the Services (unless and to the extent that in accordance with the definition of Variation LUL issues an Authority Notice or an Instruction Notice which relieves the Contractor from the obligation to provide the relevant Services and a Price Adjustment is agreed to reflect this reduction).

26.3 LUL further covenants with the Contractor to pay by way of indemnity an amount equal to any Environmental Loss:

- (a) arising out of or relating to the presence of, or any discharge, spillage, leak, escape or release into the Environment at any time of Hazardous Material existing at or migrating from the Generating Stations on or prior to the Starting Date; and/or
- (b) arising out of or relating to the presence of, or any discharge, spillage, leak, escape or release into the Environment within 10 years after the Starting Date of Hazardous Material existing at or migrating from the System (excluding the Generating Stations) on or prior to the Starting Date,

unless and to the extent the Environmental Loss was caused or contributed to by any act or omission of the Contractor except acts or omissions necessarily arising from the proper performance of the Contract (and for the avoidance of doubt the presence, discharge, spillage, leak, escape or release of the relevant Hazardous Material shall be a Potential Delay Event for the purposes of Clause 13A).

26.4 Subject to Clause 26.3, the Contractor hereby covenants with LUL to pay by way of indemnity an amount equal to any Environmental Loss arising out of or relating to the presence of, or any discharge, spillage, leak, escape or release of, Hazardous Material in the ownership or control of the Contractor (or any of its employees, agents, consultants, contractors, subcontractors or invitees) occurring at or arising from:

- (a) Greenwich Generating Station after the Starting Date;
- (b) Lots Road Generating Station for the period commencing on the Starting Date and expiring on the date of termination or expiry of the Lots Road Lease;

- (c) the System (excluding the Generating Stations) following the expiration of 10 years after the Starting Date;
- (d) the acts or omission in relation to operation, maintenance, renewal and upgrade only of the System by the Contractor (or any of its employees, agents, consultants, contractors, subcontractors or invitees).

*invitee* in this Clause 26 means any person who is expressly authorised by the Contractor to enter into any of the Properties and who is not entering by means of contractual or statutory right, or as a trespasser or as a Third Party Contractor.

26.5 With regard to the environmental review to be conducted in accordance with Clause 26.13, on the completion of such environmental review (the *relevant time*), both the Contractor and LUL shall be entitled to use such environmental review:

- (a) as prima facie evidence (in the absence of manifest error) of the presence of, or any discharge, spillage, leak, escape or release into the Environment at the relevant time of, Hazardous Material occurring at or arising from the System; and
- (b) in respect of any interpretation by the consultant who carried out the environmental review of the cause of such presence, discharge, spillage, leak, escape or release into the Environment of Hazardous Material as the basis for determining such causation provided that both Parties shall be entitled to dispute the application of any such interpretation by either Party where either Party is making a claim under Clauses 26.3 or 26.4 in accordance with the provisions of Schedule 37; and
- (c) prior to the expiration of the earlier of the period of 3 years after the Starting Date and completion of the environmental review to be conducted in accordance with Clause 26.13, if the Contractor can prove that it has suffered Environmental Loss, the burden of proof shall be on LUL to establish that any such Environmental Loss so proved by the Contractor in connection with the System has been caused by an act or omission of the Contractor under Clause 26.4(d) or under Clause 26.3(b). If LUL cannot prove this the Contractor will be entitled to recover under Clause 26.3 from LUL. Thereafter the burden of proof shall be on the Contractor to establish that any Environmental Loss so proved by the Contractor in connection with the System arising or occurring prior to the expiration of the period of 10 years after the Starting Date was not caused by an act or omission of the Contractor under Clause 26.4(d) or under Clause 26.3(b) and that LUL has a liability to pay under Clause 26.3.

26.6 The covenants in Clause 26.3 shall not extend to:

- (a) any claim unless notice of such claim (setting out reasonable particulars of the grounds on which such claim is based and the amount of the claim) is given in writing by the Contractor to LUL on or before 2 years after the determination or earlier expiry of the Contract in relation to the System and any such claim

shall (if not previously satisfied settled or withdrawn) be deemed to have been withdrawn 12 months after the date the claim is served unless legal proceedings in respect of it have been commenced in accordance with Schedule 37 (Dispute Resolution);

- (b) (except in respect of costs and Irrecoverable VAT incurred to prevent, eliminate, reduce, limit, mitigate or investigate any such liability) any claim in respect of any contingent liability unless and until such contingent liability becomes an actual liability and is due and payable;
- (c) any Environmental Loss which would not have been suffered or incurred if the Contractor had (subject to Clauses 26.25 and 26.26) taken all reasonable steps to avoid or mitigate the Environmental Liability which gave rise to, or in the absence of mitigation, might give rise to, a claim under Clause 26.3;
- (d) subject to the proviso to Clause 26.3, Clauses 26.8, 26.9, 26.11(b) and (c) and 26.26 any claim in respect of any matter, act, omission or circumstance (or combination thereof) to the extent that the same would not have occurred but for any wilful or negligent act, omission or transaction of the Contractor (or any of its employees, agents, consultants, contractors or subcontractors) which would give rise to a claim under this Contract;
- (e) without prejudice to Clause 23.55.5, any claim unless the aggregate amount of all claims for or for a proportion of which LUL would otherwise be liable under Clause 26.3 together exceeds £500,000 (the *Administrative Threshold*) and once exceeded the Contractor shall be entitled to recover all costs and Irrecoverable VAT below the £500,000 as well as above together with payment of interest at the Commercial Interest Rate from the date the cost were incurred. The Administrative Threshold shall be reset when all costs and Irrecoverable VAT are recovered. If at the Expiry Date there are amounts below the Administrative Threshold which have not yet been recovered, the Contractor shall be entitled to recover the costs and Irrecoverable VAT which have not yet been recovered.

26.7 The covenants in Clause 26.4 shall not extend to:

- (a) any claim unless notice of such claim (setting out reasonable particulars of the grounds on which such claim is based and the amount of the claim) is given in writing by LUL to the Contractor on or before 2 years after the determination or earlier expiry of the Contract in relation to the System and any such claim shall (if not previously satisfied, settled or withdrawn) be deemed to have been withdrawn 12 months after the date the claim is served unless legal proceedings in respect of it have been commenced in accordance with Schedule 37 (Dispute Resolution);
- (b) (except in respect of costs and Irrecoverable VAT incurred to prevent, eliminate, reduce, limit, mitigate or investigate any such liability) any claim in

respect of any contingent liability unless and until such contingent liability becomes an actual liability and is due and payable;

- (c) subject to Clauses 26.8, 26.9, 26.11(b) and (c) and 26.26 any claim in respect of any matter, act, omission or circumstance (or combination thereof) to the extent that the same would not have occurred but for any wilful or negligent act, omission or transaction of LUL (or any of its employees, agents, consultants, contractors or subcontractors);
- (d) any Environmental Loss which would not have been suffered or incurred if LUL had (subject to Clauses 26.25 and 26.26) taken all reasonable steps to avoid or mitigate the Environmental Liability which gave rise to, or in the absence of mitigation, might give rise to, a claim under Clause 26.4;
- (e) without prejudice to Clause 23.55.5, any claim unless the aggregate amount of all claims for or for a proportion of which the Contractor would otherwise be liable under Clause 26.4 together exceeds £500,000 (the ***Administrative Threshold***) and once exceeded LUL shall be entitled to recover all costs and Irrecoverable VAT below the £500,000 as well as above together with payment of interest at the Commercial Interest Rate from the date the costs was incurred. The Administrative Threshold shall be reset when all costs and Irrecoverable VAT are recovered. If at the Expiry Date there are amounts below the Administrative Threshold which have not yet been recovered, LUL shall be entitled to recover the costs and Irrecoverable VAT which have not yet been recovered.

26.8 Subject to Clauses 26.25 and 26.26 LUL and the Contractor shall take all reasonable steps to avoid or mitigate any Environmental Loss which gives rise to, or in the absence of mitigation might give rise to, a claim under Clause 26.3 or 26.4.

26.9 Neither LUL nor the Contractor shall be liable in relation to any claim hereunder to the extent LUL or the Contractor can show that such claim would not have occurred or was increased or made more costly as a result of the other volunteering information concerning any actual or potential Environmental Liability to a Competent Authority or other third party without the prior consent of LUL or the Contractor (such consent not to be unreasonably withheld or delayed) except:

- (a) in case of emergency; or
- (b) where LUL or the Contractor reasonably believe such disclosure to be required under Environmental Laws.

### **Hazardous Materials and Environmental Management System**

26.10 Without prejudice to Clause 26.3 the Contractor covenants from the Starting Date to exercise due care and to take reasonable precautions in accordance with Environmental Laws and to the standard of a reasonable and prudent operator with respect to the storage, use and disposal of any Hazardous Materials in the ownership or under the control of the Contractor in connection with the operation of the System



so that the Contractor's operations or activities will not cause significant Harm or Damage to the Environment (having regard to Good Industry Practice).

26.11 If information becomes available to the Contractor which indicates that the condition of any part(s) of the System or any discharge, spillage, leak or escape of Hazardous Material may or will cause significant Harm or Damage to the Environment, the Contractor:

- (a) shall inform LUL as soon as reasonably practicable in writing of all such matters;
- (b) subject to Clauses 26.25 and 26.26 shall as soon as possible take all reasonable precautions and actions to prevent or minimise or mitigate any such risks or harm and shall carry out any Remedial Action all in accordance with Clause 26.24 and Good Industry Practice;
- (c) shall consult as fully as is reasonably practicable as to the scope of any Remedial Action and shall comply with any reasonable requests and requirements of LUL in respect of any Remedial Action;
- (d) shall supply such information (including copies of relevant documents), permit such access to LUL and to the System and give such co-operation as reasonably requested by LUL (including, without limitation, meeting with and reviewing matters with LUL), to enable LUL to assess potential Environmental Liability and to ensure that the Contractor is discharging its obligations under this Clause.

26.12 Any dispute as to liability to carry out or the extent of Remedial Action or Good Industry Practice shall be resolved according to the procedure set out in Clause 37 of this Contract.

26.13 The Contractor shall within three years after the Starting Date conduct an environmental review. The instructions to conduct such an environmental review shall be agreed between the Contractor and LUL either before or after the Starting Date. The results of such environmental review shall be addressed to both the Contractor and LUL. The Contractor and LUL will discuss the report and any Remedial Action required as a result of it. This Clause 26.13 is without prejudice to LUL's liability to the Contractor under Clauses 26.2 and 26.3, and the Contractor's liability to LUL under Clause 26.4.

26.14 The Contractor shall within five years after the Starting Date on the basis of the above environmental review develop and implement an Environmental Management System to ensure sound environmental practice and performance (by the Contractor's use of BATNEEC procedures) by the Contractor of its obligations under this Contract, such system to identify the Contractor's environmental targets and objectives and the means by which they are to be achieved, including:

- (a) definition of general and specific environmental management responsibilities for normal operating conditions and also possible emergency situations;

- (b) delegation of responsibility and authority for each activity which may affect the Environment in order to attain the assessed environmental performance objectives with the desired efficiency;
- (c) definition of interface, control and co-ordination measures between different activities;
- (d) active anticipation identification (through monitoring) and recording of potential or actual environmental problems and the initiation of Remedial Action;
- (e) the production of environmental management documentation to provide an adequate description of the Environmental Management System including, as necessary, a manual covering the whole of the System, and as appropriate specialised manuals covering individual functions and activities and site emergency plans and health and safety manuals;
- (f) the establishment and maintenance of procedures for verification to check compliance with environmental targets, policy and objectives and, where these procedures require measurement and testing, for establishing and maintaining records of the results.

26.15 The Contractor shall ensure that the Environmental Management System is developed and implemented in relation to the performance by the Contractor of its obligations under this Contract to achieve within 5 years of the Starting Date the environmental management system standard known as ISO14001 (or such other equivalent system, if ISO14001 is superseded.)

26.16 The Contractor shall periodically review and revise the Environmental Management System to ensure that it conforms to Good Industry Practice.

### **Conduct of Claims**

26.17 If either Party becomes aware of any matter which might give rise to a claim or counterclaim by it (the *Claimant*) under this Clause, the following provisions shall apply.

26.18 The Claimant shall immediately give written notice to the other Party of the matter (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult as fully as is reasonably practicable with that Party with respect to the matter and particularly in relation to any negotiations and/or proceedings arising out of any claim or liability; if the matter has become the subject of any proceedings the other Party shall give the notice within sufficient time to enable the Claimant to have time to contest the proceedings.

26.19 The other Party shall:

- (a) take such action and institute such proceedings, and give such information and assistance (including access to any relevant property, premises and personnel

and the right to copy or photograph any assets, documents and works for the purpose of evaluating or disputing any claim or liability), as the Claimant or (if appropriate) its insurers may reasonably request, to:

- (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
  - (ii) enforce against any person (other than the Claimant) the rights of the Claimant or its insurers in relation to the matter; and
- (b) if the Claimant so requests, allow the Claimant or its insurers to have the exclusive conduct of the proceedings,

in each case on the basis that the Claimant shall fully reimburse the other party for all reasonable costs incurred as a result of any request or nomination by the Claimant or its insurers.

26.20 The Claimant shall not admit liability in respect of or settle the matter without obtaining the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

26.21 Without prejudice to the validity of the claim or alleged claim in question, if the Contractor becomes aware of any matter that might give rise to a claim against LUL in relation to electric and magnetic fields the Contractor shall give written notice of that fact as soon as reasonably practicable to LUL.

26.22 LUL shall allow the Contractor and its environmental experts and professional advisers to investigate the matter or circumstance alleged to give or which may give rise to such a claim under Clause 26.21 and whether and to what extent any amount is payable in respect of such claim and for such purpose LUL shall give the Contractor all such information and assistance as the Contractor or its environmental experts or professional advisers may reasonably request.

26.23 If the claim under Clause 26.21 in question is as a result of or in connection with any claim by or liability to a third party then except insofar as the Contractor expressly waives its rights in respect of any such matter the Contractor shall be entitled to dispute or contest such claim or liability and to have the conduct of any related proceedings, negotiations or appeals. No admission of liability shall be made by or on behalf of LUL without the consent of the Contractor.

### **Procedure where a claim is made for Remedial Action**

26.24 The provisions of Clauses 26.17 to 26.20 shall apply in respect of any claim under Clause 26.3 and/or 26.4 above insofar as it relates to Remedial Action and/or to voluntary action to prevent, reduce, eliminate or mitigate, in respect of a claim under Clauses 26.3 or 26.4, any Environmental Liability.

26.25 Subject to Clause 26.26 below, LUL and/or the Contractor as appropriate shall consult as fully as is reasonably practicable with and pay reasonable regard to the

views of the other in respect of any Remedial Action which forms the whole or part of a claim under Clause 26.3 and 26.4 above and each Party shall also make available to the other (at the reasonable expense of the relevant Party) all such information and assistance as may be reasonably requested by the relevant Party as being of relevance to such Remedial Action (save where disclosure would involve a breach of confidentiality or waiver of legal privilege).

26.26 Save in the case of emergency where LUL or the Contractor intends voluntarily to undertake any reasonable action (including Remedial Action) to prevent, reduce, eliminate, limit, or mitigate, in respect of a claim under Clause 26.3 and/or 26.4 or any Environmental Liability each Party shall obtain the other's prior written consent to such action (such consent not to be unreasonably withheld or delayed) and in assessing whether such action is reasonable (and accordingly whether consent should be given), regard shall be had to the estimated costs (including irrecoverable VAT) of such action.

26.27 Subject to Clause 26.25 and Clause 26.26 above, LUL or the Contractor shall undertake any Remedial Action and/or voluntary action to prevent, limit, reduce, eliminate or mitigate, in respect of a claim under Clause 26.3 and/or 26.4 or any Environmental Liability:

- (a) as soon as reasonably practicable after consultation with the other Party in respect of the same;
- (b) in the most cost effective manner reasonable in the circumstances; and
- (c) using all reasonable endeavours to procure that it is undertaken competently and to a satisfactory standard.

26.28 In the event of a dispute between the Parties in respect of a claim under Clauses 26.17 to 26.20 above as to:

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

the dispute shall be resolved according to the procedure set out in Clause 37 of this Contract.

#### **CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 1994**

27.1 For the purposes of the Construction (Design and Management) Regulations 1994 (SI 1994 No. 3140) (the *CDM Regulations 1994*) in respect of the Services (insofar as they consist of or include construction work as defined in the CDM Regulations 1994) LUL is a client (as defined in the CDM Regulations 1994).

- 27.2 In relation to any particular element of work LUL reserves the right to appoint the Contractor to act as any or all of the following in respect of work for which LUL is the client for the purposes of the CDM Regulations 1994:
- (a) client's agent pursuant to regulation 4(1) of the CDM Regulations 1994;
  - (b) planning supervisor pursuant to regulation 6(1)(a) of the CDM Regulations 1994;
  - (c) principal contractor pursuant to regulation 6(1)(b) of the CDM Regulations 1994.
- 27.3 If the Contractor is appointed as client's agent pursuant to Clause 27.2(a) LUL may require the Contractor to make a declaration in accordance with regulation 4(4) of the CDM Regulations 1994 that the Contractor will act as client for the purpose of the CDM Regulations 1994.
- 27.4 The Contractor agrees to accept any such appointments pursuant to Clause 27.2 if so appointed and to make any such declaration if so required and agrees to carry out all obligations imposed by the CDM Regulations 1994 on the client's agent and/or the planning supervisor and/or the principal contractor as the case may be and any such appointment made and accepted or any such declaration shall be made in accordance with Clause 23.38 (Variations).
- 27.5 For the purposes of the CDM Regulations 1994 in respect of the Services (insofar as they consist of or include construction work as defined in the CDM Regulations 1994) the Contractor may also be a client (as defined in the CDM Regulations 1994).
- 27.6 In relation to any particular element of work the Contractor, where it acts as client or (where applicable) client's agent under the CDM Regulations 1994, reserves the right to request that LUL agree to be appointed as any or all of the following:
- (a) client's agent pursuant to regulation 4(1) of the CDM Regulations 1994;
  - (b) planning supervisor pursuant to regulation 6(1)(a) of the CDM Regulations 1994;
  - (c) principal contractor pursuant to regulation 6(1)(b) of the CDM Regulations 1994.
- 27.7 If LUL accepts the appointment as client's agent pursuant to Clause 27.6 the Contractor may require LUL to make a declaration in accordance with regulation 4(4) of the CDM Regulations 1994 that LUL will act as client for the purposes of the CDM Regulations 1994.
- 27.8 LUL agrees that if it accepts any such appointments pursuant to Clause 27.6 and, where appointed as client's agent makes the required declaration, LUL shall perform such duty or duties in accordance with the duties imposed by the CDM Regulations 1994 on the client and/or the planning supervisor and/or the principal contractor, as the case may be.

- 27.9 LUL may decline the request of the Contractor to accept an appointment pursuant to Clause 27.6 and if LUL notifies that it does so at any time, and as a result the Contractor appoints a third party or elects to carry out that appointment itself, this shall be done in accordance with Clause 23.38.
- 27.10 Where both LUL and the Contractor are a client (as defined in the CDM Regulations 1994) in respect of an element or combination of elements of work LUL reserves the right either:
- (a) itself to make a declaration in accordance with regulation 4(4) of the CDM Regulations 1994 that it will act as client for the purposes of the CDM Regulations 1994 (in which case Clauses 27.2 and 27.3 will apply in respect of all such work); or
  - (b) to require the Contractor to make a declaration in accordance with regulation 4(4) of the CDM Regulations 1994 that the Contractor will act as client for the purposes of the CDM Regulations 1994 (in which case Clauses 27.6 and 27.7 will apply in respect of all such work) and any such declaration made by the Contractor shall be a Variation under Clause 23.38 (Variations).
- 27.11 The Contractor and LUL shall provide each other with all necessary assistance which they may reasonably require in order to fulfil their respective obligations pursuant to any appointment made under Clauses 27.2, 27.6 or 27.10.
- 27.12 The Contractor shall keep LUL indemnified against all actions, claims, losses, damages, costs and expenses resulting from the Contractor acting as client, client's agent, planning supervisor and/or principal contractor pursuant to Clause 27.2, save for those resulting from LUL's own negligence.
- 27.13 Where the Parties do not agree on the application of the CDM Regulations 1994 to any aspect of the Services then the Parties shall consult with each other in order to try and reach an agreement, failing which they shall make a joint approach to the Health and Safety Executive for guidance.

#### **CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007**

- 27A.1 LUL and the Contractor recognise that it is anticipated that with effect from 6 April 2007 the CDM Regulations 1994 will be superseded by the Construction (Design and Management) Regulations 2007 (SI 2007 No. 320) (the ***CDM Regulations 2007***). In anticipation of and subject to the CDM Regulations 2007 coming into force:
- (a) the Contractor agrees that as from 6 April 2007 or such other date as the CDM Regulations 2007 or the relevant provisions thereof shall come into force (the ***CDM Effective Date***) where the Contractor is appointed as client's agent pursuant to Clause 27.2 the Contractor shall continue to act as from the CDM Effective Date as the client's agent in respect of the relevant work for the purposes of the CDM Regulations 2007 until either such time as such appointment is revoked by LUL or the relevant work comes to an end or the expiry of five years from the CDM Effective Date, whichever occurs first;

- (b) where the Contractor has made a declaration that it will act as client pursuant to Clause 27.10(b), the Contractor agrees that on the CDM Effective Date the Contractor will notify LUL that it elects to be treated for the purposes of the CDM Regulations 2007 as the only client in respect of the relevant works;
- (c) the Contractor agrees that if it shall continue to act as the client's agent as envisaged in Clause 27A.1(a), such continuing appointment shall be subject to such requirements and prohibitions as are placed on the client by the CDM Regulations 2007, and in such event and where the Contractor has elected to be treated as the only client for the purposes of the CDM Regulations 2007 as envisaged in Clause 27A.1(b) the Contractor shall provide to LUL on request from time to time such evidence of compliance with the client's obligations under the CDM Regulations 2007 as LUL may reasonably require;
- (d) the Contractor agrees that as from the CDM Effective Date, where the Contractor is appointed as planning supervisor and/or principal contractor pursuant to Clause 27.2 the Contractor will act as the CDM co-ordinator and/or as the principal contractor as the case may be in respect of the relevant works in accordance with the requirements of the CDM Regulations 2007;
- (e) the Contractor confirms that as from the CDM Effective Date it will be and will remain competent within the meaning of Regulation 4(2) of the CDM Regulations 2007 to act as the CDM co-ordinator and as the principal contractor as provided in Clause 27A.1(d) in respect of the works referred to therein, and the Contractor undertakes to provide to LUL on request from time to time such evidence of such competency as LUL may reasonably require;
- (f) LUL agrees that as from the CDM Effective Date where LUL is appointed as client's agent pursuant to Clause 27.6 LUL shall continue to act as from the CDM Effective Date as the client's agent in respect of the relevant work for the purposes of the CDM Regulations 2007 until either such time as such appointment is revoked by the Contractor or the relevant work comes to an end or the expiry of five years from the CDM Effective Date, whichever occurs first;
- (g) where LUL has made a declaration that it will act as client pursuant to Clause 27.10(a), LUL agrees that on the CDM Effective Date LUL will notify the Contractor that it elects to be treated for the purposes of the CDM Regulations 2007 as the only client in respect of the relevant works;
- (h) LUL agrees that if it shall continue to act as the client's agent as envisaged in Clause 27A.1(f), such continuing appointment shall be subject to such requirements and prohibitions as are placed on the client by the CDM Regulations 2007, and in such event and where LUL has elected to be treated as the only client for the purposes of the CDM Regulations 2007 as envisaged in Clause 27A.1(g) LUL shall provide to the Contractor on request from time to time such evidence of compliance with the client's

obligations under the CDM Regulations 2007 as the Contractor may reasonably require;

- (i) LUL agrees that as from the CDM Effective Date, where LUL is appointed as planning supervisor and/or principal contractor pursuant to Clause 27.6 LUL will act as the CDM co-ordinator and/or as the principal contractor as the case may be in respect of the relevant works in accordance with the requirements of the CDM Regulations 2007; and
- (j) LUL confirms that as from the CDM Effective Date it will be and will remain, competent within the meaning of Regulation 4(2) of the CDM Regulations 2007 to act as the CDM co-ordinator and as the principal contractor as provided in Clause 27A.1(i) in respect of the works referred to therein, and LUL undertakes to provide to the Contractor on request from time to time such evidence of such competency as the Contractor may reasonably require.
- (k) LUL agrees that, if the Contractor can demonstrate to the reasonable satisfaction of LUL that the proper performance of its obligations as CDM co-ordinator and/or as principal contractor and/or, if the Contractor is requested by LUL to continue to act as the client's agent in accordance with Clause 27A.1(a) of its obligations as client's agent under the CDM Regulations 2007 has required the Contractor to incur Costs which are additional to those which the Contractor would have incurred in the proper performance of its obligations as planning supervisor, principal contractor and client's agent under the CDM Regulations 1994 if the CDM Regulations 2007 had not come into force, LUL shall reimburse to the Contractor such additional Costs to the extent that they are Reasonable and Documented.

27A.2 Without prejudice to Clause 27A.1, the Parties agree that as from the CDM Effective Date:

- (a) in relation to any particular element of work LUL reserves the right to appoint the Contractor to act as any or all of the following in respect of work for which LUL is the client for the purposes of the CDM Regulations 2007:
  - (i) CDM co-ordinator pursuant to regulation 14(1) of the CDM Regulations 2007;
  - (ii) principal contractor pursuant to regulation 14(2) of the CDM Regulations 2007;
- (b) the Contractor agrees to accept any such appointments pursuant to Clause 27A.2(a) if so appointed and agrees to carry out all obligations imposed by the CDM Regulations 2007 on the CDM co-ordinator and/or the principal contractor as the case may be and any such appointment made and



accepted or any such declaration shall be made in accordance with Clause 23.38 (Variations);

- (d) for the purposes of the CDM Regulations 2007 in respect of the Services (insofar as they consist of or include construction work as defined in the CDM Regulations 2007) the Contractor may also be a client (as defined in the CDM Regulations 2007);
- (e) in relation to any particular element of work the Contractor, where it acts as client or (where applicable) client's agent under Regulation 47(6) the CDM Regulations 2007, reserves the right to request that LUL agrees to be appointed as any or all of the following:
  - (i) the only client pursuant to regulation 8 of the CDM Regulations 2007;
  - (ii) CDM co-ordinator pursuant to regulation 14(1) of the CDM Regulations 2007;
  - (iii) principal contractor pursuant to regulation 12(2) of the CDM Regulations 2007;
- (f) if LUL accepts the appointment as the only client pursuant to Clause 27A.2(e) the Contractor may require LUL to make an election in writing in accordance with regulation 8 of the CDM Regulations 2007 that LUL will act as the only client for the purposes of the CDM Regulations 2007;
- (g) LUL agrees that if it accepts any such appointments pursuant to Clause 27A.2(e) and, where appointed as the only client makes the required election, LUL shall perform such duty or duties in accordance with the duties imposed by the CDM Regulations 2007 on the client and/or the CDM co-ordinator and/or the principal contractor, as the case may be;
- (h) LUL may decline the request of the Contractor to accept an appointment pursuant to Clause 27A.2(e) and if LUL notifies that it does so at any time, and as a result the Contractor appoints a third party or elects to carry out that appointment itself, this shall be done in accordance with Clause 23.38;
- (i) where both LUL and the Contractor are a client (as defined in the CDM Regulations 2007) in respect of an element or combination of elements of work LUL reserves the right either:
  - (i) itself to make a written election in accordance with regulation 8 of the CDM Regulations 2007 that it will act as the only client for the purposes of the CDM Regulations 2007 in which case Clauses 27A.2(f) and 27A.2(g) will apply in respect of all such work and LUL shall provide to the Contractor on request from time to time such evidence of compliance with the client's

obligations under the CDM Regulations 2007 as the Contractor may reasonably require; or

- (ii) to require the Contractor to make a written election in accordance with regulation 8 of the CDM Regulations 2007 that the Contractor will act as the only client for the purposes of the CDM Regulations 2007 in which case the Contractor agrees to carry out all obligations imposed by the CDM Regulations 2007 on the client, the Contractor shall provide to LUL on request from time to time evidence of compliance with the client's obligations under the CDM Regulations 2007 as LUL may reasonably require and any such election shall be a Variation under Clause 23.38 (Variations).

27A.3 The Contractor and LUL shall provide each other with all necessary assistance which they may reasonably require in order to fulfil their respective obligations pursuant to any appointment made under Clauses 27A.1(a), 27A.1(b), 27A.1(d), 27A.1(f), 27A.1(g), 27A.1(i), 27A.2(a), 27A.2(e) or 27A.2(i).

27A.4 The Contractor shall keep LUL indemnified against all actions, claims, losses, damages, costs and expenses resulting from the Contractor acting as client, client's agent, CDM co-ordinator and/or principal contractor pursuant to Clauses 27A.1(a), 27A.1(b), 27A.1(d), 27A.2(a), 27A.2(d) or 27A.2(i) save for those resulting from LUL's own negligence.

27A.5 Where the Parties do not agree on the application of the CDM Regulations 2007 to any aspect of the Services then the Parties shall consult with each other in order to try and reach an agreement, failing which they shall make a joint approach to the Health and Safety Executive for guidance.

## **TERMINATION**

### **Termination by the Contractor**

28.1 The Contractor may serve a notice to terminate this Contract on LUL if:

- (a) LUL is dissolved or wound up (unless, in accordance with Clause 23.55, all of the Services are provided to a third party (or parties) and it has been agreed or determined that LUL is no longer liable to pay for those Services and as a consequence thereof the provisions of Clause 23.55.4 (ii) apply);
- (b) there is a Change of Law which renders performance of any of the Contractor's material obligations or the exercise of any of the Contractor's material rights (including the right to receive the Availability Charge) under the Project Agreements illegal or impossible (and not merely more expensive);
- (c) the circumstances in Clause 31.3 or Clause 31.8 (Force Majeure) apply; or

- (d) a right to terminate arises under Clause 2 (conditions precedent); or
- (e) a right to terminate arises under Clause 25.9 (Contractual Risk Commitment);  
or
- (f) a right to terminate arises under Clause 25.13 (Performance Liability Limit); or
- (g) a right to terminate arises under Clause 28.10A; or
- (h) the Contract, the Framework Agreement or the Supplemental Deed is frustrated; or
- (i) a right to terminate arises under Clause 28B.10(a) or (c); or
- (j) a right to terminate arises under Clause 23.55.4(vi).

28.2 Not used

28.3 Without prejudice to any other rights or remedies it may have the Contractor shall be entitled to adopt the following procedure if LUL fails to comply with any of its payment obligations under this Contract or the Framework Agreement relating to any undisputed sum:

- (a) at any time after LUL breaches its payment obligations pursuant to the Contract or the Framework Agreement relating to any undisputed sum the Contractor may serve a notice on LUL in the form set out in Schedule 28.3, Part 1 addressed to the addressee set out for receipt of notices in Clause 43.2 (Notices and Invoices);
- (b) if the payment in question (together with interest thereon at the Commercial Interest Rate in respect of the period from the due date for payment to the date of actual receipt) remains unpaid after 30 days from the service by the Contractor of a notice in accordance with Clause 28.3(a) then the Contractor may serve on LUL a second notice in the form set out in Schedule 28.3, Part 2 addressed to both the Company Secretary of LUL and the addressee set out for receipt of notices in Clause 43.2; and
- (c) provided that the Contractor has served on LUL notices in compliance with the terms of Clauses 28.3(a) and 28.3(b) and LUL has failed to pay the amount in question (together with interest thereon at the Commercial Interest Rate in respect of the period from the due date for payment to the date of actual receipt) within 30 days of the notice served pursuant to Clause 28.3(b) then the Contractor may serve on LUL a notice to terminate this Contract in accordance with Clause 28.10 addressed to both the Company Secretary of LUL and the addressee set out for receipt of notices in Clause 43.2.

28.4 Not used

28.5 All notices required by Clause 28.3 shall comply with and be served in accordance with the provisions of Clause 43.2.

28.6 If LUL gives notice to the Contractor, either before or after receiving one or more notices from the Contractor pursuant to Clause 28.3 that LUL disputes in good faith any payment demanded by the Contractor then the Contractor shall be entitled to proceed with its claim for the disputed payment by following the Dispute Resolution Procedure in relation to the disputed payment and the Contractor shall not be entitled to terminate this Contract for non-payment of the disputed amount.

28.7 The Contractor may serve a notice to terminate this Contract on LUL if this Contract, the Framework Agreement or the Supplemental Deed (or any other Project Agreement the termination of which is likely to materially affect the Contractor's ability to perform under this Contract) is terminated by LUL otherwise than in accordance with this Clause 28 provided that if LUL terminates a Project Agreement (other than the Framework Agreement) which does not materially affect the Contractor's ability to perform under the Contract and the Contractor incurs Costs as a consequence of such termination LUL shall reimburse the Contractor for such Costs.

28.8 Save as expressly provided in the Contract, the Contractor may not terminate this Contract in any other circumstances whatsoever.

#### **Termination by LUL**

28.9 LUL may serve a notice to terminate this Contract on the Contractor on the occurrence of any of the following events or circumstances:

- (a) Not used;
- (b) the provisions of Clause 2.6 (Conditions Precedent) apply;
- (c) the Contractor fails to implement the works required in relation to the Critical Completion Date for the Emergency Supply Plan as set out in Schedule 9.1 (Emergency Supply Plan) by the ESP Long Stop Date;
- (d) the circumstances in Clause 20.3 (Service Delivery Points) apply;
- (e) the circumstances in Clause 31.2 (Force Majeure) apply;
- (f)
  - (i) EDF Energy (South East) plc ceases to hold directly or indirectly 51% or more of the issued shares (which carry the right to vote in general meetings of the ordinary shareholders) of the Contractor, without the prior consent of LUL; or
  - (ii) EDF Energy (South East) plc or any company through which EDF Energy (South East) plc holds the issued share capital of the Contractor or of PADCo transfers or otherwise disposes of any of the issued share capital of the Contractor or of PADCo after completion of the Initial Works to a transferee without notification by EDF Energy (South East)

plc to LUL of its proposals, and without permitting LUL to notify EDF Energy (South East) plc within 15 days of such notification on which of Clauses 28.9(f)(ii)(A), (B), (C), (D) or (E) LUL is seeking to rely and in respect of Clauses 28.9(f)(ii)(A), (B) or (C) the evidence on which LUL relies. In the event that LUL is seeking to rely on Clauses 28.9(f)(ii)(D) or (E) LUL shall produce reasonable grounds for its assertions of the likely effect upon the Contractor's abilities to perform the Services within 30 days of the original notification from EDF Energy (South East) plc:

- (A) that the shareholders of the transferee have passed a resolution for the winding up of the transferee other than for the purposes of an amalgamation or reconstruction or the Court has made an order for the winding up of the transferee or a provisional liquidator in a proceeding for the winding up of the transferee has been made which appointment has not been set aside or stayed within 30 days or a receiver or administrative receiver has been appointed over all or any of the Contractor's or PADCo's assets which appointment has not been discharged within 30 days or an administrator or similar official has been appointed over all or any of the transferee's assets; or
- (B) anything analogous to, or having a substantially similar effect to, any of the events specified in Clause 28.9(f)(ii)(A) has occurred in any jurisdiction;
- (C) the transferee is convicted of a serious and material criminal offence in relation to companies;
- (D) the transferee is subject to any material regulatory or disciplinary proceedings which if found against the prospective transferee is likely to have a material effect on the Contractor's ability to perform the Services as a result of the transferee becoming a shareholder of the Contractor or of PADCo; or
- (E) the transferee is in the process of bringing a material claim against LUL or LUL is in the process of bringing a material claim against the transferee which if successful is likely to have a material effect on the Contractor's ability to perform the Services as a result of the transferee becoming a shareholder of the Contractor or PADCo,

the Contractor shall notify LUL if EDF Energy (South East) plc intends to transfer (other than to an affiliate as permitted under Clause 28.9(f)) any issued share capital of the Contractor;

- (iii) any transferee of any of the issued share capital of the Contractor previously held directly or indirectly by EDF Energy (South East) plc or of PADCo previously held directly or indirectly by EDF Energy

(South East) plc after completion of the Initial Works transfers or otherwise disposes of any of the issued share capital of the Contractor or of PADCo to a transferee within any of Clauses 28.9(f)(ii)(A), (B), (C), (D) or (E); or

(iv) any of EDF Energy (South East) plc, ABB Holdings Limited or Balfour Beatty plc (formerly known as BICC plc) or any company through which any of EDF Energy (South East) plc, ABB Holdings Limited or Balfour Beatty plc holds the issued share capital of PADCo, (the *PADCo Shareholders*) transfer before completion of the Initial Works other than to another PADCo Shareholder in accordance with (v) below or to a transferee which is a subsidiary as defined in Section 736 of the Companies Act 1985 (as it may have been, or may from time to time be amended, modified or re-enacted) of the PADCo Shareholder, any of the Initial Shareholder Equity in PADCo or Initial Shareholder Debt (other than the subordinated debt) in PADCo without the prior consent of LUL (such consent not to be unreasonably withheld or delayed); or

(v) any of the PADCo Shareholders transfer to another PADCo Shareholder before completion of the Initial Works more than 10 percentage points of the Initial Shareholder Equity in PADCo or Initial Shareholder Debt (other than the subordinated debt) in PADCo without the prior consent of LUL (such consent not to be unreasonably withheld or delayed);

- (g) the passing of a resolution by the shareholders of the Contractor for the winding up of the Contractor;
- (h) the appointment of a provisional liquidator in a proceeding for the winding up of the Contractor provided that after the Liability Period the appointment of a provisional liquidator has not been set aside or stayed within 30 days;
- (i) the making by the Court of an order for the winding up of the Contractor except for the purposes of amalgamation or reconstruction approved in writing by LUL such approval not to be unreasonably withheld or delayed provided that the amalgamated or reconstructed entity has unconditionally assumed and is in the reasonable opinion of the Contract Manager capable of carrying out the obligations of the Contractor under this Contract. LUL shall be deemed to be acting reasonably in withholding such consent if the proposed amalgamated or reconstructed entity is an entity falling within Clause 28.9(f)(ii)(A)-(E);
- (j) the appointment of a receiver or administrative receiver over all or any of the Contractor's assets or the appointment of an administrator or similar official over all or any of the Contractor's assets provided that after the Liability Period the appointment of a receiver or administrative receiver has not been discharged within 30 days;

- (k) any failure or any persistent failure by the Contractor to comply with any of its obligations under the Contract (following notice from LUL that such persistent failure might lead to a termination of this Contract) which failure or persistent failures cumulatively have a material adverse effect on the provision of services by LUL on the Underground Network or on the statutory obligations of LUL to operate and provide to the general public at all times a safe, economic, reliable, efficient and regular passenger transport system provided that the breach of contract or failure to perform giving rise to such failure (or which would contribute to the persistent failure) is not one for which Service Delivery Points may be ascribed pursuant to Clause 20.1;
- (l) any of the Key Project Contracts is materially amended, or terminated (other than by the Contractor or on expiry) without the prior written approval of LUL, such approval not to be unreasonably withheld or delayed. LUL will be deemed to be acting unreasonably in withholding consent unless it can demonstrate that the relevant matter would have a material adverse effect on the Contractor's ability to perform its obligations under the Contract;
- (m) the Contract is frustrated;
- (n) LUL is permitted to terminate in the circumstances described in Clause 40;
- (o) a right to terminate arises under Clause 25.7;
- (p) a right to terminate arises under Clause 25.9;
- (q) a right to terminate arises under Clause 25.12;
- (r) a right to terminate arises under Clause 25.13;
- (s) except as provided below the Parent Company Guarantee is either (i) repudiated provided that where LUL believes that the Parent Company Guarantor has shown an intention (by notice or by conduct) to repudiate the Parent Company Guarantee (in such a way that goes to the root of the Parent Company Guarantee), LUL will serve a notice on the Parent Company Guarantor (with a copy to the Contractor) to this effect. If within three Working Days of such notice the Parent Company Guarantor (a) does not reply to such notice; or (b) has failed to provide evidence reasonably satisfactory to LUL to demonstrate that it was not in repudiatory breach, LUL will be entitled to serve a notice to terminate the Contract on the grounds that the Parent Company Guarantor has repudiated the Parent Company Guarantee (this is without prejudice to the rights of the Contractor under Clause 28.10(f)); or (ii) ceases to be in full force and effect other than for a Change of Law resulting in the consequences set out in (C) below;
  - (A) The event in Clauses 28.9(s)(ii) shall not entitle LUL to serve a notice terminating this Contract if the guarantee given by the Guarantee Provider (as defined below) is substituted by a new guarantee on the same terms from a new guarantor who can demonstrate to the

satisfaction of LUL that it has the legal, financial and technical arrangements which would enable it to perform the Contractor's obligations under the Contract and achieves a debt rating equivalent or better than that held by EDF Energy (South East) plc at the Date of Contract. The event in Clause 28.9(t) shall not entitle LUL to serve a notice terminating this Contract if EDF Energy (South East) plc or any other Guarantee Provider enhances its credit or otherwise procures credit support so that it achieves a debt rating equivalent or better than that held by EDF Energy (South East) plc at the Date of Contract where such enhancement takes place within 30 days of the event occurring which would otherwise have entitled LUL to serve a notice to terminate hereunder.

- (B) For the purpose of this Clause 28.9 Guarantee Provider means EDF Energy (South East) plc or any other person that has replaced EDF Energy (South East) plc as provider of the Parent Company Guarantee.
  - (C) If there is a Change of Law which renders performance of any of the Guarantee Provider's material obligations or exercise of any of its material rights under the Parent Company Guarantee illegal or impossible, the Contractor may procure that a substitute Parent Company Guarantee with a long term credit rating equivalent or better than that held by EDF Energy (South East) plc at the Date of Contract and the new guarantor can demonstrate to the satisfaction of LUL that it has the legal, technical and financial arrangements which would enable it to perform the Contractor's obligations under the Contract. If the Contractor does not provide a Parent Company Guarantee on this basis LUL shall be entitled to terminate the Contract.
  - (D) In the event that the Parent Company Guarantee is repudiated by the Guarantee Provider the Contractor shall use all reasonable endeavours to procure a new Guarantee Provider.
- (t) the long term, unsecured and unguaranteed debt ratings of EDF Energy (South East) plc or any other Guarantee Provider (as defined in Clause 28.9(s)(B) above) ceases to be at least BBB- with Standard & Poor's, or at least Baa3 with Moody's Investors Service or BBB- with Duff and Phelps;
  - (u) a right to terminate arises under Clause 28.10A;
  - (v) PADCo fails to perform its obligations under the Option Deed provided that there shall be no right to terminate for a failure to pay costs under Clause 6 of the Option Deed or breach of further assurances in Clauses 2.4 and 5 of the Option Deed;
  - (w) a right to terminate arises under Clause 28B.10(b); and
  - (x) if the Contractor wilfully breaches Clause 58.1 (Refinancing).



28.9A The Parties acknowledge and agree that if the Contractor fails:

- (a) to take over the operation, maintenance or operation and maintenance of part or all of the Third Party Works Assets in accordance with paragraphs 5.8 and 5.9 of Schedule 23.16A (Adoption Procedures); and/or
- (b) to adopt the relevant Third Party Works Assets in accordance with the terms of the Request for Adoption Notice for any reason other than those set out in paragraph 5.12 of Schedule 23.16A (Adoption Procedures),

then such failure shall be deemed to be the occurrence of an event under Clause 28.9(k) which on its own is sufficient to allow LUL to serve a notice to terminate this Contract pursuant to Clause 28.9.

### **Termination Procedure**

28.10 Without prejudice to Clause 23.55, termination by either Party pursuant to Clause 28.1, 28.3, 28.7, 28.9 or 28.11 shall be in accordance with the following procedure:

- (a) the notice to terminate given pursuant to Clause 28.1, 28.3, 28.7, 28.9 or 28.11 shall specify the circumstances giving rise to the right to terminate the Contract;
- (b) without prejudice to Clause 28.9(s)(A) and subject to Clause 28.10(c) if the event giving rise to the termination notice falls within any of Clauses 28.1, 28.3, 28.7, 28.9 (other than Clause 28.9(k) and 28.9(l)) or 28.11 the Contract shall subject to Clause 28.10(g) terminate on such date as shall be specified in the notice, which shall not be more than one year after the date of the service of such notice;
- (c) in all other cases following notification by LUL that it is considering terminating the Contract pursuant to Clause 28.9(k) and 28.9(l) the Parties shall consult for a period of up to 28 days (or such longer period as they may agree) as to what steps shall be taken, in respect of an event capable of remedy, to remedy the breach within a reasonable period and, in respect of an event incapable of remedy, to ensure that such event does not occur again and, in each case to mitigate the consequences of the relevant event having regard to all the circumstances;
- (d) at the expiry of the period in Clause 28.10(c) above, unless the event giving rise to the termination notice shall have been remedied, or the Contractor has devised a programme and timetable for remedying the circumstances which the Parties shall meet to discuss in good faith are reasonably acceptable to LUL (to be confirmed in writing within 14 days of expiry of the period in Clause 28.10(c)) the Party who gave the termination notice shall be entitled (within a further 15 Working Days) to serve a notice on the other Party specifying the date on which this Contract shall terminate and the Contract

shall terminate on the earlier of the date specified in such notice or the first anniversary of the date of service of such notice;

- (e) if the Contractor serves notice under this Clause on LUL specifying when this Contract shall terminate, LUL may by counter notice served within one month specify an alternative date being no later than the latest permitted date referred to in Clauses 28.10(b) or 28.10(d) (the **Counter Notice Date**), in which case subject to Clause 28.10(g) the Contract shall terminate with effect from the date so specified by LUL;
- (f) subject to Clause 40.9, the Contractor acknowledges and agrees that a dispute as to whether LUL has terminated this Contract in accordance with this Clause 28 shall not affect the validity of the termination and the Contractor shall only be entitled to refer for determination in accordance with the provisions of Schedule 37 (Dispute Resolution) the question of whether LUL was entitled to, and did, terminate this Contract in accordance with this Clause 28. In the event that a determination is made that LUL was not entitled to terminate this Contract or did not terminate in accordance with this Clause 28, the Parties agree that such termination by LUL shall constitute termination of this Contract pursuant to Clause 28.7 and, that LUL shall pay to the Contractor the sums payable under Clause 29.3;
- (g) during the period following service of a notice to terminate to the Expiry Date, the performance of this Contract by each Party will be carried out without interruption and in accordance with its terms and conditions subject to the following provisions:
  - (i) If LUL serves a counternotice under Clause 28.10(e) or (in respect of (A) below only or (A) and (B) where the provisions of Clause 25.55.4 apply) extends the Expiry Date beyond the date on which the termination notice is served provided that a Counter Notice Date has not already been specified the Contractor shall be entitled to refuse to provide the Services for the period by which the counter notice would extend the Contract Duration (the **Period of Extension**);
    - (A) to the extent that the events giving rise to the termination make it unlawful or impossible to perform the Services; and
    - (B) unless LUL provides such security or advance payments for the Services (including any Variations or Third Party Works Adoption Variations) and pay all arrears of Availability Charge and outstanding interest as the Contractor may reasonably require, having due regard to the events giving rise to the termination;
  - (ii) If LUL serves a counternotice under Clause 28.10(e), or a notice to extend the Expiry Date beyond the date on which the termination

notice is served (the **Original Termination Notice**) under Clause 28.10(b), or Clause 28.10(d):

- (A) in relation to a termination under Clauses 28.1(e), 28.1(f), 28.9(p) or 28.9(r) the Contractor shall be entitled to refuse to provide the Services (including any Variations or Third Party Works Adoption Variations) for the Period of Extension unless LUL agrees to fully compensate the Contractor after taking account of Taxation on compensation and all reliefs, credits, deductions and allowances for Taxation arising from the Costs for any Commitment Costs (in the case of termination under Clauses 28.1(e)) or 28.9(p). LUL agrees that it will have no right to enforce the rights that it would otherwise have had against the Contractor (in the case of termination under Clause 28.1(f) or Clause 28.9(r) except to the extent that there is still headroom available within the Contractual Risk Commitment;
- (B) in relation to termination under Clauses 31.2 or 31.3, the Contractor shall be entitled to refuse to provide the Services for the Period of Extension unless LUL agrees that it will not enforce its rights to make any reductions under Clause 31.1(c) to reduce the Availability Charge as a result of further Force Majeure Events, and shall fully compensate the Contractor after taking account of Taxation on compensation and all reliefs, credits, deductions and allowances for Taxation arising from the Costs for any further Costs arising in relation to Force Majeure Events (except to the extent covered, by insurance proceeds, taking account of Taxation on the above basis);
- (C) for the avoidance of doubt LUL shall not be entitled to issue a second counternotice in respect of any event or circumstance which shall have a later Expiry Date than any counternotice previously served, or more than one termination notice under Clause 28.9.

28.10A Where LUL or the Contractor (the **Aggrieved Party**) believes that the other (the **Other Party**) has shown an intention (by notice or by conduct) to repudiate the Contract or, in the case of LUL, an intention to repudiate the Framework Agreement or Supplemental Deed (in such a way that goes to the root of the Contract, the Framework Agreement or Supplemental Deed, as applicable), the Aggrieved Party will serve a notice on the Other Party to this effect. If within three Working Days of such notice, the Other Party (i) does not reply to such notice, or (ii) has failed to provide evidence reasonably satisfactory to the Aggrieved Party to demonstrate that it was not in repudiatory breach, the Aggrieved Party will be entitled to serve a notice to terminate the Contract on the grounds that the Other Party has repudiated the Contract and/or, in the case of LUL, has repudiated the Framework Agreement or Supplemental Deed. This Clause is without prejudice to the rights of the Contractor under Clause 28.10(f).

## **Discretionary Termination**

28.11 LUL may terminate this Contract by giving at least 12 months' notice to the Contractor expiring on a date which is 15, 20 or 25 years after the Starting Date.

## **Step in Rights**

28.12 Subject to Clause 34.3.1, if LUL gives notice to terminate under Clause 28.9, or if, for reasons of the safety, security or integrity of the System or the IT Systems or the Underground Network or the security of supply of Power, LUL considers (acting reasonably) it necessary, LUL shall have the right (but not the obligation), by one or more notices to the Contractor (a *step-in notice*) to require the Contractor to operate some part or all of the System or the IT Systems, or to provide some or all of the Services, in such manner as LUL may determine (which if not consistent with the terms of this Contract shall entitle the Contractor to compensation for its reasonable additional costs and expenses including Irrecoverable VAT), or, where the Contractor is unable or unwilling to do so, to do so itself or to appoint a third party (to whom the Contractor has no reasonable objection) to do so in accordance with Good Industry Practice for such period(s) up to the Expiry Date as LUL reasonably requires on the basis of the causes giving rise to the step in notice, at the expense of the Contractor (but subject to the provisions of Clause 28.13). LUL will pay the full amount of Availability Charges in respect of that period of operation in accordance with the other provisions of this Contract less any reasonable costs including Irrecoverable VAT properly incurred by LUL or such third party in such operation. Neither LUL nor any such third party shall have any liability to the Contractor for any damage to the System or the IT Systems which has occurred prior to the effective date of LUL's step-in notice or which results from a breach by the Contractor of its obligations under this Contract but (subject thereto) they shall be liable and shall fully compensate the Contractor for any failure to comply with Good Industry Practice (including in relation to any agreement between a User or Purchaser and the Contractor in relation to the New Assets) or any other provision of this Contract (as if it applied to LUL or such third party as it applies to the Contractor during the period of operation by LUL or such third party). The Contractor shall take all action which is necessary or expedient to co-operate in the exercise by LUL of its rights under this Clause. During the period of step-in, LUL shall be entitled to demonstrate on the basis of objective evidence that a Failure as defined in Schedule 20.6 continues directly from the breach by the Contractor of the Contract before the period of step in and the Contractor shall remain liable for any liquidated damages applicable pursuant to Clause 20.6 (Liquidated Damages). The Contractor shall also be liable for any Service Delivery Points connected with an event which arose before the period of step-in (provided that no liability shall arise where it is unable to perform an obligation connected with an event before the period of step in because LUL has stepped in). LUL shall not be permitted to make any deduction to the Availability Charge until any dispute has been agreed or determined.

28.13 To the extent that the exercise by LUL of its rights under Clause 28.12 to operate or direct the operation or performance of the System or the IT Systems and/or the Services (an *Exercise of Rights*) result in obligations or costs including

Irrecoverable VAT applying to the Contractor which differ from those which would have applied in the absence of such Exercise of Right (assuming that the Contractor had been and remained in compliance with its obligations under this Contract), the Exercise of Rights shall be deemed to constitute a Variation by way of an Instruction Notice and the relevant provisions of Clause 23 shall apply.

28.14 If, following an Exercise of Rights LUL considers (acting reasonably) it no longer necessary for the purposes of the causes giving rise to the step in notice to continue such Exercise of Rights, it shall serve notice to that effect (a *step-out notice*) requiring the Contractor to resume operation (as soon as reasonably practicable) of all the System and the IT Systems and performance of all the Services in accordance with the Contract.

### **Employment and Step-In**

28.15 In the event that the Transfer Regulations apply to the Exercise of Rights so that the contracts of employment of any employees working in the Services or in the operation of all or part of the System or the IT Systems to which the step-in applies transfer to LUL or a third party appointed by LUL the provisions of Clause 19 shall have effect subject to the following:

- (a) the term *Transferred Employees* shall include those employees of the Contractor whose contracts of employment transfer to LUL and those whose contracts of employment transfer to the Contractor at the end of the period of step-in; and
- (b) the indemnity given by LUL in Clause 19.6 shall apply to the period of step-in but as if references to the Starting Date were references to the date the Contractor resumes operation of all the System and the IT Systems and performance of all the Services after a period of step-in and any act or omission of LUL includes acts and omissions of third parties appointed by LUL.

28.16 LUL agrees that it will not terminate this Contract in any circumstances other than in accordance with Clause 28.

### **Novation of contracts**

28.17 If this Contract is terminated under Clause 28, the Parties agree that the Fuel Supply Contracts will be novated to LUL with effect from the date of termination of this Contract and each of the Parties will take such steps and execute such agreements as are necessary to give effect to such novation (or otherwise needed to transfer all the benefit and burden of the Fuel Supply Contracts to LUL). The Contractor agrees to fulfil all its obligations in relation to the Fuel Supply Contracts prior to the date of termination. The Contractor will confirm that it has so fulfilled its obligations (and the third party will agree to this) in the tripartite agreement to be entered into between LUL and the Contractor in relation to each Fuel Supply Contract.

### **LUL OBLIGATIONS**

28A.1 Whenever the Contract Manager or LUL is required under the terms of this Contract or any Project Agreement to respond within a specific time period or to act reasonably or without unreasonable delay in giving its approval, consent, permission or agreement to any matter he or it shall provide to the Contractor grounds for withholding any approval, consent, permission or agreement and shall give or withhold such approval, consent or agreement within any time limits prescribed by this Contract or the relevant Project Agreement.

28A.2 LUL shall provide or comply with (at no cost to the Contractor, unless specifically provided in this Contract to the contrary) the LUL Dependencies at the times and in the manner set out in the Project Agreements. LUL shall be liable to the Contractor (on the basis set out in this Clause 28A) for any failure to provide (in the manner and at the times required by the relevant Project Agreement), or breach of, the LUL Dependencies (including under Clause 6.13) which:

- (a) prevents the Contractor from performing any of its obligations and/or exercising any of its rights pursuant to any Project Agreement or causes any impairment of or delay to such performance or exercise;
- (b) increases the Costs to the Contractor of performing any of its obligations and/or exercising any of its rights pursuant to any Project Agreement;
- (c) results (or would result, but for this Clause 28A) in the loss of the entitlement to or any decrease in the Availability Charge or any other amount of any payment made by LUL which the Contractor would otherwise have expected to receive or become entitled to pursuant to this Contract;
- (d) results in any new liability or an increase in any existing liability on the part of the Contractor to any third party other than any Purchaser or User,

(the provisions of Clause 28A.2(a) to (d) being together the *Adverse Consequences*).

28A.3 The Contractor shall not:

- (a) be in breach of any Project Agreement or be liable to LUL for any Adverse Consequences (or any consequences thereof prescribed under this Contract) and any time periods by which obligations are to be performed, including any Derogation Period, shall be extended in accordance with Clause 13A; and/or
- (b) in relation to Clause 28A.2(c), suffer any abatement of the Availability Charge or any other amounts payable by LUL under this Contract.

28A.4 LUL shall pay Disruption Costs to the Contractor as a result of failure to provide or breach of any LUL Dependency which causes any Adverse Consequence except where another right or remedy is specifically provided for in this Contract and, subject to Clause 28A.6, the Contractor shall make all such claims in accordance with this Clause 28A. Where the failure of the LUL Dependency results in an increase in the costs of Taxation of the Contractor or PADCo or a reduction in the Benefits for Taxation of the Contractor or PADCo or a failure in whole or in part to obtain

payments for consortium relief shown in the Contractor's Financial Model at the Starting Date and which would have been made if PADCo had in fact had accounting periods equivalent to those assumed by Schedule 33 (Tax Principles and Assumptions) there shall be a Price Adjustment.

28A.5 If LUL has failed to provide or breached a LUL Dependency during the implementation of a Variation or Third Party Works Adoption Variation (other than where such failure was agreed between the Parties as part of the Final Implementation Details or Final Third Party Works Adoption Implementation Details (as applicable)) the Contractor shall be entitled to claim under this Clause 28A. Any other claims by the Contractor relating to Variations shall be made in accordance with Clause 23 or Schedule 23.16A (Adoption Procedure) as applicable.

[REDACTED]

**Method of Payment**

28A.7 Without prejudice to Clause 28A.4 if LUL becomes liable to pay any Disruption Costs pursuant to this Clause 28A, it will discharge its liability by means of:

- (a) a single payment of the whole amount of such costs to be payable in accordance with the provisions of Clause 22.2;
- (b) where the Contractor agrees (having discussed the matter in good faith with LUL) a Price Adjustment.

**Duty to Notify**

28A.8 The Contractor shall notify LUL in writing as soon as reasonably practicable after becoming aware of the occurrence of any circumstances which are likely to give rise to a claim for a failure to provide or breach of an LUL Dependency or Disruption Costs. The Contractor will use all reasonable measures, including co-operation with LUL to mitigate the effect of the failure to provide or breach and/or the Disruption Costs provided that it can do so without unreasonable inconvenience or unreasonable cost.

28A.9 If the Contractor wishes to make a claim for Disruption Costs and/or relief in respect of any matter described in Clause 28A.3 pursuant to this Clause, it shall notify LUL in writing as soon as reasonably practicable and no later than 28 days after becoming aware of the event giving rise to the Contractor's claim that it has incurred or is likely to incur Disruption Costs and/or claim any relief in respect of any matter described in Clause 28A.3. The Contractor shall keep contemporary records of all Disruption Costs from time to time and as may reasonably be necessary to support any claim for Disruption Costs it may subsequently wish to make. Without any admission as to liability LUL may, on receipt of a notice regarding a claim (or potential claim) for Disruption Costs, inspect such contemporary records and may instruct the Contractor on a reasonable basis to keep any further records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit LUL to inspect all records kept pursuant to this Clause 28A.9 and shall supply LUL copies of such records on request.

28A.10 After notifying LUL that it wishes (or may wish) to make a claim for Disruption Costs and subject to the provisions of Clause 28A.6, the Contractor shall as soon as is reasonable in all the circumstances, send to LUL a first interim account giving full and detailed particulars of the amount claimed to that date and the grounds on which the claim is based. Thereafter, at such intervals as LUL may reasonably require, the Contractor shall send to LUL further up to date accounts giving the accumulated total of the claim and any further grounds on which it is based. The Contractor shall supply LUL with such further information regarding the claim as LUL reasonably requires from time to time. An account shall be deemed to be the Contractor's final account either if it is stated to be the final account or if no further account or notification of progress (or lack of progress) of the relevant matter is received by LUL within 56 days after that account. If LUL and the Contractor are unable to agree whether Disruption Costs have been incurred the matter may be referred by either party to the Dispute Resolution Procedure and the provisions of Clause 22.7 shall apply.

#### **CHANGE OF CONTROL**

28B.1 The provisions of this Clause 28B shall have effect if any of the following events (a *Supervening Event*) occurs:

- (a) LUL (or any successor entity which is owned and controlled by the Crown or TfL in whom or to whom the payment obligations of LUL under Clause 21 and/or Clauses 29 and 29A of this Contract are vested or transferred) (for the purposes of this Clause 28B, LUL and any such successor entity shall be referred to as the *Company*) shall cease to be owned and controlled by the Crown.

For the purposes of this Clause 28B.1(a):

- (i) the Company shall be regarded as *owned and controlled by the Crown* at any time when it is owned and controlled by:



- (A) a Minister of the Crown; or
- (B) TfL;
- (C) any public or statutory corporation which is owned and controlled by a Minister of the Crown; or
- (D) any limited liability company which is wholly owned by a Minister of the Crown; or
- (E) a wholly owned subsidiary of any of the foregoing,

but, for the avoidance of doubt, the Company shall not be regarded as owned and controlled by the Crown at any time when it is owned and controlled by any local authority, county council, metropolitan council or similar local governmental body or agency whether elected or otherwise including the Greater London Authority (howsoever described) or any public or statutory corporation or limited liability company which is owned or controlled by the same other than TfL; and

- (ii) the expression *owned and controlled* shall mean possessing:
  - (A) in relation to a body corporate having a share capital, ninety per cent. (90%) or more of the issued equity share capital of that body having the corresponding voting power exercisable at general meetings of that body; and
  - (B) in relation to any other body (whether or not corporate), the power to appoint or remove director(s) or other persons (by whatever name called) who have management control of that body holding between them ninety per cent. (90%) or more of the voting power at meetings of the board of directors (by whatever name called) of that body;
- (b) any of the payment obligations of the Company under Clause 21 and/or Clauses 29 and 29A of this Contract (the *payment obligations*) are to be vested in or transferred to a party (a *Supplemental Obligor*) which is not owned and controlled by the Crown (as defined, mutatis mutandis, in Clause 28B.1(a)(i));
- (c) the Comfort Letter is withdrawn or repudiated or effectively repudiated or any statement contained in paragraph 2 thereof is untrue in any material respect at the date the Comfort Letter is issued or would be untrue in any material respect if repeated at any time thereafter by reference to the facts and circumstances then subsisting.

28B.2 The Company undertakes to give notice to the Contractor and PADCo as soon as reasonably practicable after becoming aware and/or having reason to believe, and in any event at least 30 days prior to the date, when it is proposed by the Company, any

Minister of the Crown, TfL or any subsidiary thereof, that any Supervening Event is to or shall occur so as to enable the procedures set out below to be followed. Without prejudice to the Company's obligations contained in the first sentence of this Clause 28B.2, the Contractor or PADCo having become aware of the pending occurrence of a Supervening Event may (but without obligation or any consequences for failing to do so) give notice to the other and to the Company to that effect to which the Company shall respond (if lawfully entitled to do so) within 30 days with confirmation as to whether any Supervening Event is to occur.

28B.3 The Company shall be required to provide additional security (in the manner provided in Clause 28B.6) to take effect prior to the Supervening Event occurring unless the Company receives notice from each of the Contractor and PADCo to the effect that (i) no such additional security is required by it or (ii) the likely effects of the Supervening Event are satisfactory to it because the Company has provided evidence satisfactory to it that:

- (a) the Company or (as the case may be) the Supplemental Obligor failing which any guarantor of the payment obligations of the Company or, as the case may be, the Supplemental Obligor under or in respect of this Contract (the **Guarantor**) has the designated credit rating which credit rating shall be tested:
  - (i) in the case of any Supplemental Obligor, after the assumption by the Supplemental Obligor of the obligations being assumed by it under the Contract together with any other obligations of the Company or TfL (or any successor) which are also being assumed by the Supplemental Obligor; and
  - (ii) in the case of the Guarantor, after the assumption by the Guarantor of its obligations under any such guarantee; and
- (b) in circumstances where the Company is relying on the designated credit rating of a Guarantor, the Contractor and PADCo are satisfied as to the legal capacity, power and authorisation of the Guarantor to perform its obligations under its guarantee, given in favour of the Contractor and PADCo, of the payment obligations of the Company or the Supplemental Obligor, as the case may be, under this Contract (the **Guarantee**) and the Guarantee is otherwise in form and substance reasonably satisfactory to the Contractor and PADCo.

28B.4 When the Company gives notice or responds pursuant to Clause 28B.2 the Company may require that prior to the date falling 10 Working Days prior to the occurrence of the Supervening Event the Contractor shall use its reasonable endeavours to arrange alternative funding on the most favourable terms reasonably obtainable by it such that either the Third Party Lenders confirm their willingness to continue funding notwithstanding the occurrence of the relevant Supervening Event on the basis of alternative arrangements agreed with the Contractor and PADCo (and approved by the Company) or the Third Party Lenders are fully repaid and their facilities cancelled and, in either case, with the Contract continuing subject to (i) the provisions of Clause 23.55; (ii) a Price Adjustment to reflect the financial impact of

alternative funding; and (iii) all such additional amendments to the Contract as are agreed between the Company, the Contractor and PADCo to reflect the consequences of the alternative funding arrangements. The obligation of the Contractor to use all reasonable endeavours to arrange alternative funding will not be satisfied unless the Contractor shall have:

- (a) sought finance from (i) a representative range of lending and investing institutions including those which at that time provide finance to the Contractor and (ii) the shareholders of the Contractor (provided that this shall not impose any obligation on those shareholders to provide or guarantee finance to the Contractor); and
- (b) given the Company all information reasonably requested by it in relation to the reasonable efforts taken by the Contractor and the reasons for the failure to arrange alternative funding including, if agreed to by them, letters from lenders and financiers that it has approached for finance, as well as the shareholders of the Contractor, stating the reasons for their refusal to provide it and the Contractor shall arrange and, if the Company so requires and agreed to by such lenders or financiers and/or shareholders, for the Company to attend meetings with them to discuss those reasons,

provided however that (i) this Clause 28B.4 shall not impose any obligation on the Third Party Lenders or other financial institutions at that time lenders to the Contractor and/or PADCo to provide finance or continue to provide finance to the Contractor and/or PADCo; and (ii) the Company shall meet all Costs incurred in seeking and arranging alternative funding other than those Costs incurred within one month of a request by the Company pursuant to this Clause 28B.4, which the Contractor might reasonably have been expected to incur in preparing an Outline Proposal.

28B.5 The Company shall use its reasonable endeavours to assist the Contractor in arranging alternative funding pursuant to its obligations under Clause 28B.4.

28B.6 For the purposes of Clause 28B.3 and Clause 28B.8 unless each of the Contractor and PADCo has notified the Company that no additional security will be required by it or the provisions of Clause 28B.3(a) and as appropriate (b) are each satisfied, the Company shall provide on or before the date on which the Supervening Event takes effect and shall maintain in full force and effect until the date referred to in Clause 28B.7:

- (a) a letter of credit:
  - (i) having a face amount (as adjusted from time to time, the **Security Amount**), on the date of issue or reissue (as the case may be) equal to the aggregate of Lenders' Liabilities plus Initial Shareholder Debt and Initial Shareholder Equity. For the purposes of determining the Security Amount as at any relevant time the Initial Shareholder Equity and Initial Shareholder Debt shall be the maximum projected to be

outstanding during the term of the letter of credit and Lenders' Liabilities shall be calculated on the basis that:

- (A) the principal amount shall be the maximum principal amount expected to be outstanding to the Third Party Lenders under the Financing Agreements during the term of such letter of credit and the interest amount shall be such amount as is expected to be due and payable during the term of such letter of credit;
- (B) the amount of fees, commission, costs and expenses due under the Financing Agreements shall be such amounts as is expected to become due and payable during the term of such letter of credit on the basis that early termination of this Contract may occur at any time during the term of such letter of credit; and
- (C) Market Breakage Costs shall be calculated on a marked to market basis 2 Working Days prior to the date on which the letter of credit is issued or reissued (as the case may be) on the basis that the Early Termination Date (as defined in the relevant Hedging Agreement(s)) has occurred,

provided that the Security Amount shall be recalculated as at the end of each 6 month period following the date of issue or reissue of any letter of credit and if such recalculated amount represents more than a 5% increase or decrease in the Security Amount, either the Company (in the event of any such decrease) or the Contractor or PADCo (in the event of any such increase) may require that an additional or replacement letter of credit be issued (within 15 days of such request) to reflect such increased or decreased Security Amount;

- (ii) issued for the benefit of PADCo by a bank, insurance company or other financial institution who has the designated credit rating; and
- (iii) having a term of not less than 364 days and callable if not reissued or replaced annually by the Company within 30 days prior to its expiry by a bank, insurance company or other financial institution, such bank, insurance company or other financial institution having the designated credit rating on a day not more than 10 days prior to the day on which the letter of credit is re-issued or renewed by it,

provided that any amount drawn under the letter of credit as a result of it not being re-issued or renewed in accordance with this Clause 28B.6 shall constitute and be treated as cash collateral in accordance with paragraph (b) of this Clause 28B.6 until the letter of credit has been so reissued or renewed, whereupon such amount shall be immediately paid over to the Company;

- (b) cash collateral in the Security Amount for the Company's payment obligations under this Contract deposited in an account designated by and charged (pursuant to a first ranking fixed charge) to PADCo as security for all and any

amounts payable by the Company and/or the Supplemental Obligor under Clauses 29 and 29A of this Contract with any interest earned on the credit balance of such account being for the account of the Company and otherwise on terms and conditions reasonably acceptable to the Company, the Contractor and PADCo provided that the amount of cash collateral shall be increased or decreased within 15 days of each anniversary of the placing of such cash collateral to reflect the Security Amount as recalculated as at such anniversary and provided further that the Security Amount shall be recalculated as at the end of each 6 month period following the date of the deposit of the cash collateral or annual reconciliation of the Security Amount in accordance with this sub-clause and if such recalculated amount represents more than a 5% increase or decrease in the Security Amount, either the Company (in the event of any such decrease) or the Contractor or PADCo (in the event of any such increase) may require that monies be released from or deposited into, as the case may be, such account (within 15 days of such request) to reflect such increased or decreased Security Amount; or

- (c) a letter from HM Government in respect of the payment obligations of the Company under this Contract in a form and substance acceptable to the Contractor and PADCo (the *HMG Letter*),

such security shall be deemed to be satisfactory to the Contractor and PADCo and this Contract shall continue subject to the provisions of Clause 23.55.

28B.7 If at any time following the posting of additional security pursuant to Clause 28B.6 the Company or (as the case may be) any Supplemental Obligor has the designated credit rating or, failing which, any Guarantor has the designated credit rating and the requirements of Clause 28B.3(b) are satisfied, the requirements of Clause 28B.6 shall not apply and any letter of credit or Government letter shall be released or cancelled and cease to be effective and any cash collateral shall be immediately paid over to the Company.

28B.8 If at any time after the occurrence of a Supervening Event (including after the release or cancellation of any security in accordance with Clause 28B.7):

- (a) the Company or (as the case may be) the Supplemental Obligor does not have the designated credit rating or, as appropriate, any Guarantor does not have the designated credit rating or the requirements of Clause 28B.3(b) are otherwise not satisfied, then the Company shall be obliged to provide to PADCo the additional security referred to in Clause 28B.6 within 30 days of the loss of the designated credit rating; or
- (b) a bank, insurance company or other financial institution providing a letter of credit in accordance with Clause 28B.6 suffers a deterioration of its credit rating such that it falls below the designated credit rating, then the Company shall be obliged to provide to PADCo additional security satisfying the requirements of Clause 28B.6 within 30 days of the occurrence of such deterioration (and for the avoidance of doubt such additional security could be

a replacement letter of credit from a bank, insurance company or other financial institution with the designated credit rating).

28B.9 If:

- (a) on the date 9 Working Days prior to the occurrence of a Supervening Event either:
  - (i) the Company has not provided the additional security referred to in Clause 28B.6 (unless each of the Contractor and PADCo has confirmed pursuant to Clause 28B.3 that either no additional security is required or the likely effects of the Supervening Event are satisfactory to it) and alternative funding arrangements as contemplated by Clause 28B.4 have not been made; or
  - (ii) the Company has failed to comply with the provisions of Clause 23.55.5; or
- (b) following the occurrence of a Supervening Event, either:
  - (i) the Company does not comply with its obligations under Clause 28B.8 or fails to comply with any request of the Contractor or PADCo to adjust any letter of credit or cash collateral to reflect any increase in the Security Amount as contemplated by Clause 28B.6(a) or (b); or
  - (ii) the HMG Letter ceases to be in full force and effect; or
  - (iii) any letter of credit provided in accordance with Clause 28B.6(a) ceases to be in full force and effect,

then the Company shall in accordance with Clause 29.14A pay to PADCo an amount equal to the Acceleration Amount. On or before the payment of the Acceleration Amount an appropriate Price Adjustment to the Availability Charge in accordance with Clause 23A payable to the Contractor shall be made. The Company shall be obliged to fund the New Assets or any Variations to the extent that such funding would have been provided to the Contractor and/or PADCo by the Third Party Lenders but for the application of the Acceleration Amount by PADCo towards the discharge of any amounts outstanding to the Third Party Lenders and any related cancellation of the commitments of the Third Party Lenders.

28B.10 In the event that:

- (a) the Company fails to pay the Acceleration Amount in accordance with Clause 28B.9 or to comply with the requirements of Clause 28B.5 and then fails to pay the Acceleration Amount, the Contractor and/or PADCo may serve a notice on the Company to terminate this Contract; or

- (b) the Contractor fails to comply with the requirements of Clause 28B.4, the Company may serve a notice on the Contractor to terminate this Contract; or
- (c) after the occurrence of a Supervening Event the Company fails to provide security in accordance with Clause 28B.8(a) and also fails to pay the Acceleration Amount, the Contractor and/or PADCo may serve a notice on the Company to terminate this Contract,

then (in any such case) the provisions of Clause 29.4 shall apply.

28B.11 Without prejudice to any other provision of this Clause 28B, if this Contract is terminated pursuant to Clause 28B.10(a) or (c) before completion of the Initial Works in addition to the payment made under Clause 29.4, an additional payment shall be made by the Company to PADCo equal to the interest (post tax) on each of the PADCo Shareholder Loan and the PADCo Subordinated Debt as projected in the Contractor's Financial Model between the Expiry Date and the proposed date for completion of the Initial Works as set out in Schedule 25.4.

28B.12 In this Clause 28B:

- (a) ***designated credit rating*** with respect to the Company, a Supplemental Obligor or a Guarantor means a Standard and Poor's long-term credit rating of AA or better or a Moody's long-term credit rating of Aa2 or better in respect of its senior, unsecured and unsubordinated debt obligations which rank no more than pari passu with all such person's other unsecured and unsubordinated debt obligations;
- (b) ***designated credit rating*** with respect to a letter of credit issued, renewed or reissued pursuant to Clause 28B.6(a) by a bank, insurance company or other financial institution means a Standard and Poor's long-term credit rating of AA- or better or a Moody's long-term credit rating of Aa3 or better,

or, if neither such agency is then in the business of rating such obligations, an equivalent rating with an agency of equivalent standing.

## **PAYMENT ON TERMINATION OR EXPIRY**

### **Contractor Default**

29.1 On Contractor Default Termination (other than under Clause 28.9(x)), LUL and the Contractor shall, subject to Clause 29A.1, each have an obligation to pay the amounts in Schedule 29.2 Part 1 (Termination Payments) which in the case of LUL shall be on the basis set out in Clause 29A.

### **Contractor Refinancing Default**

29.1A If LUL terminates this Contract under Clause 28.9(x) LUL shall, subject to Clause 29A.1, pay the amount set out in Schedule 29.2 Part 7 (Termination Payments) on the basis set out in Clause 29A.

**Discretionary Termination**

29.2 If LUL terminates the Contract under Clause 28.11 (Discretionary Termination) LUL shall, subject to Clause 29A.1, pay the amount set out in Schedule 29.2 Part 2 (Termination Payments) on the basis set out in Clause 29A.

**LUL Default**

29.3 If the Contractor terminates the Contract under Clauses 28.1(a), 28.1(g), 28.3 or 28.7 (LUL Default) LUL shall, subject to Clause 29A.1, pay the amount set out in Schedule 29.2 Part 3 (Termination Payments) on the basis set out in Clause 29A.

**Force Majeure**

29.4 If the Contractor terminates the Contract under Clauses 28.1(c) or 28.1(h) or 28.1(b) or Clause 28.1(i) or 28.1(j) or in the case of termination under Clause 28.1(i) (Change of Control) PADCo terminates the Contract or LUL terminates the Contract under Clause 28.9(e) or 28.9(m) or Clause 28.9(s)(C) or Clause 28.9(w), LUL shall, subject to Clause 29A.1, pay the amount set out in Schedule 29.2 Part 4 (Termination Payments) on the basis set out in Clause 29A and if relevant the additional payment set out in Clause 28B.11.

**Contractual Risk Commitment**

29.5 If the Contractor or LUL terminates the Contract in accordance with Clause 28.1(e), Clause 28.9(o), Clause 28.9(p), (or Clauses 28.1(f), 28.9(q) or 28.9(r) if the circumstances described in Clause 29.18 apply), LUL shall, subject to Clause 29A.1, pay the amount set out in Schedule 29.2 Part 5 (Termination Payments) on the basis set out in Clause 29A.

**Reporting**

29.6 The Contractor shall include in the Annual Report a reasonable estimate of the amounts set out in Schedule 29.2 and shall include in any notice to terminate the Contractor's calculation of the amount set out in Schedule 29.2 (Termination Payments).

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**REVERSION AND ASSET TENURE**

**Purpose of Clause**

- 30.1 This Clause establishes the basis on which:
- (a) LUL shall make available certain Assets to the Contractor and the Contractor shall make available certain Assets to PADCo at the Starting Date;
  - (b) the Contractor or, as the case may be, PADCo shall acquire all other Assets required for the performance of the Services during this Contract;
  - (c) the Contractor shall transfer certain Assets it acquires to LUL and the Contractor or, as the case may be, PADCo shall retain ownership to other Assets; and
  - (d) restrictions apply to LUL’s, the Contractor’s and PADCo’s respective ownership, dealings with and use of the Assets for the Contract Duration.

**Initial Assets: Immoveables**

- 30.2 At the Starting Date (or such later date referred to in the lease, licence or easement) LUL shall make available to the Contractor:
- (a) the properties to be comprised in the Lots Road Lease, the Greenwich Lease and the General Properties Lease;
  - (b) the properties to be comprised in the licences to occupy to be conferred on the Contractor under the Specific Properties Licence [REDACTED];
  - (c) the properties to be comprised in the easement and licences to be granted to the Contractor under the Easement; and
  - (d) any other properties to be comprised in any documents to be completed pursuant to Clause 30.5A.

on the terms of those instruments.

30.3 At the Starting Date, the Contractor shall make available to PADCo the properties to be comprised in the interests as described in Clause 30.12A(b).

30.4 The Parties agree that to the extent that the Assets are fixtures, they form part of the land in question and are therefore owned by LUL pursuant to its reversionary interest in the land but subject to the terms of the relevant lease, licence or easement or sub-lease, sub-licence or sub-easement or agreement for the same.

#### **Initial Assets: Moveables**

30.5 All moveable Assets which form part of the System at the Starting Date and all assets within the categories described in Schedule 30.3.2 (Moveable Assets which are not part of the System) shall remain the property of LUL, but LUL shall make them available to the Contractor for the purpose of performing its obligations under this Contract.

#### **Known Third Party Works**

30.5A Where the relevant properties are not made available to the Contractor pursuant to Clause 30.2, the Contractor shall, at LUL's request (or where LUL fails to request, at the Contractor's request), before or after the Starting Date, enter (at no additional cost to LUL) into such agreements for leases, easement and (where it is not possible for LUL to enter into an agreement for a lease or easement) licences (in the form of the After Acquired Property Document) as the Contract Manager considers, after reasonable consultation with the Contractor, are required as a result of completion of any Known Third Party Works before or after the Starting Date. Where the relevant moveable Assets are not made available to the Contractor pursuant to Clause 30.5, LUL shall make available to the Contractor for the purpose of performing its obligations under this Contract any moveable Assets and all records and technical drawings which form part of the System upon completion of any Known Third Party Works.

#### **After Acquired Assets: Immoveables**

30.6 The Parties agree that to the extent that Assets are fixtures and are acquired after the Starting Date, they form part of the land in question and are therefore owned by LUL pursuant to its reversionary interest in the land but subject to the terms of the relevant lease, licence or easement or sub-lease, sub-licence or sub-easement or agreement for the same.

30.7 The Parties agree that certain of the properties at which the Local Emergency Power Supply are to be located or on which cable and other equipment are to be installed and used by the Contractor have not been identified by the Parties prior to the date of this Agreement but will be identified and delineated from time to time in accordance with the Emergency Supply Plan, whereupon LUL shall, within four weeks of the date on which the Contractor indicates the extent of the site boundaries pursuant to paragraph 6.2 of Schedule 9.1, make available to the Contractor the properties so indicated pursuant to a Lease, Easement or in the event that LUL is unable to grant a Lease, a Licence or an agreement for the same, as LUL may consider appropriate at the time.

30.8 If the Contractor concludes that it is necessary or desirable to use or acquire land or any interest in or right over land (which is not already available to it under the terms of a lease, licence or easement or agreement for the same granted under this Clause 30) for the purposes of performing its obligations or exercising its rights under this Contract the Contractor shall:

- (a) give notice to that effect to LUL containing full details of the need or desire for using or acquiring the land, interest or right, a description of the relevant land, interest or right over it, full details of the terms upon which it can be used or acquired and of its proposal for the method by which the land, interest or right should be acquired and held, and the arrangements, if any, for the protection of the interests of LUL; and
- (b) not use or acquire or commit itself to using or acquiring the land, interest or right without the prior written consent of the Contract Manager and then only on terms approved by the Contract Manager.

30.9 Where the Contract Manager and the Contractor agree that the land, interest or right should be acquired by LUL, then unless otherwise agreed, LUL shall grant to the Contractor (or procure the grant) to the Contractor of rights which are no greater than those acquired by it, which are limited in duration to the period until the Expiry Date and which (subject to the foregoing) are otherwise such as are reasonably required by the Contractor for the exercise of its rights and the performance of its obligations under this Contract. Such rights shall be granted at no additional cost to LUL and substantially in the form of the relevant After Acquired Property Document with such amendments as are necessary to reflect the terms on which the land, interest or right in question was acquired and on such other terms as the Contract Manager or the Contractor may reasonably require.

30.10 If the Contractor, LUL or TfL identifies any land belonging to LUL or TfL:

- (a) upon which Assets (other than Known Third Party Works but including those installed or to be installed by a Third Party Contractor) are or are to be situated in accordance with the provisions of this Contract or are planned by LUL prior to the Starting Date to be situated; and
- (b) which is not already available to the Contractor under the terms of a Lease, Easement or Licence or an agreement for such;

the party identifying the land shall be entitled to give notice to that effect to the other party and such notice shall contain a full description of the land identified.

Where the Contract Manager is reasonably satisfied that the conditions in 30.10(a) and (b) above are met and he agrees (acting reasonably), LUL or TfL shall grant to the Contractor rights over the said land in the form of the After Acquired Property Document as soon as reasonably practicable and LUL or TfL shall (pending such grant) grant (or procure the grant) to the Contractor of a licence in respect of the use of the said land for the purposes of the Contract, such licence being on such terms as

the Contract Manager shall determine having regard to what he considers from time to time to be the likely form of the After Acquired Property Document to be granted.

#### **After Acquired Assets: Moveables**

30.11 The Contractor shall procure that PADCo holds in its own name all New Assets which are not fixtures in compliance with the Option Deed and that PADCo shall make the New Assets which are not fixtures available for use by the Contractor pursuant to the New Assets Contract. The Contractor shall immediately make the New Assets which are not fixtures available for use by LUL.

30.12 The Contractor will ensure that all Assets which vest in it after the Date of Contract shall immediately vest in LUL, other than Management Assets and Monitoring Equipment as set out in the Expenditure Schedule. LUL shall make such assets vested in LUL available to the Contractor for the purpose of performing its obligations under the Contract.

30.12A The Parties agree that:

- (a) where LUL is at the Starting Date or at any time during the Contract Duration unable to grant to the Contractor an easement under the Easement in relation to an Asset or New Asset on third party land because LUL does not itself have an estate or interest in the land LUL shall grant a licence to the Contractor under the Easement and if at a later date LUL acquires an estate or interest sufficient to enable it to grant such an easement under the Easement then forthwith LUL shall grant and the Contractor shall accept the grant of such an easement;
- (b) on any Property being made available to the Contractor at the Starting Date or at any time during the Contract Duration the Contractor shall forthwith make such Property available to PADCo on the terms of a grant of:
  - (i) a sub-lease where the Property is made available to the Contractor on the terms of the General Properties Lease;
  - (ii) a sub-licence to occupy where the Property is made available to the Contractor on the terms of the Specific Properties Licence;
  - (iii) a sub-easement where the Property is made available to the Contractor on the terms of an easement under the Easement;
  - (iv) a sub-licence where the Property is made available to the Contractor on the terms of a licence under the Easement; and
  - (v) an easement in respect of the Greenwich Generating Station.

or on the terms of an agreement for the same where the Property is made available to the Contractor on the terms of an agreement for the grant of a General Properties Lease, Specific Properties Licence or Easement (as the case may be) and pending any

such grant the Contractor shall grant to PADCo a licence in respect of the use of the said Property for the purposes of the New Assets Contract and performance of the Contractor's obligations under the Contract.

### **Treatment of property constituting the System at the Expiry Date**

30.13 At the Expiry Date:

- (a) the Leases, the Easement, the Licences, the sub-leases, sub-easement and sub-licences and any agreements for the same or licences relating to the use of the Properties shall terminate in accordance with their terms;
- (b) the Contractor shall and shall procure that PADCo shall vacate and give vacant possession of or surrender up all interest in the Properties and give full access, benefit and enjoyment to LUL of all the Assets constituting the System and any other assets necessary for or used in the provision of the Services which are fixtures, provided that the Contractor will not be able to give vacant possession of any Property which was subject to any lease prior to the Starting Date, or is at the Expiry Date subject to any statutory renewal of such lease or any lease which has been granted with LUL's consent;
- (c) the Contractor shall return forthwith all the Assets constituting the System and all records and technical drawings and any other assets necessary for or used in the provision of the Services that are owned by LUL pursuant to Clauses 30.5 and 30.12;
- (d) the Contractor shall procure that PADCo performs its obligations under the Option Deed; and
- (e) (i) it is agreed that PADCo and LUL (to the extent they are legally and practically able to do so) will enter into a lease on the date falling 60 days after the Termination Calculation Date on the terms set out in Clause 30.13(f) (the *New Assets Lease*) of the New Moveable Assets from PADCo to LUL unless:
  - (A) a PADCo Insolvency Event (as defined in the Option Deed) has occurred before the date falling 60 days after the Termination Calculation Date; or
  - (B) LUL has exercised its option to purchase the New Moveable Assets pursuant to the Option Deed before the date falling 60 days after the Termination Calculation Date; or
  - (C) the date falling 60 days after the Termination Calculation Date falls before the tenth anniversary of the Date of Contract,and on entering into the New Assets Lease LUL shall enter into an indemnity in favour of PADCo in the form set out in Schedule 30.13;

- (f) the terms of the New Assets Lease shall be as follows:
- (A) the New Assets Lease shall commence on the date falling 60 days after the Termination Calculation Date;
  - (B) the rent shall be due (together with VAT thereon) (if any) in advance on each anniversary of entry into the New Assets Lease and shall be the higher of (i) a market rent to be agreed between the Parties and (ii) the cost of leasing and keeping PADCo operating plus a sum of £100,000 per annum and the reasonable costs (including Irrecoverable VAT) to PADCo of discharging the statutory obligations of a company registered under the laws of England and Wales and resident for tax purposes in the United Kingdom and of carrying on the activity of ownership of the New Assets after the Expiry Date and the performance of the New Assets Lease, and of the appointment of reasonably qualified directors and officers of PADCo for that purpose incurred during the period beginning immediately after the Expiry Date or, if later the last anniversary of entry into the New Assets Lease, and ending on that anniversary to be certified by the auditors of PADCo for the time being and to be accompanied by sufficient details to enable LUL to verify the same;
  - (C) the New Assets Lease shall contains tax gross-up provisions; and
  - (D) that the term of the New Assets Lease shall be for 10 years, subject to earlier termination by LUL;
- (iii) LUL shall indemnify PADCo for any liability of PADCo to make or suffer an actual payment of tax or loss or setting off of (a) any relief, allowance or credit for Tax purposes which would otherwise have been available for an accounting period of PADCo beginning on or before the Expiry Date or (b) any right to repayment of Tax in each case arising from the creation of the rights constituted by this Clause 30.13(e); and
- (iv) the Contractor, LUL and PADCo shall use all reasonable endeavours to put in place arrangements to achieve a tax efficient structure for the New Assets Lease by the date the New Assets Lease is entered into.

### **Co-operation in handover**

30.14 The Contractor shall take all reasonable steps required by LUL to facilitate the engagement of a successor contractor and/or the resumption by LUL of the provision of the Services, in the period of two years before the expiry of the period referred to in Clause 4.1 or (if this Contract is terminated) during the period between the giving of a notice to terminate and termination taking effect and thereafter as reasonably required by LUL or such successor. LUL shall reimburse (within 30 days of demand) the Contractor's reasonable fees incurred in satisfying the provisions of this Clause.



## **Dealings during the Contract**

### **General Charging Restriction**

30.15 Without prejudice to Clause 44, each Party undertakes to the other that, save with the prior written consent of the other, it will not grant or attempt or purport to grant or permit to subsist any Security Interest (save for LUL Permitted Security Interests and SPL Permitted Security Interests) over the Assets or the whole or any part of the System.

### **Disposal of Assets**

30.16 Subject to Clause 30.15, the Financing Agreements, the Option Deed, the New Assets Contract and the New Assets Lease the Contractor undertakes to LUL that neither it nor PADCo shall sell, charge, lease, transfer, grant rights over or otherwise dispose of any interest in or part with possession of any Asset without first complying with the provisions of Clauses 30.18 to 30.22 (other than as envisaged by Clause 30.12A).

30.17 Subject to Clause 30.15 LUL undertakes to the Contractor that it shall not sell, charge, lease, transfer, grant rights over or otherwise dispose of any interest in or part with possession of any Asset or any Property save for any agreement for lease in connection with the development or otherwise for the disposal of Lots Road Generating Station such development or disposal to take effect once the Contractor has vacated Lots Road Generating Station.

30.18 Not less than fourteen days prior to the occurrence of any of the matters referred to in Clause 30.16 in respect of any Asset, the Contractor shall notify LUL in writing of such event and in any event, shall not do or permit to be done any of the matters referred to in Clause 30.16 in respect of any Asset without first obtaining the prior written consent of LUL not to be unreasonably withheld; provided that this Clause shall not apply to any individual Asset with a historic cost of £30,000 (exclusive of VAT) indexed to RPI or less (a *Minor Asset*).

30.19 Any consent granted by LUL shall be subject to such conditions as LUL may reasonably specify except that in the circumstances set out in Clause 30.20 LUL may not impose conditions relating to price or the treatment of any proceeds of sale or related profit.

30.20 Any proceeds arising from the occurrence of any of the matters referred to in Clause 30.16 in relation to any Minor Asset shall accrue and belong to the Contractor or PADCo, as the case may be and in relation to any New Asset (other than any which are fixtures) held by PADCo in its own name in compliance with the Option Deed, shall accrue and belong to PADCo.

30.21 (i) LUL may instruct the Contractor to deliver any Asset owned by LUL or where owned by the Contractor or PADCo to lend indefinitely at no cost any particular Asset (including Minor Assets) on decommissioning or removal from the System or any records or

technical drawings no longer being of operational use to the London Transport Museum as a relic;

- (ii) In the event that LUL gives an instruction pursuant to Clause 30.21(i) the Contractor shall have the option to transfer ownership of the particular Asset to the London Transport Museum where owned by the Contractor or PADCo;
- (iii) The Contractor will not be liable for any costs of removal, delivery or (if applicable) transfer of ownership. The Contractor shall deliver up such Assets in a safe and reasonably clean condition. LUL shall hold the Contractor and PADCo harmless against any Tax consequences of such delivery.

### **Related Contracts**

30.22 The Contractor shall, on or before the Starting Date, enter into an agreement novating the Related Contracts. Each of the Parties agrees to take all such steps and enter all such agreements as are necessary to transfer (with effect from the Starting Date) the benefit and burden of the Related Contracts to the Contractor. In the case of any such novated contracts, the Contractor undertakes that it shall, with effect from the Starting Date, perform all such obligations contained therein and shall be bound by their terms in all respects as though reference therein (unless the context otherwise requires) to LUL was reference to the Contractor. The Contractor shall indemnify LUL against all expense, liability, loss and claims whatsoever in respect of any claims made against LUL by third parties for the breach by the Contractor of any Related Contract that has been novated to the Contractor pursuant to the provisions of this Clause 30.22), provided that such breach, or the events giving rise to such breach, arose after the Starting Date (or in the case of Related Contracts not transferred at the Starting Date, the time of the relevant novation or transfer). LUL agrees to fulfil all its obligations in relation to each Related Contract prior to the date on which each Related Contract is novated to the Contractor. LUL will confirm that it has so fulfilled its obligations (and the third party will agree to this) in the tripartite agreement to be entered into between LUL and the Contractor in relation to each Related Contract. This tripartite agreement will also confirm that the third party has no grounds for rescission, avoidance or repudiation of the relevant Related Contract.

### **Key Subcontracts**

30.22A Without prejudice to Clause 35.1, unless otherwise directed by LUL, the Contractor shall give LUL notice in writing at least 40 Working Days (or such other lesser period as may be reasonably necessary having regard to the circumstances) prior to the date it proposes to enter into any Subcontract (other than any Subcontract entered into prior to the Date of the Supplemental Deed) which may have an impact on the System and/or the IT System and shall provide LUL with the following information:

- (a) the name of the proposed Subcontractor;

- (b) a description of the work package and/or services to be contracted;
- (c) whether the Contractor considers that the Subcontract should be deemed a Key Subcontract;
- (d) whether the Contractor considers that the entering into of a KS Direct Agreement is required;
- (e) the target date for execution of the Subcontract; and
- (f) such other information as LUL reasonably requires.

30.22B Unless otherwise agreed by the Contract Manager, a Subcontract entered into on or after the Date of the Supplemental Deed shall be deemed to be a Key Subcontract if:

- (a) it may have an impact on the System and/or the IT System; and
- (b):
  - (i) it has a value equal to or in excess of £1 million per annum; or
  - (ii) a duration in excess of one year; or
  - (iii) the activity which is the subject of the Subcontract would be incapable of being undertaken by another party within 5 Working Days if such Subcontract were terminated; or
  - (iv) the Contract Manager, acting reasonably, considers it would be appropriate for it to be so designated.

30.22BB The Contractor shall not, as from the Date of the Supplemental Deed, without the prior consent of LUL (which shall not be unreasonably withheld or delayed), materially vary or permit to be varied the terms or conditions of any Key Subcontract which relates at any time to any capital works component of a Variation (excluding those elements which relate to the Contractor's subsequent compliance with its obligations in accordance with Clause 16.1) (a "**KS Amendment**"). For the purposes of this Clause 30.22BB, the withholding of consent by LUL on the following grounds shall be deemed to be reasonable if:

- (a) the KS Amendment has the effect described in one or more of the grounds set out in Clause 30.22H in relation to a Key Subcontract for a Variation where the capital works components are being funded exclusively by LUL by way of Advance Payments, save that all references to "Proposed Key Subcontract" in that Clause shall be deemed to be references to "KS Amendment"; or

- (b) in respect of all relevant Key Subcontracts, the KS Amendment has the effect described in paragraphs (1), (2), (4) or (5), as relevant, of Clause 30.22CC.

**KS Direct Agreements and terms of Key Subcontracts**

30.22C Unless otherwise directed by LUL, the Contractor shall not on or after the Date of the Supplemental Deed:

- (A) enter into any Key Subcontract;
- (B) extend or renew any Key Subcontract which may exist from time to time (including any Key Subcontract listed in Schedule 30.22);

which relates to the implementation of a Variation where the capital works component of the Variation is to be funded exclusively by LUL by way of Advance Payments, unless LUL, or its nominee, on or about the same time enters into a KS Direct Agreement in respect of such Key Subcontract with the relevant counterparties.

30.22CC Without prejudice to Clause 30.46, unless otherwise directed by LUL, the Contractor shall not on or after the Date of the Supplemental Deed:

- (a) enter into any Key Subcontract;
- (b) extend or renew any Key Subcontract which may exist from time to time (including any Key Subcontract listed in Schedule 30.22),

if such Key Subcontract:

- (1) contains any terms which would have the effect of depriving LUL (or its nominee) of all or a substantial part of the benefit of any KS Direct Agreement (if relevant);
- (2) imposes obligations on the Contractor that will extend beyond the Expiry Date unless LUL shall have given its prior written consent, not to be unreasonably withheld, provided that such consent may be withheld where, under the proposed Key Subcontract:
  - (i) the aggregate amount of payments due from the Contractor to the Key Subcontractor after the Expiry Date is disproportionate to the term of the Key Subcontract remaining after the Expiry Date when compared to the total amount of all sums payable and the total term of such Key Subcontract; or
  - (ii) the obligations imposed on the Contractor after the Expiry Date materially differ from the obligations imposed on the Contractor prior to the Expiry Date; or
  - (iii) the rights of the Contractor after the Expiry Date materially differ from the rights of the Contractor prior to the Expiry Date;

- (3) is not accompanied by such evidence of authority to enter into the Key Subcontract in respect of the Key Subcontractor including relevant board minutes and, where the Key Subcontractor is a foreign entity, a legal opinion from a reputable firm of lawyers from the jurisdiction of the Key Subcontractor in relation to such authority, as LUL may reasonably require;
- (4) where such Key Subcontract is entered into with a Contractor Affiliate, does not contain a term which permits LUL to terminate such Key Subcontract without notice (or, at LUL's election, upon reasonable notice) within 40 Working Days following the expiry or termination of this Contract and without any payment, other than (i) in respect of work and/or services duly performed thereunder up to the date of termination and (ii) in respect of the Reasonable and Documented De-mobilisation Costs (if any) of the Key Subcontractor. This Clause 30.22CC(4) shall not apply if the Key Subcontract:
  - (i) has been competitively tendered in accordance with Clause 23.2B (unless the only person to tender for the Key Subcontract in accordance with such procedure is a Contractor Affiliate of the Contractor); or
  - (ii) has been entered into following the express prior written agreement of LUL that the Key Subcontract was not required to be competitively tendered and, further, that the Contractor has received the express prior written approval of LUL that this Clause 30.22CC(4) shall not apply; and
- (5) does not contain provisions which oblige an appropriate representative of the Key Subcontractor to attend meetings with the Contractor and LUL (providing that the Contractor is obliged to provide the Key Subcontractor with not less than 10 Working Days notice (or such lesser period as is reasonable in the circumstances) of any such meeting and that the timing and location of any such meeting is reasonable in the circumstances).

30.22D Where Clause 30.22C applies, the Contractor shall and shall procure that the relevant Key Subcontractor shall execute a KS Direct Agreement in respect of the Key Subcontract on or around the time of the Contractor entering into, extending or renewing the relevant Key Subcontract.

30.22E Save to the extent that it is not possible to do so as a result of a delay or failure by the Contractor to comply with its obligations in Clause 30.22A, 30.22C, 30.22CC and 30.22D LUL shall enter into a KS Direct Agreement with the relevant Key Subcontractor on or around the time of the Contractor entering into, extending or renewing the relevant Key Subcontract.

30.22F The Contractor shall provide LUL with a copy of each Key Subcontract (which relates to a KS Direct Agreement).

#### **Approval of Variation Key Subcontracts**

30.22G Without prejudice to Clause 30.22A to 30.22F, where the Contractor wishes to enter into a Key Subcontract which relates to the implementation of a Variation

where the capital works components of the Variation are funded exclusively by LUL by way of Advance Payments pursuant to a Variation Notice issued on or after the Date of the Supplemental Deed (the ***Proposed Key Subcontract***) the Contractor shall submit to LUL the terms of such Proposed Key Subcontract in substantially final form at least 40 Working Days (or such other lesser period as may be reasonably necessary in the circumstances) prior to the date on which the Contractor proposes to enter into such Proposed Key Subcontract.

30.22H Without prejudice to Clauses 30.22A to 30.22F and Clause 30.23, the Contractor shall not enter into the Proposed Key Subcontract without the approval of LUL, and LUL may only refuse to give its approval to the Contractor entering into the Proposed Key Subcontract, if:

- (a) the Proposed Key Subcontract includes terms under which:
  - (i) the aggregate amount of payments due from LUL to the Key Subcontractor following any novation of such Proposed Key Subcontract to LUL (or due from the Contractor to the Key Subcontractor prior to such novation) is disproportionate to the schedule of payments from LUL to the Contractor under the terms of the related Variation in respect of the works being carried out under the relevant Key Subcontract;
  - (ii) the obligations imposed on LUL following any novation to it of such Proposed Key Subcontract materially differ from the obligations imposed on the Contractor under such Proposed Key Subcontract prior to any such novation;
  - (iii) the rights of LUL following any novation to it of such Proposed Key Subcontract materially differ from the rights of the Contractor under such Proposed Key Subcontract prior to any such novation;
  - (iv) the performance and liability regimes under such Proposed Key Subcontract are not commensurate with and proportionate to the regimes applying as between the Contractor and LUL under the terms of the related Variation;
  - (v) the Contractor's rights to terminate such Proposed Key Subcontract are not commensurate with and proportionate to the rights applying as between the Contractor and LUL under the terms of the related Variation;
  - (vi) compensation payable in the event of breach of such Proposed Key Subcontract by the Contractor or (following any novation to LUL) LUL is materially different to that which would be paid under English law if such Proposed Key Subcontract did not stipulate any such terms;
  - (vii) the credit support (including any guarantee), if any, available to LUL in relation to the obligations of the relevant Key Subcontractor under such

Proposed Key Subcontract following any novation to LUL materially differs from the credit support, if any, available to the Contractor prior to any such novation; or

- (viii) LUL, acting reasonably, considers that rights or obligations contained in such Proposed Key Subcontract with regard to liability or the standards of performance required generally are inappropriate having regard to the fact that LUL may, pursuant to the terms of Clauses 30.24 to 30.45, become a counterparty to the Proposed Key Subcontract as a result of novation;
- (b) where the Key Subcontractor under such Proposed Key Subcontract is a Contractor Affiliate and the Proposed Key Subcontract has not been subject to competitive tendering (or has been subject to competitive tendering but the only person to tender was a Contractor Affiliate) LUL considers, acting reasonably, that the proposed terms of such Proposed Key Subcontract are not commensurate with those terms found in the Contractor's Variation related Key Subcontracts for similar works or services with non - Contractor Affiliates or with what might reasonably be expected to be found in an arm's length contract for similar works or services,

save, in the case of paragraphs (a) or (b) above, to the extent that the terms to which LUL objects are required to be included in the Proposed Key Subcontract by the provisions of the Housing Grants, Construction and Regeneration Act 1996.

30.22I Where the Contractor submits the terms of a Proposed Key Subcontract to LUL pursuant to Clause 30.22G, LUL shall respond within 20 Working Days (or such lesser period as the Parties may agree acting reasonably) of receiving such submission stating either:

- (a) that no approval is required from LUL under Clause 30.22H to enter into the Proposed Key Subcontract;
- (b) that approval to enter into the Proposed Key Subcontract is granted by LUL under Clause 30.22H provided that the final form of the Proposed Key Subcontract does not materially change from the version reviewed by LUL; or
- (c) that LUL does not give its approval to enter into the Proposed Key Subcontract unless its terms are amended.

Where LUL does not give its approval pursuant to Clause 30.22I(c) LUL shall state which terms LUL considers unacceptable and describe in reasonable detail the reasons for its refusal, in each case by reference to Clause 30.22H.

30.22J Where LUL has refused its approval pursuant to Clause 30.22I(c) the Contractor shall endeavour to agree the amendments necessary to satisfy LUL's concerns and shall submit to LUL the proposed revised terms of such Proposed Key Subcontract at least 10 Working Days prior to the date on which the Contractor

proposes to enter into such Proposed Key Subcontract. LUL shall respond within 5 Working Days of receiving such submission stating either:

- (a) that approval to enter into the Proposed Key Subcontract is granted provided that the final form of the Proposed Key Subcontract does not materially change from the version reviewed by LUL; or
- (b) that LUL refuses its approval to enter into the Proposed Key Subcontract on one or more of the grounds set out in Clause 30.22H unless its terms are amended. LUL shall provide the Contractor with a written explanation for any refusal to give its approval pursuant to this Clause 30.22J.

LUL shall not be entitled to refuse approval pursuant to this Clause 30.22J on the basis of any reasons which could reasonably have been stated but were not stated by LUL in refusing consent pursuant to Clause 30.22I(c).

30.22K Following any refusal by LUL to give its approval pursuant to Clause 30.22J the Contractor shall endeavour to agree the amendments necessary to satisfy LUL's concerns and shall re-submit to LUL the proposed further revised terms in accordance with Clause 30.22J, which shall apply to such further revised terms mutatis mutandis.

30.22L Where, following the grant of approval to the terms of a Proposed Key Subcontract by LUL pursuant to Clause 30.22I or 30.22J, the proposed terms of the Proposed Key Subcontract are materially changed from the version reviewed by LUL in relation to such approval, LUL's approval shall be deemed to be withdrawn and the Contractor shall re-submit to LUL the proposed revised terms in accordance with Clause 30.22J, which shall apply to such revised terms mutatis mutandis.

30.22M LUL shall not issue an Authority Notice until all the relevant Proposed Key Subcontracts in relation to the relevant Variation have been approved by LUL as set out in Clause 30.22I or 30.22J.

30.22N Neither the appointment of a Key Subcontractor, the entering into of any KS Direct Agreement, nor any comment, consent or approval given in any form or manner by LUL pursuant to Clause 30.22 shall in any way relieve the Contractor of its responsibility for ensuring that the Services to be provided under the Project Agreements meet the requirements of the Project Agreements.

#### **Variation Termination Triggers**

#### **Variation Termination Triggers**

30.23 Clauses 30.24 to 30.49 shall only apply to Variations where the capital works components of the Variation are funded exclusively by LUL by way of Advance Payments. In relation to any such Variation and any Variation in a Connected Variation Group LUL may only exercise its rights pursuant to Clauses 30.24 to 33.33 where Substantial Completion in respect of the relevant Variation has not yet been achieved. Where a Variation (including any Variation in a Connected Variation Group) is to be completed in stages, such that pursuant to the terms of the Variation



the Contractor becomes responsible for the operation and maintenance and renewal of certain of the assets which are the subject of the Variation before Substantial Completion has been achieved, then Clause 30.45 shall apply.

30.24 Subject to Clause 30.23, upon the occurrence and during the continuance of any of the following events, LUL shall have the right (and in the case of Clause 30.24(a) the obligation) to terminate the Contractor's obligations in relation to the Variation in respect of which that event has occurred (and as a consequence any Variations in the Connected Variation Group) in accordance with the following provisions of this Clause 30.24:

- (a) where the Third Party Lenders step into this Contract pursuant to Clause 4 of the Direct Agreement, in which event LUL shall be obliged, upon or prior to the Step-in Date (as defined in the Direct Agreement), to serve notice under this Clause 30.24 to terminate all Variations (including any Variation in a Connected Variation Group) to which this Clause 30.24 applies and in relation to which Substantial Completion has not yet been achieved (and for the avoidance of doubt Clause 30.45 shall apply if relevant);
- (b) where, in respect of a Key Subcontract which relates to that Variation the Key Subcontractor has served notice to exercise any right it may have to terminate that Key Subcontract (or treat such Key Subcontract as having been repudiated by the Contractor) as a result of the breach by the Contractor of the terms of that Key Subcontract (excluding any such breaches caused by a failure by LUL to provide or breach of an LUL Dependency);
- (c) where, in respect of a Key Subcontract which relates to that Variation the Key Subcontractor has served notice to exercise any rights it has to cease or suspend the performance of the works under that Key Subcontract as a result of the breach by the Contractor of the terms of that Key Subcontract (excluding any such breach caused by a failure by LUL to provide or breach of an LUL Dependency);
- (d) where there has been a material or persistent breach by the Contractor of the terms of that Variation which has led to a material increase in LUL's costs in relation to that Variation beyond what was contemplated at the date LUL issued the relevant Authority Notice (as such Authority Notice may subsequently have been revised pursuant to Clause 23);
- (e) where there has been a material or persistent breach by the Contractor of the terms of that Variation which would, if such breach or breaches continued, result in a failure to achieve the quality/performance standard requirements specified in the terms of such Variation;
- (f) where there has been a material or persistent breach by the Contractor of the terms of that Variation that results in a material delay to the programmed Substantial Completion of the works comprised in that Variation beyond the Variation Contractual Completion Date; or

- (g) in relation to a Variation in respect of which the terms of that Variation provide for delay liquidated damages to be payable as a remedy for delay, where the Contractor has not achieved Substantial Completion and the Contractor has become liable for delay liquidated damages up to the full Variation LD Limit.

### **Procedure for Variation Termination**

30.25 Where the event described in Clause 30.24(a) has occurred LUL shall, and where the event described in Clause 30.24(b) has occurred LUL may, issue a Variation Termination Notice in respect of the relevant Variation(s) and if it does so it shall at the same time also issue a Variation Termination Notice in respect of each other Variation in the relevant Connected Variation Group(s) and a KS Novation Notice in respect of each Connected Key Subcontract. Such Variation Termination Notice(s) and KS Novation Notice(s) shall have immediate effect.

30.26 Where the event described in Clause 30.24(c) has occurred, LUL may give written notice to the Contractor (which shall be served by hand delivery) stating its intention to issue a Variation Termination Notice in respect of the relevant Variation and each other Variation in the relevant Connected Variation Group together with a KS Novation Notice in respect of each Connected Key Subcontract. The Contractor shall respond in writing to LUL within 3 Working Days stating whether it intends to put forward a remedy proposal. If the Contractor does not within 3 Working Days state that it intends to put forward a remedy proposal, LUL may issue a Variation Termination Notice in relation to the relevant Variation and if it does so it shall at the same time also issue a Variation Termination Notice in respect of each of the Variations in the relevant Connected Variation Group and a KS Novation Notice in respect of each Connected Key Subcontract. Such Variation Termination Notice(s) and KS Novation Notice(s) shall have immediate effect. Where the Contractor informs LUL of its intention to put forward a remedy proposal within 3 Working Days, the process set out in Clauses 30.28 to 30.33 shall apply save that all references to "10 Working Days" shall be deemed to be references to "5 Working Days".

30.27 Where the event described in Clause 30.24(d), (e), (f) or (g) has occurred LUL may give written notice to the Contractor stating its intention to issue a Variation Termination Notice in respect of the relevant Variation and each other Variation in the relevant Connected Variation Group together with a KS Novation Notice in respect of each Connected Key Subcontract and the process set out in Clauses 30.28 to 30.33 shall apply. Any notice issued by LUL pursuant to this Clause 30.27 shall state in reasonable detail the grounds on which LUL intends to issue the Variation Termination Notice(s).

30.28 The Contractor shall respond in writing within 10 Working Days following receipt of the notice issued by LUL under Clause 30.26 or 30.27 with proposals giving reasonable details as to how the Contractor intends to remedy the event identified by LUL in the notice together with a timetable and time limit for implementing such proposals.

30.29 Following receipt of the Contractor's proposals pursuant to Clause 30.28 LUL shall respond in writing within 10 Working Days either stating that the proposals are acceptable or making reasonable counter proposals (which shall take into account the circumstances in which the event giving rise to LUL issuing the Variation Termination Notice has occurred).

30.30 In the event that LUL makes counter proposals pursuant to Clause 30.29, the Contractor shall respond in writing within 10 Working Days either accepting or rejecting such counter proposals.

30.31 Where:

- (a) LUL fails to respond within 10 Working Days in accordance with Clause 30.29;
- (b) LUL accepts the Contractor's proposals in accordance with Clause 30.29; or
- (c) the Contractor accepts LUL's counter proposals in accordance with Clause 30.30,

the Contractor shall act in accordance with (as applicable) (i) in the case of (a) or (b), the terms of the proposals provided by the Contractor in accordance with Clause 30.28, or (ii) in the case of (c), the terms of the counter proposals made by LUL in accordance with Clause 30.30 (the "Remedy Proposal")

30.32 Where:

- (a) the Contractor fails to respond within 10 Working Days in accordance with Clause 30.28;
- (b) the Contractor fails to respond within 10 Working Days in accordance with Clause 30.30;
- (c) the Contractor rejects LUL's counter proposals in accordance with Clause 30.30;
- (d) at any time LUL reasonably considers that the Contractor is materially failing to carry out a Remedy Proposal in accordance with its terms and the relevant event as set out in Clause 30.24 is continuing; or
- (e) following the expiry of the time limit for remedy specified in a Remedy Proposal, LUL reasonably considers that the Contractor has failed to achieve the objectives of the Remedy Proposal and the relevant event as set out in Clause 30.24 is continuing,

LUL may issue a Variation Termination Notice in respect of the relevant Variation and if it does so it shall at the same time also be obliged to issue a Variation Termination Notice in respect of each other Variation in the relevant Connected Variation Group and a KS Novation Notice in respect of each Connected Key

Subcontract. Such Variation Termination Notice(s) and KS Novation Notice(s) shall have immediate effect.

30.33 LUL shall not issue a further notice pursuant to Clause 30.26 or 30.27 in relation to an event addressed by a previous notice issued pursuant to Clause 30.26 or 30.27 where LUL and the Contractor are still engaged in the process set out in Clause 30.28 to 30.32 (including where the Contractor is still engaged in the implementation of a Remedy Proposal). However, LUL shall at any time be entitled to issue a further notice pursuant to Clause 30.26 or 30.27:

- (a) in relation to an event under Clause 30.24 which is a different event to that addressed by a previous notice; or
- (b) in relation to any event (whether or not different to that addressed by a previous notice) where LUL and the Contractor are no longer engaged in the process set out in Clauses 30.28 to 30.32 (including where the implementation of an earlier Remedy Proposal has been completed and the event has occurred again).

#### **Payments following Variation Termination**

30.34 Where, in relation to any Variation or Variations LUL issues a Variation Termination Notice in accordance with Clause 30.25, 30.26 or 30.32 (the date of service of such notice being the "Variation Termination Date") then with effect from the Variation Termination Date LUL shall:

- (a) cease all reimbursement, compensation or payment to the Contractor in respect of that Variation or those Variations save to the extent of any right of the Contractor to reimbursement, compensation or payment accrued prior to the Variation Termination Date (and the Availability Charge, Advance Payments and/or other payments to the Contractor in respect of the Variation(s) shall be reduced accordingly); and
- (b) reimburse, compensate or pay all amounts which become due and payable under and in accordance with all Connected Key Subcontracts which relate to that Variation or those Variations (and the Contractor shall reimburse LUL within 20 Working Days of demand for any outstanding payment obligations under such Connected Key Subcontracts which accrued prior to the Variation Termination Date).

#### **Performance following Variation Termination**

30.35 Subject to Clauses 30.37 and 30.46 to 30.49 (inclusive), where, in relation to any Variation or Variations, LUL issues a Variation Termination Notice in accordance with Clause 30.25, 30.26 or 30.32, then with effect from the Variation Termination Date the Contractor shall be relieved of all its obligations under this Contract which relate to that Variation or those Variations, both in relation to the period of time before and after the Variation Termination Date.

## Liability

30.36 Subject to Clauses 30.37 and 30.46 to 30.49 (inclusive), where and to the extent that the Contractor is relieved of its obligations under this Contract which relate to a Variation or Variations pursuant to Clause 30.35 the Contractor shall also be relieved of any liability under this Contract arising out of the performance or non-performance of those obligations.

30.37 Notwithstanding Clause 30.35 and 30.36, the Contractor shall remain liable to LUL in respect of the Variation or Variations for which a Variation Termination Notice has been issued in respect of the performance or non-performance by the Contractor of its obligations which relate to that Variation or those Variations and which arose prior to the Variation Termination Date and which the Contractor did not subcontract under the Connected Key Subcontracts which relate to that Variation or those Variations. The Contractor shall also remain liable for those obligations which it did subcontract to a Key Subcontractor and in respect of which, prior to the Variation Termination Date, the Contractor had by its acts or omissions waived the Key Subcontractor's obligation to perform or the Contractor's rights in respect of non-performance by the Key Subcontractor. Notwithstanding Clause 25 or any other provision of this Contract the maximum aggregate liability of the Contractor arising out of the performance or non-performance of such obligations or waivers or any liability of the Contractor under Clause 30.39 shall not exceed:

- (a) in respect of Variations in respect of which the terms of that Variation provide for delay liquidated damages to be payable as a remedy for delay, in relation to delays to the achievement of Substantial Completion, the lower of:
  - (i) the amount of delay liquidated damages for which the Contractor would have been liable had the relevant Variation Termination Notice not been served, on the assumption that the period of delay to the programme for completion of all the works as at the Variation Termination Date attributable to the delay risk borne by the Contractor (but not its Key Subcontractors) is the period by which the completion of all the works will be delayed beyond the Variation Contractual Completion Date; and
  - (ii) the Variation LD Limit in respect of the relevant Variation; and/or
- (b) in relation to all other matters (including any liability in relation to delays to the achievement of Substantial Completion in respect of Variations in respect of which the terms of that Variation does not provide for delay liquidated damages and including claims under Clause 30.39), the Variation Liability Limit in respect of the relevant Variation.

30.38 Where, as a consequence of Clause 30.36 or 30.37 above, the Contractor is relieved of a liability which it would otherwise have to LUL under the terms of this Contract, but:

- (a) the Contractor receives or has received from a relevant Key Subcontractor any payment in respect of the corresponding liability under the terms of the relevant Key Subcontract and the Contractor has not already discharged its corresponding liability to LUL, the Contractor shall pay to LUL an amount equal to the amount of the corresponding payment (less any Taxation for which the Contractor may be liable thereon, after taking account of the tax treatment of the payment to LUL) by the later of (i) 5 Working Days after the Variation Termination Date and (ii) 5 Working Days after receipt of such payment from the Key Subcontractor; or
- (b) on or prior to the Variation Termination Date the Contractor has made a payment or performed an obligation for which a Key Subcontractor is responsible under the terms of its Key Subcontract and prior to the Variation Termination Date has not received a corresponding payment (or equivalent compensation) from the Key Subcontractor in recompense then LUL shall pay to the Contractor an amount equal to the amount of the corresponding payment within 5 Working Days of being notified of such amount by the Contractor.

30.39 Where, pursuant to a KS Deed of Novation LUL has assumed the Contractor's rights and obligations under a Key Subcontract:

- (a) LUL shall be responsible for and shall indemnify the Contractor against all expense, liability, loss and claims whatsoever which may arise out of any claim or proceedings brought against the Contractor by the Key Subcontractor in respect of such Key Subcontract relating to the period on or after the relevant Variation Termination Date); and
- (b) the Contractor shall be responsible for and indemnify LUL against all expense, liability, loss and claims whatsoever which may arise out of any claim or proceedings brought against LUL by the Key Subcontractor and relating to the period before the relevant Variation Termination Date, subject to the limits on liability in Clause 30.37(b).

30.40 Any claim by LUL for payment or indemnification pursuant to Clauses 30.37 to 30.39 may and shall be made under Clause 25.1 and shall, without prejudice to Clauses 30.37 to 30.39, be subject to the provisions of Clause 25.

### **Co-operation in Handover**

30.41 Following the issue of a Variation Termination Notice the Contractor shall take all reasonable steps required by LUL to facilitate LUL or a third party appointed by LUL carrying out the works associated with the relevant Variation except to the extent such steps are included within any Direction Notice or Implementation Notice as referred to in Clause 30.42 relating to such works, in which event the provisions of Clause 30.42 shall apply. LUL shall reimburse (within 20 Working Days of demand) the Contractor's costs in complying with the provisions of this Clause 30.41.

### **Third Party Works**

30.42 Where, following the issue of a Variation Termination Notice, LUL still wishes to continue with the works to which the relevant Variation related, it shall issue a Third Party Works Adoption Variation Notice which encompasses the Construction Stage or the Construction Stage and the Commissioning and Handover Stage as soon as reasonably practicable following the Variation Termination Date and the provisions of Schedule 23.16A (Adoption Procedures) shall apply provided that the Parties shall progress directly to the production by the Contractor of Third Party Works Adoption Implementation Details but without prejudice to the Contractor's rights to state that it is unwilling or unable to perform the Third Party Works Adoption Variation due to a Third Party Permitted Refusal. The Contractor acknowledges and agrees and shall procure that the Third Party Lenders' technical advisor acknowledges and agrees that the Contractor shall only refuse to perform the Third Party Works Adoption Variation on the basis of any Third Party Permitted Refusal ground which arises as a consequence of a change or changes to the scope of works, design of works or programme for completion of the works agreed between LUL and the Third Party Contractor or other relevant matters arising as a result of the termination of the relevant Variation by LUL and which of itself, or in combination with any other changes, has a material effect on the Contractor's ability to perform the Third Party Works Adoption Variation. Subject to the foregoing, in the event that the Parties are unable to agree Final Third Party Works Implementation Details within 20 Working Days of the Contractor first providing draft Third Party Works Adoption Implementation Details (which it shall do within 10 Working Days of LUL issuing the Third Party Works Adoption Variation Notice) the Third Party Works Adoption Implementation Details shall be deemed to have been agreed in all material respects for the purposes of paragraph 6.10 of Schedule 23.16A (Adoption Procedures) and the provisions of paragraphs 6.6A to 6.6D of Schedule 23.16A (Adoption Procedures) shall with effect from that date apply to the implementation of the Third Party Works Adoption Variation and the Third Party Works Adoption Variation shall be carried out as if LUL had issued a Direction Notice in respect of such Third Party Works Adoption Variation. The Parties agree that if the Contractor is required to operate, maintain, operate and maintain, or adopt the assets to which the relevant Variation relates (being Third Party Works Assets) then this shall be carried out in accordance with and subject to paragraphs 5.7 to 5.18 and 7.17 to 7.19 of Schedule 23.16A (Adoption Procedures).

30.43 LUL and the Contractor acknowledge and agree that in the event that LUL issues a Third Party Works Adoption Variation Notice in the circumstances envisaged in Clause 30.42 there will be many matters which have already been substantially agreed between the Parties as part of the Variations (as may subsequently have been revised pursuant to Clause 23) to which the relevant Variation Termination Notice relates (including but not limited to many elements of those matters set out in paragraphs (c), (d), (e), (g), (h), (j) and (k) of the definitions of Third Party Works Adoption Implementation Details). The Parties agree that the relevant element of such matters (acknowledging that LUL and not the Contractor is now procuring the relevant works) shall form the basis of the Third Party Works Adoption Implementation Details that the Contractor is required to submit save to the extent that it is reasonable to amend such terms to take into account any change in the scope of works, design of works or programme for completion of the works agreed between

LUL and the Third Party Contractor or other relevant matters arising as a result of the termination of the relevant Variation by LUL.

30.44 The Parties agree that any dispute as to whether or not an event set out in Clause 30.24 has or had occurred or whether or not LUL has or had the right to issue a Variation Termination Notice in respect of a Variation or Variations or whether LUL has acted reasonably where required to do so under Clauses 30.23 to 30.43 shall be referred to the dispute resolution procedure set out in Schedule 37 (Dispute Resolution). The Contractor acknowledges that notwithstanding any such dispute the Parties shall follow the procedures set out in Clauses 30.23 to 30.43 but if it is subsequently determined that an event set out in Clause 30.24 had not occurred or that LUL did not have the right to issue a Variation Termination Notice in respect of a Variation or LUL did not act reasonably where required to do so then LUL shall be responsible for and shall indemnify the Contractor, its employees, agents and subcontractors from and against all cost, expense, liability, loss or damage which may arise out of the wrongful claim that an event set out in Clause 30.24 has occurred, the wrongful exercise of rights or failure to act reasonably by LUL, save that, but without prejudice to the foregoing, LUL shall have no liability for any special, indirect or consequential loss other than for any loss of profits of the Contractor (whether such loss is held to be direct or indirect).

30.45 Where a Variation (including any Variation in a Connected Variation Group) is to be completed in stages, such that pursuant to the terms of the Variation the Contractor becomes responsible for the operation, maintenance and renewal of certain of the assets which are the subject of the Variation following LUL's sign off on the completion of such assets so as to enable the acceptance of such assets under the commissioning section (part 8) of the QICC Process (or such other acceptance process as is specified to apply pursuant to the terms of the Variation) (the **Relevant Assets**) but before Substantial Completion of the Variation as a whole has been achieved then the provisions of Clauses 30.24 to 30.44 shall apply to that Variation except that:

- (a) subject to Clause 30.45(c) such provisions shall not apply to the Contractor's ongoing obligations to operate, maintain and renew the Relevant Assets in accordance with the terms of the relevant Variation and the other terms of the Contract;
- (b) subject to Clause 30.45(c) and (d) and notwithstanding Clauses 30.34, 30.35 and 30.36 the terms of the relevant Variation and the other terms of the Contract as they apply to the operation, maintenance and renewal of the Relevant Assets shall continue to apply between the Contractor and LUL (including, for the avoidance of doubt, in respect of payment, liability and the provision of any LUL Dependencies, Concessions and Derogations);
- (c) for the avoidance of doubt, both LUL and the Contractor acknowledge that:
  - (i) any Key Subcontract(s) novated to LUL shall be novated in full and Clauses 30.34(b), 30.37, 30.38 and 30.39 shall continue to apply in full; and



- (ii) Clause 30.34(a) shall continue to apply in relation to any outstanding reimbursement, compensation or payment obligations which relate to the works in respect of or the purchase and installation of the Relevant Assets under the terms of the Variation (but not to the operation, maintenance and renewal of the Relevant Assets).
- (d) where pursuant to paragraph (a) the Variation Termination Notice does not apply to the Relevant Assets but pursuant to Clauses 30.25, 30.26 or 30.32 LUL has novated the Key Subcontract(s) in respect of the relevant Variation then LUL agrees that it will be liable to the Contractor in respect of the Relevant Assets on the same terms as the relevant Key Subcontractor(s) was liable to the Contractor in respect of the Relevant Assets immediately prior to the novation of the relevant Key Subcontract(s) to LUL.

#### **30.46 Employment Standstill Provisions**

30.46.1 Following the date on which LUL issues a notice of its intention to serve a Variation Termination Notice under Clauses 30.26 or 30.27 (and until such notice is no longer capable of leading to a Variation Termination Notice pursuant to Clauses 30.28 to 30.33), or a Variation Termination Notice, as applicable, the Contractor agrees that it will not and will procure that each Relevant Subcontractor will not (other than in the ordinary course of business, without the prior written consent of LUL (such consent not to be unreasonably withheld or delayed):

- (i) make any material change to the numbers of employees engaged in providing the works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group;
- (ii) make any material changes to the terms and conditions of employment of any employees engaged in providing the works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group other than to comply with legal requirements or to implement an agreement with an employee or group of employees which was reached before the notification referred to above was received by the Contractor; or
- (iii) transfer any employees engaged in providing the works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group to another party of its (or any associated company's) business or engage other employees from elsewhere in its (or any associated company's) business who have not previously been employed or engaged in providing the works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group to provide such works or services.

#### **30.47 Application of Employment Regulations**

30.47.1 If on termination (in whole or part) of a Variation or Variations in the Connected Variation Group (for any reason) the Employment Regulations apply then the provisions in Clauses 30.47.2 to 30.49 (inclusive) will take effect.

30.47.2 The Parties shall co-operate (and the Contractor shall procure that any Relevant Subcontractor co-operates and LUL shall procure that any Replacement Contractor co-operates) to ensure that any requirement to inform and consult with any persons and/or employee representatives in relation to the transfer is fulfilled.

### **30.48 Indemnities**

30.48.1 The Contractor will, or will procure that any Relevant Subcontractor will, perform and discharge all obligations in respect of the Variation Transferring Employees and their representatives payable or which arise during or in relation to the period up to and including the Transfer Date. LUL will, or will procure that any Replacement Contractor will perform and discharge all such obligations which arise in relation to the period after the Transfer Date.

30.48.2 If the contract of employment of any Variation Transferring Employee transfers to LUL or any Replacement Contractor the Contractor will indemnify LUL and the Replacement Contractor against all Employment Losses arising from the failure to perform and discharge any such obligations under Clause 30.48.1 and against any Employment Losses in respect of the Variation Transferring Employees and/or any former employee of the Contractor or a Relevant Subcontractor arising from or as a result of:

- (i) any act or omission by the Contractor or a Relevant Subcontractor occurring on or prior to the Transfer Date; and
- (ii) any failure by the Contractor or a Relevant Subcontractor to comply with any requirement of Regulation 13 of the Employment Regulations except to the extent that such complaint is caused by a failure by LUL or the Replacement Contractor to comply with Regulation 13(4) of the Employment Regulations.

### **30.49 LUL Indemnities**

LUL will indemnify the Contractor and any Relevant Subcontractor against all Employment Losses in respect of the Variation Transferring Employees arising from or as a result of:

- (i) any act or omission by LUL or the Replacement Contractor, relating to a Variation Transferring Employee occurring on or after the Transfer Date;
- (ii) any failure by LUL or any Replacement Contractor to comply with its obligations under clause 30.48.1;
- (iii) any failure by LUL or any Replacement Contractor to comply with the obligations imposed on a transferee by Regulation 14(3) of the Employment Regulations;

- (iv) any liability incurred by the Contractor or a Relevant Subcontractor under Regulation 13 of the Employment Regulations which results from the Contractor being given insufficient notice of termination by LUL; and
- (v) any proposal by LUL or the Replacement Contractor on or prior to the Transfer Date to make a substantial change to the working conditions of any Variation Transferring Employee to the material detriment of any such Variation Transferring Employee. For the purposes of this clause the expressions “substantial change” and “material detriment” shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Employment Regulations.

30.50 In order to facilitate the requirements of this Clause 30, the Contractor undertakes to LUL that it will ensure that any Key Subcontract it enters into (other than the New Assets Contract or the Construction Contract) in connection with this Contract:

- (a) will contain an undertaking by the party or parties contracting with the Contractor to novate (or otherwise fully transfer the benefit and burden of any such contract) to LUL (or as it may direct) upon request by the Contractor (and in this respect, the Contractor shall make any such request only if so requested by LUL) immediately prior to the expiry or termination of this Contract;
- (b) will not contain any terms which would have the effect of depriving LUL (or its nominee) of all or a substantial part of the benefit of any such novated or transferred contract or of imposing on them obligations which are more onerous than those imposed on the Contractor; and
- (c) the Contractor shall fully indemnify LUL against all expense, liability, loss and claims whatsoever as a direct result of any failure to do so and any claims made against LUL by any counterparties to such Key Subcontracts concerning any breach by the Contractor of such Key Subcontracts, where such breach occurred prior to the effective date of novation or transfer (as the case may be) of such Key Subcontracts.

30.51 Where the Contract Manager reasonably considers that a contract entered into by the Contractor could readily be replaced by LUL on similar terms to those entered into by the Contractor at no additional expense to LUL, then the obligation in Clause 30.50(a) shall not apply.

30.52 Nothing in this Clause 30 shall in any way apply to any Intellectual Property Rights (including any in the System or the IT Systems) used by the Contractor in the provisions of the Services (such matters being dealt with in Clause 34).

## **FORCE MAJEURE**

31.1 In the event that a Force Majeure Event (or the consequences thereof) prevents a Party from complying or delays the time period in which either Party can comply with any of its obligations under the Contract the following shall apply (except to the

extent that the relevant Party has failed to use all reasonable endeavours to continue to perform or resume performance of its obligations and in the meantime to mitigate the effects of such event, provided this does not require the Contractor or LUL to incur unreasonable costs):

- (a) The Party shall be excused performance of, and liability for non-performance of, those obligations, without prejudice to the obligations to insure contained in Schedule 25 (Insurance);
- (b) Any time period (and any Derogation Period) granted under this Contract for the performance of any of those obligations shall be extended for a period equal in length to the period during which the Party is unable to comply with that obligation as a result of such Force Majeure Event (or the consequences thereof);
- (c) The Availability Charge shall continue to be paid (regardless of whether it is LUL or the Contractor claiming the Force Majeure Event) but the Delivery Fee will be reduced by the System Non-Delivery Ratio (but for such purposes not applying the 3 and 28 day grace periods contained in the definition of System Lost Capacity). The Contractor shall be entitled to elect within the notice delivered pursuant to Clause 31.5 (or within any later notice, provided that no prior election has been made in the notice pursuant to Clause 31.5) whether an event, falling within the categories of Force Majeure Events, should be treated for the purpose of liability under this Contract as a Force Majeure Event or a breach of contract. Where an election is made to treat the event as a Force Majeure Event, reductions to the Delivery Fee in accordance with Clause 31.1(c) shall apply retrospectively from the time at which the Force Majeure Event occurred and (in addition to relief from other relevant liabilities under the Contract) the Contractor shall be relieved from any liquidated damages under Clause 20.6 which would have otherwise accrued from the occurrence of the Force Majeure Event. Once the Contractor has elected to treat an event as a Force Majeure Event it cannot then elect to treat it as a breach of contract; and
- (d) The Contract Duration shall be extended as provided in this Clause 31.1(d) at the option of the Contractor who shall give notice at least 24 months before the end of the Contract Duration (provided the relevant Force Majeure Event occurs before then). The Contract Duration shall be extended by a number of days or parts thereof (the ***Period of Lost Service***) calculated as the sum, for all days on which a Force Majeure Event prevented or delayed the performance by the Contractor of its obligations under this Contract, of the reduction in the Delivery Fee under Clause 31.1(c) for each such day, divided by the Delivery Fee which would have been due for that day if the Force Majeure Event had not occurred. The Contractor shall specify the then current total Period of Lost Service in each Four Weekly Report under Schedule 43.3 (Contract Management). The Contractor shall round up the total Period of Lost Service to the nearest full day, provided that the Period of Lost Service shall not exceed two years. The Delivery Fee payable during the Period of Lost Service

shall be the Delivery Fee payable in the last year of the Contract Duration (prior to such extension), indexed by the Retail Price Index. The obligation of the Contractor to meet the Ultimate Reversionary Requirements shall expire at the end of the Contract Duration (prior to such extension) but the Contractor will continue to meet the Intermediate Reversionary Requirements, the requirements of Clause 6 and Schedule 5.1 (Performance Specification) (subject to the removal of the Ultimate Reversionary Requirements from paragraph 11) and the Contract.

31.2 If on the expiry of 6 months after the occurrence of the Force Majeure Event, (i) the Force Majeure Event (or the consequences thereof) is continuing and (ii) the Force Majeure Event has a material effect on the System as a whole as a result of such Force Majeure Event or the consequences thereof or if twenty per cent. or more of the timetabled service is unable to be provided as a result of such Force Majeure Event or the consequences thereof, then for such period as it shall so continue, LUL shall have the option to terminate the Contract in accordance with Clause 28.

31.3.1 [REDACTED]

[REDACTED]

■ ■ ■

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

as adjusted from time to time in accordance with Clause 31.3.4 then LUL shall pay to the Contractor an amount calculated in accordance with Clause 31.3.3 or permit the Contractor to terminate in accordance with Clause 28.

31.3.2 For the purposes of Clause 31.3.1,

In calculating X in real terms, the Delivery Fee reduction for each Force Majeure Event will be deflated by  $\frac{RPI_{BD}}{RPI_{ARn}}$ , where n corresponds to the Contract Year in which the Delivery Fee reduction for that Force Majeure event occurs.

31.3.3 The amount payable by LUL to the Contractor under Clause 31.3.1 will be calculated as X multiplied by  $\frac{RPI_{AR}}{RPI_{BD}}$  and for the purposes of  $RPI_{AR}$ , the relevant Contract Year is the Contract Year in which the payment is made.

31.3.4 Y shall be adjusted on each Adjustment Date to take account of Price Adjustments arising in the previous Contract Year so that:

$$Y \text{ for the current Contract Year} = Y \text{ for the previous Contract Year} + \frac{\text{The aggregate of all additional Delivery Fees projected to payable as a result of Price Adjustments arising in the previous Contract Year, expressed in real terms}}{60}$$

31.3.5  $RPI_{BD}$  and  $RPI_{AR}$  and Adjustment Date shall have the meaning set out in Schedule 21.3 (Definitions).

31.4 The Force Majeure Events are any of the following, which are beyond the reasonable control of the relevant Party and whose effect the relevant Party could not reasonably have avoided (and the definition of Force Majeure Event shall be deemed to include both the acts and events referred to below and their effects on the System and/or the IT Systems and/or the Telephony System and/or the Underground Network and/or the Contractor's ability to comply with the Performance Specification):

- (a) war or civil war (whether declared or undeclared) or armed conflict, invasion and acts of foreign enemies, blockades and embargos;
- (b) civil unrest or commotion or rebellion;
- (c) any act or reasonably credible threat of terrorism provided that the relevant Party has complied with its material obligations under Clause 14;
- (d) lightning, earthquake, or extraordinary storm;
- (e) explosion, fire or flooding (unless caused by the relevant Party or any other person for whom the relevant Party is responsible). It will be assumed that where the Contractor has demonstrated in its Four Weekly Reports or otherwise that it has complied with the relevant aspect of the Regimes and Good Industry Practice, the explosion, fire or flooding has not been caused by the Contractor. Where subsequent investigation attributes the cause to the Contractor, the Contractor shall pay LUL any liquidated damages which should have been deducted from the Availability Charge, with interest at the Commercial Interest Rate;

- (f) nuclear, chemical or biological contamination (unless caused by the relevant Party or any other person for whom the relevant Party is responsible and for which the relevant Party is liable under Clause 26). It will be assumed that where the Contractor has demonstrated in its Four Weekly Reports or otherwise that it has complied with the relevant aspect of the Regimes and Good Industry Practice, the nuclear, chemical or biological contamination has not been caused by the Contractor. Where subsequent investigation attributes the cause to the Contractor, the Contractor shall pay LUL any liquidated damages which should have been deducted from the Availability Charge, with interest at the Commercial Interest Rate;
- (g) strikes or other industrial action if predominantly politically motivated, nationwide or industry wide provided that the relevant Party has taken reasonable efforts to prevent the strike occurring or settle the strike where it would have been practicable for the Contractor to take such efforts;
- (h) unexploded bombs or other munitions and the discovery of fossils or antiquities; and
- (i) any failure of NGC Transmission and/or any failure of Regional Electricity Company Distribution,

provided that Force Majeure shall not arise, and LUL will not be excused from its payment obligations under this Contract, by virtue of lack of funds (for whatever reason).

31.5 A Party affected by a Force Majeure Event shall inform the other Party as soon as practicable after becoming aware of the event of its occurrence giving full details of its expected effect and duration. If the Force Majeure Event continues for more than one week the Party affected shall notify the other Party regularly and not less than every one week of the ongoing circumstances.

31.6 A Party affected by a Force Majeure Event shall use all reasonable endeavours to resume performance of its obligations as soon as practicable and in the meantime to mitigate the effects of any such event and shall keep the other Party fully informed about the steps taken to achieve this provided that this does not require the Party affected by the Force Majeure Event to incur unreasonable costs.

31.7 LUL agrees that where as a result of a Force Majeure Event which affects LUL, LUL is not able to supply any one or more of the LUL Dependencies to the Contractor, then the Contractor shall not be liable in relation to any breach of its obligations under this Contract resulting from failure. Each Party shall use reasonable efforts to resume performance of its obligations by other means.

31.8 If insurance for terrorism is not available (on the basis set out in Schedule 25 (Insurance)), the Contractor will be entitled to terminate this Contract unless it receives underwriting of future costs in relation to terrorism (on the basis set out in Schedule 25 (Insurance)).

## CHANGE OF LAW

32.1 Without prejudice to Clause 32.2, where a Safety Change brings about an actual or prospective increase in Costs or results in an increase in the costs of Taxation of the Contractor or PADCo or a reduction in the Benefits for Taxation of the Contractor or PADCo or a failure in whole or in part to obtain payments for consortium relief shown in the Contractor's Financial Model at the Starting Date and which would have been made if PADCo had in fact had accounting periods equivalent to those assumed by Schedule 33 (Tax Principles and Assumptions), then there shall be a Price Adjustment.

32.2 Where any Safety Change brings about an actual or prospective reduction in the Costs incurred by the Contractor in providing the Services in any Contract Year, then there shall be a Price Adjustment.

32.3 Not used.

32.4 The Contractor shall use all reasonable endeavours to control any increase in Costs or any decrease in Costs incurred in connection with a Discriminatory Change of Law or Safety Change, in accordance with the Cost Optimisation Principles and, where not inconsistent therewith to minimise any such increase in Costs and maximise any such decrease in Costs.

32.5 As soon as is reasonably practicable the Contractor shall notify LUL of any actual or prospective Discriminatory Change of Law or Safety Change or, in the case of Clause 32.14 any Change of Law, of which it becomes aware (or LUL may itself notify the Contractor without prejudice to the Contractor's obligation to notify LUL) which will or is reasonably likely either to increase or decrease the Contractor's Costs or in the case of Clause 32.14, to reduce its revenues receivable exclusive of VAT and the Contractor shall provide such information as LUL requires about its effect on the Contractor's Costs and/or revenues. The Contractor shall issue a Proposal Notice in relation to relevant changes to this Contract in accordance with the provisions of Clause 23.36.

32.6 If the Parties fail to agree a Price Adjustment the matter shall be determined in accordance with the provisions of Schedule 37 (Dispute Resolution).

32.7 Subject to Clause 32.9, there shall be a Price Adjustment to cover the estimated increased or decreased Costs arising from a Discriminatory Change of Law after the Change of Law comes into effect and it has been agreed or determined that the Change of Law is a Discriminatory Change of Law as follows:

- (a) unless the Change of Law is a Taxation Change of Law, the Contractor shall estimate the Costs of the Change of Law above the level of 5 per cent. of the Availability Charge (exclusive of VAT) payable within the 12 months after the Change of Law comes into effect (before any deduction). The estimated Costs below the level of 5 per cent of the Availability Charge (exclusive of VAT) payable within the 12 months after the Change of Law comes into effect shall



reduce the Liability Headroom within the Contractual Risk Commitment at the same time as the Price Adjustment is agreed;

- (b) If the Change of Law is a Taxation Change of Law the Contractor shall estimate all Costs of the Change of Law, and there shall be one Price Adjustment in respect of all such Costs, other than those described under Clause 32.7(b)(i) and (ii) below;
  - (i) the estimated Costs up to the level of 10 per cent of the Availability Charge (exclusive of VAT) within the 12 months after the Change of Law comes into effect shall reduce the Liability Headroom within the Contractual Risk Commitment, at the same time as the Price Adjustment is agreed; and
  - (ii) if applicable, the estimated Costs in each year in the two years following the 12 months after the Change of Law comes into effect up to the level of 10 per cent of the Availability Charge (exclusive of VAT) payable in each of those years shall reduce the Liability Headroom within the Contractual Risk Commitment at the beginning of each of those years.

For the avoidance of doubt, any Costs arising from a Change of Law which is not a Discriminatory Change of Law shall be Change of Law Commitment Costs under Clause 25. Any Price Adjustment shall be calculated in accordance with Clause 23A and Schedule 33 (Tax Principles and Assumptions). For the purposes of this Clause 32.7, *Costs* shall include an increase in the costs of Taxation, or a reduction in the Benefits for Taxation, of the Contractor or PADCo unless and to the extent that such increase or reduction is attributable to the conduct of activities by the Contractor and/or PADCo, as applicable, other than those assumed by the principles in paragraphs B.I.9 and B.I.10 of Schedule 33 (Tax Principles and Assumptions) and shall include a failure in whole or in part to obtain payments for consortium relief shown in the Contractor's Financial Model at the Starting Date and which would have been made if PADCo had in fact had accounting periods equivalent to those assumed by Schedule 33 (Tax Principles and Assumptions).

32.8 A Change of Law shall not constitute a Discriminatory Change of Law or Safety Change if the proposed change would amount to a Discriminatory Change of Law or Safety Change but has been published as at the Date of Contract in substantially the same form as such Law finally takes when it has legal effect, (i) in the case of an Act of Parliament, after the First Reading of the relevant bill has taken place (ii) in the case of a statutory instrument, by Her Majesty's Stationery Office as a draft statutory instrument or (iii) in the case of European Legislation as a Common Position adopted by the European parliament.

32.9 No adjustment shall be made in respect of a Discriminatory Change in Law or Safety Change to the extent it is determined in accordance with the provisions of Schedule 37 (Dispute Resolution) that the Contractor is clearly compensated for such

increased costs by RPI (on the basis of the price indicator components within the RPI basket and their weighting).

## **Funding**

32.10 **NOT USED.**

32.11 **NOT USED.**

32.12 Subject to Clause 32.15 LUL shall be obliged to fund the Costs or loss of revenues (excluding VAT) arising from the Discriminatory Change of Law or Safety Change through Advance Payments, in accordance with the provisions of Clauses 23.13 and 23.13A. In this Clause 32.12 Costs has the same meaning as in Clause 32.7.

32.13 Without prejudice to Clause 23.38 the Contractor shall not be liable for any failure to comply with or delay in complying with this Contract where such failure or delay arises as a result of a Discriminatory Change of Law or Safety Change and, if relevant, the Derogation Period shall be extended accordingly.

32.14 If any Change of Law (whether or not a Discriminatory Change of Law) results in any reduction of or inability to pay the Availability Charges and/or other amounts payable to the Contractor pursuant to, and in accordance with, this Contract, LUL agrees to compensate the Contractor to the extent of any such reduction and/or inability to pay so as to ensure that the Contractor is financially no better and no worse off on the same basis as Clause 23.20 than if such Change of Law had not occurred. If LUL as a result of the Change of Law is unable to make the Contractor no better and no worse off under this Clause 32, the Contractor shall be entitled to terminate the Contract under Clause 28.1(b).

## **Administrative Threshold**

32.15 Subject to Clause 23.55.4 there shall be no Price Adjustment or payment of Advance Payments made, in each case pursuant to this Clause 32, until the date at which the Costs arising from the relevant Change of Law exceed £1 million (the **Administrative Threshold**). The £1 million Costs (together with interest paid at the Commercial Interest Rate from the date of incurring of the Costs) shall be reimbursed by Advance Payments. The Administrative Threshold shall be reset at the date of payment of all the relevant Advance Payments. If at the expiry of the Contract Duration or on early termination of the Contract there are amounts below £1 million which have not yet been reimbursed by Advance Payments, LUL shall on the Expiry Date pay the Costs (together with interest at the Commercial Interest Rate from the date of incurring of the Costs). In this Clause 32.15 **Costs** has the same meaning as in Clause 32.7.

## **GENERAL TAXATION**

33.1 If any amount payable by any Party (the **Payer**) under this Contract by way of indemnity, compensation or reimbursement other than payments of interest or liquidated damages is subject to any Tax in the hands of another Party (the **Payee**) and

thus proves to be insufficient either to discharge the corresponding liability to a third party or to reimburse the Payee for the cost incurred by it in discharging such corresponding liability, the amount payable shall be increased to such an amount as (after taking into account the benefit of any deduction or relief from taxation obtained by the Payee in respect of any corresponding amount paid or payable by the Payee to a third party, or the obligation giving rise to the same, and the time at which such benefit is obtained) is required to put the Payee in the same after-tax position the Payee would have been in had the circumstances giving rise to indemnity, compensation or reimbursement not occurred provided that this Clause 33.1 shall not, if it otherwise would, apply to the Availability Charge or to any payments under Clause 29.9. If payment of the amount by the Payer is initially made on the basis that it is not subject to Tax in the hands of the Payee and it is subsequently determined that it is, or vice versa, such adjustment shall be made between the Payer and the Payee as shall be required in order to restore the after-tax position of the Payee to what it would have been had the adjustment not been necessary.

33.2 Without prejudice to the generality of Clause 33.1 if and to the extent that any sum (***Indemnity Sum***) constituting (directly or indirectly) an indemnity, compensation, Disruption Costs or reimbursement to any Party but paid by the Payer to any person other than the Payee, other than payments of interest or Liquidated Damages, shall be treated as taxable in the hands of the Payee, the Payer shall promptly pay to the Payee such sum (the ***Compensating Sum***) as (after taking into account any Taxes suffered by the Payee on the Compensating Sum and taking into account the time value of money) shall reimburse the Payee for any Taxes suffered by it in respect of the Indemnity Sum after taking into account any deduction for tax purposes obtained by the Payee in respect of the payment or the matter giving rise to, the Indemnity Sum and the time at which the benefit of such deduction is obtained provided that this Clause 33.2 shall not, if it otherwise would, apply to the Availability Charge or to any payments under Clause 29.9.

33.3 The Payer shall not be liable under Clauses 33.1 to 33.2 to make any payment in connection with any Tax, or increase in Tax, suffered by the Payee to the extent that such Tax, or increase in Tax, would not have arisen but for the Payee drawing up its accounts or submitting its tax returns or computations (save as required by law / accounting practice or HM Revenue & Customs practice of general application as applicable or, in the case of the Contractor and PADCo, save as in accordance with the basis of accounting for that company assumed by Schedule 33 to this Contract) on a basis inconsistent with such basis as would result in no claim arising under Clauses 33.1 to 33.2.

## **Deductions**

33.4 All payments due to either Party under this Contract shall be calculated and made free and clear of and without deduction for, or on account of, any Taxes, unless such deduction or withholding is required by Law. The Party making the payment (the ***Payer***) shall account on a timely basis to the appropriate authority in respect of any such deduction or withholding which is so required.

33.5 If such deduction or withholding is required by Law, the Payer shall (subject to Clause 33.6 and except in the case of interest) increase the payments to the Party receiving the payment (the *Payee*) so that the net amount received and retained by the Payee after such deduction or withholding (and after taking account of any further deduction or withholding which is required to be made which arises as a consequence of the increase) shall be equal to the full amount which the Payee would have received and retained if no such deduction or withholding had applied.

33.6 To the extent that the Payee is, as a result of a deduction or withholding the subject of an increased payment under Clause 33.5, relieved of a liability to make a payment of Tax which it would otherwise have been liable to make or obtains a repayment of all or part of the amount deducted or withheld or an amount of Tax referable to the amount so deducted or withheld, the Payee shall make such payment as the Payee in its absolute discretion certifies will transfer that Tax benefit to the Payer and will leave the Payee in no better and no worse position than it would have been in had no such deduction or withholding been required.

### **Value Added Tax**

33.7 All sums payable under this Contract and under contracts to be entered into in performance of this Contract shall be exclusive of value added tax, if any. If VAT is chargeable on any supply under this Contract or any contract entered into in performance of this Contract to which LUL is a party, the recipient of the supply shall pay any VAT on that supply at the time at which such supply is treated as being made for VAT purposes. The party making a supply under this Contract shall comply with its obligations to issue a VAT invoice in respect of the supply and the recipient of such supply shall not be liable in relation to any interest or penalties arising to the extent that such VAT invoice is not issued.

33.8 Where this Contract or any contract entered into in performance of this Contract to which LUL is a party requires a party to this Contract:

- (a) to bear a cost falling due to a person who is not a party to this Contract, that cost shall be borne by the relevant contracting party plus VAT, if any;
- (b) to indemnify, compensate or reimburse another party to this Contract for a cost borne by that other party, or to make a payment to another party to this Contract determined wholly or partly by reference to a payment made or cost borne by that other party, the amount payable shall be calculated by taking into account the underlying cost or payment exclusive of VAT, if any, other than Irrecoverable VAT; and
- (c) to make a payment to another party to this Contract determined in whole or in part by reference to revenue derived from a third party, such revenue shall be taken into account exclusive of VAT, if any.

33.9 Where this Contract permits a party to this Contract to withhold an amount when making a payment to another party to this Contract and the amount which may

be withheld is on account of a cost, the amount of that cost shall be calculated exclusive of VAT (if any) except Irrecoverable VAT (if any).

### **Capital Allowances**

33.9.1 To the extent that Capital Allowances are available to the Contractor, PADCo or its nominee for capital expenditure in relation to the System or the IT Systems, LUL shall cooperate fully with the Contractor and PADCo, as the case may be, so as to maximise the availability to the Contractor, PADCo or its nominee of those allowances PROVIDED THAT, except in relation to any Capital Allowances the non-availability of which would give rise to a cash payment from LUL to the Contractor and/or PADCo under this Agreement, the Contractor shall indemnify LUL against any material costs thereby incurred.

To the extent that Capital Allowances (i) are available to LUL or its nominee for capital expenditure in relation to the System or the IT Systems, (ii) are not so available to PADCo, and (iii) in relation to assets of a type within the category of "Monitoring Equipment" and "Management Assets" contained in the Expenditure Schedule referred to in Schedule 33 to this Contract, are not so available to the Contractor, the Contractor or PADCo, as the case may be, shall cooperate fully with LUL so as to maximise the availability to LUL or its nominee of those allowances PROVIDED THAT LUL shall indemnify the Contractor and/or PADCo against any material Costs thereby incurred.

33.9.2 Neither the Contractor nor PADCo shall claim or attempt to claim any capital allowances in respect of assets forming part of the System or the IT Systems, or any part thereof, as at the Starting Date except where such assets form part of the Early Works. The Contractor or PADCo shall in each accounting period, at the written request of LUL, the reasonable costs of which shall be borne by LUL, provide to LUL a certificate signed by the Contractor's or PADCo's auditors, as the case may be, certifying that, in the accounting periods to which such request relates, the provisions of this Clause 33.9.2 have been complied with.

### **Tax Contest**

#### **Correspondence**

33.10.1 The Contractor or PADCo, as the case may be, (the *Taxpayer*) will notify and provide a copy to LUL within 17 Working Days of receipt of any formal written communication received by the Taxpayer from HM Revenue & Customs from which it appears:

- (i) that any matter relating to or affecting the basis of the tax treatment set out in the Variable Tax Assumptions contained in Schedule 33 Part C.II and the Variable Tax Assumption constituted by Schedule 33 Part B.II is being considered, investigated or disputed by HM Revenue & Customs; or
- (ii) that any of those Variable Tax Assumptions will or may otherwise prove not to be correct.

For the purposes of this Clause 33.10, the subject matter of such communication (a *relevant communication*) shall be referred to as a *Tax Matter*. For the avoidance of doubt, where a relevant communication relates both to a Tax Matter and to any other matter affecting the Taxpayer, the Taxpayer shall only be required to provide to LUL a copy of that part of, or an extract from, such relevant communication which is material to a Tax Matter.

33.10.2 The obligation set out in Clause 33.10.1 above shall be a continuing obligation in relation to any further relevant communication received from HM Revenue & Customs relating to a Tax Matter and shall include the notification and provision of summaries of material meetings and material telephone conversations with HM Revenue & Customs.

33.10.3 In responding to any relevant communication relating to a Tax Matter, the Taxpayer and LUL agree that the overriding consideration shall be that, unless this is inappropriate by virtue of any Change of Law, any mandatory change of accounting practice or would otherwise be contrary to the Taxpayer's legal duties, the response should be consistent with the Variable Tax Assumptions. LUL and the Taxpayer each agree to co-operate to the full extent necessary to ensure that any correspondence with HM Revenue & Customs is conducted so as best to ensure that HM Revenue & Customs is persuaded that the Variable Tax Assumptions are correct but each undertakes that all communications with HM Revenue & Customs will be accurate and true in all respects. This will extend to the provision of such further information and evidence by the Taxpayer to LUL (and vice versa) as is reasonably necessary to assist in achieving this objective provided that nothing in this Clause 33.10.3 shall require the Taxpayer (or LUL, as the case may be) to provide (i) any information relating solely to its tax affairs which does not, in the reasonable judgment of such party, relate to or affect a Tax Matter; (ii) details of meetings and correspondence between the relevant party and its advisers; (iii) in the case of the Taxpayer, details of meetings and correspondence between it and any Shareholder (or any member of the Shareholder's group); or (iv) any information of a confidential nature unless the other party provides an undertaking not to disclose such information in a form satisfactory to the party otherwise required to provide such information.

33.10.4 Subject to Clause 33.10.3 above, the Taxpayer shall conduct any correspondence with HM Revenue & Customs. The Taxpayer shall give LUL an opportunity to comment in writing on any draft response to HM Revenue & Customs (and will ensure in good faith that LUL's comments are taken into account), shall not send any final response to HM Revenue & Customs without obtaining LUL's written consent to do so (such consent not to be unreasonably withheld or delayed) and generally will keep LUL fully informed about relevant developments as they arise. If LUL does not agree that any proposed response to HM Revenue & Customs in relation to any particular communication is best formulated so as to obtain HM Revenue & Customs' agreement that the Variable Tax Assumptions are correct or considers it is inappropriate by virtue of any Change in Law or any mandatory change in accounting practice, then the Taxpayer and LUL shall use their best efforts to work together to agree a response to HM Revenue & Customs which is acceptable to both parties. In the absence of any such agreement, LUL or the Taxpayer may request that

a senior tax counsel of appropriate standing be instructed jointly by the Taxpayer and LUL to advise on whether LUL or the Taxpayer's proposed response is to be preferred (or some other formulation would be preferable) with that object in mind. The identity of the counsel shall be agreed between the Taxpayer and LUL and, in the absence of agreement within 30 days, shall be chosen by the Chairman of the Bar Council whom the parties shall instruct for that purpose. The costs of the counsel shall be borne by the party as counsel shall direct, having regard to the extent to which counsel agrees with each party's argument.

## **Tax disputes**

### **General and Special Commissioners**

33.10.5 If HM Revenue & Customs cannot be persuaded that the relevant Variable Tax Assumption which is the subject of the Tax Matter is correct then, if either party considers that this is appropriate, subject to Clause 33.10.6 below, the dispute shall be appealed to the General or Special Commissioners, in which case the reasonable costs (including any Irrecoverable Value Added Tax) of such appeal (but excluding management time) shall be borne by the party that initiates the appeal, provided that if both parties in good faith consider an appeal appropriate, such costs shall be borne by both parties equally. If the Taxpayer initiates the appeal and LUL does not in good faith consider such an appeal appropriate then, regardless of the outcome of the appeal, the Availability Charge shall not be adjusted upwards by any amount greater than it would have been so adjusted had no such appeal been made.

33.10.6 The Taxpayer shall be entitled to refuse to appeal the dispute to the General or Special Commissioners if the dispute involves the question of whether any assets which are 'plant' for capital allowances purposes constitute fixtures or not, and such an appeal would be likely materially to prejudice its business or tax affairs, or those of EDF Energy (South East) plc or any subsidiary or subsidiary undertaking of EDF Energy (South East) plc. If LUL disagrees that the appeal would be likely materially to prejudice the business or tax affairs of the Taxpayer, or those of EDF Energy (South East) plc or any subsidiary or subsidiary undertaking of EDF Energy (South East) plc, LUL shall be entitled to require EDF Energy (South East) plc to obtain certification from a senior tax counsel selected in the manner described in Clause 33.10.4 above that, on the balance of probabilities, an appeal would have that effect.

33.10.7 If an appeal is made to the General or Special Commissioners pursuant to Clause 33.10.5, the Taxpayer shall be responsible for the conduct of that appeal, shall consult in good faith with LUL to ensure, as far as possible, that the outcome of the appeal is to uphold the tax treatment as set out in the Variable Tax Assumptions and shall take account in good faith of LUL's reasonable requests in respect of the conduct of the appeal save that LUL may not require the Taxpayer to take any action in relation to such appeal if the dispute involves the question of whether any assets which are 'plant' for capital allowances purposes constitute fixtures or not, and the course of conduct proposed by LUL would be likely materially to prejudice its business or tax affairs, or those of EDF Energy (South East) plc or any subsidiary or subsidiary undertaking of EDF Energy (South East) plc. If LUL disagrees that the

proposed course of conduct would be likely materially to prejudice the business or tax affairs of the Taxpayer, or those of EDF Energy (South East) plc or any subsidiary or subsidiary undertaking of EDF Energy (South East) plc, LUL shall be entitled to require EDF Energy (South East) plc to obtain certification from a senior tax counsel selected in the manner described in Clause 33.10.4 above that, on the balance of probabilities, the proposed course of conduct would have that effect.

### **Court proceedings**

33.10.8 Following an appeal pursuant to Clause 33.10.5 above, either party may decide to take a further appeal to the courts or to defend any appeal made by HM Revenue & Customs (which further appeal or defence may be made at each level of the courts up to the House of Lords), in which case the reasonable costs (including any Irrecoverable Value Added Tax) of such appeal or defence (but excluding management time) shall be borne by the party who so decides, provided that if both parties in good faith consider such action to be appropriate, such costs shall be borne by both parties equally. If the Taxpayer initiates such appeal or defence and LUL does not in good faith consider such action to be appropriate then, regardless of the outcome of the appeal or defence, the Availability Charge shall not be adjusted upwards by any amount greater than it would have been so adjusted had no such appeal or defence been made. LUL may not require any such further appeal or defence to proceed if:

- (a) the law has changed in such a way that the appeal or defence stands no reasonable prospect of success (this question, if necessary, being determined in the light of advice given by senior tax counsel selected in the manner described in Clause 33.10.4 above, the costs of such counsel being borne by such person as counsel shall direct having regard to the extent to which counsel agrees with each party's argument); or
- (b) the outcome of the appeal or defence would not affect whether the Availability Charge should be adjusted upwards or downwards (this question, if necessary, being determined in the light of advice given by senior tax counsel selected in the manner described in Clause 33.10.4 above, the costs of such counsel being borne by such person as counsel shall direct having regard to the extent to which counsel agrees with each party's argument).

### **Appeals to the courts**

33.10.9 In relation to a further appeal (including, for the avoidance of doubt, appealing any decision of a court where HM Revenue & Customs has successfully appealed against an earlier decision) by the Taxpayer pursuant to Clause 33.10.8, LUL may not require any such further appeal to proceed if the Taxpayer considers (in its discretion to be exercised in good faith) that such an appeal would be likely materially to prejudice its business or tax affairs or subject to Clause 33.10.11, those of any Shareholder or a member of the Shareholder's group.



33.10.10 Where a further appeal is made pursuant to Clause 33.10.8, the Taxpayer shall be responsible for the conduct of that appeal and shall consult in good faith with LUL to ensure, as far as possible, that the outcome of the appeal is to uphold the tax treatment as set out in the Variable Tax Assumptions, and shall take account in good faith of LUL's reasonable requests in respect of the conduct of the appeal save that LUL may not require the Taxpayer to take any action in relation to such appeal as the Taxpayer considers (in its reasonable discretion to be exercised in good faith) would be likely materially to prejudice its business or tax affairs or, subject to Clause 33.10.11, those of any Shareholder (or a member of the Shareholder's group).

33.10.11 The Taxpayer shall only be entitled to refuse to proceed with a further appeal (including, for the avoidance of doubt, appealing any decision of a court where HM Revenue & Customs has successfully appealed against an earlier decision) or to take any action in relation to the conduct of a further appeal on the basis that such appeal or action would be likely materially to prejudice the business or tax affairs of a Shareholder or a member of a Shareholder's group if:

- (i) the dispute in question involves the question of whether any assets which are 'plant' for capital allowances purposes constitute fixtures or not;
- (ii) the Shareholder or member of a Shareholder's group which would be prejudiced is EDF Energy (South East) plc or a subsidiary or subsidiary undertaking of EDF Energy (South East) plc; or
- (iii) the action, appeal, or defence would be likely materially to prejudice the investment of a Shareholder or member of its group in the Contractor or PADCo.

### **Defence of HM Revenue & Customs appeal to the courts**

33.10.12 Where an HM Revenue & Customs appeal is defended pursuant to Clause 33.10.8, the Taxpayer shall be responsible for the conduct of that appeal and shall consult in good faith with LUL to ensure, as far as possible, that the outcome of the appeal is to uphold the tax treatment as set out in the Variable Tax Assumptions, and shall take account in good faith of LUL's reasonable requests in respect of the conduct of the appeal.

### **General Provisions**

33.10.13 For the avoidance of doubt, where under this Clause 33.10 counsel is required to direct the identity of the party to bear the costs of counsel, counsel may direct that one party alone shall bear such costs or may direct that both parties should bear such costs and, if so, each party's proportionate share of such costs.

33.10.14 For the purposes of this Clause 33.10, Shareholder means any person which holds 20% or more by nominal value of the ordinary share capital of either or both of the Contractor or PADCo.

### **Construction Industry Tax Deduction Scheme**

33.11.1 If LUL, the Contractor or PADCo is a “subcontractor” (the *Subcontractor*) for the purposes of Sections 559 to 567 of the Income and Corporation Taxes Act 1988 (the *Taxes Act*) and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 (as amended) (the *Regulations*) and the Taxes Act and the Regulations require that person as a “subcontractor” to obtain a valid tax certificate for it to receive payments which are not subject to the statutory deduction referred to in section 559(4) of the Taxes Act (the *Statutory Deduction*), the Subcontractor will use its best endeavours to obtain such a certificate so that the party paying the Subcontractor pursuant to this Contract (the *CITD Payer*) may be entitled to make any and all payments which it makes to the Subcontractor pursuant to this Contract free and clear from the statutory deduction.

33.11.2 If the Subcontractor successfully obtains such a certificate pursuant to Clause 33.11.1, it will use its best endeavours to ensure that the certificate remains valid and will notify the CITD Payer if for any reason the certificate ceases to be valid. While the Subcontractor has a valid certificate it will, at the CITD Payer’s reasonable request, make available to the CITD Payer either the certificate or a certifying document evidencing its possession of a valid certificate.

33.11.3 If the Subcontractor for any reason (other than the fact that it is exempted from the need to do so by the Act or the Regulations) fails to obtain a certificate as referred to in Clause 33.11.1, then the CITD Payer shall make all applicable payments to the Subcontractor subject to the statutory deduction and in the event that any error or omission occurs in making the statutory deduction then, in the case of an over-deduction the CITD Payer shall pay the sum over-deducted to the Subcontractor and in the case of an under-deduction the Subcontractor shall pay the sum which should have been deducted to the CITD Payer, so that, in both cases, the error or omission shall be corrected.

33.11.4 Clauses 33.11.1 to 33.11.3 shall cease to apply on 5 April 2007, but without prejudice to any rights which have accrued as a result of any breach of those Subclauses on or before that date.

33.11.5 Each of the parties to this Agreement agrees that from 6 April 2007 until the Expiry Date:

- (i) it shall at all times comply with all the requirements of Chapter 3 of Part 3 of the Finance Act 2004 and all regulations made thereunder from time to time in force in so far as those requirements apply to the performance of this Contract;
- (ii) it shall in particular when reasonably requested to do so by any Party provide to that Party the information specified in regulation 6(2)(b)(iii) of the Income Tax (Construction Industry Scheme) Regulations 2005; and
- (iii) it shall at all times when it is a subcontractor (for the purposes of Section 58 of the Finance Act 2004) and payments to it under this

contract would be contract payments for the purposes of Section 60 of the Finance Act 2004 use its reasonable endeavours to be registered with HM Revenue & Customs for gross payment under Section 63(2) of the Finance Act 2004 and shall use its reasonable endeavours to satisfy the conditions set out in Part 3 of Schedule 11 to the Finance Act 2004 and shall use its reasonable endeavours to procure the satisfaction by the persons specified of the conditions referred to or specified in any notice issued by HM Revenue & Customs pursuant to Section 64(5) of the Finance Act 2004.

33.11.6 After 6 April 2007 until the Expiry Date each of the parties to this Agreement shall notify the other parties forthwith if HM Revenue & Customs makes a determination cancelling its registration for gross payment pursuant to Sub-section 66(1) or 66(3) of the Finance Act 2004, in which case:

- (i) it shall forthwith use its reasonable endeavours to register with HM Revenue & Customs for payment under deduction pursuant to Sub-section 66(6) or 66(7) of the Finance Act 2004;
- (ii) it shall use its reasonable endeavours to reregister as soon as possible with HM Revenue & Customs for gross payment pursuant to Section 63(2) of the Finance Act 2004; and
- (iii) each of the other parties shall follow any instructions from HM Revenue & Customs to withhold the relevant percentage to be deducted at source from any payment to which Section 61 of the Finance Act 2004 applies until such time as HM Revenue & Customs directs it to make gross payments to that party;

and this sub-clause shall be applied as often as may be required.

33.11.7 Clauses 33.4 to 33.6 shall not apply to a payment or payments to which Clause 33.11 applies.

## **INFORMATION TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS**

### **Existing IT Systems and IT Assets**

34.1.1 Prior to the Starting Date, subject to Clauses 34.1.4, 34.1.5 and 34.1.6 below, LUL shall licence (on a non-exclusive, non-transferable, royalty free and irrevocable basis) to the Contractor or in respect of third party rights, use reasonable endeavours to sub-licence or procure the license or sub-licence, to the Contractor (on a non-exclusive, non-transferable and royalty free basis) in each case with effect from the Starting Date all IT Assets and licences relating to the IT Systems in existence as at the Starting Date including, without limitation, relating to all hardware, software and documentation pertaining thereto for any purpose related to the provision of the Services to LUL and shall use reasonable endeavours to novate or assign any maintenance, support, escrow facilitates management, disaster recovery or other associated agreements (*Associated Agreements*) relating to those IT Systems. The

Contractor shall provide all reasonable assistance as is required by LUL in this regard. Physical delivery of such IT Assets and copies of such licences and the Associated Agreements shall take place in reasonable time to allow the Contractor to commence providing the Services on the Starting Date. For the avoidance of doubt the Parties agree and acknowledge that to the extent the SCADA System constitutes immovable assets it will be made available on the terms of Clauses 30.2 and 30.4. To the extent it constitutes moveable tangible assets, it shall be made available pursuant to Clause 30.5 and to the extent it constitutes intangible assets, shall be a Performance Critical IT System pursuant to this Clause 34. Any replacement of the SCADA System required as part of the Initial Works will be subject to the provisions of Clause 30.11 and the Option Deed to the extent such replacement constitutes New Moveable Assets.

34.1.2 Subject to Clause 34.1.4 and 34.1.5 below, LUL shall license (on a non-exclusive, non-transferable, royalty free and irrevocable basis) to the Contractor all Intellectual Property Rights in any Technical Documentation, the Intellectual Property Rights in which are owned by LUL. Physical delivery of copies of such Technical Documentation shall take place in reasonable time to allow the Contractor to commence provided the Services on the Starting Date. Insofar as the Intellectual Property Rights in any Technical Documentation are owned by a third party, LUL shall use its reasonable endeavours to sub-license or procure a licence or sub-license (on a non-exclusive, non-transferable and royalty free basis) or consent from such third party for the Contractor to use the Technical Documentation from the Starting Date.

34.1.3 LUL shall at the Starting Date in addition to those Intellectual Property Rights described in Clauses 34.1.1 and 34.1.2, licence to the Contractor (on a non-exclusive, irrevocable, non-transferable, royalty-free basis) all Intellectual Property Rights owned by LUL and necessary for the performance by the Contractor of its obligations or exercise of its rights under this Contract including, for the avoidance of doubt, a hard copy of the SCADA System data wiring database.

34.1.4 Any licence granted by LUL to the Contractor pursuant to Clauses 34.1.1, 34.1.2 and 34.1.3 is granted (a) in respect of Intellectual Property Rights owned by LUL for the duration of this Contract and (b), subject to earlier termination of this Contract, in respect of Intellectual Property Rights owned by a third party for such period as LUL is entitled to grant a licence or sub-license subject, in the case of Performance Critical IT Systems, to a minimum of 6 years from the Starting Date, for the performance by the Contractor of its obligations or the exercise of its rights and the Contractor may sub-license and grant the right to sub-license to any third party for such purposes:

- (i) Where LUL is sub-licensing any third party Intellectual Property Rights to the Contractor pursuant to Clauses 34.1.1 or 34.1.2 it shall only pass on to the Contractor those license fees payable by LUL to such third party for such licence;

- (ii) LUL shall ensure that it at all times complies with the terms of any third party licences of such third party Intellectual Property Rights and otherwise shall ensure any sub-licence granted to the Contractor shall not terminate as a result of the breach by LUL of any such third party licences;
- (iii) The Contractor shall comply, and shall procure the compliance of any of its subcontractors or agents, with the terms and conditions of any third party licence relevant to any third party's Intellectual Property Rights licensed to the Contractor by LUL pursuant to Clauses 34.1.1 or 34.1.2 to the extent and from the time that a copy of such licence has been provided to the Contractor by LUL (save to the extent such terms or conditions relate to restricting the identity of persons permitted to use the Intellectual Property Rights or in relation to licences in respect of any Performance Critical IT Systems, documentation, Associated Agreements or Technical Documentation, restricting the scope of the purposes of use of the Intellectual Property Rights which would be breached by the Contractor or any of its contractors, agents, or licensees using such Rights pursuant to this Contract);
- (iv) If the Contractor becomes aware that its use, possession or sub-licensing of any Performance Critical IT Systems, documentation, Associated Agreements or Technical Documentation licensed to it by LUL pursuant to Clause 34.1.1 for the purpose of providing the Services pursuant to the Contract is in breach of the terms of any relevant third party licence the Contractor shall advise LUL as soon as practicable of such breach and shall, at LUL's expense, provide reasonable assistance and co-operation to LUL to obtain from the relevant third party a licence to use such Performance Critical IT Systems, documentation, Associated Agreements or Technical Documentation for the purpose of providing the Services. This Clause 34.1.4(iv) is without prejudice to any other provision of this Contract.

34.1.5 Where the relevant licensing, sub-licensing, novation or assignment to the Contractor of Performance Critical IT Systems, documentation, Associated Agreements or Technical Documentation owned by a third party have not been, or are not likely to be, carried out pursuant to Clause 34.1.1 or 34.1.2 by the Starting Date then LUL and the Contractor shall agree upon one of the following courses of action in relation to each Performance Critical IT System or component thereof, except that in the event of failure of the Parties to agree prior to the Starting Date, or pending implementation of options (i) and (ii) after the Starting Date, (and the Parties agree that they will in good faith pursue options (i) and (ii) prior to replacing in accordance with (iii)) the course of action set out in Clause 34.1.5 (iii) shall be the interim and the default position:

- (i) LUL shall continue, with the Contractor's reasonable assistance, to use its reasonable endeavours to seek the necessary consents or other comfort from the relevant third parties to such licensing, sub-licensing, novation or assignment;

- (ii) LUL and the Contractor shall work together to obtain, as soon as is reasonably practicable, a substitute or replacement for such Performance Critical IT System or component, documentation, Associated Agreement or Technical Documentation (provided that the cost of any substitute or replacement shall be to LUL's account);
- (iii) the Contractor will commence the use, as agent of LUL, and be authorised to appoint third parties to use, as agents of LUL in connection with the performance by the Contractor of its obligations or exercise of its rights under the Contract for a maximum period of six years from the Starting Date, of the relevant Performance Critical IT System or component, documentation, Associated Agreement or Technical Documentation save in relation to the SCADA System data wiring database which may be used for a maximum of two years from the Starting Date, before the relevant consents or other comfort are obtained from the relevant third Parties, provided that in such an event LUL, subject to Clause 34.1.8, hereby agrees to fully indemnify the Contractor against any action, claim, demand, cost, charge and expense arising from or incurred by reason of the infringement or alleged infringement of any rights of any third party, or any breach of confidentiality arising from any such use or authorisation (including, for the avoidance of doubt, any claim by a subcontractor, agent or sub-licensee authorised by the Contractor to use any Performance Critical IT System or component, documentation, Associated Agreements or Technical Documentation pursuant to this paragraph (iii)) and the Contractor shall not be liable to LUL to the extent that any such action, claim, demand, cost, charge and expense results in an Adverse Consequence under Clause 28A. Upon the expiry of the six year period or the two year period as applicable the Contractor will have in place a replacement for the relevant Performance Critical IT Systems. All costs including VAT, if any, associated with such replacement shall be the responsibility of the Contractor.

34.1.6 Where the relevant licensing, sub-licensing, novation or assignment to the Contractor of the Non-Performance Critical IT Systems, or component, documentation, Associated Agreements or Technical Documentation have not been, or are not likely to be, carried out pursuant to Clause 34.1.1 within six months of the Starting Date, then the Contractor shall obtain a substitute or replacement for such Non-Performance Critical IT Systems or component documentation, Associated Agreements or Technical Documentation thereof. LUL shall provide all reasonable assistance as is required by the Contractor in this regard. All costs associated with such replacement shall be the responsibility of the Contractor. The Parties agree that should the Contractor, acting reasonably and in good faith, determine that a replacement or substitute is not required for it to provide the Services, then it shall not be required to replace or substitute such Non-Performance Critical IT System or component, documentation, Associated Agreements or Technical Documentation.

34.1.7 For the purposes of this Clause 34, ***Performance Critical IT Systems*** means those IT Systems identified and agreed by the Parties as being necessary to enable the Services to be provided by the Contractor under this Contract, and listed in Schedule 34.2.5, as such Schedule is amended from time to time by agreement of the Parties

(such agreement not to be unreasonably withheld or delayed). ***Non-Performance Critical IT Systems*** means those IT Systems not identified as Performance Critical IT Systems. Any failure by the Parties to agree the Performance Critical IT Systems shall be dealt with in accordance with the Dispute Resolution procedure set out in Schedule 37.

34.1.8 The indemnity in Clause 34.1.5(iii) is conditional upon the Contractor (i) having complied with Clause 34.1.4(iii) in respect of all relevant third party licences and (ii) not knowingly by act, default or omission disclosing, or permitting the disclosure, to any third party (other than its agents or subcontractors and the Contractor shall ensure that such agents and subcontractors comply with the Contractor's non-disclosure obligations hereunder) of its use or possession of any IT System or any component thereof, documentation, Associated Agreements or Technical Documentation forming the basis of such claim and (iii) any use by the Contractor (or its agents or subcontractors) as LUL's giving rise to the claim agent being solely for the purposes of this Contract.

34.1.9 In the event that LUL has not been able to obtain the consent of a third party to the licensing or sub-licensing to the Contractor where that software licence relates to standard software widely available from third party suppliers, the provisions of Clauses 34.1.5 and 34.1.6 shall not apply in respect of that software licence and, for the avoidance of doubt, LUL shall have no further liability to the Contractor regarding the subject matter of that software licence and the Contractor shall be responsible for obtaining substitute or replacement software. If such software is, or is part of, a Non-Performance Critical IT System then the Contractor shall bear all substitution or replacement costs, however, if such software is, or is part of, a Performance Critical IT System then LUL shall bear all such costs.

34.1.10 The Contractor hereby acknowledges and agrees that it shall provide all other computer systems and related hardware and software and provide such network connections that are required to enable the Services to be provided by the Contractor under this Contract.

### **Effect of Expiry or Termination**

34.2.1 The Contractor and LUL shall meet at least two (2) years prior to the intended expiry of the Contract or, in the case of earlier termination, as soon as practicable after notice to terminate has been given, to use reasonable endeavours to agree an IT exit plan and arrange for an audit to be carried out of the IT Systems being used by the Contractor in the provision of the Services. The IT exit plan shall provisionally identify the IT Systems and determine those IT Systems which are used by the Contractor exclusively in the provision of the Service and which IT Systems are Performance Critical IT Systems as at the date of such IT exit plan (which for the avoidance of doubt, shall not necessarily be the same or similar to those identified as Performance Critical IT Systems as at the Starting Date) and shall set out the process for endeavouring to obtain all necessary third party consents to the licensing, sub-licensing or transfer to LUL of the Performance Critical IT Systems. The costs (including VAT) of such audit and IT exit plan shall be borne by the Contractor, the

Parties agreeing that if a third party is used in preparing the audit and IT exit plan, then the costs (including VAT) shall be included in the £150,000 contribution in Clause 34.2.3. In the event that the Parties cannot agree the IT exit plan referred to in this Clause 34.2, the dispute shall be dealt with in accordance with the Dispute Resolution procedure set out in Schedule 37 (Dispute Resolution).

34.2.2 Subject to Clauses 34.2.3 and 34.2.4, on the Expiry Date the following provisions shall apply:

- (a) all licences or sub-licences granted by LUL pursuant to Clauses 34.1.1, 34.1.2 and 34.1.3 shall terminate;
- (b) LUL shall have the option to purchase at market value plus VAT if applicable the Contractor's interest in all IT Systems, components thereof, documentation and Associated Agreements in the possession of the Contractor and used by the Contractor exclusively in the provision of the Services at the time of such expiry or termination (excluding any licensed to it by LUL) and if such option is exercised such assets will be transferred to LUL or its nominee to the extent that the Contractor has the right to sell the same. Any costs (including VAT) involved in physically moving such assets to LUL shall be borne by LUL;
- (c) the Contractor shall use all reasonable endeavours to obtain, in relation to any IT Systems, components thereof, documentation and Associated Agreements licensed by a person other than LUL to the Contractor, used exclusively in the provision of the Services, and not transferred following the exercise of the option contained in Clause 34.2.2(b), all necessary consents of the relevant licensors to the transfer of such assets to LUL or its nominee. In the event the Contractor is unable to obtain the consents of the relevant licensors within a reasonable time the Contractor and LUL shall agree (or failing agreement the Contract Manager shall acting reasonably determine) whether the Contractor shall continue, with LUL's reasonable assistance, to seek the necessary consents to such transfer or whether LUL and the Contractor should work together to obtain, as soon as is reasonably practicable, a substitute or replacement for such IT System, component thereof, documentation or Associated Agreement. Any costs (including VAT) involved in obtaining any such consents shall be borne by the Contractor. The Contractor shall also be solely responsible for the costs including VAT of arranging the manual entry of the transfer of any data requested by LUL otherwise all other costs associated with the transfer, substitution or replacement shall be borne by LUL;
- (d) in relation to Performance Critical IT Systems not used exclusively by the Contractor in the provision of the Services, the Contractor shall, at its own cost:
  - (i) in respect of hardware components, acquire for LUL or its nominee or provide all reasonable assistance to LUL or its nominee in acquiring duplicate or substitutable hardware; and



- (ii) in respect of software components and documentation, (as part of the Services for which the Availability Charge is paid under Clause 21.1) license LUL or its nominee to use such software and documentation (in the case of the Contractor's proprietary rights) or provide all reasonable assistance to LUL or its nominee in acquiring licences of substitutable or replacement software or documentation (in the case of third party rights); and
  - (iii) in respect of Associated Agreements, provide all reasonable assistance to LUL or its nominee in obtaining similar services; and
- (e) the Contractor shall make available, at its own cost, to LUL or any third party nominated by LUL all information and assistance as is reasonably required by LUL in order to maintain the continuity of Services and ensure a smooth transition of such Services back to LUL or to any third party.

34.2.3 In relation to the Non-Performance Critical IT Systems not used exclusively by the Contractor in the provision of the Services, LUL shall be responsible for all costs (including VAT) arising from obtaining consents or licences from third Parties or acquiring duplicate or substitute systems except that the Contractor shall be responsible for such costs including irrecoverable VAT up to a maximum sum of £150,000 indexed annually on each anniversary of the Starting Date to the most recently published Retail Prices Index over the duration of the Contract. The Parties agree that the maximum sum shall not apply to facilitating data transfer to LUL, for which the Contractor accepts responsibility for all costs (including VAT).

34.2.4 The Contractor shall unless otherwise instructed by LUL continue to provide the Services (or part thereof) on the terms and conditions of this Contract until such time as all the relevant consents and licences have been obtained and all replacement or substitute IT Systems have been acquired by LUL pursuant to Clauses 34.2.2 and 34.2.3 above, subject to a maximum period of 24 months in relation to the SCADA System (or any equivalent replacement system to the SCADA System) and 12 months for all other IT Systems from the Expiry Date (or such other period as is agreed between the Parties).

### **Step In**

34.3.1 In relation to IT Systems and Intellectual Property Rights, LUL's rights of Step In set out in Clause 28.12 shall be modified as follows:

- (a) subject to Clause 34.3.1(b) LUL shall not be entitled to use directly, or appoint a third party to use, the assets comprising the IT Systems or any Intellectual Property Rights to the extent that this would or would be likely to, in the Contractor's reasonable opinion, cause a breach of Contract, a breach of confidentiality (including but not limited to any obligations of confidentiality owed to the Contractor), infringement of any similar third party right or breach of the Contractor's IT security arrangements. In this event, LUL may require a third party agreed between LUL and the Contractor and acting as the

Contractor's agent (*Step In Agent*) to carry out LUL's instructions pursuant to Clause 28.12; and

- (b) in exercising its rights of Step In, LUL, any third party nominee of LUL and any Step In Agent shall agree to comply with the Contractor's reasonable security and safety requirements as notified to it, and any reasonable directions and regulations imposed by the Contractor relating to the protection of the Contractor's business interests or rights of third parties as contemplated by Clause 34.3.1(a).

### **Intellectual Property Rights Indemnity in favour of LUL**

34.4.1 Subject to Clause 34.4.4 the Contractor shall fully indemnify LUL against any action, claim, demand, cost, charge and expense arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Right arising out of the Contract by the provision of the Services (including for the avoidance of doubt, the grant of licences and other rights to LUL under this clause 34) and against all costs and damages which LUL may incur in any actual or threatened proceedings before any court or arbitration or other competent tribunal provided that this indemnity (i) is conditional upon compliance by LUL with Clauses 34.4.2 and 34.4.5 and (ii) shall not apply where any infringement or alleged infringement arises out of the Contractor's use in accordance with this Contract of any Intellectual Property Rights sub-licensed to the Contractor by LUL or is attributable to a failure or refusal by LUL to take the benefit of any licence procured by the Contractor or to use any modified or replaced material provided by the Contractor pursuant to Clause 34.4.3 and (iii) if the action, claim, demand, cost, charge or expense arose from or was incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Right arising out of the sub-license by the Contractor to LUL of Intellectual Property Rights licensed from a third party, the indemnity will only apply to the extent the Contractor has received the benefit of an indemnity from the third party licensor provided that the Contractor shall have used all reasonable endeavours to obtain an indemnity from such third party that shall satisfy the requirements of this clause 34.4.1 (iii).

34.4.2 In the event of any claim being made or action brought against LUL arising out of the matters referred to in Clause 34.4.1 LUL shall promptly notify the Contractor thereof and the Contractor may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom having due regard to LUL's interests. LUL shall not unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation make any admission which might be prejudicial thereto.

34.4.3 In the event of any actual or threatened proceedings (a *Claim*), the Contractor is entitled at its sole expense to:

- (a) secure a royalty free licence authorising LUL to continue to do those acts which would otherwise be an infringement or alleged infringement of the third party's Intellectual Property Rights; or

- (b) modify or replace any allegedly infringing material, without thereby producing a material adverse effect on the substance of them in order to avoid the Claim, or any injunction or court order or award of any arbitration or competent tribunal.

34.4.4 The Intellectual Property Rights indemnity in Clause 34.4.1 shall not apply in respect of any Intellectual Property Rights licensed or sub-licensed to the Contractor pursuant to Clauses 34.1.1, 34.1.2 and 34.1.3.

34.4.5 The Parties shall each give such assistance as the other may reasonably request in bringing any action against, or defending or resisting any Claim brought or made by any person or body arising out of this Contract in respect of any infringement or alleged infringement of any Intellectual Property Rights.

### **Intellectual Property Rights Indemnity in favour of the Contractor**

34.5.1 Save as specifically provided for in Clause 34.1.5, LUL shall fully indemnify the Contractor (and for the purposes of this Clause any authorised contractors or agents of the Contractor or any subcontractor of any contractor of the Contractor shall have the benefit of the indemnity given under this Clause) against any action, claim, demand, cost, charge and expense arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Right in the course of the provision of the Services by the Contractor that arise out of the use or sub-license by the Contractor pursuant to Clauses 34.1.1, 34.1.2 and 34.1.3 of any Intellectual Property Rights and against all costs and damages which the Contractor may incur in any actual or threatened proceedings before any court or arbitration or other competent tribunal provided that this indemnity (i) is conditional upon compliance by the Contractor with Clauses 34.5.2 and 34.5.4 and (ii) shall not apply where any infringement or alleged infringement arises out of LUL's use in accordance with this Contract of any Intellectual Property Rights sub-licensed to LUL by the Contractor or is attributable to a failure or refusal by the Contractor to take the benefit of any licence procured by LUL or to use any modified or replaced material provided by LUL pursuant to Clause 34.5.3 and (iii) if the action, claim, demand, cost, charge or expense arose from or was incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Right arising out of the sub-license by LUL to the Contractor of Intellectual Property Rights licensed from a third party, the indemnity will only apply to the extent LUL has received the benefit of an indemnity from the third party licensor.

34.5.2 In the event of any claim being made or action brought against the Contractor arising out of the matters referred to in Clause 34.5.1, the Contractor shall promptly notify LUL thereof and LUL may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom having due regard to the Contractor's interests. The Contractor shall not unless and until LUL shall have failed to take over the conduct of the negotiations or litigation make any admission which might be prejudicial thereto.

34.5.3 In the event of any actual or threatened proceedings (*a Claim*) LUL is entitled at its sole expense to:

- (a) secure a royalty free licence authorising the Contractor and any authorised agents or contractors of the Contractor to continue to do those acts which would otherwise be an infringement or alleged infringement of the third party's Intellectual Property Rights; or
- (b) modify or replace any allegedly infringing material, without thereby producing a material adverse effect on the substance of them in order to avoid the Claim, or any injunction or court order or award of any arbitration or competent tribunal.

34.5.4 The Parties shall each give assistance as the other may reasonably request in bringing any action against, or defending or resisting any Claim brought or made by any person or body arising out of this Contract in respect of any infringement or alleged infringement of any Intellectual Property Rights.

### **Software**

34.6.1 The Contractor shall use reasonable endeavours to ensure that any Performance Critical IT Systems software or other matter or material of any kind the Intellectual Property Rights in which belong to a third party and which is licensed to the Contractor after the Starting Date for the purposes of its performance of the Contract or otherwise utilised by the Contractor for those purposes by agreement with the owner of such rights shall be licensed or used on such terms that it shall permit LUL or its nominee to use such rights after the Expiry Date or, in the event of LUL exercising its rights under Clause 28.12, for the purposes of operating, maintaining, modifying, repairing, replacing and adjusting the System and continuing any element of the Services and LUL shall be entitled to assign such rights to any nominee or successor for the same purposes. If any costs (including VAT) are to be incurred in securing such rights, LUL shall have the option, in its sole discretion, of not proceeding with such licence. If LUL decides to proceed all costs (including VAT) shall be borne by LUL. This provision shall not apply to proprietary or standard software which may be purchased and replaced by LUL without the specific consent of the third party owner of such software.

### **Source Code**

34.7.1 The Contractor shall use its reasonable endeavours to obtain and deposit the source code (with full explanatory notes) and functional specification (*Materials*) of all Performance Critical IT Systems software owned by or licensed to the Contractor after the Starting Date and used in the performance of its obligations under this Contract on an annual basis (other than any licensed or sub-licensed to the Contractor by LUL) with a reputable escrow agent and on terms which are reasonably acceptable to LUL (including a term that they are to be released to HMRI if HMRI requests information from LUL in relation to its investigation of any accident or incident or any other matter and which furthermore contains a provision substantially in the form

of Schedule 34.7.1). This provision shall not apply to any software which either LUL may purchase or replace without the specific agreement of the owner of that software or which the Contract Manager designates by use of the Concession Procedure.

34.7.2 The Contractor shall use its reasonable endeavours to ensure that each escrow agreement entered into by the Contractor with an escrow agent acting on behalf of any supplier of Performance Critical IT Systems software contains the following clause:

“The Contractor hereby gives notice to the Escrow Agent of the charge, assignment and/or other security interests granted by it to The Royal Bank of Scotland plc as security trustee (the *Security Trustee*) on behalf of certain third party lenders (the *Lenders*) over its right, title, benefit and interest in and to certain agreements to which it is a party in connection with the London Underground Power PFI Project, including its rights under this Agreement. Accordingly, the Escrow Agent and the Contractor agree that upon written notice to the Escrow Agent from the Security Trustee of the enforcement of the Lenders’ security then the Security Trustee or its nominee shall be entitled to exercise all rights of the Contractor under, pursuant to and/or in connection with this Agreement and until the Security Trustee notifies the Escrow Agent in writing to the contrary the Escrow Agent shall owe its obligations to and act upon the instructions of the Security Trustee in place of and to the exclusion of the Contractor. The Escrow Agent further agrees that upon any novation of the Contractor’s interest in the Power Service Contract and related agreements to a third party (a *Substitute Entity*), this Agreement will automatically be novated to such Substitute Entity in connection therewith.”

## **Millennium Compliance**

34.8.1 Subject to:

- (a) the Contractor’s implementation of any deliverables (which shall include the provision of staff) (the reasonable cost of which shall be to LUL’s account) required for the Millennium upgrade programme provided by LUL when requested by LUL in accordance with the terms of the Millennium upgrade programme; and
- (b) the Contractor providing necessary access in accordance with the terms of this Contract and the Project Agreements,

it will be an LUL Dependency that the System or any component thereof and any IT System or component thereof transferred to or licensed or sub-licensed to the Contractor by LUL or which the Contractor is authorised to use as agent of LUL pursuant to this Contract will be Millennium Compliant. The Contractor shall act as agent for LUL for the receipt of the deliverables associated with the appropriate Millennium upgrade programme provided that any failure to implement a deliverable (including provision of staff) or to provide access in accordance with this Clause 34.8.1 shall only disapply the LUL Dependency in this Clause 34.8.1 in

relation to the work to be implemented pursuant to that deliverable or following provision of such access.

34.8.2 Where the Contractor has identified that the System or any component thereof or an IT System or component thereof will be replaced either before or after the Millennium as part of its obligations under this Contract, the Contractor undertakes that such IT System will be Millennium Compliant. Where Non-Performance Critical IT Systems have not been made Millennium Compliant by the Contractor, the Contractor shall provide alternative means of providing the services relating to these systems in an alternative manner which does not disrupt the Services.

## **Intellectual Property Rights**

### **LUL's Rights to IP developed by or on behalf of the Contractor**

34.9

- (a) All Developed IP and Contractor IP shall as between the Parties be owned by and vest in the Contractor.
- (b) The Contractor hereby grants (as part of the Services for which the Availability Charge is paid under Clause 21.1 and on the basis that no further payment is made for the licence) to LUL a non-exclusive, perpetual, irrevocable, royalty free and transferable licence to use, sub-licence, develop, modify, copy and adapt the Developed IP and Contractor IP for any and all purposes LUL deems fit provided that such purposes relate at all times to the provision of services by or to LUL, its agent or contractors on the Underground Network and/or compliance with the statutory obligations of LUL (which right and licence shall include a right to use any records or documentation and to take copies thereof and provide such records or documentation to other contractors or consultants of LUL).
- (c) As soon as reasonably practicable from the Supplemental Deed Date the Contractor shall report to LUL the creation of any Developed IP (including Developed IP created but not notified or licensed in writing prior to the Supplemental Deed Date) and shall upon request provide copies of the same to LUL. The Contractor shall seek all reasonable and necessary protection in respect of such Developed IP and shall take all such reasonable and necessary steps to protect such Developed IP including but not limited to making applications for patents or design rights, diligently prosecuting any such applications, responding to oppositions filed by third parties. The Contractor shall keep LUL informed of all matters relevant to the protection of the Developed IP including but not limited to keeping LUL advised as to all developments with respect to any such protection and applications.

### **Third Party IP**

34.10 From the Supplemental Deed Date, the Contractor shall not:

- (a) use any Third Party IP in fulfilling its obligations in relation to this Contract or
- (b) incorporate Third Party IP into Developed IP or Major Power Works IP or
- (c) cause the full and proper enjoyment of Developed IP, Major Power Works IP or Services to be dependent upon, any Third Party IP or Subcontractor Developed IP,

without:

- (i) procuring a licence for LUL to use the Third Party IP and/or Subcontractor Developed IP (as the case may be) on the same terms as the licence referred to in clause 34.9(b) or on such less onerous terms as LUL may direct; or
- (ii) provided the Contractor has used all reasonable endeavours to procure a licence for LUL under (a) above and has failed to do so within a reasonable period of time or such longer time as LUL may direct in writing at LUL's cost, and provided that the Third Party IP and/or the Subcontractor Developed IP (as the case may be) is not used or to be used in connection with and does not form part of the capital works component of (including modelling and design aspects of) any Variation, securing a licence for LUL to use the Third Party IP and/or Subcontractor Developed IP (as the case may be) on terms which are equivalent to those secured by the Contractor, such rights (and all corresponding obligations) of the Contractor having been fully disclosed to LUL prior to any such use, incorporation or causation by the Contractor; or
- (iii) provided the Contractor has used all reasonable endeavours to procure a licence for LUL under (a) and (b) above and has failed to do so within a reasonable period of time or such longer time as LUL may direct in writing at LUL's cost and provided that the Third Party IP and/or the Subcontractor Developed IP (as the case may be) is not used or to be used in connection with and does not form part of the capital works component of (including modelling and design aspects of) any Variation, securing a right to novate the Contractor's licence and/or right to such Third Party IP and/or Subcontractor Developed IP (as the case may be) to LUL on the Expiry Date, the terms of such licence and/or right having been fully disclosed to LUL prior to any such use, incorporation or causation by the Contractor, and if this Clause 34.10(c) applies, the Contractor shall do all things to procure, at LUL's written request (acting reasonably), that the such licence and/or right is novated to LUL without charge on the Expiry Date.

34.11A In the event that the Contractor fails to procure the licence required pursuant to Clause 34.10(i) or (ii) the Contractor shall, upon LUL's request, provide evidence to LUL that the Contractor has used or has been using all such reasonable endeavours.

**34.11B Major Power Works IP**

- (a) All Contractor MPW IP shall be owned by and vest in the Contractor. All Subcontractor MPW IP shall be owned by and vests in the relevant subcontractor.
- (b) The Contractor hereby grants or shall procure each MPW Subcontractor grants (as part of the Services for which the Availability Charge is paid under Clause 21.1 and on the basis that no further payment is made for the licence) to LUL a non-exclusive, perpetual, irrevocable, royalty free and transferable licence to use, sub-licence, develop, modify, copy and adapt the Major Power Works IP for any and all purposes LUL deems fit provided that such purposes relate at all times to the provision of services by or to LUL, its agent or contractors on the Underground Network and/or compliance with the statutory obligations of LUL (which right and licence shall include a right to use any records or documentation and to take copies thereof and provide such records or documentation to other contractors or consultants of LUL).
- (c) From the Supplemental Deed Date the Contractor shall as soon as reasonably practicable report to LUL the creation of any Contractor MPW IP (including Contractor MPW IP created but not notified or licenced in writing prior to the Supplemental Deed Date and shall upon request provide copies of the same to LUL. The Contractor shall seek all reasonable and necessary protection in respect of such Contractor MPW IP and shall take all such reasonable and necessary steps to protect such Contractor MPW IP including but not limited to making applications for patents or design rights, diligently prosecuting any such applications, responding to oppositions filed by third parties. The Contractor shall keep LUL informed of all matters relevant to the protection of Contractor MPW IP including but not limited to keeping LUL advised as to all developments with respect to any such protection and applications.
- (d) From the Supplemental Deed Date, the Contractor shall procure that MPW Subcontractors shall:
  - (i) as soon as reasonably practicable report to the Contractor and LUL the creation of any Subcontractor MPW IP (including Subcontractor MPW IP created but not notified or licenced in writing prior to the Supplemental Deed Date) and shall upon request provide copies of the same to the Contractor and LUL;
  - (ii) seek all reasonable and necessary protection in respect of such Subcontractor MPW IP and shall take all such reasonable and necessary steps to protect such Subcontractor MPW IP including but not limited to making applications for patents or design rights, diligently prosecuting any such applications, responding to oppositions filed by third parties; and
  - (iii) keep the Contractor and LUL informed of all matters relevant to the protection of Subcontractor MPW IP including but not limited to



keeping the Contractor and LUL advised as to all developments with respect to any such protection and applications.

### **Use and Sharing of Information and Know-How**

34.11C Subject to Clause 41 (Advertising and Confidentiality), the Contractor shall share information and know-how relating to activities relating to the Key Objective with LUL and with third parties as directed by LUL.

34.12 The Contractor shall have no right under this Contract to use any LT Corporate IPR except as expressly authorised in writing by LUL prior to such use.

34.13 Notwithstanding any other provisions of this Agreement, where Third Party IP incorporates or is supported by Proprietary Material:

- (a) the Contractor shall notify LUL of the existence of the Proprietary Material and the relevant Third Party IP;
- (b) subject to the Contractor complying with Clause 34.13(a), the licence to use such Third Party IP procured pursuant to Clause 34.10 shall not include, without the relevant third party's prior written consent, a right for LUL to:
  - (i) develop, modify or adapt such Proprietary Material;
  - (ii) disclose such Proprietary Material to its contractors or any other third party; or
  - (iii) grant any sublicense or transfer its licence to its contractors or any other third party to the Proprietary Material component of the Third Party IP.

34.14 Notwithstanding any other provisions of this Agreement, where the Contractor is procuring, pursuant to Clause 34.10(c), rights to Subcontractor Developed IP, where such Subcontractor Developed IP incorporates or is supported by Proprietary Material:

- (a) the Contractor shall notify LUL of the existence of the Proprietary Material and the relevant Subcontractor Developed IP;
- (b) subject to the Contractor complying with Clause 34.14(a) the licence to use such Subcontractor Developed IP procured pursuant to Clause 34.10(c) shall not include without the relevant third party's prior written consent, a right for LUL to:
  - (i) develop, modify or adapt such Proprietary Material;
  - (ii) disclose such Proprietary Material to its contractors or any other third party; or

- (iii) grant any sublicense or transfer its licence to its contractors or any other third party to the Proprietary Material component of the Subcontractor Developed IP.

34.15 Where LUL has exercised its rights in respect of Subcontractor Developed IP pursuant to the wording of Clauses 34.9 and 34.10 (as then in effect) prior to the Supplemental Deed Date, the restrictions of Clause 34.14 shall not apply.

34.16 Save as provided otherwise in this Clause 34, the Parties agree that Clause 34.9 and 34.10 as in effect prior to the Supplemental Deed Date shall continue to apply to Subcontractor Developed IP.

#### **SUBCONTRACTING, MAJOR ASSET ACQUISITION AND KEY PERSONNEL**

35.1 Without prejudice to Clauses 30.22A to 30.22N, the Contractor shall obtain the prior written consent of the Contract Manager (which shall not be unreasonably withheld or delayed) before:

- (a) appointing any subcontractor (other than PADCo under the New Assets Contract or the construction joint venture under the Construction Contract) to perform the whole or any part of the Services; provided that no consent will be required where the subcontractor appears in the list of subcontractors in Schedule 35.1 and is appointed for a category of work indicated for that subcontractor therein. The Schedule will be reviewed annually, subject to LUL's consent, (not to be unreasonably withheld);
- (b) other than in relation to the Project Agreements and Key Project Contracts, entering into any single contract for the purchase by lease or otherwise of equipment which will form part of the System, whose aggregate annualised value exceeds £5 million (excluding VAT) (indexed to RPI as from the Starting Date) or whose duration exceeds five years; and
- (c) appointing any Key Personnel.

35.2 The appointment of a subcontractor shall not relieve the Contractor of the responsibility for ensuring that the Services to be provided under the Project Agreements meet the requirements of the Project Agreements.

35.3 In any Variation Notice or in any Final Implementation Details unless the Contractor agrees otherwise, LUL shall not be able to request, either by name or by job title a specific individual to work on a Variation.

35.4 Prior to appointing or otherwise allocating any staff or any other person (including without limitation the Contractor's employees or other staff, agents, consultants and Subcontractors or the employees or other staff, agents, consultants, subcontractors of any Subcontractors and of their subcontractors' respective subcontractors) to perform the function of a project manager or a manager reporting directly to the project manager in respect of part or all of a Variation, the Contractor shall notify LUL in writing of the identity of such person and the proposed activities that the Contractor proposes such person carry out in respect of the Variation. LUL

(acting reasonably) shall be entitled to raise objections in respect of any person proposed by the Contractor and shall notify the Contractor of any such objection in writing as soon as is reasonably practicable and in any event within 15 Working Days of receipt by it of notice given by the Contractor pursuant to this Clause 35.4 together with reasons (in reasonable detail) as to why such person is not suitable to carry out the proposed activities. Where LUL has raised objections to a person pursuant to this Clause 35.4 the Contractor shall not, unless otherwise agreed with LUL, appoint or otherwise allocate such person to work on any aspect of a Variation and shall propose an alternative person to carry out the proposed activities.

#### **CHANGE OF OWNERSHIP/CONTROL OF THE CONTRACTOR OR PADCO**

36.1 The Contractor shall inform LUL immediately of any Change of Ownership and provide such information as LUL reasonably requires in relation to such Change of Ownership including, inter alia, any information that the Contractor or PADCo may have in relation to any further Changes of Ownership.

36.2 The Contractor shall obtain LUL's written approval (which may be withheld in LUL's absolute discretion) prior to any Change of Ownership as a result of which (whether alone or when taken with any other Change of Ownership) EDF Energy (South East) plc ceases to hold directly or indirectly 51% or more of the issued shares (which carry the right to vote in general meetings of the ordinary shareholders) of the Contractor.

36.3 No Change of Ownership by EDF Energy (South East) plc or any company through which EDF Energy (South East) plc holds the issued share capital of the Contractor or of PADCo shall result in any of the issued share capital of the Contractor or of PADCo being transferred to a transferee in respect of which in the reasonable opinion of LUL (and so that LUL shall notify EDF Energy (South East) plc within 15 days of such notification on which of Clauses 36.3(a), (b), (c), (d) or (e) LUL is seeking to rely and in respect of Clauses 36.3(a), (b) or (c) the evidence on which LUL relies. In the event that LUL is seeking to rely on Clauses 36.3(d) or (e) LUL shall provide reasonable grounds for its assertions of the likely effect upon the Contractor's abilities to perform the Services within 30 days of the original notification from EDF Energy (South East) plc):-

- (a) the shareholders of the transferee have passed a resolution for the winding up of the transferee other than for the purposes of an amalgamation or reconstruction or the Court has made an order for the winding up of the transferee or a provisional liquidator in a proceeding for the winding up of the transferee has been appointed which appointment has not been set aside or stayed within 30 days or a receiver or administrative receiver has been appointed over all or any of the transferee's assets which appointment has not been discharged within 30 days or an administrator or similar official has been appointed over all or any of the transferee's assets;
- (b) anything analogous to, or having a substantial similar effect to, any of the events specified in Clause 36.3(a) has occurred in any jurisdiction;

- (c) the transferee has been convicted of a serious and material criminal offence in relation to companies;
- (d) the transferee is subject to any material regulatory or disciplinary proceedings which if found against the prospective transferee are likely to have a material effect on the Contractor's ability to perform the Services as a result of the transferee becoming a shareholder of the Contractor or of PADCo; or
- (e) the transferee is in the process of bringing a material claim against LUL or LUL is in the process of bringing a material claim against the transferee which if successful is likely to have a material effect on the Contractor's ability to perform the Services as a result of the transferee becoming a shareholder of the Contractor or of PADCo.

36.4 No Change of Ownership shall result in any of the issued share capital of the Contractor or of PADCo previously held by EDF Energy (South East) plc or any company through which EDF Energy (South East) plc holds the issued share capital of the Contractor or of PADCo after completion of the Initial Works being transferred or otherwise disposed of to a transferee within any of Clauses 36.3(a), (b), (c), (d) or (e).

36.5 The Contractor shall obtain LUL's written approval prior to any Change of Control of the Contractor by EDF Energy (South East) plc or any company through which EDF Energy (South East) plc holds the issued share capital of the Contractor or of PADCo such approval not to be unreasonably withheld or delayed. LUL shall not be entitled to refuse such approval unless it can demonstrate that, following such Change of Control, the Contractor does not have (or have available to it) the legal, financial and technical arrangements to enable it to perform its obligations under this Contract.

36.6 The Contractor shall obtain LUL's written approval (such approval not to be unreasonably withheld or delayed) prior to any transfer before completion of the Initial Works by any of EDF Energy (South East) plc, ABB Holdings Limited or Balfour Beatty plc (formerly known as BICC plc) or any company through which any of EDF Energy (South East) plc, ABB Holdings Limited or Balfour Beatty plc holds the issued share capital of PADCo (the *PADCo Shareholders*) other than to another PADCo Shareholder in accordance with Clause 36.7 below or to a transferee which is a subsidiary as defined in Section 736 of the Companies Act 1985 (as it may have been, or may from time to time be amended, modified or re-enacted) of the transferor, of any of the Initial Shareholder Equity in PADCo or Initial Shareholder Debt (other than the subordinated debt) in PADCo.

36.7 The Contractor shall obtain LUL's written approval (such approval not to be unreasonably withheld or delayed) prior to any transfer before completion of the Initial Works by any of the PADCo Shareholders to another PADCo Shareholder of more than 10 percentage points of the Initial Shareholder Equity in PADCo or 10 percentage points of the Initial Shareholder Debt (other than the subordinated debt) in PADCo.

## **DISPUTE RESOLUTION**

37. The dispute resolution procedure set out in Schedule 37 (Dispute Resolution) shall apply.

## **RECORDS**

38.1 Without prejudice to any legal or regulatory requirement to maintain and retain records of any matters the Contractor shall, and shall procure that its subcontractors and agents shall, maintain a true and correct set of records including personnel records pertaining to all activities relating to their performance of this Contract and transactions related thereto (including without limitation the Assets). The Contractor agrees and shall procure that its subcontractors and agents agree, to retain all records concerning the Contract for six years (or in relation to the Assets and the IT Assets, such period as corresponds to the actual life of the Assets and the IT Assets plus 6 years), and such other records for a period of not less than three years after completion of performance of the relevant obligations under this Contract. Save as otherwise provided herein (including pursuant to Clauses 18.28 and 41), LUL shall have the right to audit and to take copies of any and all such records of the Contractor.

38.2 LUL shall maintain and provide such information to the Contractor that is reasonably required by the Contractor to exercise its rights under the Contract or perform its obligations under the Project Agreements including information in respect of liquidated damages (as more specifically defined in Schedule 20.6 (Liquidated Damages)); any Superior Lease or Superior Agreement as referred to in any Lease, Licence or Agreement for Lease or Licence, or any other document relevant to the Contractor's rights in respect of the Properties; records in respect of the tests of maintenance of the LUL Distribution System and/or Underground Network under Clause 6.9; the information described under paragraph 2.2.2.1 of Schedule 5.1 (Performance Specification) and information relating to PAYE and National Insurance obligations in respect of Transferred Employees.

38.3 The Contractor shall be responsible for providing, maintaining and updating all documentation directly related to the Services provided under this Contract and necessary for LUL to fulfil the LUL Statutory Duties.

## **WRONGFUL PAYMENTS**

39. No payment made by a Party hereunder, shall prevent that Party recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid by mistake of law or of fact.

## **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

40.1 The Contractor shall not, and shall use all reasonable endeavours to procure that its subcontractors and agents shall not, offer or give or agree to give to any person in the employ of LUL or subcontractor or agent of LUL any gift or consideration of any kind as inducement or reward for doing or for having done or forborne to do any

act or showing in favour or forbearing to show disfavour to any person in relation to this Contract, the New Assets Contract and the Construction Contract.

40.2 The Contractor represents to LUL that:

- (a) the Contractor has not offered or agreed to give any gift or consideration of any kind as an inducement or reward for doing or having done or forborne to do any act in relation to the obtaining or execution of this Contract, New Assets Contract and the Construction Contract; and
- (b) in connection with the obtaining or execution of this Contract, New Assets Contract and the Construction Contract, no commission has been paid or agreed to be paid by the Contractor or to its knowledge on its behalf.

40.3 The Contractor shall not, and shall use all reasonable endeavours to procure that its subcontractors and agents shall not favour employees, officers or agents of LUL with gifts or entertainment of significant cost or value.

40.4 Nothing contained in Clauses 40.1, 40.2 or 40.3 shall prevent an employer from paying any proper commission or bonus to its employees within their agreed terms of employment or providing legitimate corporate hospitality in accordance with an agreed protocol.

40.5 Subject as provided in Clause 40.8, any breach of Clauses 40.1 or 40.2 by the Contractor or the commission of any offence by the Contractor or any of its directors, employees, agents, Key Subcontractors (or an employee of a Key Subcontractor) or subcontractors under the Prevention of Corruption Acts 1889 to 1916 (the **Corruption Acts**) in relation to this Contract, New Assets Contract and the Construction Contract shall entitle LUL to act as follows:

- (a) in respect of a breach of Clause 40.1 arising from the act of the chief executive of the Contractor or any director or manager of the Contractor in the tier below director level reporting directly to a director or the chief executive (a **Senior Employee**) to terminate this Contract (such termination having been approved by a resolution of the directors of LUL) if as a result of such breach there is a conviction on indictment against any Senior Employee of the Contractor or against the Contractor or any agent instructed by a Senior Employee to commit such act under the Corruption Acts;
- (b) subject to LUL being entitled to exercise and exercising its rights to terminate under Clause 40.5(a) to terminate any other agreement entered into between LUL and the Contractor in relation to this Project;
- (c) without prejudice to its other rights under this Clause 40 if a conviction on indictment against any director or the chief executive of the Contractor under the Corruption Acts has been obtained and such conviction is not the subject of appeal then LUL shall (without prejudice to its other rights under this Clause 40) be entitled to require the Contractor to dismiss the chief executive or director;

- (d) without prejudice to its other rights under this Clause 40 if a conviction on indictment against any employee of the Contractor under the Corruption Acts has been obtained and such conviction is not the subject of appeal, then LUL shall be entitled to require the Contractor to dismiss such employee;
- (e) without prejudice to the other rights under this Clause 40, LUL shall be entitled to require the Contractor to dismiss any director or the chief executive or any employee who reports directly to the chief executive or a director of the Contractor who was aware of any act of corruption which gave rise to any conviction not the subject of an appeal referred to in this Clause 40.5 and who did not use his best endeavours to stop such act of corruption;
- (f) without prejudice to its other rights under this Clause 40 LUL shall be entitled to require the Contractor to take such actions (including, if applicable, dismissal) as accords with its then current applicable disciplinary procedure against any employee of the Contractor who has been responsible for any act on the part of the Contractor which constitutes a breach of Clauses 40.1 or 40.2;
- (g) LUL shall be entitled to recover from the Contractor:
  - (a) the amount of any loss (excluding Consequential Loss) resulting from such breach;
  - (b) the amount or value of any such gift, consideration or commission;
- (h) in respect a breach of Clause 40.1 arising from the commission of any offence by a Key Subcontractor (or an employee of that Key Subcontractor not acting independently of that Key Subcontractor) then LUL may give notice to terminate this Agreement with immediate effect, unless within 20 Working Days of receipt of such notice the Contractor has served notice to terminate the relevant Key Subcontract and, if necessary, procures, within a reasonable period, the performance by another person of such part of the work carried out by that Key Subcontractor; and
- (i) in respect of a breach of Clause 40.1 arising from the commission of any offence by an employee of a Key Subcontractor acting independently of that Key Subcontractor, then LUL may give notice to terminate this Agreement with immediate effect unless within 20 Working Days of receipt of such notice the Key Subcontractor terminates the employee's involvement with that Key Subcontract or any other Key Subcontract with which that employee is involved and, if necessary, procures the performance by another person of such part of the work carried out by that employee.

40.6 In exercising its rights or remedies under this Clause 40 LUL shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the acts prohibited

under this Clause 40 and any actions of the Contractor pursuant to Clauses 40.5 and 40.7; and

- (b) give all due consideration, where appropriate to action other than termination of this Contract under Clause 40.5(a) including (but not limited to) requiring the Contractor to take the action set out in Clause 40.5(c);

40.7 Subject to the provisions of Clause 40.5, in the event that LUL or any director of the Contractor (other than any director alleged to have taken an action in breach of Clause 40.1 or 40.2) becomes aware of or reasonably believes that there has been or there is continuing a breach of Clauses 40.1 or 40.2 by the Contractor or the commission of any offence by the Contractor or any of its directors, employees, agents, Key Subcontractors (or an employee of a Key Subcontractor) or subcontractors under the Corruption Acts in relation to this Contract, the New Assets Contract or the Construction Contract each Party shall notify the other Party and:

- (a) the Contractor shall:
  - (i) investigate with the assistance of LUL the existence of any action by its directors, employees, agents or subcontractors which would give rise to a breach of Clauses 40.1 or 40.2 or give rise to an offence under the Corruption Acts in relation to this Contract, the New Assets Contract or the Construction Contract;
  - (ii) promptly and with the assistance of LUL conduct an investigation into the facts giving rise to a breach of Clauses 40.1 or 40.2 or the commission of the offence under the Corruption Acts and the surrounding circumstances and the effect and future effect on the Contract, such investigation to be completed (to the extent consistent with the terms and conditions of employment of the relevant employee) within 14 days of the commencement of such investigation and promptly provide LUL with the results of such investigation;
  - (iii) if the investigation referred to in (i) above gives rise to a reasonable belief by the Contractor that there has been or there is continuing to be a breach of Clauses 40.1 or 40.2 by the Contractor or the commission of any offence by the Contractor or any of its directors or employees under the Corruption Acts immediately remove the director or employee concerned from any involvement with the provision of Services under the Contract;
  - (iv) consult with LUL the action to be taken to prevent any further occurrences and also the action required (if any) to mitigate any adverse effect on the Contract; and
  - (v) after consultation with LUL as described in (iv) above prepare a plan within 14 days detailing such actions which shall be implemented within such period as agreed with LUL;



- (b) LUL shall investigate and take appropriate action with regard to which of the employees or directors, agents or subcontractors of LUL has been involved with the Contractor or its employees or directors or subcontractors such as to give rise to a breach by the Contractor of Clauses 40.1 or 40.2 or the commission of any offence by the Contractor or any of its directors or employees under the Corruption Acts and shall consult with the Contractor in respect of the action to be taken in respect of such employee, director, agent or subcontractor, the action required to mitigate any adverse effect on the Contractor and/or LUL and to prevent any further occurrences.

40.8 If any of the CJV under the Construction Contract or PADCo through its own acts commits a breach of Clause 20A of the Construction Contract or Clause 34 of the New Assets Contract, the Contractor, in exercising its rights or remedies in respect of that breach, shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the breach; and
- (b) give due consideration, where appropriate, to action other than termination of the relevant subcontract, including (but not limited to) requiring the relevant subcontractor to take such actions (including if applicable, dismissal) as accords with its then current applicable disciplinary procedure against any employee of the relevant subcontractor who has been responsible for the breach.

40.9 Any dispute relating to this Clause 40 may be referred by either party to the disputes resolution procedure set out in Schedule 37 (Dispute Resolution) and LUL shall not be entitled to terminate this Contract pursuant to Clause 40.5 until any such dispute has been agreed or determined.

40.10 If LUL terminates this Contract pursuant to Clause 40.5(a) the provisions of Clause 28.9(n) shall apply.

40.11 The Contractor shall put in place procedures requiring each of its directors and employees to certify on an annual basis that he/she has not offered to give or agreed to give to any person in the employ of LUL any gift, or entertainment of significant value, or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act or showing favour of forbearing to show disfavour to any person in relation to this Contract, the Construction Contract and the New Assets Contract.

40.12 Following any conviction of a director or employee of an offence under the Corruption Acts the Contractor will increase the monitoring of the acts of the directors and employees.

40.13 LUL shall have the right to audit any and all such records necessary to confirm compliance with Clauses 40.1 and 40.3 at any time during performance of this Contract and during the 3 year period following completion of such performance.

40.14 The provisions of this Clause 40 shall not apply to any employee of the Contractor who is a Transferred Employee if and to the extent that its provisions conflict with the terms and conditions of his or her employment as at the Starting Date.

#### **ADVERTISING**

41.1 The Contractor and PADCo shall not (directly or indirectly) without the prior consent in writing of LUL:

- (a) advertise or announce that it is carrying out this Contract for LUL such consent not to be unreasonably withheld (provided that in the case of a mere statement that the Contractor is counterparty to this Contract, such consent shall be deemed to be granted);
- (b) use the Properties for the purpose of advertising; or
- (c) give or allow to be given interviews to the press, radio or television or take part in programmes or presentations or seminars concerning this Contract or on any matter relating thereto (such consent not to be unreasonably withheld).

#### **FREEDOM OF INFORMATION AND CONFIDENTIALITY**

41.2

- (a) The parties agree that provisions of this Contract and each Project Agreement shall, subject to sub-paragraph (b) and (c) below, not be treated as confidential information and may be disclosed without restriction.
- (b) Sub-paragraph (a) above shall not apply to provisions of this Contract or a Project Agreement designated as Commercially Sensitive Information in Schedule 41.2 (Commercially Sensitive Information) to this Contract which shall, subject to Clause 41.3 below, be kept confidential for the periods specified.
- (c) Each party shall, subject to Clause 41.3, keep confidential all Commercially Sensitive Information and any Personal Information received by it from the other Party and relating to this Contract, a Project Agreement or the Project and shall use all reasonable endeavours to prevent its employees and agents from making any disclosure to any person of any such Commercially Sensitive Information or Personal Information.

41.3 Clause 41.2 (b) and (c), shall not apply to any information that is:

- (a) already in the public domain at the time of its disclosure other than by breach of this Clause;
- (b) disclosed to any party's professional advisers (including lawyers, auditors, accountants and technical consultants) or any of its employees, agents or

subcontractors, in each case as are required in the course of their duties to receive and consider the same for the purposes of the Project or the enforcement or preservation of any rights under this Contract;

- (c) required to be disclosed to the extent required by any applicable Law, the regulations of any recognised stock exchange or by an order of a court or other tribunal of a competent jurisdiction;
- (d) provided to the Finance Parties (as defined in the Common Terms Agreement) or to any actual or potential lenders and their agents and representatives or trustees or to any tax authority in connection with the tax affairs of the disclosing party;
- (e) provided to the original Parent Company Guarantor and actual or potential shareholders (and their respective parent companies) of the Contractor (and their respective professional advisers (including lawyers, auditors and accountants)) in each case as are required in the course of their duties to receive and consider the same for the purposes of the Project or the enforcement or preservation of any rights under this Contract;
- (f) provided by LUL to the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the government of the United Kingdom, Transport for London (or any successor body), the Mayor of London, the Greater London Authority (or any successor body);
- (g) provided by LUL in connection with the implementation of the LUL project known as PPP and announced by the Deputy Prime Minister on 20 March 1998 to any actual or potential tenderer (and their respective professional advisers (including lawyers, auditors, accountants and technical consultants)) and LUL's professional advisers (including lawyers, auditors, accountants and technical consultants) or any of its employees or agents or Her Majesty's Government and a copy of this Contract may be disclosed provided that the parties agree in good faith within two months the form in which the Contract will be disclosed to protect each party's commercial confidentiality (such reasonable and properly incurred costs incurred by the Contractor in relation to the provision of such information by LUL to be for LUL's account) provided that any person to whom a copy of this Contract is to be disclosed shall give a confidentiality undertaking to the supplier in the terms outlined in this Clause 41;
- (h) (without prejudice to the generality of Clause 41.3(c)) required for the purposes of compliance with the FOI Legislation; and

41.3A Prior to any disclosure of any Bidding IP by LUL, its employees, agents and contractors to any prospective third party bidder for the carrying out of Third Party Works or to be engaged as a successor to the Contractor following the Expiry Date. LUL shall procure that such third party enters into a Third Party Confidentiality Agreement.

41.3B The Contractor shall disclose to any prospective third parties bidding to carry out any element of a Variation tendered pursuant to Clause 23 all Bidding IP in a timely and equitable manner so as to ensure that full, proper and timely bids may be made by all third parties and so as not to disadvantage any third party in comparison with any Contractor Affiliates provided that such third party enters into a Third Party Confidentiality Agreement.

41.3C Prior to the disclosure by LUL of any Intellectual Property Rights that form part of any Third Party Works to the Contractor the Contractor shall sign a Contractor Confidentiality Agreement.

41.4 Each party shall use all reasonable endeavours to ensure that any of its directors, employees, servants, agents or other persons to whom it has given any Commercially Sensitive Information or Personal Information shall hold the same in confidence and shall not, subject to Clause 41.3, publish or disclose the same.

41.5 The Contractor acknowledges that LUL is subject to the requirements of the FOI Legislation and shall, subject to Clauses 41.6 to 41.15, facilitate LUL's compliance with its Information disclosure requirements pursuant to the same in the manner provided for Clauses 41.6 to 41.15.

41.6 Where LUL receives a Request for Information in relation to Information that is not already in the public domain that the Contractor is holding on its behalf and which LUL does not hold itself LUL shall provide a copy of the Request for Information that it receives to the Contractor as soon as reasonably practicable after receiving a Request for Information and the Contractor shall:

- (a) provide LUL with a copy of all such Information in the form that LUL requires as soon as practicable and in any event within 7 Working Days (or such other period as the Parties acting reasonably may agree) of LUL's request; and
- (b) provide all necessary assistance as reasonably requested by LUL in connection with any such Information, to enable LUL to respond to a Request for Information within the time for compliance set out in the relevant section or regulation of the FOI Legislation.

41.7 Following notification under Clause 41.6, and up until such time as the Contractor has provided LUL with all the Information requested pursuant to Clause 41.6(a), the Contractor may make representations to LUL as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that LUL shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOI Legislation;
- (b) whether Information is to be disclosed in response to a Request for Information; and

in no event shall the Contractor respond directly, or allow its subcontractors (including Key Subcontractors) to respond directly, to a Request for Information unless expressly authorised to do so by LUL.

41.8 NOT USED.

41.9 The Contractor shall transfer to LUL any Request for Information received by the Contractor as soon as practicable and in any event within 5 Working Days of receiving it.

41.10 The Contractor acknowledges that any lists provided by it listing or outlining Commercially Sensitive Information, are of indicative value only and that LUL may nevertheless be obliged to disclose Commercially Sensitive Information pursuant to the provisions of the FOI Legislation.

41.11 In the event of a request from LUL pursuant to clause 41.6 above, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform LUL of the Contractor's estimated costs of complying with the request to the extent these could be taken into account under the FOI Legislation if incurred by LUL. Where such costs (either on their own or in conjunction with LUL's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") LUL shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request.

41.12 Where it does require the Contractor to comply with the request pursuant to Clause 41.11 the 7 Working Days period for compliance specified under Clause 41.6(a) shall be extended by such number of additional days for compliance as LUL is entitled to under the FOI Legislation. In such case, LUL shall notify the Contractor of such additional days as soon as practicable after becoming aware of them.

41.13 LUL shall reimburse the Contractor for such reasonable and documented costs as the Contractor incurs in complying with a request from LUL pursuant to Clause 41.6.

41.14 Without prejudice to Clause 41.15, LUL shall use reasonable endeavours to consult the Contractor before disclosing Information under the FOI Legislation concerning the Contractor or the Project.

41.15 The Contractor acknowledges that (notwithstanding the provisions of Clause 41.2 and 41.14) LUL may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOI Legislation to disclose Information concerning the Contractor or the Project:

(a) in certain circumstances without consulting with the Contractor; or

- (b) following consultation with the Contractor and having taken its views into account,

provided always that where (a) above applies LUL shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

## **INDEXATION**

### **Withdrawal of index**

42.1 If any index, any of the publications or the information derived from any such publication and referred to in this Contract, including Clauses 23A, 31 and 32, Schedules 20.6 (Liquidated Damages), 21.3 (Availability Charge Indexation Formula) ceases to be published, then such alternative index or publication or information which the Parties agree produces as nearly as possible the same result or gives the same information shall be substituted therefor, and if the reference date used in the compilation of any such index or information shall change the figure taken to be shown in such index or information shall be the figure which would have been shown in the index or information if the original reference date had been retained.

### **Change in the basis of index**

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

### **Reference to Dispute Resolution**

42.3 If any dispute or difference shall arise between the Parties as to the construction or effect of this Clause 42 or as to the calculation of the sums payable in the circumstances referred to in Clause 42.2, (and a dispute shall be deemed to have arisen if the Parties have not reached agreement within 6 weeks of the occurrence of the event referred to in Clause 42.1 or 42.2) the same shall be determined in accordance with the provisions of Schedule 37 (Dispute Resolution).

### **Effect of determination under Dispute Resolution**

42.4 If so determined pursuant to Schedule 37 (Dispute Resolution), the index or information in respect of which the dispute or difference has arisen between the Parties may be amended, or replaced by a substitute index or information, or replaced by other provisions providing for the adjustment of payments under this Contract, as

may be provided in such determination, and the necessary payments and repayments shall be made between the Parties together with interest at the Commercial Interest Rate in order to give effect to such determination with effect from the date on which it is determined that the circumstances or events giving rise to dispute or difference between the Parties occurred.

## **NOTICES**

43.1 Any notice (including any approval or consent) affecting this Contract shall, unless otherwise specifically provided in the Contract or agreed in writing between the relevant parties, be in writing and signed by or on behalf of the party giving it and may be served by hand delivery during normal office hours at, or sending it by fax, prepaid recorded delivery or registered post to the address and for the attention of the relevant Party as set out in Clause 43.2. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt as follows:

- (a) in the case of fax, the Working Day after the despatch; and
- (b) in the case of recorded delivery or registered post, forty-eight (48) hours after the date of posting.

43.2 Notices or communications referred to in Clause 43.1 affecting this Contract shall in the case of LUL be addressed to:

The Contract Manager

and in the case of the Contractor be addressed to:

the Managing Director

and in the case of PADCo be addressed to:

the Managing Director

or such person or address as the relevant party may from time to time notify in writing to the other on no less than 5 Working Days' notice.

43.3 This Clause 43 shall not apply to communications which the Contract Management Procedure requires or permits to be made in a different manner.

## **ASSIGNMENT**

44. Subject to Clauses 28B, 23.55, 30.17 and 35, the Financing Agreements and the Option Deed, neither Party shall give, sell, assign, subcontract or otherwise dispose of the Project Agreements or any part thereof or any benefit or other interest therein.

## **SURVIVAL**

45. The provisions of Clauses 1, 2, 4, 6, 10.10, 10.10A, 10.12, 10.18, 10.19, 15.1A, 15.1K, 15.1N, 16.7, 16.9, 16.10, 16.12 to 16.18, 17A, 17B, 19, 20.9, 21.24, 21.25, 21.26, 21A, 22, 23.46A, 23A, 25, 26, 28A.1, 28B, 29, 29A, 30.13, 30.14, 30.35, 30.36, 30.37, 30.38, 30.39, 30.40, 30.48, 30.49, 33, 34, 35, 37, 38, 39, 40, 41, 43, 45, 46, 47, 48, 49, 50, 53, 54, 56 and Schedule 1 (Definitions), Schedule 2 (Interpretation), Schedule 29.2 (Termination Payments), Schedule 29.3 (Termination Payments), Schedule 30.13 (Lease Option Indemnity) and Schedule 53.3 (Information Relied Upon) shall survive the Expiry Date and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision contained in this Contract which by its nature or implication (including in respect of any accrued rights or liabilities but subject to Clause 25.16) is required to survive termination or the Expiry Date shall survive termination or expiry as aforesaid.

#### **WAIVER**

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

#### **LANGUAGE**

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

#### **ENTIRE AGREEMENT**

48.1 Subject to Clause 53, as at the Date of the Supplemental Deed, this Contract, any Final Implementation Details agreed prior to the Date of the Supplemental Deed in respect of a Variation for which an Authority Notice or Instruction Notice has been issued by LUL and which complies with the requirements of Schedule 8 of the Common Terms Agreement, the documents referred to in it, the Framework Agreement, the Supplemental Deed, the Option Deed Side Letter, the Pensions Settlement Agreement, the Jubilee Line Side Letter, the Tufnell Park Lease, the Safety Audit Letter and the Greenwich Turbine Letter set out the entire agreement and understanding between LUL, the Contractor and PADCo as at the Date of the Supplemental Deed. It is agreed between the Parties and PADCo that<sup>9</sup>:

- (a) neither Party nor PADCo has entered into this Contract in reliance upon any representation, warranty or undertaking of the other Party or PADCo which is not expressly set out or referred to in this Contract and the other documents referred to in it and the letters referred to above; and

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<sup>9</sup> If any new side letters are agreed between the parties these will need to be reflected in Clause 48.1.



- (b) neither Party nor PADCo shall have any remedy in respect of misrepresentation or untrue statement made by the other Party unless and to the extent that a claim lies for breach of warranty under this Contract.

48.2 Nothing in this Clause 48.1 shall exclude any liability for fraudulent misrepresentation.

### **Representations and Warranties**

48.3 Each Party and PADCo represents and warrants to the other parties that as of the Date of the Supplemental Deed:

- (a) it is a company duly organised and validly existing under the laws of England and has all requisite legal power and authority to execute this Contract and carry out the terms, conditions and provisions hereof;
- (b) this Contract constitutes and the documents to be executed pursuant to the Contract when executed, will constitute, valid and binding agreements of it;
- (c) there are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitral tribunal that might affect its ability to meet and carry out its obligations under this Contract; and
- (d) the execution and delivery by it of this Contract has been duly authorised by all requisite corporate action, and will not contravene any law provision of, or constitute a default under any other agreement or instrument to which it is a party or by which it or its property may be bound.

48.4 LUL and the Contractor agree that from the Date of Contract the Early Works Contract shall terminate save for the agreement as to the acceleration of stages 1 and 2 of the batteries and the fixed temperature point detectors.

### **SEVERABILITY**

49. Without prejudice to Clauses 28B and 32, should any provision of this Contract be held to be invalid or unenforceable, then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision the effect of which is the closest possible to the intended effect of the invalid or unenforceable provision.

### **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

50.1 Subject to Clause 50.2, this Contract does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

50.2 A Relevant Subcontractor and a Replacement Contractor shall be able to rely on and enforce their respective rights under Clauses 30.46 to 30.49 (inclusive).

## **COSTS**

51. Unless otherwise specified in this Contract, the Framework Agreement or the Supplemental Deed each Party shall bear its own costs and expenses in connection with the preparation, execution, registration, and performance of this Contract, the Framework Agreement and/or the Supplemental Deed and all matters related to or connected with it.

### **Contractor's Reasonable and Documented Costs**

51A Without prejudice to any obligations of the Contractor in respect of the Cost Optimisation Principles, and notwithstanding any other obligations of the Contractor, where LUL agrees or is obliged to reimburse, compensate, discharge, indemnify or make payment in respect of any element of the Contractor's costs (including without limitation Costs and Disruption Costs) which have been incurred after the Date of the Supplemental Deed at any time under or in accordance with this Contract (including, without limitation, in respect of a Variation and/or a Third Party Works Adoption Variation) LUL shall be obliged to reimburse, compensate, discharge, indemnify or make payment in respect of only those Costs, Disruption Costs and/or costs (as applicable) which are Reasonable and Documented and which are consistent with such other terms as may be agreed between the Parties.

51B Without prejudice to any obligations of the Contractor in respect of the Cost Optimisation Principles and notwithstanding any other obligations of the Contractor, where LUL agrees or is obliged to reimburse, compensate, discharge, indemnify or make payment to the Contractor in respect of any element of the costs associated with works, services and/or goods supplied by Key Subcontractors which have been incurred after the Date of the Supplemental Deed under or in accordance with this Contract (including, without limitation in respect of a Variation and/or a Third Party Works Adoption Variation) LUL shall be obliged to reimburse, compensate, discharge, indemnify or make payment in respect of only those costs (including without limitation Costs and Disruption Costs) which are Reasonable and Documented and which are consistent with such other terms as may be agreed between the Parties.

With respect to Key Subcontracts entered into prior to the Supplemental Deed Date (and which have not been extended or renewed since the Supplemental Deed Date), the 40 day time limit in respect of the delivery of Daily Time Sheets to LUL contained in the definition of Reasonable and Documented does not apply but in such circumstances the Contractor shall make such delivery as soon as reasonably practicable.

51C Clauses 51A and 51B shall not apply in respect of:

- (a) payments which are made in respect of Costs, Disruption Costs or any other costs the quantum and other terms of which are agreed between the Parties as a

fixed price rather than on a cost reimbursable basis in accordance with the terms of this Contract;

- (b) any Price Adjustment which is made in respect of Costs or other costs the quantum and other terms of which are agreed between the Parties in accordance with the terms of this Contract;
- (c) any payments in respect of the Availability Charge or Availability Charge Components;
- (d) any payments to be made by LUL pursuant to Clauses 29 and 29A and any other payments to be made by LUL to the Contractor as a consequence of the expiry or termination of this Contract but excluding any amounts payable under Clause 29.20(b).
- (e) the payment of any Costs, Disruption Costs and/or costs (i) the amount of which have already been pre-agreed between the Contractor and LUL in accordance with this Contract or otherwise; (ii) to the extent that they are determined by reference to a specified interest rate, mechanism or other analogous contractual mechanism in accordance with this Contract; or (iii) which are determined:
  - (A) by an expert in accordance with this Contract; or
  - (B) in accordance with the procedure set out in Schedule 37 (Dispute Resolution); and
- (f) any Costs, Disruption Costs and/or costs which relates to taxation including any amounts claimed or calculated by reference to Clause 33 or Schedule 33.

### **LUL's Reasonable and Documented Costs**

51D Without prejudice to any other obligations of LUL, where the Contractor agrees or is obliged to reimburse, compensate, discharge, indemnify or make payment in respect of any element of LUL's costs which have been incurred after the Date of the Supplemental Deed at any time under or in accordance with this Contract the Contractor shall be obliged to reimburse, compensate, discharge, indemnify or make payment in respect of only those costs which are Reasonable and Documented and which are consistent with such other terms as may be agreed between the Parties.

51E Without prejudice to any other obligations of LUL, where the Contractor agrees or is obliged to reimburse, compensate, discharge, indemnify or make payment to LUL in respect of any element of the costs associated with works, services and/or goods supplied by Third Party Contractors which have been incurred after the Date of the Supplemental Deed under or in accordance with this Contract the Contractor shall be obliged to reimburse, compensate, discharge, indemnify or make payment in respect of only costs which are Reasonable and Documented and which are consistent with such other terms as may be agreed between the Parties.

51F Clauses 51D and 51E shall not apply in respect of:

- (a) any payments which are made in respect of costs the quantum and other terms of which are agreed between the Parties as fixed price rather than on a cost reimbursable basis in accordance with the terms of this Contract;
- (b) any Price Adjustment which is made in respect of costs the quantum and other terms of which are agreed between the Parties in accordance with the terms of this Contract;
- (c) any payments in respect of the Availability Charge or Availability Charge Components;
- (d) any payments to be made by the Contractor pursuant to Clauses 29 and 29A and any other payments to be made by the Contractor to LUL as a consequence of the expiry or termination of this Contract;
- (e) the payment of any costs (i) the amount of which have already been pre-agreed between the Contractor and LUL in accordance with this Contract or otherwise; (ii) to the extent that they are determined by reference to a specified interest rate, mechanism or other analogous contractual mechanism in accordance with this Contract; or (iii) which are determined:
  - (A) by an expert in accordance with this Contract; or
  - (B) in accordance with the procedure set out in Schedule 37 (Dispute Resolution); and
- (f) any costs which relates to taxation including any amounts claimed or calculated by reference to Clause 33 or Schedule 33.

#### **No fetter of determinations**

51G Nothing in Clause 51 shall fetter:

- (a) the ability of an expert in making a determination in accordance with this Contract; or
- (b) the ability of an Independent Expert, the Contract Manager, Adjudicator, arbitrator or the High Court in making a determination pursuant to Schedule 37 (Dispute Resolution),

including whether or not to use the concept of Reasonable and Documented Costs in making an award if it considers it to be appropriate.

#### **FURTHER ASSURANCE**

52. Each Party shall with all due diligence on or after the Date of Contract (and whether before or after the Starting Date) execute all such deeds and documents and perform all such acts and things and provide such assistance and information as may

be reasonably required to carry out the terms of this Contract and to assure to each Party the rights and benefits hereby agreed to be granted.

### **THE SYSTEM, ASSETS AND PROPERTIES**

53.1 Save as expressly contained in this Contract and subject to Clause 53.3, all representations and warranties by LUL and all conditions and other terms which would otherwise impose obligations on LUL (including without limitation warranties and conditions as to title, quiet possession, satisfactory quality, fitness for purpose and description) express or implied, by statute or otherwise, in respect of the System, the IT Systems, the Assets, the IT Assets or the Properties shall be excluded and no representations or warranties are made about the condition of the System, the IT Systems, the Assets, the IT Assets or the Properties or their suitability for purpose or the right of the Contractor to use any of them.

53.2 Subject to this Clause 53, Clauses 17A and 17B and the express rights of the Contractor under this Contract, the Contractor acknowledges that it has had full and adequate opportunity to investigate, inspect, and/or survey all of the System, the IT Systems, the Assets, the IT Assets and the Properties and therefore that it shall be deemed to have full knowledge of any matters which would be revealed by an investigation, inspection and/or survey (whether or not made).

53.3 During the period commencing on the Starting Date and terminating on the date three years thereafter it shall be an LUL Dependency that:

- (a) so far as LUL are reasonably aware the contents of the Data Room as at 31 January 1998 accurately reflected the contents list dated 31 January 1998 and signed by the Parties for the purposes of identification;
- (b) LUL has not:
  - (i) knowingly included in the Data Room at 31 January 1998 information misleading as at its date or if not dated as at the date it was lodged in the Data Room or in section Z Part G of the Data Room at the Date of Contract, to the extent the Data Room contains material information in relation to the Project (other than information which the Contractor did discover and which the Contractor operating in accordance with Good Industry Practice would have been expected to take into account in carrying out its pricing) which could reasonably have been expected to impact on the pricing of risk and/or cost of the Contract; or
  - (ii) knowingly omitted from the Data Room with the dominant intention of misleading the Contractor information where the omission could have been misleading (other than information which the Contractor did discover and which the Contractor operating in accordance with Good Industry Practice would have been expected to take into account in carrying out its pricing) and could reasonably have been expected to impact on the pricing of risk and/or cost of the Contract; and

- (c) LUL has not knowingly provided misleading information including by the omission of material information in relation to the Project which could reasonably have been expected to impact on the pricing of risk and/or cost of the Contract from:
- (i) all the answers to the questions contained in the questionnaires contained in the pack prepared by Linklaters contained in Schedule 53.3;
  - (ii) all formal query response forms;
  - (iii) the information contained in Schedule 53.3 (Information Relied Upon); and
  - (iv) the correspondence contained in Schedule 53.3 (Information Relied Upon) (all of (i) to (iv) above together being the “Responses”).

53.4 LUL shall not be regarded as having breached the LUL Dependency in Clause 53.3(c):

- (i) in circumstances where the Contractor could have been expected (if acting reasonably) to have discovered that the Responses were inaccurate or incomplete in a material respect during the due diligence process undertaken by it. For the purpose of this Clause the Contractor shall not be deemed to have been acting unreasonably, if it has conducted limited sampling of a part of the System (where it was reasonable to suppose that limited sampling would provide a reasonable view as to the System as a whole), if it has relied on the positive information (or lack of information) in the Data Room, or if it has not conducted due diligence as a result of difficulty in obtaining access to the System (or any part thereof) or where it has received a positive or negative written confirmation of a matter from LUL; or
- (ii) the information related to LUL’s forecasts of costs or assumptions as to risks where it would be reasonable for LUL to expect a prudent contractor to make its own judgement as to such costs or risks.

53.5 It shall be a LUL Dependency that so far as LUL are reasonably aware at the Date of Contract and at the Starting Date there have been no material changes to Responses under Clause 53.3(c) other than those contained in Clause 53.6(a).

53.6 Prior to the Date of Contract, LUL has provided the Contractor with:

- (a) an updated contents list of the Data Room since 31 January 1998 and material changes to the Responses;
- (b) the last four power supply engineering departmental performance reports prior to the Date of Contract;

- (c) the status reports on the Performance Critical IT Systems in Schedule 34.2.5 (Performance Critical IT Systems);
- (d) the technical limitations; and
- (e) the plant out of service reports.

53.7 LUL acknowledges that if required it has used all reasonable endeavours to obtain the consent of third parties to the disclosure of any document to the Contractor.

53.8 Subject to Clause 28A.6, LUL will not be liable to meet any claims for Disruption Costs as a result of failure to provide the LUL Dependency in Clause 53 unless:

- (a) the amount of the Disruption Costs as a result of each failure to provide the LUL Dependency in Clause 53.3 exceeds £50,000 (and so that the Contractor shall not be entitled to recover the first £50,000 of each failure for Disruption Costs);
- (b) the presentation of any such claim to LUL have been preceded by a meeting between David Bailey or another director of LUL if David Bailey is unavailable for any reason or David Bailey's successor as Commercial Director (or an equivalent role) of LUL and the managing director and Chairman of the Contractor;
- (c) following the meeting referred to in Clause 53.4.2 the Contractor has delivered to LUL a letter signed by the Chairman of the Contractor confirming that the board of directors of the Contractor has approved the presentation of the claim to LUL by the Contractor; and
- (d) any such claim have been agreed by LUL or, if not so agreed, Notice of Dispute (as defined in Schedule 37 (Dispute Resolution)) has been given in relation to such claim within three years after the Starting Date.

53.9 In relation to a claim for Disruption Costs for failure to provide the LUL Dependency in Clause 53.3, and without prejudice to the validity of the claim or alleged claim in question, the Contractor shall allow LUL, its advisers and agents to investigate the matter or circumstances alleged to give rise to such claim and whether, and to what extent, any amount is payable in respect of such claim pursuant to the terms of the Contract and shall upon reasonable notice make available to LUL, its advisers and agents, all such property, information and assistance subject to the Contractor being paid for all reasonable costs and expenses (including reasonable access to any of the Contractor's company and accounting records, correspondence or other documents or records and the right to copy the same, making available employees and directors on a reasonable basis who may be accompanied by a representative nominated by the Contractor), as may reasonably be requested by LUL for this purpose.

53.10 Subject to the express provisions of this Clause the Parties agree that the terms and conditions of this Contract and the exclusions and limitations it contains are fair and reasonable in the context of this transaction and in particular, in the light of the tendering procedure which has taken place and the information made available to the Contractor.

#### **GOVERNING LAW**

54. The construction, performance and validity of this Contract shall be governed by English law.

#### **INDEPENDENT CONTRACTOR**

55. Nothing in this Contract, nor any action taken by either LUL, the Contractor or PADCo, shall constitute, or be deemed to constitute, a partnership, unincorporated association or other co-operative entity.

#### **REMEDIES**

56.1 LUL, the Contractor and PADCo intend that their respective rights, obligations and liabilities as provided for in this Contract shall be exhaustive of the rights, obligations and liabilities between them arising out of or in connection with this Contract or as a matter of tort. Accordingly, the remedies expressly stated in this Contract and any document entered into pursuant to it shall be the sole and exclusive remedies of LUL, the Contractor and PADCo for liabilities to one another arising out of or in connection with this Contract or as a matter of tort, including any representation, warranty or undertaking given in connection with it, notwithstanding any remedy otherwise available at law or in equity. However:

- (a) this sub-clause shall not restrict remedies in respect of fraud;
- (b) at any time after notice to terminate is given (unless the notice to terminate has been withdrawn or has ceased to be effective) LUL, the Contractor and PADCo may request an arbitrator appointed in accordance with Schedule 37 (Dispute Resolution) or the court to order specific performance of or may seek an injunction to enforce one another's obligations under this Contract;
- (c) Clause 56.1(b) is without prejudice to any other rights to damages (or any limitations on such damages) for which this Contract provides and LUL, the Contractor and PADCo agree in relation to any application made under Clause 56.1(b) that:
  - (i) LUL will not make any claim or advance any argument for an award of equitable damages in lieu of specific performance or of an injunction; and
  - (ii) if, notwithstanding Clause 56.1(c)(i) damages are awarded to LUL in lieu of specific performance or of an injunction in circumstances where damages would not otherwise be recoverable by LUL under this



Contract (including by reason of Clause 25.5), LUL shall fully reimburse the Contractor for all such damages to the extent that they exceed the damages which would otherwise be recoverable by LUL; and

- (d) If an Arbitrator or Court makes an order for specific performance or grant an injunction pursuant to Clause 56.1(b) and the Contractor shall in order to comply with such order or injunction perform any Services to which Clause 28.10(g)(ii) applies or would otherwise apply:
  - (i) in relation to a termination under Clauses 28.1(e), 28.1(f), 28.9(p) or 28.9(r), LUL shall fully compensate the Contractor after taking account of Taxation on compensation and all reliefs, credits, deductions and allowances for Taxation arising from the Costs for any Commitment Costs (in the case of termination under Clauses 28.1(e) or 28.9(p)). LUL shall not enforce the rights that it would otherwise have had under the order described above or otherwise against the Contractor in respect of such Services (in the case of termination under Clause 28.1(f) or Clause 28.9(r)) except to the extent that there still Liability Headroom available within the Contractual Risk Commitment; and
  - (ii) In relation to termination under Clauses 31.2 or 31.3, LUL shall not enforce its rights to make any reductions under Clause 31.1(c) to reduce the Availability Charge as a result of further Force Majeure Events and shall fully compensate the Contractor taking account of Taxation on compensation and all reliefs, credits, deductions and allowances for Taxation arising from the Costs for any further Costs arising in relation to Force Majeure Events (except to the extent covered by insurance proceeds after taking account of Taxation on insurance proceeds and all reliefs, credits, deductions and allowances for Taxation arising from the costs).

56.2 In no event shall the Contractor, its officers, employees or agents be liable to LUL (on the basis of breach of contract, indemnity, warranty or tort, including negligence and strict or absolute liability, or breach of statutory duty or otherwise) for any matter arising out of or in connection with this Contract in respect of any Consequential Loss suffered by LUL other than to the extent provided in Clauses 20.6, 25.16 and 25.17. LUL undertakes not to sue the Contractor, its officers, employees, agents or subcontractors in respect of such Consequential Loss other than to the extent provided in Clauses 20.6, 25.16 and 25.17. Each Party declares that it holds the benefit of this Clause 56.2 on trust for itself and its officers, employees and agents.

#### **PROVISIONS OF SERVICES BY LUL**

57.1 The Parties agree that, in view of LUL's relevant knowledge and experience, the Contractor may wish to procure the provision of certain services not already covered by some other agreement between the Parties from LUL from time to time

throughout the duration of this Contract. LUL is prepared to consider making the provision of such services on and subject to the terms of this Contract and subject always to the LUL continuing to have sufficient surplus capacity to enable it to supply such services within the terms of The 1984 Act.

57.2 LUL and the Contractor agree that the creation of any contract between them for the provision of services by LUL to the Contractor shall be made in accordance with the provisions of this Clause 57 and that the Conditions of Contract contained in Schedule 57 shall apply to all such contracts and, together with the Form of Contract and the Schedules thereto shall constitute the contract for the provision of the services specified in Schedule 1 to the Form of Contract.

57.3.1 Whenever the Contractor requires the provision by LUL of services it shall issue a Request for Services to LUL in the form set out in Schedule 57 Appendix 1.

57.3.2 LUL shall, where it is able and willing to perform such services, respond by the issue of an Offer to Provide Services, in the form set out in Schedule 57 Appendix 2 and enclosing therewith two execution copies of the Form of Contract as set out in Schedule 57 Appendix 3.

57.3.3 An offer made pursuant to Clause 57.3.2 shall remain open for acceptance by the Contractor for 7 Working Days. Acceptance shall be made by the Contractor completing, executing and returning both copies of the Form of Contract and its annexures, without amendment in any particular within such period of 7 days: in the event of the Contractor failing so to complete, execute and return the Form of Contract, without amendment in any particular, within such period of 7 Working Days the offer shall lapse.

57.3.4 The Parties agree that every endeavour shall be made to ensure that any Request for Services is made in accordance with Clause 57.3.1: the Parties acknowledge, however, that from time to time services may be requested and provided without proper recourse to the procedures contained in Clauses 57.3.1 to 57.3.3 and it is agreed that notwithstanding such failure to follow the correct procedure the provision of such services shall be on and subject to the Conditions of Contract set out in Schedule 57 and that the scope of the services and the pricing thereof shall be as agreed between LUL and the Contractor whether orally or in writing and in the event of no clear agreement as to pricing LUL's then current rates for provision of services on a time and materials basis shall apply.

57.4.1 Each contract entered into by LUL and the Contractor pursuant to this Clause 57 shall be a separate contract from any other contract entered into between LUL and the Contractor pursuant to this Clause or otherwise.

57.4.2 In the event of any conflict or difference between this Contract and a contract expressed to be entered into hereunder the latter shall prevail.

57.5 This Clause 57 shall not be an exclusive arrangement between the Parties either as to the contracts that the Parties shall enter into between themselves or as to

the Contractor being bound to offer contracts hereunder to LUL in preference to any other contractor or supplier or at all.

## **REFINANCING**

58.1 Following the Supplemental Deed Date the Contractor shall obtain LUL's prior written consent to any

Qualifying Refinancing and both LUL and the Contractor shall at all times act in good faith with respect to any Refinancing.

58.2 LUL shall be entitled to receive in respect of any Qualifying Refinancing following the Supplemental Deed Date:

- (a) a 30 per cent share of any Refinancing Gain arising from the first Qualifying Refinancing (subject to paragraph (b) below); and
- (b) a 50 per cent share of any Refinancing Gain arising from the first Qualifying Refinancing to the extent that the Refinancing Gain is attributable to amounts committed (such amounts not previously having been committed) at or after the Supplemental Deed Date; and
- (c) a 50 per cent share of any Refinancing Gain arising from each Qualifying Refinancing after the first,

each an "**LUL Share of Refinancing Gain**".

58.3 LUL shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than 30 per cent or 50 per cent, as the case may be, share of the Refinancing Gain.

58.4 The Contractor shall promptly provide LUL with full details of any proposed Qualifying Refinancing, including a copy of the proposed Contractor's Financial Model relating to it (if any) and the basis for the assumptions used in the proposed Contractor's Financial Model. LUL shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any Contractor's Financial Model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

58.5 LUL shall have the right to elect to receive any LUL Share of Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; or
- (b) a reduction in the Availability Charge over the remaining term of the Contract;  
or

(c) a combination of either of the above.

58.6 LUL and the Contractor will negotiate, acting reasonably, to agree the basis and method of calculation of any Refinancing Gain and payment of any LUL Share of Refinancing Gain (taking into account how LUL has elected to receive the LUL Share of Refinancing Gain under Clause 58.5). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of any LUL Share of Refinancing Gain, the dispute shall be determined in accordance with Clause 37 (*Dispute Resolution*) of this Contract.

58.6A Distributions made or projected to be made shall be disregarded in calculating the Pre-Refinancing Equity IRR to the extent they represent the profit element in payments for (a) that part of Variations funded by Advance Payments or (b) income arising from the energy cost savings associated with the Transmission Network Use of System charge (TRIAD) avoidance running of Greenwich Generating Station or any other income arising under Variation ECMV 0151 (provided in the case of (b) that such payments are not included in calculating the Availability Charge).

58.7 If the decision in respect of such dispute is that the part of the Refinancing Gain that is the subject of the dispute should have been paid, then Clause 22.4 (Interest) of this Contract shall apply with the "due date" (after which date interest shall accrue) of that portion of the Refinancing Gain the subject of which is in dispute, being deemed to be the date on which the Refinancing occurred.

58.8 The Refinancing Gain shall be calculated after taking into account the Reasonable and Documented costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that, subject to compliance by LUL with Clause 51D, such costs incurred by LUL will be paid to LUL by the Contractor on or before 28 days from the completion of any Qualifying Refinancing.

58.9 LUL agrees that the prepayment, in whole or in part, by PADCo of:

- (a) amounts owing to the Third Party Lenders (or any of them) under the Financing Agreements; and/or
- (b) amounts owing to any Subordinated Lender under the Financing Documents or Investment Documents,

where:

- (i) the funds for such prepayment have been provided to PADCo by EDF Energy (South East) plc or any other Relevant Person;
- (ii) the aggregate actual liabilities or obligations of LUL under or in relation to this Contract are not increased;
- (iii) the aggregate contingent liabilities or obligations of LUL under or in relation to this Contract are not increased; and

- (iv) such adjustments as the parties may agree are made to the provisions of this contract relating to payments on termination,

shall not constitute a Qualifying Refinancing.

58.10 Each of the Contractor and PADCo confirm to LUL that as at the Supplemental Deed Date:

- (a) there is no line item in the Contractor's Financial Model which shows a rate of return for the Contingent Funding Liabilities; and
- (b) as far as it is aware no Subordinated Lender has internal accounting arrangements in place to reflect the cost of making available any Contingent Funding Liabilities.

58.11 The Parties agree that if LUL requests that PADCo prepay, in whole or in part:

- (a) amounts owing to the Third Party Lenders (or any of them) under the Financing Agreements; and/or
- (b) amounts owing to any Subordinated Lender under the Financing Documents or Investment Documents,

where the funds for such prepayment would be provided by LUL, TfL or any Affiliate or either of them then the Parties and PADCo shall negotiate in good faith whether any such prepayment should be made and, if so, the terms that should apply to it. This Clause 58.11 shall not be capable of reference to the dispute resolution procedure set out in Schedule 37 (Dispute Resolution).

## DEFINITIONS

**1989 Act Licence** means a licence granted pursuant to section 6 of The 1989 Act;

**Abandoned Duct** means any duct structure or duct configuration or Trench or trough where the manhole chamber and other access points have been infilled;

**ac** means alternating current;

**Acceleration Amount** means Lenders Outstandings;

**Access Code** means the code of that name governing rights of access to the LUL Network;

**Access Reservation Agency** means a division of LUL which shall be responsible for recording access requests on SABRE and administering the procedure set out in the Access Code;

**Account Agreement** has the meaning given to it in the Common Terms Agreement;

**Accounting Period** means except in Clause 29.10 an accounting period of the Contractor or of PADCo, as applicable, for the purposes of section 12 of the Income and Corporation Taxes Act 1988;

**Additional Equity** means:

- (a) any obligation to subscribe for equity or obligation in respect of drawdown of debt of the shareholders of PADCo or of the Contractor; or
- (b) use of cash (including cash repayable to the Contractor or PADCo on demand) within the Contractor or PADCo;
- (c) other financing of PADCo or the Contractor by the shareholders of PADCo or the Contractor,

in excess of the Initial Shareholder Equity, Initial Shareholder Debt and Included Funding Allowance;

**Additional URR Failure Costs** has the meaning given to it in Clause 16.8;

**Adjacent Property** means in respect of a Property all or any part of any land building structure or works (other than Cable Ducts or another Property or Properties) in which LUL or TfL have any estate or interest or over which either LUL or TfL has any rights or control and which is for the time being adjacent above below or neighbouring the Property;

**Adjudicator** has the meaning given to it in Schedule 37 (Dispute Resolution);

**Adjustment Factor** means RPI (February 1997)/RPIRR;

**Adoption Procedures** means the procedures set out in Schedule 23.16A (Adoption Procedures);

**Adopted Third Party Works** means any Third Party Works Assets that have been adopted by the Contractor in accordance with Schedule 23.16A (Adoption Procedures);

**Adoption Stage** means any of the Concept Stage, Feasibility Stage, Pre-Construction Stage, Construction Stage or the Commissioning and Handover Stage and "**Adoption Stages**" means all of them;

**Advance Payments** shall mean any payments advanced by LUL pursuant to Clause 23.13;

**Advance Payments Trigger** means the occurrence of any of the following:

- (a) LUL chooses to fund a Variation by Advance Payments pursuant to Clause 23.13 and issues an Authority Notice pursuant to Clause 23.40 in relation to that Variation;
- (b) LUL issues an Implementation Notice to the Contractor in relation to a Third Party Works Adoption Variation in accordance with Schedule 23.16A (Adoption Procedures);
- (c) LUL issues an Instruction Notice under Clause 23.32 or a Direction Notice under Schedule 23.16A (Adoption Procedures);
- (d) **NOT USED;**
- (e) **NOT USED;**
- (f) LUL is obliged to fund the Costs or loss of revenue arising from a Discriminatory Change of Law or Safety Change pursuant to Clause 32.12;

**Adverse Consequences** shall have the meaning in Clause 28A;

**Affiliate** means any holding company or subsidiary company of a Party and any subsidiary company of any such holding company as the context so requires (and for this purpose holding company or subsidiary company shall have the meaning ascribed to them by sections 736 and 736A of the Companies Act 1985);

**After Acquired Property Document** means a lease, a grant of easement or licence or agreement for lease, easement or licence (the Contract Manager reasonably determining after consultation with the Contractor which of such is appropriate to be used in the circumstances of a particular property including the nature of interest in the property the Contractor shall need in order to comply with its obligations under this Contract and where applicable according to the time available prior to the Starting

Date to identify the property and matters to be specified in the document and to complete that document in due form) substantially in the form of the General Properties Lease, the Specific Properties Licence, the Easement or the Agreement for Leases, Easement and Licences with such variations as the Contract Manager or the Contractor shall reasonably require having regard to the circumstances of a particular property provided that this shall not include the imposition of any rent or licence fee of more than a nominal amount in the case of freehold or leasehold property belonging to LUL or TfL;

***Agreed Compressor Capacity*** means 90% of the aggregate installed capacity of air compressors (excluding those categorised as redundant) measured in cubic feet per minute at the start of the Period in question multiplied by the number of total hours in the Period;

***Agreed Form Documents File*** means the set of files containing the agreed form documents listed in Schedule 1.3 (Agreed Form Documents);

***Agreement for Leases, Easement and Licences*** means the agreed form of Agreement contained in the Agreed Form Documents File and any other like agreement that is entered into as an After Acquired Property Document;

***Airspace Level*** means in respect of any particular point in a Property:

- (a) the level of the highest point of any building or structure or plant and equipment comprising part of a generating station, bulk supply point, switch house, switch room, substation, transformer room, track paralleling room, track coupling room, the H. T. Mains stores at Neasden or other building or structure or plant and equipment of a height of at least 4 metres above ground level (other than any part of any Other LUL Building) existing at that point at the date of the Lease or Licence of the Property; and/or
- (b) where there is only part of some other building or structure or plant and equipment or no building or structure or plant and equipment at the Property above ground at that point at the date of the Lease or Licence of the Property, the level 4 metres above ground level at that point (or if another level above ground level is specified in the First Schedule to the Lease or Licence of the Property then such other level at that point);

***ALARP*** means as low as reasonably practicable;

***Amendment and Restatement Deed*** means the deed to be entered into on 27 November 2002 between, inter alia, PADCo, the Contractor, European Investment Bank and the Third Party Lenders which amended and restated certain of the Financing Agreements in connection with the power upgrade works;

***Annual Operating Plan*** means the plan prepared by the Contractor setting amongst other things out the manner by which the Contractor shall provide the Services during the next Contract Year as approved, agreed or determined pursuant to Clause 18.11M from time to time;



**Annual Report** means the annual report as required by paragraph 4.2 of Schedule 43.3 (Contract Management);

**Any Annual Operating Plan Draft** means an Outline Annual Draft Operating Plan, Interim Annual Operating Plan, Final Draft Annual Operating Plan, a revision to any of the foregoing or any other draft of the Annual Operating Plan;

**Any Five Year Operating Plan Draft** means an Outline Five Year Operating Plan, Interim Five Year Operating Plan, Final Draft Five Year Operating Plan, a revision to any of the foregoing or any other draft of the Five Year Operating Plan;

**Applicable Standards** means any British Standards, European Standards and/or International Standards applicable to the Contractor and/or the performance of its obligation under this Contract from time to time;

**Appropriate Limit** has the meaning ascribed to it in Clause 41.11;

**Approved Equipment List** means the list of equipment approved for use on the System by the Contractor as the same may be amended from time to time;

**Asset Register** means the register of Assets to be maintained by the Contractor in accordance with the provisions of Clause 18.25;

**Asset Rent** shall have the meaning contained in the New Assets Contract;

**Assets** means those tangible physical assets (excluding the land (but not any buildings or structures and any fixtures and fittings thereon) comprised in the Properties and the IT Assets) required or used by the Contractor to fulfil its obligations under the Contract (whether or not part of the System) which at the Starting Date shall include those identified in the LUL Asset Register which is contained in the Data Room;

**Authorised Third Parties** means HMRI, the Environment Agency, LFCDA, BTP and any other body or person who to fulfil their statutory duties is lawfully entitled to inspect any part of the Underground Network or of the System in the performance of their functions;

**Authority Notice** means a notice given pursuant to Clause 23.40;

**Availability Charge** means the charge to be paid by LUL to the Contractor calculated in accordance with Clause 21;



**Availability Charge Indexation Formulae** means the indexation formulae set out in paragraphs 1.1 and 1.2 of Schedule 21.3 (Definitions);

**Availability Charge Indices** means the indices specified in Schedule 21.3 (Definitions);

**Balancing and Settlement Code (BSC)** means the document setting out electricity balancing and settling arrangements established by the National Grid Company plc (or any successor or other party who carries out the operational role of National Grid Company plc in relation to the high voltage national grid system for the transmission of electricity in England and Wales) pursuant to its transmission licence;

**Base Date** means 1 August 1997;

**BATNEEC** means the best available technique not entailing excessive cost;

**Benefits for Taxation** means a repayment of or reduction in Taxation excluding payments made for surrender of consortium relief or group relief;

**BG** means BG Plc (Company Registration number 2006000) or its successor(s), as a public gas transporter under the Gas Act 1986 (as amended by the Gas Act 1995);

**Bidding IP** means any Developed IP, Subcontractor Developed IP, Third Party IP or Major Power Works IP which LUL acting reasonably in the circumstances considers is necessary for any third party bidding either to:

- (a) carry out any element of a Variation tendered pursuant to Clause 23;
- (b) to carry out any Third Party Works; or
- (c) to be engaged as a successor to the Contractor following the Expiry Date, to be able to put forward a full, proper and timely bid and so as not to be disadvantaged in relation to any bids made by the Contractor or any Contractor Affiliates and thereafter, in the case of a successful third party, to carry out its obligations to LUL where relevant. For the avoidance of doubt Bidding IP shall exclude Proprietary Material;

**British Standards** means those standards produced by the British Standards Institution of 389 Chiswick High Road, London, United Kingdom (or any successor);

**BTP** means the British Transport Police;

**Bulk Supply Point or BSP** means a point of connection at which a supply of electricity may upon energisation flow between the electrical distribution system of a Regional Electricity Company and the System, as listed with the letters BSP in paragraph 2.7.4 of Schedule 5.1;<sup>10</sup>

**Cable** has the meaning set out in the Easement;

**Cable Duct** means any duct construction or duct configuration containing one or more ducts or any Trench or trough under a highway or under third party land or on or under any LUL rail property and whether or not containing any cables and shall

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<sup>10</sup> Power Quality Variation

include any manhole chamber, any manhole cover, any lighting and ladders and any infill and backfill and cover over any cable trench and shall include Live Ducts, Disused Ducts and Abandoned Ducts but shall exclude a duct, Trench or trough in which any third party has a cable.

**Cables Shaft** means the structure of and the airspace within any shaft, pit heading, tunnel or other structure solely or mainly (in the Contract Manager's opinion, which shall be final) serving or containing a cable or cables the subject of easements or licences to the Contractor under the Easement including lighting, ladders and hatches in cable shafts, pits, headings or tunnels;

**Capacity** means the rating including both Continuous Rating plus any short term or cyclic rated capacities of the equipment concerned in accordance with relevant international or national standards or codes of practice as they existed on the date of installation of the equipment, or as agreed from time to time taking into account the rating class of the equipment where applicable;

**Capital Allowances** means any allowances in respect of machinery and plant made under Part II Capital Allowances Act 1990 and/or any allowances in respect of industrial buildings and structures made under Part I of the same Act, in either case and/or made under any other enactment for the time being in force, providing for the making of similar allowances, and/or giving similar relief whether introduced as an addition to or replacement for the same;

**CDM Regulations** means the Construction (Design and Management) Regulations 1994 and any amendment, replacement or re-enactment made to such regulations from time to time;

**Central Emergency Power Supply** means equipment and systems to provide Emergency Power to equipment and services specified in paragraph 5 of Schedule 5.1 (Performance Specification);

**Central Emergency Power Supply Failure** means the period of time specified in Clause 21.12;

A **Central Emergency Power Supply Trigger** occurs if the arrangements for the Central Emergency Power Supply either:

- (a) fail to meet the requirements as specified in paragraph 5.3.1(a) of Schedule 5.1 (Performance Specification); or
- (b) fail on testing during Traffic Hours to meet the requirements of paragraph 5.3.1(c) of Schedule 5.1 (Performance Specification); or
- (c) fail on testing during Engineering Hours to meet the requirements of paragraph 5.3.1(d) of Schedule 5.1 (Performance Specification) if the Contractor fails to restore the Central Emergency Power Supply on or before one hour before the start of Traffic Hours for the first line on the relevant day;

***Certified System*** has the meaning ascribed to it in Clause 18.4B;

***Change of Control*** means an event where any single person or group of persons acting in concert (within the meaning of The City Code on Take-overs and Mergers) acquires any direct interest in the relevant share capital (as defined in Section 198(2) of the Companies Act 1985) of the Contractor held by EDF Energy (South East) plc or any company through which EDF Energy (South East) plc holds the issued share capital of the Contractor as a result of which that person or group of persons other than ABB Holdings Limited or Balfour Beatty plc (formerly known as BICC plc) or any company through which either ABB Holdings Limited or Balfour Beatty plc hold issued share capital of the Contractor have a direct interest in more than 10% of the relevant share capital of the Contractor;

***Change of Environmental Laws*** means any amendment, alteration, repeal (in whole or in part) or modification to or change of interpretation (which is not the subject of appeal) of or introduction or application of any Environmental Laws which takes effect after the Date of Contract;

***Change of Law*** means any amendment, alteration, repeal (in whole or in part) or modification to or change of interpretation (which is not the subject of appeal) of or introduction or application of any Law or Required Consent (including, for the avoidance of doubt, any implementation or enforcement of the IME Directive and any change to the licensing regime under the 1989 Act) which takes effect after the Date of Contract provided that any such amendment, alteration, repair, modification, change, introduction or application shall not constitute a Change of Law to the extent that it gives rise to Taxation which:

- (i) would not have arisen had the Contractor not been a subsidiary of, a subsidiary undertaking of, connected with, associated with or related to EDF Energy (South East) plc, or been a member of any grouping with EDF Energy (South East) plc, within the meaning of any applicable definition or meaning; and
- (ii) is imposed through a tax which is imposed on a one-off or temporary basis (which may include tax imposed for more than one accounting period) other than income or corporation tax on annual profits.

***Change of Law Commitment Costs*** means those Commitment Costs arising under Clause 25.6(a) and (b);

***Change of Ownership*** means any change to the ownership of any direct shareholding in the Contractor or PADCo;

***CJV*** means an unincorporated consortium for the construction of the New Assets comprising Balfour Kilpatrick Limited, EDF Energy Contracting Limited (formerly known as Seaboard Contracting Services Limited) and ABB Power Transmission and Distribution Limited;

**Collector** means the Director General of Electricity Supply whose functions shall be in accordance with the Fossil Fuel Levy Regulations 1990 and the 1989 Act;

**Comfort Letter** means the letter from the Secretary of State for the Environment, Transport and the Regions addressed to the Contractor, PADCo and the Third Party Lenders in relation to the funding commitments of LUL under this Contract;

**Commercial Interest Rate** means a rate equivalent to 1% per annum above the base lending rate per annum announced by HSBC plc which is current on the date upon which the amount bearing interest first becomes due (such interest to accrue daily on the basis of a 365 day year and to be compounded at six monthly intervals). In the event of any change in the HSBC plc base lending rate being announced while such amount remains outstanding, the interest payable shall be correspondingly varied from the date of each such change;

**Commercially Sensitive Information** means (i) the commercially sensitive information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 41.2 (Commercially Sensitive Information) in each case for the period specified in column 3 of Parts 1 and 2 of Schedule 41.2; (ii) all Intellectual Property Rights unless otherwise agreed in writing; and (iii) any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of the Contractor and/or its contractors;

**Commissioning and Handover Adoption Variation Notice** means a Third Party Works Adoption Variation Notice served by LUL on the Contractor pursuant to paragraph 5.2 of Schedule 23.16A (Adoption Procedures);

**Commissioning and Handover Stage** has the meaning ascribed to it in paragraph 5.1 of Schedule 23.16A (Adoption Procedures);

**Commitment Costs** means the Costs set out in Clause 25.6;

**Common Terms Agreement** means the agreement dated 13 August 1998 between PADCo, European Investment Bank, the financial institutions listed therein, CIBC Wood Gundy PLC, Midland Bank PLC, The Royal Bank of Scotland PLC as Arrangers and The Royal Bank of Scotland PLC as Lenders' Agent, Bank Facility Agent, Account Bank and Security Trustee, The Royal Bank of Scotland plc and CIBC Wood Gundy PLC as original Hedging Providers and the Contractor;

**Company** has the meaning ascribed thereto in Clause 28B;

**Compensating Sum** shall have the meaning contained in Clause 33.2;

**Competent Authority** means any legal person (including the Crown, any government department or government agency) having regulatory authority under Environmental Laws and/or any court or tribunal which has jurisdiction to determine any matter arising under Environmental Laws and/or relating to the Environment;

**Completion Date** means in relation to an item of Initial Works the date or the date of expiry of the relevant period from the Starting Date specified in Schedule 25.4 (Liquidated Damages) when any item of Initial Works is to be completed in accordance with this Contract and as amended from time to time pursuant to this Contract including Clause 13A;

**Completion Date for Phase 1** means 20 September 2002 or such other date determined in accordance with the terms of this Contract including Clause 13A;<sup>11</sup>

**Completion Date for Phase 2** means 7 May 2003 or such other date determined in accordance with the terms of this Contract including Clause 13.A;<sup>12</sup>

**Completion of the Emergency Supply Plan** means actual completion of the Emergency Supply Plan by way of completion of the Stages to meet the Critical Completion Date and the Final Completion Date as set out in Schedule 9.1 (Emergency Supply Plan);

**Components** means for an overall system; substations, nodes, transmission lines; central processor and man/machine interface;

a **Compressed Air Failure** occurs if the Contractor fails to comply with its obligations to supply compressed air as set out in paragraph 3.3 of Schedule 5.1 (Performance Specification), as established in accordance with paragraph 3.5.2 of that Schedule;

the **Compressed Air Fee** shall be the charge so described specified in Schedule 21.4 (Availability Charge);

**Compressed Air Fee Ratio** means for any Period, the Lost Compressor Capacity divided by the Agreed Compressor Capacity;

**Computer Viruses** means any extraneously introduced programme, routine or subroutine or device which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any programme or data, impair the operation of any program or the reliability of any data (whether by rearranging the same within the computer or any storage medium or device by altering or erasing the program or data in whole or in part, or otherwise);

**Concept Adoption Variation Notice** means a Third Party Works Adoption Variation Notice served by LUL on the Contractor pursuant to paragraph 1.2 of Schedule 23.16A (Adoption Procedures);

**Concept Stage** has the meaning ascribed to it in paragraph 1.1 of Schedule 23.16A (Adoption Procedures);

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<sup>11</sup> Power Quality Variation

<sup>12</sup> Power Quality Variation

**Concession** means a relief, derogation or waiver whether temporary or permanent from the requirements of the Project Agreements granted pursuant to the Concession Procedure;

**Concession Procedure** means the procedure set out in paragraph 10 of Schedule 43.3 (Contract Management);

**Conditions Precedent** means the matters referred to in Schedules 2.1 (Conditions Precedent) and 2.2 (Conditions Precedent);

**Conditions, Qualifications and Assumptions** means the conditions, qualifications and assumptions as specified as such in this Contract and the ECM V0055 Final Implementation Details;<sup>13</sup>

**Conductor Rail** means a rail used on the Underground Network exclusively for the supply of electricity for the moving of trains;

**Conduits** means any pipe, sewer, drain, duct, conduit, downpipe, gutter, wire, cable, trench, trough, manhole, manhole cover, manhole chamber, channel, watercourse, flue, interceptor, high pressure air system, trunking or other conducting medium or ancillary apparatus (or any part of parts thereof) but not any such relating to the System and other matters the subject of this Contract;

**Confirmed Access Date** means the date agreed between LUL and the Contractor at the completion of Phase 1 for the purposes of commencing the decommissioning work at the Lots Road Generating Station;

**Connected Key Subcontract** means any Key Subcontract entered into for the implementation of the relevant Variation and/or any Variation in the relevant Connected Variation Group;

**Connected Variation Group** means any group of Variations, the capital works component of which are funded exclusively by LUL by way of Advance Payments and which have been agreed between the Parties as such in the Final Implementation Details relating to those Variations in consequence of their relation to, connection to, or support of each other;

**Connected Variation** means any Variation in a Connected Variation Group;

**Connection Agreement** means the connection agreement dated 16 March 1994 entered into between London Electricity PLC and LUL and, for the avoidance of doubt, paragraph (h) of Schedule 2 shall not apply for the purposes of this definition;<sup>14</sup>

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<sup>13</sup> Power Quality Variation

<sup>14</sup> Above 2 definitions Power Quality Variation

**Consequential Loss** means in relation to a breach of this Contract or any document entered into pursuant to it (including breach of, or failure to provide an LUL Dependency) or other circumstances in which LUL is entitled to claim under Clause 25.1 (or any document entered into pursuant to it) any indirect or consequential loss (including loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties) resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

**Constituent Manners of Performance** means each of, the maintenance of the System, the operation of the System, the upgrade of the System and the replacement of the System;

**Construction Adoption Variation Notice** means a Third Party Works Adoption Variation Notice served by LUL on the Contractor pursuant to paragraph 4.2 of Schedule 23.16A (Adoption Procedures);

**Construction Contract** means the contract of even date between PADCo and the CJV in relation to, inter alia, design, construction, installation and commissioning of the New Assets;

**Construction Stage** has the meaning ascribed to it in paragraph 4.1 of Schedule 23.16A (Adoption Procedures);

**Consultation Document** means the document dated June 1995 and issued by LUL in connection with the subject matter of this Contract;

**Contingency Plan** means the plan prepared by the Contractor to comply with Clause 14.10;

**Contingent Funding Liabilities** means (subject to paragraph (d) of this definition):

- (a) all drawn and undrawn amounts and the amounts of any equity funding commitments under the Investment Documents; and/or
- (b) all requirements in the Sponsors and Shareholders Direct Agreement to contribute equity or loans or to put in place letters of credit (or other security) or to compensate the Third Party Lenders on the occurrence of certain events together with, in each case, any provisions on relation thereto; and/or
- (c) any guarantees or indemnities under the Investment Documents or Sponsors and Shareholders Direct Agreement; but
- (d) excluding for the purposes of this definition any amounts or commitments under or in respect of the Subordinated Debt Facilities, payments in respect of ordinary shares subscribed in the Contractor or PADCo to the extent that such shares are fully paid up and amounts payable under the Borrower Management Agreement or the SPL Management Agreement (each as defined in the



Sponsors and Shareholders Direct Agreement).

**Continuous Rating** means the rating of equipment forming part of the System or LUL's Distribution System at which that equipment is capable of working continuously;

**Contract Duration** means the period from the Date of Contract to the date of expiry referred to in Clause 4.1 or early termination (and as may be extended pursuant to Clause 31);

**Contract Management Procedure** means the procedure as set out in Schedule 43.3 (Contract Management);

**Contract Manager** means the person identified as such in accordance with Schedule 43.3 (Contract Management) who is appointed by LUL to administer manage and operate the Contract on behalf of LUL and who has full power to issue instructions and make decisions in relation thereto;

**Contract Quality Conditions** means the conditions of that name initialled for the purposes of identification as at the Date of Contract;

**Contract Register** means the register to be maintained by the Contractor in accordance with the provisions of Clause 18.27;

**Contract Review Meeting** means a meeting held pursuant to paragraph 9.2 of Schedule 43.3 (Contract Management);

**Contract Safety and Environmental Conditions** means the conditions of that name initialled for the purposes of identification as at the Date of Contract;

**Contract Year** means a period commencing on the Starting Date or on an anniversary of it, and ending one year later (or if earlier on the Expiry Date);

**Contractor Affiliate** means an Affiliate of the Contractor, a Shareholder of the Contractor or any Affiliate thereof;

**Contractor Confidentiality Agreement** means the form of agreement as set out in Schedule 41.3A;

**Contractor Default Termination** means termination by LUL by virtue of an event under Clauses 28.9(c), (d), (f), (g), (h), (i), (j), (k), (l), (n), (q), (r), (s) (other than Clause 28.9(s)(C)), (t), (u), (v), (x) or by the Contractor under Clause 28.1(f) (but not Clauses 28.9(q), (r)) or Clause 28.1(f) in the circumstances described in Clause 29.18 (Performance Liability Limit));

**Contractor** means EDF Energy Powerlink Limited (formerly known as Seeboard Powerlink Limited), Company Registration No: 3221818 whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN;

**Contractor IP** means any IP owned by the Contractor or that the Contractor is licensed or authorised to use prior to the Expiry Date save that Contractor IP shall not include any IP which is Developed IP, Subcontractor Developed IP, Third Party IP or Major Power Works IP or which is commercially available in the ordinary course of business and has not been specifically developed for the Contractor or any Subcontractor;

**Contractor MPW IP** means all Major Power Works IP created by or that vests in or is assigned to the Contractor, and/or PADCo in the performance of the Major Power Works (including all documents, materials and other articles in which the Contractor MPW IP subsists);

**Contractor's Conduits** means in respect of a Property the Conduits used exclusively by that Property (to the extent that they are not public Conduits or do not become adopted as such);

**Contractor's Engineering Director** means the person identified as the Contractor's Engineering Director to LUL from time to time by the Contractor or the nominee of such person as identified as such to LUL from time to time by the Contractor (provided that such nominee is acceptable to LUL (acting reasonably));

**Contractor's Financial Model** means the agreed form of financial model of the Contractor as at the Date of Contract (the print out of which is attached in the Agreed Form Documents File) and a copy of which agreed form shall be lodged by the Contractor with the Custodian under an escrow arrangement, as that model is amended in accordance with the terms of this Contract to reflect all prior agreed Price Adjustments and which amended model shall be updated and a new copy lodged with the Custodian within one month of the amended model being agreed. Such amendments shall be as agreed between the Parties or in the absence of any agreement as determined by an Independent Expert under the provisions of Schedule 37 (Dispute Resolution) (so that the Independent Expert's decision shall be final and binding);

**Contractor's Invoice** means an invoice in the form of Schedule 22.3 (Contractor's Invoice);

**Contractor's Property Plans** means the Contractor plans relating to the existing, proposed and/or planned use and occupation of any property by the Contractor in connection with the provision of the Services or the performance of any other obligation arising under this Contract (including any works or activities described in the Property Maintenance Plan);

**Contractor's Representative** is as defined in paragraph 2.5 of Schedule 43.3 (Contract Management);

**Contractual Risk Commitment** means (i) at the Starting Date [REDACTED]  
[REDACTED] or (ii) such other figure arising because the Contractor has agreed to increase the Contractual Risk Commitment in accordance with Clauses 25.7, 25.8 and 25.9, in each case to the

extent not utilised in meeting claims (as contemplated in Clause 25.6) following exercise by LUL of its rights under Clause 25.13 and 25.14;

***Control System Handover Programme*** means the programme for passing responsibility for implementing Electrical Switching from LUL to the Contractor to be provided in accordance with Clause 8;

***Corrective Action Request*** means a document issued by LUL in accordance with Clause 7.7 and Schedule 43.3 (Contract Management);

***Costs*** means the reasonable costs to the Contractor arising from performing this Contract (whether itself or through its subcontractors under the New Assets Contract or other agreement who have been approved if so required in accordance with Clauses 30.22G to 30.22N and 35 and so that such reasonable costs shall include the costs of its subcontractors making any adjustment in accordance with the terms of their subcontracts or otherwise), which shall include:

- (a) non-recurring expenditure, including any design costs;
- (b) operating expenditure;
- (c) personnel costs of any subcontracts, personnel costs, the cost of obtaining and maintaining the use of any asset or property by means of lease, licence or otherwise;
- (d) the costs of integration of any asset which was not previously part of the System and any altered risk in performance of the System as whole;
- (e) costs in relation to a Change of Law or Variation following delivery of the Outline Proposal or Third Party Works Adoption Variation following delivery of the Draft Proposal;
- (f) funding costs including the reasonable costs of satisfying any constraints (including any liquidated damages) imposed by the Third Party Lenders as a result of implementing any Variation or Third Party Works Adoption Variation and/or adopting any Known Third Party Adopted Works or Third Party Works Assets;
- (g) Supplied Electricity costs and other utility costs;
- (h) insurance costs;
- (i) costs of implementation of any Variation or Third Party Works Adoption Variation or the properly incurred costs of any Change of Law, including loss of Availability Charges and any third party revenue, increased funding costs;
- (j) costs of obtaining all Required Consents;
- (k) loss of revenue arising from Purchasers or Users and costs directly attributable to the redundancy of assets (taking into account any disposal proceeds);

- (l) any altered risk from additional contractual incentives and/or liquidated damages and/or increases to the Performance Liability Limit and/or increases to the Contractual Risk Commitment and/or increases to the amounts set forth in the table contained in Schedule 29.3; and
- (m) the reasonable costs of the Third Party Lenders and their technical and legal advisers properly incurred pursuant to the Financing Agreements; and
- (n) any Irrecoverable Value Added Tax paid in respect of any of the above.

For the avoidance of doubt, where the Contractor is performing any aspect of a Variation or Third Party Works Adoption Variation which is not subcontracted to a third party, the Contractor shall be entitled to include the application of any time and/or expertise at the market cost thereof by the employee of the Contractor or the incurring of costs by the Contractor as additional Costs under this definition;

***Cost Optimisation Principles*** means the following principles (in descending order of importance) for the procurement and performance of work:

- (a) the cost of assets and Services will be assessed on the basis of the lowest reasonable whole life costs; and
- (b) any design, services provided or works to be undertaken are to be performed in accordance with Good Industry Practice in the context of the provision by the Contractor of the Services for the Contract Duration;

(provided that, subject to Clause 23.15, Taxation shall not be taken into account when assessing such costs) and the Contractor shall take reasonable steps to demonstrate that the aggregate Costs in the Implementation Details or Third Party Works Adoption Implementation Details (as applicable) reflect the lowest reasonable whole life costs achievable by the Contractor taking into account:

- (a) insurance proceeds received or receivable or agreed between the Contractor and LUL to be receivable and not yet applied or payments from third parties received where LUL has issued a Variation Notice or Third Party Works Adoption Variation Notice (as applicable) relating to the assets which are the subject of the payment; and
- (b) the requirements of LUL under Clause 23.27 or paragraph 6.3 of Schedule 23.16A (Adoption Procedures) (as applicable), or revised proposals under Clause 23.27A,

including by way of affording LUL (or its representatives) access to detailed information supporting the relevant Costs subject to LUL's right to require the Contractor to carry out competitive tendering if the Contractor is unable to demonstrate to the reasonable satisfaction of the Contract Manager, lowest reasonable whole life costs;

**CPAF** means a contract payment approval form substantially in the form of Schedule 22.2 Part 2 (CPAF);

**Critical Completion Date** means 4 July 2000 or such other date determined in accordance with the terms of this Contract including Clause 13A;

**Cumulative Threshold** means £1,000,000;

**Custodian** means the National Computing Centre, Manchester;

**Daily Time Sheets** means

- (a) in respect of the Contractor (unless otherwise agreed by LUL) a paper or electronic record (that is able to be printed in paper form) completed contemporaneously by each of the Contractor's employees or other staff, agents, consultants and Key Subcontractors (including without limitation the employees or other staff agents, consultants and subcontractors of Key Subcontractors and of their subcontractors) and which identifies the time spent by such person in respect of the relevant activity or project on a particular day; and
- (b) in respect of LUL (unless otherwise agreed by the Contractor) a paper or electronic record (that is able to be printed in paper form) completed contemporaneously by each of LUL's employees or other staff, agents, consultants and Third Party Contractors (including without limitation the employees or other staff, agents, consultants and subcontractors of Third Party Contractors and of their subcontractors) and which identifies the time spent by such person in respect of each of the particular activities undertaken by that person during a particular day;

**Data Room** means the room located on the first floor of Broadway Buildings, 54 Broadway, London SW1H 0DB containing information and documentation relating to the subject matter of this Contract;

**Date of Contract** means the date on which the Contract was signed by LUL, the Contractor and PADCo;

**Date of the Supplemental Deed or Supplemental Deed Date** means the date of the execution of the Supplemental Deed;

**dc** means direct current;

**Debt Service Reserve Account** means the account titled as such under the Financing Agreements;

**Decommissioning Report** has the meaning set out in Schedule 9.1;

**Deed of Novation** means a deed of novation substantially in the same form as set out in Appendix 1 to Schedule 30.22C;

**Defined Aggregate Capacity of Power Quality Compensation Equipment** means the aggregate of the firm capacities of all SVCs and Harmonic Filters, as listed in Appendix 1.10.3 of Schedule 5.1 at the start of the Period in question;<sup>15</sup>

**Defined Capacity** means at any Relevant Point the Firm Service Capacity less Excluded Capacity as set out in Schedule 5.1 (Performance Specification) as amended pursuant to Clause 23;

the **Delivery Fee** shall be the charge so described specified in Schedule 21.4 (Availability Charge);

**Delivery Point** means:

- (a) for electricity, the outgoing terminal of the relevant switchgear as set out in paragraphs 2.1.1.2, 2.2.1.2, 2.3.1.2, 2.4.1.2, 2.5.1.2 and 2.6.1.2 of the Performance Specification; and
- (b) for compressed air, the reduction valve output isolation cock within each relevant Substation in accordance with the Performance Specification;

**De-Mobilisation Costs** means costs arising directly from termination (provided always that no payment shall be made in respect of any indirect or consequential loss (including any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties (except in respect of the costs, including Irrecoverable VAT, of materials or goods reasonably ordered which have been delivered or for which there is legal liability to accept delivery)) resulting from termination);

**Deposit Rate** means the rate offered by the bank for deposits of that amount for that period of time;

**Depot** means as the context requires, the Site where staff book on to work and receive work instructions and materials or a part of the Underground Network where trains are located when not in service and are cleaned, maintained and made ready for service;

**Depot Failure** means a failure in Power to or interruption in the use of any Depot which is caused by a failure of the Contractor to perform, or a breach of its obligations under, this Contract;

**Derogation** means each of the matters listed in Schedule 20A (Derogations) and Clause 17.2 and any further temporary or other derogation granted pursuant to this Contract or included in the ECM V0055 Final Implementation Details;<sup>16</sup>

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<sup>15</sup> Power Quality Variation

<sup>16</sup> Power Quality Variation

***Derogation Period*** means the period in respect of a Derogation for which the Contractor is excused from performance of its obligations under this Contract as set out in Schedule 20A (Derogations) or Clause 17.2, as such period may be extended in accordance with Clauses 13A, 23, 31 and 32;

***Developed IP*** means all Intellectual Property Rights subsisting in all designs, modelling, drawings, plans, documents, materials and other articles created:

- (a) by the Contractor; or
- (b) by any and all agents and subcontractors of the Contractor to the extent that such Intellectual Property Rights are the property of the Contractor,

during the performance of this Contract from the Starting Date (including all documents, materials and other articles in which the Developed IP subsists);

***Direct Agreement*** means the agreement between LUL, TfL, the Contractor, PADCo, the Guarantor and the Royal Bank of Scotland PLC as security trustee dated on or about the date hereof;

***Direct Agreement Amendment and Restatement Deed*** means the amendment and restatement deed in respect of the Direct Agreement dated on or about the Supplemental Deed Date between LUL, TfL, the Contractor, PADCo, the Guarantor and the Royal Bank of Scotland PLC as security trustee;

***Direct Low Voltage AC Supplies*** means a low voltage ac supply from a Delivery Point which provides a sole source of supply to the Underground Network via LUL's Distribution System, excluding those which provide supplies to the Underground Network via LUL's low voltage cable mains:

***Direction Notice*** has the meaning ascribed to it in paragraph 6.6 of Schedule 23.16A (Adoption Procedures);

***Discriminatory Change of Law*** means a Change of Law which:

- (a)
  - (i) in respect of a Change of Law other than a Taxation Change of Law, increases or decreases the Costs to the Contractor operating, maintaining, renewing or upgrading the System or performing any of its other obligations under the Contract by more than an amount which is 5 per cent of the Availability Charge (exclusive of VAT) payable (before any deductions) within the 12 months after the Change of Law comes into effect; or
  - (ii) in respect of a Taxation Change of Law increases or decreases the Costs which accrue to the Contractor within the 12 months after the Change of Law comes into effect (regardless of whether the Contractor is due to make payment in respect of those Costs during such period) and which would not have accrued to the Contractor but for it operating, maintaining, renewing or upgrading the System or performing any of its

other obligations under the Contract by more than an amount which is 10 per cent of the Availability Charge (exclusive of VAT) payable (before any deductions) within the 12 months after the Change of Law comes into effect; and

- (b) (i) in respect of a Change of Law other than a Taxation Change of Law the Contractor demonstrates by comparison to an actual company or business that the Change of Law has a greater impact on the Contractor as compared with:
  - (A) a company or business responsible for the entire operations of high voltage power distribution systems;
  - (B) a company or business responsible for the entire operations of railway electrification assets; or
  - (C) a company or business responsible for the entire operations of an underground railway system and/or light rail services business;

failing an ability to compare the Contractor with (A) to (C) above other comparable companies or businesses;

- (ii) in respect of a Taxation Change of Law if the rules relating to the calculation of the amount of Taxation payable or tax losses incurred by the Contractor or PADCo or the use of such tax losses are less favourable from the rules applying to the calculation of the amount of Tax payable or tax losses incurred or the use of such tax losses by a company responsible for the entire operations of:

- (A) high voltage power distribution systems;
- (B) railway electrification assets; or
- (C) an underground railway system and/or light rail services business.

In this definition, **Costs** shall be construed in accordance with Clause 32.7;

**Disruption Costs** means all reasonable losses, Costs and expenses properly incurred by the Contractor, or its employees, agents or subcontractors (provided that they are reasonably foreseeable as a result of any breach or any failure of LUL to provide an LUL Dependency) including, as a result of a single material event or a series of events which collectively have a material effect, on the ability of PADCo to obtain the release of Third Party Lenders' letters of credit and excluding (without prejudice to the foregoing) liability which is excluded under Clauses 10.14 and 10.16, any Consequential Loss and other costs to the extent compensated by insurance taken out under Schedule 25 (Insurance) but including any losses, costs and expenses arising from failure by LUL to provide an LUL Dependency due to a Force Majeure Event claimed by LUL.



***Distribution*** means:

- (a) whether in cash or in kind but excluding in each case those in respect of Contingent Funding Liabilities which have been drawn or otherwise utilised or contributed prior to, on or after the Supplemental Deed Date, any:
  - (i) dividend or other distribution in respect of share capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
  - (iii) payments under the Investment Documents (whether of principal, interest, breakage costs or otherwise);
  - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the Supplemental Deed Date and was neither in the ordinary course of business nor on reasonable commercial terms;
  - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) subject to Clause 58.9, the early release of any debt or equity funding commitments (other than any Contingent Funding Liabilities), the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

***Distribution Code*** means the Distribution Code required to be drawn up pursuant to Condition 11 of the Public Electricity Supply Licence, as from time to time revised with the approval of the Electricity Regulator;

***Disused Duct*** means any duct structure or duct configuration or Trench or trough which is empty or which houses only cables which have ceased to be used;

***Draft Long Term Strategy*** has the meaning ascribed to it in Clause 18.6F;

***Draft Proposal*** means, in respect of a Third Party Works Adoption Variation, a proposal which contains at least the following: an estimated price together with a budget showing in reasonable detail the constituent elements of the estimated price and a provisional timetable for, and summary method of, the implementation of that Third Party Works Adoption Variation;

***Early Reinforcement Works*** means those works determined by the Contractor as being necessary to upgrade the System so as to be able to meet the requirements of the Performance Specification following the closure of Lots Road;

***Early Works*** means the work commenced prior to the Starting Date in relation to the Emergency Supply Plan pursuant to the Early Works Contract;

**Early Works Contract** means the contract between LUL and the Contractor dated 22 April 1998 the scope of which has subsequently been increased by LUL letter 2089/DR/P00127.doc of 15 May 1998 and LUL letter 2089/DR/ P00191 of 8 July 1998;

**Easement** means the agreed form of grant of easement and licences relating to the cables, other Assets and New Assets referred to therein and contained in the Agreed Form Documents File and any agreement for such or any other grant of easement and/or licences or agreement for such that is entered into as an After Acquired Property Document;

**ECM V0055 Final Implementation Details** means the final implementation details agreed in accordance with Clause 23.29 or Clause 23.30 relating to Variation ECM V0055;

**ECMV0055 Price Adjustment** means the Price Adjustment made to the Availability Charge pursuant to Variation ECMV0055;<sup>17</sup>

**EEA** means from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

**EIB Finance Contract** shall have the meaning contained in the Common Terms Agreement;

**EIB PUW Loan Facility** shall have the meaning contained in the Common Terms Agreement;

**Electrical Control Equipment** means equipment used to implement Electrical Switching;

**Electrical Protection** means equipment and systems provided to disconnect or restrict the flow of electricity in the event of an undesired condition, e.g. a short circuit or overload;

**Electrical Switching** means those actions necessary to control the flow of electricity within the System;

**Electricity Regulator** means the Director General of Electricity Supply;

**Element** means an element of the SCADA System including any single Printed Circuit Board (PCB), Interconnecting Cable, Power Supply Unit, Data Link, Visual Display Unit, Interface Device, Overview device (mimic), Printer, GPS Clock, Watchdog, Modem Unit;

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<sup>17</sup> Above 2 definitions Power Quality Variation

**Emergency Line Control Centre** means in relation to any line the location from which Interface Switching is carried out for that line under emergency conditions;

**Emergency Power** means Power meeting the requirements set out in the Performance Specification that is to be available to be used at all times when Procured Electricity is not available;

**Emergency Power Control Centre** means any location from which Electrical Switching is carried out under emergency conditions;

**Emergency Power Supply System** means the Local Emergency Power Supply System and Central Emergency Power Supply System;

an **Emergency Supplies Failure** occurs if the arrangements for Emergency Power fail to meet the requirements as specified in paragraph 5.3.1 of Schedule 5.1 (Performance Specification), during the Period in question;

the **Emergency Supplies Fee** shall be the charge so described specified in Schedule 21.4 (Availability Charge);

**Emergency Supply Plan** means the Contractor's proposals for Initial Works to enable the Contractor to provide Emergency Power set out in Schedule 9.1 (Initial Works);

**Employment Losses** means all losses, costs (including legal costs) awards, liabilities and expenses, damages, compensation and fines;

**Employment Regulations** means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI2006/246) as amended or replaced or any other UK regulations implementing Council Directive 2001/23/EC in the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

**Energisation** means the operation of any switchgear or the insertion of any fuse or the taking of any other step so as to enable an electrical current to flow from the System through a Delivery Point;

**Engineering Hour Failure** means a failure in Power to or interruption in the use of any line of the Underground Network during Engineering Hours which is caused by a failure of the Contractor to perform, or a breach of its obligations under this Contract, provided that unavailability of Power shall not be an Engineering Hour Failure if (a) LUL has specifically requested that Power not be available for that period; or (b) the exception in paragraph 4.1.1 of Schedule 5.1 (Performance Specification) applies;

**Engineering Hours** means the period of time not being Traffic Hours determined by LUL in accordance with the Safety Reference Manual, changes to which will be notified to the Contractor from time to time;

***Environment*** means all, or any, of the following media namely the air (including without limitation the air within buildings and the air within other natural or man-made structures above or below ground), water including, without limitation, coastal and inland waters, surface waters and ground waters and water in drains and sewers and land including, without limitation, surface land and sub-structure strata, sea bed or river bed under any water and any natural or man-made structures and any living organisms or systems supported by those media;

***Environment Commitment Costs*** means Commitment Costs arising under Clause 25.6(c);

***Environmental Laws*** means all or any applicable law from time to time in force (whether civil, criminal or administrative), including law, statute, statutory instrument, treaty, regulation, directive, decision, by-law, circular, code, order, notice, demand, decree, injunction, resolution or judgment of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, court or agency or any other person or body in any jurisdiction which have as a purpose or effect the protection of, and/or the prevention of Harm or Damage to the Environment and/or the provision of remedies in respect of Harm or Damage to the Environment and having the force of law (Provided That for the purposes of this definition the provisions of Part IIA of the Environmental Protection Act 1990 and Sections 161A - 161D of the Water Resources Act 1991 (all as inserted by the Environment Act 1995) shall be deemed to have come into force and effect on the Date of Contract together with any regulations and guidance notes made or issued in relation thereto and shall continue to be applicable until repealed or any modified or amended form of such provisions regulations and/or guidance note(s) first comes into force and effect);

***Environmental Liability*** means any liability of LUL and/or the Contractor under Environmental Laws (including, without limitation, liability under Environment Laws to undertake or pay for Remedial Action);

***Environmental Loss*** means any loss, damage, liabilities, costs and expenses including, fines, penalties, the costs of settling any action or claim, the reasonable cost of Remedial Action, reasonable legal and other professional fees and Irrecoverable VAT in respect of any of these (but excluding Consequential Loss which for the purposes of Clause 26 the definition of Consequential Loss shall apply both to breach of this Contract and liability to pay under this Contract) suffered as appropriate by LUL and/or the Contractor in respect of (a) any Environmental Liability and/or (b) any reasonable action taken by LUL and/or the Contractor to prevent, eliminate, reduce, limit or investigate any Hazardous Materials which would or have given rise to Environmental Liability or in or about its duties of mitigation and/or avoidance of any Environmental Loss as set out in Clause 26.8 and in or about those steps which it is required to take pursuant to Clause 26.11;

***Environmental Management System*** means a group of documented policies, standards, systems and practices providing a framework within which the Contractor shall conduct and manage all operations and activities carried out in connection with or relating to the System which have the potential to affect the Environment all to the

standard of a reasonable and prudent operator having regard to Good Industry Practice;

**Equity IRR** means the projected blended rate of return to Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made.

**ESI** means the electricity supply industry;

**ESP Long Stop Date** means the date which is the first anniversary of the Critical Completion Date or such other date as determined in accordance with the provisions of this Contract, including Clause 13A;

**European Standards** means those standards ratified by the European Committee for Standardization (CEN) of Rue de Stassart, 36, B 1050 Brussels, Belgium, the European Committee for Electrotechnical Standardization (CENELEC) of Rue de Stassart, 36, B 1050 Brussels, Belgium or by the European Telecommunications Standards Institute (ETSI) of F-06921, Sophia Antipolis Cedex, France (or any successor of any of the foregoing);

**Excluded Capacity** means the amount of capacity on the System which is available to the Contractor for delivery of electricity to any Purchaser or for any User; which Excluded Capacity is listed for each Relevant Point in Schedule 5.1 (Performance Specification) unless provided by the Contractor pursuant to Clause 10.17 or as otherwise agreed. Excluded Capacity shall not be greater than 50% of the difference between the Firm Service Capacity and the measured load;

**Excluded Control Equipment** means the Central Line Electrical Control Equipment, the Jubilee Line Electrical Control Equipment which forms part of the Known Third Party Works and the Northern Line Electrical Control Equipment which forms part of the Known Third Party Works;

**Excluded Equipment** means those items of equipment, fixtures, fittings, or other assets located at or in the Properties but which are excluded from any Lease, Easement or Licence of the Properties and are not Assets, which Excluded Equipment shall at the Starting Date be as set out in Schedule 17.4 (Excluded Equipment);

**Exempt Refinancing** means:

- (a) any Refinancing that was fully taken into account in the calculation of the Availability Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
  - (i) breach of representations and warranties, covenants or undertakings;
  - (ii) movement of monies between the Accounts (as defined in the Common

Terms Agreement) in accordance with the terms of the Financing Documents as at the Supplemental Deed Date;

- (iii) late or non-provisions of information, consents or licences;
  - (iv) amendments to Key Subcontracts, the New Assets Contract, the Construction Contract or the New Assets Maintenance Contract;
  - (v) approval of revised technical and economic assumptions for the financial model runs (to the extent required for forecasts under the Financing Documents);
  - (vi) failure by the Contractor or PADCo to obtain any consent by statutory bodies required by the Financing Agreements; or
  - (vii) voting by the Third Party Lenders and the voting arrangements between the Third Party Lenders in respect of the levels of approval required by them under the Financing Agreements;
- (e) any amendment, variation or supplement of any agreement (other than any Investment Document) approved by LUL as part of any Variation or Third Party Works Adoption Variation under this Contract;
- (f) any sale of shares in the Contractor or PADCo by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or PADCo;
- (g) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Investment Documents or securitisation of the Subordinated Lenders' existing rights and/or interests under the Investment Documents; or
- (h) any Qualifying Bank Transaction.

***Exercise of Rights*** has the meaning ascribed to it in Clause 28.13;

***Expenditure Schedule*** means Schedule 59 (Expenditure Schedule);

***Expert*** has the meaning given to it in Clause 16.13;

***Expiry Date*** means the date when this Contract expires under Clause 4 or terminates under Clause 28;

***Failure*** has the meaning given to it in Schedule 20.6 (Liquidated Damages);

***Feasibility Adoption Variation Notice*** means a Third Party Works Adoption Variation Notice served by LUL on the Contractor pursuant to paragraph 2.2 of Schedule 23.16A (Adoption Procedures);

***Feasibility Stage*** has the meaning ascribed to it in paragraph 2.1 of Schedule 23.16A (Adoption Procedures);

**Fees Regulations** means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (S.I. 2004 No. 3244);

**Final Completion Date** means the later of: (i) 6.5 Periods beyond the Confirmed Access Date and (ii) 6.5 Periods after the end of the agreed Four Week Mobilisation Period, or such other date as determined in accordance with the terms of this Contract, including Clause 13A;<sup>18</sup>

**Final Draft Annual Operating Plan** has the meaning ascribed to it in Clause 18.11E;

**Final Draft Five Year Operating Plan** has the meaning ascribed to it in Clause 18.11E;

**Final Draft Plan** has the meaning ascribed to it in Clause 18.11E;

**Final Implementation Details** means the terms on and according to which any Variation shall be implemented;

**Final Third Party Works Adoption Implementation Details** means, in relation to a Third Party Works Adoption Variation, the Third Party Works Adoption Implementation Details agreed by the Parties or otherwise determined under Schedule 37 (Dispute Resolution) in respect of that Third Party Works Adoption Variation;

**Financial Close** means the date on which the Financing Documents initialled for identification by LUL have been entered into and all conditions precedent thereto are satisfied or are waived (save any condition requiring that this Contract or any other Project Agreement has become unconditional) and the swaps have been arranged;

**Financing Agreements** means:

- (a) the Financing Documents, each of which is approved by LUL, as evidenced by its initialling on behalf of LUL by their solicitors other than in respect of each Bank letter of credit, confirmations under the Hedging Agreements and each Novation Certificate;
- (b) such other agreements entered into by PADCo and/or the Contractor for the provision of finance as contemplated by Clauses 23 (Variation), 32 (Change of Law) and 33 (Tax Assumptions) and any Hedging Agreements entered into in relation thereto, added to this definition under Clause 23.23; and
- (c) such other agreements entered into for the purpose of refinancing some or all of PADCo's and/or the Contractors' obligations and liabilities under the Financing Agreements referred to in paragraphs (a) and (b) (**Refinancing Agreements**); and

in each case as amended, varied and waived from time to time;

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***Financing Documents*** means:

- (a) the Common Terms Agreement;
- (b) the EIB Finance Contract;
- (c) the Bank Letter of Credit Facility Agreement (as defined in the Common Terms Agreement);
- (d) each Bank Letter of Credit (as defined in the Common Terms Agreement);
- (e) the Account Agreement (as defined in the Common Terms Agreement);
- (f) the Original Hedging Agreements;
- (g) the PADCo Debenture (as defined in the Common Terms Agreement);
- (h) the PADCo Share Mortgage (as defined in the Common Terms Agreement);
- (i) the SPL Debenture (as defined in the Common Terms Agreement);
- (j) the SPL Share Mortgage (as defined in the Common Terms Agreement);
- (k) each Fee Letter (as defined in the Common Terms Agreement);
- (l) the Direct Agreement;
- (m) the Construction Contractor's Direct Agreement (as defined in the Common Terms Agreement);
- (n) the Powerlink/PADCo Direct Agreement (as defined in the Common Terms Agreement);
- (o) the Sponsors and Shareholders Direct Agreement (as defined in the Common Terms Agreement);
- (p) each Novation Certificate (as defined in the Common Terms Agreement);
- (q) the Amendment and Restatement Deed;
- (r) the Renegotiation Amendment and Restatement Deed; and
- (s) the Direct Agreement Amendment and Restatement Deed;

***Firm Service Capacity*** means at any Relevant Point the Installed Capacity less the capacity of one Unit (except where only one Unit exists at a relevant Substation or Transformer Room where the Installed Capacity shall be the same as the Firm Service Capacity) being as set out in Schedule 5.1 (Performance Specification), as amended pursuant to Clause 23;



**Five Year Operating Plan** means the plan setting out amongst other things the manner in which the Contractor shall provide the Services during the next five Contract Years as approved, agreed or determined pursuant to Clause 18.11M from time to time;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

**FOI Legislation** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them, and any guidance and/or codes of practice issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**Force Majeure Event** means any of the events listed in Clause 31.4;

**Formal Warning** means a warning given pursuant to Schedule 20.2 (Formal Warning);

**Foreseeable Change in Law** means as at the date the Contractor or the Third Party Lenders' technical advisor provides LUL with written confirmation pursuant to paragraph 1.6, 2.7, 3.7 or 4.7 of Schedule 23.16A (Adoption Procedures) (as the case may be) any changes to any Law (including all Environmental Laws) and/or Applicable Standards (whether by means of any enactment, repeal or amendment) that comes into effect after the relevant date which are foreseeable at the relevant date and for this purpose any changes shall be regarded as foreseeable if on the relevant date they have been published in:

- (i) a draft bill as part of a Government consultation paper;
- (ii) a bill;
- (iii) a draft statutory instrument;
- (iv) a proposal in the Official Journal of the European Communities or as a common position adopted by the European Parliament; or
- (v) in a draft Applicable Standard that has been published by:<sup>19</sup>

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<sup>19</sup> This section has been inserted to clarify what is proposed to be foreseeable in the context of changes to Standards.

- a. the British Standards Institution (or any successor) in relation to British Standards;
- b. the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute (or any successor to any of the foregoing) in relation to European Standards; or
- c. the International Organization for Standardization or the International Electrotechnical Commission (or any successor to any of the foregoing) in relation to International Standards;

**Fossil Fuel Levy** means the charge made by the Contractor and set by the Electricity Regulator from time to time in accordance with The 1989 Act or any additional or substitute charge;

**Four Weekly Report** has the meaning ascribed to it in paragraph 4.1 of Schedule 43.3 (Contract Management);

**Four Week Mobilisation Period** means the four week mobilisation period required pursuant to the programme agreed by LUL and the Contractor in the ECM V0055 Final Implementation Details;<sup>20</sup>

**Framework Agreement** means the power upgrade works framework agreement dated 27 November 2002 between LUL, the Contractor and PADCo relating to certain matters in connection with the Power Upgrade Works;

**Fuel Supply Contracts** means contracts for the supply of fuel to Greenwich Generating Station after the completion of the Emergency Supply Plan;

**Full Line Closure** means any interruption to or failure of or on a Line which results in LUL ceasing or being unable to commence train services on the whole of that Line;

**Full Network Closure** is as defined in Schedule 20.1;

**General Properties Lease** means the agreed form of lease of that name contained in the Agreed Form Documents File and any agreement for any such lease and any other like lease or agreement for such that is entered into as an After Acquired Property Document;

**Generating Stations** means Greenwich Generating Station and Lots Road Generating Station;

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor and/or operator engaged in the same type of undertaking under the same or similar circumstances including (where applicable) the circumstances of

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<sup>20</sup> Power Quality Variation

an urban railway network with sub-surface sections and/or electricity undertaking and seeking in good faith to perform its obligations with sufficient financial resources and complying with the relevant Law or Legislation;

**Greater London Authority** means the body corporate of that name established by section 1 of the Greater London Authority Act 1999;

**Greenwich Generating Station** means LUL's electricity generating station in Old Woolwich Road, Greenwich;

**Greenwich Lease** means the agreed form of lease of Greenwich Generating Station contained in the Agreed Form Documents File;

**Greenwich Turbine Side Letter** means the side letter relating to the turbines at the Greenwich Generating Station dated on or about the date hereof from LUL to the Contractor;

**Grid Supply Point** means any point at the electrical border of the National Grid Company's transmission network and a Regional Electricity Company's distribution network;

**Harm or Damage to the Environment** means harm or damage to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property;

**Harmonic Filter** means the minimum amount of equipment necessary to provide harmonic distortion reduction on an electrically connected area of the System which requires such a reduction;

**Harmonic Filtering Capacity** means the rating in MVAR of a Harmonic Filter, as listed in Appendix 1.10.2 to Schedule 5.1;<sup>21</sup>

**Hazardous Material** means anything which alone or in combination with others is capable of causing harm, damage or nuisance (as defined in the Environmental Protection Act) to property or to man or any other organism supported by the Environment including, without limitation, noise, hazardous substances, pollutants, contaminants, wastes and other toxic, noxious, flammable, corrosive matter (including all materials listed or regulated as hazardous, toxic, etc. under Environmental Laws) whether in solid, liquid or gaseous form;

**Health and Safety File** has the meaning ascribed to it under regulation 2 of the CDM Regulations;

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<sup>21</sup> Above 2 definitions Power Quality Variation

**Hedging Agreements** means:

- (a) the ISDA Master Agreement dated on or about the Date of Contract between The Royal Bank of Scotland plc and PADCo and the ISDA Master Agreement dated on or about the Date of Contract between CIBC Wood Gundy Plc and PADCo and each of which assumes the election for the “Second Method and Market Quotation” and any confirmations relating to interest swap transactions thereunder (the **Original Hedging Agreements**); and
- (b) any ISDA Agreement in a form substantially similar to the forms referred to under paragraph (a) above entered into from time to time between PADCo and/or the Contractor and one or more Third Party Lenders for the purpose of hedging interest rate liabilities under any Financing Agreement and any confirmations relating to interest swap transactions thereunder;

**HMRI** means Her Majesty’s Railway Inspectorate;

**HSE** means Health & Safety Executive;

**Hz** means Hertz;

**IME Directive** means Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 including all decisions;

**Implementation Details** means:

- (a) detailed programme, in such form and with such content as specified by LUL pursuant to Clause 23.27(i) (iii) and (iv), setting out in a clear manner all of the activities proposed to be undertaken by the Contractor and, separately, by its Key Subcontractors in order to implement the Variation, including the manner in which the Contractor shall comply with LUL’s Subcontracting policy described in Clause 23.27(f);
- (b) a detailed timetable for doing so including milestones for key events and giving particulars of all lead times and contingencies allowed for in the timetable and all assumptions upon which it is conditional;
- (c) a detailed description of the effect if any of implementing the Variation on the timing of the performance of other obligations under this Contract (including on any relevant Completion Date for the Initial Works or on any completion date in respect of any works that are the subject of a Variation or Third Party Works Adoption Variation);
- (d) the impact of the Variation on the provision of the other Services including any recommendation for consequential changes to or requests for relief from the Services as at the date of the Variation Details as a result of implementation of the Variation;

- (e) a statement, in such form and with such content as specified by LUL pursuant to Clause 23.27(i)(i) and (ii), itemising the proposed costs of implementing the proposed Variation, including, where applicable, an itemised breakdown of profit margins, overhead costs, and any other fixed and/or variable costs to be suffered or incurred by the Contractor and, separately, by its Key Subcontractors (including the cost and resource to be assigned to a level of activity as specified by LUL to be included in the programme referred to in paragraph (a) above);
- (f) where the Variation is not to be wholly funded by Advance Payments, a statement of the alternative methods by which the Contractor is able to finance the costs of implementing it specifying the respective amounts of debt and equity required to do so, the likely Costs and terms on which debt financing would be available, the effect of these on the alternative proposed Price Adjustments (if any) contained in the Implementation Details and any other details reasonably required by LUL;
- (g) a statement specifying whether those Costs are likely to exceed the Individual Threshold or, when aggregated with the Minor Variation Costs the Cumulative Threshold (and if so a statement itemising the amount of the Minor Variations Costs);
- (h) a statement by the Contractor specifying the payment profile which the Contractor proposes to govern the quantum and timing of payments to the Contractor and where different to that proposed by LUL pursuant to Clause 23.27(h) a description in reasonable detail as to the differences between the proposals;
- (i) a draft of any changes to this Contract which would be required as a result of implementing the Variation;
- (j) if relevant, a statement as to the proposed Variation LD Limit and/or Variation Liability Limit; and
- (k) any other matters which LUL considers appropriate to specify;

**Implementation Notice** means a notice given pursuant to paragraph 6.10 of Schedule 23.16A (Adoption Procedures);

**Implementation Statement** means a statement which explains the specific Implementation Details or Third Party Works Implementation Details (as applicable) suggested by the Contractor for the Variation or Third Party Works Adoption Variation (as applicable) and which demonstrates the steps that have been taken to comply with the Contractor's obligations under Clause 23.14 (Obligation to Minimise Costs) or paragraphs 7.14 and 7.15 of Schedule 23.16A (Adoption Procedures) (as applicable);

**Incident Investigation** means a thorough review of a situation or event including a review of the reasons for the situation or event arising and the actions taken at the

time or after the event to respond to or mitigate the effects of the situation or event and recommendations for subsequent necessary actions to prevent a recurrence;

***Included Funding Allowance*** means the:

- (i) [REDACTED] term loan facility provided to PADCo under the EIB Finance Contract the availability of which is subject to the terms and conditions contained therein and the other Financing Agreements;
- (ii) the Borrower [REDACTED] Contingent Loan Facility (as defined in the Common Terms Agreement) under the Borrower Subordinated Facilities Agreement (as defined in the Common Terms Agreement) the availability of which is subject to the terms and conditions therein and the Financing Agreements, and

which is not available if the Contractor is required to go to competitive tendering for a Variation in accordance with the Cost Optimisation Principles;

***Incremental Risk*** means the amount of the difference between (a) the profile of risk of the System (measured by the likelihood of the Contractor incurring liability for liquidated damages pursuant to Clause 20.6 under this Contract as at the Starting Date) and (b) the profile of risk of the System on the basis that the relevant Variation or Third Party Works Adoption Variation is implemented or the relevant Known Third Party Adopted Works or Third Party Works Assets are adopted measured by the likelihood of the Contractor incurring liability for liquidated damages pursuant to Clause 20.6 under this Contract, such measurement to be on exactly the same basis as at the Starting Date but altered and amended so as to take into account the Variation or Third Party Works Adoption Variation or Known Third Party Adopted Works or Third Party Works Assets which is (or, as the case may be) are proposed to be implemented or adopted, as the case may be, together with any previous Variations already implemented or Known Third Party Adopted Works or Third Party Works Asset already adopted;

***Indirect Users*** means the parties other than LUL who from time to time occupy premises which are connected to and receive supplies of electricity from LUL's Distribution System (but excludes any third party directly supplied by the Contractor in accordance with Clause 10.1);

***Individual Threshold*** means £250,000 (indexed to RPI as from the Starting Date);

***Information*** has the meaning given under section 84 of the FOIA;

***Infraco*** means each of Metronet Rail SSL Limited, Metronet Rail BCV Limited and Tube Lines Limited and any other successor PPP company (as defined in the Greater London Authority Act 1999); and ***Infracos*** means all of them together;

***Infraco Network*** means those parts of the Underground Network for which the Infracos have responsibility;

**Initial Shareholder Debt** means the lower of actual and projected (provided that between quarters, the projected shareholder debt shall be pro-rated) shareholder debt drawn down in the Contractor's Financial Model up to a maximum of [REDACTED] and any shareholder debt shown as drawn down in the Contractor's Financial Model as at the Termination Calculation Date in connection with the Included Funding Allowance and/or the PUW Contingent Facilities up to a maximum amount of [REDACTED] in each case applied for purposes of the Project and any further shareholder debt added to this definition under Clause 23.23;

**Initial Shareholder Equity** means any Shareholder Equity issued as projected in the Contractor's Financial Model up to a maximum of [REDACTED] and any additional Shareholder Equity added to this definition under Clause 23.23;

**Initial Shareholders** means Seepower Limited (now known as EDF Energy Powerlink Holdings Ltd.), ABB Investments Limited and BICC Infrastructure Investments Limited (now known as Balfour Beatty Infrastructure Investments Limited), being the holders of the entire issued share capital of the Contractor at the Date of Contract;

**Initial Works** means the works listed in Schedule 13.1 (Initial Works);

**Input to the System** means in the case of electricity supplied pursuant to Clause 5 electricity received into the System measured at the generator output meters at each of the Generating Stations less in each case the metered consumption of the house transformers and in the case of Procured Electricity means the electricity received into the System measured at the Metering Equipment located at the Bulk Supply Points;

**Installed Capacity** means the capacity of the System at any Relevant Point, being as set out in Schedule 5.1 (Performance Specification), as amended pursuant to Clause 23;

**International Standard** means those standards produced by the International Organization for Standardization or by the International Electrotechnical Commission both of 1 Rue de Varembe, CH1211, Geneva 20, Switzerland (or any successor of any of the foregoing);

**Instruction Notice** means a notice given pursuant to Clause 23.26;

**Insurance Proceeds Received** means all proceeds of any insurance taken out as required by Clause 25 and the Financing Agreements which either have been received by any insured party or loss payee thereof or for which a claim has been submitted including, whilst there are Third Party Lenders, proceeds placed in (and at the relevant time are standing to the credit of) accounts to secure obligations to the Third Party Lenders under the Financing Agreements and over which Third Party Lenders have security in accordance with such Financing Agreements, and, when there are no Third Party Lenders, paid or required to be paid into a joint account;

**Insurance Undertaking** has the meaning given in the rules from time to time of the Financial Services Authority;

**Insurances** means the insurance policies from time to time in force and taken out by the Contractor pursuant to Clause 25.27;

**Intellectual Property Rights or IP** means any patents, moral rights, rights in inventions, registered and unregistered designs, trademarks, service marks, trade names, copyright, database rights, rights in software, rights in commercial information and technical information, including know-how, research and development data, manufacturing methods and data, specifications and drawings, formulae, algorithms, prototypes and research materials, any applications for the registration of registrable rights and any other intellectual property rights;

**Interface Switching** means those actions necessary to control the flow of electricity from the System to and in LUL's Distribution System and shall constitute switching associated with each individual Delivery Point for:

- (a) low voltage ac where circuit breakers are associated with Delivery Points which are direct low voltage ac supplies at the Starting Date;
- (b) all positive and negative dc circuit breakers associated with each individual Delivery Point;

and shall encompass the associated status indication and monitoring arrangements and means to trip the rectifier supplies as set out in the Performance Specification; and those actions necessary to provide switching associated with dc busbar sectioning equipment together with the associated status indication and monitoring arrangements as set out in the Performance Specification.

**Interim Annual Operating Plan** has the meaning ascribed to it in Clause 18.11B(a)(i);

**Interim Five Year Operating Plan** has the meaning ascribed to it in Clause 18.11B(a)(i);

**Intermediate Reversionary Requirements** means in relation to a Contract Year the relevant requirements relating to the System which are referred to in Schedule 5.1 (Performance Specification);

**Investment Documents** has the meaning given in the Sponsors and Shareholders Direct Agreement;

**Invoice** means an invoice substantially in the form of Schedule 22.2, Part 1 (Invoice);

**IRR Failure Costs** means the aggregate costs (exclusive of VAT) (as agreed or determined in accordance with Clause 16.3) to remedy the IRR Failures pursuant to Clause 16.3;

**IRR Failures** has the meaning given in Clause 16.3;



***Irrecoverable Value Added Tax*** or ***Irrecoverable VAT*** means value added tax incurred by a person to the extent to which that person or any VAT group of which it is a member (assuming for these purposes that the only possible members of a VAT group of which either the Contractor or PADCo is a member are the Contractor and PADCo) cannot recover such value added tax (whether by a way of credit against a liability to account for value added tax or as an actual repayment from HM Revenue & Customs) and to the extent to which it would not be recoverable if the only activities carried on by the Contractor and PADCo were confined to those assumed in paragraphs B.I.9 and B.I.10 of Schedule 33 (Tax Principles and Assumptions) respectively;

***Isolation*** means the disconnection and separation of electrical or compressed air equipment from every source of electrical energy or compressed air in such a way that this disconnection and separation is secure.

***IT Assets*** means those assets, including but not limited to hardware, software and cabling, comprising the IT Systems;

***IT Systems*** means the computer systems and networks (including the SCADA System) (other than the Telephony System) used by LUL to operate the System or otherwise necessary to enable the Contractor to provide the Services, as such systems and networks are amended, upgraded, improved or replaced from time to time;

***Jubilee Line Side Letter*** means the letter from the Contractor to LUL relating to the Jubilee Line Extension dated on or about the date hereof;

***Junior Lenders*** has the meaning given in the Sponsors and Shareholders Direct Agreement;

***kA*** means Kiloamperes;

***Key Objective*** has the meaning ascribed to it in recital (G);

***Key Personnel*** means employees of the Contractor performing any of the following functions: contractor's representative, managing director, operations director, power station manager;

***Key Project Contracts*** means the New Assets Contract, the New Assets Maintenance Contract and the Construction Contract as amended and updated from time to time;

***Key Subcontract*** means any contract entered into by the Contractor which is listed in Schedule 30.22 or which is deemed as such pursuant to Clause 30.22B;

***Key Subcontractor*** means any party (other than the Contractor) to a Key Subcontract;

***Known Third Party Adopted Works*** means any:

- (a) NOT USED

- (b) change to the scope since the Starting Date of the Known Third Party Works which the Contractor is to adopt; or
- (c) any proposed change to the tables in Schedule 20.6 in relation to the Known Third Party Works;

**Known Third Party Adopted Works Cap** means in relation to Known Third Party Works or Known Third Party Adopted Works, £25 million adjusted on each anniversary of the Starting Date by the percentage change in the Retail Price Index over the previous Contract Year;

**Known Third Party Works Adoption Procedures** means the procedures set out in Schedule 23.16 (Known Third Party Works Adoption Procedures);

**Known Third Party Works** means projects already in progress at the Starting Date pursuant to contracts between LUL and third parties as listed in Part 1 of Schedule 23.51 (Known Third Party Works);

**KS Amendment** has the meaning ascribed to it in Clause 30.22BB;

**KS Deed of Novation** means a deed of novation in the form set out in Appendix 1 of the KS Direct Agreement;

**KS Direct Agreement** means the form of agreement as set out in Schedule 30.22C (KS Direct Agreement);

**KS Novation Notice** means a notice issued by LUL pursuant to Clause 2 of the relevant KS Direct Agreement;

**kV** means Kilovolts;

**kVA** means Kilovoltamperes;

**kVAh** means Kilovoltampere hours;

**kVA<sub>r</sub>** means Kilovoltamperes (reactive);

**kVA<sub>r</sub>h** means Kilovoltampere (Reactive) hours;

**kW** means Kilowatts;

**kWh** means Kilowatt hours;

**Late Start Up of Depot** means any failure to run the first scheduled train departure from any Depot on any day;

**Latent Defect** means any latent or inherent defect or defects in the Adopted Third Party Works whose existence is adverse to the Contractor and which is attributable to defective design, defective workmanship and/or defective materials and which existed but was not reasonably apparent to the Contractor (acting in accordance with Good

Industry Practice) during its carrying out and/or witnessing of tests and/or inspections on the Third Party Works Assets (including, without limitation, the commissioning and acceptance tests) and not caused either by (i) the failure of the Contractor to operate and maintain the Adopted Third Party Works in accordance with its obligations under the Contract, (ii) the carrying out by the Contractor of any alterations or additions to the Adopted Third Party Works (provided that alteration or additions shall not include any works and/or testing associated with fault location, fault investigation or fault correction) and/or (iii) the failure by the Contractor to perform any of its obligations under this Contract;

**Law or Legislation** means any Act of Parliament or subordinate Legislation within the meaning of section 21(1) of the Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 and any licence or regulation made pursuant to the 1989 Act;

**LDs Threshold** means an amount of liquidated damages identified and calculated in accordance with Schedule 20.6 (Liquidated Damages) which have been agreed or finally determined of [REDACTED] in respect of events giving rise to liquidated damages occurring in any one LUL Financial Year, indexed to RPI as from the Date of the Supplemental Deed;

**LE** means London Electricity PLC, its subsidiaries, affiliates, agents and subcontractors;<sup>22</sup>

**Leases** means the Lots Road Lease, the Greenwich Lease, the General Properties Lease, any agreement for any such lease and any other like lease or agreement for lease that is entered into as an After Acquired Property Document;

**Lenders Agent** means the agent for the Third Party Lenders under the Financing Documents from time to time and, in the absence of such agent, the European Investment Bank;

**Lenders Liabilities** means at the relevant time the sum certified in writing by the Third Party Lenders (or their agent) (without taking into account any amounts paid by or on behalf of the Contractor or PADCo in or towards the payment of Lenders Outstandings on or after any acceleration thereof or any enforcement of any Security Interest relating thereto) as being the aggregate of:

- (a) all principal outstanding to the Third Party Lenders under the Financing Agreements (**Principal Outstanding**);
- (b) accrued but unpaid interest (other than any amount of interest representing any marginal increase in the rate of interest applying only by reason of default or

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<sup>22</sup> Power Quality Variation

other failure under a Financing Agreement howsoever described) (***Interest Outstanding***);

- (c) fees and commissions due but unpaid under the Financing Agreements;
- (d) costs and expenses due but unpaid to the Third Party Lenders (or any of them) in any capacity under the Financing Agreements; and
- (e) Market Breakage Costs;

Provided that:

- (i) if any of the Financing Agreements are waived, amended, varied or otherwise modified after the Supplemental Deed Date (each a ***Modification***) it shall continue to be a Financing Agreement for the purposes of this Contract but if, subject to (ii) and (iii) below:

- (A) any such Modification results in the aggregate amount of Principal Outstanding on the date the calculation is made (the ***Relevant Date***), being higher than is projected to be outstanding on such date by reference to:

- (aa) the cumulative total of the amounts shown as being available for drawing in Schedule B to the EIB Finance Contract up to and on the Relevant Date; or

- (bb) where the Relevant Date falls after 6 December 2003 the full amount of the Main Facility (as defined in the EIB Finance Contract) less the cumulative total of the percentages shown in Schedule F Part 1 to the EIB Finance Contract up to and on the Relevant Date multiplied by such amount,

and if on such date (x) any part of the Included Funding Allowance has been drawn by reference to the full amount of the IFA Facility (as defined in the EIB Finance Contract) less the cumulative total of the percentages shown in Schedule F Parts 2 and 3 of the EIB Finance Contract up to and on the Relevant Date multiplied by such amount and/or (y) any part of the PUW Facilities has been drawn by reference to the full amount of the EIB PUW Loan Facility less the cumulative total of the percentages shown in Schedule F Part 4 of the EIB Finance Contract up to and on the Relevant Date multiplied by such amount; or

- (B) any such Modification is of any term of the Financing Agreements relating to the basis of calculating the amounts referred to in paragraphs (c) and/or (d) under the definition of Lenders Liabilities; or

- (C) any such Modification is of a Hedging Agreement and results in the aggregate amount of Market Breakage Costs being higher than it would otherwise have been but for such Modification,

then unless and until LUL shall have consented to such Modification (such consent to be for the purposes only of the definition of Lenders Liabilities and not to be unreasonably withheld or delayed) the amount of Lenders Liabilities shall be calculated on the assumption that the relevant Modification has not been entered into;

(ii) subject to (iii) below if any of the Financing Agreements are Refinancing Agreements (having the meaning in the definition of the Financing Agreements) and the aggregate amount of Principal Outstanding is, on Relevant Date, higher than is projected to be outstanding on such date by reference to:

(A) the cumulative total of the amounts shown as being available for drawing in Schedule B to the EIB Finance Contract up to and on the Relevant Date; or

(B) where the Relevant Date falls after 6 December 2003 the full amount of the Main Facility (as defined in the EIB Finance Contract) less the cumulative total of the percentages shown in Schedule F Part 1 to the EIB Finance Contract up to and on the Relevant Date multiplied by such amount,

and if on such date (x) any part of the Included Funding Allowance has been drawn by reference to the full amount of the IFA Facility less the cumulative total of the percentages shown in Schedule F Parts 2 and 3 of the EIB Finance Contract up to and on the Relevant Date multiplied by such amount and/or (y) any part of the PUW Facilities has been drawn by reference to the full amount of the EIB PUW Loan Facility less the cumulative total of the percentages shown in Schedule F Part 4 of the EIB Finance Contract up to and on the Relevant Date multiplied by such amount and as a result of entry into of such Refinancing Agreements then unless and until LUL shall have consented to the entry into of such Refinancing Agreements (such consent to be for the purposes only of the definition of Lenders Liabilities and not to be unreasonably withheld or delayed) the amount of Lenders Liabilities shall be calculated on the assumption that such Refinancing Agreements had not been entered into; and

(iii) the Third Party Lenders may (x) agree with PADCo or the Contractor (as appropriate) to any Modification which defers, (but not a Modification of any term of the Financing Agreements relating to the basis of calculating the amounts referred to in paragraphs (c) and/or (d) or of the Hedging Agreements) and/or (y) may take or refrain from taking any other action which results in the deferral of, the repayment of any sums payable in respect of principal or interest under any of the Financing Agreements for periods of up to (in aggregate) six months, or for unlimited periods of time where any such deferment of such sums results from a breach by LUL of its obligations under this Contract or failure to comply with or provide a LUL Dependency, in either case without the consent of LUL notwithstanding that such action may

increase the amount of Principal Outstanding and/or Interest Outstanding (or for the avoidance of doubt, the amount of fees, commissions, costs, expenses and Market Breakage Costs under paragraphs (c), (d) and (e) above) and all such Modifications or taking any other action shall be taken into account in the determination of Lenders Liabilities and LUL's obligations in relation thereto;

**Lenders Outstandings** means at any relevant time the aggregate amount required to pay, repay or otherwise discharge in full all amounts or other obligations outstanding to the Third Party Lenders (or any of them) under the Financing Agreements;

**LFCDA** means the London Fire and Civil Defence Authority;

**Liability Headroom** means, at any time, the amount of the Contractual Risk Commitment or (as the case may be) the Performance Liability Limit that has not been consumed by Commitment Costs or (as the case may be) contractual claims or liability to LUL pursuant to and in accordance with this Contract;

**Liability Period** has the meaning given to it in the Direct Agreement;

**Licences** means [REDACTED] the Specific Properties Licence and any agreement for such and any other like licence or agreement for licence that is entered into as an After Acquired Property Document;

**Line** means a railway line on the Underground Network forming part of the network of urban railways operated by LUL;

**Line Control Centre** means in relation to any Line, the location from which Interface Switching is carried out for that Line under non-emergency conditions;

**Line Specific Electrical Control Equipment** means equipment used to implement Interface Switching;

**Live Duct** means any duct structure or duct configuration containing one or more ducts or any Trench or trough in which is housed any cable (whether or not comprised in the System) which is in continual, regular or occasional use;

**Local Emergency Power Supply** means equipment and systems to provide Emergency Power to equipment and services located within a Station as specified in paragraph 5 of the Performance Specification;

**Local Emergency Power Supply Failure** means the period of time specified in Clause 21.13;

a **Local Emergency Power Supply Trigger** occurs if the arrangements for the Local Emergency Power Supply either:

- (a) fail to meet the requirements as specified in paragraph 5.3.1(a) of Schedule 5.1 (Performance Specification); or

- (b) fail on testing during Traffic Hours of any Local Emergency Power Supply and at the time of the failure of the test the requirements of paragraph 5.3.1(b) of Schedule 5.1 (Performance Specification) are not met provided that the threshold for failure shall be calculated in accordance with Schedule 21.5 paragraph 4.2 (Adjustments to the Availability Charge Components);

**Long Term Strategy** means the Long Term Strategy as approved, agreed or determined pursuant to Clause 18.6L;

**Loss Factor** means a value agreed between the Contractor and LUL determined through technical analysis of the losses incurred through the demand of the Purchaser;

**Losses** means all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses including Irrecoverable VAT (included loss of revenue excluding VAT);

**Lost Compressor Capacity** means in any Period the total capacity measured in cubic feet per minute of air compressors “out of service” (which expression shall be related to failure of plant, and not to any inaccessibility of plant, or plant being taken out in accordance with the Regimes, or plant not being utilised for delivery of compressed air due to reduced demand on the Underground Network) for a period of 3 consecutive days (part or all of which has fallen within that Period unless an adjustment has already been made in respect of those days in any preceding Period) multiplied by the duration of the outage (in hours);

**Lots Road Closure Termination Payments** means payments made by the Contractor to the Transferred Employees set out in Part 3 of Schedule 19.19 and in the event of an omission in Part 3 of Schedule 19.9 of a Transferred Employee entitled to a payment such additional Transferred Employees as agreed by LUL and the Contractor on the termination of their employment on the grounds of redundancy in relation to the closure of Lots Road Power Station in accordance with the collective agreement governing the Transferred Employees entered into by LUL prior to the Starting Date;

**Lots Road Generating Station** means LUL’s electricity generating station at Lots Road, Chelsea;

**Lots Road Lease** means the agreed form of lease of Lots Road Generating Station contained in the Agreed Form Documents File;

**Lots Road Licences** means the special licences initialled for the purposes of identification obtained by the Contractor in relation to generation and supply from Lots Road Generating Station and Greenwich Generating Station;

***LT Corporate IPR*** means any Intellectual Property Rights subsisting in the roundel, the line map and the New Johnston typeface (as set out in Schedule 34.7.1) and subject to Clause 34.1.3 any registered or unregistered trade mark or service mark, trade name, logo or get-up;

***LUL*** means London Underground Limited of 55 Broadway, London SW1H 0BD and any successor to the undertaking, property or works (or any part or parts thereof) of LUL acting for itself and, where relevant, on behalf of London Regional Transport;

***LUL Approvals*** means all consents, licences, authorisations, permissions, approvals and permits which are necessary for the discharge by LUL of the LUL Statutory Duties and/or the discharge by LUL of its obligations under the Project Agreements;

***LUL Asset Register*** means the register of the Assets as at the Starting Date prepared by LUL and made available to the Contractor;

***LUL Audit Plan*** has the meaning ascribed to it in Clause 18.3A;

***LUL Dependencies*** means the obligations and matters to be performed by LUL and TfL in accordance with the Technical Interface Procedures, this Contract (including those set out in Schedule 28A (LUL Dependencies) and, to the extent set out therein, Schedule 28C (VLU LUL Dependencies)), any other Project Agreement and the Final Implementation Details for the ECM V0055 or, where specified in the Contract or ECM V0055 Final Implementation Details, the exercise of LUL's or TfL's rights in a particular manner and for which Clause 28A provides the rights and remedies (except where another remedy is specifically provided for in this Contract);<sup>23</sup>

***LUL Estate Plan*** means the plans prepared by LUL each year in respect of each Infraco Network which contains information regarding LUL's property related activities (including information relating to proposed projects, maintenance works and commercial exploitation);

***LUL Financial Year*** means a financial year of LUL, as published or notified by LUL from time to time;

***LUL Fixed and Floating Charge Agreement*** means the fixed and floating charge granted by PADCo to LUL dated on or about the date hereof;

***LUL Losses*** has the meaning contained in Clause 25.1;

***LUL Permitted Security Interest*** means any Security Interest created by LUL or TfL other than a Security Interest which could have a material adverse effect on LUL's ability to discharge its obligations under this Contract or the Contractor's ability to perform its obligations or exercise its rights under this Contract;

***LUL Share of Refinancing Gain*** has the meaning given in Clause 58.2;

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<sup>23</sup> Power Quality Variation



***LUL Space Allocation Process*** means the LUL space allocation process detailed in the document relating to the allocation of space on operational property - Category 1 LU Standard 2-04100-003 from LUL to the Contractor issued in November 2003 and approved 20 November 2003 (renamed the Category 1 LU Standard 1-472 in October 2006) as amended and updated from time to time;

***LUL Statutory Duties*** means any duties or obligations imposed by statute (directly or through TfL or otherwise) on LUL in relation to the provision of public passenger transport services for Greater London, including those set out in The 1984 Act and as referred to in Clause 14.3;

***LUL/Infraco Estate Plan*** means the plans prepared by the Infracos each year to seek to co-ordinate the activities proposed by LUL in the relevant LUL Estate Plan and the Infraco's proposals for compliance with the obligations in its PPP Contract so that the timing and design of these activities can complement each other and which facilitates (so far as is reasonably possible) LUL's priorities indicated in the LUL Estate Plan;

***LUL's Distribution System*** means LUL's system for the distribution of electricity and compressed air from the Delivery Points to and within the Underground Network;

***LUL's Station Electrical Distribution System*** means the electrical system within LUL's stations which forms part of LUL's Distribution System and which is used to supply electricity derived from or through the System and from low voltage REC supplies which do not form part of the System, to station lighting and all other electrical equipment within LUL stations;

***LUL's Supply Contract*** means any contract from time to time between LUL and an electricity supplier other than the Contractor.

***m<sup>3</sup>*** means cubic metres;

***Main Power Control Centre*** means the location from which Electrical Switching is carried out under non-emergency conditions;

***Major Power Works*** means the works contemplated and/or created pursuant to (i) the major power works heads of terms dated 19 March 2004 between LUL, the Contractor and PADCo, and (ii) the Power Strategy Variation V0263 dated 19 July 2004;

***Major Power Works IP*** means all Intellectual Property Rights subsisting in all designs, drawings, plans, documents, materials and other articles created by the Contractor, PADCo and all MPW Subcontractors in the performance of the Major Power Works (including all documents, materials and other articles in which the Major Power Works IP subsists);

***Management Escalation Procedure*** means the procedure described in paragraphs 1 and 2 of Schedule 37A (Management Escalation and Expert Determination Procedure).

**Mandatory Termination Notice** shall have the meaning contained in the Direct Agreement;

**Market Breakage Costs** means any amount payable by PADCo pursuant to clause 6(e) of any Hedging Agreement following the occurrence of the Early Termination Date (as defined therein) provided that if any election other than for Second Method and Market Quotation is made under any such Hedging Agreement the amount of Market Breakage Costs shall be the lower of the actual amount payable and the amount it would have been had such election been made;

**Master Projects Database** means the database owned and operated by LUL for the purpose of facilitating the coordination of works, projects and programmes between all parties carrying out work on the Underground Network;

**Metering Equipment** means the metering equipment, instrument transformers (both voltage and current), metering protection, electrical equipment, associated data collection outstations (if any), other measuring equipment and apparatus used to measure any or all of the kWh, kW, kVA, kVArh and m<sup>3</sup> at any point in the System;

**Method Statement** means a statement of method for carrying out works as set out in and required by the Contract Safety and Environmental Conditions SIS-621B, Attachment 10 “Model Health, Safety and Environmental Method Statement”;

**Millennium Compliance** means the ability of a computer system or related hardware or software to provide all the following functions:

- (a) handle date information before, during and after 1 January 2000 including, but not limited to, accepting date input, providing date output and performing calculations on dates or portions of dates;
- (b) function accurately and without interruption before, during and after 1 January 2000, without any change in operations associated with the advent of the year 2000 and the new century;
- (c) respond to two-digit year input and process two-digit year date information in ways that resolve the ambiguity as to century in a disclosed, defined and predetermined manner; and
- (d) store and provide output of date information in ways that are similarly unambiguous as to century;

**Minor Variations** means a Variation where the Costs arising out of the Variation are less than the Individual Threshold or where the Costs are zero;

**Minor Variations Costs** means the Costs of implementation of each Minor Variation as agreed or determined in accordance with Clauses 23.17 less any Variations for which an adjustment to the charges payable under this Contract has been made pursuant to Clauses 23.18 or 23.24;

**Month** means a calendar month of the Gregorian calendar;

**MPD Guidelines** means the document named as such and initialled by the Parties as at the Date of the Supplemental Deed, as may be amended by LUL from time to time;

**MPW Subcontractors** means subcontractors of the Contractor who have consented to amend the terms on which they licence their intellectual Property Rights to the Contractor in the terms set out in Clause 34.11B(b);

**MVA** means Mega Volt Amperes;

**MVA<sub>r</sub>** means reactive Mega Volt Amperes;<sup>24</sup>

**MW** means Megawatts;

**National Grid** means the transmission system in England and Wales operating primarily at voltages of 400 kV and 275 kV;

**National Grid Company PLC (NGC)** means the company which owns and operates the National Grid;

**Net Cashflow** means the sum of any charges due to the Contractor pursuant to the Contract, less operating and maintenance costs, non-recurring expenditure and Taxes;

**Net Present Value** means the present value of the future amounts in question discounted at the applicable rate for each year between the date when the amounts in question would have fallen due and the Expiry Date;

**Net Purchasers' Revenues** shall have the meaning in Clause 10.12;

**Net Users' Revenue** shall have the meaning in Clause 10.12;

**Network Code** means the document of that name prepared by TransCo pursuant to its public gas transporter licence under the Gas Act 1986 (as amended by the Gas Act 1995) and relating to its high pressure gas transmission system and which at the date of this Contract comprises the Network Code Principal Document and the Network Code Transmission Document (both dated 1st March 1996) and as the same may from time to time be modified or replaced;

**New Assets** means the assets created from the Works (as defined in the Construction Contract);

**New Assets Contract** means the agreement of even date between the Contractor and PADCo for the supply, implementation, installation and commissioning of the New Assets and then ongoing maintenance;

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<sup>24</sup> Above 3 definitions Power Quality Variation

***New Assets Maintenance Contract*** means the agreement of even date between the Contractor and PADCo;

***New Moveable Assets*** means all of the New Assets other than any which are fixtures;

***NGC Transmission*** means the transmission of electricity by the National Grid Company from its source to the Grid Supply Point at the electrical border between the National Grid Company's and the Regional Electricity Company's networks;

***Operation and Maintenance Regime*** means the regime in Schedule 7.2.1 (Operation and Maintenance Regime) as amended from time to time in accordance with Clause 7;

***Option Deed*** means the option deed and indemnity between PADCo and LUL in relation to the New Moveable Assets;

***Option Deed Side Letter*** means the side letter relating to the Option Deed dated on or about the date hereof from LUL to the Contractor;

***Option Exercise Notice*** shall have the meaning contained in the Option Deed;

***Option Exercise Price*** shall have the meaning contained in the Option Deed;

***Other LUL Building*** means any other part of a building or structure (including a Cable Shaft) of LUL or TfL of which a particular Property forms part;

***Outline Annual Operating Plan*** has the meaning ascribed to it in Clause 18.9;

***Outline Five Year Operating Plan*** has the meaning ascribed to it in Clause 18.9;

***Outline Long Term Strategy*** has the meaning ascribed to it in Clause 18.6C;

***Outline Proposal*** means, as a minimum, a budget price, a provisional timetable and summary method of implementation in response to the relevant Variation Details supplied by LUL;

***P3(e) Programme*** means the programme which is contained in the prima vera P3(e) project management software application;

***PADCo*** means Power Asset Development Company Limited, Company Registration No: 2340677 whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN;

***PADCo Management Services Agreement*** means the Agreement relating to the Provision of Services dated 13 August 1998 between (i) PADCo; and (ii) ABB Power T&D Limited, ABB Investments Limited, The Telegraph Construction and Maintenance Company Limited, BICC Infrastructure Investments Limited (now known as Balfour Beatty Infrastructure Investments Limited) and Seepower Limited (now known as EDF Energy Powerlink Holdings Ltd.) as the service providers;

**PADCo Shareholder Loan** means the [REDACTED] projected to be drawn in PADCo in the Contractor's Financial Model as at the Starting Date;

**PADCo Subordinated Debt** means the [REDACTED] projected to be drawn in PADCo in the Contractor's Financial Model as at the Starting Date;

**PADCo Termination Payment** has the meaning given to it in Clause 29A.2;

**Parent Company Guarantee** means the guarantee by the Parent Company Guarantor of the performance by the Contractor of its obligations under this Contract in the form attached in Schedule 2, Appendix 2 (Parent Company Guarantee);

**Parent Company Guarantor** means EDF Energy (South East) plc or any substitute under Clause 28;

**Partial Line Closure** means any interruption to or failure of or on part of a Line which results in LUL ceasing or being unable to commence train services on that part of that Line, whilst able to operate train services on other parts of that Line;

**Party** or **Parties** means LUL and the Contractor or where the context so requires, either of them;

**Performance Liability Limit** means (a) at the Starting Date, [REDACTED]  
[REDACTED]  
[REDACTED] or (b) such other larger figure arising because the Contractor has agreed to increase the Performance Liability Limit in accordance with Clauses 25.13, 25.14, 25.15, 25.16 and 23.27(c), in each case to the extent that such amounts are not used towards meeting Commitment Costs following exercise by LUL of its right under Clause 25.10 as may be adjusted in accordance with Clause 23;

**Performance Specification** means the performance specification set out in Schedule 5.1 as amended pursuant to this Contract;

**Period** means each period identified as such in accordance with paragraph 7 of Schedule 43.3 (Contract Management) but so that there shall be no less than twelve Periods in any Contract Year apart from the final Contract Year which terminates on the Expiry Date when there may be less than twelve Periods;

**Permitted Refusal** means a refusal to carry out a Variation on the basis of the circumstances specified in Clause 23.3 and/or Clause 23.3A and/or Clause 23.3C and/or Clause 23.27(c);

**Perpetuity Period** means the period of 80 years commencing on the date hereof;

**Personal Information** means all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;

***Pensions Deed of Participation*** means the pensions deed of participation set out in Schedule 19.9 Part 2B executed by the parties thereto as such deed may be amended, supplemented and/or replaced from time to time;

***Pensions Settlement Agreement*** means the settlement agreement relating to pensions dated on or about the Date of the Supplemental Deed between LUL and the Contractor;

***Phase 1*** means those works defined as such in Section 2, attachment 4 in the ECM V0055 Final Implementation Details and paragraphs 1.1 and 1.2 of Schedule 13.1A, and, if at the date that such works have been completed the works set out in Schedule 9.1 subparagraphs 2.1(a), (b) and (c) have also been completed, shall include ceasing generation at Lots Road (other than confirmed on-site supplies);

***Phase 2*** means those works defined as such in Section 2, attachment 4 in the ECM V0055 Final Implementation Details and paragraphs 1.1 and 1.2 of Schedule 13.1A;

***Plan*** has the meaning ascribed to it in clause 18.8;

***Points of Common Coupling*** means at a BSP the LE 132 kV busbar supplying that LUL BSP, together with other LE customers;<sup>25</sup>

***Potential Delay Event*** means any event (including, without limitation, any breach by LUL of its obligations under this Contract or any of the agreements referred to in it or any of the LUL Dependencies) which either occurs, or the Contractor can reasonably foresee occurring, which in either case is liable to cause any delay in the Contractor's compliance with any of the Completion Dates, Stage Completion Date or Stage Final Completion Date or the completion of any other works required by this Contract (including any Variation or Third Party Works Adoption Variation except to the extent that the terms of the relevant Variation or Third Party Works Adoption Variation expressly specify otherwise);

***Power*** means electricity and compressed air;

***Power Quality Compensation Equipment*** means the Harmonic Filters and Static Var Compensators;

***Power Quality Control Equipment*** means control equipment provided a part of or directly controlling an SVC or Harmonic Filter;

***Power Quality Cooling Equipment*** means equipment provided as part of an SVC which provides a cooling function;

***Power Quality Delivery Capacity*** means the Defined Aggregate Capacity of Power Quality Compensation Equipment in MVar at the start of the Period in questions multiplied by the number of hours in the Period;

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<sup>25</sup> Above 3 definitions Power Quality Variation

**Power Quality Fee** shall be the charge so described, specified in Schedule 21.4A;

**Power Quality Lost Capacity** means the amount of power quality compensation (measured in MVAR) which the Contractor would have been unable to provide in the relevant Period as required by this Contract (if LUL had required power quality compensation equal to the Defined Aggregate Capacity of Power Quality Compensation Equipment throughout the Period) as a result of the loss of power quality compensation properly attributable to items of plant installed under Variation ECM V0055 being “out of service” (which expression shall relate to failure of plant, and not to any inaccessibility of plant, or plant being taken out in accordance with the Regimes, or plant not being utilised for delivery of power quality compensation due to reduced demand on the Underground Network) for a period of 3 consecutive days; provided that, if the declaration by the Contractor in the Four Weekly Report made under Schedule 43.3 (Contract Management) for that Period is inaccurate by more than 5%, Power Quality Lost Capacity shall, for that Period (and each of the next two Periods) equal the difference between the Power Quality Delivery Capacity for each such Period and the power quality compensation delivered under this Contract in each such Period;

**Power Quality Non-Delivery Ratio or PNDR** means during a particular period, the proportion which the Power Quality Lost Capacity bears to the Power Quality Delivery Capacity;<sup>26</sup>

**Power Upgrade Works** means the works set out in the PUW Scope of Works and any other works which are ancillary or connected to the works set out in the PUW Scope of Works (as approved by the Third Party Lenders);

**Powerlink Standards and Specifications** means the standards and specifications applicable to the Contractor's performance of its obligations under the Contract as described in paragraph 10.9 of Schedule 5.1 (Performance Specification), paragraph 3.4 of Schedule 7.2.1 (Operation and Maintenance Regime), paragraph 13 of Schedule 7.2.2 (Renewal and Upgrading Regime) and paragraph 1(e) of Schedule 14.8 (Safety Management System);

**Pre-Construction Adoption Variation Notice** means a Third Party Works Adoption Variation Notice served by LUL on the Contractor pursuant to paragraph 3.2 of Schedule 23.16A (Adoption Procedures);

**Pre-Construction Stage** has the meaning ascribed to it in paragraph 3.1 of Schedule 23.16A (Adoption Procedures);

**Prequalification Document** means the document dated December 1995 and issued by LUL in connection with the subject matter of this Contract;

**Pre-Refinancing Equity IRR** means the nominal post-tax Equity IRR calculated

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<sup>26</sup> Above 7 definitions Power Quality Variation

immediately prior to the Refinancing;

**Price Adjustment** means adjustments to the Availability Charge payable by LUL to the Contractor arising from:

- (a) a Variation or Third Party Works Adoption Variation (including the adoption of Third Party Works Assets or Services);
- (b) any adjustment pursuant to Schedule 23.38 and any other Qualifications and Assumptions;
- (c) a Discriminatory Change of Law;
- (d) a Safety Change;
- (e) Clause 29.16.2;
- (f) a change to or a failure of a Variable Tax Assumption as provided for in Clause 23A.8;
- (g) payment of the Acceleration Amount pursuant to Clause 28B.9;
- (h) a breach of or failure by LUL to provide a LUL Dependency which gives rise to an Adverse Consequence and a liability to pay Disruption Costs under Clause 28A.4;
- (i) an Advance Payment Trigger in accordance with Clause 23.13(c);
- (j) the provisions of the Framework Agreement; and
- (k) any other provision of this Contract which expressly provides for a Price Adjustment;

**Procured Electricity** means electricity supplied to LUL by a third party (other than the Contractor) pursuant to Clause 5 and/or any Indirect Users;

**Procurement Rules** means:

- (a) the Council Directive 93/38/EEC of 14 June 1993 co-ordinating the procurement procedures of entities operating in the Water, Energy, Transport and Telecommunication Sectors (OJ No. L199/84, 9.8.93, p84);
- (b) the Council Directive 92/13/EEC of 25 February 1992 co-ordinating the laws, regulations and administering provisions relating to the application of Community rules on the procurement procedures of entities operating in the Water, Energy, Transport and Telecommunication Sectors (OJ No. L76, 23.3.92, p14); and
- (c) the Utilities Contracts Regulations 1996 (SI 1996/2911).



**Programme** means the plan of activities to be undertaken by the Contractor or its Key Subcontractors in order to complete certain works (whether arising pursuant to a Variation or otherwise) by a specified timeframe;

**Project** means the financing, operation, maintenance, development, management and/or upgrade of the System and the supply of electricity to LUL thereon;

**Project Agreements** means this Contract, the Framework Agreement, the Supplemental Deed, the Option Deed Side Letter, the LUL Fixed and Floating Charge Agreement, the Pensions Settlement Agreement, the Pensions Deed of Participation, the Agreement for Leases, Easement and Licences, the Leases, the Licences, the Easement, the Option Deed, the VLU Letter Agreement, the Direct Agreement Amendment and Restatement Deed and the Direct Agreement;

**Project Manager** means in relation to a package of Third Party Works the person appointed by LUL to administer and manage the procurement of those Third Party Works;

**Properties** means the properties the subject of the Leases, the Easement and the Licences (and Property shall mean, as appropriate, the property the subject of any relevant Lease, Easement or Licence);

**Property Maintenance Plan** means the plan set out in Schedule 17.2;

**Property Maintenance Plan Principles** means the principles set out in Schedule 17.2;

**Proposal Notice** means a notice given pursuant to Clause 23.36;

**Proposed Key Subcontract** has the meaning ascribed to it in Clause 30.22G;

**Proprietary Material** means technical information that pertains to a patentable invention or any commercially sensitive know-how;

**Purchaser** means a person to whom the Contractor is delivering electricity via the System and with whom the Contractor has an agreement in relation thereto whether or not the Contractor is also supplying electricity to that person (other than LUL or any Indirect User);

**PUW Completion Date** means in relation to any part of the Power Upgrade Works, the date when that part of the Power Upgrade Works is to be completed in accordance with this Contract and as amended from time to time pursuant to this Contract including Clause 13A;

**PUW Contingent Debt** means the [REDACTED] contingent debt facility to be provided by ABB Power T&D Limited and The Telegraph Construction and Maintenance Company Limited in respect of the Power Upgrade Works;

**PUW Contingent Facilities** means (i) the PUW Shareholder Contingent Loan; and (ii) the PUW Contingent Debt provided in respect of the Power Upgrade Works; the

availability of which is subject to the terms and conditions therein and the Financing Agreements;

***PUW Facilities*** means the:

- (i) EIB PUW Loan Facility; and
- (ii) the PUW Contingent Facilities,

***PUW Financial Close*** shall have the meaning contained in the Common Terms Agreement;

***PUW Scope of Works*** means the scope of works set out in Schedule 13.1B in respect of the Power Upgrade Works which works will constitute works on the System;

***PUW Shareholder Contingent Loan*** means the [REDACTED] contingent shareholder term loan facility to be provided by ABB Investments Limited, EDF Energy Powerlink Holdings Ltd. (formerly known as Seepower Limited and SEEBOARD Powerlink Holdings Ltd.) and Balfour Beatty Infrastructure Investments Limited (formerly known as BICC Infrastructure Investments Limited) in respect of the Power Upgrade Works;

***PUW Variation*** means the implementation of any of the works set out in the PUW Scope of Works or any other works which are ancillary or connected to the works set out in the PUW Scope of Works (as approved by the Third Party Lenders) following the issue of an Authority Notice or an Instruction Notice, as applicable, by LUL in respect of such works;

***QICC Process*** means the LUL standard 2-01303-071 (as may be revised from time to time) followed by the Parties in relation to the issue of a quality inspection completion certificate;

***Qualifications and Assumptions*** means the qualifications and assumptions as specified as such in this Contract;

***Qualifying Bank*** means a bank that is authorised by the Financial Services Authority to accept deposits in the United Kingdom;

***Qualifying Bank Transaction*** means:

- (a) the syndication by a Third Party Lender, in the ordinary course of its business, of any of its rights or interests in the Financing Agreements;
- (b) the grant by a Third Party Lender of any rights of participation, or the disposition by a Third Party Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Financing Agreements in favour of (i) any other Third Party Lender (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking

up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state (iii) a local authority or public authority (iv) a trustee of a charitable trust which has (or has at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time) (vi) an EEA or Swiss Insurance Undertaking (vii) a Regulated Collective Investment Scheme (viii) any Qualifying Bank or (ix) any other institution in respect of which the prior written consent of LUL has been given;

- (c) the grant by a Third Party Lender of any other form or benefit or interest in either the Financing Agreements or the revenues or assets of the Contractor or PADCo, whether by way of security or otherwise, in favour of (i) any other Third Party Lender (ii) any institution specified in paragraphs (b)(ii) to (vii) above and (iii) any other institution in respect of which the prior written consent of LUL has been given;

***Qualifying Refinancing*** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

***Quality Management System*** means the system referred to in Clause 24.1;

***Railway Safety Case*** means the safety case submitted to and approved by the Health and Safety Executive from time to time and as the same may be maintained, updated or amended by LUL all in accordance with the Rail (Safety Case) Regulations 1994;

***Reasonable and Documented*** means (unless otherwise agreed by LUL or the Contractor as relevant), in relation to any costs (including without limitation Disruption Costs and Costs where applicable), documentation to demonstrate:

- (i) the manner, basis and/or circumstances in which each Disruption Cost, Cost and/or any other cost was incurred in undertaking the relevant activity;
- (ii) that the Disruption Costs, Costs and/or any other costs incurred in undertaking the relevant activity are reasonable in the circumstances;
- (iii) that such Disruption Costs, Costs and/or any other costs have been mitigated to the extent reasonable in the circumstances,

and without prejudice to the foregoing shall include:

- (a) in respect of
  - (i) staff-related Disruption Costs, Costs and/or any other costs of the Contractor, (including all the costs of the Contractor's employees or other staff, agents, consultants and Key Subcontractors, and the employees or other staff, agents, consultants and subcontractors of Key

Subcontractors and of their subcontractors) the provision of Daily Time Sheets to be delivered to LUL no later (save where the Contractor is making a claim under an indemnity) than 40 Working Days following the end of the relevant Period;

- (ii) staff-related costs of LUL (including without limitation all the costs of LUL's employees or other staff, agents, consultants and Third Party Contractors, and the employees or other staff, agents, consultants and subcontractors of Third Party Contractors and of their subcontractors), the provision of Daily Timesheets to be delivered to the Contractor no later (save where LUL is making a claim under an indemnity) than 40 Working Days following the end of the relevant Period; and
- (b) in respect of all other Disruption Costs, Costs and/or any other costs otherwise than under paragraphs (a) (i) or (ii) above, copies of invoices or other evidence together with, if appropriate, an explanation of the Disruption Costs, Costs and/or costs to which the invoice or other evidence relates;

**Reduced Service** means a reduction in the number of scheduled trains available or able to operate, such that the normal timetabled service cannot be operated;

**Refinancing** means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreements (other than any Investment Document);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreements (other than any Investment Document);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements (other than the Investment Documents) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Investment Documents) or the contracts, revenues or assets of the Contractor or PADCo whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor or PADCo or any other person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the Contractor's or PADCo's ability to carry out any of (a)-(c) above;

**Refinancing Gain** means an amount equal to the greater of zero and  $(A - B) - C$ , where:

A = the Refinancing NPV of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Contractor's Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the

remaining term of the Contract following the Refinancing;

B = the Refinancing NPV of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Contractor's Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing.

C = the adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

**Refinancing NPV** means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

**Regenerative Braking** means a system whereby the speed of a train, escalator, lift or travelator is reduced by converting the kinetic energy possessed by the train escalator lift or travelator into electrical energy and returning this energy to the LUL Distribution System;

**Regional Electricity Company (REC)** means the public electricity supplier in an area defined by The 1989 Act;

**Regional Electricity Company Distribution** means the distribution of electricity by a Regional Electricity Company from the Grid Supply Point to the Bulk Supply Point;

**Regulated Collective Investment Scheme** has the meaning given in the rules from time to time of the Financial Services Authority;

**Related Contracts** means contracts listed in Schedule 30.9.3 (Related Contracts) being contracts held by LUL immediately before the Starting Date which the Parties agree will be novated to the Contractor in order to enable the Contractor to perform the Services;

**Relevant Person** means a Shareholder and any of its Affiliates;

**Relevant Point** means a Bulk Supply Point, 22/11kV Switchhouse or Substation or Transformer Room;

**Relevant Subcontractor** means a subcontractor of the Contractor carrying out all or part of those works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group;

**Relevant Variation** has the meaning ascribed to it in Clause 23.13A(a) of this Contract;

**Remedial Action** means any steps reasonably necessary for (a) preventing, removing, remedying, cleaning-up, abating, containing or ameliorating the presence or effect of any Hazardous Material in the Environment (including without limitation the Environment at the Properties) or (b) carrying out investigative work and obtaining legal and other professional advice as is reasonably required in relation to (a);

**Remedy Proposal** means has the meaning ascribed to it in Clause 30.31;

**Renegotiation Amendment and Restatement Deed** means the deed entered into on or about the Supplemental Deed Date between, inter alia, PADCo, the Contractor, European Investment Bank and the Third Party Lenders which amends and restates certain of the Financing Agreements as a result of the re-negotiation of this Contract;

**Renewal and Upgrade Programme** has the meaning ascribed to it in Clause 18.8(a);

**Renewal and Upgrading Costs** means costs including VAT (excluding costs covered, after taking account of Tax attributable thereto, by insurance proceeds) on the System in excess of £25,000 including VAT per item or related items (for the avoidance of doubt, including the first £25,000 including VAT);

**Renewal and Upgrading Regime** means the Renewal and Upgrading Regime in Schedule 7.2.2 (Renewal and Upgrading Regime) as amended in accordance with Clause 7;

**Replacement Contractor** means a replacement third party contractor;

**Request for Adoption Notice** has the meaning ascribed to it in paragraph 5.10 of Schedule 23.16A (Adoption Procedures);

**Request for Information** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

**Required Consents** means all consents, licences, authorisations, permissions, approvals and permits which are necessary for the discharge by the Contractor of its obligations under the Project Agreements;

**Reserve Service Capacity** means at any Relevant Point, the Installed Capacity less Excluded Capacity;

**Retail Price Index** or **RPI** means subject to Clause 42 the general index of retail prices published by the Central Statistical Office each month in respect of all items or, where the context requires, the percentage change in such index over any period for which a calculation falls to be made;

**Retendering Cost Payment** means the amount agreed between the Parties or in default of agreement as is determined in accordance with the provisions of Schedule 37 (Dispute Resolution) to reflect the best estimates of the likely costs including Irrecoverable VAT of LUL inviting tenders and appointing a replacement contractor;

**Re-transferred Employees** means the employees of the Contractor who are working in the Services immediately before the Expiry Date;

**Revised Outline Long Term Strategy** has the meaning ascribed to it in Clause 18.6C;

**Risk Protections** means any mechanism agreed between the Parties to mitigate any Incremental Risk in the performance of the System as a result of the implementation of a Variation or Third Party Works Adoption Variation or adoption of any Known Third Party Adopted Works or Third Party Works Assets which is (or, as the case may be) are proposed, which may include one or more of the following:

- (a) a limit on liability for liquidated damages;
- (b) relief from liability for liquidated damages;
- (c) a payment by LUL for Costs incurred by the Contractor;
- (d) the amount of Price Adjustment;
- (e) Derogations from the Contractor's obligations to perform the Services;
- (f) further Variations or Third Party Works Adoption Variations or Known Third Party Adopted Works reasonably contemporaneous with the relevant Variation or Third Party Works Adoption Variation or Known Third Party Adopted Works; and
- (g) a reduction from the scope of the Variation or Third Party Works Adoption Variation or Known Third Party Adopted Works;

**ROTA** means a sequence of software instructions in a SCADA system which are used to control the switching on of the supply of electricity to LUL's Distribution System at the start of Traffic Hours;

**RPI** or **Retail Price Index** means subject to Clause 42 the general index of retail prices published by the Central Statistical Office each month in respect of all items or, where the context requires, the percentage change in such index over any period for which a calculation falls to be made;

**RPI (2 months before April 1997)** means the Retail Price Index published by the Central Statistics Office for February 1997;

**RPIRR** means the Retail Price Index published by the Central Statistics Office for the month 2 months before the date on which the cost was determined;

**Running Availability** means, for those standby generator units which are required to run to provide Emergency Power, the actual duration of availability of full Capacity at the agreed interface expressed as a percentage of the required duration of availability;

**SABRE** means the access booking system used by the Access Reservation Agency to record requests for access and includes a reference to any other access booking system used by the Access Reservation Agency;

**Safety Audit Letter** means the side letter relating to the safety audit dated on or about the date hereof from the Contractor to LUL;

**Safety Change** means any change to the requirements referred to in Clause 14.2(c) as at the Starting Date or requirements under Law or Legislation arising (directly or indirectly) from:

- (a) Clause 14.2(c);
- (b) LUL requiring the Contractor, pursuant to either of Clauses 14.2(a)(ii) or 15.1, to assist LUL to comply with Law or Required Consents which apply to LUL; or
- (c) the requirement (direct or indirect) on the Contractor or any of its sub contractors (of any tier) to comply with the Laws detailed in Schedule 14.3 (Legislative/Regulatory Requirements) (or any replacement Law) or principles or guidance under Clause 14.2(b) in each case which relate to the Underground Network and/or the System.

For the avoidance of doubt this definition shall be deemed to include (i) the changes or actions reasonably required by LUL under paragraph 3.2 of Schedule 14.9 (ii) any requirement that the Contractor holds a safety case in its own name and (iii) any changes to LUL's requirements pursuant to Clause 14.3;

**Safety Management System** means the system referred to in Clause 14.8;

**Safety Reference Manual** means the manual bearing that name issued by LUL from time to time or such other named manual or reference document as may replace it in purpose or intent initialled for the purposes of identification as at the Date of Contract;

**Satellite Emergency Power Control Centre** means any location from which Electrical Switching (excluding 22kAV) or Interface Switching is or may be carried out under emergency conditions as at the Starting Date unless and until replaced by any other Emergency Power Control Centre or Emergency Line Control Centre;

**SCADA System** means both the Line Specific Electrical Control Equipment and the Electrical Control Equipment more particularly described in the document titled User Requirements Documents for Supervisory Control and Data Acquisition System for Railway Power Networks;

**Section 12 Station** means premises which fall within the requirements of the Fire Precautions (Sub-Surface Railway Stations) Regulations 1989;



**Security Interest** means any security interest of any nature whatsoever, including, any mortgage, charge, pledge, lien, assignment by way of security or other encumbrance;

**Security Plan** means the plan prepared by the Contractor to comply with Clause 14.10;

**Seaboard Loan** means the [REDACTED] standby subordinated revolving loan to be made by EDF Energy (South East) plc to the Contractor;

**Seaboard Loan Agreement** means the loan agreement dated on or about the date of the Contract between EDF Energy (South East) plc and the Contractor setting out the terms and conditions pursuant to which EDF Energy (South East) plc will provide the Contractor with a [REDACTED] subordinated revolving loan facility;

**Senior Management Review** means a review of an incident or process, leading to a set of recommendations, with defined terms of reference instigated by a Director or Senior Manager within LUL and conducted by designated Senior Managers;

**Senior Representative** means in the case of LUL a person who holds the title at the level of or more senior to Chief Programme Officer and in the case of the Contractor a person who holds the title at the level of or more senior to a main board member of the Contractor and who has the authority to make decisions on behalf of all of the shareholders of the Contractor;

**Service Delivery Points** means points awarded against the Contractor by LUL in accordance with Clause 20;

**Services** means the services to be provided by the Contractor under this Contract;

**Shareholder** means any person from time to time holding share capital in the Contractor or PADCo;

**Shareholder Debt** means the principal amount (to the extent not repaid) of any subordinated debt or shareholder loans drawn down by PADCo for the purposes of the Project up to a maximum amount equal to [REDACTED] unless approved in writing by LUL or added to this definition under Clause 23.23;

**Shareholder Equity** means the nominal value of all shares (and any share premium thereon) issued to shareholders of the Contractor for the purposes of the Project and all amounts then outstanding under the Seaboard Loan Agreement up to a maximum amount equal to [REDACTED] unless approved in writing by LUL or added to this definition under Clause 23.23;

**Signal Supply System** means the system for distribution of electricity for signalling purposes including the frequency changers, signalling busbars, circuit breakers, isolators, link boxes and interconnecting cables;

**Single Event LDs Threshold** means [REDACTED] per Failure or series of cascading Failures which are attributable to a single event or incident, indexed to RPI as from the Supplemental Deed Date;

**Site** means as the context requires, either all Delivery Points situated at a Substation, Transformer Room or other operational location or any Substation, Transformer Room or other operational location itself;

**Slow Running** means any imposition by LUL or by the Contractor or by necessity of a speed restriction on any part of the Underground Network, such that trains may not travel through the affected part at or to the normal timetabled speed for that part;

**Snagging Longstop Date** has the meaning ascribed to it in paragraph 5.18 of Schedule 23.16A (Adoption Procedures);

**SPAP Manager** means the person(s) identified as such from time to time by LUL;

**Specific Properties Licence** means the agreed form of template licence contained in the Agreed Form Documents File and any agreement for any such licence and any other like licence or agreement for such that is entered into as an After Acquired Property Document;

**SPL Contingent Equity** means the contingent equity to be subscribed in the Contractor pursuant to the SPL Shareholders Subscription Deed (as defined in the Common Terms Agreement);

**SPL Permitted Security Interest** means:

- (a) the Security Interests granted by way of security pursuant to the Financing Agreements;
- (b) liens arising solely by operation of law (or by an agreement evidencing the same) in the ordinary course of its business and not securing liabilities which have been overdue for more than 30 days or if securing overdue liabilities secured by a bond or other security satisfactory to LUL;
- (c) Security Interests arising out of title retention provisions in a supplier's standard conditions of supply of goods acquired in the ordinary course of its business where the supplier is appointed in accordance with the provisions of Clause 35; and
- (d) the LUL Fixed and Floating Charge;

**SPL Related Contracts** means contracts at the Expiry Date to which the Contractor is a party for plant or equipment relating to the System which the Contractor had contracted for prior to the Expiry Date in order to meet its obligations under the Contract and which is not yet paid in full by the Expiry Date;

**Sponsors and Shareholders Direct Agreement** has the meaning given in the Common

Terms Agreement; and

**SQE Systems** means the Environmental Management System, Quality Management System and the Safety Management System and "**SQE System**" means any one of them;

**Stage** is defined in paragraph 6.1 of Schedule 9.1;

**Stage Completion Date** means those dates indicated as such in the table set out in paragraph 1 of Schedule 21.4 (Availability Charge Components) or such other date determined in accordance with this Contract including Clause 13A;

**Stage Final Completion Date** means those dates indicated as such in the table set out in paragraph 1 of Schedule 21.4 (Availability Charge Components) or such other date determined in accordance with this Contract including Clause 13A;

**Standards and Specifications Review Programme** has the meaning ascribed to it in paragraph 10.9 of Schedule 5.1, Part 1 (Performance Specification);

**Starting Date** means the date when the Contractor commences provision of the Services as established in accordance with Clause 3.1;

**Static VAr Compensation Capacity** means the rating in MVAR of an SVC as listed in Appendix 1.10.1 at Schedule 5.1;

**Static Var Compensator Availability** means the availability of SVCs as set out in paragraph 2.7.5.4 of Schedule 5.1;<sup>27</sup>

**Static Var Compensator or SVC** means all equipment necessary to make reactive power available at a busbar on the System from any single source of such reactive power;

**Station** means a station on the Underground Network;

**Station Closure** means any unscheduled closure of a Station such that it is closed to customers for entry to or exit from trains;

**Step-in Period** shall have the meaning contained in the Direct Agreement;

**Step-out Date** shall have the meaning contained in the Direct Agreement;

**Strategic Tools** means any tool or test equipment specifically designed to permit the maintenance or operation of part of the System and which would not normally be stocked by a reputable engineering tool or equipment supplier and which if not available to the operator of the System would substantially impair its ability to provide the Services in accordance with the Contract or at costs consistent with the charges

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<sup>27</sup> Above 3 definitions Power Quality Variation

payable under this Contract, including, accessories for switchgear to facilitate earthing, testing and maintenance, safety padlocks and a key safe and testing equipment;

**Study Reports** means the documents produced by the Contractor with reference numbers PFIW/ABO1/67566B and PFIW/ABO1/6756B;<sup>28</sup>

**Subcontract** means any contract, arrangement or agreement between the Contractor and any one or more third parties relating to or in connection with the performance by the Contractor of its obligation under this Contract;

**Subcontractor** means a party to a Subcontract other than the Contractor;

**Subcontractor Developed IP** means all Intellectual Property Rights subsisting in all designs, drawings, plans, documents, materials and other articles created or used by a subcontractor of the Contractor in the performance of this Contract prior to the Supplemental Deed Date and any update, modification, upgrade thereto from time to time made in good faith save that Subcontractor Developed IP shall not include any IP which is Major Power Works IP or Developed IP;

**Subcontractor MPW IP** means all Major Power Works IP created by or that vests in MPW Subcontractors in the performance of the Major Power Works (including all documents, materials and other articles in which Subcontractor MPW IP subsists);

**Subordinated Debt Facilities** means the Borrower Shareholder Loan Facility, the IFA Shareholder Contingent Facility, the IFA Contingent Debt Facility, the PUW Shareholder Contingent Facility, the Borrower Subordinated Debt Facility and the PUW Contingent Debt Facility (as each is defined in the Sponsors and Shareholders Direct Agreement);

**Subordinated Lenders** means the Shareholders, Junior Lenders and the SPL Lender (as defined in the Sponsors and Shareholders Direct Agreement);

**Substantial Completion** means the completion of those works required to be carried out and completed by the Contractor in respect of the relevant Variation so as to enable the acceptance of the relevant assets or works under the commissioning section (Part 8) of the QICC Process (or such other acceptance process as is specified to apply pursuant to the terms of the relevant Variation);

**Substation** means an installation on the Underground Network consisting of a building containing rectifiers, dc switchgear, high voltage switchgear and/or transformers and which may contain low voltage switchgear, signal motor generations, signal switchgear or compressors;

**Supplemental Deed** means the deed dated \_\_\_\_\_ 2007 and made between LUL, TfL, the Contractor and PADCo to which this Contract is annexed;

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<sup>28</sup> Power Quality Variation

**Supplemental Deed Date or Date of the Supplemental Deed** means the Effective Date as defined in the Supplemental Deed;

**Supplemental Obligor** has the meaning ascribed thereto in Clause 28B;

**Supplied Electricity** means electricity generated by the Contractor at the Generating Stations less electricity required for the purposes of that generation;

**Surface Level** means in respect of any particular point in a Property the level of the ground where there is no building or structure above ground at that point;

**Suspension Period** shall have the meaning set out in the Direct Agreement;

**Switchhouse** means a building containing high voltage switchgear and high voltage distribution transformers, but not containing rectifiers and dc switchgear. (A Substation may be co-located within a Switchhouse);

**System** means the electrical conductors and apparatus for the distribution and control of electricity from any Bulk Supply Points (and for the avoidance of doubt, excluding any assets belonging to any Regional Electricity Company) and from and including the Generating Stations to and including the Delivery Points and for the production of compressed air all as at the Starting Date and includes the Electrical Control Equipment, the interests in and rights in respect of the Properties granted under this Contract but excludes LUL's Distribution System, the IT Systems (other than the SCADA System) and the Telephony Systems the Waterloo and City Line, the District Line from Putney Bridge to Wimbledon and Gunnersbury to Richmond, the Bakerloo Line from Queens Park northwards and the interface with the System for each such part as is set out in the Performance Specification and as altered by the Contractor, any Variation, any Third Party Works Adoption Variation or any Known Third Party Adopted Works;

the **System Delivery Capacity** means the aggregate Defined Capacity in MVA of the System at the start of the Period in question multiplied by the number of hours in the Period;

**System Demand** means the amount of electricity which LUL determines it requires to run the Underground Network;

**System Lost Capacity** means the amount of electricity (measured in MVAh) which the Contractor would have been unable to deliver in the relevant Period as required by this Contract (if LUL had required electricity equal to the Defined Capacity throughout the Period) as a result of the loss of capacity properly attributable to items of plant forming part of the System (other than air compressors or Power Quality Compensation Equipment) being "out of service" (which expression shall relate to failure of plant, and not to any inaccessibility of plant, or plant being taken out in accordance with the Regimes, or plant not being utilised for delivery of power due to reduced demand on the Underground Network) for a period of 28 consecutive days (part of which has fallen within that Period unless an adjustment has already been made in respect of those days in any preceding Period) until the Critical Completion

Date and 3 consecutive days thereafter; Provided that, if the declaration by the Contractor in the Four Weekly Report made under Schedule 43.3 (Contract Management) for that Period is inaccurate by more than 5%, System Lost Capacity shall, for that Period (and each of the next two Periods) equal the difference between the System Delivery Capacity for each such Period and the electricity delivered under this Contract in each such Period;<sup>29</sup>

**System Non Delivery Ratio** means during a particular Period, the proportion which the System Lost Capacity in the Period bears to the System Delivery Capacity;

**Taking-Over Certificate** means a certificate of completion of the Third Party Works issued to the Third Party Contractor by LUL;

**Taxation Change of Law** means a Change of Law which alters the rules relating to the calculation of the amount of Taxation payable or tax losses incurred by the Contractor or PADCo or the use of such losses;

**Taxation or Tax** means corporation tax, advance corporation tax, income tax, capital gains tax, inheritance tax, value added tax, national insurance contributions, capital duty, stamp duty, stamp duty reserve tax, stamp duty land tax, duties of customs and excise, local authority rates and charges, all taxes, duties or charges replaced by or replacing any of them, and all other taxes on gross or net income, profits or gains, distributions, receipts, sales, use, occupation, franchise, value added, and personal property, and all levies, imposts, duties, charges or withholdings of any nature whatsoever chargeable by any tax authority, together with except insofar as is attributable to the unreasonable delay or default of the party being indemnified all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them;

**Technical Documentation** means at the Starting Date the specifications, drawings, technical and functional descriptions, manuals, cabling maps and other documentation used by LUL prior to the Starting Date to operate the System and thereafter includes any other such documentation as is developed or acquired by the Contractor to enable the Contractor to provide the Services;

**Technical Interface Procedures** means the procedures set out in Schedule 15.1(d) (Technical Interface Procedures) (as amended from time to time in accordance with that Schedule);

**Telephony System** means LUL's internal telephony system (including but not limited to the network, switches and terminal equipment) to be used by the Contractor pursuant to this Contract;

**Termination Calculation Date** means the first to occur of the date on which:

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<sup>29</sup> Power Quality Variation

- (a) a termination notice served by LUL in respect of any event under Clause 28.9 is outstanding and:
  - (i) the Lenders Agent notifies LUL that the Third Party Lenders will not exercise their rights to step-in to the Contractor under the Direct Agreement; or
  - (ii) the Third Party Lenders' rights under the Direct Agreement are extinguished, whether as a result of the occurrence of the Step-out Date, the expiration of the Step-in Period, the expiration of the Suspension Period or otherwise; and
- (b) the Security Trustee delivers to LUL a Mandatory Termination Notice;
- (c) the Contractor serves on LUL and the Lenders Agent a notice to terminate the Power Service Contract under Clauses 28.1, 28.3(c) or 28.7 and a period of 15 days has occurred since the notice to terminate was served; and
- (d) LUL serves on the Contractor and the Lenders Agent a notice to terminate the Power Service Contract under Clause 28.11 and a period of 15 days has occurred since the notice to terminate was served;

**Termination Events** means the Termination Events listed in Clauses 28.1 and/or 28.9;

**Termination Notice** means a notice given by LUL to the Contractor stating that one or more of the Termination Events listed in Clause 28.9 or 28.11 has occurred or a notice given by the Contractor to LUL stating that one or more of the Termination Events listed in Clause 28.1, 28.3 or 28.7 has occurred and therefore the Contract will terminate on the date specified in such notice or such other date as may be agreed between the parties;

**The 1984 Act** means the London Regional Transport Act 1984;

**TfL or Transport for London** or means the body corporate of that name established by section 154 of the Greater London Authority Act 1999 and any successor body;

**The 1989 Act** means the Electricity Act 1989;

**Third Party Confidentiality Agreement** means the form of agreement as set out in Schedule 41.3B;

**Third Party Contractor** means a person, other than the Contractor appointed by LUL to carry out Third Party Works;

**Third Party Costs** has the meaning given to it in Clause 10.12;

**Third Party IP** means any Proprietary Material or IP owned by any person other than LUL or the Contractor save that Third Party IP shall not include any IP: (a) which is commercially available in the ordinary course of business and has not been

specifically developed for the Contractor or any Subcontractor; or (b) which is Subcontractor Developed IP, or (c) which is Major Power Works IP;

**Third Party Lenders** means in relation to the provision of finance to PADCo or the Contractor, the following persons, from time to time:

- (a) each senior bank or other financial institution party (in any capacity) to any Financing Agreement being, as at the Date of Contract, the Finance Parties under (and as defined in) the Common Terms Agreement;
- (b) a holder of bonds or debentures issued by the Contractor and/or PADCo; and
- (c) any trustee or agent for the persons referred to in paragraphs (a) and/or (b) appointed pursuant to the provisions of the Financing Agreements;

**Third Party Permitted Refusal** means a refusal by the Contractor to implement a Third Party Works Adoption Variation on one or more of the grounds:

- (a) specified in paragraph 1.4 of Schedule 23.16A (Adoption Procedures) in relation to a Concept Adoption Variation Notice;
- (b) specified in paragraph 2.4 of Schedule 23.16A (Adoption Procedures) in relation to a Feasibility Adoption Variation Notice;
- (c) specified in paragraph 3.4 of Schedule 23.16A (Adoption Procedures) in relation to a Pre-Construction Adoption Variation Notice;
- (d) specified in paragraph 4.4 of Schedule 23.16A (Adoption Procedures) in relation to a Construction Adoption Variation Notice; and/or
- (e) specified in paragraph 5.4 of Schedule 23.16A (Adoption Procedures) in relation to a Commissioning and Handover Adoption Variation Notice;

**Third Party Works** means:

- (a) any works on and/or affecting any part of the System;
- (b) any services relating to and/or affecting any part of the System; and/or
- (c) the supply of any equipment, plant or goods to be used in connection with any part of the System,

to be undertaken by a Third Party Contractor;

**Third Party Works Adoption Implementation Details** means in relation to a proposed Third Party Works Adoption Variation:

- (a) a detailed programme, in such form and with such content as specified by LUL pursuant to paragraph 6.3(l)(iii) and (iv) of Schedule 23.16A (Adoption Procedures), setting out in a clear manner all of the activities proposed to be



undertaken by the Contractor and, separately, by its Key Subcontractors in order to implement the Third Party Works Adoption Variation;

- (b) a detailed timetable for the implementation of the proposed Third Party Works Adoption Variation including milestones for key events and giving particulars of all lead times and contingencies allowed for in the timetable and all assumptions upon which it is conditional;
- (c) a detailed description of the effect if any of implementing the proposed Third Party Works Adoption Variation on the timing of the performance of other obligations under this Contract (including on any completion dates for any Variation and/or Third Party Works Adoption Variation);
- (d) the impact of the proposed Third Party Works Adoption Variation on the provision of the Services including any recommendation for consequential changes to or requests for relief from the Services as at the date of the Third Party Works Adoption Variation Details as a result of implementation of the proposed Third Party Works Adoption Variation;
- (e) a statement, in such form and with such content as specified by LUL pursuant to paragraph 6.3(1)(i) and (ii) of Schedule 23.16A (Adoption Procedures), itemising the proposed costs of implementing the proposed Third Party Works Adoption Variation, including, where applicable, an itemised breakdown of profit margins, overhead costs, and any other fixed and/or variable costs to be suffered or incurred by the Contractor and, separately, by its Key Subcontractors (including the cost and resource to be assigned to a level of activity as specified by LUL to be included in the programme referred to in paragraph (a) above);
- (f) a statement by the Contractor specifying the payment profile which the Contractor proposes to govern the quantum and timing of payments to the Contractor by LUL and, where different to that proposed by LUL pursuant to paragraph 6.3(k) of Schedule 23.16A (Adoption Procedures), a description in reasonable detail as to the differences between the proposals;
- (g) details of alternative warranty options to be provided by the Third Party Contractor and the consequential impact of each of these options on the proposed Price Adjustment (if any) contained in the Third Party Works Adoption Implementation Details;
- (h) a draft of any changes to this Contract which would be required as a result of implementing the Third Party Works Adoption Variation;
- (i) an appropriately detailed description of the minimum information and documentation that the Contractor and the Third Party Lenders' technical adviser will require from LUL and/or the Third Party Contractor in order to enable the Contractor to comply with its obligations under, as relevant, paragraphs 1.6, 2.7, 3.7 or 4.10 of Schedule 23.16A (Adoption Procedures);

- (j) where relevant, details of any proposed Price Adjustment as a result of the implementing of the Third Party Works Adoption Variation; and
- (k) where appropriate, an interface schedule setting out responsibility in respect of interface related works and services as between LUL, the Contractor, the Third Party Contractor and other third parties;

**Third Party Works Adoption Variation** means the works and/or services to be provided by the Contractor in support of Third Party Works and as described in the relevant Third Party Works Adoption Variation Notice;

**Third Party Works Adoption Variation Details** means, as applicable, the requirements specified by LUL:

- (a) in a Concept Adoption Variation Notice pursuant to paragraph 1.2 (a) and (b) of Schedule 23.16A (Adoption Procedures);
- (b) in a Feasibility Adoption Variation Notice pursuant to paragraph 2.2(a) to (e) of Schedule 23.16A (Adoption Procedures);
- (c) in a Pre-Construction Adoption Variation Notice pursuant to paragraph 3.2(a) to (d) of Schedule 23.16A (Adoption Procedures);
- (d) in a Construction Adoption Variation Notice pursuant to paragraph 4.2(a) and (b) of Schedule 23.16A (Adoption Procedures);
- (e) in a Commissioning and Handover Adoption Variation Notice pursuant to paragraph 5.2(a) and (b) of Schedule 23.16A (Adoption Procedures);

**Third Party Works Adoption Variation Notice** means, as applicable:

- (a) a Concept Adoption Variation Notice;
- (b) a Feasibility Adoption Variation Notice;
- (c) a Pre-Construction Adoption Variation Notice;
- (d) a Construction Adoption Variation Notice; or
- (e) a Commissioning and Handover Adoption Variation Notice;

**Third Party Works Assets** means the assets created from the undertaking of any Third Party Works;

**Third Party Works IPR** has the meaning ascribed to it in paragraph 9.1 of Schedule 23.16A (Adoption Procedures);

**Threshold** means the sum of £500,000 (as adjusted on the first anniversary of the Starting Date and each subsequent anniversary thereafter by the percentage change

between the Retail Price Index (most recently published figures) on the Starting Date and the Retail Price Index on each such anniversary);

**Threshold Equity IRR** means 17.98%;

**Traction Current** means a supply of electricity for the moving of trains;

**Traffic Hours** means the period of time when the railway is operational, as determined by LUL in accordance with the Safety Reference Manual, changes to which will be notified to the Contractor from time to time;

**Train Delay** means any interruption or delay to a train such that the train becomes stationary;

**TransCo** means that division or subsidiary of BG which carries on the transportation and storage business of BG and any successor or assignee of TransCo conducting all or part of such business or businesses;

**Transfer Date** means the date on which the Variation Termination Notice takes effect or, in the context of a KS Direct Agreement, the date on which the notice issued by LUL under Clause 2 of the KS Direct Agreement takes effect;

**Transferred Employees** means such of the employees of LUL listed in Schedule 19.9 (Pensions and Employee Matters) whose contracts of employment shall transfer to the Contractor on the Starting Date under the Employment Regulations;

**Transfer Regulations** means the Transfer of Undertaking (Protection of Employment) Regulations 1981 and the Acquired Rights Directive;

**Transformer Room** means a room containing high voltage to low voltage distribution transformers, it may also contain high and/or low voltage ac switchgear, but will not contain rectifiers or dc switchgear;

**Transport for London** or **TfL** means the body corporate of that name established by section 154 of the Greater London Authority Act 1999 and any successor body;

**Trench** means a below ground structure made of concrete, brick or other similar material built for the purpose of containing cables or other services;

**Ultimate Reversionary Requirements** means the requirements specified in paragraph 11 of Schedule 5.1 (Performance Specification);

**Underground Network** means the system of railway lines and associated premises activities and equipment including LUL's Distribution System operated from time to time by or on behalf of LUL or by third parties by arrangement with LUL or TfL in or about London;

**Underground Network Failure** means a Train Delay, Slow Running, Partial Line Closure, Full Line Closure, Reduced Service, Late Start Up of Depot or Station

Closure which is caused by a failure by the Contractor to perform, or a breach of its obligations under this Contract;

**Unit** means in the case of:

- (a) Low voltage ac Power: the largest rated auxiliary transformer;
- (b) dc Power: the largest rated transformer rectifier;
- (c) 22/11kV Switchhouse: the largest rated coupling transformer; and
- (d) Bulk Supply Point: the largest rated transformer or (where no transformer exists) the largest rated incoming cable;

**URR Costs** has the meaning given to it in Clause 16.9;

**URR Failures** has the meaning given to it in Clause 16.9;

**URR Failure Costs** means the aggregate costs (exclusive of VAT) as agreed or determined in accordance with Clause 16.6 to ensure that on expiry of the Contract Duration the Ultimate Reversionary Requirements are met;

**User** means a person (other than the Contractor or LUL) who supplies electricity through the System to a third party and who has a use of System agreement with the Contractor in relation thereto;

**V** means Volts;

**Variation** means any alteration to the Services (which, in the case of reductions, shall be subject to paragraph (d) below), or (subject to Clause 23.2A) the manner (including the timing) of their performance requested under Clauses 23.1(a) to 23.1(m) and shall include but not be restricted to:

- (a) implementation of extensions to the System and the provision of Services in relation thereto;
- (b) the provision of additional Services including adoption of works in accordance with Clause 23.48 and in relation to any Services any material additional costs including Irrecoverable VAT arising from the restructuring of LUL and/or the transfer of LUL's rights and obligations under Clause 23.55; and
- (c) alterations to the required scope of existing Services;

which is, in the case of (b) and (c), reasonably incidental to the Services as at the date of the Date of Contract;

- (d) a reduction in the range and scope and volume of the Services which the Contractor is required to provide;

- (i) which arise from reductions in the operations or infrastructure of the Underground Network;
- (ii) with which the Contractor agrees (acting reasonably and having regard to the technical feasibility of any such reduction and the consequent effect on the Services to be provided by the Contractor for the remainder of the Contract Duration) provided that any such reduction shall not result in either any disaggregation of the Constituent Manners of Performance or any reduction to the Initial Works save those referred to in paragraph (iii);
- (iii) which relate to:
  - (A) the decommissioning of Lots Road where the Contractor fails to complete the decommissioning works required within eighteen months from the Completion Date for Phase 1;
  - (B) the decommissioning of Lots Road where the Contractor has materially failed to meet the programme for decommissioning;
  - (C) the technical solution for the Local Emergency Power Supply provided that (aa) the Variation will not require a reduction of the value set out in Schedule 25.4 (Initial Works) equal to or in excess of 15 per cent of the value of the Emergency Supply Plan (bb) LUL agrees to grant an extension to the Critical Completion Date and Final Completion Date, to the extent the Contractor is unable to comply without additional cost with its programme for the Emergency Supply Plan and (cc) the Contractor shall be entitled to take into account any costs in respect of operating the Lots Road Generating Station for any additional period; and
  - (D) the cessation of generation at Lots Road where the Contractor fails to complete Phase 1 within one year from the Completion Date for Phase 1;<sup>30</sup>
- (e) any additional work required to be performed in relation to the Bulk Supply Points unless caused by the Contractor acting in breach of this Contract, or initiating changes to the System which are not necessitated by the action or omission of LUL and/or any relevant REC, and all works required as a result of harmonics studies initiated by any relevant REC as a result of LUL's supply arrangements with third parties and/or its connections to RECs or NGC or all obligations of LUL under connection agreements which are not subcontracted to the Contractor under Clause 5 or Schedule 5.9;

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30 Power Quality Variation

- (f) any PUW Variation; and
- (g) any change to the criteria set out in paragraph 2.2.2.1 of Schedule 5.1 (Performance Specification) (subject to (i) to (iv), which is not the subject of a temporary Derogation) and/or any Major Load Growth as described in Schedule 43.3 (Contract Management),

but shall not include any Third Party Works Adoption Variation;

**Variation Cap** means £25 million adjusted on each anniversary of the Starting Date by the percentage change in the Retail Price Index over the previous Contract Year;

**Variation Contractual Completion Date** means in relation to works comprised in a Variation, the date by which the Contractor is required to achieve Substantial Completion as set out in the terms of the relevant Variation, as such date may subsequently be revised pursuant to Clause 13A or 23;

**Variation Cumulation Period** means any such period described in Clause 23.18;

**Variation Date** means the date a Variation occurs or (if later) is required to be implemented;

**Variation Details** means details provided under Clause 23.27;

**Variation ECM V0055** means the Variation of that description which is subject to issue of an Authority Notice;<sup>31</sup>

**Variation LD Limit** means the limit on liability, if any, of the Contractor for delay liquidated damages arising from delay in achieving Substantial Completion beyond the Variation Contractual Completion Date, as such limit of liability is set out in the terms of the relevant Variation, as may subsequently be revised pursuant to Clause 23;

**Variation Liability Limit** means the aggregate limit on liability, if any, of the Contractor, in relation to the performance or non-performance of the relevant Variation set out in the Final Implementation Details for that Variation, as may subsequently be revised pursuant to Clause 23;

**Variation Notice** means a notice given pursuant to Clause 23.25;

**Variation Termination Date** has the meaning ascribed to it in Clause 30.34;

**Variation Termination Notice** means a notice to terminate a Variation in accordance with the provisions of Clause 30.25, 30.26 or 30.32;

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<sup>31</sup> Power Quality Variation

***Variation Transferring Employees*** means the employees of the Contractor, or of a Relevant Subcontractor, engaged in the works or services being provided by the Contractor (and not a Key Subcontractor) in respect of the relevant Variation or Variations in the Connected Variation Group;

***VLUC Direct Agreement*** has the meaning ascribed thereto in the Supplemental Deed;

***VLU Guarantee*** has the meaning ascribed thereto in the Supplemental Deed;

***VLU Letter Agreement*** means the letter agreement dated on or about the date the Supplemental Deed is executed between LUL, the Contractor and PADCo in respect of Variation EMC V0391 Part (3);

***VLU Price Adjustment*** shall have the meaning given to it in the VLU Letter Agreement;

***VLU Works*** shall have the meaning given to it in the VLU Letter Agreement;

***Working Day*** means any day (excluding Saturdays and Sundays) on which banks are open for banking business in London.

## SCHEDULE 2

### INTERPRETATION

In this Contract, unless the context otherwise requires:

- (a) references to *persons* shall include individuals, bodies corporate, unincorporated associations and partnerships and any other person having legal capacity and shall include subject to the terms of this Contract (including Clauses 23.54) the successors and permitted transferees and assigns of such persons;
- (b) the singular includes the plural and vice versa;
- (c) the feminine includes the masculine and vice versa, and the neuter includes the feminine or the masculine and vice versa;
- (d) the headings and table of contents in this Contract are inserted for convenience only and shall not affect the construction of the Contract;
- (e) any reference to any enactment, law or piece of Legislation or Directive or (except where a version number or date of issue is specified) standard or regulation of LUL (or code of any regulatory authority) is a reference to it as from time to time amended, consolidated, re-enacted or replaced and includes all instruments, orders or regulations made under, or deriving validity from such enactment, law or piece of Legislation or Directive;
- (f) references to a Clause or Schedule shall mean references to that Clause or Schedule of this Contract and references in a Schedule to a paragraph shall mean references to that paragraph of that Schedule;
- (g) references to this Contract or the Contract shall mean this Contract as concluded between the Parties at the Date of Contract including all Schedules, annexes, appendices, plans and drawings attached thereto or other documents referred to therein, as amended, varied, supplemented suspended, replaced or novated in accordance with this Contract;
- (h) any reference to a document in the agreed form is to the form of the relevant document agreed between the Parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the Parties);
- (i) any reference to LUL or the Contract Manager being required to act reasonably or not to act unreasonably (or any other similar or analogous expression or phrase) shall be construed as if the term of reasonableness was an objective test of the reasonableness (or otherwise) of LUL or, as the case may be, the Contract Manager, but subject always to the following exception, namely that LUL or, as the case may be, the Contract Manager shall be entitled to have due regard to the LUL Statutory Duties, and to give such thought as it, or he, as the



case may be, shall consider proper to LUL's paramount requirement to operate and provide to the general public at all times during the Contract Duration, a safe, reliable, regular, economic and efficient railway service on its Underground Network;

- (j) reference to "includes" or "including" shall mean without limitation;
- (k) technical terms not defined in this Contract shall be defined in accordance with:
  - (i) the Safety Reference Manual;
  - (ii) the latest published version as at the Date of Contract of Chambers Science and Technology Dictionary and the latest version of LUL E1006 (glossary of terms and abbreviations used in corporate engineering documents); and/or
  - (iii) Good Industry Practice;in that order of precedence;
- (l) where an agreed form document has been executed by the Parties in accordance with the terms of this Contract, the terms of that executed document as amended, varied, modified, supplemented, suspended, replaced or novated from time to time between the Parties shall prevail and the relevant references used in this Contract shall be deemed to be amended, varied, modified, supplemented, suspended or novated so as to refer to such executed document as amended from time to time between the Parties;
- (m) references to an agreement, contract, deed, instrument or other document (including this Contract), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, restated, varied, supplemented, modified, suspended, assigned or novated;
- (n) where reference to a plan to be provided by the Contractor in this Contract is made, the minimum requirements of the content of such plan shall, inter alia, include a detailed statement of the methods by which the Contractor intends to meet a particular objective. Each plan shall include an implementation Schedule and indicative timescales;
- (o) where reference to a regime to be provided by the Contractor in this Contract is made, the minimum requirements of the content of such regime shall, inter alia, include a description of the system, rules or principles which the Contractor intends to apply to a particular activity;
- (p) In the event of any discrepancy between the provisions of the Clauses of this Contract and the Schedules hereto, appendices and any other document

forming part of the Contract, the provision of the Clauses shall prevail unless expressly provided to the contrary;

- (q) as this Contract has not been updated to reflect changes in the structure of the electricity supply industry in England since it was originally executed on 13 August 1998, references to electricity industry bodies and documents which no longer exist shall be construed as references to the most comparable equivalent in the new industry structure.

**IN WITNESS WHEREOF** each of the Parties has caused this Contract to be executed as a deed in more than one copy each of which shall be deemed to be an original as of the date first above written.