

Contract Reference Number: tfl_scp_000952

Date:

**Traffic Control (TC) Equipment Maintenance, Capital Works and Related
Services (TCMS2) Agreement**

between

Transport for London

and

Siemens Plc

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THIS CONTRACT is made this day of

2014

BETWEEN:

- (1) **Transport for London** a statutory corporation whose principal office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Authority**”), for and on behalf of itself, the Authority, and the other Service Recipients; and
- (2) **Siemens Plc** a company registered in England and Wales (Company Registration Number 00727817) whose registered office is at Faraday House, Sir Williams Siemens Square, Frimley, Camberley, GU16 8QD (the “**Contractor**”).

RECITALS:

- (A) The Authority is under a duty to facilitate safe, integrated, efficient and economic transport facilities and services to, from and within Greater London and the Allocated Areas (as defined below).
- (B) The Authority has historically itself installed and is responsible for the maintenance and upkeep of traffic technology systems for and on roads in the Greater London area/Allocated Areas which comprise, amongst other things, traffic signals and monitoring equipment connected to one or more Systems (as defined below), enabling its staff and agents to monitor and direct traffic on Greater London’s road network.
- (C) The Authority’s existing contracts relating to maintenance of traffic control and related equipment are due to expire and, pursuant to the Authority advertising the project in the Official Journal of the European Union on 26th April 2013 (OJEU Reference 2013/S 082-138252), the Authority wishes to replace these with new contracts going forwards and to enter into new agreements with a number of contractors for the Authority and the other Service Recipients relating to five different geographical areas or lots in the Greater London area/Allocated Areas as shown in **Annex B of Schedule 1** (known as Clusters or Lots in this Contract) and which, in relation to the Contractor:
 - (i) enables the Authority to instruct the Contractor to undertake Proposed Capital Works (as defined below), either pursuant to a direct instruction or following a mini-competition as further set out in this Contract (and once instructed, referred to as “**Instructed Capital Works**” under this Contract) for and on behalf of the Authority and the other Service Recipients; and
 - (ii) require the Contractor to perform Maintenance (as defined below) for and on behalf of the Authority and the other Service Recipients.
- (D) The Contractor holds itself out as an expert in the Services to be provided under this Contract and the Authority appoints and the Contractor hereby accepts its appointment to perform the Capital Works it is contracted to

provide, the Maintenance and the other Services, as set out below, and to be able to compete for certain other Proposed Capital Works, all in accordance with the terms of this Contract.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

In this Contract:

- 1.1 the expressions set out in **Schedule 2** shall have the meanings set out in such Schedule, unless the context otherwise requires;
- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 any reference to time in this Contract shall be construed during the period of summer time to be British Summer Time (whilst ever it exists), and otherwise to be Greenwich Mean Time;
- 1.4 a reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and will include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of this Contract;
- 1.5 a reference to any document other than as specified in **Clause 1.4** and save as expressed otherwise will be construed as a reference to the document as at the date of execution of this Contract (as may have been varied in accordance with this Contract);
- 1.6 headings are included in this Contract for ease of reference only and do not affect the interpretation or construction of this Contract;
- 1.7 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, this Contract and any reference to a paragraph in any Schedule will, in the absence of provision to the contrary, relate to the paragraph in that Schedule save that a reference to a clause in **Schedule 6** shall be to a reference to a clause in the Capital Works Conditions of Contract;
- 1.8 subject to **Clause 1.13**, the Schedules, Exhibits, Annexes and Appendices form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context;

- 1.11 references to "in writing" or "written" are to:
- 1.11.1 written communication effected by post;
 - 1.11.2 facsimile;
 - 1.11.3 documents or information or data posted via the SFM or via such other System as the Authority confirms to the Contractor from time to time by issuing a notice pursuant to **Clause 54** or via the Change Control Procedure;
 - 1.11.4 e-mail; and/or
 - 1.11.5 any other means of reproducing words in a legible and non-transitory form,
- save that e-mail and/or documents, information or data posted via a System (including the SFM) cannot be used to issue a formal notice as referred to and pursuant to **Clause 54** nor for documenting a variation of the Contract nor for documenting a change made via the Change Control Procedure;
- 1.12 a reference to "subject to Indexation Adjustment" or "IA" in this Contract (including in **Schedule 1** and in **Schedule 5**) shall mean that the particular charges, fees and/or Minimum Annual Value figure(s) referred to are subject to an uplift or decrease in amount in accordance with and as set out in **Clause 17**;
- 1.13 in the event, and only to the extent, of any conflict between the Clauses, the Schedules, the Annexes, the Appendices and any other document referred to in or incorporated into this Contract, the order of priority for the purposes of construction is:
- 1.13.1 any and all validly made variations to this Contract to the extent they update the Contract;
 - 1.13.2 (a) the **Clauses (1 to 67)** (inclusive) and additionally those clauses set out in **Schedule 20**; and (b) the Capital Works Conditions of Contract in **Schedule 6** including its annexes and appendices in relation to Capital Works (with each Works Instruction having the order of precedence of documents set out in **Clause 6.3**);
 - 1.13.3 the Statement of Requirements including (with equal precedence) the TC Equipment List within that Statement of Requirements (as may have been amended in accordance with this Contract), save where and to the extent the Statement of Requirements (or a part thereof) are stated expressly to take precedence over another document;

- 1.13.4 the remaining Schedules, which in the case of **Schedules 5 and 14** shall include Exhibit 001 and Exhibit 002, save where and to the extent they are stated expressly to take precedence over another document;
 - 1.13.5 the Annexes, save where and to the extent they are stated expressly to have equal precedence to or take precedence over another document;
 - 1.13.6 the Appendices, save where and to the extent they are stated expressly to take precedence over another document; and
 - 1.13.7 any other document referred to or incorporated into this Contract; and
- 1.14 any obligation on the Contractor to comply with standards, policies, procedures or the like will be an obligation on the Contractor to comply with the same as they will be amended from time to time and communicated to the Contractor.
- 2. SCOPE OF CONTRACT**
- 2.1 In consideration of the:
- 2.1.1 the Prices to be paid for the Instructed Capital Works; and
 - 2.1.2 the Maintenance Charges for the Maintenance,
- the Contractor shall undertake and perform all of the Services in accordance with this Contract.
- 2.2 For the avoidance of doubt, the Contractor acknowledges and accepts that the Authority is requesting and may request Services for and on behalf of itself and the other Service Recipients under this Contract and the Contractor agrees and accepts it is providing Services to the Authority and the other relevant Service Recipients.
- 2.3 Where requested in writing to do so by the Authority on behalf of the GLA and/or any of its other functional bodies (as at the Contract Commencement Date being the Mayor's Office for Policing and Crime, the London Fire and Emergency Planning Authority and London Legacy Development Corporation and/or any of their subsidiaries), the Contractor will contract additionally or instead directly with the GLA or such other functional body of the GLA on the terms of this Contract mutatis mutandis.
- 2.4 As part of the Services, but subject always to **Clauses 30, 30A and 31**, the Contractor shall:
- 2.4.1 provide the Instructed Capital Works in the Contract Area, where directly instructed by the Authority in accordance with **Clause 7** and/or where directly instructed in accordance with **Clause 31A**;

2.4.2 provide the Instructed Capital Works the Contractor has been awarded to provide under a Mini-Competition in accordance with **Clause 8**; and

2.4.3 from the Maintenance Commencement Date, provide the Maintenance in the Contract Area and in such other areas within the Allocated Areas as the Contractor is directly instructed to under **Clause 31A**,

all in accordance with this Contract.

2.5 The Sites in the Contract Area existing as at the Contract Commencement Date are those Sites as recorded in the SFM at the Contract Commencement Date. The Contractor acknowledges and agrees that the number of Sites within the Contract Area is likely to change during the Term. The Authority may add Sites to the Contract Area due to the creation of new Sites by way of Instructed Capital Works and/or due to transfer of a Site (as confirmed by the Authority) from a traffic authority or otherwise in accordance with this Contract. The Authority may remove Sites from the Contract Area and the scope of this Contract in accordance with the terms of this Contract.

3. **COMMENCEMENT AND DURATION**

3.1 Subject to **Clauses 3.2** and **3.3** and/or subject to earlier termination of this Contract in accordance with **Clause 32**, this Contract shall commence on the Contract Commencement Date and shall continue in full force and effect for the Initial Term, unless extended in writing by the Authority pursuant to **Clause 3.3**.

3.2 The provisions of **Clause 8** relating to and setting out the Mini-Competition process shall apply from the Contract Commencement Date until 23.59 on the day preceding the fourth anniversary of the Contract Commencement Date and the right for the Authority to instruct Capital Works using the Mini-Competition process shall cease 4 years from the Contract Commencement Date (being the "**Framework Term**"). Upon the expiry of the Framework Term but subject to **Clauses 30, 30A** and **31**, all Capital Works instructed by the Authority for the remainder of the Term in the Contract Area will be performed by the Contractor unless and subject to the Authority reserving the right, at any time, to tender one or more new framework agreement(s) for Capital Works and to instruct Capital Works via such framework agreement(s) (which would have previously been competed through the Mini-Competition process during the Framework Term).

3.3 Save in relation to Proposed Capital Works to be competed for and then instructed using the Mini-Competition process (which shall always be subject to the Framework Term), the Authority may, at its option and in its sole discretion, extend the duration of this Contract for successive periods of not less than 3 (three) months up to a maximum total extension period of 24 (twenty-four) months by giving notice in writing to the Contractor, provided that each such written notice is served at least 3 (three) months prior to expiry of the Initial Term or the expiry of the then current extension, if later.

- 3.4 The Contractor shall, at its own cost and expense, fully and successfully implement the Mobilisation Plan by no later than the Maintenance Commencement Date and shall successfully deliver and complete all Mobilisation Deliverables in accordance with the timetable for delivery and completion set out in the Mobilisation Plan.
- 3.5 The Contractor shall implement the Mobilisation Plan in full co-operation with the Authority and all relevant Third Parties to ensure that the Contractor is able to provide the Services in accordance with this Contract including the Contractor being able to provide the Maintenance from the Maintenance Commencement Date.
- 3.6 The Contractor shall apply the same level of skill, care and diligence in the performance of its tasks and obligations under the Mobilisation Plan as it is required to apply in the provision of the other Services.
- 3.7 If the Contractor becomes aware that it is or may be unable to meet or is unlikely to be able to perform any Mobilisation Deliverable in accordance with any timetable set out in the Mobilisation Plan then, without prejudice to any other rights or remedies of the Authority, the Contractor shall promptly notify the Authority in writing of the same, the reason for the delay and provide an estimate of when that Mobilisation Deliverable will be completed.
- 3.8 If the Contractor fails to complete any Mobilisation Deliverable by the date specified in the Mobilisation Plan for completion of it, then (without prejudice to the Authority's rights and remedies) the Contractor shall at its own cost (using best endeavours), arrange such additional resources as are necessary to fulfil its obligations under the Mobilisation Plan as soon as possible after the relevant date contained in the timetable set out in the Mobilisation Plan.
- 3.9 The Authority may, at any time, undertake an audit pursuant to **Clause 46** order to inspect and view the state and progress of mobilisation under this **Clause 3** and against the Mobilisation Plan. The Authority's inspection of such mobilisation activities will not be deemed acceptance by the Authority of any aspect of mobilisation and/or the Services and other obligations performed by the Contractor in relation to it.
- 3.10 The Contractor will regularly review the Mobilisation Plan and, whenever appropriate, propose changes to the Mobilisation Plan, at the Contractor's expense, to ensure that the Services (other than the mobilisation services) are capable of being provided from the dates envisaged or set out in this Contract, including the Maintenance Commencement Date in respect of Maintenance. All changes proposed by the Contractor will be subject to the prior written approval of the Engineer.
- 3.11 If at any time during the Mobilisation Period, the Engineer decides that the progress of the works under the Mobilisation Plan are not sufficient or appropriate to ensure that the Services are capable of being provided from the dates envisaged or set out in this Contract, including the Maintenance Commencement Date in respect of Maintenance, the Engineer may instruct

the Contractor to revise the Mobilisation Plan and the Contractor will, at its expense, promptly prepare and implement the requisite modifications.

4. **CONDITION OF SITES, CONTRACT AREA AND CONTRACTOR SOLUTION**

4.1 Without prejudice to the generality of **Clause 5.1**, the Contractor warrants that it has, during the competitive dialogue period and prior to signature of this Contract, examined:

4.1.1 all the Sites in its Contract Area;

4.1.2 all the Installed TC Equipment already Installed in its Contract Area and any and all documentation relating to such Installed TC Equipment;

4.1.3 the relevant requirements for the TC Equipment set out in the TC Equipment Specifications in **Annex E1 to Schedule 3** (as may be amended from time to time by the Authority),

and, whether or not the Contractor has examined such Sites, equipment, documentation and requirements, the Contractor shall have satisfied itself concerning the Sites, the condition of the Sites, the Installed TC Equipment, documentation and requirements and the Contract Area and the Contractor acknowledges and agrees that it shall not be entitled to bring any claim for extra payment due to the conditions existing at the Sites or in the Contract Area, the condition of the Installed TC Equipment, due to the documentation, or due to the relevant requirements for the TC Equipment set out in the TC Equipment Specifications in **Annex E1 to Schedule 3** (as may be amended from time to time by the Authority).

4.2 Subject to **Clause 4.3** and without prejudice to the generality of **Clause 5.1**, the Contractor acknowledges and accepts that, notwithstanding that the Authority has provided the Statement of Requirements:

4.2.1 the Contractor has full knowledge and understanding of the Statement of Requirements and warrants that the Statement of Requirements is fit for purpose for the provision of the Services under this Contract; and

4.2.2 no fault, error or defect in the Statement of Requirements will absolve the Contractor from its obligations to provide the TC Equipment and the Services in accordance with the provisions of this Contract.

4.3 In the event, and only to the extent, of any conflict between the provisions of the Statement of Requirements and the provisions of the Contractor Solution, the Parties agree that the Statement of Requirements will take precedence to the extent of any inconsistency unless and to the extent otherwise agreed in writing by an authorised signatory of the Authority.

5. THE SERVICES

5.1 The Contractor:

5.1.1 acknowledges that it:

5.1.1.1 has sufficient information about the Authority, the Services Recipients and the Statement of Requirements;

5.1.1.2 is aware of the Authority's and the Services Recipients' relevant processes and business;

5.1.1.3 has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Contract; and

5.1.1.4 is aware of the purposes for which the Services are required; and

5.1.2 agrees that it will neither be entitled to any additional payment nor excused from any obligation or liability under this Contract due to any misinterpretation or misunderstanding by the Contractor of any fact relating to the Statement of Requirements or otherwise to this Contract.

5.2 The Contractor shall (and shall procure that the Contractor Personnel) provide the Services in accordance with:

5.2.1 all Applicable Laws;

5.2.2 the terms and conditions of this Contract;

5.2.3 the Statement of Requirements in all respects and so that they fulfil the purpose indicated by or to be reasonably inferred from the Statement of Requirements;

5.2.4 the Performance Measures;

5.2.5 the TfL Policies set out or referred to in **Schedule 15**, as may be updated, amended, added to and/or replaced by the Authority from time to time;

5.2.6 all reasonable directions which the Authority may give to the Contractor from time to time and which relate (whether directly or indirectly) to the provision of the Services. For the avoidance of doubt, any consequential material changes to the Services or this Contract arising from such directions will be dealt with in accordance with the Change Control Procedure;

- 5.2.7 all relevant approvals, consents, permissions (including any from relevant and lawful Third Parties) and within the lawful requirements of local and public authorities; and
- 5.2.8 Good Industry Practice.
- 5.3 To the extent that there may be any conflict between the requirements set out in **Clause 5.2**, each such requirement will take priority over the other requirements in the order set out therein.
- 5.4 Without prejudice to **Clause 5.2**, the Contractor shall (and shall procure that the Contractor Personnel) provide the Services:
 - 5.4.1 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
 - 5.4.2 so that they are properly managed and monitored and will immediately inform the Authority if any aspect of this Contract is not being or is unable to be performed.
- 5.5 The Contractor shall deal with the Proposed Capital Works and provide the Instructed Capital Works in accordance with **Clauses 6 to 8** (inclusive), **Schedule 6** and this Contract.
- 5.6 Throughout the Term, the Contractor will, when required by the Authority, give to the Authority such written or oral advice, information and/or data regarding or otherwise in connection with any of the Services as the Authority may reasonably require.
- 5.7 In addition to the Services, the Contractor will provide at no additional cost to the Authority any services, functions and responsibilities (including any incidental service, function or responsibility) not specifically set out in the Statement of Requirements or this Contract but which:
 - 5.7.1 are within the scope of the Services as set out in the Statement of Requirements and/or this Contract;
 - 5.7.2 are consistent with the allocation of responsibilities between the Authority and the Contractor under the terms of this Contract; and/or
 - 5.7.3 are services, functions or responsibilities which are inherent and/or necessary to the proper performance and delivery of the Services.

For the avoidance of doubt, any actual changes to the scope of the Services shall be dealt with in accordance with the Change Control Procedure, save that a change to the scope of Instructed Capital Works shall be dealt with in accordance with the terms of the Capital Works Conditions of Contract rather than via (and without the need to use) the Change Control Procedure.

- 5.8 Notwithstanding anything to the contrary in this Contract, the Authority's discretion in carrying out its statutory duties will not be fettered or otherwise constrained or affected by any provision of this Contract.
- 5.9 The Contractor shall put in place, maintain and keep up to date and/or update for the Term:
- 5.9.1 a quality assurance system that complies with or is equivalent to BS EN ISO9000/14001 and this system must be registered with an approved certification authority;
 - 5.9.2 a quality management system complying with BS EN ISO 9002; and
 - 5.9.3 any other quality requirements set out in **Schedule 3**,
- and the Contractor shall, at its own cost, provide the Authority with such information and documents relating to the quality assurance and management systems requirements as the Authority may reasonably request from time to time.
- 5.10 The Contractor shall, at its own cost and as part of the Services, submit a written report to the Authority at least four (4) weeks before each anniversary of the Contract Commencement Date which will identify:
- 5.10.1 the emergence of any relevant new and evolving technologies and/or processes which could improve or supersede the TC Equipment or Services or this Contract;
 - 5.10.2 new or potential improvements, updates or different equipment to the TC Equipment or Services including the quality and responsiveness of the TC Equipment or Services or the procedures used to perform the Services;
 - 5.10.3 any developments that may reduce the cost of providing the Services;
 - 5.10.4 an analysis of the impact of any technologies, processes, improvements and/or developments that are proposed in relation to the TC Equipment or Services, including analyses of the costs of and timescale for, effecting such changes and the impact on the availability of Installed TC Equipment and the provision of the Services; and
 - 5.10.5 details of the new performance mechanisms (including proposed updated Performance Measures) that should be implemented if any technologies, processes, improvements and/or developments are implemented in relation to the TC Equipment, Installed TC Equipment and/or Services.

Such report will also contain any further information that is required in order for the Authority to properly evaluate the proposed technologies, processes, improvements and/or developments. If the Authority wishes to implement any

aspect of the report, it will request to do so using the Change Control Procedure. Nothing in this Contract will oblige the Authority to implement or agree to the implementation of any new technology, process, improvement and/or development.

6. WORKS INSTRUCTION MECHANISM

6.1 Any Proposed Capital Works that may be instructed by the Authority and provided by the Contractor shall be of the type described in the TCMS2 Scope. Without prejudice to **Clause 9**, whilst this Contract is not an exclusive arrangement in relation to capital works (including the Proposed Capital Works) and nothing in this Contract operates to prevent the Authority from engaging any other company, organisation or person to provide services or works similar to or the same as the Proposed Capital Works described in or envisaged by the Statement of Requirements or the TCMS2 Scope, the Authority intends to and shall provide all Proposed Capital Works during the initial term of 6 (six) years to the Contractor where such Proposed Capital Works are going to be performed in the Contract Area save in circumstances where:

6.1.1 the Authority has a right to place or instruct Proposed Capital Works with Third Parties or provide them itself pursuant to **Clauses 30A** and/or **31** and/or as set out expressly elsewhere in this Contract;

6.1.2 where the Authority chooses to instruct Proposed Capital Works using the Mini-Competition process pursuant to **Clause 8** (at its discretion); or

6.1.3 where the Authority has a right to suspend or terminate the applicable Capital Works and/or this Contract pursuant to **Clause 30** or **Clause 32**,

in which case such terms shall prevail.

6.2 **Clauses 7** and **8** set out the procedure by which the Authority may issue a Works Instruction. Each Works Instruction is binding on the Parties in relation to the relevant Services and each Works Instruction shall form part of this Contract.

6.3 Each Works Instruction shall be carried out in accordance with:

6.3.1 the Capital Works Conditions of Contract (where there is a discrepancy or conflict within the Capital Works Conditions of Contract the Option Z clauses set out in **Schedule 6 Part A** prevail over the other provisions of the Capital Works Conditions of Contract), which for the avoidance of doubt shall apply only to Instructed Capital Works;

6.3.2 **Clauses 1 to 67** (inclusive) and **Schedule 20** of this Contract;

- 6.3.3 the contract data part one appended at **Annex 1** to **Schedule 6, Part A** as supplemented or amended by the relevant information provided with or referred to in the Works Instruction;
 - 6.3.4 the contract data part two provided with or referred to in the Works Instruction;
 - 6.3.5 the relevant Build Brief, save as set out in **Clause 7.12** where a Build Brief shall not be required;
 - 6.3.6 the Works Information referred to in the applicable contract data part one; and
 - 6.3.7 the Site Information referred to in the applicable contract data part one.
- 6.4 The provisions and documents relating to each Works Instruction shall be taken as and shall be deemed to be mutually explanatory of each other. In the event of any ambiguity they shall be construed in the order set out in **Clause 6.3** above.
- 6.5 The Contractor shall carry out and complete each Instructed Capital Works in accordance with each relevant Works Instruction. Subject to **Clause 7.12**, the Contractor shall not commence any Capital Works without an agreed Works Instruction.
- 6.6 Each Works Instruction (including the documents referred to at **Clause 6.3** above) shall supersede any previous agreement, arrangement or understanding between the Authority and the Contractor in relation to the matters dealt with in the Works Instruction and (save in the case of fraud or fraudulent misrepresentation) shall represent the entire understanding and agreement between the Authority and the Contractor in relation to such matters.
- 7. DIRECT WORKS INSTRUCTION**
- 7.1 At any time during the Term, the Authority may identify Proposed Capital Works which, in its sole discretion (but subject to **Clause 9**), it wishes to instruct under the terms of this Contract in which event the Parties shall follow the process set out below which the Authority reserves the right, at its discretion, to amend from time to time to reflect best practice and to reflect and accord with Applicable Laws.
- 7.2 Subject to **Clause 7.12**, where the Authority opts to instruct the Contractor directly without the need for a Mini-Competition, it will issue to the Contractor a Build Brief specifying the Proposed Capital Works to be provided together with the relevant contract data.

7.3 In the event that the Contractor receives a Build Brief, the Contractor shall:

7.3.1 immediately confirm receipt of the Build Brief in writing; and

7.3.2 subject to **Clause 7.5**, notify the Authority whether or not it will be able to provide a Quotation within the timescales set out below:

| Scheme Request Type (as identified in the Build Brief) | Response Time (from and including the date of receipt of the Build Brief) |
|--|---|
| A | Five (5) Business Days |
| B | Two (2) Business Days |
| D | Five (5) Business Days |
| E | Five (5) Business Days |
| F | Five (5) Business Days |

7.4 Subject to **Clause 7.5**, the Contractor shall provide a Quotation pursuant to **Clause 7.6** unless the Contractor:

7.4.1 does not have sufficient resources to carry out and complete the Proposed Capital Works identified in the Build Brief; or

7.4.2 cannot achieve the completion date for the Proposed Capital Works identified in the Build Brief (in which case the provisions of **Clause 31** shall apply).

Together with its notification under **Clause 7.3.2** the Contractor shall provide such evidence as the Authority may reasonably require to demonstrate the Contractor's insufficiency of resources or inability to achieve the specified completion date.

7.5 Notwithstanding **Clause 7.4**, the Contractor shall always provide a Quotation if the Authority issues a Build Brief for Type C works.

7.6 Following receipt of a Build Brief, the Contractor shall (unless it has notified, pursuant to **Clause 7.3**, that it will not for a valid reason in accordance with **Clause 7.4**) provide a Quotation to the Authority in accordance with the timescales set out below (or such other timescales as may be specified by the Authority):

| Scheme Request Type (as identified in the Build Brief) | Response Time (from and including the date of receipt of the Build Brief) |
|--|---|
| A | Ten (10) Business Days |
| B | Five (5) Business Days |
| C | One (1) Business Day |
| D | Sixty (60) Business Days |
| E | Thirty (30) Business Days |
| F | Sixty (60) Business Days |

- 7.7 A Quotation is an offer capable of acceptance and remains valid for at least ninety (90) Business Days (or such longer period as may be specified in the Build Brief) from the date it is submitted to the Authority.
- 7.8 Together with each Quotation, the Contractor shall submit full details of the basis on which the relevant Prices have been calculated. In responding to a Build Brief the Contractor may use rates, prices, percentages and allowances which are less than those stated in the Schedule of Capital Works Rates but the Contractor shall not use any rates, prices, percentages and allowances which exceed those stated in the Schedule of Capital Works Rates. The Authority shall identify in the Build Brief the method by which the Contractor should show any applicable reduction in the rates, prices, percentages and allowances against those stated in the Schedule of Capital Works Rates.
- 7.9 Following receipt of a Quotation, the Authority aims to respond to the Contractor in accordance with the timescales set out below:

| Scheme Request Type (as identified in the Build Brief) | Indicative Response Time |
|--|--------------------------|
| A | Five (5) Business Days |
| B | Five (5) Business Days |
| C | One (1) Business Day |
| D | Five (5) Business Days |
| E | Five (5) Business Days |
| F | Five (5) Business Days |

For the avoidance of doubt, the Authority is not obliged to respond to a Quotation within the timescales set out above.

7.10 Should the Authority:

7.10.1 fail to respond to the Contractor's Quotation in the appropriate timescale set out at **Clause 7.9**; and

7.10.2 subsequently accept the Quotation and issue a Works Instruction,

then the Authority may, if the Authority (acting reasonably) considers it to be appropriate, make a reasonable adjustment to the Completion Date for the relevant Capital Works to reflect the delay in responding to the Quotation beyond the specified time period. Any such adjustment to a Completion Date will be recorded in the relevant Works Instruction. The Contractor acknowledges that the Authority may consult with any Third Party who has an interest in the Capital Works when considering whether or not an adjustment to a Completion Date is appropriate.

7.11 If the Authority accepts the Quotation provided under **Clause 7.6**, it shall issue a completed Works Instruction to the Contractor.

7.12 The Authority reserves the right to issue a Works Instruction to the Contractor for Type C works without issuing a Build Brief in advance. The Prices applicable to the Proposed Capital Works to be provided under such a Works Instruction are calculated and the activity schedule is prepared by the Authority using the appropriate rates, prices, percentages and allowances stated in the Schedule of Capital Works Rates. On receipt of a Works Instruction issued under this **Clause 7.12** the Contractor shall provide the relevant works in accordance with such Works Instruction, provided that the Authority reserves the right to instruct the Contractor to commence the relevant Capital Works before a Works Instruction has been formally issued and the Authority will issue the relevant Works Instruction as soon as reasonably practicable thereafter. The Contractor shall provide such assistance as the Authority may reasonably require to compile Works Instructions for Type C works.

7.13 A Build Brief and any draft Works Instruction issued by the Authority and anything prepared or discussed by an Authority constitutes an invitation to treat in relation to the relevant Proposed Capital Works and does not constitute an offer capable of acceptance by the Contractor. The Authority shall not be obliged to consider or accept any Quotation submitted by the Contractor.

- 7.14 Without prejudice to **Clause 6.1**, if the Contractor:
- 7.14.1 fails to notify the Authority within the relevant timescale required under **Clause 7.3.2** whether or not it will provide a Quotation; or
 - 7.14.2 having notified the Authority that it will provide a Quotation does not provide such a Quotation within the relevant timescale required under **Clause 7.6**,
- then the Authority may engage a Third Party to provide, or itself provide, the relevant Proposed Capital Works without further notice to the Contractor.
- 7.15 Subject to **Clause 9**, this Contract does not oblige the Authority to issue any Works Instruction to the Contractor.
- 7.16 Unless otherwise expressly agreed in writing with the Authority (including as stated in **Schedule 3, Part 2**), the Contractor shall not charge for any work involved in receipt and/or confirmation of any Build Brief, and/or in preparation of any Quotation as contemplated in this **Clause 7**.
- 7.17 Subject to **Clause 7.16**, the Contractor shall be and remains responsible for all and any costs, charges and expenses incurred by the Contractor arising from or associated with the procurement process in this **Clause 7** and the Authority shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is instructed or awarded a Works Instruction, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process. If the Authority issues a Works Instruction to the Contractor this **Clause 7.17** does not affect the Contractor's right to payment for the Instructed Capital Works provided under such Works Instruction.
- 7.18 It is the Authority's intention to dedicate a proportion of its annual budget applicable to the TCMS2 Framework to the modernisation of Traffic Signals which form part of the TC Equipment. The Authority's budget for Modernisations will be divided across the Allocated Areas on a pro-rata basis in accordance with the relevant asset base (being the number of Traffic Signal Sites) in each Lot.
- 7.19 As at the Contract Commencement Date, the asset base is as set out in the table below. This table is for information only and subject to change at the Authority's discretion.

| | Lot 1 Sites / % | Lot 2 Sites / % | Lot 3 Sites / % | Lot 4 Sites / % | Lot 5 Sites / % |
|-----|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| ATS | 1427 / 29% | 852 / 17% | 969 / 20% | 969 / 20% | 700 / 14% |

7.20 The Authority will, during the Mobilisation Period, produce a modernisation priority list for each Lot setting out the Sites which are in the Authority's view at the relevant time in greatest need of Modernisation. The key factors which the Authority will take into account when producing each modernisation list shall include the following criteria:

7.20.1 **Obsolescence** – taking into account:

7.20.1.1 the Obsolescence Factor of the TC Equipment, any Assembly and/or Sub-Assembly of Installed TC Equipment in the relevant Lot;

7.20.1.2 the Authority's responsibility for modernising items of Installed TC Equipment with Obsolescence Factor 4 under this Contract; and

7.20.1.3 the benefits of modernising Installed TC Equipment with an Obsolescence Factor 3;

7.20.2 **Asset condition** – the condition of Sites as detailed in SFM;

7.20.3 **Fault History** – Sites with a history of frequent or recurring Faults (excluding Faults caused by Third Party Damage and Third Party Supplier Faults); and

7.20.4 **Age** – the age of Installed TC Equipment at the Sites as set out in the Asset Profile.

7.21 In producing the modernisation priority list for each Lot, the Authority will take into consideration the Sites in that Lot which are in its view in greatest need of Modernisation and, subject always to **Clause 7.29** below, will apply the following weightings to the criteria set out in **Clause 7.20** above in respect of each Site:

| Factor | Weighting |
|-----------------|-----------|
| Obsolescence | 30% |
| Asset Condition | 25% |
| Faults | 25% |
| Age | 20% |

7.22 The Authority will review, modify and provide any updated versions of the modernisation priority list for each Lot in writing to the Contractor annually during the Term.

7.23 Within a reasonable period of the beginning of each financial year during the Term, the Authority will, to the extent it is reasonably able, share with the Contractor its separate budget for Modernisations for each Lot in the Contract Area.

- 7.24 Subject to **Clause 7.29**, the Authority will determine how ninety percent (90%) of the modernisation budget for each Lot in the Contract Area will be allocated with reference to the Authority's modernisation plans and the modernisation priority list for the relevant Lot.
- 7.25 Subject to **Clause 7.26** and **Clause 7.29**, in addition to the Sites which the Authority has determined will be the subject of 90% of its modernisation budget in accordance with **Clause 7.24** above, the Contractor may suggest how up to ten percent (10%) of the modernisation budget for each Lot in the Contract Area could be allocated based on the additional Sites which the Contractor believes would benefit from Modernisation. It is anticipated that the Contractor will apply similar criteria to the Authority in determining which Sites may be appropriate for Modernisation but the Contractor may also apply its own criteria.
- 7.26 The Authority will consider proposals made by the Contractor pursuant to **Clause 7.25** but may refuse to prioritise any Site proposed by the Contractor. The reasons the Authority may exercise its right to refuse the Modernisation of a Site proposed by the Contractor pursuant to this **Clause 7** include:
- 7.26.1 where the Authority has visibility of a forthcoming Scheme(s) that is or are likely to affect the Site(s) which the Contractor proposed to be the subject of Modernisation;
 - 7.26.2 where an incident has occurred which remains under investigation at the Site(s) which the Contractor proposed to be the subject of Modernisation; and/or
 - 7.26.3 where the majority of installed TC Equipment at the Site which the Contractor proposed to be the subject of Modernisation is less than eight (8) years old as shown in the Asset Profile.
- If the Authority refuses to prioritise a Site proposed by the Contractor pursuant to this clause the Contractor will be entitled to propose alternative Sites for which its proportion of the modernisation budget for each Lot in the Contract Area may be allocated by the Authority.
- 7.27 If the Authority and the Contractor are able to agree upon the Sites in each Lot which are to be the subject of Modernisation, the Authority may issue a Build Brief in respect of each Site specifying the Proposed Capital Works together with the relevant contract data and the Contractor shall comply with its obligations pursuant to this **Clause 7** in respect of each Build Brief issued by the Authority.
- 7.28 The value of any Modernisation shall contribute to the minimum amount of Capital Works provided to the Contractor for the purposes of **Clause 9** and **Schedule 1**.

- 7.29 The Contractor acknowledges and agrees that it is at the Authority's sole discretion which Sites are the subject of Modernisation at any time and, notwithstanding the provisions of this **Clause 7**, the Authority may decide to change its requirements for Modernisation at any time.

8. **MINI-COMPETITION**

- 8.1 Without prejudice to **Clause 7**, at any time during the Framework Term, the Authority may identify Proposed Capital Works which it assesses (in its discretion) to have a value of two hundred and fifty thousand (£250,000) or more and which, in its sole discretion, it wishes to let under the terms of this Contract through a Mini-Competition process. The Authority reserves the right, at its discretion, to amend such process from time to time, whether to reflect best practice and/or Applicable Laws or otherwise as may be permitted by law.
- 8.2 Where the Authority undertakes a Mini-Competition, it shall issue to those contractors signed up to the TCMS2 Framework a Mini-Competition Request, specifying the Proposed Capital Works it wishes to be provided, incorporating the applicable contract data and setting out any other information required by the Authority and **Schedule 1, Annex A, paragraph 1** shall apply to such Mini-Competition.
- 8.3 In the event that the Contractor receives a Mini-Competition Request:
- 8.3.1 the Contractor shall promptly (and in any event within two days) confirm receipt of the Mini-Competition Request in writing; and
- 8.3.2 the Contractor shall complete and issue to the Authority a Proposal incorporating the applicable completed contract data and any other relevant documents or shall notify the Authority that it does not intend to submit a Proposal. The Contractor shall respond to the Authority by the date specified in the Mini-Competition Request or, if no such date is specified, within 10 Business Days of receiving the Mini-Competition Request, or by such other date as may be specified by the Authority. A Proposal is an offer capable of acceptance and remains valid for at least ninety (90) Business Days (or such longer period as may be specified in the Mini-Competition Request) from the date it is submitted to the Authority.
- 8.4 Subject to **Clause 8.9**, the Authority shall evaluate tendered Proposals with reference to the assessment criteria set out in the Mini-Competition Request as they relate to the Proposed Capital Works in question in accordance with the provisions of **Schedule 1, Annex A, paragraph 1**. Each of the contractors to whom a Mini-Competition Request was sent will be notified as to whether or not it has been successful.
- 8.5 If the Authority accepts the Contractor's Proposal pursuant to **Clause 8.4**, the Authority shall issue a completed Works Instruction to the Contractor.

- 8.6 In response to a Mini-Competition Request, the Contractor shall submit with each Proposal full details of the basis on which the relevant Prices have been calculated. In preparing a Proposal, the Contractor may use rates, prices, percentages and allowances which are less than those stated in the Schedule of Capital Works Rates but the Contractor shall not use any rates, prices, percentages and allowances which exceed those stated in the Proposed Capital Works. The Authority shall identify in the Mini-Competition Request the method by which the Contractor should show any applicable reduction in the rates, prices, percentages and allowances against those stated in the Proposed Capital Works.
- 8.7 A Mini-Competition Request and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Contractor. The Authority shall not be obliged to consider or accept any Proposal submitted by the Contractor.
- 8.8 Subject to **Clause 9**, this Contract does not oblige the Authority to issue any Works Instruction for any Proposed Capital Works to the Contractor.
- 8.9 Unless otherwise expressly agreed in writing with the Authority the Contractor shall not be entitled to charge for any work involved in receipt and/or confirmation of any Mini-Competition Request, and/or any response to any Mini-Competition Request as contemplated in this **Clause 8**.
- 8.10 The Contractor shall be responsible for all and any costs, charges and expenses incurred by the Contractor arising from or associated with the procurement process in this **Clause 8** and the Authority shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded the relevant Proposed Capital Works, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process. If the Authority issues a Works Instruction to the Contractor this **Clause 8.10** does not affect the Contractor's right to payment for the Instructed Capital Works provided under such Works Instruction.

9. **MINIMUM WORKS COMMITMENT**

The Authority agrees to comply with the provisions of **Schedule 1, Annex A, paragraph 2** in relation to the provision to the Contractor of a minimum amount of Capital Works under this Contract, as set out in and subject to the terms set out in **paragraph 2** of such Annex to such Schedule.

10. **TC EQUIPMENT, EQUIPMENT AND SOURCE CODE**

10.1 The Contractor shall:

- 10.1.1 subject to **Clauses 10.11 to 10.13** (inclusive), procure, store and supply the TC Equipment;
- 10.1.2 provide Capital Works in relation to TC Equipment if and once instructed to (being the Instructed Capital Works); and
- 10.1.3 provide maintenance services in relation to Installed TC Equipment (being the Maintenance),

all in accordance with this Contract.

10.2 The Contractor shall ensure that all TC Equipment supplied by it pursuant to this Contract shall:

- 10.2.1 conform with the Statement of Requirements and any additional requirements agreed with the Authority;
- 10.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended)), including being fit for any purpose held out by the Contractor or made known to the Contractor by the Authority;
- 10.2.3 be free from defects in design, materials and workmanship;
- 10.2.4 be formulated, designed, constructed and finished so as to be safe and without risk to health; and
- 10.2.5 comply with all applicable statutory and regulatory requirements and all codes of conduct, practice and guidance relating to TC Equipment.

10.3 The Contractor shall obtain and maintain during the Term all approvals, permissions, registrations, licences, support agreements and consents that are necessary and/or consequential to the supply, Installation, operation and Maintenance of the TC Equipment and/or the Installed TC Equipment.

10.4 The Contractor shall deliver and provide the TC Equipment in accordance with its obligations set out **Schedule 3** including as set out in the TC Equipment Specifications in **Annex E1 to Schedule 3** (as may be amended from time to time by the Authority) and the TC Equipment List.

10.5 Without prejudice to the generality of **Clauses 4.1 and 5.1**, and notwithstanding that TC Equipment may have successfully been Commissioned as part of the Services, such process does not confer any acknowledgement or acceptance by the Authority that the TC Equipment meets the requirements of this Contract or that the Contractor Solution for delivery of the Services will be sufficient to deliver the Services in accordance with the Performance Measures and the other requirements of this Contract. The Contractor shall remain solely responsible at all times:

- 10.5.1 for the risk that the TC Equipment and the Contractor Solution may not actually fulfil the requirements of this Contract;
 - 10.5.2 for ensuring that the Contractor Solution fulfils the requirements of this Contract, notwithstanding that the Authority has provided the Statement of Requirements; and
 - 10.5.3 for ensuring that the particular TC Equipment shall be fit for purpose and in compliance with the requirements of this Contract.
- 10.6 Risk and title in the TC Equipment which forms part of any Instructed Capital Works will pass to the Authority or (if directed by the Authority) the relevant Service Recipient in accordance with the relevant Works Instruction.
- 10.7 Subject to **Clause 10.6** which shall apply in relation to TC Equipment which is subject to and part of Instructed Capital Works, risk and title to any other TC Equipment (including any parts or replacement parts (whether Assemblies, Sub-Assemblies or otherwise) in the TC Equipment which are part of the Maintenance) shall pass to the Authority or the relevant Service Recipient (as directed by the Authority) as follows:
 - 10.7.1 title shall pass once the TC Equipment, parts or replacement parts have been paid for or certified Commissioned (whichever is the sooner); and
 - 10.7.2 risk shall pass once the TC Equipment, parts or replacement parts have been Installed at the Sites in the Contract Area.
- 10.8 Any requirement of this Contract that any material or article will comply with any specified standard, whether a British Standard, other named standard or otherwise, will be satisfied by compliance with any relevant national or governmental standard of any member state of the European Communities, or any relevant international standard recognised in such a member state provided that in either case the standard in question offers guarantees of safety, suitability and fitness for purpose equivalent to those offered by the standard which is specified in this Contract. Any requirement of this Contract to use material or an article which is defined by reference to a named supplier or manufacturer or a specified quality assurance scheme or contract certificate, or which is registered with or has otherwise received the approval of the Authority will be satisfied using material or an article which has received equivalent approval in another member state of the European Communities provided that the material or article in question is as safe, suitable and fit for the relevant purpose as material or an article complying with the requirement as set out in this Contract.
- 10.9 Subject to **Clause 10.20**, all replacement items will be replaced “like for like” meaning that they shall be functionally identical, unless agreed with the Engineer and, where appropriate, will be fully type approved. The Contractor acknowledges that replacement with compatible or similar items of equipment will not normally be permitted.

10.10 Where the Contractor procures and purchases TC Equipment, for which ownership will transfer under this Contract to the Authority or another Service Recipient, the Contractor shall ensure that:

10.10.1 it has the right and warrants that it will have the right to transfer ownership of the TC Equipment to such Service Recipient in accordance with this Contract; and

10.10.2 the Contractor shall procure that any and all standard and extended warranties for such TC Equipment are purchased and/or negotiated for and on behalf of and are documented to be for the benefit of the Authority and the other Service Recipients and permit such Service Recipients' agents (including the Contractor and other contractors to the TCMS2 Framework) to act as agent on the Service Recipients' behalf to deal in relation to the warranties.

Free Issue TC Equipment

10.11 At any time during the Term, the Authority shall have the discretion to issue Free Issue TC Equipment which, once issued, the Contractor shall use in the way required by the Authority as part of the Services, whether as part of the Capital Works, for Maintenance, for spare parts, replacement parts or otherwise.

10.12 Where the Authority provides Free Issue TC Equipment to the Contractor for use in the Services, the Contractor shall promptly and in any event within ten (10) Business Days (or sooner in relation to any and all Pooled Spares being used to fix a Fault) carry out a visual inspection of such equipment to check that it is in good condition and suitable for use prior to incorporating or using such equipment in the Services. If the Contractor considers such Free Issue TC Equipment is not fit for purpose the Contractor will notify the Authority and the Parties will discuss (each acting in good faith) the reasons why the Contractor does not consider the Free Issue TC Equipment to be fit for purpose with a view to reaching an agreement on the TC Equipment to be used. If the dispute is not resolved between the Parties within ten (10) Business Days then the dispute will be referred to the Dispute Resolution Process.

10.13 Title in the Free Issue TC Equipment shall remain at all times with the Authority. Risk in the Free Issue TC Equipment will pass to the Contractor on delivery. While the Free Issue TC Equipment is in the possession of the Contractor and until it is either used and Commissioned by the Contractor as part of a Works Instruction or Installed as part of Maintenance or returned to the Authority or another Service Recipient as directed by the Authority, the Contractor shall:

10.13.1 hold the Free Issue TC Equipment on a fiduciary basis as the Authority's bailee;

10.13.2 store the Free Issue TC Equipment (at no cost to the Authority) separately from all other equipment of the Contractor or any third

party in such a way that it remains readily identifiable as the Authority's property;

- 10.13.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Free Issue TC Equipment;
- 10.13.4 maintain the Free Issue TC Equipment in satisfactory condition insured on the Authority's behalf for its full price against all risks to the reasonable satisfaction of the Authority; and
- 10.13.5 make the Free Issue TC Equipment available for inspection at any and all reasonable times.

Software

10.14 The Contractor warrants and shall ensure that any software, electronic or magnetic media, hardware or computer system(s) used or supplied by the Contractor in connection with this Contract (including in any TC Equipment and Installed TC Equipment):

- 10.14.1 is Euro compliant;
- 10.14.2 is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk;
- 10.14.3 does not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;
- 10.14.4 does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Authority and/or any other member of the TfL Group on which it is used or with which it interfaces or comes into contact; and
- 10.14.5 in relation to the TC Equipment only and any software in such TC Equipment, has a software interface that is an open standard and is fully detailed to the Authority at the time of Installation such that any other party can interface or ensure their software and systems can interface with the relevant software. Without prejudice to the generality of the foregoing, all application programming interface(s) (APIs) must have a full specification and be openly and freely available for anyone to use. The Contractor shall provide written details of such standards, interfaces, software and documentation upon request from the Authority.

Any variations, enhancements or actions undertaken by the Contractor in respect of such software, electronic or magnetic media, hardware or

computer system does not affect the Contractor's compliance with this warranty and **Clause 10.14**.

- 10.15 To the extent possible (either because the source code is owned by the Contractor or the TC Equipment provider/manufacture permits it (and, in the latter case, the Contractor shall use its reasonable endeavours to gain such permission), the source code to any software relating to TC Equipment in which the Intellectual Property Rights are, or are to be, owned by the Authority (acknowledging that certain software elements in such owned TC Equipment may be licensed rather than owned in which case **Clause 10.16** shall apply), together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code both during and after the Term, shall be supplied to the Authority by the Contractor when that TC Equipment is supplied to the Authority ("**the Authority Materials**").
- 10.16 The source code to any software forming part of the Contractor's Intellectual Property Rights and/or Third Party Intellectual Property Rights (which shall include source code in software in the TC Equipment which is not to be owned by the Authority, source code in software which the Contractor may use and/or uses for configuring, testing, running diagnostics, connecting to and/or auditing TC Equipment as well as connecting to other infrastructure and systems of the Authority and the Service Recipients, and source code in software in any interfaces or source code otherwise not transferred to the Authority under this Contract), together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code ("**Escrow Materials**") shall, where requested by the Authority, be subject to source code deposit arrangements and verification services to be entered into, on such terms as are reasonably acceptable to the Authority, within thirty (30) days of the Authority's request to do so (whether in relation to part or all of the software) for the benefit of the TfL Group, the Service Recipients and their agents, both during the Term and after the Term with either NCC International Limited ("**NCC**") (on NCC's then standard terms) or with any other alternative reputable escrow agent required by or agreed to by the Authority and providing for the release of the source code of such software in the event of insolvency (or analogous events) of the Contractor or the TC Equipment provider, inadequate performance of support or maintenance obligations (if any) or cessation of trade by the Contractor or the TC Equipment provider/manufacture. Where requested by the Authority, the Contractor shall procure that NCC (or such other escrow agent as the Authority considers appropriate) enters into the escrow/verification agreement. The charges payable to NCC or other escrow agent shall be borne by the Authority, unless agreed otherwise in writing with the Contractor. The Contractor shall at all times ensure that the Escrow Materials deposited with NCC or other escrow agent are capable of being used to generate and maintain and adapt the latest version of the relevant software and the Contractor shall deliver to NCC or other escrow agent an updated copy of the Escrow Materials as and when necessary for this purpose and additionally when requested to do so by the Authority.

Obsolete Equipment

- 10.17 Without prejudice to the Contractor's Maintenance obligations, the Authority shall be responsible for the cost of replacing any Whole Unit of Installed TC Equipment which has an Obsolescence Factor of 4, provided that the Contractor complies with all of its obligations in relation to obsolescence including those set out in **Schedule 3 – Part 3** and can demonstrate to the satisfaction of the Engineer that it has taken all reasonably proactive steps to extend and prolong the life of all Installed TC Equipment. The Authority has the option to either replace the Whole Unit via Capital Works or to free up an Assembly and/or Sub-Assembly such that they become Spare Parts which can be fitted into the Installed TC Equipment so that it no longer holds an Obsolescence Factor of 4.

Pooled Spares

- 10.18 The Contractor shall be obliged to hold and store, as pooled spares, Spares recovered and/or removed by the Contractor from Installed TC Equipment which is the subject of Capital Works in accordance with **Schedule 3 – Part 3** or Maintenance (these being defined as Pooled Spares in **Schedule 2**). Risk in any such Pooled Spares to be stored by the Contractor will pass to the Contractor at the point such equipment is removed from the Installed TC Equipment by the Contractor.
- 10.19 The Contractor shall make any Pooled Spares which may be used in (a) any Installed TC Equipment which has an Obsolescence Factor of 3 or 4; and/or (b) to replace to a Sub-Assembly which has an Obsolescence Factor of 3 or 4; and/or (c) to replace to an Assembly which has an Obsolescence Factor of 3 or 4, available for collection by another or other contractor(s) signed up to the TCMS2 Framework for use in any of the Allocated Areas as directed in writing by the Authority.
- 10.20 The Authority may request that the Contractor transfer one or more Pooled Spares (and also risk in any such Pooled Spares) being held by the Contractor to another contractor signed up to the TCMS2 Framework at any time and acting in its sole discretion and/or may require that the Contractor use a Pooled Spare held by another contractor signed up to the TCMS2 Framework as a replacement part for any Installed TC Equipment (whether a Whole Unit, Assembly or Sub-Assembly) with an Obsolescence Factor of 3 or 4. Risk in the Pooled Spare which is transferred to the other contractor signed up to the TCMS2 Framework shall transfer at the time of collection by that contractor, as directed by the Authority.
- 10.21 Where the Contractor has received a Pooled Spare from the Authority or another contractor signed up to the TCMS2 Framework in accordance with **Clause 10.20**, the Contractor shall be responsible for ensuring that, before any such Pooled Spare is used to replace any Whole Unit, Assembly or Sub-Assembly in Installed TC Equipment, such Pooled Spare is capable of functioning properly in accordance with the specification of the part it is intended to replace and the Contractor shall fully test such Pooled Spare to ensure this is the case.

- 10.22 Subject to **Clause 10.23**, risk and title in any Whole Units, Assemblies and/or Sub-Assemblies which are swapped out as part of Maintenance will pass to the Contractor at the point at which any such Whole Units, Assemblies and/or Sub-Assemblies are removed from an item of Installed TC Equipment (or the Whole Unit is removed), provided that the Contractor must make any such Whole Units, Assemblies and/or Sub-Assemblies of Installed TC Equipment which have an Obsolescence Factor of 3 or 4 available to all TCMS2 Contractors as if such Whole Units, Assemblies and/or Sub-Assemblies were Pooled Spares in accordance with **Clause 10.20**, mutatis mutandis (with the necessary changes).
- 10.23 If the Contractor itself wishes to replace a Whole Unit, Assembly and/or Sub-Assembly component of Installed TC Equipment which has not been the subject of a Fault for the purposes of making the relevant Installed TC Equipment more reliable or perform more efficiently, it shall notify the Authority via the System or such other method as the Authority may reasonably require from time to time. If the Authority approves such a replacement then the Unit being replaced will belong to the Contractor and will not form part of the Contractor's stock of Pooled Spares, irrespective of the Obsolescence Factor of the Installed TC Equipment concerned.
- 10.24 None of the obligations relating to obsolescence and Pooled Spares set out in this **Clause 10** or in **Schedule 3 Part 3** shall override the Contractor's obligations to perform the Services in accordance with the Service Levels and/or any of the Contractor's other obligations in accordance with the Contract. The Minimum Spares Threshold does not constitute any guarantee by the Authority that any particular number of Spares will be adequate for the Contractor to perform its obligations and the Contractor shall remain responsible for sourcing, and maintaining in stock at any of its premises, an appropriate amount of Spares for this purpose.

General

- 10.25 This **Clause 10** shall survive termination of this or part of this Contract.
11. **MAINTENANCE, ACCESS AND FAULT REPAIR/REPORTING**
- 11.1 Subject to the Contractor complying with its obligations under **Schedule 6** in relation to access and permitting for Capital Works and under **Schedule 16** generally and/or making appropriate arrangements with relevant Third Parties, as necessary, the Contractor's representatives shall be given and/or may gain access to the Sites in order to be able to perform the Services.
- 11.2 The Contractor shall maintain a Despatch Centre and inform the Authority of the address and contact details (including telephone (including mobile telephone) and fax numbers and an email address) of such Despatch Centre and any changes thereto. Without prejudice to **Clause 14**, the Contractor shall provide all necessary communications equipment to support communication between the Despatch Centre, the Centre, the SFM and any other Systems notified to the Contractor by the Authority from time to time and the Contractor's representatives on the street.

- 11.3 The Contractor shall perform Maintenance in accordance with this Contract.
- 11.4 Without prejudice to the generality of this **Clause 11**, the Authority shall inform the Contractor that a Fault exists or the Contractor shall notice a Fault exists and deal with such Fault in accordance with the provisions set out in the Statement of Requirements and **Schedules 4 and 5** (as and to the extent applicable), including the location of the Fault, a description of the Fault, the time of notification and the time the Fault was first observed. The Contractor will attend the relevant Site at which an Emergency Fault has occurred or in relation to which a Direction is issued, irrespective of the actions which the Contractor considers appropriate in respect of the Fault, to determine the appropriate action to take in response to the Fault report in order to comply with the relevant Performance Measures and to ensure it achieves the Availability Targets subject to the specific timeframes in relation to Emergency Faults and Directions, as specified in **Schedule 3, Part 4**, which shall override the relevant Performance Measures in the event of the specific circumstances set out in such Part.

12. **CO-OPERATION AND PROVISION OF INFORMATION**

- 12.1 The Contractor shall (and shall procure that the Contractor Personnel shall) at all times (and at no extra cost to the Authority) provide such information, data and assistance relating to the Services and/or this Contract to the Third Party Suppliers as the Authority reasonably requires or requests from time to time.
- 12.2 The Contractor shall (and shall procure that the Contractor Personnel shall) co-operate with and co-ordinate their performance and/or provision of the Services and other obligations hereunder with the performance or provision of works and/or services provided by the TfL Group, other Service Recipients, and/or Third Party Suppliers and, without prejudice to the generality of the foregoing, with all relevant public authorities, local authorities, the Metropolitan Police Service, statutory undertakers, the relevant London Borough(s) and the relevant Highway Authority.
- 12.3 Without prejudice to the generality of **Clause 12.2**, the co-operation referred in this **Clause 12.3** shall include the Contractor:
- 12.3.1 liaising and meeting with Third Party Suppliers and/or the Service Recipients;

- 12.3.2 co-ordinating the successful and efficient integration of the Services with any services, works, maintenance and/or products of any Third Party Supplier and the implementation by the Contractor, the Service Recipients and/or any Third Party Supplier of new processes and systems from time to time; and
 - 12.3.3 responding to requests for suggestions and/or responses should acquisitions, disposals, organisational or management changes be proposed by the Authority in respect of any of the Third Party Suppliers and/or the Service Recipients.
- 12.4 The Contractor shall maintain an up to date contacts register detailing its contact with Third Party Suppliers which it will make available to the Authority promptly upon request.

13. **CONTRACTOR FACILITIES**

- 13.1 The Contractor shall promptly establish and shall maintain, throughout the Term, appropriate facilities for performing the Services and carrying out its obligations under this Contract, including warehousing facilities for any necessary storage of any TC Equipment, Pooled Spares and/or spare or replacement parts it has purchased for carrying out of Capital Works, Maintenance and/or other Services. Such facilities shall be maintained and upgraded by the Contractor during the Term in order to ensure the Contractor is able to meet the Contractor's obligations and any and all requirements to improve the level(s) of service provided for under this Contract. The Contractor shall ensure that the Contractor's facilities shall be located so as to allow the Contractor to meet the required response and fix times and Availability Targets set out in this Contract and the other Performance Measures.
- 13.2 The Contractor shall ensure that the Contractor's facilities and equipment shall have adequate facilities and functionality for receiving the Authority's reports of Faults and for the storage of TC Equipment and other equipment required in respect of all Services to be undertaken by the Contractor under this Contract and in accordance with the requirements set out in the Statement of Requirements.
- 13.3 Without prejudice to **Clause 13.2**, the Contractor shall ensure that the Contractor's facilities shall, at all times, have secure storage space adequate for the purposes of storing any Free Issue TC Equipment issued by the Authority for the Services (and TC Equipment too) and where Free Issue TC Equipment and TC Equipment too are protected from damage and/or degradation, including a secure area to which only the Contractor Personnel and the Authority will have access and the Contractor shall insure such Free Issue TC Equipment.
- 13.4 All costs in establishing, maintaining and upgrading the Contractor's facilities pursuant to this **Clause 13** and complying with this **Clause 13** will be borne by the Contractor.

14. SYSTEMS AND THE SITE

14.1 The Authority hereby grants to the Contractor and the Contractor Personnel (where necessary) a non-exclusive, non-transferable, royalty-free revocable licence to access and input into the SFM (and such other Systems as the Authority may notify the Contractor of in writing from time to time) and only then as reasonably required by the Contractor for the purposes of this Contract and the performance of the Services. This licence is granted for the Term and solely to enable the Contractor to comply with its obligations under this Contract. The Contractor will not obtain any right, title or interest in any System or in any Intellectual Property Rights in any System. The Authority gives no warranty regarding the availability or functionality of any System nor that access to any System will be uninterrupted.

14.2 The Authority will throughout the Term:

- 14.2.1 use reasonable endeavours to provide and maintain and, if it thinks it appropriate, develop the System(s);
- 14.2.2 enter all Site configuration data into the SFM and control changes to the SFM(s) configuration data;
- 14.2.3 enter into the SFM information relating to traffic control and monitoring equipment not covered by this Contract;
- 14.2.4 enter Faults into the SFM and will not pass Faults to the Contractor by any other means unless the SFM becomes unavailable;
- 14.2.5 provide a change control process for any changes to the System(s);
- 14.2.6 provide training as provided for under **Clause 14.3** below in relation to the SFM;
- 14.2.7 manage SFM back-ups;
- 14.2.8 carry out data archiving for the SFM;
- 14.2.9 provide emergency support for the SFM;
- 14.2.10 provide disaster recovery to re-establish the SFM in the event of a total loss of service; and
- 14.2.11 control access to the SFM (including via the website) by the allocation of user names and user passwords.

14.3 The Contractor shall throughout the Term:

- 14.3.1 provide and maintain its own systems and interfaces with the SFM and such other System(s) the Authority reasonably requires the Contractor to use and interact with from time to time and to specifications no less than those notified by the Authority from time

to time, including to enable access to the SFM and such other System(s) (where required) while at the Sites and at the Contractor's facilities including the provision of hardware to enable the Contractor's representatives on-Site to access the SFM;

- 14.3.2 provide a high specification internet access (in terms of security and speed) with access for an appropriate number of users for use of all applicable Systems in accordance with this Contract;
 - 14.3.3 verify the accuracy of data in the SFM and promptly notify the Authority of any inaccuracies. The Contractor's personnel should ensure that they verify data through and in conjunction with the Authority's data management team and in a timely manner;
 - 14.3.4 provide accurate data relating to the Services and enter all Faults and times of repairs into the relevant System promptly;
 - 14.3.5 maintain appropriate firewalls and security controls to maintain the integrity of the Systems and prevent unauthorised access. The Contractor will not issue or disclose any data from the Systems to any Third Party without the Authority's prior written consent;
 - 14.3.6 where applicable, ensure that only nominated users who have been notified to the Authority and receive a user name and user password and receive training on the use of the System(s) have access to the System(s);
 - 14.3.7 supply contact details (first name, surname, company, email address, telephone number and mobile phone number) for all engineers and operatives undertaking the Services. The Contractor shall comply with the requirements of the Data Protection Legislation and **Clause 43** in providing such information; and
 - 14.3.8 co-operate with the Authority and assist constructively with the development of the SFM and any other relevant Systems.
- 14.4 Training in relation to use of the SFM (and any other System(s) the Authority deems necessary for the Contractor to be trained on) will be provided to the Contractor's employees as follows:
- 14.4.1 during the Mobilisation Period, the Authority will prepare a training plan having regard to any reasonable requests from the Contractor;
 - 14.4.2 the Authority will provide initial training free of charge to the Contractor's employees in accordance with the plan prepared pursuant to **Clause 14.4.1** using competent trainers and hands-on training techniques;
 - 14.4.3 the Contractor shall thereafter train all new Contractor Personnel itself;

- 14.4.4 the Authority will, if it deems necessary, provide training free of charge on new functionality when this is introduced into the SFM or any other System it deems applicable.
- 14.5 The Contractor will be responsible for all costs in connection with its employees' attendance at any and all training in accordance with this Clause including all travel, hotel and subsistence costs. Any training which the Contractor requires in excess of that set out in **Clause 14.4** will be at the Contractor's cost.
- 14.6 Where required by the Authority, the Contractor shall ensure that, during each Contract Year:
 - 14.6.1 each of its field operatives attends at least 1 half day training in the use of the SFM, either by the Authority or by the Contractor on a "train the trainer" basis such that the Contractor's trained staff train the field operatives; and
 - 14.6.2 each of its Fault operators attends at least 2 full days' training in the use of the SFM either by the Authority or by the Contractor on a "train the trainer" basis such that the Contractor's trained staff train the Fault operators.
- 14.7 The Contractor shall attend 6 monthly SFM use group meetings chaired by the Authority to discuss the SFM and business processes, as required by the Authority.
- 14.8 If the Authority requires to conduct routine maintenance of the SFM and this results in users not being able to access the SFM, the Authority shall use reasonable endeavours to ensure that this will take place between the hours of 22:00 and 05:00 other than for emergency maintenance (which shall be at the Authority's discretion).
- 14.9 The Authority shall use its reasonable endeavours to rectify material faults in the SFM within 4 hours of the fault being reported to the Authority or coming to its attention.
- 14.10 In the event of a Failure of SFM, the following provisions will apply:
 - 14.10.1 during the first 4 hours of a failure:
 - 14.10.1.1 the Centre may, at its discretion, only send out urgent Faults during this time;
 - 14.10.1.2 the Contractor will report any Fault updates in the format required by the Authority which may include by fax, email or, in extreme conditions, by telephone to the Centre; and
 - 14.10.1.3 the Contractor shall enter Clears into the SFM when the SFM next becomes available, with the date and time of the actual Clear amended to reflect the actual date/time

the repair was carried out. The Contractor will enter on the Clear, the status of Fault at the time, to enable Availability to be measured. The Clear confirm date, entered by the Centre, cannot be altered, and defaults to the Installed TC Equipment date and time. Therefore, when confirming the Clear, the Centre will verify that SFM was unavailable at the time the Clear was entered. All Clears must be recorded in the format required by the Authority from time to time. Once all Clears have been entered into the SFM, the Contractor shall promptly provide copies of all completed Clear forms to the Authority;

14.10.2 if the Failure exceeds 4 hours:

- 14.10.2.1 the Authority will make available 1 workstation at the Centre to allow the Contractor to operate and the Contractor shall relocate 1 Fault operator to carry out their normal operations from the Centre during the Centre's operating hours;
- 14.10.2.2 the Centre may, at its direction, only send out urgent Faults during this time;
- 14.10.2.3 automatic reporting of Faults while the SFM is unavailable will not occur. Faults reported to the Centre by fax, email or phone will be communicated to the Contractor as described for short term communication failure under **Clause 14.10.1** and Clears will be processed in the same manner; and
- 14.10.2.4 the Centre operators will process the Faults in the normal manner on reinstatement of the SFM and the Contractor will enter Clears as described in **Clause 14.10.1.3**.

14.10.3 Following a Failure, the Contractor shall support the Authority in the preparation and delivery of reports on such Failure to users including attendance at meetings and presentations.

14.10.4 For the purposes of this **Clause 14.10.1**, a "**Failure**" is defined as when, in a controlled test, a PC complete with a connection of bandwidth 56Kb or minimum market standard available (whichever is the greater), connected to an unprotected conventional link and ISP, is unable to connect to SFM via the internet.

14.11 For the purposes of this Contract, the following shall be deemed to be a material breach of the Contract under **Clause 32.1**, entitling the Authority to terminate the Contract immediately:

- 14.11.1 a breach by the Contractor of the scope of the licence set out in **Clause 14.1** or otherwise of **Clause 14.1** or a breach of **Clauses 14.3.1, 14.3.2, 14.3.3, 14.3.4 or 14.3.5**; or
- 14.11.2 if the Contractor knowingly and/or negligently inputs inaccurate information into any System and/or knowingly or negligently provides inaccurate information to the Authority.

15. **PERFORMANCE MANAGEMENT**

- 15.1 The Contractor shall ensure that the Services are performed so as to meet or exceed all SLIs and other Performance Measures.
- 15.2 If at any time the Contractor is in Default (including a failure to meet the Performance Measures) or becomes aware that a Default is likely to occur then notwithstanding any other provision in this Contract, the Contractor will, at no additional cost to the Authority and without prejudice to the Authority's other rights and remedies take all such remedial action that is necessary to remedy the relevant Default (provided the failure in question is remediable) as soon as reasonably practicable and to prevent the Default in question from recurring.
- 15.3 If at any time the Contractor is in Material Default or becomes aware that a Material Default is likely to occur then notwithstanding any other provision in this Contract and without prejudice to the Authority's rights in relation to provision of Action Plans pursuant to **Schedule 4**, the Contractor will, at no additional cost to the Authority and without prejudice to the Authority's other rights and remedies:
- 15.3.1 immediately notify the Authority in writing of the nature and extent of the Material Default, the anticipated impact of the Material Default on the Services, the root cause of the Material Default and the Contractor's proposed rectification plan in respect of that Material Default ("**Rectification Plan**"). All Rectification Plans will require the Contractor to deploy all additional resources and take all remedial action that is necessary to rectify the Material Default (provided the failure in question is remediable) and to prevent the Material Default in question from recurring;
- 15.3.2 amend any proposed Rectification Plan to reflect the Authority's comments, the Authority's required timescale for rectification and any additional steps that the Authority may require the Contractor to take and then implement the amended Rectification Plan as soon as possible and, in any event, within the timescales set out in the Rectification Plan;
- 15.3.3 if the Authority so requests, procure that the member of the Contractor Personnel who is responsible for rectifying the Material Default is available to discuss the matter with the Authority;

- 15.3.4 if the Authority so requests, permit the Authority (or its Contract Manager) to attend operational meetings to the extent that they relate to the planning and implementation of the Rectification Plan;
- 15.3.5 report to the Authority on a regular basis and, in any event no less than weekly, on the Contractor's progress against the Rectification Plan; and
- 15.3.6 promptly notify the Authority in writing of any non-trivial changes required to the Rectification Plan from time to time and the reasons for those changes, all such changes to be subject to the Authority's prior written consent.

This **Clause 15.3** is without prejudice to the Authority's right to terminate under **Schedule 4** or for a material breach in accordance with **Clause 32**.

15.4 If a Material Default:

- 15.4.1 is not resolved; or
- 15.4.2 in the Authority's reasonable opinion is unlikely to be resolved,
by the Contractor's implementation of a Rectification Plan (such circumstances being an "**Enhanced Co-operation Event**") then the Contractor shall, as directed by the Authority and at no additional cost to the Authority:
- 15.4.3 provide all necessary assistance, information and co-operation requested by the Authority in connection with the remedy of the Enhanced Co-operation Event;
- 15.4.4 devote additional resources and Contractor Personnel to the resolution of the Enhanced Co-operation Event;
- 15.4.5 permit the Authority to attend the Contractor's Premises upon notice and during Business Hours to observe and monitor the Contractor's implementation of the Rectification Plan;
- 15.4.6 notify the Authority of internal meetings of the Contractor in which the Material Default is discussed and give the Authority the opportunity to attend such internal meetings;
- 15.4.7 copy the Authority in on all electronic communications and promptly provide the Authority with copies of any other communications made by the Contractor in relation to the Material Default;
- 15.4.8 report to the Authority on its implementation of the Rectification Plan;
- 15.4.9 make any changes to the Rectification Plan which the Authority considers are necessary to remedy the Enhanced Co-operation Event,

(the Authority's rights under this **Clause 15.4** being its "**Enhanced Co-operation Rights**" in relation to such Enhanced Cooperation Event).

- 15.5 For the avoidance of doubt, the Authority may exercise its Enhanced Co-operation Rights pursuant to **Clause 15.4** prior to the completion of the relevant Rectification Plan (if in its opinion the Material Default is unlikely to be remedied by the Contractor's activities under the Rectification Plan).
- 15.6 The Contractor shall consult and co-operate with any Third Party nominated by the Authority in relation to the exercise of its Enhanced Co-operation Rights.
- 15.7 The Contractor shall indemnify, keep indemnified and hold the Authority harmless from and against all reasonable incremental costs, liability and expenses incurred by the Authority in relation to the resolution of an Enhanced Cooperation Event, including any amounts paid or payable by the Authority to the Third Parties it engages in relation thereto.
- 15.8 The Authority shall cease exercising its Enhanced Co-operation Rights upon the resolution of the Enhanced Co-operation Event (or at such earlier time as the Authority notifies to the Contractor in writing). Notwithstanding such cessation, the Contractor shall continue to implement any Rectification Plan which is still in effect on such date.
- 15.9 The Authority's exercise of its Enhanced Cooperation Rights shall not prejudice the Contractor's obligation to satisfactorily and expeditiously resolve any Material Default.
- 15.10 If the Contractor:
 - 15.10.1 fails to fully, effectively and promptly implement a Rectification Plan in all material respects in accordance with its terms;
 - 15.10.2 fails to promptly produce a Rectification Plan in relation to a breach of Applicable Laws when it is required to do so; and/or
 - 15.10.3 if any cause of a Rectification Plan recurs more than two (2) times, then the Authority may terminate this Contract pursuant to **Clause 32.1.6**.

16. **AVAILABILITY INCENTIVES AND THE AUTHORITY'S REMEDIES FOR FAILURE TO PERFORM**

- 16.1 The Contractor shall perform the Services in accordance with **Schedule 4** and the relevant parts of **Schedule 5** relating to Availability and, without prejudice to the generality of the foregoing, in accordance with the Performance Measures.
- 16.2 The Contractor shall be liable for Service Failure Points for failure to meet certain Performance Measures as set out in **Schedules 4** and **5** and, where applicable, shall carry out its obligations to rectify failures to meet certain Performance Measures, all as set out in **Schedules 4** and **5**.

- 16.3 Service Failure Points and Availability of the Installed TC Equipment shall be identified by the SFM and calculated automatically for each Reporting Period as set out in **Schedules 4 and 5**

17. **CHARGES AND PAYMENT**

- 17.1 In consideration of the proper provision of the Services by the Contractor in accordance with the terms of this Contract, the Authority shall:

17.1.1 ensure the Contractor is paid in accordance with the Capital Works Conditions of Contract; and

17.1.2 pay the Maintenance Charges for Maintenance.

- 17.2 The Maintenance Charges and the Prices (and any other fees or monies paid or payable under this Contract) will be inclusive of all costs of staff, facilities, equipment (including the TC Equipment), materials, mobilisation and other expenses whatsoever incurred by the Contractor in discharging its obligations under this Contract.

Indexation Adjustment

- 17.3 Where under this Contract an amount is to be adjusted for changes in indexation, the Indexation Adjustment shall be calculated in April of each Contract Year and shall apply automatically, where it is referred to, in which case the Contract shall be deemed updated accordingly.

- 17.4 Subject to **Clause 17.5**, the Indexation Adjustment shall be calculated as follows:

$$IA = (CPI_n / CPI_o)$$

where:

IA is the Indexation Adjustment;

CPI_n is the value of the CPI published or determined with respect to the month of January of the Contract Year in which the Indexation Adjustment is calculated; and

CPI_o is the value of the CPI published or determined with respect to the month of July 2014.

For the avoidance of doubt the CPI is the value of the Consumer Price Index as published by the Office of National Statistics (www.ONS.gov.uk).

The Indexation Adjustment shall apply to each of the following types of Charges: (i) Fixed Unit Rates (for all categories i.e. ATS/OVD/VMS); (ii) Schedule of Capital Works Rates; (iii) Directions; (iv) Emergency Fault Abatements; and (v) the Minimum Annual Value.

- 17.5 If CPI ceases to be published or is compiled in a manner which is materially different to the way it was compiled as at the Contract Commencement Date, the Parties will agree upon an alternative index which as nearly as possible replicates CPI. If the Parties are unable to agree upon an alternative index, the dispute will be referred to an independent chartered accountant of not less than ten years standing (the “**Charges Expert**”) and the Parties agree that the decision of the Charges Expert as to the alternative index which shall apply shall be binding on both Parties provided that whilst any decision is pending the rate of CPI which applied previously shall continue to apply for any subsequent 12 month period.

18. **RECOVERY OF SUMS FROM THE CONTRACTOR**

Without prejudice to any other rights or remedies of the Authority, if the Authority discovers any defect in the Services performed or failure on the part of the Contractor to execute the same in accordance with this Contract or any defect in any replacement parts supplied the Authority may call upon the Contractor to return to the relevant Site to remedy such defect or malfeasance or replace such defective parts and such remedial works will be carried out at no further cost to the Authority.

19. **CHANGE IN LAW**

- 19.1 In all cases, other than a Discriminatory Change of Law, the costs of compliance with **Clause 5.2.1** shall be borne by the Contractor. In respect of a Discriminatory Change of Law:

19.1.1 the Contractor shall bear all costs associated with a Discriminatory Change of Law other than those giving rise to a need for additional Capital Expenditure by the Contractor;

19.1.2 where as a result of a Discriminatory Change of Law the Contractor is required to incur additional Capital Expenditure, the Authority and the Contractor will bear the additional Capital Expenditure required in equal proportions; and

19.1.3 where as a result of a Discriminatory Change of Law the Contractor incurs less Capital Expenditure, the Contractor will share the consequent saving with the Authority in equal proportions.

The Change Control Procedure shall apply to all Discriminatory Changes of Law although this shall not relieve the Contractor of its obligation to comply with **Clause 5.2.1** at all times.

20. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

20.1 Without prejudice to any other warranties expressed elsewhere in this Contract or implied by law, the Contractor warrants, represents and undertakes to the Authority and the other Service Recipients that:

20.1.1 the Contractor has the full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Contract;

20.1.2 the representations and other statements contained within the Contractor Solution are accurate in every respect and may be fully relied upon by the Authority and the other Service Recipients;

20.1.3 the Contractor is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Contractor's expertise and knowledge in the provision of the Services;

20.1.4 the Contractor is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;

20.1.5 this Contract is executed by a duly authorised representative of the Contractor;

20.1.6 all materials, equipment and goods used or supplied by the Contractor in connection with this Contract (including the TC Equipment) will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Statement of Requirements; and

20.1.7 all documents, drawings, computer software and any other work prepared or developed by the Contractor or supplied to the Authority under this Contract will not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

20.2 The Contractor warrants that to the extent the Contractor either is obliged to specify or approve products or materials for use in the Services or does so specify or approve, the Contractor does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

20.2.1 the guidance given in the edition current at the date of specification, approval and/or use of the publication entitled "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) other than the recommendations for good practice contained in Section 2 of that report;

20.2.2 relevant British or European Standards or codes of practice; or

20.2.3 any publications of the Building Research Establishment related to the specification of products or materials, and

if in the performance of its duties under this Contract, the Contractor becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the Contractor shall notify the Authority in writing immediately.

20.3 As part of the Maintenance and without prejudice to the Contractor's continuing obligations in relation to Preventative Maintenance and Reactive Maintenance during the Term, the Contractor shall be responsible for making good at its own cost and with all possible speed any and all defects in or damage to the Installed TC Equipment (including any part thereof) which may develop or be notified to the Contractor during a warranty period of (i) twelve (12) calendar months or (ii) the manufacturer's standard warranty for the relevant TC Equipment (whichever is the shorter or whichever is required by the Authority from time to time) from the date the relevant Installed TC Equipment is Commissioned ("**Warranty Period**") and which arises either from:

20.3.1 faulty workmanship during Installation and/or as Part of the Capital Works or Maintenance;

20.3.2 defective materials, workmanship or design;

20.3.3 non-compliance with the Statement of Requirements or the requirement to be fit for purpose;

20.3.4 any act, omission or failure of the Contractor during such Warranty Period; or

20.3.5 any other matter covered by the manufacturer's standard warranty.

If the Contractor replaces the relevant Installed TC Equipment (including any part thereof) pursuant to this **Clause 20.3**, the provisions of this **Clause 20.3** above will apply to the TC Equipment (including any part thereof) which has replaced the previously Installed TC Equipment, from the date of replacement by the Contractor, or the balance of the unexpired extended Warranty Period, whichever is the longer.

20.4 Without prejudice to the Authority's other rights and remedies, if any such defect or damage is not remedied within a reasonable time (and in any event within one (1) month of the damage or defect arising), the Authority may proceed to execute remedial works (either itself or via a third party) at the Contractor's risk and expense, and deduct the cost thereof from any monies due to the Contractor or recover the same as a debt due.

20.5 Each warranty and obligation in this **Clause 20** will be construed as a separate warranty or obligation (as the case may be) and will not be limited

or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Contract.

- 20.6 The provisions of this **Clause 20** will continue notwithstanding termination of this Contract.

21. **LIABILITY**

- 21.1 Neither Party excludes or limits liability to the other Party or, in the case of the Contractor, to the Authority and the other Service Recipients for:

21.1.1 death or personal injury caused by that Party's, and in the case of the Contractor including the Contractor Personnel's negligence;

21.1.2 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or section 2(3) of the Consumer Protection Act 1987;

21.1.3 fraud or fraudulent misrepresentation;

21.1.4 wilful default or deliberate breach; or

21.1.5 any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.

- 21.2 The Contractor does not exclude, or limit its liability in any way, in respect of liability arising out of or in connection with **Clause 27** (Transfer of Employment), **Clause 32** (Termination), **Clause 33** (Consequences of Termination), **Clause 40** (Confidentiality and Transparency), **Clause 44** (Intellectual Property Rights) or **Clause 45** (Data) or for death or personal injury arising from or in connection with the TC Equipment (whether Installed TC Equipment and/or TC Equipment), the Services and/or any act or omission of the Contractor and/or the Contractor Personnel.

- 21.3 The Contractor is responsible for and shall indemnify, keep indemnified and hold harmless the Indemnified Parties from and against any breach or negligent performance of or in connection with this Contract by the Contractor and/or any of the Contractor Personnel or any act or omission of the Contractor and/or the Contractor Personnel, including all Losses in respect of:

21.3.1 death or personal injury to any person;

21.3.2 any breach of statutory duty by the Contractor and/or the Contractor Personnel, which causes any breach by the Indemnified Parties of any of their duties under the Data Protection Legislation or the FOI Legislation; and

21.3.3 any loss of or damage to any real or tangible property, including property belonging to the Indemnified Parties, any Third Party or property for which the Authority (or a member of the TfL Group or any other Service Recipient) is responsible.

21.4 Exclusion of consequential losses

21.4.1 Subject to, and without prejudice to, **Clauses 21.1 and 21.2** and any and all indemnities and liquidated damages provisions contained within this Contract (which shall not be limited in nature by this Clause or otherwise) neither Party will be liable for any indirect or consequential losses (including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) and, for the avoidance of doubt howsoever caused arising under this Contract.

21.4.2 Notwithstanding the provisions of **Clause 21.4.1**, the Parties acknowledge and agree that the following types of losses will be regarded as direct (and not consequential or indirect) losses for the purposes of this Contract:

21.4.2.1 the Authority's and the Service Recipients' reasonable costs of internal and external staff (including associated expenses reasonably incurred by such staff) necessitated as a result of the Contractor's or the Contractor Personnel's default (including the costs of such staff performing or re-performing the Services which the Contractor, if properly performing its obligations in accordance with this Contract, should have performed);

21.4.2.2 any costs incurred by the Authority and/or the Service Recipients in connection with the termination of this Contract by the Authority under **Clauses 32.1 or 32.2**, including those costs set out in **Clauses 33.2 and 33.3** and/or the termination by the Authority of the Contractor's obligation to Provide the Works for reasons R1-R15 (inclusive), R18 or R22 (as defined in the Capital Works Conditions of Contract);

21.4.2.3 the costs of reconstituting and/or recovering any Authority Data (and/or data of the Service Recipients) that is destroyed, corrupted, degraded and/or lost as a result of an act or omission of the Contractor and/or the Contractor Personnel (including the costs of employing a third party to reconstitute and/or recover such data); and

21.4.2.4 any loss or liability (including payment of service credits or liquidated damages) that the Authority and/or another Service Recipient suffers/ becomes liable for under any agreement with any Third Party as a result of any act or omission of the Contractor and/or of the Contractor Personnel.

21.5 Subject to the provisions of **Clauses 21.1, 21.2 and 21.4**, the Contractor's aggregate liability and limit of indemnity to the Indemnified Parties under this

Contract in respect of each and every Cluster in the Contract Area (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) will be limited:

- 21.5.1 in respect of loss of and/or damage to the Authority's or an Indemnified Party's tangible property, to **REDACTED** per Event in each and every Cluster;
- 21.5.2 in respect of loss of and/or damage to any Third Party tangible property, to **REDACTED** per Event in each and every Cluster;
- 21.5.3 in respect of loss and/or damage caused by the Installed TC Equipment and/or the other TC Equipment, to **REDACTED** per Event and **REDACTED** in the aggregate per Contract Year in each and every Cluster; and
- 21.5.4 where the loss does not fall within the limitations in **Clauses 21.5.1, 21.5.2 or 21.5.3**, to
 - (i) **REDACTED** of the combined Charges (when added together) for (a) Maintenance which have been paid and/or are to be paid (whether or not yet invoiced) in respect of Maintenance performed and/or to be performed and/or which was due to be performed in the relevant Contract Year in which the claim arose; and (b) for all other Charges paid and/or payable to the Contractor for Services other than Maintenance in respect of the relevant Cluster in the relevant Contract Year in which the claim arose.

For the purposes of interpretation of this sub-clause:

- A. The Charges in **Clause 21.5.4(i)A** above shall include all of the Charges paid to date in the relevant Contract Year and any and all Charges which are due to be paid (whether or not yet invoiced) for Maintenance in the relevant Contractual Year (notwithstanding and not taking into account any Emergency Fault Abatements or other monies that have been or may be set-off or that the Contractor may not actually get paid some of the Charges); and
 - B. the term "payable" in **Clause 21.5.4(i)B** shall include sums invoiced but not yet paid up to the date of the claim in the relevant Contract Year; sums accrued for Services performed but not yet invoiced up to the date of the claim in the relevant Contract Year; and sums which will fall to be paid as part of the minimum amount of Capital Works to be provided by the Contractor pursuant to **Clause 9**; or
- (ii) **REDACTED** per Event,

in each and every Cluster, and in each case, whichever is the higher amount at the time the claim arose.

Any liability of the Contractor (a) which falls within **Clauses 21.1** or **21.2**, or (b) for any liquidated damages due under this Contract, will not be taken into account in assessing whether the financial limits in this **Clause 21.5** have been reached.

- 21.6 Subject to the provisions of **Clauses 21.1** and **21.4**, the Authority's maximum aggregate liability to the Contractor arising out of or in connection with this Contract (whether in contract, tort, negligence, breach of statutory duty, misrepresentation, restitution or otherwise) will be limited to **REDACTED** per Contract Year.
- 21.7 The limitations in **Clause 21.5** shall not apply to any liability for losses, liability, expenses, claims, proceedings, compensation and/or costs whatever and howsoever arising which the Contractor is entitled to an indemnity under any policy of insurance or would have been entitled but for any breach or failure to maintain such insurance.
- 21.8 This **Clause 21** will not affect any entitlement to injunctive relief and/or specific performance.

22. **INSURANCE**

- 22.1 The Contractor will at its own cost, effect and maintain the insurance set out below in respect of each and every Cluster in the Contract Area. The Authority shall be entitled at any time to review the Contractor's insurances required pursuant to this **Clause 22** and, if such insurances do not comply with the requirements of the Contract, the Authority may require the Contractor to promptly (and at the Contractor's own cost) take such steps as are necessary to ensure that the Contractor has taken out and is maintaining the requisite insurances under **Clause 22**:

- 22.1.1 without prejudice to **Clause 22.2.1**, insurance for an amount equal to the full replacement cost of:

- 22.1.1.1 the Installed TC Equipment arising from damage caused by act, omission or default by the Contractor or the Contractor Personnel; and

- 22.1.1.2 other TC Equipment (not falling into **Clause 22.1.1.1** and which is under the control of the Contractor or the Contractor Personnel and which is not yet Installed arising from damage howsoever caused;

- 22.1.2 public liability insurance for the sum of not less than **REDACTED** per Event and **REDACTED** in the aggregate per Insurance Year to cover the legal liability of the Contractor or as the case may be of the Sub-Contractor including (without limitation) in respect of property damage and death and bodily injury other than as provided for under **Clause 22.1.4** of this Contract;
- 22.1.3 insurance covering liability to third parties arising out of the use of motor vehicles used in connection with the Services. The Contractor shall ensure (and procure that its Sub-Contractors shall ensure) that the motor insurance cover contains an indemnity to principals clause. The minimum amount of cover/indemnity provided by such insurance shall be the amount required by the Applicable Laws or as otherwise stated in a Works Instruction (whichever is the higher);
- 22.1.4 insurance against liability for death and/or bodily injury or illness sustained by employees of the Contractor (and/or their Sub-Contractors) arising out of or in the course of their employment in connection with this Contract, with the amount of cover being as required by Applicable Laws or as otherwise stated in a Works Instruction (whichever is the higher) and the Contractor will cause any Sub-Contractor to effect and maintain such insurance;
- 22.1.5 product liability insurance for the sum of not less than **REDACTED** per Event and not less than **REDACTED** in the aggregate per Insurance Year; and
- 22.1.6 insurance for the Services undertaken by the Contractor under this Contract to a level sufficient to cover the Contractor's liabilities arising under or in connection with this Contract including professional indemnity insurance with a limit of indemnity of not less than **REDACTED** in the aggregate per Insurance Year and a maximum upper limit for a Works Instruction of **REDACTED** in the aggregate per Insurance Year, provided always that:
- 22.1.6.1 such insurance is in place from the Contract Commencement Date until no less than the later of six (6) years after the completion of all of the Services or, where there is one or more claims in place at the expiry of such six (6) year period then for such time until the claim is settled or damages have been awarded (whether by a Court or an Adjudicator or otherwise);
- 22.1.6.2 the insurance premiums in respect of the insurance are at all times the responsibility of the Contractor; and
- 22.1.6.3 if such insurance ceases to be available to the Contractor (and to other contractors engaged in services of a similar size, nature and complexity as the Contractor) at commercially reasonable rates and terms

(such non-availability to be confirmed by an independent insurance agent operating in the UK market), excluding any increase in premiums attributable to the actions, omissions, claims record, error or defaults of the Contractor, the Contractor shall immediately notify the Authority and the Contractor and the Authority shall then meet and the Contractor shall outline the steps the Contractor intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Authority, the Parties shall agree an alternative method of managing such risk.

22.2 In respect of Instructed Capital Works, the Contractor shall take out and maintain until Completion (as defined in the Capital Works Conditions of Contract) or termination of the relevant Instructed Capital Works:

22.2.1 construction all risks insurance against all risks of loss of or damage to any Instructed Capital Works (including any temporary works required for the purposes of such Instructed Capital Works i.e. works erected or constructed for the purpose of making possible the erection or installation of Instructed Capital Works) and any Plant and Materials (as defined in the Capital Works Conditions of Contract), equipment, temporary buildings and property owned by or supplied by the Authority for the full reinstatement value of the Instructed Capital Works including the replacement cost of any such Plant and Materials (as defined in the Capital Works Conditions of Contract) plus the cost of debris removal, professional fees and expediting costs;

22.2.2 insurance against loss of or damage to Equipment (as such term is defined in the Capital Works Conditions of Contract) and/or for any other equipment used by the Contractor in relation to their performance of the Services, in each and every case for their replacement cost.

22.3 The policies of insurance referred to at:

22.3.1 **Clause 22.2.1** shall:

22.3.1.1 be in the joint names of the Authority and the Contractor;

22.3.1.2 shall include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud;

22.3.1.3 provide that the insurers have no right of recourse against any person named as an insured or recognised as such under the insurances; and

- 22.3.1.4 contain a non-vitiation clause in a form satisfactory to the Authority providing that any act or omission committed by the Contractor shall not prejudice the right of the Authority to indemnify under any such policy.
- 22.3.2 **Clause 22.1.2** shall:
 - 22.3.2.1 name the Authority as an additional insured to the extent that the property damage, death and/or bodily injury is caused by the negligence of Siemens, but the Authority acknowledges that there is no cover under the policy of insurance referred to at **Clause 22.1.2** for the sole negligence of an additional insured; and
 - 22.3.2.2 contain a waiver of subrogation between the Contractor and the Authority except where the Authority has been deliberately negligent or grossly negligent and there is no contributory negligence of the Contractor.
- 22.4 The Contractor shall effect and maintain any insurances which it is required to provide under this Contract promptly with a reputable insurer or insurers accepted by the Authority and authorised to underwrite such risks in the United Kingdom.
- 22.5 Prior to the Contract Commencement Date and whenever so required by the Authority, the Contractor will produce to the Authority evidence of the insurance policies required under this Contract and payment of all premiums due on each policy. A letter addressed to the Authority signed by an insurer or insurance broker of the Contractor which is directly regulated by the UK Financial Conduct Authority confirming that the Contractor has in place insurance coverage as required under this Contract and setting out the principal terms and exclusions under such cover, all due premiums under such insurance have been paid and that such insurance is in full force and effect will be deemed sufficient evidence with the Authority's prior approval.
- 22.6 The Contractor will procure that its Sub-Contractors maintain insurance cover sufficient and appropriate to the Services sub-contracted to them. The Contractor will also be responsible for ensuring that all Sub-Contractors employed by it for the purposes of this Contract are fully insured against all claims in respect of personal injury or death in respect of their employees.
- 22.7 The stipulations contained in this Clause will not be deemed to and will not in any way limit or affect the general liability or responsibility of the Contractor under the provisions of this Contract. The limits provided under the insurance pursuant to **Clauses 22.1.2, 22.1.4, 22.1.5 and 22.1.6** shall be ring fenced in respect of this Contract and will not be eroded by claims unrelated to the Contract.
- 22.8 If the Contractor fails to effect and keep in force the insurances referred to in **Clause 22.1 or 22.2** or any other insurance which it may be required to effect

under the terms of this Contract then and in any such case the Authority may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Authority as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

- 22.9 The Contractor warrants that nothing has or will be done or be omitted to be done which may result in the insurance policies set out in **Clause 22.1** and **22.2** being or becoming void, voidable or unenforceable.
- 22.10 The Contractor shall provide the Services and perform its obligations under this Contract and ensure the Contractor Personnel, as well as the Contractor's servants or agents carry out their respective obligations in such a manner that all of the requirements, terms, conditions, stipulations and provisos of the insurance required by **Clause 22.1** and **22.2** are at all times fully complied with.
- 22.11 In respect of the insurance the Contractor is required to effect and maintain pursuant to **Clause 22.1** and **22.2**:
 - 22.11.1 the Contractor shall promptly notify the Authority in writing of any claim, event, fact, matter or circumstance which may give rise to the right to make any claim on any insurance;
 - 22.11.2 the Contractor shall not compromise, surrender, release, settle or waive any claim or potential claim which the Contractor has or may have the right to bring, or has brought, under any insurance without the prior consent of the Authority;
 - 22.11.3 the Contractor shall not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the Contractor's and/or the Authority's rights to make or proceed with a claim against any insurer;
 - 22.11.4 if the Contractor is informed that any insurer providing insurance required by this Contract intends to cancel or change any term of any insurance required by this Contract, the Contractor shall promptly notify the Authority of such intention;
 - 22.11.5 the Contractor shall promptly notify the Authority in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this Contract lapsing or being terminated or the cover under it being reduced or modified;
 - 22.11.6 to the extent that the Contractor is entitled to bring any claim or claims under any insurance relating to this Contract then the Contractor shall deal with all such claims promptly and diligently and (subject to the requirements of this Contract) in accordance with all insurer requirements and recommendations;

- 22.11.7 the Contractor acknowledges that the Authority has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this Contract; and
- 22.11.8 if and to the extent that the Contractor receives payment in respect of any damage or destruction following an insurance claim in respect of damage or destruction of any Site or TC Equipment (whether Installed TC Equipment or otherwise) the Contractor shall apply the same to remedy the damage or destruction.
- 22.12 The Contractor shall bear the cost of any and all excesses in relation to the insurances required pursuant to this **Clause 22** and any other insurances either Party may hold in connection with this Contract.

23. **COMPLIANCE WITH POLICIES AND LAW**

- 23.1 The Contractor, at no additional cost to the Authority:
- 23.1.1 undertakes to for its own employees and staff, and shall procure that all of the Contractor Personnel, comply with all of the Authority's then current policies and standards that are relevant to the performance of the Services, (including the Authority's workplace harassment policy as updated from time to time and with the Authority's Code of Conduct (which is available at www.tfl.gov.uk)) and including the TfL Policies set out in **Schedule 15** (as may be amended from time to time by the Authority) and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at the Authority's premises or accessing the Authority's computer systems. The Authority will provide the Contractor with copies of such policies and standards on request. The Authority accepts and agrees that if it materially amends a policy and/or standard relevant to this Contract after the Contract Commencement Date, then to the extent such amendment shall have a material impact on the Contractor's performance of this Contract in terms of cost or operationally, then unless the Contractor is having to amend its operations for more than one customer due to a general change in law (in which case the Contractor shall promptly implement the changes necessary to comply with the amended policy/standard without additional charge), then the Contractor agrees to promptly implement the necessary changes to ensure it complies with the policies/standards but the affect of the change shall be dealt with through the Change Control Procedure;
- 23.1.2 will provide the Services in compliance with, and the Contractor Personnel shall comply with, all requirements of all Applicable Laws relevant to the Contractor's business and/or the Authority's business, from time to time in force which are or may become applicable to the Services. The Contractor shall promptly notify the

Authority if the Contractor is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 23.1.2**;

23.1.3 without limiting the generality of **Clause 23.1.2**, will comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

23.1.4 acknowledges that the Authority is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

23.1.4.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

23.1.4.2 eliminate unlawful discrimination; and

23.1.4.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Services, the Contractor will assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty;

23.1.5 acknowledges that the Authority is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Contractor shall assist and co-operate with Authority where possible in satisfying this duty;

23.1.6 shall comply with the Authority's requirements in respect of equality and diversity as set out in **Schedule 12**;

23.1.7 will inform the Authority forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Employment Equality (Age) Regulations 2006 or the Equality Act 2010;

23.1.8 without prejudice to any other provision of this **Clause 23.1** or the Schedules, will comply with any provisions set out in the Schedules that relate to Traffic Management and will comply with the reasonable instructions of a Traffic Manager as may be made available to the Contractor from time to time. For the purposes of this **Clause 23.1.8**, "**Traffic Manager**" means any traffic manager

appointed by a Highway Authority in accordance with section 17 of the Traffic Management Act 2004;

- 23.1.9 shall promptly notify the Contractor Personnel, any Sub-Contractors and Indirect Subcontractors and the Authority of any health and safety hazards that exist or that may arise in connection with the performance of the Services of which the Contractor is aware or ought reasonably to be aware;
- 23.1.10 without limiting the generality of **Clause 23.1.2**, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

In all cases, the costs of compliance with this **Clause 23.1** will be borne by the Contractor.

- 23.2 In providing the Services, the Contractor will (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:

- 23.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 23.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;
- 23.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- 23.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

- 23.3 The Contractor acknowledges that the Authority is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998:

- 23.3.1 to have due regard to the impact of crime, disorder and community safety in the exercise of the Authority's duties;
- 23.3.2 where appropriate, to identify actions to reduce levels of crime and disorder; and
- 23.3.3 without prejudice to any other obligation imposed on the Authority, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of this Contract, the Contractor will assist and co-operate with the Authority, and will use reasonable endeavours to procure that its Sub-Contractors and Indirect Subcontractors observe these duties

and assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty.

24. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 24.1 The Contractor shall not, and will ensure that the Contractor Personnel, its agents, Sub-Contractors and Indirect Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Authority or any member of the TfL Group nor any other Service Recipient nor favour any employee, officer or agent of the Authority or any member of the TfL Group nor any other Service Recipient with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Authority or any member of the TfL Group nor any other Service Recipient other than as a representative of the Authority, without the Authority's prior written approval.
- 24.2 If any fraudulent activity comes to the attention of the Contractor in relation to this Contract the Contractor shall notify the Authority by the most expeditious means available. The Contractor shall co-operate with the Authority in the investigation of any fraudulent activity and implement any changes in the procedures or working practices employed under this Contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The Contractor shall ensure that no fraudulent activity is committed by the Contractor, its agents, employees, Sub-Contractors or Indirect Subcontractors.
- 24.3 The Authority will have the right to audit any and all such records necessary to confirm compliance with **Clause 24.1** at any time during performance of this Contract and during the six (6) year period following expiry or termination of this Contract. Breach of **Clause 24.1** will entitle the Authority to terminate this Contract and any other contracts between the Contractor and the TfL Group forthwith.
- 24.4 In the event of any breach of this **Clause 24** by the Contractor the Authority and the other Service Recipients (as applicable) shall be entitled to recover any loss, liability or damage incurred or suffered as a result of the breach of this Clause by the Contractor.

25. **SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 25.1 The Contractor shall not sub-contract all or any part of the Services nor this Contract without the prior written consent of the Authority which may be refused or granted subject to such conditions as the Authority sees fit. In applying for the Authority's prior written consent, the Contractor will provide the Authority with details of the relevant Sub-Contractor and that part of the Services to be sub-contracted, as applicable, together with such other information as the Authority may require.
- 25.2 Where the Contractor sub-contracts all or any part of the Services to any person, the Contractor will:
- 25.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under this Contract insofar as they relate to the Services or part of them (as the case may be) which that Sub-Contractor is required to provide;
 - 25.2.2 be responsible for payments to that person; and
 - 25.2.3 remain solely responsible and liable to the Authority for any act or omission, breach of this Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any Sub-Contractor to the same extent as if such act, omission, breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor.
- 25.3 Where the Contractor sub-contracts all or any part of the Services to any person, the Contractor will, if so required by the Authority, procure that a permitted Sub-Contractor enters into a warranty agreement with the Authority in the form reasonably requested by the Authority.
- 25.4 The Contractor will give notice to the Authority within ten (10) Business Days where:
- 25.4.1 there is any change in the ownership or control of the Contractor where such change relates to 50% or more of the issued share capital of the Contractor;
 - 25.4.2 there is any change in the ownership or control of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; and
 - 25.4.3 (in the case of an unincorporated Contractor) if there is any change in the management personnel of the Contractor, which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of 50% or more of the management personnel of the Contractor.
- 25.5 Upon the occurrence of any of the events referred to at **Clause 25.4**, the Authority will have the right to terminate this Contract by giving not less than

four (4) weeks' but not more than eighteen (18) months' written notice to the Contractor to be served within sixty (60) Business Days of receipt of the Contractor's notice to the Authority under **Clause 25.4**, save that the Authority will not be entitled to exercise this right to terminate if it has given its prior written consent to such change.

26. CONTRACTOR PERSONNEL

26.1 General

The Contractor shall:

- 26.1.1 provide all Contractor Personnel necessary for the proper performance of the Services in accordance with the terms of this Contract;
- 26.1.2 ensure that all Contractor Personnel are suitably skilled, qualified and experienced (and that they will be available at such times as are necessary) to perform the Services in accordance with the Performance Measures, the terms of this Contract and all Applicable Laws;
- 26.1.3 ensure that all continuing checks are made and documents obtained and/or verified as required by law or the United Kingdom Border Agency to demonstrate the continuing right of Contractor Personnel to work in the United Kingdom;
- 26.1.4 ensure that all Contractor Personnel will at all times uphold the good name and reputation of the Authority and their respective services and act in a manner that is appropriate given that good name and reputation;
- 26.1.5 individually assess all Contractor Personnel to ensure that such persons are:
 - 26.1.5.1 diligent, careful, honest, skilled, competent and experienced in the work which they are to perform in connection with the Services and at all times remain so;
 - 26.1.5.2 properly supervised and sufficiently trained, and informed about:
 - (a) the Services to be provided;
 - (b) the duty or duties which that person has to perform in relation to those Services;
 - (c) any aspect of the Performance Measures or other terms of this Contract which are or may be relevant to the duties to be performed by the Contractor Personnel;

- (d) all relevant rules, procedures and statutory and regulatory requirements concerning health and safety and safety at work; and
 - (e) the need to observe the highest standards of integrity, courtesy and consideration in the performance of their duties; and
- 26.1.6 ensure that all Contractor Personnel who undertake the Services are, where appropriate, accredited as relevant under the Highway Electrical Capital Works sector scheme administered by the Association of Street Lighting and Electrical Contractors or such replacement scheme from time to time;
- 26.1.7 ensure that all Contractor Personnel are equipped with sufficient communications and other equipment and spares so that they can carry out the Services in a proficient and safe manner;
- 26.1.8 give the Authority, if so requested, full particulars of all persons who are or may be at any time employed or otherwise engaged on this Contract; and
- 26.1.9 pay to the Contractor Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for this Contract and not less than the amounts to which the Contractor Personnel are contractually entitled.
- 26.2 For the avoidance of doubt, it is not the intention of the Parties that any member of the TfL Group will be the employer of any of the Contractor Personnel by virtue of the provision of the Services and the Contractor will be responsible for making, or procuring the making of, appropriate deductions for tax and national insurance contributions from the remuneration paid to the Contractor Personnel.
- 26.3 **Training**
 - 26.3.1 The Contractor shall, at its own expense, provide or procure the provision of training for the Contractor Personnel in respect of all aspects of its performance of this Contract and will ensure that the Contractor Personnel continue to receive adequate future development training to keep up to date with all relevant technical developments and innovations in the fields relevant to the Contract.
 - 26.3.2 Without prejudice to the Contractor's other obligations under this Contract, where training of any or all of the Contractor Personnel is required for the purposes of performance of this Contract, the Contractor will not assign any of the Contractor Personnel to the performance of this Contract unless and until the Contractor Personnel have satisfactorily completed such training.
- 26.4 **Removal and Replacement of Contractor Personnel**

26.4.1 Following written notice from the Authority, the Contractor will (and will procure that its Sub-Contractors will), subject to its responsibilities in relation to exit including under **Clause 26.4.2** and **Schedule 10**, immediately remove from any involvement in or responsibility for the provision of the Services any Contractor Personnel who, in the reasonable opinion of the Authority:

26.4.1.1 does not fulfil any of the conditions set out in **Clause 26.1**;

26.4.1.2 is persistently not performing his or her role in respect of the provision of the Services properly, efficiently or effectively; and/or

26.4.1.3 is, for any other reason, unacceptable or inappropriate for the provision of the Services or association with the Authority.

26.4.2 The Contractor shall (and shall procure that each of its Sub-Contractors will):

26.4.2.1 following the removal of any of the Contractor Personnel, ensure such person is replaced promptly with another person with the necessary training, experience and skills to perform the Services in accordance with this Contract;

26.4.2.2 if any Contractor Personnel are replaced ensure that a full and effective knowledge transfer process is in place and fully adhered to for the transfer of any relevant knowledge from the replaced Contractor Personnel to the replacement Contractor Personnel;

26.4.2.3 ensure that all Contractor Personnel who cease to be engaged in the performance of the Services (for any reason) return all Confidential Information held by them to the Contractor or the Authority (as appropriate); and

26.4.2.4 bear all costs associated with effecting the replacement of any Contractor Personnel (including any required to be removed by the Authority under **Clause 26.4.1**).

26.5 **Offers of Employment (Non-Solicitation)**

For the duration of this Contract and for a period of 12 months after expiry or termination of this Contract, the Contractor shall not employ any Authority or Service Recipient employees who have been associated with the provision of the Services by the Contractor without the Authority's prior written consent. Any breach of this **Clause 26.5** shall render the Contractor liable to pay to the Authority a sum equal to the basic salary payable to the employee by the Contractor during the first 12 months of new employment.

27. **EMPLOYEES AND PENSIONS**

Both Parties shall comply with the provisions of **Schedule 9** (Employees and Key Personnel) in respect of TUPE and pensions. **Schedule 9** shall be deemed to be a material term of this Contract.

28. **OPERATIONAL MANAGEMENT**

28.1 The Authority authorises the Engineer to act as the Authority's representative for the purposes of this Contract and the Contractor will deal with the Engineer (or his or her nominated representative or assistant) in respect of all matters arising under this Contract unless notified otherwise.

28.2 The Contractor will appoint a manager who will be responsible for the day to day supervision of this Contract ("**Contract Manager**"). The appointee will have extensive relevant experience, a significant part of which will be in the maintenance of the Installed TC Equipment and in capital works of a similar nature to the Capital Works. The Contract Manager will be available during each Business Day to oversee Services and problems as they may arise. A deputy with similar working knowledge will be available to deputise when the Contract Manager is absent or otherwise unavailable.

28.3 The Contractor shall ensure at all times that:

28.3.1 a competent and experienced person is appointed to act as the Contractor's representative for Instructed Capital Works; and

28.3.2 a different competent and experienced person is appointed to act as the Contractor's representative for Maintenance.

In each case, such Contractor's representatives may, after notifying the Authority and the Engineer, delegate any of their actions to someone of similar experience and may cancel any delegation. A reference to an action of the Contractor's representative(s) in this Contract includes an action by his delegate.

28.4 During the Term, the Contractor will submit to the Authority for approval the curriculum vitae of any new manager or deputy manager the Contractor wishes to employ as the Contractor's Contract Manager or either of the representatives mentioned in **Clause 28.3** or, in ease case, their deputy. The Authority's approval of such individuals proposed will not be unreasonably withheld.

28.5 The Contractor will comply with the provisions in relation to contract management as are set out in **Schedule 8**, including the requirements for meetings, reporting and documentation.

28.6 The Contractor will promptly provide to the Authority such additional reports as the Authority may reasonably request in relation to the provision of the Services and in such format as reasonably required by the Authority from time to time.

29. ACCESS TO PREMISES

- 29.1 This **Clause 29** is without prejudice to the provisions of **Schedule 16** which shall take precedence in relation to the particular subject matter set out in such Schedule to the extent of any inconsistency.
- 29.2 The Contractor will provide a list of the names and addresses of all Contractor Personnel who may, in the performance of this Contract, require access to any premises operated by or on behalf of the Authority or any other Service Recipients, specifying the capacity in which they are acting and giving such other particulars as the Authority may reasonably require. The Contractor acknowledges that security clearance will be required for any Contractor Personnel to enter on certain of such premises and that such clearance will take a period of time to obtain and undertakes to have procedures in place to ensure that it has sufficient staff having the necessary security clearances to perform any Services and comply with its obligations under this Contract at all times and prior to any required implementation dates and to ensure that such staff carry any identity passes issued to them by the Authority and comply with such health and safety and security policies as may be notified to the Contractor from time to time.
- 29.3 Any access to any Authority Premises or other Service Recipients' premises and/or Authority Assets made available to the Contractor in connection with the proper performance of this Contract will be used by the Contractor solely for the purpose of performing the Services during the Term in accordance with this Contract provided, for the avoidance of doubt, that the Contractor will be responsible for its own costs of travel including any congestion charging and/or low emission zone charging.
- 29.4 While on the Authority Premises, the Contractor will:
- 29.4.1 comply with all of the Authority's policies and standards that are relevant to the provision of the Services and this Contract, including those relating to safety, security, business ethics, responsible procurement, workplace harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the Authority for personnel working at such premises or accessing the Authority's computer systems and will procure that all of the Contractor Personnel, Sub-Contractors and Indirect Subcontractors will likewise comply with such requirements;
 - 29.4.2 have the use of the Authority Premises as licensee and will not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of the Authority Premises;
 - 29.4.3 ensure that the Contractor Personnel carry any identity passes issued to them by the Authority at all relevant times;
 - 29.4.4 not damage the Authority Premises or any assets on such premises;

- 29.4.5 vacate the Authority Premises upon the termination or expiry of this Contract or at such earlier date as the Authority may determine; and
- 29.4.6 immediately return to the Authority in good working order and satisfactory condition (in the reasonable opinion of the Authority) all Authority Assets used by the Contractor or the Contractor Personnel in the performance of the Services.
- 29.5 The Contractor hereby agrees to indemnify the Authority and hold the Authority harmless from and against all Losses suffered or incurred by the Authority (or any member of the TfL Group), as a result of the Contractor's presence on the Authority Premises or breach of **Clause 29.4**.
- 29.6 Upon request, the Authority will provide the Contractor with copies of any rules and procedures referred to in **Clause 29.4.1** that relate to the Authority Premises and will afford the Contractor with an opportunity to inspect the Authority's physical security arrangements.
- 29.7 The Authority reserves the right under this Contract to refuse to admit to the Authority Premises any of the Contractor Personnel, whose admission would be, in the opinion of the Authority, undesirable.
- 29.8 All Contractor equipment and materials which are on the Authority Premises and which are provided by or on behalf of the Contractor will stand at the risk and be in the sole charge of the Contractor.
- 29.9 The Authority will be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Contractor except as may be specified in this Contract.
- 29.10 Nothing in this **Clause 29** will create or be deemed to create the relationship of landlord and tenant in respect of any Authority Premises between the Contractor and the Authority (or any member of the TfL Group).
- 29.11 This **Clause 29** shall apply mutatis mutandis in respect of other Service Recipients' premises and assets.

30. **SUSPENSION OF THE SERVICES**

30.1 Without prejudice to any other rights or remedies which the Authority may possess under this Contract or otherwise, if the Contractor is in default in one or more of the following respects:

- 30.1.1 it fails to proceed regularly and/or diligently with the Services;
- 30.1.2 it is unable to comply with the requirements of the Statement of Requirements; or
- 30.1.3 it is unable to respond to any emergency call out or a request for Emergency Maintenance in the time and manner stipulated in this Contract; or
- 30.1.4 one of the circumstances in **Clause 31.1.1** applies (unless the Authority chooses to exercise its rights under **Clause 30A** or **31** instead of/as well as this suspension right),

then the Engineer may give it notice in writing (or in an emergency oral notice) specifying the default and a time period for remedying the default and if the Contractor fails to remedy the default within the specified time, the Authority may suspend any part or the whole of the Services until such time as it considers the Contractor is once again in a position to execute the same (the “**Suspension Period**”) and may employ a third party to carry out and perform and/or complete the Services for that purpose and the Authority and/or such third party may attempt to repair and may use for the entire Suspension Period (without charge) all spares, plant, software, tools, equipment, goods and materials intended for, delivered to and placed on the Site in connection with the Services and/or which was to be used or would reasonably be needed to be used by a third party to provide the Services which shall include the Contractor providing the Authority, the Service Recipients and the agents with copies of the software which the Contractor would use for configuring, testing, running diagnostics, connecting to and/or auditing TC Equipment as well as connecting to other infrastructure and systems of the Authority and the Service Recipients, software in any interfaces, documentation and any manuals relating to the TC Equipment and anything else reasonably required by the Authority.

30.2 The Contractor will allow the Authority to set off or, at the Authority's requirement, pay the Authority the amount of any Loss caused to the Authority under this **Clause 30** and may inspect the third party's work, witness any test and make recommendations accordingly.

30.3 Where part of the Services is suspended in accordance with this **Clause 30**, the Contractor will be relieved from performance of such part but shall continue to provide the remaining Services, providing that its ability to do so is not impeded by such suspension, and in the event of such an impediment the Contractor shall give the Authority prompt notice in writing of the impediment (and all relevant details of such impediment) and shall provide reasonable cooperation and assistance to help remove such impediment as

may be required by the Authority.

- 30.4 The Contractor shall promptly, where possible, remedy any and all acts and/or omissions which led to suspension of part or the whole of the Services.
- 30.5 Where the Authority, acting reasonably, is satisfied that the Contractor will be able to provide again the Services which have been suspended to the Authority's satisfaction, the Authority may cease suspension by giving not less than five (5) Business Days' written notice to the Contractor. The Contractor will resume provision of the Services at the date and time specified in such notice. The Contractor may request and the Authority agrees to provide and have relevant Third Parties provide any reasonable cooperation requested by the Contractor in writing to enable the Contractor to resume the Services provided sufficient notice is given for the request.
- 30.6 As an alternative to **Clause 30.5**, if the Contractor is able to remedy the relevant event and/or omission leading to such suspension and/or to successfully put in place arrangements to ensure that it does not recur, then the Contractor may itself serve notice (a "**Resumption Notice**") on the Authority requesting that the Contractor resume provision of the suspended Services. The Contractor will provide the Authority with all information that the Authority reasonably requires to verify that the Contractor will be able to provide the suspended Services to the Authority's reasonable satisfaction and ensure proper and sustained compliance with all Service Levels and other provisions set out in this Agreement. If the Authority, acting reasonably, is satisfied that the Contractor will be able to provide all of the suspended Services to the Authority's satisfaction, the Authority will serve not less than five (5) Business Days' written notice (a "**Re-commencement Notice**") requiring the Contractor to resume provision of the suspended Services and at the date and time specified in that notice and the Contractor will resume provision of those Services in accordance with such notice. If the Authority has not served a Re-commencement Notice within ten (10) Business Days, then if the Authority is not satisfied the Contractor can resume provision of the suspended services as set out in this Clause then **Clauses 30.3 to 30.5** (inclusive) shall be reapplied, mutatis mutandis (with the necessary changes). In the event of any disagreement as to the capability of the Contractor to resume provision of the suspended Services, then either the Authority or the Contractor may refer the matter to the Dispute Resolution Process.

30A FURTHER REMEDIES

- 30A.0 The Contractor shall ensure that it has sufficient resources to perform its obligations under this Contract and shall, in a timely manner, increase any resources as may be reasonably necessary to be able to perform anticipated Capital Works or Proposed Capital Works under this Contract.

30A.1 If, in the Authority's opinion:

30A.1.1 the Contractor persistently and/or regularly refuses to or does not perform Works which have been directly awarded/instructed in accordance with **Clause 7**; or

30A.1.2 the Contractor persistently and/or regularly refuses to bid or to submit a Proposal in respect of a Mini-Competition Request (under **Clause 8**); or

30A.1.3. the Contractor is persistently and/or is regularly submitting Proposals in respect of Mini-Competition Requests (under **Clause 8**) and such Proposals contain materially unreasonable and lengthy timescales for delivery and/or completion of Works and/or unreasonably high valuations or levels for charges or fees for the Works; or

30A.1.4 the Authority is concerned that if the Contractor was awarded such Works either directly or under a Mini-Competition that the Contractor will not perform them on time or in accordance with the quality and/or with other aspects of this Contract based on the Contractor's past performance of works over the past 3 Reporting Periods being not in material accordance with this Contract and/or the relevant Works Instruction, then

30A.2. the Authority shall use its reasonable endeavours to notify the Contractor that the Authority is beginning to or has formed a view that any of the activities or thresholds set out in **Clause 30A.1** have or are occurring or are likely to occur (where known) and, where reasonably possible, before the Authority asks for the demonstration(s) set out in **Clause 30A.3** from the Contractor,

and

30A.3

30A.3.1 In the case of **Clauses 30A.1.1** or **30A.1.2**, the Contractor is not able to demonstrate to the Authority's satisfaction within five (5) Business Days (or 2 Business Days where the issue relates to a Type B scheme or schemes only of the Authority's request for it to do so that such refusal or lack of bid is not for a valid (in accordance with the Contract) and genuine reason;

30A.3.2. In the case of **Clause 30A.1.3**, the Contractor is not able to demonstrate to the Authority's satisfaction within five (5) Business Days (or two (2) Business Days where the issue relates to a Type B scheme or schemes only) of the Authority's request for it to do so that the timescales and/or pricing is reasonable; or

30A.3.3. In the case of **Clause 30A.1.4** the Contractor is not able to demonstrate to the Authority's satisfaction within five (5) Business Days (or two (2) Business Days where the issue relates to a Type B scheme or schemes only) of the Authority's request for it to do so

that the Contractor will be able to perform the Works which are the subject to the Mini-Competition Request or direct award on time and/or in accordance with the Contract and how the Contractor has improved its procedures, training and/or systems to ensure this,

then the remainder of this **Clause 30A** shall apply:

30A.3.4 **paragraph 2.1.3 of Schedule 1, Annex A** shall apply (without prejudice to the fact that they shall also apply in respect of direct works on each occasion) such that the values of the Works which would have been instructed will be deducted from the Minimum Works Commitment which would otherwise be due to the Contractor in the relevant Minimum Annual Value Assessment Period; and

30A.3.5 the Authority reserves the right to immediately by confirming the same in writing to the Contractor:

30A.3.5.1 award directly to a third party appointed by the Authority (which may include another contractor(s) appointed to the TCMS2 Framework) ("**Another Contractor**") in respect of a Contractor's Allocated Area future direct works which the Contractor would otherwise have been allocated; and/or

30A.3.5.2 exclude the Contractor from bidding under a Mini-Competition for future Works,

in each case, subject to **Clause 30A.3.7**, for a period which, at the Authority's discretion, may be up to the same period in time over which the persistent or regular refusals or the failures were measured by the Authority as determined by the Authority (but being no longer than 3 Reporting Periods),

each of the above being an "**Authority Right**".

It shall be at the Authority's discretion as to whether the thresholds set out above have been met or not met.

30.A.3.6 Additionally, in such case, where the Authority is getting Another Contractor to perform Works in a Contractor's Allocated Area under this **Clause 30.A.3.5** above, then the Contractor shall make available to the Authority and shall permit the Authority and/or Another Contractor for the period referred to in **Clause 30.A.3.5**):

30.A.3.6.1 to able to collect and to use without charge, all equipment (other than TC Equipment) of the Contractor's on the Site(s) within the Allocated Area(s) which the Authority or Another Contractor (as applicable) can not reasonably bring themselves; and/or

30.A.3.6.2 to be able to collect and to use the Contractor's owned and/or licensed software and/or tools which the Contractor may use and/or uses for configuring, testing, running diagnostics, connecting to and/or auditing TC Equipment as well as connecting to other infrastructure and systems of the Authority and the Service Recipients.

30.A.3.7 Where the Contractor has triggered an Authority Right under **Clause 30.A.3.5**, the Contractor shall promptly improve its procedures, infrastructure, staffing, management and/or other areas which may have been causing the issues or failures under this **Clause 30.A** which led to the trigger(s) of the Authority Right and shall, once it has improved sufficiently, promptly demonstrate to the Authority in writing that it has and how it has improved (whether its procedures, infrastructure, management, staffing or Sub-Contractor levels or otherwise) such that the Authority should not have a concern that any of the failures or issues in **Clause 30.A.1** are likely to occur again. Where the Authority is satisfied that this is the case, the Authority will, at a sensible moment in time (which shall be selected by the Authority), cease the right to exclude the Contractor from the right to mini-compete or cease awarding directly Capital Works to a third party (provided nothing in this Clause shall mean the Authority must take away Capital Works which have already been instructed to third parties under this Clause). The Authority shall notify the Contractor in writing when and if it is able to resume in this way, after which time the Contractor shall continue to perform its obligations in accordance with the Contract. If the Contractor has not demonstrated the requisite improvements to the Authority, then (without prejudice to any other rights or remedies the Authority may have) the Authority's right to award directly to other third parties and/or exclude the Contractor from mini-competitions for future Proposed Capital Works shall cease from the date which is three (3) Reporting Periods from the date the Authority first notified the Contractor it would rely on and use its rights at set out in **Clause 30A.3.5** above.

31. STEP-IN

31.1 If the Authority believes (at its discretion) that it needs to take action in connection with one or more of the Services:

31.1.1 because the Contractor is in breach of the Contract in accordance with **Clause 32.1.1** or **32.1.2**;

31.1.2 because the circumstances in **Clause 30.1.4** have arisen;

31.1.3 because a serious risk exists to the health or safety of persons or property or to the environment;

31.1.4 to discharge a statutory duty;

- 31.1.5 because the Contractor does not have sufficient resources to carry out and complete any of the Maintenance;
- 31.1.6 because the Contractor is unable to perform the Services in a timely manner and the Authority is reasonably concerned that a right to remedy or provide rectification first would materially prejudice the Authority, any of the Service Recipients or any of the general public or other Third Parties;
- 31.1.7 which the Authority had instructed the Contractor to carry out but which the Authority has a right (in total or in part) to re-allocate to another contractor or Third Party or to itself for them or itself to provide the Services in accordance with **paragraph 7.1 of Schedule 4** or otherwise in accordance with this Contract;
- 31.1.8 where the Contractor is unable to perform the Services due to a Force Majeure Event; and/or
- 31.1.9 where the Authority otherwise has an express right to take action, step-in or move the Services in accordance with this Contract,

then the following provisions will apply as set out in this **Clause 31** below.

- 31.2 The Authority will, save in respect of Emergency Maintenance or other emergency (where the Authority does not need to provide notice in advance), provide notice (the **"Step-In Notice"**) (which may be immediate) to the Contractor in writing of the following:
 - 31.2.1 the action it wishes to take;
 - 31.2.2 the reason for such action;
 - 31.2.3 the date it wishes to commence such action (which may be the date of the notice) (being the start of the **"Step-In Period"** as defined below); and
 - 31.2.4 the time period which it believes will be necessary for such action (if known).
- 31.3 Following service of the Step-In Notice, the Authority or a Third Party appointed by the Authority for the purpose, which may include another contractor appointed to the TCMS2 Framework, will take such action as is notified under these provisions and any consequential additional action as the Authority reasonably believes is necessary (the **"Step-In Services"**) and the Contractor will give all reasonable assistance to the Authority or such third party while it is taking such Step-In Services (such assistance to be at the expense of the Authority except where the requirement for the Authority to Step-In results from a failure of the Contractor to perform its obligations under this Contract). The period during which the Step-In Services shall be taken shall be referred to as the Step-In Period.

31.4 During the Step-in Period:

- 31.4.1 the Authority (or one or more Third Parties nominated by the Authority) will manage and/or supervise performance of the Step-In Services to the extent detailed in the relevant notice (or subsequently notified by the Authority to the Contractor) using (without charge) (and for this purpose the Contractor will promptly make available for the entire Step-In Period) the Contractor's resources relevant to this Contract, the Contractor's Premises, the Contractor's Personnel, TC Equipment being stored, the benefit of any third party contracts and, if required by the Authority, the services of the permitted Sub-Contractors as well as all spares, plant, software, tools, equipment, goods and materials intended for, delivered to and placed on the Site in connection with the Services and/or which was to be used or would reasonably be needed to be used by a third party to provide the Services which shall include the Contractor providing the Authority, the Service Recipients and the agents with copies of the software which the Contractor would use for configuring, testing, running diagnostics, connecting to and/or auditing TC Equipment as well as connecting to other infrastructure and systems of the Authority and the Service Recipients, software in any interfaces, documentation and any manuals relating to the TC Equipment and anything else reasonably required by the Authority (together referred to as the "**Resources**"). The Contractor's Resources may be used virtually or from any of the Contractor Premises at the Authority's choice; and
- 31.4.2 the Contractor will continue to provide all Services other than the Step-In Services.

Contractor Co-operation

- 31.5 The Contractor will permit the Authority and Authority-nominated third parties to have such reasonable access to and use of the Contractor's Resources and the Contractor Premises at no cost to the Authority as the Authority requires in order to fully and effectively exercise its rights under this **Clause 31**. The Contractor will at all times co operate fully with the Authority in relation to the exercise of its rights under this **Clause 31** and provide the Authority with any reasonable information required by the Authority in relation to or in connection with the exercise of those rights.

Revocation of Step-in

- 31.6 The Authority may (at its sole discretion and at any time) revoke a Step-In Notice by giving not less than five (5) Business Days' notice to the Contractor. The Contractor will resume provision of the Step-In Services at the date and time specified in such notice.

Contractor's rights to resume Services Provision

- 31.7 The Contractor shall promptly, where possible remedy any act or omission which led to the Step-In Services being performed and take steps to ensure the issue is resolved for future purposes. If the Contractor is able to remedy the relevant event or omission leading to the Step-In Services and/or to successfully put in place arrangements to ensure that it does not recur, then the Contractor may serve notice (a “**Step-In Resumption Notice**”) on the Authority requesting that the Contractor resume provision of the Step-In Services. The Contractor will provide the Authority with all information that the Authority reasonably requires to verify that the Contractor will be able to provide the Step-In Services to the Authority's reasonable satisfaction and ensure proper and sustained compliance with all Service Levels and other provisions set out in this Contract. If the Authority acting reasonably is satisfied that the Contractor will be able to provide all of the Step-In Services to the Authority's satisfaction, the Authority will serve not less than five (5) Business Days' written notice (a “**Re-commencement Notice**”) requiring the Contractor to resume provision of the Step-In Services and at the date and time specified in that notice the Contractor will resume provision of the Step-In Services. If the Authority has not served a Re-commencement Notice within ten (10) Business Days of receipt of a Step-In Resumption Notice, then either the Authority or the Contractor may refer the matter to the Dispute Resolution Process.

Authority right to terminate

- 31.8 If a Step-In Notice has been served (which has not been revoked by the Authority pursuant to **Clause 31.6**) and:
- 31.8.1 the Contractor has not served a Step-In Resumption Notice within twenty (20) Business Days of service of that Step-in Notice;
 - 31.8.2 following service of a Re-commencement Notice the Contractor has not resumed provision of the Step-In Services (for any reason) on the date and time specified in that Re-commencement Notice; and/or
 - 31.8.3 the Authority has not served a Re-commencement Notice on the Contractor within thirty (30) Business Days of service of a Step-In Resumption Notice,

the Authority may at its sole discretion terminate this Contract.

Status of the Services and Charges during the Step-In Period

- 31.9 During any Step-in Period the Authority shall only be liable to pay Charges in respect of those of the Step-In Services that it continues to receive from the Contractor and shall not be liable to pay Charges in respect of any other Step-In Services.

Step-in Expenditure

- 31.10 In the event that the Authority incurs costs in exercising its Step-In rights in accordance with this **Clause 31** and such costs exceed the Charges which would have been payable but for the Step-In, the Contractor shall credit an amount equal to the difference between the costs and such Charges against all future Charges to the effect that no Charges shall be payable by the Authority unless and until the full amount of such credit has been utilised. The Authority may at any time by written notice require the Contractor to cease crediting the amount in question against the Charges and any unused balance thereof shall be remitted to the Authority in cleared funds within twenty (20) Business Days of service of such written notice.
- 31.11 In the event the Authority exercises its Step-In rights under **Clause 31.1.8** (where the Contractor is unable to perform the Services due to a Force Majeure Event), then where an Emergency Fault Abatement would have been applied but for the Force Majeure Event then where the Contractor incurs an Emergency Fault Abatement and subject always to the Contractor's obligation to implement any Business Continuity Plan then the Contractor shall be relieved from the applicable Emergency Fault Abatement during the relevant applicable Step-In Period for and to the extent caused by the Force Majeure Event.
- 31A PERFORMANCE OF SERVICES SIMILAR TO THE SERVICES WHICH WOULD ORDINARILY HAVE BEEN PERFORMED BY ANOTHER CONTRACTOR IN THAT CONTRACTOR'S CONTRACT AREA WITHIN THE ALLOCATED AREA**
- 31A.1 The Contractor acknowledges that there may be circumstances where the Authority requires the Contractor to provide services similar to some or all of the Services in the Allocated Areas but outside of the Contract Area (whether due to another contractor's breach or otherwise). The Contractor agrees in good faith to, where at all possible, provide such services as are requested by the Authority in such other area and the charges for providing such services shall be no more than the Schedule of Capital Works Rates.

32. TERMINATION

32.1 Without prejudice to the Authority's right to terminate at common law or any other rights arising under this Contract, the Authority may terminate this Contract in whole or in part immediately upon giving not less than four (4) weeks' and not more than eighteen (18) months' written notice to the Contractor if the Contractor:

- 32.1.1 commits any irremediable material breach of this Contract;
- 32.1.2 commits any material or persistent breach of this Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within thirty (30) days (or such other timeframe as specified in writing by the Authority) from the date of a written notice to the Contractor giving details of the breach and requiring it to be remedied provided that the Authority shall temporarily waive its right to terminate pursuant to this **Clause 32.1.2** if an agreed Rectification Plan is in place in respect of the breach which the Authority requires to be remedied which gives a longer period (with a defined date) in which a breach can be remedied in which case the right to terminate is waived until that later defined date is reached and the breach has not been remedied and the agreed steps to prevent that breach re-occurring have not been taken successfully;
- 32.1.3 commits any of the money laundering related offences listed in the Public Contract Regulations 2006;
- 32.1.4 or its Holding Company is subject to an Insolvency Event;
- 32.1.5 undergoes a change of ownership or control without the Authority's prior written consent in accordance with **Clause 25.5**;
- 32.1.6 subject to **Clause 32.1.2**, fails to implement or produce a Rectification Plan in accordance with **Clause 15**;
- 32.1.7 has reached or exceeded the maximum aggregate liability of the Contractor provided for in **Clause 21.5**;
- 32.1.8 is in breach of **Clause 23** (Compliance with Policies and Laws);
- 32.1.9 is in breach of **Clause 24** (Corrupt Gifts and Payment of Commission);
- 32.1.10 is served a Step-In Notice under **Clause 31.2** and the Authority's exercise of its Step-In rights continues for a period of three (3) months or more;
- 32.1.11 is in breach of **Clause 45** (Data);
- 32.1.12 has a conflict of interest in accordance with **Clause 50**;

- 32.1.13 has committed an Equality & Diversity Infraction in accordance with the equality and diversity requirements stated in **Schedule 12**;
 - 32.1.14 is unable to provide the Maintenance in full on and from the Maintenance Commencement Date in accordance with the terms of this Contract;
 - 32.1.15 any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
 - 32.1.16 by his acts or omissions, triggers a right to terminate pursuant to **Schedule 4**;
 - 32.1.17 commits any of the offences listed in the Corporate Manslaughter and Corporate Homicide Act 2007; or
 - 32.1.18 without prejudice to the generality of **Clause 32.1.16**, has had twenty two (22) or more SFPs awarded against it in a Cluster in any period of three (3) rolling Reporting Periods in accordance with **paragraph 4.2 of Schedule 4**.
- 32.2 If the Contractor refuses or neglects to execute the Services or any part thereof or refuses or neglects within a reasonable time to comply with any instructions given to it by the Engineer or if at any time provision of the Services appears to the Engineer to be unnecessarily delayed by any cause within the reasonable control of the Contractor and such refusal, neglect or delay and the cause thereof will not be remedied within the shortest practicable time having regard to the nature or severity of the breach, refusal, neglect or delay, the Authority will be entitled to terminate this Contract forthwith by giving (at its option) not less than four (4) weeks' and not more than eighteen (18) months' notice in writing to the Contractor.
- 32.3 Without prejudice to the Authority's right to terminate this Contract under **Clause 32** or to terminate at common law, the Authority may terminate this Contract at any time:
- 32.3.1 without cause subject to giving the Contractor no less than three (3) months' prior written notice, provided that a termination of whole shall be subject to **Clause 33.9** below and a termination in part for convenience shall be construed to be a change to the Contract which shall be dealt with and subject to the Change Control Procedure; or
 - 32.3.2 following a Declaration of Ineffectiveness in accordance with the provisions of **Clause 35**.
- 32.4 Without prejudice to **Clauses 32.1** or **32.2**, the Authority may terminate a Works Instruction in accordance with its terms.
- 32.5 To the extent that the Authority has a right to terminate this Contract under this **Clause 32** then, as an alternative to termination, the Authority may by giving notice to the Contractor require the Contractor to provide part only of the Services with effect from the date specified in the Authority's notice

(“**Change Date**”) whereupon the provision of the remainder of the Services will cease and the definition of “**the Services**” will be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Authority’s reasonable opinion a proportionate adjustment would not be reasonable in such manner as the Authority may determine after consideration of any representations made by the Contractor.

32.6 If the Authority or any Service Recipient needs to itself, or via a Third Party, or a Replacement Contractor perform any services similar to the Services or take over Services from the Contractor or to assist with Services or be involved with the Contractor in the receipt of the benefit of the Services, then where necessary, the Contractor shall ensure that the Authority, the other Service Recipients and any Third Parties have all necessary consents, approvals, permissions and licences to be able to do so in such circumstances without interruption or cost.

32.7 In respect of Instructed Capital Works which the Authority reasonably deems may not achieve Completion (as defined in the Capital Works Conditions of Contract) by the relevant date of termination or expiry:

32.7.1 if the Authority exercises its right to terminate this Contract pursuant to **Clause 32.3.1**, the Authority may request that the Contractor completes any or all such Instructed Capital Works and subject to the Contractor’s agreement (not to be unreasonably withheld or delayed) the Contractor shall complete the relevant Instructed Capital Works; and

32.7.2 on expiry of the Initial Term (or any extension thereof), the Authority (acting reasonably) reserves the right to instruct the Contractor to complete any or all such Instructed Capital Works and on instruction the Contractor shall complete the relevant Instructed Capital Works.

If the Authority exercises its rights to terminate this Contract, or if the Contract may be terminated, in any other circumstances nothing in this **Clause 32.7** prevents the Authority from requesting the Contractor to complete any or all Instructed Capital Works and the Contractor agrees to discuss completion of such Instructed Capital Works with the Authority in good faith.

32.8 Where it is agreed or instructed under **Clause 32.7** (as appropriate) to complete Instructed Capital Works the relevant Works Instruction(s) and any other Clauses or Schedules of this Contract that are necessary to give effect to the Works Instruction(s) will survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract will do so. On completion of the relevant Instructed Capital Works, the provisions of **Clauses 33.6, 33.7 and 33.8** and the provisions of the Exit Plan shall apply mutatis mutandis.

33. CONSEQUENCES OF TERMINATION

- 33.1 Notwithstanding the provisions of **Clause 40**, wherever the Authority chooses to put out to tender for a Replacement Contractor some or all of the Services, the Contractor will disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Contractor may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 33.2 If the Contractor or its Holding Company is subject to an Insolvency Event and/or if the Authority terminates this Contract in accordance with **Clause 32.1.4**, the Contractor will immediately transfer (or will procure the immediate transfer of) the Services to the Authority or a Replacement Contractor (as authorised agents of the Contractor or the manufacturer, as applicable, pursuant to **Clause 32.5**) without interruption or cost to the Authority or the Replacement Contractor. The Contractor will be liable for all additional expenditure reasonably incurred by the Authority or the Replacement Contractor in connection with the transfer of the Services.
- 33.3 On termination of this Contract (in whole or part) under **Clauses 32.1** (excluding **Clause 32.1.4**), **32.2** or **32.4** (to the extent arising under **Clause 32.1** (excluding **Clause 32.1.4**) and **32.2**), the Contractor will either (at the Authority's option):
- 33.3.1 immediately transfer (or will procure the immediate transfer of) the Services to the Authority (and/or a Replacement Contractor nominated by the Authority or otherwise agreed with the Contractor) and will authorise (or obtain authorisation for) the Authority or the Replacement Contractor, as applicable, to undertake the Services as authorised agents of the Contractor or the manufacturer, as applicable, without interruption or cost to the Authority or the Replacement Contractor. The Contractor will be liable for all additional expenditure reasonably incurred by the Authority or the Replacement Contractor in connection with the transfer of the Services; or
 - 33.3.2 be liable for all additional expenditure reasonably incurred by the Authority in consequence of such termination, including:
 - 33.3.2.1 the costs and expenses incurred by the Authority in re-procuring and/or implementing alternative or replacement services and equipment, including the costs of undertaking a procurement process, additional cost of management time, personnel costs and the costs of replacement equipment, materials, systems and software; and
 - 33.3.2.2 the Authority's costs of selecting and negotiating with a contractor or contractors to provide replacement equipment and services, including any additional charges which the Authority contracts to pay a new

contractor to provide equipment and services which are materially similar to the TC Equipment and Services.

- 33.4 The Authority may deduct such costs from any amounts payable under this Contract (including from the Charges) or otherwise recover such costs from the Contractor as a debt.
- 33.5 Upon the expiry of the Initial Term (or any extension thereof), the Authority will have the option to require the Contractor to immediately or on no less than four (4) weeks' and no more than eighteen (18) months' notice prior to the date of expiry of the Initial Term transfer (or procure the immediate transfer of) the Services to the Authority (or a Replacement Contractor nominated by the Authority or otherwise agreed with the Contractor). If the Authority exercises this option, the Contractor will authorise (or obtain authorisation for) the Authority or the Replacement Contractor, as applicable, to undertake the Services as authorised agents of the Contractor or the manufacturer, as applicable.
- 33.6 Subject to **Clause 32.7** and **Clause 32.8**, upon expiry or termination of this Contract (howsoever caused), the Contractor will, at no further cost to the Authority:
- 33.6.1 comply with and perform its obligations under the Exit Plan or any Service and TC Equipment Transfer/Cessation Plan approved by the Authority in accordance with **Schedule 10**;
 - 33.6.2 save as required under **Clauses 33.2, 33.3.1** or **33.4**, take immediate steps to bring the Services (or any part) to an end in an orderly manner but with all reasonable speed and economy;
 - 33.6.3 provide all such co-operation and information to the Authority (or its nominee) in order to effect a seamless, orderly and timely handover of the Services as the Authority may reasonably request in accordance with **Clauses 33.2, 33.3.1** or **33.4**;
 - 33.6.4 return to the Authority all equipment provided by the Authority and certify that no copies of any data or software provided by the Authority have been retained;
 - 33.6.5 effect an orderly withdrawal from all or some of the Authority Premises, as applicable, and make good any damage caused to a Site or any other property or premises to the Authority's satisfaction, as applicable;
 - 33.6.6 promptly deliver to the Authority or, if the Authority requests, destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Authority Confidential Information;
 - 33.6.7 supply to the Authority all relevant materials, documentation, data and information on appropriate media (as may be specified by the Authority);

- 33.6.8 ensure that all information the Contractor is required to input into the System(s) in accordance with **Clause 14** has been so input and is accurate and complete. The Contractor will promptly report any inaccuracies to the Authority's "Data Management Team". The Authority will have the right to carry out an inspection of a representative set of Sites to determine whether the information recorded on the System(s) by the Contractor is accurate and complete. If any differential is found the Contractor will bear the costs of any rectification works required and the correction of the data on the System(s) together with the Authority's costs in carrying out such inspection. If the information in respect of more than 5% of the Sites selected/more than 5% of the Contract Area selected is found to be incorrect in the SFM (or other relevant System), the Authority will have the right to select a further representative set of Sites for inspection and the provisions of this Clause will apply to such further inspection mutatis mutandis;
- 33.6.9 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information contained on any Contractor equipment, system or network by a mutually agreed date, including (without limitation) the purging of all disk-based information and the reformatting of all disks;
- 33.6.10 ensure that the licences granted pursuant to **Clause 44** continue in full force and effect (or to the extent deemed not to be granted in full at the Termination Date, immediately grant such licence pursuant to **Clause 44**) to enable the continuation of services similar to the Services and use of the Installed TC Equipment after the Termination Date; and
- 33.6.11 to the extent outstanding, immediately assign to the Authority (and/or its nominee) pursuant to **Clause 44** all existing and future Intellectual Property Rights which may subsist in the Authority Data and, if applicable, arrange on an ongoing basis to execute such documentation as may be necessary for the assignment of all Intellectual Property Rights to the Authority (and/or its nominee) in any Authority Data arising after the Termination Date.
- 33.7 The Contractor will, as and when required in writing by the Engineer, remove from any Site or premises of the Authority any plant, tools, equipment, goods, or materials belonging to or hired by it. The Contractor must ensure that, prior to it removing any hardware or other equipment owned by the Contractor or leased to it, all data including any Authority Personal Data and the Authority Confidential Information is permanently deleted from such hardware or equipment. If within a reasonable time after any such requirement has been made the Contractor has not complied with such requirement, then the Authority may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

- 33.8 Upon expiry or termination of this Contract (howsoever caused), the Authority may retain and continue to use any and all of the Contractor's (and their Sub-Contractor's) Confidential Information as the Authority requires to continue using and maintaining the Installed TC Equipment and having it used and maintained by Third Parties in the future.
- 33.9 If the Authority terminates this Contract in whole under **Clause 32.3.1** during the Term, the Authority agrees to pay the following sums set out below by way of an early termination fee within forty-five (45) days of receipt of an invoice in accordance with **Clause 33.9.11** below. Both parties agree that such early termination fee shall be in full and final settlement of the Authority's obligations for terminating the Contract and the Authority shall not be liable to the Contractor for any loss of profit, loss of contracts or other costs, losses and/or expense not specifically stated in **Clause 33.9** incurred by the Contractor in connection with such termination. The early termination fee shall consist of the following:
- 33.9.1 except in respect of TC Equipment which forms part of Instructed Capital Works, (in which case the terms of the applicable Works Instruction shall apply to determine what amounts the Contractor is entitled to), the actual monies accrued and payable and/or owed to the Contractor up to the date of termination in respect of TC Equipment which the Contractor has assigned title to or will assign (prior to the Termination Date in accordance with the Contract) title to the Authority in accordance with the Contract but which the Authority has not yet paid for and/or which otherwise has been Installed but not yet paid for;
 - 33.9.2 notwithstanding the provisions of **Schedule 9**, Redundancy Costs payable by the Contractor to any member of the Contractor Personnel who is wholly or mainly (that is more than 50% of their working time) engaged in the provision of the Services as at the Termination Date where:
 - 33.9.2.1 TUPE does not apply to transfer the employment of such person to a Replacement Contractor; and
 - 33.9.2.2 the Contractor notifies the Authority in writing (and provides any evidence required by the Authority to support) that it has used its reasonable endeavours to redeploy such person(s) to other work within its business and, having consulted with the Authority as to the circumstances, has afforded the Authority and/or the Replacement Contractor a reasonable opportunity to redeploy such person(s) to other work, but neither the Contractor nor the Authority nor any Replacement Contractor has been able to identify a suitable alternative role or the member of the Contractor Personnel has reasonably refused such role (including prior to or on completion of any trial period); and

- 33.9.3 except in respect of TC Equipment which forms part of Instructed Capital Works (in which case the terms of the applicable Works Instruction shall apply to determine what amounts the Contractor is entitled to, if any), the actual contractual costs which the Contractor is contractually obliged to pay to third parties (including group companies) in respect (and to the extent) of their Services performed in relation to this Contract up to the date of termination, which have reasonably been incurred by the Contractor and in relation to which the Contractor is unable to reasonably mitigate in accordance with its obligations under **Clause 33.9.8**;
- 33.9.4 except in respect of TC Equipment which forms part of Instructed Capital Works (in which case the terms of the applicable Works Instruction shall apply to determine what amounts the Contractor is entitled to, if any) but in addition to **Clause 33.9.3** above (where not already covered by **Clause 33.9.3**), the actual costs incurred or which will be incurred by the Contractor in expectation of completing the Contract to the end of the Term which:
- 33.9.4.1 would not have been incurred had this Contract continued until its natural expiry; or
 - 33.9.4.2 are incurred under long term arrangements or long-term agreements entered into with manufacturers of TC Equipment or with Sub-Contractors; and/or
 - 33.9.4.3 are incurred in the performance of this Contract and which have not been recovered through the Charges but which have been incurred specifically for this Contract only and which would reasonably have been expected to be recovered at part of the Charges over time, including unamortised mobilisation costs,
- in each case, only to include costs which have reasonably been incurred by the Contractor and in relation to which the Contractor is unable to reasonably mitigate in accordance with its obligations under **Clause 33.9.8**;
- 33.9.5 in respect of Instructed Capital Works, a sum assessed by the Authority as the amount due on termination for a reason other than R1 – R21 in accordance with the Capital Works Conditions of Contract less the total of previous payments made by the Authority for the Instructed Capital Works; and
- 33.9.6 except in respect of Instructed Capital Works, the Contractor's future lost profits from the date of termination up until the date upon which the Term (including any contracted for extension) would have expired had such termination not taken place. Such lost profit shall be agreed between the parties or, in the absence of such agreement, determined pursuant to the Dispute Resolution Process

(**Clause 66**). The basis of calculation shall be that the Contractor is entitled to recover such sum as it could reasonably have expected to earn by way of reasonable profits during such period in the absence of termination,

provided always that:

- 33.9.7 the Contractor must at all time have provided written evidence to demonstrate the sums due such that they are verifiable by the Authority and that the Contractor is able to demonstrate to the Authority's satisfaction (acting reasonably) that the sums have been correctly and reasonably incurred. For this purpose, the Contractor shall promptly provide the Authority with all information and documentation reasonably requested to verify the early termination fee and sums due; and
- 33.9.8 from the date on which the Authority serves notice to terminate this Agreement pursuant to **Clause 32.3.1**, the Contractor shall use its reasonable endeavours to mitigate any and all of the sums referred to in this **Clause 33.9**. Such mitigation shall include the Contractor taking all reasonable steps to mitigate the early termination fee and costs due including by:
 - 33.9.8.1 appropriating employees, assets and resources for other purposes. For the avoidance of doubt, to the extent that employees, assets and/or resources are appropriated for other purposes the early termination fee will be reduced by an equitable amount;
 - 33.9.8.2 exercising its rights of cancellation or termination (in whole or part) under applicable third party contracts or, if so required by the Authority, using all reasonable endeavours to assign or novate any such third party contracts to the Authority or its nominee(s); and
 - 33.9.8.3 reducing such sums to the extent that any payments or other monies paid or payable to the Contractor under this Contract already reflect any element of the early termination fee already paid (for example payments for termination for convenience of any Instructed Capital Works under the Capital Works Conditions of Contract as referred to below) so as to ensure that there is no double recovery by the Contractor; and

33.9.9 the costs and sums and Charges referred to in this **Clause 33.9** shall be:

- a) agreed between the Parties prior to becoming payable or, in the absence of such agreement, shall be determined pursuant to the Dispute Resolution Process; and
- b) subject to any withholdings, deductions or set-offs which the Contractor and/or Employer is entitled to make under the Contract.

33.9.10 If requested by the Authority at any time, if the Authority is considering terminating under **Clause 32.3.1** or terminating any obligations for the Contractor to provide Instructed Capital Works under a Works Instruction, then the Contractor shall within two (2) weeks of the date so requested, provide the Authority with:

33.9.10.1 a written list of indicative costs and an overall indicative cost for the likely early termination fee which would be due if the Authority was to terminate the Contract without cause, which indicative fee shall be calculated by the Contractor in accordance with this **Clause 33.9**; and

33.9.10.2 where relevant, an assessment of the amounts that would be due in respect of the Instructed Capital Works that the Authority is considering terminating.

The Contractor shall use reasonable endeavours to ensure this estimate is a genuine pre-estimate of the actual likely early termination fee due provided that the Authority accepts this is only an estimate and for information purposes only.

33.9.11 In the event the Authority terminates this Contract under **Clause 32.3.1**, then the Parties will agree the sums due in accordance with **Clause 33.9** above and then the Contractor shall issue an invoice for the amounts due after which the Contractor shall prepare an invoice for the agreed amount and the Authority will, within forty-five (45) days of receipt of such agreed invoice, reimburse the Contractor for the agreed early termination fee referred to in this **Clause 33.9** above. For the avoidance of doubt

- a) such early termination fee will not become due or payable in relation to any other event of termination howsoever arising, or on the expiry, of this Contract; and
- b) where the Employer terminates the Contractor's obligation to provide Instructed Capital Works under a Works Instruction at will in accordance with the terms of that Works Instruction, then the Contractor shall only be entitled to such sums as are properly due the Capital Works Conditions of Contract in

respect of under that Works Instruction and the Contractor shall not be entitled to an early termination fee in accordance with **Clause 33.9**.

33.10 For the avoidance of doubt, save as set out in **Clause 33.9**, the Contractor will not be entitled to any compensation or damages on the expiry or termination of this Contract howsoever arising for the loss of its rights hereunder.

33.11 The termination or expiry of this Contract (howsoever caused) will not prejudice or affect any right, power or remedy which has accrued or will accrue to either Party prior to or after such termination or expiry.

34. **EXIT PLANNING**

34.1 The Contractor shall during the Mobilisation Period, prepare the Exit Plan and deliver it to the Authority for its approval in accordance **Schedule 10**.

34.2 The Exit Plan will set out the respective obligations of the Authority and the Contractor to facilitate an orderly transfer of the Services to the Authority or a Replacement Contractor and will, without limitation, include those matters set out in **Schedule 10**.

34.3 Once the Authority Approves the Exit Plan it will be adopted as the Exit Plan and will be held under the control of the Engineer.

34.4 The Exit Plan will be reviewed and amended from time to time in accordance with the applicable provisions of **Schedule 10** or otherwise via the Change Control Procedure.

35. **DECLARATION OF INEFFECTIVENESS**

35.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority will promptly notify the Contractor. The Parties agree that the provisions of **Clause 33** and this **Clause 35** will apply as from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of **Clause 33** and this **Clause 35** or the Cessation Plan, the provisions of this **Clause 35** and the Cessation Plan will prevail.

35.2 The Declaration of Ineffectiveness will not prejudice or affect any right, liability or remedy which has accrued or will accrue to either Party prior to or after such Declaration of Ineffectiveness.

35.3 As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) will agree or, in the absence of such agreement, the Authority will reasonably determine an appropriate Cessation Plan with the object of achieving:

35.3.1 an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and

35.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of this **Clause 35** and to give effect to the terms of the Declaration of Ineffectiveness.

35.4 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

35.5 The Authority will pay the Contractor's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs will be based on any comparable costs or the charges agreed as part of this Contract or as otherwise reasonably determined by the Authority. Provided that the Authority will not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this **Clause 35**.

36. **FORCE MAJEURE**

36.1 In the event of a Force Majeure Event, the Contractor shall implement and comply with its Business Continuity Plan, to the extent applicable. Subject to the Contractor's obligations to implement and comply with the Business Continuity Plan, neither Party will be in breach of this Contract or otherwise liable to the other Party in any manner whatsoever to the extent that a Force Majeure Event directly causes it to be unable to comply with all or a material part of its obligations under this Contract for the continuance of such Force Majeure Event.

36.2 If the Force Majeure Event continues for more than 3 (three) calendar months and the Parties have not been able to agree how to recommence provision of the Services, the Party not subject to the Force Majeure Event may give written notice to the other to terminate this Contract. The termination notice must specify the termination date which must be not less than 30 (thirty) calendar days after the date the notice is given, and once such notice has been validly given, this Contract will terminate on that termination date.

37. **RELIEF EVENTS AND EXCUSING CAUSES FOR MAINTENANCE**

37.1 This **Clause 37** shall apply to Maintenance only and shall not apply to Capital Works.

37.2 If and to the extent that a Relief Event or Excusing Cause adversely affects the ability of the Contractor to perform any of its obligations under this Contract relating to Maintenance then the provisions of **Annex M4** of **Schedule 3**, the Statement of Requirements, **Part 4** shall apply.

38. **BUSINESS CONTINUITY**

- 38.1 The Contractor will, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover, including any Disaster or Force Majeure Event. The Business Continuity Plan will be created and maintained in accordance with Good Industry Practice.
- 38.2 The Contractor will update the Business Continuity Plan at least once during each rolling period of twelve (12) months during the Term. The Contractor will also update the Business Continuity Plan if at any time an amendment to it is reasonably required in order to reflect any change to this Contract, the Services, TC Equipment or any other matters that have occurred since agreement of the last Business Continuity Plan. Not more than ten (10) days after each such update the Contractor will submit the revised Business Continuity Plan to the Authority for approval. The Contractor will amend the revised Business Continuity Plan so as to incorporate all of the Authority's comments. The amended Business Continuity Plan will be promptly re-submitted to the Authority for approval and the process contained in this **Clause 38.2** will be repeated until the Authority approves the draft Business Continuity Plan. The Contractor will retain business continuity readiness in accordance with the last approved version of the Business Continuity Plan (insofar as this still applies).
- 38.3 The Contractor will comprehensively test the Business Continuity Plan once in every rolling twelve (12) month period during the Term and will upon request provide the Authority with a written report detailing the results of that test and any actions it proposes to take to address those results. The Contractor will promptly update the Business Continuity Plan in accordance with **Clause 38.2** following such tests and will be bound to promptly implement the same.
- 38.4 The Contractor will implement the Business Continuity Plan in the event that the Installed TC Equipment are impaired or unavailable (or appear likely to be impaired or unavailable) or it is unable to perform any of the Services as a result of any occurrence envisaged in the Business Continuity Plan. The Contractor will notify the Authority in writing each time the Business Continuity Plan is, or should be, implemented.
- 38.5 The Contractor will procure that its Sub-Contractors will at all times, maintain adequate and up to date business continuity and disaster recovery plans in respect of the Services performed by them and the people and facilities used to provide them and ensure that such plans operate properly together.

39. HEALTH AND SAFETY

- 39.1 The Contractor shall ensure that the Services are carried out by the Contractor Personnel:
- 39.1.1 using safe and adequate working procedures and practices;
 - 39.1.2 in a good and workmanlike manner;
 - 39.1.3 as a minimum to British Standards or other enforceable or relevant EU codes of practice relating to health and safety and workmanship in force at the time the Services are carried out;
 - 39.1.4 in compliance with any health and safety code of practice issued by the Authority as may, for the time being, be in force (which code may be amended at the Authority's sole discretion);
 - 39.1.5 in compliance with the safety policy statement submitted by the Contractor to the Authority; and
 - 39.1.6 in compliance with any health and safety requirements under all Applicable Laws including the requirements of the Electricity at Work Regulations 1989.
- 39.2 The Contractor will promptly notify the Contractor's personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of this Contract.
- 39.3 The Contractor in carrying out the Services will maintain the integrity of all mains services and in the event of being obliged to cut off electricity, gas, water, telephone or any other service will inform the Engineer immediately whether such shut down or discontinuance of supply is on the grounds of safety or otherwise.
- 39.4 In order to demonstrate commitment to Health & Safety in the workplace and in the completion of duties under this Contract, the Contractor will be registered under the Contractors Health and Safety Assessment Scheme (CHAS) or equivalent, such as Safety Schemes in Procurement (SSIP).
- 39.5 The Contractor will be required to submit copies of annual external CHAS audit reports demonstrating compliance. The Contractor will submit evidence of completion of audit actions arising to the auditor's satisfaction to demonstrate retained registration for class 1 and class 2 actions (i.e. short and medium term), which are expected to have been resolved within 3 months of the audit report issue date.

40. **CONFIDENTIALITY AND TRANSPARENCY**

40.1 Subject to **Clauses 40.3, 40.6** and **42**, the Parties shall keep confidential:

40.1.1 the terms of this Contract; and

40.1.2 any and all Confidential Information that they may acquire in relation to the other.

40.2 The Contractor will not use the Authority's (including the other Service Recipient's) Confidential Information for any purpose other than to perform its obligations under this Contract and only then as strictly necessary to do so. The Contractor may pass the Authority's Confidential Information to its Sub-Contractors but only providing that the Contractor procures that the Sub-Contractor complies with this **Clause 40** and only uses the Confidential Information as strictly necessary for its purposes of performing its element of this Contract.

40.3 The Contractor will ensure that its officers, employees and Sub-Contractors comply with the provisions of **Clause 40.1** and **40.2**.

40.4 The obligations set out in **Clause 40.1** and **40.2** will not apply to any Confidential Information:

40.4.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this **Clause 40**)

40.4.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or

40.4.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

40.5 The Contractor shall keep secure (and ensure its Sub-Contractors keep secure) all materials containing any information in relation to the Contract and its performance.

40.6 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the Authority. The Authority shall have the right to approve any announcement before it is made.

40.7 The Contractor acknowledges that the Authority and the other Service Recipients are subject to the Transparency Commitment. Accordingly,

notwithstanding **Clause 40.1** and **Clause 40.2**, the Contractor hereby gives its consent for the Authority and the other Service Recipients to publish the Contract Information to the general public.

- 40.8 The provisions of this **Clause 40** will survive any termination of this Contract for a period of 6 years from termination.

41. **ANNOUNCEMENTS**

- 41.1 The Contractor will not advertise, announce or communicate or permit any communications with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Contract or that it is providing the Services to the Authority and the other Service Recipients or in relation to any matter under or arising from this Contract unless specifically granted permission to do so in writing by the Authority. The Authority will have the right to approve any advertisement or announcement before it is made.
- 41.2 Neither the Contractor nor anyone employed by the Contractor or acting on the Contractor's behalf shall give information concerning the Services for publication in the press or on radio, television, screen or any other media without the prior written consent of the Authority and, if such consent is given, shall provide to the Authority a full copy of the information to be released and shall not release any such information until the Contractor has received the Authority's prior written consent as to the content of the information to be released. The Contractor shall not, without the prior written approval of the Authority, take or permit to be taken any photographs of the Services or Sites for use in any publicity or advertising.
- 41.3 The Contractor will not take or permit any photographs of the Installed TC Equipment, the Sites or the Services to be taken for use in any publicity or advertising without the prior written consent of the Authority and where consent is given will obtain approval of such photographs prior to their issue.
- 41.4 The Contractor will procure compliance with the terms of this **Clause 41** by all Contractor Personnel.
- 41.5 Any breach of this **Clause 41** will be deemed a material breach incapable of remedy, giving the Authority the right to terminate this Contract in accordance with **Clause 32.1**.

42. FREEDOM OF INFORMATION

42.1 The Contractor acknowledges that the Authority and certain Service Recipients:

42.1.1 are subject to the FOI Legislation and agrees to assist and co-operate with the Authority and such Service Recipients to enable the Authority to comply with its obligations under the FOI Legislation; and

42.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

42.2 Without prejudice to the generality of **Clause 42.1**, the Contractor will and will procure that its Sub-Contractors (if any) will:

42.2.1 transfer to the Contractor (or such other person as may be notified by the Authority to the Contractor) each Information Request relevant to this Contract, the Services or any of the other Service Recipients (as applicable) that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and

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

42.3 The Authority and the other Service Recipients will be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor will not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

43. PROTECTION OF PERSONAL DATA

43.1 In respect of any Personal Data processed by the Contractor pursuant to this Contract for and on behalf of the Authority and/or any other Service Recipients or any other Third Party (as appropriate) (the “**Authority Personal Data**”), the Contractor warrants and undertakes that it will and will procure that each of the Contractor Personnel will:

43.1.1 comply at all times with the Data Protection Legislation;

43.1.2 only process the Authority Personal Data:

- 43.1.2.1 to the extent necessary to provide the Services and then only in accordance with this Contract; and
 - 43.1.2.2 on instructions received from the Authority from time to time;
- 43.1.3 promptly comply with any change of instructions from the Authority relating to the Authority Personal Data and/or the Contractor's role as Data Processor;
- 43.1.4 not by any act or omission place the Authority or any TfL Group member or any Third Party in breach of the Data Protection Legislation;
- 43.1.5 put in place:
 - 43.1.5.1 appropriate technical and organisational security measures that prevent or are designed to prevent the accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access to the Authority Personal Data and which comply with Good Industry Practice from time to time;
 - 43.1.5.2 a level of security measures which ensures that only authorised personnel have access to the Authority Personal Data and processing equipment to be used to Process such Authority Personal Data and that any such persons whom the Contractor authorises to have access to such Authority Personal Data will comply with like obligations as are contained in this **Clause 43.1.5** and will respect and maintain all due confidentiality; and
- 43.1.6 ensure that Authority Personal Data is only accessed by authorised Contractor Personnel;
- 43.1.7 ensure the reliability of the Contractor Personnel having access to Authority Personal Data and will ensure that such Contractor Personnel are fully aware of the measures to be taken when Processing Authority Personal Data;
- 43.1.8 promptly give written notice to the Authority of any actual or suspected incident of unauthorised or accidental disclosure of or access to the Authority Personal Data or other breach of **Clause 40** made by any of the Contractor Personnel or any other identified or unidentified third party (a "**Security Breach**");
- 43.1.9 promptly provide the Authority with all information in the Contractor's or the Contractor Personnel's possession concerning any Security Breach and not make any announcement or publish or otherwise authorise any broadcast or any notice or information about a Security Breach;

- 43.1.10 ensure that the Authority Personal Data is kept separate from Contractor Personal Data and from Personal Data belonging to other customers of the Contractor and that the Authority Personal Data is readily identifiable;
- 43.1.11 not make any copies of the Authority Personal Data (whether in electronic or paper form) unless strictly necessary for the Services;
- 43.1.12 not modify, amend or alter the contents of the Authority Personal Data or disclose or permit the disclosure of any of the Authority Personal Data to any Third Party unless expressly required to do so as part of the Services or specifically authorised in writing to do so by the Authority;
- 43.1.13 provide the Authority with such co-operation, assistance and information as is required by the Authority to comply with its obligations under the Data Protection Legislation;
- 43.1.14 without prejudice to **Clause 43.1.13**, comply with all instructions from the Authority in relation to a subject access request for the disclosure of Authority Personal Data and provide the Authority with all assistance required in respect thereof;
- 43.1.15 at any time at the Authority's request, submit to the Authority all required materials and/or technical documentation to demonstrate its compliance with this **Clause 43**; and
- 43.1.16 not cause or permit the Authority Personal Data to be transferred outside of the European Economic Area, without the Authority's prior written consent (which shall not include e-mail).
- 43.2 When the Contractor receives a written request from the Authority for information about, or a copy of, Authority Personal Data, the Contractor will supply such information or data to the Authority within such time and in such form as specified in the request or if no period of time is specified in the request, then within 10 (ten) Business Days from the date of the request.
- 43.3 The Authority remains solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed. The Contractor will not share any Authority Personal Data with any Sub-Contractor, Indirect Subcontractor or Third Party unless there is a written contract in place which requires the Sub-Contractor, Indirect Subcontractor or Third Party to:
 - 43.3.1 only process Authority Personal Data in accordance with the Authority's instructions to the Contractor; and
 - 43.3.2 comply with the same data protection requirements that the Contractor is required to comply with under this Contract.
- 43.4 If the Contractor receives any complaint about the Processing of the Authority Personal Data from Third Parties then it will promptly notify the

Authority of the same and provide the Authority with all assistance required in respect thereof.

44. INTELLECTUAL PROPERTY RIGHTS

44.1 The Parties agree that the IPR in all documents, drawings, materials, computer software, reports, any other material or works or services (including the Services) prepared or developed by or performed by or on behalf of the Contractor in the performance of this Contract (including IPR in materials or works created by a Sub-Contractor) shall vest in the Authority from the date of creation. The Contractor shall procure that each Sub-Contractor assigns such IPR to the Authority from the date of creation.

44.2 In respect of Background IPR, the Contractor grants (in respect of his own Background IPR) and procures the grant of (in respect of a Sub-Contractor's Background IPR and/or a manufacturers' Background IPR in TC Equipment and/or software) a non-exclusive, perpetual, irrevocable, royalty-free licence (including the right to sub-licence) to the Authority and the other Service Recipients (and in each case their agents and third parties) to use the Background IPR for the purposes of:

44.2.1 the Authority and the other Service Recipients and their agents (including future contractors providing services) receiving their rights under this Contract and/or being able to use, support, adapt and/or maintain the Installed TC Equipment (including any software) both during and after the term of this Contract as envisaged by this Contract, including the requirement and right for them to use, maintain and adapt and connect to and interface with and audit and run diagnostics on and to the TC Equipment after the Term;

44.2.2 understanding the Instructed Capital Works and Maintenance;

44.2.3 completing, operating, maintaining, repairing, modifying, altering, enhancing, re-configuring, correcting and/or replacing the TC Equipment Installed by the Contractor, Instructed Capital Works and Maintenance;

44.2.4 extending, interfacing with, integrating with, connection into and adjusting the TC Equipment Installed by the Contractor, Instructed Capital Works and Maintenance and/or the works of others and connecting and and/or interfacing with the Authority's and the Service Recipients' infrastructure and systems and software; and

44.2.5 in the event of the Authority exercises its Step-In Rights and/or Suspension rights under this Contract, allowing a Third Party and/or the Authority and/or other Service Recipients to use the Background IPR for the purposes of the Authority and/or the other Service Recipients and, in each case, their agents (including other contractors) exercising their rights under the relevant Step-In and/or Suspension clauses and only for such period including having access to copies of the Escrow Materials as set out in this Contract.

- 44.2A The Contractor commits to the Authority that if the Contractor is provided with and/or has access to software which fixes a bug or functionality error or fixes another issue with any software in the TC Equipment after the expiry or termination of this Contract or in any software which the Authority has access to post termination or expiry in accordance with this Contract, then the Contractor shall provide in a timely manner (without charge) and licenses the Authority and the Service Recipients to use (on their own behalf and to sub-license to third parties to use for the Authority's and the Service Recipients' benefit) at least two (2) copies of such software to use post termination or expiry in relation to TC Equipment provided that if such software contains new functionality that is separate to the functionality the Authority had prior to such termination or expiry, then the Authority shall not use such functionality unless its use is a function of using existing functionality. **Clause 44.2** and **44.2A** shall survive termination and/or expiry of this Contract.
- 44.3 The Contractor warrants and undertakes that he has the right to grant and procure the grant of the licences set out in **Clause 44.2** and **44.2A**.
- 44.4 IPR in all items supplied and/or owned or developed by the Service Recipients to the Contractor remains the property of the Service Recipients.
- 44.5 The Contractor shall have no right (save where expressly permitted under this Contract or with the Authority's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Authority.
- 44.6 The Contractor acknowledges that in as far as he is (and shall procure that as far as a Sub-Contractor is) the author of documents, drawings, materials, computer software, and any other materials or works prepared and developed by him or the Sub-Contractor (as the case may be) in the performance of this Contract, then:
- 44.6.1 in respect of the IPR which vests in the Authority pursuant to **Clause 44.1**, the Contractor shall waive and shall procure that any and all Sub-Contractors shall waive any and all moral rights which he (and/or a Sub-Contractor) might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 (or otherwise) in respect thereof and of the Services; and
- 44.6.2 in respect of the Background IPR which is licensed to the Authority and the other Service Recipients (and in each case their agents and third parties) pursuant to **Clause 44.2**, the Contractor or any Sub-Contractor may retain any and all moral rights which he (or a Sub-Contractor) might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 (or otherwise) in respect thereof but the Contractor shall permit and shall procure that any and all Sub-Contractor(s) shall permit the Authority and the other Service Recipients (and in each case their agents and third parties) to use, adapt and/or develop any such materials or works as the Authority and/or relevant Service Recipients (and/or their agents) see fit provided that any mark or insignia identifying the original

material or works as having been prepared and provided by the Contractor or a Sub-Contractor (as the case may be) is retained.

- 44.7 The Authority grants to the Contractor a non-exclusive, non-transferable, revocable licence to use the relevant IPR owned (or capable of being so licensed) by the Authority and reasonably required by the Contractor in order to provide the Services. Any such licence is granted for the duration of this Contract solely to enable the Contractor to comply with its obligations under this Contract.
- 44.8 The Contractor will promptly notify the Authority upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Rights which affects or may affect the provision or receipt of the Services, any documentation and/or any TC Equipment or anything else provided by or on behalf of the Contractor under this Contract, whether under **Clause 44.1, 44.2, 44.2A** or otherwise ("**Indemnified Deliverables**"), or if any claim or demand is made or action brought for infringement or alleged infringement of any such Intellectual Property Rights.
- 44.9 The Contractor will defend, indemnify, keep indemnified and hold harmless the Indemnified Parties against all Losses that arise from or are incurred by reason of any infringement or alleged infringement of any Indemnified Deliverables, third party Confidential Information or other similar proprietary rights, and against all Losses of any kind which the Indemnified Parties may incur as a result of such infringement or alleged infringement.
- 44.10 The Authority will, at the request of the Contractor, give the Contractor all reasonable assistance for the purpose of contesting any such claim, demand, or action as referred to in this **Clause 44**. The Contractor will reimburse the Authority for all costs and expenses (including legal costs) incurred in doing so and/or the Contractor will at its own expense conduct any litigation and all negotiations arising from such claim, demand or action, provided that the Authority may participate in such defence or negotiations to protect its interests or those of the Indemnified Parties.
- 44.11 In addition to the Contractor's obligation to indemnify the Indemnified Parties and any other rights which the Authority may have, if a claim or demand is made or action brought to which **Clause 44.10** applies or in the reasonable opinion of the Contractor is likely to be made or brought, or which causes the use of the Services or the Installed TC Equipment or other documentation or Indemnified Deliverables or any part thereof to be disrupted or impaired, the Contractor will after consultation with the Authority, at its own expense, promptly:
- 44.11.1 use its best endeavours to secure the right for the alleged infringing item to continue to be used on terms which are acceptable to the Authority;
- 44.11.2 if the right provided under **Clause 44.11.1** is not available, the Contractor having used its best endeavours to secure such right, then the Contractor will (if appropriate) modify the infringing or

alleged infringing item so as to avoid the infringement, provided such modification does not reduce the performance, functionality or quality of the said item and provided that the terms of this Contract will apply mutatis mutandis to such modified item and such item is accepted by the Authority; or

- 44.11.3 if such solution cannot be accomplished by the Contractor taking all such steps as are appropriate to achieve such outcome, then the Contractor will replace such item and substitute an alternative of at least equal performance, functionality and quality.
- 44.12 If the Contractor does not determine within ten (10) Business Days of a claim being presented to assume the defence of an indemnified claim within the required notice period, or ceases to defend the indemnified claim, the Authority will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Contractor, including payment of any judgement or award and the costs of settlement or compromise of the claim. In such instance, the Contractor will promptly reimburse and hold harmless the Authority for all such costs and expenses, (including legal costs).
- 44.13 The Contractor shall not (without the prior written approval of the London 2017 Limited in each case) represent that any TC Equipment, other equipment or Services provided under the Contract have been endorsed or approved by the Authority, the International Association of Athletics Federations (“IAAF”), International Paralympic Committee (“IPC”), UK Athletics, UK Sport or London 2017 Limited or any other official IAAF or IPC World Championships 2017 body, or that the Contractor (including any of its products or services) are in any way associated with those organisations, the IAAF or IPC World Championships 2017, including by publishing or issuing any statement (factual or otherwise) about the Contractor’s provision of the TC Equipment, other equipment or Services to the Authority.

45. **DATA**

- 45.1 The Contractor acknowledges the Authority’s ownership of and right to own and reserve all Intellectual Property Rights which may subsist in the Authority Data and hereby assigns upon creation any and all such existing and future Intellectual Property Rights in the Authority Data to the Authority (and/or its nominee) to use without further payment or restriction of any kind.
- 45.2 The Contractor will not:
 - 45.2.1 delete or remove any copyright notices contained within or relating to the Authority Data; or
 - 45.2.2 store, copy or disclose the Authority Data except as strictly necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised by the Authority.

- 45.3 The Contractor and the Authority will each take reasonable precautions (having regard to the nature of their other respective obligations under this Contract) to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 45.4 To the extent that the Authority Data is held and/or processed by the Contractor, the Contractor will promptly supply the Authority Data to the Authority as requested by, and in a format specified by, the Authority.
- 45.5 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by Contractor of any Authority Data, the Contractor will take all necessary precautions to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 45.6 In the event that the Authority Data is corrupted or lost or sufficiently degraded as a result of the Contractor's or the Contractor Personnel's negligence or Default so as to be unusable after its receipt or creation by the Contractor or during any collection, processing, storage or transmission by the Contractor or the Contractor Personnel of the Authority Data then in addition to any other remedies that may be available to the Authority under this Contract or otherwise, the Authority will have the option to elect either of the following remedies:
- 45.6.1 the Authority may require the Contractor at its own expense to restore or procure the restoration of the Authority Data and the Contractor will use its best endeavours to do so as soon as possible; or
- 45.6.2 the Authority may itself restore or procure the restoration of the Authority Data, and will be repaid by the Contractor any reasonable expenses so incurred.
- 45.7 If at any time the Contractor suspects or has reason to believe that the Authority Data has or may become corrupted in any way for any cause then the Contractor will immediately notify the Authority of such and inform the Authority what remedial action it proposes to take.
- 45.8 In respect of any enforcement data generated by the Installed TC Equipment, the Contractor will:
- 45.8.1 not, and will procure that the Contractor Personnel do not, decrypt or attempt to decrypt any Authority Data which is in a decrypted format;
- 45.8.2 ensure that such data is delivered securely and safely to the Authority and that no unauthorised persons have access to such data at any time.

46. **RECORDS, AUDIT AND INSPECTION**

46.1 The Contractor shall, and shall procure that its Sub-Contractors and Indirect Subcontractors will:

46.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Contractor's obligations under this Contract and all transactions entered into by the Contractor for the purposes of this Contract (including time-sheets for the Contractor's personnel where such records are material to the calculation of the Charges). Without prejudice to the generality of the foregoing, such list shall include the following:

- 46.1.1.1 all necessary information for the evaluation of claims or compensation events, whether or not relating to Subcontractors and/or Indirect Subcontractors in relation to Capital Works;
- 46.1.1.2 management accounts, information from management information systems and any other management records;
- 46.1.1.3 accounting records (in hard copy as well as computer readable data);
- 46.1.1.4 Sub-Contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- 46.1.1.5 original estimates;
- 46.1.1.6 estimating worksheets;
- 46.1.1.7 correspondence;
- 46.1.1.8 compensation event files (including documentation covering negotiated settlements);
- 46.1.1.9 schedules including Capital Works costs, timetable and progress towards Commissioning;
- 46.1.1.10 general ledger entries detailing cash and trade discounts and rebates;
- 46.1.1.11 commitments (agreements and leases) greater than **REDACTED**;
- 46.1.1.12 detailed inspection records;
- 46.1.1.13 records of the Reporting Period Value of Capital Works as required in accordance with **Schedule 8**;

- 46.1.1.14 such materials prepared in relation to the invitation to participate and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Authority as part of the Capital Works; and
 - 46.1.1.15 accounts and records of the Price for Work Done to Date (as defined in **Schedule 6**) and all other amounts to be paid to the Contractor under this Contract,
- being the ("**Records**"); and
- 46.1.2 retain all Records during the Term and for a period of not less than 12 (twelve) years (or such longer period as may be required by Applicable Law) following termination or expiry of this Contract ("**Retention Period**").
- 46.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Contractor what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Contractor's performance of the Services (including the Contractor's technical and organisational security measures as required by **Clause 43.1.5**) and (if applicable) to test the Services to ascertain the conformance of the Services with this Contract.
- 46.3 For the purposes of exercising its rights under **Clause 46.2**, the Contractor will promptly provide (and will procure that its Sub-Contractors and Indirect Subcontractors promptly provide) the Authority and/or any person nominated by the Authority with all reasonable co-operation including:
 - 46.3.1 granting access to any premises, equipment, plant, machinery or systems (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the Contractor's performance of this Contract wherever situated and, where such premises, equipment, plant, machinery or systems are not the Contractor's own, using all reasonable endeavours to procure such access;
 - 46.3.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;
 - 46.3.3 providing a reasonable number of copies of any Sub-Contracts and other documents or Records reasonably required by the Authority and/or any auditor and/or granting copying facilities to the Authority and/or any auditor for the purposes of making such copies,
 - 46.3.4 complying with the Authority's and/or any auditor's reasonable requests for access to senior Contractor Personnel engaged by the Contractor in the performance of this Contract and/or the Services;

- 46.3.5 making all Records and other documents and records required to be maintained under this Contract available for audit and inspection and providing copies of any Records if requested; and
 - 46.3.6 making the Contractor's personnel available for discussion with the Authority.
- 46.4 Any audit, inspection and/or testing by the Authority pursuant to **Clause 46.2** will not relieve the Contractor (or any of its Sub-Contractors) from any obligation under this Contract or prejudice any of the Authority's rights, powers or remedies against the Contractor.
- 46.5 If as a result of any audit, inspection and/or testing pursuant to **Clause 46.2** the Authority is not satisfied that the Services are conforming or will conform in all respects with this Contract and the Authority so informs the Contractor, the Contractor will take all steps necessary to ensure conformance. The Contractor will reimburse the Authority's costs in undertaking any further audits to check the Contractor's compliance.

47. **QUALITY AND BEST VALUE**

The Contractor acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Contractor will assist the Authority to discharge the Authority's duty where possible, and in doing so, carry out any review of the Services where reasonably requested by the Authority from time to time. The Contractor agrees to negotiate in good faith (acting reasonably) any changes to this Contract in order for the Authority to achieve best value.

48. **SECURITY FOR DUE PERFORMANCE**

- 48.1 The Contractor will provide, at the Contractor's expense, a parent company guarantee (from such Holding Company as the Authority may require) in the form contained in **Schedule 18** and, if requested by the Authority, a legal opinion as to its enforceability in the form contained in the Appendix to **Schedule 18**.
- 48.2 If the Authority requires the Contractor to obtain a performance bond at any time during the Term, then the Contractor shall obtain a performance bond within ten (10) Business Days of such request, which shall be at the Authority's reasonable cost (provided the cost is agreed with the Authority in advance of the bond being put in place) and which shall be in the form contained in **Schedule 19** with such amendments as the Authority may agree with the Contractor (with both Parties acting reasonably).

- 48.3 For the avoidance of doubt, if a performance bond is required by the Authority, the Contractor will ensure that the performance bond is granted for the Initial Term and, if required by the Authority, is extended at the relevant time to cover any extended term agreed between the Parties.
- 48.4 The Authority will not be obliged to make any payment to the Contractor under this Contract (whether for the Charges or otherwise) unless and until the Contractor has complied with **Clause 48.1**.
- 48.5 The Contractor will be regarded as being in material breach of this Contract which is incapable of remedy in the event that any parent company guarantee or, where applicable, performance bond required by the Authority is or becomes invalid or otherwise unenforceable.

49. **SET OFF**

In addition to any and all other rights of the Authority and the TfL Group (whether at common law or under equity under this Contract), all damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority arising out of or attributable to this Contract or any other contract between the Authority and the Contractor may be deducted by the Authority from monies due or which may become due to the Contractor under this Contract or under any other contract with any member of the TfL Group or the Authority may recover such amount as a debt.

50. **CONFLICT OF INTEREST**

- 50.1 The Contractor warrants that it does not and will not have at the Contract Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the Services or the Authority or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Authority.
- 50.2 The Contractor will undertake ongoing checks for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and will notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the provision of the Services or the Authority or any member of the TfL Group and will work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Contract in accordance with **Clause 32.1.12**.

51. **COPYRIGHT IN CONTRACT**

Copyright in the documents comprising this Contract, the Schedules and Appendices will vest in the Authority but the Contractor may obtain or make at its own expense any further copies required for use in the performance of the Services.

52. **VARIATIONS TO THE CONTRACT**

- 52.1 Additions to and/or amendments to and/or deletions of the Sites and the Installed TC Equipment may be made by the Authority by notifying the Contractor using the SFM or otherwise in writing.
- 52.2 The Maintenance Charges for Maintenance to Sites and Installed TC Equipment added to or removed from the Contract shall be varied to reflect the Contractor's increase or decrease in Sites and/or TC Equipment in accordance with, inter alia, **Schedule 5**.
- 52.3 Without prejudice to the provisions of **Clauses 52.1** and **52.2** above, in respect of the Authority's right to add or remove Sites and/or Installed TC Equipment and/or save as otherwise expressly provided in this Contract, this Contract may only be varied or amended with the written agreement of both Parties in accordance with the Change Control Procedure.
- 52.4 Save as set out in this Clause, a variation will not be binding and the Authority will have no obligation to pay for any work undertaken or goods or services provided by the Contractor in connection with any variation unless such variation has been made in accordance with the Change Control Procedure.

53. **NOVATION**

- 53.1 The Authority may assign, novate or otherwise transfer this Contract (in whole or in part). Within ten (10) Business Days of a written request from the Authority, the Contractor will, at its expense, execute one or more agreements substantially in the form specified in **Schedule 17** with such amendments as the Authority may require by which the Authority will transfer all or part of its rights and obligations under this Contract to one or more persons nominated by the Authority.
- 53.2 The Contractor may not assign, novate or otherwise transfer this Contract (in whole or in part) without the prior written consent of the Authority which may be refused or granted subject to such conditions as the Authority sees fit.

54. **NOTICES AND COMMUNICATIONS**

- 54.1 Subject to **Clauses 54.4** and **54.5** any notice or demand required to be given in accordance with this Contract will be in writing, in the English language and:

54.1.1 delivered by hand; or

54.1.2 sent by pre-paid first class post or recorded delivery post,

to the relevant Party using the appropriate contact information detailed in **Schedule 1** (or such other contact information as may be notified by the relevant Party to the other Party from time to time in accordance with this **Clause 54**).

54.2 Any notice or demand given in accordance with **Clause 54.1** will be deemed to have been served:

54.2.1 if delivered by hand, at the time of delivery;

54.2.2 if sent by pre-paid first class post or recorded delivery post at 9.00 am two (2) Business Days after the date of posting,

provided that if a notice or demand is served before 9.00 am on a Business Day it will be deemed to be served at 9.00 am on that Business Day and if it is served on a day which is not a Business Day or after 5.00 pm on a Business Day it will be deemed to be served at 9.00 am on the immediately following Business Day.

54.3 To prove service of a notice or a demand it will be sufficient to prove that the provisions of this **Clause 54** were complied with.

54.4 Any communications of an operational nature may be given not only in accordance with **Clause 54.1** but also via the SFM or any other System of a like nature that the Engineer may reasonably require the Contractor to input or operate. Without prejudice to the generality of the foregoing, Works Instructions, documents drafted (including Design Documentation) and submissions made by the Contractor to the Authority under this Contract must be in writing and sent by fax, post, e-mail and/or inputted onto Systems nominated by the Authority and which, at the Contract Commencement Date, shall include the SFM.

54.5 This **Clause 54** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

55. **WAIVER**

55.1 No failure or delay by any Party hereto in exercising any right, power or privilege under this Contract will impair such right, power or privilege or be construed as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

55.2 No waiver of any of the provisions of this Contract will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

55.3 The rights and remedies of the Authority herein provided are cumulative and in addition to and not exclusive of any rights and remedies provided by law.

56. **INVALIDITY AND SEVERABILITY**

56.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if this Contract had been executed with the invalid, illegal, or unenforceable provision eliminated.

- 56.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Authority and the Contractor will immediately commence good faith negotiations to remedy such invalidity.

57. **RELATIONSHIP OF THE PARTIES**

- 57.1 Nothing in this Contract will constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, will either Party be deemed to be the agent of the other.
- 57.2 Subject to any express provisions to the contrary in this Contract, the Contractor will have no right or authority to and will not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Authority or bind the Authority in any way.

58. **SURVIVAL**

The provisions of **Clauses 10, 17, 18, 20, 21, 22, 24, 27, 33, 34, 40, 41, 42, 43, 44, 45, 46, 48, 49, 51, and 54 to 67** (inclusive) and **Schedules 9 and 10** and any other Clauses or Schedules that are necessary to give effect to those Clauses will survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract will do so.

59. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 59.1 Subject to **Clauses 59.2 and 59.3**, the Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**") by any person not a Party to it.
- 59.2 Any member of the TfL Group and/or any other Service Recipients and/or any Replacement Contractor shall have the right to enforce the terms of this Contract conferring a benefit upon them including under the Capital Works Conditions of Contract (**Schedule 6 Part A**) and/or any other terms conferring a benefit on them in accordance with the Third Party Act.
- 59.3 Without limitation to **Clause 59.2**, the Service Recipients and the Indemnified Parties shall have the right to bring a claim direct against the Contractor pursuant to **Clause 21** (Liability) and **Clause 44** (Intellectual Property Rights), together with the right to enforce any other provision of this Contract that confers a right or benefit on them, including **Clause 29** (Access to Premises), **Clause 40** (Confidentiality) and **Clause 45** (Data) in accordance with the provisions of the Third Party Act.
- 59.4 The Parties reserve the right to rescind, novate or vary this Contract or vary any terms, or part of it, without the consent of the Indemnified Parties or any member of the TfL Group or the Service Recipients (other than the Authority).

60. **ENTIRE AGREEMENT**

60.1 Subject to **Clause 60.2**:

60.1.1 this Contract and all documents referred to in this Contract, contains all of the terms which the Parties have agreed relating to the subject matter of this Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Contract by a statement which this Contract does not contain; and

60.1.2 without prejudice to the Contractor's obligations under this Contract, the Contractor is responsible for and will make no claim against the Authority in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of this Contract or any incorrect or incomplete information howsoever obtained.

60.2 Nothing in this **Clause 60** excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

61. **SUCCESSORS**

This Contract will be binding upon and benefit each Party to this Contract and their successors and permitted assigns.

62. **COSTS AND EXPENSES**

Each Party will be responsible for all its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Contract and all matters contemplated by this Contract.

63. **FURTHER ASSURANCE**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Contract.

64. **COUNTERPARTS**

This Contract may be executed in any number of counterparts and by the Parties on different counterparts and each such counterpart will constitute an original of this Contract but all the counterparts will together constitute one and the same instrument.

65. **EQUITABLE REMEDIES**

For the avoidance of doubt, no provision of this Contract will have the effect of removing or reducing any equitable remedies available to the Authority

including, but not limited to, the Authority's rights to seek an order for specific performance by the Contractor.

66. **DISPUTE RESOLUTION**

66.1 In order to overcome differences and avoid disputes and where this cannot be achieved to facilitate their clear definition and early resolution (whether by agreement or otherwise) the Parties will first follow the procedure set out in **Clause 66.3** in respect of all disputes in relation to this Contract (save that either Party will have the right to refer a dispute to adjudication at any time in accordance with **Clause 66.5**). The Parties may then follow the procedures set out in **Clauses 66.4** or **66.5** or proceed to litigation in accordance with **Clause 67**.

66.2 The Contractor will continue to provide the Services in accordance with this Contract and without delay or disruption whilst a Dispute is being resolved.

66.3 **Escalation**

66.3.1 As soon as either Party becomes aware of any matter which if not resolved might become a dispute it will so advise the other Party in writing.

66.3.2 The Authority and the Contractor will use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Contract ("**Dispute**").

66.3.3 If the Dispute is not settled through discussion between the Engineer and the Contractor's Contract Manager within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.

66.4 **Mediation**

66.4.1 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.

66.4.2 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator will be divided equally between the Parties or as the Parties may otherwise agree in writing.

66.4.3 Where a Dispute is referred to mediation under this **Clause 66.4**, the Parties:

- 66.4.3.1 will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend; and
- 66.4.3.2 agree to co-operate fully with such a mediator and to provide such assistance as is necessary to enable the mediator to discharge its duties.

All negotiations connected with respect to the Dispute will be conducted in confidence and without prejudice to the rights of the Parties in any future court proceedings.

- 66.4.4 If the Parties reach agreement on the resolution of the Dispute, such agreement will be recorded in writing and once signed by the Parties' authorised representatives, it will be final and binding on the Parties.
- 66.4.5 If the Parties fail to reach agreement within forty (40) Business Days of the appointment of the mediator, such failure will be without prejudice to the right of either Party to refer the Dispute to the English courts. In addition, failing agreement, either of the Parties may invite the mediator to provide a non-binding opinion in writing as to the merits of the Dispute and the rights and obligations of the Parties. Such opinion will be provided on a without prejudice basis and will be subject to the confidentiality provisions of this Contract.

66.5 **Adjudication**

- 66.5.1 In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays in England.
- 66.5.2 Either Party has the right to refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication.
- 66.5.3 The Adjudicator shall act impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 66.5.4 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Adjudicator Nominating Body to choose an adjudicator. Such joint appointment or referral to the Adjudicator Nominating Body shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.
- 66.5.5 The Adjudicator Nominating Body shall choose an adjudicator within four (4) days of the request. The chosen adjudicator shall become the "**Adjudicator**".
- 66.5.6 A replacement Adjudicator shall have the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. The Adjudicator

shall deal with an undecided Dispute as if it had been referred to him on the date he was appointed.

- 66.5.7 The Adjudicator, his employees and agents shall not be liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 66.5.8 Before a Party refers a Dispute to the Adjudicator, that Party shall give a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this Contract that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that the Party wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Party issuing the Notice of Adjudication shall immediately send a copy of the Notice of Adjudication to the Adjudicator. Within three (3) days of the receipt of the Notice of Adjudication, the Adjudicator shall notify the Parties:
 - 66.5.8.1 that he is able to decide the Dispute in accordance with this Contract; or
 - 66.5.8.2 that he is unable to decide the Dispute and has resigned.
- 66.5.9 If the Adjudicator does not so notify within three (3) days of the issue of the Notice of Adjudication, either Party may act as if he has resigned.
- 66.5.10 Within seven (7) days of a Party giving a Notice of Adjudication that Party shall:
 - 66.5.10.1 refer the Dispute to the Adjudicator;
 - 66.5.10.2 provide the Adjudicator with the information on which that Party relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
 - 66.5.10.3 provide a copy of the information and supporting documents that Party has provided to the Adjudicator to the other Party.
- 66.5.11 Upon receipt of the referral notice, the Adjudicator shall inform every Party to the Dispute of the date that it was received. Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, shall provide the Adjudicator with the information on which that Party relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.
- 66.5.12 The time periods set out in **Clauses 66.5.10** and **66.5.11** above may be extended if the Adjudicator and the Parties agree.

- 66.5.13 If a matter disputed by the Contractor under or in connection with a Sub-Contract is also a matter disputed under or in connection with this Contract the Contractor may, with the consent of the Sub-Contractor and the Authority, refer the Sub-Contract dispute to the Adjudicator at the same time as the main Contract referral. The Adjudicator shall then decide the disputes together and references to the Parties for the purposes of the dispute shall be interpreted as including the Sub-Contractor. The Parties shall comply with any reasonable request by the Adjudicator for more time to decide the disputes referred to him.
- 66.5.14 The Adjudicator may:
- 66.5.14.1 make directions for the conduct of the Dispute;
 - 66.5.14.2 review and revise any action or inaction of the Authority related to the Dispute and alter a quotation which has been treated as having been accepted;
 - 66.5.14.3 take the initiative in ascertaining the facts and the law related to the Dispute;
 - 66.5.14.4 instruct a Party to provide further information related to the Dispute within a stated time; and
 - 66.5.14.5 instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- 66.5.15 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.
- 66.5.16 The Adjudicator shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 66.5.17 A communication between a Party and the Adjudicator shall be communicated to the other Party at the same time.
- 66.5.18 Save as required by Applicable Law, the Parties and the Adjudicator shall keep information relating to the Dispute confidential.
- 66.5.19 For Disputes relating to Instructed Capital Works, if the Adjudicator's decision includes assessment of additional cost or delay caused to the Contractor, the Adjudicator shall make his assessment in the same way as a compensation event is assessed.
- 66.5.20 The Adjudicator shall decide the Dispute and notify the Parties of his decision and his reasons within twenty-eight (28) days of the

Dispute being referred to him. This period may be extended by up to fourteen (14) days with the consent of the Parties or by any other period agreed by the Parties.

- 66.5.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and expenses of the adjudication, excluding the Adjudicator's own remuneration and expenses, as between the Parties.
- 66.5.22 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his own remuneration and expenses as between the Parties.
- 66.5.23 Unless and until the Adjudicator has notified the Parties of his decision the Parties shall proceed as if the matter disputed was not disputed.
- 66.5.24 If the Adjudicator does not make his decision and notify it to the Parties within the time provided by this Contract the Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.
- 66.5.25 The Adjudicator's decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision shall be final and binding if neither Party has notified the other within the time required by this Contract that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts.
- 66.5.26 The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this clause, the Adjudicator shall deliver a copy of the corrected decision to each of the Parties. Any correction of a decision shall form part of the decision.
- 66.5.27 If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- 66.5.28 Unless the Parties agree otherwise, a Party shall not refer any Dispute under or in connection with this Contract to the courts unless it has first been decided by the Adjudicator in accordance with this Contract.

66.5.29 If, after the Adjudicator notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the Adjudicator's decision.

66.5.30 The courts shall settle the Dispute referred to it. The courts shall have the power to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Authority related to the Dispute. A Party shall not be limited in court proceedings to the information or evidence put to the Adjudicator.

66.5.31 Neither Party shall call the Adjudicator as a witness in court proceedings.

67. **LAW AND JURISDICTION**

This Contract (and all non-contractual rights and obligations arising out of or in connection with it) will be governed by and construed in accordance with the laws of England. Without prejudice to **Clause 66**, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

This Contract has been signed by for and on behalf of the Parties on the day and year written above.

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| Signed by |) | |
| |) | |
| |) | |
| For and on behalf of |) | |
| Siemens Plc |) | |

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|-----------------------------|---|-------|
| Signed by |) | |
| |) | |
| |) | |
| For and on behalf of |) | |
| Transport for London |) | |