

*[SUBJECT TO CONTRACT]*

Framework Number:

Call-Off Contract Number:

Date: [                      ]

**Call- Off Contract**  
***[Call-off Contract Name]***

**between**

***[TFL or TTL if revenue generating]***

**and**

***[Name of Service Provider]***

**[Note: items highlighted in yellow are for action/completion by the Authority  
when the draft Call-Off Contract is issued to the Service Provider for a  
particular Call-Off]**

## Table of Contents

1	DEFINITIONS AND INTERPRETATION .....	4
2	COMMENCEMENT AND DURATION .....	20
3	TRANSITION.....	21
4	THE SERVICES .....	21
5	PERFORMANCE REGIME .....	22
6	NOT USED.....	22
7	NOT USED.....	22
8	NOT USED.....	22
9	MAJOR INCIDENT MANAGEMENT .....	22
10	CHARGES .....	22
11	PAYMENT PROCEDURES AND APPROVALS .....	23
12	WARRANTIES, OBLIGATIONS AND PARENT COMPANY GUARANTEES AND BONDS.....	25
13	OPERATIONAL MANAGEMENT .....	27
14	SERVICE PROVIDER PERSONNEL.....	27
15	KEY PERSONNEL.....	31
16	CORRECTIVE ACTION NOTICES .....	32
17	SUB-CONTRACTING AND CHANGE OF OWNERSHIP .....	32
18	CONFLICT OF INTEREST .....	33
19	ACCESS TO PREMISES AND ASSETS .....	33
20	COMPLIANCE WITH POLICIES AND LAW .....	34
21	CORRUPT GIFTS AND PAYMENT OF COMMISSION.....	36
22	EQUIPMENT .....	36
23	QUALITY AND BEST VALUE .....	37
24	RECORDS, AUDIT AND INSPECTION .....	37
25	SET-OFF.....	38
26	INDEMNITY AND LIMITATION OF LIABILITY .....	38
27	INSURANCE.....	40
28	THE AUTHORITY'S DATA.....	41
29	INTELLECTUAL PROPERTY RIGHTS .....	41
30	PROTECTION OF PERSONAL DATA .....	44
31	CONFIDENTIALITY, ANNOUNCEMENTS AND TRANSPARENCY .....	51
32	FREEDOM OF INFORMATION AND TRANSPARENCY .....	53
33	DISPUTE RESOLUTION.....	54

34	BREACH AND TERMINATION OF CONTRACT .....	55
35	CONSEQUENCES OF TERMINATION OR EXPIRY.....	58
36	HANDBACK OF SERVICES. ....	59
37	TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION.....	61
38	DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT .....	67
39	SURVIVAL .....	68
40	RIGHTS OF THIRD PARTIES .....	69
41	CONTRACT VARIATION .....	69
42	NOVATION .....	69
43	NON-WAIVER OF RIGHTS .....	70
44	ILLEGALITY AND SEVERABILITY .....	70
45	NOTICES .....	70
46	ENTIRE AGREEMENT.....	70
47	COUNTERPARTS.....	71
48	RELATIONSHIP OF THE PARTIES .....	71
49	FURTHER ASSURANCE .....	71
50	AUTHORITY EVENTS.....	71
51	GOVERNING LAW .....	74
52	<b>[DRAFTING NOTE: INSERT ANY ADDITIONAL CLAUSES FROM HERE OR DELETE THIS LINE]</b> .....	74
1	SCHEDULE 1 - KEY CONTRACT INFORMATION .....	75
	APPENDIX 1 – AUTHORITY PERIODS.....	78
2	SCHEDULE 2 – OVERVIEW OF THE CONTRACT.....	79
	APPENDIX 1 - SERVICE DEPENDENCIES AND MATERIALS .....	81
3	SCHEDULE 3 - TRANSITION.....	82
4	SCHEDULE 4 – SERVICE SCOPE SPECIFICATION .....	97
	APPENDIX 1 TO SCHEDULE 4 - PROCESS DOCUMENTS AT THE DATE OF THE CONTRACT .....	98
5	SCHEDULE 5 – TRAINING .....	99
6	SCHEDULE 6 – SYSTEMS INTEGRATION.....	103
7	SCHEDULE 7 – PRICING SCHEDULE.....	106
8	SCHEDULE 8 – SERVICE MANAGEMENT .....	108
	APPENDIX 1 - SERVICE LEVELS.....	121
	APPENDIX 2 – SERVICE PERFORMANCE REPORTS.....	122
	APPENDIX 3 – MAJOR INCIDENT LIST .....	123

<b>APPENDIX 4 – DASHBOARD REQUIREMENTS .....</b>	<b>125</b>
<b>9 SCHEDULE 9 – FORM OF VARIATION .....</b>	<b>126</b>
<b>10 SCHEDULE 10 – NOT USED .....</b>	<b>139</b>
<b>11 SCHEDULE 11 – HANDBACK OF SERVICE .....</b>	<b>140</b>
<b>12 SCHEDULE 12 – NOT USED .....</b>	<b>144</b>
<b>13 SCHEDULE 13 – NOT USED .....</b>	<b>145</b>
<b>14 SCHEDULE 14 – ASSURANCE .....</b>	<b>146</b>
<b>15 SCHEDULE 15 – SERVICE PROVIDER CONFIDENTIAL INFORMATION 149</b>	
<b>16 SCHEDULE 16 – SUPPLIER DIVERSITY .....</b>	<b>150</b>
<b>17 SCHEDULE 17 – STRATEGIC LABOUR NEEDS AND TRAINING TERMS AND CONDITIONS.....</b>	<b>168</b>
<b>APPENDIX 1 TO SCHEDULE 17.....</b>	<b>172</b>
<b>APPENDIX 2 TO SCHEDULE 17.....</b>	<b>173</b>
<b>APPENDIX 3 TO SCHEDULE 17.....</b>	<b>174</b>
<b>APPENDIX 4 TO SCHEDULE 17.....</b>	<b>175</b>
<b>APPENDIX 5 TO SCHEDULE 17.....</b>	<b>178</b>

THIS CONTRACT is made the                      day of 20[   ]

**BETWEEN:**

- (1) [ **insert relevant name to match front page** ] (“the Authority”); and
- (2) [ **insert full service provider name from Framework Agreement**], a company registered in England and Wales (Company Registration Number [ **insert company registration number** ]) whose registered office is at [ **insert company registered address** ] (“the Service Provider”).

**RECITALS:**

- A. [                      ] (“the Contracting Authority”) and the Service Provider have entered into an agreement dated [                      ] which sets out the framework for the Service Provider to provide certain services to the Contracting Authority or the Authority (“the Agreement”).
- B. The Authority wishes the Service Provider to provide the specific Services described in this Call-Off Contract and the Service Provider has agreed to provide such Services to the Authority on the terms and conditions set out in this Call-Off Contract.

**THE PARTIES AGREE THAT:**

**1 DEFINITIONS AND INTERPRETATION**

In the Contract (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings.

“the Affected Party”	shall have the meaning given to it in the definition of “ <b>Force Majeure Event</b> ”;
“the Agreement” (or “the Framework Agreement”)	shall have the meaning given in Recital A;
“Alert”	an alert or issue which indicates that an Incident is imminent or has occurred;
“Assurance”	the process referred to in Schedule 14 (Assurance), by which the Service Provider ensures that the Authority gains the necessary levels of confidence that the Service Provider is complying with its obligations under the Contract and, in particular, in relation to the delivery of the Services, and <b>Assure</b> and <b>Assured</b> shall be construed accordingly;
“Assurance Event”	an event whose purpose is to Assure the Authority as to the relevant status of activities being undertaken by the Service Provider pursuant to this Contract;

**“Authority Assets”**

any assets (whether tangible or intangible), materials (including consumables), resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Authority or any member of the Authority Group [including those identified in paragraph 1 of Schedule 6] [DRAFTING NOTE: DELETE THESE WORDS WHERE TFL IS NOT PROVIDING SPECIFIC ASSETS TO THE SERVICE PROVIDER TO UTILISE IN PERFORMING THE CONTRACT];

**“Authority Events”**

means any of:

- a) any failure by the Authority to meet a Transition Dependency ; or
- b) a failure by the Authority to provide any of the Authority Assets identified in paragraph 1 of Schedule 6 (Systems Integration) or any failure (other than one for which the Service Provider or any of its sub-contractors is responsible) of any such assets to perform as reasonably required in order to enable the Service Provider to perform the Services in accordance with its obligations under this Contract; ~~for~~

- c) a failure by the Authority to provide any of the Authority accommodation or services identified in Schedule 36 (Systems Integration) as reasonably required in order to enable the Service Provider to perform the Services in accordance with its obligations under this Contract; ~~or~~ ]  
[DRAFTING NOTE: PARA (C) TO BE DELETED UNLESS ACCOMMODATION/SERVICES BEING PROVIDED BY TFL AS REFERENCED IN CLAUSE 19.3/SCHEDULE 6]

- d) a failure by the Authority to meet any of the Service Dependencies

in each case howsoever caused, including by the negligence of, or a deliberate and/or repudiatory breach by, the Authority (or the negligence of a person for whom it is vicariously responsible) but for the avoidance of doubt:-

- i) not to the extent that any such failure act or

omission is attributable to any breach, negligence or other default by:

1) the Service Provider;

2) a Third Party (which excludes for this purpose any agent, supplier or contractor appointed by the Authority whose appointment is relevant to the Contract and their act or omissions in that context); or

3) any person for whom the Service Provider or such Third Party is responsible; and

ii) shall not include a failure by the Authority to pay the Charges;

**“Authority Group”**

TfL or TTL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **“member of the Authority Group”** shall refer to TfL or any such subsidiary;

**“Authority Personnel”**

all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Authority, as are engaged in activity impacted by any of the Services;

**“Authority Premises”**

any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Authority Group);

**“Authority to Proceed”**

a notice issued by the Authority pursuant to paragraph 5.2 of Schedule 9 (Form of Variation);

**“Bond Provider Downgrade”**

means the bond provider of a Performance Bond no longer holds a long-term credit rating of at least ‘A+’ or its equivalent from any of the Rating Agencies which rate the bond provider;

**“Business Day”**

any day excluding Saturdays, Sundays or public or bank holidays in England;

**“Call-Off Contract”**

means this Contract or another Call-Off Contract entered into between the Authority and the Service Provider pursuant to the Agreement;

**“Cessation Plan”**

a plan agreed between the Parties or determined by the Authority pursuant to Clause 38.3 in the event a Declaration of Ineffectiveness is sought or Clause 38.9 to give effect to a Public Procurement

	Termination Event;
<b>“Change”</b>	any piece of work that changes, affects or reconfigures any aspect of the Services;
<b>“Change Date”</b>	shall have the meaning given in Clause 34.9;
<b>“CEDR”</b>	means the Centre for Effective Dispute Resolution;
<b>“Charges”</b>	the charges payable by the Authority, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Schedule 7 (Pricing Schedule) as the same may be varied from time to time in accordance with Clause 34.9 or Clause 41;
<b>“Compliance Certificate”</b>	shall have the meaning given in paragraph 2.4.3.1 of Schedule 3 (Transition);
<b>“Confidential Information”</b>	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Authority (or any member of the Authority Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Authority Group);
<b>“Consultation Period”</b>	shall have the meaning given in paragraph 2.4.16.2 of Schedule 3 (Transition);
<b>“Contract”</b>	means this contract including its Schedules, any appendices or annexes, and all ancillary documents as amended from time to time in accordance with its terms;
<b>“Contract Commencement Date”</b>	the date for commencement of the Contract specified in Schedule 1 (Key Contract Information);
<b>“Contract Information”</b>	<ul style="list-style-type: none"> <li>a) the Contract in its entirety (including from time to time agreed changes to the Contract); and</li> <li>b) data extracted from the invoices submitted pursuant to Clause 11 which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice</li> </ul>



	amount;
<b>“Contract Manager”</b>	the person named as such in Schedule 1 (Key Contract Information) or such other person as notified to the Service Provider by the Authority;
<b>“Corrective Action Notice”</b>	a notice issued by the Authority pursuant to Clause 16 (Corrective Action Notices);
<b>“COTS Product”</b>	a commercial off-the-shelf product used by the Service Provider in the performance of the Services and available for purchase by the general public including by the Authority, any member of the Authority Group and any Successor Operator(s);
<b>“CPI”</b>	Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree or in the absence of agreement, the Authority may determine, acting reasonably;
<b>"Data"</b>	data compiled, generated, collected, processed or stored during the performance of the Services (or any part thereof), including personal data and data supplied to a member of the Authority Group and/or Third Parties in connection with the Services or this Contract;
<b>“Declaration of Ineffectiveness”</b>	A declaration made by a court under regulation 45J which has any of the consequences described in regulation 45M of the Utilities Contracts Regulations 2006 SI 2006/6 (the <b>“UCR”</b> ) as amended from time to time or which is made under an equivalent provision in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland and which has consequences which are similar to any of the consequences described in regulation 45M of the UCR;
<b>“Detailed Transition Plan”</b>	has the meaning given in paragraph 2.2.2 of Schedule 3 (Transition);
<b>“Dispute”</b>	shall have the meaning given in Clause 33.1;
<b>“Dispute Resolution Procedure”</b>	the procedure detailed in Clause 33;
<b>“Document”</b>	operating manuals, program listings, data models, flowcharts, logic diagrams, input and output forms, instructions, technical literature (including, drawings, designs, blue prints,

schematics and plans), equipment and component inventories, source codes, functional specifications, testing specifications, performance specifications, physical specifications, interface specifications, written processes and procedures, all documents required under this Contract and all other related materials in eye-readable or electronic form and complete or partial copies of the foregoing (and “**Documentation**” shall be interpreted accordingly);

**“End Date”**

the date on which the Service Provider ceases to be responsible for the provision of a particular Service pursuant to the provisions of this Contract which shall be:

a) the end of the Initial Term or, where applicable, of any Extension Year(s) added in accordance with Clause 2 (Commencement and Duration), or any earlier effective date of termination in accordance with any notice to terminate under Clause 34 (Breach and Termination of Contract); or if later

b) the end of the period during which any of the activities required under Schedule 11 (Handback of Services) and/or the Handback Plan are or are to be carried out in relation to that Service;

**“Existing Contract Handback Plan”**

**[DRAFTING NOTE: TO BE COMPLETED ON A CONTRACT BY CONTRACT BASIS DEPENDING ON WHETHER /WHAT PLAN IS AVAILABLE FROM EXISTING CONTRACT – SEE SCHEDULE 3 (TRANSITION)]**

**“Existing Contract Handback Programme”**

**[DRAFTING NOTE: TO BE COMPLETED ON A CONTRACT BY CONTRACT BASIS DEPENDING ON WHETHER /WHAT PROGRAMME IS AVAILABLE FROM EXISTING CONTRACT – SEE SCHEDULE 3 (TRANSITION)]**

**“Existing Services”**

the services carried out by the Existing Service Provider;

**“Existing Service Provider”**

the service provider(s) providing services which are equivalent, similar or facilitate the same or similar outcome to the Services, prior to the Services being transitioned to the Service Provider (which may include an entity

	within the Authority Group);
<b>“Expiry Date”</b>	<p>the date of the final End Date under this Contract, which shall be:-</p> <p>a) the end of the Initial Term or, where applicable, of any Extension Year(s) added in accordance with Clause 2 (Commencement and Duration), or any earlier effective date of termination in accordance with any notice to terminate under Clause 34 (Breach and Termination of Contract); or if later</p> <p>b) the end of the period during which any of the activities required under Schedule 11 (Handback of Services) and/or the Handback Plan are or are to be carried out;</p>
<b>“Extension Years”</b>	shall have the meaning given in Clause 2.2;
<b>“Final Service Transition Milestone”</b>	has the meaning set out in paragraph 2.3.1.2.4 of Schedule 3 (Transition);
<b>“FOI Legislation”</b>	the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
<b>“Force Majeure Event”</b>	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ( <b>“Affected Party”</b> ) to perform its obligations in accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
<b>“Handback Period”</b>	the period from the earlier of:-

	<p>a) the end of the Initial Term or, where applicable, of any Extension Year(s) added in accordance with Clause 2 (Commencement and Duration); and</p> <p>b) the date on which any notice to terminate this Contract pursuant to Clause 34 (Breach and Termination of Contract) takes effect until the Expiry Date;</p>
<b>“Handback Plan”</b>	the plan for the orderly handover of Service to the Authority or its nominee which is to be developed by the Parties pursuant to Schedule 11 (Handback of Services);
<b>“Handback Programme”</b>	shall have the meaning given in paragraph 2.2 of Schedule 11 (Handback of Service);
<b>“High-Level Transition Plan”</b>	shall have the meaning given in paragraph 2.2.1.1 of Schedule 3 (Transition);
<b>“Holding Company”</b>	any company which from time to time directly or indirectly controls the Service Provider as set out by section 1159 of the Companies Act 2006;
<b>“Incident”</b>	a system or service or part thereof not fulfilling all of the requirements as set out in Schedule 4 (Service Scope Specification);
<b>“the Indemnified Party”</b>	shall have the meaning given in Clause 26.1;
<b>“Information”</b>	information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority;
<b>“Information Access Request”</b>	a request for any Information under the FOI Legislation;
<b>“Initial Term”</b>	shall have the meaning given in Clause 2.1;
<b>“Innocent Party”</b>	shall have the meaning given in Clause 34.3;
<b>“Interim Service Transition Milestones”</b>	shall have the meaning given in paragraph 2.3.1.2.2 of Schedule 3 (Transition);
<b>“Insolvency Event”</b>	<p>any of the following:</p> <p>a) either or both of the Service Provider or a Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;</p> <p>b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or</p>

both of the Service Provider or a Holding Company;

- c) being a company, either or both of the Service Provider or a Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- d) either or both of the Service Provider or a Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- e) being an individual or firm, the Service Provider becoming bankrupt or dying;
- f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider or a Holding Company under the law of any applicable jurisdiction for those purposes;

**“the Insurances”**

**“Intellectual Property Rights”**

shall have the meaning given in Clause 27.1;

any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

**“Key Personnel”**

the Service Provider Contract Manager, the Service Provider Incident Manager and such other Service Provider Personnel who the Parties may agree to designate as Key Personnel from time to time as detailed in Schedule (Key Contract Information);

**“Losses”**

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, ~~indirect or consequential losses~~ es (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like

	loss), damages, claims, demands, proceedings and judgments;
<b>“Major Incident”</b>	means an incident described in Appendix 3 (Major Incident List) of Schedule 8 (Service Management) as amended from time to time;
<b>“Major Incident Plan”</b>	means the plan for managing a Major Incident as developed by the Service Provider in accordance with the requirements set out in Schedule 8 (Service Management);
<b>“Material(s)”</b>	shall have the meaning given in Clause 22.1.2 but excludes any Authority Assets;
<b>“Milestone”</b>	an event which is the completion of one or more specified activities;
<b>“Non-Compliance Certificate”</b>	shall have the meaning given in paragraph 2.4.3.3 of Schedule 3 (Transition);
<b>“Notice”</b>	shall have the meaning given in Clause 33.3;
<b>“Parent Company Guarantee”</b>	where the same has been required by the Authority in relation to this Contract, a guarantee by a Holding Company or other person approved in writing by the Authority of the Service Provider’s pursuant to this Call-Off Contract;
<b>“Parties”</b>	the Authority and the Service Provider (including their successors and permitted assignees) and <b>“Party”</b> shall mean either of them as the case may be;
<b>“Period”</b>	means each period typically of twenty eight (28) days within the Authority financial calendar as set out in Appendix 1 of Schedule 1 (Key Contract Information) or otherwise supplied by the Authority from time to time;
<b>“Performance Bond”</b>	where the same has been required by the Authority in relation to this Agreement, a performance bond in the form provided in the Framework Agreement or such other form as has been approved by the Authority from time and (where applicable) includes any replacement bond provided by the Service Provider pursuant to Clause 12;
<b>“Post-Transition Phase”</b>	shall have the meaning set out in paragraph 2.1.1.3 of Schedule 3 (Transition);
<b>“Pre-Transition Phase”</b>	shall have the meaning set out in paragraph 2.1.1.1 of Schedule 3 (Transition);

<b>“Process Document(s)”</b>	has the meaning given in Schedule 4 (Service Scope Specification);
<b>“Procurement Regulations”</b>	a reference to the Procurement Regulations in clause 38 shall be interpreted in a manner which is consistent with a decision of a court that the Utilities Contracts Regulations 2006 SI 2006/6 (as amended from time to time), or the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time), apply to this Contract;
<b>“the Products”</b>	all Documents, drawings, hardware, computer software and any other work prepared or developed by or on behalf of the Service Provider <u>pecifically for the Authority</u> in the provision of the Services;
<b>“Public Procurement Termination Event”</b>	the Authority exercises its right to terminate the Contract in one or more of the circumstances described in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time) and which has circumstances similar to any of the circumstances described in Article 90 of the Directive 2014/25/EU;
<b>“Proposed Variation”</b>	a Variation issued by the Authority where the preparation and agreement of the Service Provider’s proposal occurs prior to the implementation of the Variation;
<b>“Proposed Variation Notice”</b>	shall have the meaning given to it in Schedule 9 (Form of Variation);
<b>“Proprietary Tools”</b>	a tool, system, piece of software, software licence or equipment (a "tool") which in accordance with this Contract is not to be made available on handback to a Successor Operator;
<b>“Qualified Compliance Certificate”</b>	shall have the meaning given in paragraph 2.4.3.2 of Schedule 3 (Transition);
<b>“Rating Agency”</b>	means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies Inc., and its successors ( <b>“S&amp;P”</b> ) or Fitch Ratings Limited and its successors ( <b>“Fitch”</b> ) or Moody's Investors Services Limited, and its successors ( <b>“Moody’s”</b> );

<b>“Records”</b>	shall have the meaning given in Clause 24.1.1;
<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority Group and "Regulatory Body" shall be construed accordingly;
<b>“Relevant Protected Characteristic”</b>	shall have the meaning given to in Clause 20.1.4;
<b>“Required Variation”</b>	a Variation issued by the Authority where the Service Provider is required to proceed with the implementation of the Variation in parallel to the preparation and agreement of a Service Provider's proposal in respect of that Variation;
<b>“Required Variation Notice”</b>	shall have the meaning given to it in Schedule 9 (Form of Variation);
<b>“Required Variation Settlement Notice”</b>	a notice issued by the Authority pursuant to paragraph 5.4 of Schedule 9 (Form of Variation);
<b>“Retention Period”</b>	shall have the meaning given in Clause 24.1.2;
<b>“SCD Long Stop Date”</b>	subject to any extension in accordance with Clause 50 (Authority Events), shall have the meaning given in the table in paragraph 2.5 of Schedule 3 (Transition);
<b>“Senior Personnel”</b>	shall have the meaning given in Clause 33.2;
<b>“Service Bonus”</b>	means a measure of the addition to the Charges due to the Service Provider's performance bettering the specified Service Level and/or other performance criteria;
<b>“Service Credit”</b>	means a measure of the reduction to the Charges due to the Service Provider's performance failing to meet the specified Service Level and/or other performance criteria;
<b>“Service Commencement Date”</b>	the date for commencement of the [first of the] Services [or first phase of the Services (as the case may be) as] set out in Schedule 1 (Key Contract Information) or, if later the actual



date on which responsibility for the provision of any part of the Services transfers to the Service Provider in accordance with Schedule 3 (Transition); **[DRAFTING NOTE: TEXT TO BE AMENDED TO REFLECT WHETHER SERVICES ARE TO BE INTRODUCED TOGETHER, OR ON A PHASED BASIS AND/OR ON A PHASED SERVICE BY SERVICE BASIS. THE SERVICE COMMENCEMENT DATE IS THE FIRST DATE ON WHICH ANY SERVICES ARE PROVIDED]**

**“Service Dependencies”**

the dependencies that the Service Provider has on the Authority in the performance of the Services as identified at Appendix 1 of Schedule 2 (Overview of the Contract) as amended by agreement in writing from time to time

**“Service Levels”**

shall have the meaning given in Clause 5.1;

**“Service Performance Report”**

means the report of that name as described in Schedule 8 (Service Management);

**“Service Provider Confidential Information”**

shall have the meaning given in Clause 31.8;

**“Service Provider Equipment”**

the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under the Contract (including the Proprietary Tools) but excluding any Authority Assets;

**“Service Provider Group”**

the Service Provider in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together with each Holding Company of the Service Provider and any subsidiaries (as so defined) of any such Holding Company and reference to any **“member of the Service Provider Group”** shall refer to the Service Provider, any such Holding Company or any such subsidiary;

**“Service Provider Contract Manager”**

as defined in Clause 13.3. This role is designated as Key Personnel;

**“Service Provider Incident”**

as defined in Clause 13.5. This role is designated as Key Personnel;

**Manager”**

**“Service Provider Personnel”**

all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider, as are engaged in the performance of any of the Services and including the Key Personnel;

**“Service Provider Proposal Notice”**

shall have the meaning given to it in Schedule 9 (Form of Variation);

**“Service Provider Response”**

shall have the meaning given to it in Schedule 9 (Form of Variation);

**“Service Review Meeting”**

has the meaning given in Schedule 8 (Service Management);

**“Services”**

subject to Clause 34.9:-

a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under the Contract including those detailed in Schedule 3 Transition), Schedule 4 (Service Scope Specification), Schedule 8 (Service Management) and Schedule 11 (Handback), including any Variations to such services or activities pursuant to Clause 41; and

b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Contract;

**“Specification”**

the specification and other requirements set out in Schedule 4 (Service Scope Specification);

**“Submission Period”**

shall have the meaning given in paragraph 2.4.16.1 of Schedule 3 (Transition);

**“Successor Operator(s)”**

any person engaged by, or which may be engaged by, any member of the Authority Group, in its absolute discretion, in order to provide the Services (or parts thereof) or services and/or systems which replace the Services (or parts thereof), which may be the Authority or a member of the Authority Group where the Authority so determines;

**“Successor Plan”**

shall have the meaning given in Clause 36.4;

<b>“Term”</b>	the period during which the Contract continues in force as provided in Clause 2 (Commencement and Duration);
<b>“TfL”</b>	Transport for London, a statutory corporation established under the Greater London Authority Act 1999 (including its successors);
<b>“TfL Assurance Audit Programme”</b>	shall mean the programme described and developed in accordance with paragraph 3 of Schedule 14 (Assurance);
<b>“Third Party”</b>	any person or entity which is not a Party to this Contract, including without limitation any government body, but excluding any member of the Authority Group;
<b>“Third Party Act”</b>	shall have the meaning given in Clause 40.1;
<b>“Training Plan”</b>	shall have the meaning given in paragraph 3.1.1 of Schedule 5 (Training);
<b>“Training Programme”</b>	shall have the meaning given in paragraph 3.2.1 of Schedule 5 (Training);
<b>“Training Log”</b>	shall have the meaning given in paragraph 3.3.1 of Schedule 5 (Training);
<b>“Transition”</b>	means the transition of services from the Existing Services Provider to the Service Provider in accordance with Schedule 3 (Transition);
<b>“Transition Dependencies”</b>	means the Transition Dependencies described in paragraph 7.2 of Schedule 3 (Transition);
<b>“Transition Governance Group”</b>	means the group of that name described in paragraph 6 of Schedule 3 (Transition);
<b>“Transition Long-Stop Date”</b>	subject to any extension in accordance with Clause 50 (Authority Events), shall have the meaning given in the table in paragraph 2.5 of Schedule 3 (Transition);
<b>“Transition Milestone”</b>	means a Milestone relating to the Transition included in the High-Level Transition Plan and including those Milestones described in paragraph 2.3.1.2 of Schedule 3 (Transition);
<b>“Transition Milestone Completion Plan”</b>	has the meaning given in paragraph 2.4.1 of Schedule 3 (Transition);
<b>“Transition Milestone Criteria”</b>	means the criteria required to be satisfied for the achievement of any Transition Milestone, as described in Appendix 3 of Schedule 3

	(Transition);
<b>“Transition Milestone Date”</b>	means the date provided in the relevant Transition Plan for the achievement of a Transition Milestone;
<b>“Transition Period”</b>	means the period between the Contract Commencement Date until the end of the Post-Transition Phase;
<b>“Transition Phase”</b>	has the meaning given in paragraph 2.1.1.2 of Schedule 3 (Transition);
<b>“Transition Plan”</b>	shall mean (as the context requires) the High-Level Transition Plan described in paragraph 2.2.1.1 of Schedule 3 (Transition) or the Detailed Transition Plan described in paragraph 2.2.1.2 of Schedule 3 (and <b>“Transition Plans”</b> shall be interpreted accordingly);
<b>“Transparency Commitment”</b>	means the Authority's commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority's own published transparency commitments;
<b>“Variation”</b>	any variation to the Contract and/or the Services or their performance, including additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line and changes in any sequence, method, manner or timing, pursuant to Schedule 9 (Form of Variation) and Varied shall be construed accordingly;
<b>“VAT”</b>	value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.
<b>“VfM” or “Value for Money”</b>	means the optimum combination of whole-of-life costs and quality in respect of the Services;
<b>“Withdrawal Notice”</b>	a notice issued by the Authority pursuant to paragraph 5.4 of Schedule 9 (Form of Variation).

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall 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 shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;

- 1.4 a reference to any document other than as specified in Clause 1.3 (and save as expressed otherwise) shall be construed as a reference to the document as at the date of execution of the Contract (except that save as otherwise expressly provided, references to this Contract (or to any Schedule or appendix or annex to it) are references to those documents as they may be amended from time to time in accordance with the terms of this Contract);
- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses, Schedules, appendices, annexes and any ancillary document forming part of the Contract, the order of precedence will be as follows (except where the conflicting part of the relevant document ranked lower in the list is explicitly expressed to take precedence):
  - 1.7.1 the Clauses
  - 1.7.2 the Schedules
  - 1.7.3 the appendices
  - 1.7.4 the annexes
  - 1.7.5 any ancillary documents;
- 1.8 the Schedules (and any appendix or annex to any Schedule) form part of the Contract and will have the same force and effect as if expressly set out in the body of the 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; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

## **2 COMMENCEMENT AND DURATION**

- 2.1 The Contract commences on the Contract Commencement Date and shall continue, subject to Clause 2.2 and to earlier termination in accordance with Clause 34, until [XX-XX-20XX] (the “**Initial Term**”) or (if later having regard to the duration of any Handback Period) until the Expiry Date.
- 2.2 The Authority has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of [X] years (the “**Extension Years**”), following which any subsequent Handback Period shall apply, such that the provisions of this Contract shall continue until the

Expiry Date. The Authority shall serve such notice in writing to the Service Provider at least three months prior to the expiry of the Initial Term of the Contract or the expiry of any previous extension, if later.

### **3 TRANSITION**

- 3.1 The Service Provider and the Authority shall comply with their respective obligations set out in Schedule 3 (Transition) such that Transition will be completed in accordance with the Transition Plan and notwithstanding that the Contract will commence from and including the Contract Commencement Date, the specific responsibilities of the Parties in relation to the other Services will come into effect from the Service Commencement Date as provided in Schedule 3.

### **4 THE SERVICES**

#### **4.1 The Service Provider:**

- 4.1.1 shall provide the Services to the Authority in accordance with the Contract;
- 4.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;
- 4.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or to any misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Contract; and
- 4.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.

- 4.2 Notwithstanding anything to the contrary in the Contract, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;

#### **4.3 The Service Provider shall provide the Services:**

- 4.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
- 4.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
- 4.3.3 in a manner that will, on the termination or expiry of all or part of this Contract (or any of the Services), facilitate an orderly handover of the provision of such Services to the Authority and/or Successor Operator(s);
- 4.3.4 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;
- 4.3.5 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Contract is not being or is unable to be performed; and
- 4.3.6 meeting its obligations in accordance with Schedule 8 (Service Management).

- 4.4 Without limiting Clauses 40 and 42, where reasonably requested to do so by the Authority and provided the Service Provider is willing to so contract, the Service Provider shall contract with such other member(s) of the Authority Group as on the terms of this Contract with only the necessary changes of Parties' details being made.
- 4.5 Throughout the Term of the Contract the Service Provider shall when required give to the Authority such written or oral advice or information regarding any of the Services as the Authority may reasonably require.

## **5 PERFORMANCE REGIME**

- 5.1 From the Service Commencement Date the Service Provider will provide the Services in accordance with the required service levels set out in Schedule 8 (Service Management), each being a "**Service Level**".
- 5.2 The Service Provider will report to the Authority in relation to its provision of the Services as required by the reporting regime specified in this Contract (including Schedule 8 (Service Management)).
- 5.3 If the Service Provider fails to provide the Services in accordance with the Service Levels, then the Service Provider will take such action as is required pursuant to this Contract including payment of any Service Credits in accordance with the provisions of this Contract. If the Service Provider betters certain identified Service Levels as set out in Schedule 8 (Service Management) then, if and to the extent provided in Schedule 8, the Service Provider will be entitled to corresponding Service Bonuses in accordance with the provisions of this Contract. The payment of Service Credits is in addition and will be without prejudice to any other right or remedy of the Authority under the Contract or otherwise, provided that any Service Credits paid will be taken into account when assessing the quantum of any additional damages or other sums that may be due to the Authority under the Contract or otherwise.

## **6 NOT USED**

## **7 NOT USED**

## **8 NOT USED**

## **9 MAJOR INCIDENT MANAGEMENT**

- 9.1 The Service Provider shall comply with its obligations in respect of Major Incident Management in Schedule 8 (Service Management), including in respect of the development and maintenance of a Major Incident Plan).

## **10 CHARGES**

- 10.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 11 and in consideration of, and subject to the due and proper performance of the Services by the Service Provider in accordance with the Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and with the other terms and conditions of the Contract.
- 10.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 7 (Pricing Schedule) or have been incurred

with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

**10.3** All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

## **11 PAYMENT PROCEDURES AND APPROVALS**

11.1 The Service Provider shall invoice the Authority in respect of the Charges:

11.1.1 where no Milestones are specified in Schedule 7 (Pricing Schedule), at such dates or at the end of such periods as may be specified in Schedule 1 (Key Contract Information); or

11.1.2 if specified in Schedule 7 (Pricing Schedule), on completion of each Milestone provided that any preceding Milestones have been completed in accordance with the Contract,

and shall not make any separate charge for submitting any invoice.

11.2 The Service Provider shall submit invoices to the postal address set out in Schedule 1 (Key Contract Information) or, where an electronic format for submission of invoices is set out in Schedule 1 (Key Contract Information), such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Contract Reference Number, SAP order number, Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

11.3 In the event of a Variation to the Services in accordance with the Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoices.

11.4 The Authority shall consider and verify each invoice, which is submitted by the Service Provider in accordance with this Clause 11, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

11.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1 (Key Contract Information);

11.4.2 not been calculated correctly or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution (including by reference to Clause 33 where necessary), the Service Provider shall submit a revised invoice to the Authority.



The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

- 11.5 Save where inconsistent with the requirements of Schedule 7 (Pricing Schedule) (including, for example, for payments which are associated with Milestones which have not yet been achieved), the Service Provider shall submit all invoices for Services supplied up to Period 12 (ending early March) of every financial year by the date which is ten Business Days prior to 31<sup>st</sup> March. For Services supplied during period 13 (to 31<sup>st</sup> March), the Service Provider shall provide the following:
- 11.5.1 an estimate (together with backup information supporting it). The estimate should only be for the value of Services expected to be provided up to and including 31<sup>st</sup> March of the same financial year which have not yet been invoiced;
- 11.5.2 the estimate and backup must be on the Service Provider's headed paper and signed by the appropriate signatory, and is to reach the Authority by the date which is ten Business Days prior to 31<sup>st</sup> March of every year where Services have been provided in that same financial year.
- 11.6 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Contract Manager (whether related to payment or otherwise) shall:
- 11.6.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of the Contract; or
- 11.6.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 25, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt.
- 11.7 Except where otherwise provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Contract.
- 11.8 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

## **12 WARRANTIES, OBLIGATIONS AND PARENT COMPANY GUARANTEES AND BONDS**

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

12.1.1 the Service Provider:

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

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

12.1.1.3 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;

12.1.2 the Contract is executed by a duly authorised representative of the Service Provider;

12.1.3 all materials, equipment and goods used or supplied by the Service Provider in connection with the Contract shall 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 Specification; and

12.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

12.2 Each warranty and obligation in this Clause 12 shall be construed as a separate warranty or obligation (as the case may be) and shall 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 the Contract.

12.3 Where a Bond Provider Downgrade occurs, the Service Provider shall within 30 Business Days:

12.3.1 deliver the Authority another bond in the form set out in the Framework Agreement or as the Authority may in its absolute discretion determine for a bond amount at the date of replacement equal to the bond amount under the then current bond (or, as the case may be, equal to the bond amount under the previous performance bond if such performance bond has expired or terminated) which complies with the requirements of the Framework Agreement and the requirements of the Authority in relation to this Call-Off Contract; or

12.3.2 procure that alternative cash collateral or other security acceptable to the Authority in an amount equal to the bond amount from time to time under the affected performance bond is made available to the Authority on such terms and conditions as the Authority shall, in its absolute discretion, consider appropriate,

and, if the Service Provider fails to deliver such replacement bond or replacement security by this deadline it shall constitute a material breach by the Service Provider of the terms of this Contract and the Authority shall be entitled to make demand under that bond for the bond amount at that time, which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Authority and the Service Provider for application in or towards amounts in respect of which the Authority would have been entitled to make any demand under the bond. Any interest accruing in such account and any balance remaining at the expiry or earlier termination of this Agreement or such other date as the Authority shall determine following application by the Authority in accordance with this Clause 12.3 shall, subject to the Authority's rights of set-off, belong to the Service Provider. If the Service Provider subsequently delivers a replacement or extended bond complying with the provisions of this Contract and the Framework Agreement, the balance standing to the credit of the account (including any amount in respect of interest accrued) shall belong to the Service Provider and the Authority shall promptly take such steps as are reasonably requested by the Service Provider to ensure release of such balance to the Service Provider.

- 12.4 Unless a different basis has been approved by the Authority in writing, the Service Provider shall maintain the continuing validity and effectiveness of the performance bond provided in respect of this Contract renewable on an annual basis until the expiry of this Contract in accordance with the following provisions:
  - 12.4.1 the performance bond procured must be issued by a financial institution meeting the requirements of the Framework Agreement and have an expiry date which is no less than 364 days from the date of issue of the bond.
  - 12.4.2 where the bond is due to expire then the Service Provider shall replace it with another performance bond in each case in the same form as the bond it is replacing and with a validity period of not less than 364 days from the date of issue of the bond and with a bond amount at the date of replacement which is equal to the amount originally required by the Authority in respect of the original Performance Bond.
  - 12.4.3 if the Service Provider fails to deliver such replacement bond by 10 Business Days prior to the expiry of the then current performance bond it shall constitute a material breach by the Service Provider of the terms of the Contract and the Authority shall be entitled to make demand under that performance bond for the full amount at that time.
- 12.5 The Service Provider will be regarded as being in material breach of this Contract in the event that any Parent Company Guarantee and/or Performance Bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 12.6 The Service Provider will give notice to the Authority within 10 Business Days where there is any change in the ownership of the guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the guarantor. The Authority will have the right to terminate this Agreement within sixty (60) calendar days of receipt of the required notice from the Service Provider, or in the event that the Service Provider fails to give the

required notice, within sixty (60) calendar days of the Authority becoming aware of such event, unless the Service Provider has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor having obtained the Authority's prior approval of the replacement guarantor (such approval not to be unreasonably withheld) and on terms that are reasonably acceptable to the Authority.

### **13 OPERATIONAL MANAGEMENT**

- 13.1 The Authority authorises the Contract Manager to act as the Authority's representative for the Contract
- 13.2 The Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract.
- 13.3 The Service Provider shall appoint a service performance manager (the **"Service Provider Contract Manager"**). The Service Provider shall notify the Authority of the identity of the Service Provider Contract Manager on or before the Date of Contract.
- 13.4 Subject to Clause 13.5, the Service Provider shall ensure that the Service Provider Contract Manager shall:
  - 13.4.1 act as the principal point of contact between the Parties on all matters relating to the performance of the Services;
  - 13.4.2 be the interface with the Authority and act as the interface for the relationship with the systems integrators in relation to Service performance;
  - 13.4.3 pro-actively pursue continuous service performance improvements to ensure that the Service Levels are met;
  - 13.4.4 help to ensure that the obligations in the Services Schedules are met;
  - 13.4.5 attend Service Review Meetings as set out in Schedule 8 (Service Management) and other meetings as otherwise requested by the Authority (acting reasonably); and
  - 13.4.6 ensure delivery to the Authority of the reports required to be delivered to the Authority under this Contract, and, at the Authority's request, provide to the Authority at no additional cost to the Authority, such additional reports on the provision of the Services as the Authority may reasonably request.
- 13.5 The Service Provider shall appoint an incident manager (the **"Service Provider Incident Manager"**). The Service Provider shall notify the Authority of the identity of the Service Provider Incident Manager on or before the Date of Contract. The Service Provider Incident Manager may (but need not) be the same person as the Service Provider Contract Manager.
- 13.6 The Service Provider shall ensure that the Service Provider Incident Manager shall act as the principal point of contact between the Parties in connection with the management of Incidents arising in respect of the Services.

### **14 SERVICE PROVIDER PERSONNEL**

- 14.1 NOT USED

14.2 For the purposes of this Clause 14 and Clause 37, unless the context indicates otherwise, the following expressions shall have the following meanings:

<b>“Applicable Transfer Date”</b>	means the Contract Commencement Date except where the Services (or any of them) do not commence on the Contract Commencement Date in which case it means (as regards any person) the date on which the Services transfer to the Service Provider such as to effect a transfer of relevant Transferring Staff in accordance with TUPE). The detailed Transition planning to be undertaken in accordance with paragraph 3.2 of Schedule 3 (Transition) shall include the assessment and determination of the Applicable Transfer Date for each relevant person;
<b>“Employment Costs”</b>	means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);
<b>“Employment Liabilities”</b>	means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
<b>“Final Staff List”</b>	has the meaning set out in Clause 37.4;
<b>“Further Transfer Date”</b>	means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Authority or any Successor Operator when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Successor Operator occurs;
<b>“Relevant Period”</b>	means the period starting on the earlier of: a) the date falling 6 calendar months before the date of expiry of the Contract; or b) if the Contract is terminated by either Party in accordance with Clause 34.3 or by the Authority in accordance with Clause 34.1, 34.2, 34.7 or 34.8, the date of the

	relevant termination notice; and ending on the Further Transfer Date;
<b>“Re-Transferring Personnel”</b>	means any Service Provider Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Authority or the Successor Operator pursuant to TUPE with effect from the Further Transfer Date;
<b>“Staff List”</b>	has the meaning set out in Clause 37.1;
<b>“Staffing Information”</b>	has the meaning set out in Clause 37.1;
<b>“Sub-Contractor”</b>	means any sub-contractor to the Existing Provider, the Service Provider or a Successor Operator as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or part of them);
<b>“Transfer of Services”</b>	means the transfer of the provision of the Services from the Existing Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;
<b>“Transferring Staff”</b>	means such employees of the Existing Service Provider(s) (and any Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services the names of whom as at the date of this Contract are listed in Appendix 1 to this Clause 14;and
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006

- 14.3 It is understood and acknowledged by the Parties that TUPE ~~may apply~~<sup>ies</sup> to the Transfer of Service and accordingly, pursuant to TUPE, the contracts of employment between the Existing Service Provider (or any Sub-Contractor of the Existing Service Provider) and Transferring Staff will have effect from the Applicable Transfer Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of Clause 14.4).
- 14.4 The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Applicable Transfer Date.

- 14.5 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:
- 14.5.1 the Existing Service Provider(s) will be responsible for any Employment Costs relating to the period up to the Applicable Transfer Date for the relevant Transferring Staff; and
- 14.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Applicable Transfer Date,  
and Employment Costs will if necessary be apportioned on a time basis between the Existing Service Provider(s) and the Service Provider.
- 14.6 The Authority warrants to the Service Provider that none of the Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.
- 14.7 The Service Provider will indemnify and keep indemnified the Authority and the Existing Service Provider(s) (and its sub-contractors) from and against all Employment Liabilities which the Authority or the Existing Service Provider(s) (or its sub-contractors) incur or suffer arising out of or in connection with:
- 14.7.1 any act or omission by or on behalf of the Service Provider (or its sub-contractors) in respect of any person employed or engaged by it (or its sub-contractors) (including the Transferring Staff) on or after the Applicable Transfer Date;
- 14.7.2 any failure by the Service Provider (or its sub-contractors) to comply with Regulation 13 of TUPE;
- 14.7.3 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the Service Provider (or its sub-contractors) before the Applicable Transfer Date;
- 14.7.4 the employment or termination of employment by the Service Provider (or its sub-contractors) of any Transferring Staff on or after the Applicable Transfer Date;
- 14.7.5 any actual or proposed changes by the Service Provider (or its sub-contractors) to the terms and conditions of employment or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.
- 14.8 The Service Provider will provide the Existing Service Provider(s) (or its sub-contractors), as soon as practicable, but in any event in good time before the Applicable Transfer Date, with all information which the Existing Service Provider (or its sub-contractors) may reasonably require to enable it to comply with its information and consultation obligations under TUPE and, if requested, will confirm to the Authority when it has done so and provide a copy to the Authority.
- 14.9 The Service Provider warrants and undertakes to the Authority that all information given to the Existing Service Provider(s) (or its sub-contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.

- 14.10 Clause 40.1 shall be amended so that benefits conferred on the Existing Service Provider or its sub-contractors under this Clause 14 shall be enforceable by them.
- 14.11 Nothing in this Contract will render the Service Provider Personnel, an employee, agent or partner of the Authority or Authority Group by virtue of the provision of the Services by the Service Provider under the Contract, and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider Personnel.
- 14.12 The Service Provider shall provide the Service Provider Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.
- 14.13 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Service Provider) deny access to any Service Provider Personnel to any Authority Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider Personnel in the Authority's view have not been properly trained in any way required by this Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Authority shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Personnel).
- 14.14 The Service Provider shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed on the Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Contract as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 14.12 shall apply to the proposed replacement personnel.
- 14.15 NOT USED
- 14.16 The Service Provider shall pay to the Service Provider Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for the Contract and not less than the amounts to which the Service Provider Personnel are contractually entitled.
- 14.17 The Service Provider shall provide or procure the provision of appropriate training for Authority Personnel and Service Provider's Personnel in respect of all aspects of its performance of the Contract in accordance with Schedule 5 (Training).

## **15 KEY PERSONNEL**

- 15.1 The Service Provider shall provide the Key Personnel and shall procure that Key Personnel shall:
- 15.1.1 diligently supervise the performance of the Services;



- 15.1.2 attend all relevant Contract meetings with the Authority (including the Service Review Meetings) the location of which shall be at the Authority's offices, except as otherwise agreed by the Authority from time to time; and
- 15.1.3 be available to the Authority to resolve any issues arising in connection with this Contract.
- 15.2 The Service Provider may only make any changes to Key Personnel with the prior written consent of the Authority (which shall not be unreasonably withheld, delayed or conditioned). Clause 14.12 shall apply to the proposed replacement Key Personnel.

## **16 CORRECTIVE ACTION NOTICES**

- 16.1 Where the Service Provider fails to comply with any part of this Contract the Authority Contract Manager may issue to the Service Provider a Corrective Action Notice and the provisions of Schedule 14 (Assurance) shall apply.
- 16.2 The Parties acknowledge and agree that:
  - 16.2.1 a Corrective Action Notice does not constitute a notice given by the Authority pursuant to Clause 34.1 (Authority's right to termination) but that a Corrective Action Notice shall not restrict or prevent the Authority from terminating this Contract in accordance with that Clause; and
  - 16.2.2 a Corrective Action Notice shall not restrict or prevent the Authority from issuing a subsequent or other Corrective Action Notice (whether by reference to a default or remedial action specified or referred to in any other Corrective Action Notice).

## **17 SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 17.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority which may be refused or granted consent subject to such conditions as the Authority sees fit.
- 17.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
  - 17.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the 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;
  - 17.2.2 be responsible for payments to that person;
  - 17.2.3 remain solely responsible and liable to the Authority for any breach of the 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 breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
  - 17.2.4 on or before the Contract Commencement Date or the Service Commencement Date (whichever is the earlier), notify the Authority in writing of the name, contact details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Service Provider to the Authority under the Contract;

- 17.2.5 promptly notify the Authority in writing of any change to the information notified under Clause 17.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Contract Commencement Date or the Service Commencement Date (whichever is the earlier); and
- 17.2.6 without prejudice to the provisions of Clause 20, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor.
- 17.3 Except in the case of a consolidation, amalgamation, merger or solvent reconstruction within the Service Provider's Group, The Service Provider shall give notice to the Authority within 10 Business Days where :
- 17.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
- 17.3.2 there is any change in the ownership of a Holding Company where such change relates to 50% or more of the issued share capital of a Holding Company, and
- 17.3.3 (in the case of an unincorporated Service Provider) give notice to the Authority if there is any change in the management personnel of the Service Provider, 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 Service Provider.
- Upon the occurrence of any of the events referred to at Clauses 17.3.1–17.3.3 above, the Authority shall have the right to terminate the Contract.

## **18 CONFLICT OF INTEREST**

- 18.1 The Service Provider warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the Authority Group, save to the extent fully disclosed to and approved by the Authority.
- 18.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the Authority Group and shall 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 (the Authority acting reasonably), provided that, where the Authority is not so satisfied, it may terminate the Contract in accordance with Clause 34.1.4.

## **19 ACCESS TO PREMISES AND ASSETS**

- 19.1 Subject to Clause 14.13 any access to either of both of any Authority Premises or Authority Assets made available to the Service Provider in connection with the proper performance of the Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services

during the Term in accordance with the Contract provided, for the avoidance of doubt, that the Service Provider shall be responsible for its own costs or travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:

- 19.1.1 have the use of such Authority Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Authority Premises;
  - 19.1.2 vacate such Authority Premises upon the termination or expiry of the Contract or at such earlier date as the Authority may determine;
  - 19.1.3 not exercise or purport to exercise any rights in respect of any Authority Premises in excess of those granted under this Clause 19.1.3;
  - 19.1.4 ensure that the Service Provider Personnel carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time;
  - 19.1.5 not damage the Authority Premises or any assets on Authority Premises; and
  - 19.1.6 return immediately to the Authority in good working order and satisfactory condition (in the reasonable opinion of the Authority) all Authority Assets used by the Service Provider or the Service Provider Personnel in the performance of the Services.
- 19.2 Nothing in this Clause 19 shall create or be deemed to create the relationship of landlord and tenant in respect of any Authority Premises between the Service Provider and any member of the Authority Group.
- 19.3 The Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in Schedule 6 (System Integration).]
- DRAFTING NOTE: TFL WILL CHECK ON A CONTRACT BY CONTRACT BASIS WHETHER THESE ARE NECESSARY AND IF SO WHETHER THEY WILL BE INCLUDED IN SCHEDULE 6. IF ACCOMMODATION OR SERVICES ARE BEING PROVIDED AS WELL AS ASSETS, NOTE THAT 1.WHERE ACCOMMODATION IS BEING PROVIDED, PROVISION NEEDS TO BE INCLUDED FOR A PROPERTY LICENCE 2. WHERE SERVICES ARE BEING PROVIDED, ADDITIONAL DEFINITIONS SHOULD BE INCLUDED TO REFER TO THIS, AND THE SERVICES AND TERMS ON WHICH THEY ARE PROVIDED WILL BE INCLUDED IN SCHEDULE 6. ]**

## **20 COMPLIANCE WITH POLICIES AND LAW**

20.1 The Service Provider, at no additional cost to the Authority:

- 20.1.1 undertakes to procure that all the Service Provider Personnel comply with all of the Authority's policies and standards that are relevant to the performance of the Services, (including TfL's workplace harassment policy as updated from time to time (copies of which are available on request from TfL) and with TfL's Code of Conduct (which is available on TfL's website, [www.tfl.gov.uk](http://www.tfl.gov.uk))) including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at Authority Premises or accessing the Authority's computer systems.

The Authority shall provide the Service Provider with copies of such policies and standards on request. In the event that the Services are being provided to both the GLA and TfL, then the policies and standards of each of the GLA and TfL shall apply as appropriate;

20.1.2 shall provide the Services in compliance and ensure that the Service Provider Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), by-laws, treaties and other regulatory requirements relevant to either of both of the Service Provider's or the Authority's business, from time to time in force which are or may become applicable to the Services. The Service Provider shall promptly notify the Authority if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this Clause 20.1.2 and:-

20.1.2.1 the provisions of Clause 41 and all other provisions of this Contract which deal with changes shall apply, except that for the avoidance of doubt any additional costs associated with such change or compliance by the Service Provider shall be borne by the Service Provider; and

20.1.2.2 such circumstances shall not constitute a Force Majeure Event.

20.1.3 without limiting the generality of Clause 20.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

20.1.4 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 Service Provider shall assist and cooperate with Authority where possible in satisfying this duty;

20.1.5 acknowledges that where the Authority is TfL or TTL, TfL 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:

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

20.1.5.2 eliminate unlawful discrimination; and

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

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

20.1.6 shall 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 Equality Act 2010.

20.1.7 shall promptly notify the Service Provider's Personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services;

20.1.8 without limiting the generality of Clause 20.1.2, 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 20.1 shall be borne by the Service Provider.

20.2 In providing the Services, the Service Provider shall (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 Service Provider's activities may impact on the environment) to the need to:

20.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

20.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;

20.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

20.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

20.3 Without limiting Clause 20.1 or 20.2, the Service Provider shall comply with its obligations in Schedule 16 (Supplier Diversity).

20.4 The provisions of Schedule 17 (Strategic Labour Needs and Training Terms and Conditions) shall apply and the Parties shall comply with their respective obligations in that Schedule.

## **21 CORRUPT GIFTS AND PAYMENT OF COMMISSION**

21.1 The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any member of the Authority Group nor favour any employee, officer or agent of any member of the Authority Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any member of the Authority Group other than as a representative of the Authority, without the Authority's prior written approval.

## **22 EQUIPMENT**

22.1 Risk in:

22.1.1 all Service Provider Equipment shall be with the Service Provider at all times; and

22.1.2 all other equipment and materials forming part of the Services [listed at Appendix 1 of Schedule 2 \(Overview of the Contract\)](#), title to which will pass to

the Authority (but excluding the Authority Assets) ("**Materials**") shall be with the Service Provider at all times until completion of the Services in accordance with the Contract,

regardless of whether or not the Service Provider Equipment and Materials are located at Authority Premises.

- 22.2 The Service Provider shall ensure that all Service Provider Equipment and all Materials meet all minimum safety standards required from time to time by law.

## 23 QUALITY AND BEST VALUE

- 23.1 The Service Provider 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 Service Provider shall, where reasonably requested by the Authority, participate in any relevant best value review.

- 23.2 The Authority shall have the rights and the Service Provider shall comply with its obligations as set out in Schedule 9 (Form of Variation) in order to deliver Value for Money ("**VfM**") to the Authority in the performance of this Contract.

## 24 RECORDS, AUDIT AND INSPECTION

- 24.1 The Service Provider shall, and shall procure that its sub-contractors shall:

- 24.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under the Contract and all transactions entered into by the Service Provider for the purposes of the Contract (including time-sheets for the Service Provider Personnel where such records are material to the calculation of the Charges) ("**Records**"); and

- 24.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law), except Records containing Personal Data (as defined in section 1(1) of the Data Protection Act 1998) which shall only be retained for as long as necessary, following termination or expiry of the Contract ("**Retention Period**").

- 24.2 The Service Provider shall, at the Authority's request, and without limiting any other obligation it has under this Contract provide promptly to the Authority at no additional cost such reports –or other Documentation in respect of the provision of the Services as the Authority may reasonably request.

- 24.3 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 Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services, including without limitation;

- 24.3.1 accuracy of the Charges and invoices;

24.3.2 audits and examinations by Regulatory Bodies;

24.3.3 performance of the terms of this Contract;

24.3.4 efficiency of the Service Provider in performing the Services under this Contract;

and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

## 25 SET-OFF

25.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority or any member of the Authority Group arising out of or attributable to this Contract or any other contract ~~entered into by~~entered into by ~~between~~ the Authority Authority (or any other member of the Authority Group) and the Service Provider under the Agreement, may be deducted:

25.1.1 by the Authority from monies due or which may become due to the Service Provider under this Contract ~~or under any other contract with any member of the Authority Group or the Authority or a member of the Authority Group; or~~

25.1.2 by the Authority or another member of the Authority Group from monies due or which may become due to the Service Provider under any other contract entered into by any of them with the Service Provider under the Agreement  
or, in either case, the Authority and/or other member of the Authority Group (as the case may be) -may recover such amount as a debt.

## 26 INDEMNITY AND LIMITATION OF LIABILITY

26.1 Subject to the other Clauses in this Clause 26, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless each of the Authority and all other members of the Authority Group (including their respective employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or negligent performance of the Contract by the Service Provider (or any of the Service Provider Personnel) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees, agents or sub-contractors).

26.2 The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any Authority Event or by any other breach or negligent performance of any of its obligations under the Contract by the Authority or any other member of the Authority Group including by any of their respective employees, agents or sub-contractors.

26.3 The Service Provider accepts unlimited liability for:

26.3.1 death or personal injury caused by the negligence of the Service Provider;

- 26.3.2 fraud or fraudulent misrepresentation committed by the Service Provider;
- 26.3.3 infringement or alleged infringement of third party intellectual property and/or any breach of the provisions of Clause 28 (The Authority's Data) and Clause 29 (Intellectual Property Rights);
- 26.3.4 any breach of Clause 30 (Protection of Personal Data) and Clause 31 (Confidentiality, Announcements and Transparency);
- 26.3.5 Losses arising under any indemnity in Clause 14 (Service Provider Personnel) and Clause 37 (Transfer of Employees on Expiry or Termination);

26.3.6 Service Credits to which the Authority is entitled:

~~26.3.6~~26.3.7 any other liability to the extent which it cannot be lawfully excluded.

26.4 Subject to Clause 26.3, the Service Provider's liability (whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise under or in connection with this Contract or the provision of the Services) shall in respect of Losses within the scope of the Insurance maintained by the Service Provider pursuant to any of Clauses 27.1.1, 27.1.2, 27.1.3 or 27.1.4 not exceed, per incident or series of connected incidents, the level of the insurance cover required to be taken out pursuant to the relevant Clause 27.1.1, 27.1.2, 27.1.3 or 27.1.4, as the case may be.

26.5 Subject to Clause 26.3 and (in so far as it applies) Clause 26.4, the Service Provider's liability to the Authority (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) arising out of any act or omission of the Service Provider, its agents or subcontractors ~~for any indirect or consequential loss~~ howsoever caused arising out of or in connection with this Contract shall not exceed for Events which occur in any Year, per incident or series of connected incidents, the sum referred to in Clause 26.6. For the purpose of this clause and Clause 26.6:

26.5.1 a "Year" means each period of 13 Periods commencing on the Contract Commencement Date or an anniversary of the Contract Commencement Date (as the case may be), except in the case of the final Year, which will commence on the anniversary of the Contract Commencement Date immediately preceding the Expiry Date and end on the Expiry Date; and

26.5.2 an "Event" means any act, event, omission or circumstance.

~~26.5~~

26.6 The sum referred to in Clause 26.5 is ~~125~~150% of the Charges payable by the Authority pursuant to the Contract in respect of the Year during which the Event occurs ("the Cap"), except that:

26.6.1 if it is necessary to establish the amount of the Cap for a Year before the end of that Year then the Cap will be provisionally deemed to be a sum which is equal to:-

26.6.1.1.1 in the case of the first Year, 125% of the amount which the Authority, acting reasonably, forecasts as the Charges which are expected to be payable by it under the Contract in respect of that Year; and

26.6.1.1.2 in the case of any other Year, the Cap which applied for the preceding Year



and there will be a reconciliation based on the actual Cap for that Year once that is ascertained and an additional payment paid by the Service Provider or a reimbursement made by the Authority to correct any over or under payment made on the basis of the provisional Cap;

26.6.2 where this Contract terminates before the end of the Initial Term (or where applicable before the end of any Extension Years added in accordance with Clause 2), the Cap will be calculated on the basis of the Charges which the Authority, acting reasonably, forecasts it would have paid for the relevant Year(s) had the early termination not occurred; and

26.6.3 for the purpose of this Clause, an Event occurring after the Expiry Date will be regarded as having occurred in the final Year.

26.6.4 references in this Clause 26.6 to Charges means Charges which would have been payable by the Authority but for any breach by the Service provider of its obligations under this Contract and not taking into account any Service Credits to which the Authority is entitled.

~~13 Periods preceding the Period in which the incident (or, where applicable, the first of the series of connected incidents) occurred. Where such an incident occurs before the expiry of 13 Periods from the Service Commencement Date, the sum for the purposes of this Clause shall be the amount which the Authority, acting reasonably, forecasts as the Charges payable by it in the first 13 Periods following the Service Commencement Date.~~

## **27 INSURANCE**

27.1 The Service Provider will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in the sum of not less than £5 million per claim (in terms approved by the Authority) in respect of the following to cover the Services ("**the Insurances**") and will ensure that the Authority's interest is noted on each and every policy or that any public liability, product liability or employer's liability insurance includes an indemnity to principal clause:

27.1.1 public liability to cover injury and loss to third parties;

27.1.2 insurance to cover the loss or damage to any item related to the Services;

27.1.3 product liability; and

27.1.4 professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 27.1 or, if applicable, the product liability insurance referred to in Clause 27.1.3. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such other period as the Authority may stipulate) following the expiry or termination of the Contract.

27.2 The insurance cover will be maintained with a reputable insurer.

27.3 The Service Provider will produce evidence to the Authority on reasonable request of the insurance policies set out in Clause 27.1 and payment of all premiums due on each policy.

- 27.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 27.1 being or becoming void, voidable or unenforceable.
- 27.5 In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Authority.

## **28 THE AUTHORITY'S DATA**

- 28.1 The Service Provider acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Authority's data.
- 28.2 The Service Provider shall ensure every Document produced or amended by the Service Provider in connection with this Contract displays an appropriate copyright statement correctly reflecting its status in accordance with the following requirements:
- 28.2.1 All new and updated Documents must be marked as "Copyright TfL" by including the following copyright statements, including the relevant year in which the document was created;
- 28.2.2 On the front page:
- "Copyright © [2015] [Drafting Note: Year in which document created to be inserted.] Transport for London. All rights reserved. This information is confidential. You may not reproduce, adapt or disclose this information, or any part of this information, for any purpose without TfL's written permission. TfL makes no warranties or representations, and expressly disclaims all liability, concerning this information.";*
- 28.2.3 On the footer / bottom of every subsequent page:
- "Copyright © [2015] [Drafting Note: Year in which document created to be inserted.] Transport for London. All rights reserved. This information is confidential."*
- 28.3 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

## **29 INTELLECTUAL PROPERTY RIGHTS**

### **29.1 NOT USED**

- 29.2 The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use the Product together with such materials in connection with the use of the Products.

- 29.3 The Service Provider grants to the Authority an irrevocable non-exclusive, worldwide, royalty free licence for the duration of the Term to use, copy, translate and amend all Intellectual Property Rights in any software, Documentation, spreadsheets, data or other materials provided to the Authority by or on behalf of the Service Provider in the course of providing the Services (or otherwise in accordance with the terms of this Contract) for any reasonable purpose associated with the proper enjoyment by the Authority of the Services and the exercise by the Authority of its rights under the Contract. Such right will include the right for the Authority to grant sub licences to any member of the Authority Group and/or any Successor Operator(s) and the providers of services to any of them from time to time on terms no wider than the terms granted to the Authority from time to time under this provision provided that:-
- 29.3.1 without limiting Clause 29.4, this Clause shall not apply in relation to any COTS Product to the extent that the acquisition by the Authority of its own licence in respect of that COTS Product is listed as a Transition Dependency; and
- 29.3.2 any sub-licence to a Successor Operator shall be for the purpose and to the extent required for the implementation of the Handover Plan and not for the purpose of the provision of services by the Successor Operator following the end of the Term.
- 29.4 To the extent that the Service Provider has utilised a COTS Product in the performance of the Services, without limiting any other obligation of the Service Provider under Clause 36 (Handback of Services) or Schedule 11 (Handback of Service) the Service Provider:-
- 29.4.1 shall as and when requested by the Authority from time to time provide to the Authority a copy of that COTS Product as configured by the Service Provider for the purposes of the Contract- (including of all Data held within the COTS Product for the purpose of the performance of the Services or the Service Provider's other obligations under this Contract); and
- 29.4.2 hereby grants to the Authority a perpetual, irrevocable, royalty-free and transferable licence free of charge to use that configuration (it being acknowledged that the Authority will be responsible for obtaining any required licence(s) of the underlying COTS Product required for the Authority's continued use of the same after the end of the Term).
- 29.5 The Service Provider shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of the Authority.
- 29.6 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used by the Service Provider in connection with the Contract (other than the Intellectual Property Rights made available by the Authority to the Service Provider pursuant to the Contract) have been paid and are included within the Charges.
- 29.7 The Service Provider shall:
- 29.7.1 promptly notify the Authority upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property

Right which affects or may affect the provision or receipt of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and

29.7.2 indemnify, keep indemnified and hold harmless the Authority from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Authority by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Authority of the Products (or any of them) or any of the items licensed in accordance with Clauses 29.3 or 29.4 or anything arising from the provision of the Services and from and against all costs and damages of any kind which the Authority may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.

29.8 The Authority shall, at the request of the Service Provider, give the Service Provider all reasonable assistance for the purpose of the Service Provider contesting any such claim, demand, or action referred to in Clause 29.7.1 and the Service Provider shall:

29.8.1 reimburse the Authority for all costs and expenses (including legal costs) incurred in doing so;

29.8.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and

29.8.3 consult with the Authority in respect of the conduct of any claim, demand or action and keep the Authority regularly and fully informed as to the progress of such claim, demand or action.

| 29.9 If a claim or demand is made or action brought to which Clause 29.7 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may (without prejudice to 29.7), after consultation with the Authority, at its own expense and within a reasonable time and subject to all other applicable provisions of this Contract (including those relating to Change), modify or substitute any or all of the Products so as to avoid the infringement or the alleged infringement, provided that the terms of the Contract shall apply mutatis mutandis to such modified or substituted Products and such Products are accepted by the Authority.

29.10 The Authority shall:

29.10.1 promptly notify the Service Provider upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right resulting from the use of any Authority Assets by the Service Provider in the performance of the Services as permitted by and in accordance with the terms of this Contract which affects or may affect the provision of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right in respect of any use of the Authority Assets by the Service Provider in the performance of the Services as permitted by and in accordance with the terms of this Contract; and

29.10.2 indemnify, keep indemnified and hold harmless the Service Provider from and against all actions, claims, demands, costs, charges or expenses

(including legal costs on a full indemnity basis) that arise from or are incurred by the Service Provider by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Service Provider of the Authority Assets (or any of them) as permitted by and in accordance with the terms of this Contract and from and against all costs and damages of any kind which the Service Provider may incur in or in connection with any actual or threatened proceedings before any court or arbitrator

29.11 The Service Provider shall, at the request of the Authority, give the Authority all reasonable assistance for the purpose of the Authority contesting any such claim, demand, or action referred to in Clause 29.10.1 and the Authority shall:

29.11.1 reimburse the Service Provider for all costs and expenses (including legal costs) incurred in doing so;

29.11.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and

29.11.3 consult with the Service Provider in respect of the conduct of any claim, demand or action and keep the Service Provider regularly and fully informed as to the progress of such claim, demand or action.

29.12 If a claim or demand is made or action brought to which Clause 29.10 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Authority may (without prejudice to Clause 29.10), after consultation with the Service Provider, at its own expense and within a reasonable time and subject to all other applicable provisions of this Contract (including those relating to Change), modify or substitute any or all of the Authority Assets so as to avoid the infringement or the alleged infringement, provided that the terms of the Contract shall apply mutatis mutandis to such modified or substituted Authority Assets.

29.13 The indemnified party at Clause 29.7.2 and 29.10.2 (as the case may be) shall take all reasonable steps to mitigate the claims, demands, costs, charges, losses and/or expenses to which the indemnity applies.

### **30 PROTECTION OF PERSONAL DATA**

30.1 The Service Provider shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Authority, shall only carry out such Processing for the purposes of providing the Services in accordance with the Contract.

30.2 For the purposes of this Clause 30, unless the context indicates otherwise, the following expressions shall have the following meanings:

**“Authority Personal Data”**

Personal Data and/or Sensitive Personal Data Processed by the Service Provider on behalf of the Authority;

<b>“Data Controller”</b>	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
<b>“Data Processor”</b>	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
<b>“Data Subject”</b>	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
<b>“Data Protection Legislation”</b>	the Data Protection Act 1998 (as interpreted in accordance with Directive 95/46/EC) including all regulations made under it and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any amendment or re-enactment of any of them; any other legislation relating to privacy and/or the processing of Personal Data (as amended from time to time); and any guidance or statutory codes of practice issued by the Information Commissioner in relation to such legislation;
<b>“Personal Data”</b>	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
<b>“Privacy Impact Assessment”</b>	a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Authority Personal Data;
<b>“Processing”</b>	has the meaning given to it by section 1(1) of the Data Protection Act 1998 and “Process” and “Processed” will be construed accordingly;
<b>“Restricted Countries”</b>	any country outside the European Economic Area;
<b>“Sensitive Personal Data”</b>	has the meaning given to it by section 2 of the DPA; and
<b>“Subject Access Request”</b>	a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted pursuant to Data Protection Legislation.

30.3 With respect of the Parties’ rights and obligations under the Contract, the Parties acknowledge that the Authority is a Data Controller and that the Service Provider is a Data Processor.

30.4 Details of the Authority Personal Data to be Processed by the Service Provider and the purposes of such Processing are as follows:

30.4.1 Categories of Data Subject

The Authority Personal Data to be Processed by the Service Provider (if any) concerns the following categories of Data Subjects:

**[e.g. staff; customers; members of the public]**

30.4.2 Categories of Authority Personal Data

The Authority Personal Data to be Processed concerns the following categories of Personal Data and/or Sensitive Personal Data:

**[e.g. names; addresses; telephone numbers; photographs]**

30.4.3 Purpose(s) of the Processing

The Authority Personal Data is to be Processed for the following purpose(s);

**[summarise the relevant purpose(s)]**

30.5 Without prejudice to the generality of Clause 30.1, the Service Provider shall:

30.5.1 process the Authority Personal Data only in accordance with instructions from the Authority to perform its obligations under the Contract;

30.5.2 use its reasonable endeavours to assist the Authority in complying with any obligations under Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

30.5.3 maintain, and make available to the Authority on its request, documentation, a central register or an inventory which describes the processing operations for which it is responsible and specifies: the purposes for which Authority Personal Data are processed including the legitimate interests pursued by the Authority or any Authority Group member where processing is based on this lawful basis; the categories of Personal Data and Data Subjects involved; the source of the Personal Data; the recipients of the Personal Data; and the location(s) of any overseas processing of those Personal Data;

30.5.4 take appropriate technical and organisational security measures, that are satisfactory to the Authority from time to time, against unauthorised or unlawful Processing of Authority Personal Data and against accidental loss, destruction of, or damage to such Authority30.5.3 Personal Data;

30.5.5 without prejudice to Clause 30.5.4, wherever the Service Provider uses any mobile or portable device for the transmission or storage of Authority Personal Data, ensure that each such device encrypts Authority Personal Data;

30.5.6 provide the Authority with such information as the Authority may from time to time require to satisfy itself of compliance by the Service Provider (and/or any authorised sub-contractor) with Clause 30.5.4 and 30.5.5, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or the Authority;

- 30.5.7 where requested to do so by the Authority, or where Processing Authority Personal Data presents a specific risk to privacy, carry out a Privacy Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant statutory requirements) and make the results of such an assessment available to the Authority;
- 30.5.8 notify the Authority within two (2) Business Days if it, or any sub-contractor, receives:
- 30.5.8.1 from a Data Subject (or third party on their behalf):
    - 30.5.8.1.1 a Subject Access Request (or purported Subject Access Request);
    - 30.5.8.1.2 a request to rectify, block or erase any Authority Personal Data; or
    - 30.5.8.1.3 any other request, complaint for communication relating to the Authority's obligations under Data Protection Legislation;
  - 30.5.8.2 any communication from the Information Commissioner or any other regulatory authority in connection with Authority Personal Data; or
  - 30.5.8.3 a request from any third party for disclosure of Authority Personal Data where compliance with such request is required or purported to be required by law;
- 30.5.9 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 30.5.8, including by promptly providing:
- 30.5.9.1 the Authority with full details and copies of the complaint, communication or request; and
  - 30.5.9.2 where applicable, such assistance as is reasonably requested by the Authority to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation.
- 30.5.10 when notified in writing by the ~~Authority~~~~Service Provider~~, supply a copy of, or information about, any relevant Authority Personal Data. The Service Provider shall supply such information or data to the Authority within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within five (5) Business Days from the date of the request.
- 30.5.11 when notified in writing by the Authority, comply with any agreement between the Authority and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Authority Personal Data;
- 30.6 The Authority remains solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed. The Service Provider shall not share any Authority Personal Data with any sub-contractor or third party without prior written consent from the Authority (in the Contract or otherwise) and unless there is a written contract in place with the sub-contractor which requires the sub-contractor or third party to:



- 30.6.1 only Process Authority Personal Data in accordance with the Authority's instructions to the Service Provider; and
- 30.6.2 comply with the same obligations with which the Service Provider is required to comply with under this Clause 30 (and in particular Clauses 20.1, 24.1, 24.2, 26.1, 28.1, 28.3, 30.1 and 31).
- 30.7 The Service Provider agrees that, and shall procure that any sub-contractor shall agree that, Authority Personal Data:
  - 30.7.1 must only be Processed in accordance with the Authority's obligations to comply with Data Protection Legislation and by such of their personnel as need to view or otherwise access Authority Personal Data;
  - 30.7.2 must only be used as instructed by the Authority and as reasonably necessary to perform the Contract in accordance with its terms;
  - 30.7.3 must not be used for any other purposes (in whole or part) by any of them (and specifically but without limitation must not be copied or referred to in whole or part through training materials, training courses, discussions or negotiations or contractual arrangements with third parties or in relation to proposals or tenders with the Authority (or otherwise), whether on renewal of this Contract or otherwise, without the prior written consent of the Authority); and
  - 30.7.4 must not be used so as to place the Authority in breach of Data Protection Legislation and/or to expose it to risk of actual or potential liability to the Information Commissioner, Data Subjects and/or reputational damage and/or to any order being made against the Authority preventing, suspending or limiting the Processing of Authority Personal Data.
- 30.8 The Service Provider shall, and shall procure that any sub-contractor shall:
  - 30.8.1 not disclose or transfer Authority Personal Data to any third party or their own personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Authority Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract);
  - 30.8.2 notify the Authority within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of security and/or of the Contract and/or Clause 30 in relation to Authority Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any Authority Personal Data;
  - 30.8.3 keep the Authority properly and regularly informed consequently;
  - 30.8.4 fully cooperate with the reasonable instructions of the Authority in relation to the Processing and security of Authority Personal Data in accordance with the Contract and in compliance with Data Protection Legislation (including procuring access to sub-contractor premises);
  - 30.8.5 cooperate as the Authority requires with any investigation or audit in relation to Authority Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Contract, in relation to Data Protection Legislation

or in relation to any actual or suspected breach), whether by the Authority (or on its behalf) any relevant regulatory body, including the Information Commissioner, the police, any other statutory law enforcement agency or otherwise and shall do so both during the Contract and after its termination or expiry (for so long as the Party concerned retains and/or Processes Authority Personal Data);

- 30.8.6 take all reasonable steps to ensure the reliability and integrity of all Service Provider's Personnel who can/or do access Authority Personal Data;
- 30.8.7 ensure all Service Provider's Personnel who can/ do access Authority Personal Data are informed of its confidential nature and do not publish, disclose or divulge any of the Personal Data to any third party without the prior consent of the Authority;
- 30.8.8 ensure all Service Provider's Personnel who can/ do access Authority Personal Data have undergone adequate training in relation to the use, care, protection and handling of Personal Data in accordance with Data Protection Legislation and this Contract, understand such obligations and comply with them and ensure that such training is updated at reasonable intervals; and
- 30.8.9 comply during the course of the Contract with any written retention and/or deletion policy or schedule provided to it by the Authority from time to time.
- 30.9 The Service Provider shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Authority Personal Data in or to any Restricted Countries without prior written consent from the Authority (which consent may be subject to additional conditions imposed by the Authority).
- 30.10 If, after the Service Commencement Date, the Service Provider or any sub-contractor wishes to Process and/or transfer any Authority Personal Data in or to any Restricted Countries, the following provisions shall apply:
  - 30.10.1 the Service Provider shall submit a written request to the Authority setting out details of the following:
    - 30.10.1.1 the Authority Personal Data which will be transferred to and/or Processed in any Restricted Countries;
    - 30.10.1.2 the Restricted Countries which the Authority Personal Data will be transferred to and/or Processed in;
    - 30.10.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Authority Personal Data in Restricted Countries;
    - 30.10.1.4 how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the Authority Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with Data Protection Legislation;
  - 30.10.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner, in connection with, the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;

- 30.10.3 the Service Provider shall comply with any instructions and shall carry out such actions as the Authority may notify in writing when providing its consent to such Processing or transfers, including:
- 30.10.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and
- 30.10.3.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Authority Personal Data in any Restricted Countries enters into a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Authority and the Service Provider in connection with, the Processing of Authority Personal Data in (and/or transfer of Authority Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in 30.10.3.1.
- 30.11 The Service Provider and any sub-contractor (if any), acknowledge:
- 30.11.1 the importance to Data Subjects and the Authority of safeguarding Authority Personal Data and Processing it only in accordance with the Contract;
- 30.11.2 the loss and damage the Authority is likely to suffer in the event of a breach of the Contract or negligence in relation to Authority Personal Data;
- 30.11.3 any breach of any obligation in relation to Authority Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of Contract;
- 30.11.4 notwithstanding Clause 34.1.1, if the Service Provider has committed a material breach under Clause 30.11.3 on two or more separate occasions, the Authority may at its option:
- 30.11.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
- 30.11.4.2 terminate the Contract in whole or part with immediate written notice to the Service Provider.
- 30.12 If the Service Provider Processes payment card data under the Contract, it shall ensure that it is and that its internal processes and procedures, information technology systems and any equipment that it provides or is provided on its behalf pursuant to this Contract are compliant with the Payment Card Industry Data Security Standard as updated from time to time ("**PCI DSS**"). In addition the Service Provider shall
- 30.12.1 at least once every 12 months appoint a PCI DSS Qualified Security Assessor ("**QSA**") to validate that the Service Provider is compliant with (including as set out above) PCI DSS when providing the Services;
- 30.12.2 without prejudice to any other audit and inspection rights that the Authority has under this Contract, provide the Authority with copies of any reports and other documents provided by or to the QSA in respect of each such validation; and

- 30.12.3 where the QSA recommends that certain steps should be taken by the Service Provider, promptly take those steps and demonstrate to the Authority that those steps have been taken without charge to the Authority.
- 30.13 Compliance by the Service Provider with this Clause 30 (Protection of Personal Data) shall be without additional charge to the Authority.
- 30.14 Following termination or expiry of this Contract, howsoever arising, (or the applicable End Date, if later) the Service Provider:
- 30.14.1 may Process the Personal Data only for so long as to the extent as is necessary to properly comply with its non contractual obligations arising under law (and will then comply with Clause 30.14.2);
- 30.14.2 subject to Clause 30.14.1, shall:
- (a) on written instructions from the Authority either securely destroy or securely and promptly return to the Authority or a recipient nominated by the Authority (in such usable format as and to the extent the Authority may reasonably require) the Authority Personal Data and relevant records and documentation accordingly; or
  - (b) in the absence of instructions from the Authority after 12 months from the expiry or termination of the Contract securely destroy the Authority Personal Data and relevant records and documentation accordingly.
- Authority Personal Data may not be Processed following termination or expiry of the Contract (or the applicable End Date, if later) save as permitted by this Clause 30.14.
- 30.15 For the avoidance of doubt, and without prejudice to Clause 30.14 the obligations in this Clause 30 shall apply following termination or expiry of the Contract to the extent the Party concerned retains or Processes Authority Personal Data.
- 30.16 The indemnity in Clause 26 shall apply to any breach of Clause 30 and shall survive termination or expiry of the Contract.

### **31 CONFIDENTIALITY, ANNOUNCEMENTS AND TRANSPARENCY**

- 31.1 Subject to Clause 32, the Service Provider will keep confidential:
- 31.1.1 the terms of this Contract; and
- 31.1.2 any and all Confidential Information that it may acquire in relation to the Authority.
- 31.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 31.1.
- 31.3 The obligations on the Service Provider set out in Clause 31.1 will not apply to any Confidential Information:

- 31.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 31);
- 31.3.2 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
- 31.3.3 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.
- 31.4 The Service Provider shall keep secure all materials containing any information in relation to the Contract and its performance.
- 31.5 The Service Provider 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.
- 31.6 The Service Provider shall:
- 31.6.1 at the Authority's request and in any event upon the termination or expiry of the Contract, promptly deliver to the Authority or destroy as the Authority may direct all documents and other materials in the possession, custody or control of the Service Provider (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the Authority in writing, remove all electronically held Confidential Information, including the purging of all disk-based Confidential Information and the reformatting of all disks; and
- 31.6.2 not, except where provided in this Clause 31 or with the prior written consent of the Authority, disclose to any person the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.
- 31.7 The Service Provider acknowledges that damages would not be an adequate remedy for any breach by it of this Clause 31 and that (without prejudice to all other rights, powers and remedies which the Authority may be entitled to as a matter of law) the Authority shall be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 31 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 31.
- 31.8 Notwithstanding Clause 32, the Authority shall have the same obligations as those imposed on the Service Provider under this Clause 31 in respect of those categories of confidential information set out in Schedule 15 (**"Service Provider Confidential Information"**), except that the Authority may:
- 31.8.1 disclose the Service Provider Confidential Information where the Authority considers that it is obliged to do so under any of the legislation referred to in Clause 32;

- 31.8.2 use the Service Provider Confidential Information to the extent necessary to obtain the benefit of the Service Provider's performance under this Contract;
- 31.8.3 disclose the Service Provider Confidential Information to any member of the Authority Group; and
- 31.8.4 disclose such Service Provider Confidential Information as may be required to be published in the Official Journal of the European Union and any associated tender documentation; and
- 31.8.5 disclose such Service Provider Confidential Information as may be required to transition the Service to a Successor Operator which (for the avoidance of doubt) shall not include information that the parties identify and agree as being commercially sensitive information of the Service Provider.-
- 31.9 The provisions of this Clause 31 will survive any termination of this Contract for a period of 6 years from termination.

## **32 FREEDOM OF INFORMATION AND TRANSPARENCY**

- 32.1 The Service Provider acknowledges that the Authority:
  - 32.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
  - 32.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 32.2 Without prejudice to the generality of Clause 32.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
  - 32.2.1 transfer to the Contract Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Access Request relevant to the Contract, the Services or any member of the Authority Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and
  - 32.2.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and copies of all such Information that the Authority requests and such details and copies shall be provided within 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.
- 32.3 The Authority shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 32.4 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

- 32.5 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 31.8 and this Clause 32, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 32.6 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 32.7 The Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 32.6. The Authority shall make the final decision regarding both publication and redaction of the Contract Information.

### 33 DISPUTE RESOLUTION

- 33.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract ("**Dispute**") before resorting to litigation.
- 33.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to the Director of Customer Experience (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 33.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the other Party ("**Notice**") to commence such process and the notice shall identify one or more proposed mediators.
- 33.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 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 shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 33.5 Where a dispute is referred to mediation under Clause 33.3, the Parties 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.
- 33.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 33.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 51

- 33.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 33.
- 33.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 33 shall not apply in respect of any circumstances where such remedies are sought.

#### **34 BREACH AND TERMINATION OF CONTRACT**

- 34.1 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate the Contract immediately (or so as to be effective at such future time as the Authority may specify) upon giving notice to the Service Provider if:
- 34.1.1 in addition and without prejudice to Clauses 34.1.2 to 34.1.9 (inclusive), the Service Provider has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;
- 34.1.2 the Service Provider is subject to an Insolvency Event;
- 34.1.3 in the event that there is a change of ownership referred to in Clause 17.3 or the Service Provider is in breach of Clause 17.3;
- 34.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 18;
- 34.1.5 in the circumstances described in Clause 12.6 if there is a change of ownership of a guarantor of the type referred to in that Clause;
- 34.1.6 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
- 34.1.7 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
- 34.1.8 the Service Commencement Date has not occurred prior to the SCD Long-Stop Date; or
- 34.1.9 the Compliance Certificate for the Final Service Transition Milestone is not achieved prior to the Transition Long-Stop Date.
- 34.2 Without prejudice to any of the Authority's other rights, powers or remedies (whether under the Contract or otherwise) if the Service Provider is in breach of any of its warranties, or obligations either under Clause 12 or any other provision of this Contract, the Service Provider shall, if required to do so by the Authority, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and obligations. Nothing in this Clause 34.2 shall prevent the Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Authority so procures any Services or any remedial action, the Authority shall be entitled to recover from



the Service Provider all additional cost, loss and expense incurred by the Authority and attributable to the Authority procuring such Services or remedial action from such alternative contractor.

- | 34.3 Subject to Clauses 34.4 and 34.6, neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event and, provided that, where that Party is the Service Provider, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Service Provider and the Service Provider has complied with Clause 34.4. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("**the Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this Clause 34.3 then without prejudice to any rights and liabilities which accrued prior to termination (and, in the case of the Service Provider, to it having complied with Clause 34.4), the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 34.4 If a Force Majeure Event occurs which affects the Service Provider, the Service Provider will:
- 34.4.1 promptly upon becoming aware of the Force Majeure Event give notice to the Authority setting out details of the nature, extent and anticipated duration of the Force Majeure Event, the expected impact of the Force Majeure Event on its ability to perform its obligations and the steps it is taking and/or proposes to take to comply with Clause 34.4.2;
- 34.4.2 use its reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end, including taking such steps as may be reasonably required by the Authority;
- 34.4.3 keep the Authority informed of all developments relating to the Force Majeure Event and the steps being taken to comply with Clause 34.4.2, including by providing regular written updates in respect of all the matters covered by the notice given under Clause 34.4.1 and by attending such meetings and supplying such information as may reasonably be required by the Authority from time to time;
- 34.4.4 continue to perform all of its obligations under this Contract, the performance of which is not affected by the Force Majeure Event; and
- 34.4.5 to the extent it is able to do so notwithstanding the occurrence of the Force Majeure Event, provide all such assistance to the Authority and/or such other persons as the Authority may request in connection with the Authority securing an alternative supply of those Services which the Service Provider is delayed in or prevented from supplying due to the Force Majeure Event

(including by providing and permitting the use by the Authority or its nominee of assets, equipment and personnel).

- 34.5 A Party will not be in breach of this Contract or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under this Agreement to the extent that this is due to a Force Majeure Event affecting the other Party. In particular, if the Service Provider is the Party affected by the Force Majeure Event the Authority will have no liability to pay Charges to the Service Provider in respect of any Services which the Service Provider does not supply due to the Force Majeure Event.
- 34.6 Nothing in Clause 34.3 will relieve the Service Provider from its obligations under this Contract to create, implement and operate the Major Incident Plan. Accordingly, if a Force Majeure Event affecting the Service Provider occurs which is an event or circumstance that is within the scope of the Major Incident Plan, or would have been had the Service Provider and/or Major Incident Plan complied with Clause 9 (Major Incident Management) and Schedule 8 (Service Management), then Clause 34.3 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure would have arisen even if the Major Incident Plan had complied with, and had been fully and properly implemented and operated in accordance with, Clause 9 and Schedule 8, and the terms of the Major Incident Plan in respect of that Force Majeure Event.
- 34.7 Without prejudice to the Authority's right to terminate the Contract under Clause 34.1 or to terminate at common law, the Authority may terminate the Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1 (Key Contract Information), provided that this Clause 34.7 may be disapplied by notice to that effect in Schedule 1.
- 34.8 Without prejudice to the Authority's right to terminate the Contract under Clauses 34.1, 34.7 or at common law, the Authority may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 38.
- 34.9 To the extent that the Authority has a right to terminate the Contract under this Clause 34 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider 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" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted in accordance with the Variation procedure proportionately or if in the Authority's opinion a proportionate adjustment would not be reasonable in such manner as the Authority may determine.
- 34.10 The Service Provider may by providing not less than three (3) months' written notice, terminate this Contract if the Authority fails to pay any undisputed sum in accordance with Clause 11 which is in excess of £10,000 (ten thousand pounds sterling) and has subsequently failed to remedy such breach within sixty (60) days of written notice of such breach from the Service Provider provided that in the case of such termination:

- 34.10.1 the Authority shall be responsible for making such payments to the Service Provider as have accrued and are properly payable in respect of the period prior to the Expiry Date but;
- 34.10.2 in no circumstances shall the Authority have any other liability to the Service Provider in respect of or connected with such termination, including (without limitation) any loss of anticipated profit.

### **35 CONSEQUENCES OF TERMINATION OR EXPIRY**

- 35.1 Notwithstanding termination of this Contract pursuant to Clause 34 or expiry in accordance with Clause 2, any applicable Handback Period shall apply pursuant to Schedule 11 (Handback of Service) and the provisions of this Contract shall continue until the Expiry Date.
- 35.2 [Not used].
- 35.3 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 35.4 Upon expiry or termination of the Contract (howsoever caused):
- 35.4.1 the Service Provider shall, at no further cost to the Authority:
- 35.4.1.1 in accordance with Schedule 11 (Handback of Service) take all such steps as shall be necessary for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover; and
- 35.4.1.2 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 35.4.2 the Authority shall (subject to Clauses 25, 35.1 and 35.5 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 7 (Pricing Schedule) or otherwise reasonably determined by the Authority.
- 35.5 On termination of all or any part of the Contract, the Authority may enter into any agreement with any Third Party or parties as the Authority thinks fit to provide any or all of the Services and (save where terminated by the Authority under Clause s 34.3, 34.7, 34.8) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

## **36 HANDBACK OF SERVICES.**

36.1 The Service Provider will comply with the Service Provider's obligations under Schedule 11 (Handback of Services) in order to ensure, amongst other things, Service continuity and minimisation of disruption to customers at the end of the Contract and during the Handback Period.

### **36.2 Cooperation in Relation to Handback of Services**

Without limiting the Service Provider's TUPE obligations and Clauses 24 (Records, Audit and Inspection) and 37 (Transfer of Employees on Expiry or Termination), the Service Provider shall pro-actively co-operate and work with the Authority Group and/or any Successor Operator(s):

36.2.1 from the earliest of:

36.2.1.1 12 months prior to the expiry of the Initial Term; or

36.2.1.2 the date on which any notice to terminate this Contract is issued by the Authority or the Service Provider,

until the Expiry Date ;

36.2.2 by providing such services, advice, assistance, support, information, documentation, data, access and taking such steps as are reasonably requested by the Authority including;

36.2.2.1 as described in the Handback Plan and/or the Handback Programme;

36.2.2.2 in respect of the provision of the Services (or services which are substantially similar to the Services);

36.2.2.3 in respect of the Service Levels;

36.2.2.4 in relation to any Intellectual Property Rights within the scope of Clause 29 and subject always to Clause 31;

36.2.2.5 to enable the Authority (and/or another member of the Authority Group and/or any Successor Operator(s)) to understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools and;

36.2.2.6 in respect of the Authority otherwise drafting any notice, invitation, request or other tender or negotiation process and/or providing any due diligence or other information for recipients of such a notice, invitation, request or other process,

whether or not the Service Provider or a member of the Service Provider Group is a recipient of or invited by the Authority Group to be involved in such process; and

36.2.3 in order to:

36.2.3.1 facilitate (i) the invitation of bids from, (ii) the selection of, and (iii) the appointment of, any Successor Operator(s)

36.2.3.2 prepare for an orderly and smooth transfer to any member of the Authority Group and/or any Successor Operator(s) of the provision of the

Services (or services substantially similar to the Services) or any relevant part thereof;

- 36.2.3.3 minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and any interfacing systems and Services.,

### 36.3 Handback Plan and Service End Dates

- 36.3.1 The Authority anticipates that the transfer of the Services to a Successor Operator may take place on the basis of a transition on a single “**End Date**” (which in those circumstances would also be the Expiry Date) or alternatively, on a phased step down of Services with completion of each phase or service being an “**End Date**” (and the last of such dates being the Expiry Date).

- 36.3.2 The Authority may, in its absolute discretion and by giving written notice in the form of a Variation to the Service Provider:

- 36.3.2.1 specify an End Date in relation to the termination of any particular Service having regard for the proper management and transitioning of the relevant Service and any phasing of various individual End Dates; and/or

- 36.3.2.2 revise or delay the relevant End Date for any reason including where the Authority Group and/or any Successor Operator is not ready to take over responsibility for the Service (or any replacing service) or any part thereof,

provided that the Authority shall not specify or require as an End Date any date which is a) prior to the effective date of any notice to terminate this Contract or any part thereof taking effect in relation to any termination of that Service pursuant to Clause 34 or b) otherwise (where no such notice to terminate has been given) prior to the end of the Initial Term (or, where extended in accordance with Clause 2.2, the end of the relevant Extension Year). The Service Provider shall continue to provide the relevant Service and any other required activities pursuant to this Contract until the relevant End Date.

### 36.4 Handback Procedure

- 36.4.1 The Authority shall provide to the Service Provider as much information as is reasonably practicable regarding the Authority’s proposed arrangements for the performance of the Services (or services similar to the Services) by the Successor Operator(s) and/or any member of the Authority Group (as the case may be) (the “**Successor Plan**”). If there are changes to the Successor Plan, the Authority shall update such information and shall provide such updated information to the Service Provider.

- 36.4.2 The Service Provider shall prepare and provide the following in accordance with Schedule 11 (Handback of Services):

- 36.4.2.1 the Handback Plan and any updates thereto;

- 36.4.2.2 the Handback Programme and any updates thereto; and

- 36.4.2.3 NOT USED.

- 36.5 No additional charges will be payable to the Service Provider for the services provided pursuant to this Clause 36. However:-

36.5.1.1 if the Service Provider is required to produce more than 2 iterations of each of the Handback Plan or the Handback Programme (other than as result of any failure by the Service Provider to comply with its obligations and not counting revisions to those documents to take into account the reasonable comments of the Authority in accordance with the provisions of Schedule 11 (Handback of Services); and

36.5.1.2 carrying out the Handback Plan

the requirements shall be chargeable activity which is not included in the Charges and shall be determined pursuant to the Variation Procedure.

### 37 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION.

37.1 The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Authority from time to time but no more than twice in any twelve month period and in any event not more than 107 Business days after the date of any notice to terminate this Contract given by either Party, the following information to the Authority:

37.1.1 an anonymised list of current Service Provider Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the “Staff List”);

37.1.2 such of the information specified in Appendix 1 to this Clause 37 as is requested by the Authority in respect of each individual included on the Staff List;

37.1.3 a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, whom the Service Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer,

such information together being the “Staffing Information”.

37.2 The Service Provider will notify the Authority as soon as practicable and in any event within 5 days of the Service Provider becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.

37.3 The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.

37.4 Subject to Clause 37.5, the Service Provider will provide the Authority with a final Staff List (the “Final Staff List”) and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.

37.5 If the Contract is terminated by the Authority in accordance with Clause 34.1, 34.7, 34.8, or 34.9 then the Final Staff List will be provided by the Service Provider to the Authority as soon as practicable and no later than 14 days after a) the date of the notice or b) the date of termination of the Contract (whichever is the earlier).

37.6 The Service Provider warrants that as at the Further Transfer Date:

- 37.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
- 37.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- 37.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
- 37.7 During the Relevant Period the Service Provider will not and will procure that its sub-contractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
  - 37.7.1 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that the Authority is informed promptly of such termination);
  - 37.7.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
  - 37.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
  - 37.7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider Personnel; or
  - 37.7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- 37.8 The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in Clause 37.7 regardless of when such notice takes effect.
- 37.9 The Service Provider agrees that the Authority will be permitted to disclose any information provided to it under this Clause 37 in anonymised form for the provision of the Services (or similar services) and to any Third Party engaged by the Authority to review the delivery of the Services and to any Successor Operator.
- 37.10 If TUPE applies on the expiry or termination of the Contract or the appointment of a Successor Operator, the following will apply:
  - 37.10.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Successor Operator (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).
  - 37.10.2 During the Relevant Period the Service Provider will:

- 37.10.2.1 provide the Authority or Successor Operator (as appropriate) with access to such employment and payroll records as the Authority or Successor Operator (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Successor Operator (as appropriate);
- 37.10.2.2 allow the Authority or Successor Operator (as appropriate) to have copies of any of those employment and payroll records;
- 37.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Successor Operator (as appropriate); and
- 37.10.2.4 co-operate with the Authority and any Successor Operator in the orderly management of the transfer of employment of the Re-Transferring Personnel.

If the Re-Transferring Personnel are employed or engaged by Sub-Contractors, the Service Provider will procure such Sub-Contractors provide the Authority or Successor Operator (as appropriate) with the same level of access, information and cooperation.

- 37.10.3 The Service Provider warrants to each of the Authority and the Successor Operator that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Authority and the Successor Operator (if appointed) in writing to the contrary) to the Service Provider's knowledge:
  - 37.10.3.1 is under notice of termination;
  - 37.10.3.2 is on long-term sick leave;
  - 37.10.3.3 is on maternity, parental or adoption leave;
  - 37.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
  - 37.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Successor Operator (as appropriate);
  - 37.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
  - 37.10.3.7 has received a written warning (other than a warning that has lapsed);
  - 37.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or
  - 37.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Successor Operator (as appropriate) under TUPE.
- 37.10.4 The Service Provider undertakes to each of the Authority and any Successor Operator that it will (and will procure that its Sub-Contractors will):
  - 37.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring



- Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;
- 37.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Sub-Contractor which fall due in the period up to the Further Transfer Date;
- 37.10.4.3 to pay to the Authority or the Successor Operator (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in Clause 37.10.5; and
- 37.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Successor Operator (as appropriate) such information as the Authority or Successor Operator may request in order to verify such compliance.
- 37.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
- 37.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;
- 37.10.5.2 the Authority or (where appointed) any Successor Operator will be responsible for the Employment Costs relating to the period after the Further Transfer Date
- and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.
- 37.10.6 The Service Provider will indemnify and keep indemnified each of the Authority and any Successor Operator from and against all Employment Liabilities which the Authority and/or the Successor Operator incurs or suffers arising directly or indirectly out of or in connection with:
- 37.10.6.1 any failure by the Service Provider to comply with its obligations under this Clause 37.10;
- 37.10.6.2 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;
- 37.10.6.3 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Authority or the Successor Operator to comply with Regulation 13 of TUPE);
- 37.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;
- 37.10.6.5 any claim or demand or other action taken against the Authority or any Successor Operator by any person employed or engaged by the Service Provider (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the

Authority or Successor Operator has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

37.11 If TUPE does not apply on the expiry or termination of the Contract, the Service Provider will remain responsible for the Service Provider Personnel and will indemnify and keep indemnified the Authority against all Employment Liabilities which the Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Service Provider Personnel or former Service Provider Personnel.

37.12 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 2 years following the date of expiry or earlier termination of the Contract the Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

37.12.1 is still an employee or Sub-Contractor of the Service Provider or any of the Service Provider's associated companies; and

37.12.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the Service Provider and/or its employees or Sub-Contractors on such consultation. The Service Provider will use all reasonable endeavours to procure that such persons co-operate with the Authority's requests.

37.13 Clause 40.1 shall be amended so that benefits conferred on the Successor Operator under this Clause 37 shall be enforceable by them.

## **Appendix 1 to Clause 37**

### **Information to be provided in respect of those on the Staff List**

- Amount of time spent on the Services (or any part of the Services specified by the Authority)
- Date of birth
- Role title/designation and role profile
- Annual salary £
- Bonus and commission amount and frequency
- Pay frequency and date
- Overtime - contractual or non-contractual and rates
- Contractual working hours
- Contract type - permanent/temporary
- Geographical area of work / location
- Commencement of employment date
- Continuous service date
- Car allowance
- Pension contributions
  - Employer
  - Employee
  - Including additional info on:
    - § who were originally employees of the Authority,
    - § who were members of (or eligible to become members of) the TfL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme,
    - § whose employment transferred from the Authority to the Service Provider under TUPE; and
    - § who were entitled to broadly comparable benefits under the Existing Service Provider's Scheme
- Details of any contracting out certificate
- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of annual pay award
- Annual leave entitlement
- Contractual notice period
- Public holiday /concessionary days entitlement
- Sickness entitlement (in 12 month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual
- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom

- Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided
- Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

### **38 DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT**

- 38.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 35 and Clauses 38.1, 38.2, 38.4 to 38.6 and clause 38.12 shall apply as from the time when the Declaration of Ineffectiveness is made.
- 38.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness.
- 38.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Authority may require the Service Provider to prepare a Cessation Plan in accordance with this clause 38.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Authority, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.3.1 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
- 38.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,  
in accordance with the provisions of Clauses 38.2 to 38.6 and which the parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 38.4 Where there is any conflict or discrepancy between the provisions of clauses 35 and clauses 38.2 to 38.6 or the Cessation Plan, the provisions of these clauses 38.2 to 38.6 and the Cessation Plan will prevail.
- 38.5 The parties shall comply with their respective obligations under the Cessation Plan (as agreed by the parties or, where agreement cannot be reached, as reasonably determined by the Authority) in the event that a Declaration of Ineffectiveness is made.
- 38.6 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Call off Contract or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider for any

loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.

- 38.7 Consistent with the Authority's rights of termination implied into this Contract by the Procurement Regulations, in the event of a Public Procurement Termination Event, the Authority shall promptly notify the Service Provider that the provisions of Clause[s] 35 to 37 (inclusive) and these Clauses 38.7 to 38.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause[s] 35 to 37 (inclusive) and these Clauses 38.7 to 38.12 (inclusive) ~~or the Cessation Plan~~, the provisions of these Clauses 38.7 to 38.12 (inclusive) ~~and the Cessation Plan~~ shall prevail.
- 38.8 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.
- 38.9 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.9.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and
- 38.9.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities
- in accordance with the provisions of these Clauses 38.7 to 38.12 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.
- 38.10 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 38.11 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Contract as a result of a Public Procurement Termination Event.
- 38.12 For the avoidance of doubt, the provisions of this clause 38 (and applicable definitions) shall survive any termination of the Contract following a Declaration of Ineffectiveness or a Public Procurement Termination Event.

## **39 SURVIVAL**

- 39.1 The provisions of Clauses 1, 4.1.3, 10, 11, 12.1.4, 17.2.2, 17.2.3, 19.1.1, 19.1.2, 19.1.5, 19.1.6, 19.2, 22, 24-28 (inclusive), 29.2 29.3, 30-41 (inclusive), 43-49 (inclusive), 50, and any other Clauses or Schedules that are necessary to give effect to those Clauses shall 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 shall do so. **[DRAFTING NOTE: REVIEW THIS CLAUSE IF AMENDMENTS ARE MADE TO CLAUSES/SCHEDULES ON A CASE BY CASE BASIS]**

#### 40 RIGHTS OF THIRD PARTIES

- 40.1 Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (“**Third Party Act**”), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it except an Existing Service Provider and its sub-contractors to the extent provided in Clause 14.10.
- 40.2 Notwithstanding Clause 40.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

#### 41 CONTRACT VARIATION

- 41.1 Save where the Authority may require an amendment to the Services (in which case the Variation procedure set out in Schedule 9 shall apply), the Contract may only be varied or amended with the written agreement of both Parties. The details of any Variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Schedule 9 (Form of Variation) and shall not be binding upon the Parties unless completed in accordance with such form of variation.

#### 42 NOVATION

- 42.1 The Authority may novate or otherwise transfer the Contract (in whole or in part).
- 42.2 Within 10 Business Days of a written request from the Authority, the Service Provider shall at its expense execute such agreement as the Authority may reasonably require to give effect to any such transfer of all or part of its rights and obligations under the Contract to one or more persons nominated by the Authority.
- 42.3 Subject to Clause 17, the Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Authority.

#### **43 NON-WAIVER OF RIGHTS**

- 43.1 No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 45. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

#### **44 ILLEGALITY AND SEVERABILITY**

- 44.1 If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

#### **45 NOTICES**

- 45.1 Any notice, demand or communication in connection with this Contract (including a Notice) will be in writing and may be delivered by hand, prepaid recorded delivery first class post or e-mail addressed to the recipient at its registered office or the address stated in Schedule 1 (Key Contract Information) or any other address notified to the other Party in writing in accordance with this Clause 45 as an address to which notices, invoices and other documents may be sent provided that any notice (or Notice) to be served pursuant to Clause 33 (Dispute Resolution) or Clause 34 (Breach and Termination of Contract) shall not be capable of being served by e-mail. The notice, demand or communication will be deemed to have been duly served:
- 45.1.1 if delivered by hand, at the time of delivery;
  - 45.1.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or
  - 45.1.3 if e-mail is permitted for such notice, if sent by e-mail to that Party's e-mail address, at the time of sending (or, if sending is not on a Business Day or is after 5pm (at the location of the recipient) on a Business Day, at 9am on the next following Business Day), provided that a confirming copy is delivered by hand or sent by first class post to the other Party within 24 hours after sending the e-mail.

#### **46 ENTIRE AGREEMENT**

- 46.1 Subject to Clause 46.2:

- 46.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the 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 the Contract by a statement which the Contract does not contain; and
- 46.1.2 without prejudice to the Service Provider's obligations under the Contract, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.
- 46.2 Nothing in this Clause 46 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

#### **47 COUNTERPARTS**

- 47.1 This Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

#### **48 RELATIONSHIP OF THE PARTIES**

- 48.1 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

#### **49 FURTHER ASSURANCE**

- 49.1 The Service Provider shall provide Assurance to the Authority in accordance with the requirements of Schedule 14 (Assurance) in order to provide clarity and visibility to the Authority in relation to the Service Providers compliance with its obligations under this Contract.
- 49.2 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 the Contract.

#### **50 AUTHORITY EVENTS**

- 50.1 The Service Provider will ~~immediately~~ give notice to the Authority as soon as reasonably practicable, but in all cases within two (2) Business days of the Service Provider becoming aware that an Authority Event has arisen or is likely to arise. That notice must include:



- 50.1.1 details of that Authority Event (including the date of occurrence or likely occurrence);
- 50.1.2 details of the delay (if any) to completion of Transition or the likely impact (if any) on performance of the relevant Services; and
- 50.1.3 a calculation of the increased costs (if any) that the Service Provider is likely to incur as a direct result of that Authority Event in completing Transition or performing the Services (as the case may be),
- in each case in sufficient detail to enable the Authority to reasonably understand, consider and assess the same and the likely impact on the Service Provider's obligations under this Contract.
- 50.2 The Service Provider will promptly supply to the Authority such further information relating to any Authority Event and the rights claimed by the Service Provider under this Clause 50 as the Authority may reasonably request from time to time.
- 50.3 If the Service Provider does not provide any information required to be provided under Clauses 50.1 or 50.2 on the date when it should be provided then the Service Provider's rights to be relieved from performance of its obligations and/or to be reimbursed for additional costs incurred by it pursuant to this Clause 50 will not apply to the extent relief would not have been required or costs incurred had the information been provided within the required timescale.
- 50.4 Subject to Clauses 50.1, 50.2, 50.5, 50.6, and 50.7, if an Authority Event occurs then if that Authority Event directly:
- 50.4.1 results in a delay to any Transition Milestone being achieved, or to the Service Commencement Date or to the completion of Transition beyond the SCD Long Stop Date or the Transition Long Stop Date (as the case may be), the relevant Transition Milestone Date, and/or the SCD Long Stop Date and/or the Transition Long Stop Date (as the case may be) will be postponed to such future date as is reasonable given the nature and extent of the relevant Authority Event;
- 50.4.2 following the Service Commencement Date, affects performance of, or results in a delay to, performance of the Services (or part of them) then the Service Provider's obligation to perform the affected Services (including its obligation to meet Service Levels (and reduce the Charges by way of crediting Service Credits (where appropriate)) will be deemed to be amended, or delayed (as appropriate), to the extent reasonable to reflect the relevant Authority Event provided that nothing in this Clause 50.4.2 will extend the Term; or
- 50.4.3 causes the Service Provider to incur additional costs, the Service Provider will (subject to Clause 50.5.3) be able to recover such reasonable additional costs from the Authority that directly flow from the relevant Authority Event in accordance with the principles set out in Clause 50.6.
- 50.5 The Service Provider will only be entitled to the rights contained in Clause 50.4 if:
- 50.5.1 the Service Provider has at all times acted in accordance with good industry practice and used all reasonable endeavours to:

- 50.5.1.1 mitigate the effects of the relevant Authority Event;
- 50.5.1.2 continue to perform all of its obligations under this Contract in accordance with its terms; and
- 50.5.1.3 minimise any additional costs incurred by or on behalf of the Service Provider as a result of the relevant Authority Event;
- 50.5.2 the Service Provider has complied in full with all of the provisions of this Clause 50; and
- 50.5.3 in respect of the ability to recover additional costs pursuant to Clause 50.4.3, the additional costs which the Service Provider would be entitled to recover in respect of the relevant Authority Event exceed ~~£5002000~~ ("**the Threshold**") provided that:-
- 50.5.3.1 for the purpose of determining whether the Threshold is exceeded, each act, omission, incident or circumstance which constitutes an Authority Event shall be considered individually and there will be no aggregation of such acts, omissions incidents or circumstances; but subject to that,
- 50.5.3.2 if the Threshold is exceeded for any individual act, omission, incident or circumstance which constitutes an Authority Event, the Service Provider shall be entitled to recover the whole amount and not just the excess.
- 50.6 The additional costs that the Service Provider can recover pursuant to Clause 50.4.3 will be calculated in accordance with the principles in paragraph 7 (Value for Money) of Schedule 9 (Form of Variation), as if the relevant Authority Event had been a Variation, and shall take into account any savings made by the Service Provider in connection with the Authority Event.
- 50.7 The Service Provider will verify and justify such costs by reference to its accounting records and the Authority will be granted full access to any relevant records in accordance with Clause 24 (Records, Audit and Inspection).
- 50.8 The Service Provider will give notice to the Authority of all amounts which it believes are due to it pursuant to Clause 50.4.3 not less than 20 Business Days prior to the date on which the Authority is proposed to be invoiced for the same and will provide details of all relevant calculations.
- 50.9 If the Parties do not agree upon:-
- 50.10 any amounts invoiced (or proposed to be invoiced) by the Service Provider to the Authority pursuant to this Clause 50, either Party may refer the dispute to the Dispute Resolution Procedure and pending resolution the amounts in dispute will not be payable by the Authority. Any sums due to the Service Provider following resolution of such dispute will be added to the instalment of the Charges due next following such resolution and, if no such Charges are due, as a debt due within 20 Business Days of the resolution of the dispute.
- 50.11 The Service Provider will have no rights pursuant to Clause 50.4 unless and until the extent of the Service Provider's entitlement to relief from performance of, or right to delay performance of the Services or complete Transition (as appropriate) has been agreed by the Parties in writing. If the Parties cannot agree upon whether or not a Authority Event has arisen and/or the extent or consequences of a Authority Event or the extent of any relief due to the Service

Provider under Clause 50.4 the matters in dispute will be referred to the Dispute Resolution Procedure.

50.12 The Service Provider's sole remedies in respect of any Authority Event will be as set out in this Clause 50. The Service Provider will have no right to terminate this Contract pursuant to Clause 34 (Breach and Termination of Contract) (or otherwise) in respect of any Authority Event.

## 51 GOVERNING LAW

51.1 The Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 33, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Authority has the right in its absolute discretion to enforce a judgment and take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

**52 [DRAFTING NOTE: INSERT ANY ADDITIONAL CLAUSES FROM HERE OR DELETE THIS LINE]**

**THE CONTRACT** has been signed for and on behalf of the Parties the day and year written above.

Signed by for and on behalf of the <b>Authority</b>	Print name.....  Position.....  Signature.....  Date.....
Signed by for and on behalf of the <b>Service Provider</b>	Print name.....  Position.....  Signature.....  Date.....

## 1 SCHEDULE 1 - KEY CONTRACT INFORMATION

1) Call-Off Contract Reference Number:

2) Commencement:

a) Contract Commencement Date:

b) Service Commencement Date:

3) Initial Term:

4) Payment (see Clauses 11.1, 11.2 and 11.4):

### Clause 11.1

*[Insert alternative period]*

Where no alternative is listed, the invoice period shall be every Period in arrears during the Term.

### Clause 11.2

Where the Service Provider wishes to invoice electronically, the Service Provider shall use the format detailed in the EP2P Vendor Handbook, to be provided by the Authority electronically.

### Clause 11.4

*[Insert alternative (shorter\*) period]*

Where no alternative is listed, payment must be made within 30 days of receipt of invoices.

**[\*DRAFTING NOTE: the period cannot exceed 30 days]**

5) Address where invoices shall be sent:

Transport for London  
Accounts Payable  
PO Box 45276  
14 Pier Walk  
SE10 1AJ

Electronic format required (if any) for submission of orders by the Authority and of invoices by the Service Provider:

Email address: [etrading@tfl.gov.uk](mailto:etrading@tfl.gov.uk)

## 6) Details of the Authority's Contract Manager

**Name:** Andy Barrie  
**Address:** 3<sup>rd</sup> Floor, Windsor House  
50 Victoria Street  
London SW1H 0TL  
**Tel:** 020 3054 0127  
**Email :** Andy.Barrie@tube.tfl.gov.uk

## 7) Service Provider's Key Personnel:

Name & Position	Contact Details	Area of Responsibility
[ xxx ]	Direct Dial: xxxx Mob:xxxxxx Email:xxxxx	Service Provider Contract Manager <b>(NOTE THIS MUST BE CONSISTENT WITH THE FRAMEWORK AGREEMENT)</b>
[ xxx ]	Direct Dial: xxxx Mob:xxxxxx Email:xxxxx	Service Provider Incident Manager
<b>[DRAFTING NOTE: ADD OTHERS AS APPLICABLE]</b>		

## 8) Notice period in accordance with Clause 34.7 (termination without cause):

180 days' written notice at any time after the expiry of 12 months from the Service Commencement Date 90 days unless an alternative is listed here [insert alternative if needed]

~~[DRAFTING NOTE -- if appropriate, write "Clause 34.7 does not apply" and delete the 90 day reference]~~

## 9) Address for service of notices in accordance with Clause 45:

### For the Authority:

Transport for London, Windsor House, 42-52 Victoria Street, LONDON, SW1H 0TL

E-mail Address (where permitted): XXX]

For the attention of: XXX

**For the Service Provider:**

[Relevant Service Provider address]

E-mail Address (where permitted): XXX

For the attention of: XXX

## Appendix 1 – Authority Periods

2015/2016 financial year

Financial Year	Start of Period 1	Start of Period 3	Start of Period 4	Start of Period 5	Start of Period 6	Start of Period 7	Start of Period 8	Start of Period 9	Start of Period 10	Start of Period 11	Start of Period 12	Start of Period 13	End of Period 13
2015-16	01/04/2015	31/05/2015	28/06/2015	26/07/2015	23/08/2015	20/09/2015	18/10/2015	15/11/2015	13/12/2015	10/01/2016	07/02/2016	06/03/2016	31/03/2016
2016-17	01/04/2016	29/05/2016	26/06/2016	24/07/2016	21/08/2016	18/09/2016	16/10/2016	13/11/2016	11/12/2016	08/01/2017	05/02/2017	05/03/2017	31/03/2017
2017-18	01/04/2017	28/05/2017	25/06/2017	23/07/2017	20/08/2017	17/09/2017	15/10/2017	12/11/2017	10/12/2017	07/01/2018	04/02/2018	04/03/2018	31/03/2018
2018-19	01/04/2018	27/05/2018	24/06/2018	22/07/2018	19/08/2018	16/09/2018	14/10/2018	11/11/2018	09/12/2018	06/01/2019	03/02/2019	03/03/2019	31/03/2019
2019-20	01/04/2019	26/05/2019	23/06/2019	21/07/2019	18/08/2019	15/09/2019	13/10/2019	10/11/2019	08/12/2019	05/01/2020	02/02/2020	01/03/2020	31/03/2020
2020-21	01/04/2020	31/05/2020	28/06/2020	26/07/2020	23/08/2020	20/09/2020	18/10/2020	15/11/2020	13/12/2020	10/01/2021	07/02/2021	07/03/2021	31/03/2021
2021-22	01/04/2021	30/05/2021	27/06/2021	25/07/2021	22/08/2021	19/09/2021	17/10/2021	14/11/2021	12/12/2021	09/01/2022	06/02/2022	06/03/2022	31/03/2022
2022-23	01/04/2022	29/05/2022	26/06/2022	24/07/2022	21/08/2022	18/09/2022	16/10/2022	13/11/2022	11/12/2022	08/01/2023	05/02/2023	05/03/2023	31/03/2023
2023-24	01/04/2023	28/05/2023	25/06/2023	23/07/2023	20/08/2023	17/09/2023	15/10/2023	12/11/2023	10/12/2023	07/01/2024	04/02/2024	03/03/2024	31/03/2024
2024-25	01/04/2024	26/05/2024	23/06/2024	21/07/2024	18/08/2024	15/09/2024	13/10/2024	10/11/2024	08/12/2024	05/01/2025	02/02/2025	02/03/2025	31/03/2025
2025-26	01/04/2025	25/05/2025	22/06/2025	20/07/2025	17/08/2025	14/09/2025	12/10/2025	09/11/2025	07/12/2025	04/01/2026	01/02/2026	01/03/2026	31/03/2026
2026-27	01/04/2026	31/05/2026	28/06/2026	26/07/2026	23/08/2026	20/09/2026	18/10/2026	15/11/2026	13/12/2026	10/01/2027	07/02/2027	07/03/2027	31/03/2027
2027-28	01/04/2027	30/05/2027	27/06/2027	25/07/2027	22/08/2027	19/09/2027	17/10/2027	14/11/2027	12/12/2027	09/01/2028	06/02/2028	05/03/2028	31/03/2028
2028-29	01/04/2028	28/05/2028	25/06/2028	23/07/2028	20/08/2028	17/09/2028	15/10/2028	12/11/2028	10/12/2028	07/01/2029	04/02/2029	04/03/2029	31/03/2029
2029-30	01/04/2029	27/05/2029	24/06/2029	22/07/2029	19/08/2029	16/09/2029	14/10/2029	11/11/2029	09/12/2029	06/01/2030	03/02/2030	03/03/2030	31/03/2030
2030-31	01/04/2030	26/05/2030	23/06/2030	21/07/2030	18/08/2030	15/09/2030	13/10/2030	10/11/2030	08/12/2030	05/01/2031	02/02/2031	02/03/2031	31/03/2031
2031-32	01/04/2031	25/05/2031	22/06/2031	20/07/2031	17/08/2031	14/09/2031	12/10/2031	09/11/2031	07/12/2031	04/01/2032	01/02/2032	29/02/2032	31/03/2032
2032-33	01/04/2032	30/05/2032	27/06/2032	25/07/2032	22/08/2032	19/09/2032	17/10/2032	14/11/2032	12/12/2032	09/01/2033	06/02/2033	06/03/2033	31/03/2033
2033-34	01/04/2033	29/05/2033	26/06/2033	24/07/2033	21/08/2033	18/09/2033	16/10/2033	13/11/2033	11/12/2033	08/01/2034	05/02/2034	05/03/2034	31/03/2034
2034-35	01/04/2034	28/05/2034	25/06/2034	23/07/2034	20/08/2034	17/09/2034	15/10/2034	12/11/2034	10/12/2034	07/01/2035	04/02/2035	04/03/2035	31/03/2035

## **2 SCHEDULE 2 – OVERVIEW OF THE CONTRACT**

### **1. Introduction**

#### **1.1. Scope and Purpose**

- 1.1.1. This Schedule provides an introduction to and an overview of the Contract documentation and the concepts behind both its structure and the approach and language adopted within the Contract and the Schedules.
- 1.1.2. This overview is intended to introduce and expand on the information provided elsewhere within the Contract to ensure that the concepts and approach underlying the main provisions are easily and properly understood. It is not intended to contain specific obligations on either Party.
- 1.1.3. The overviews within this Schedule are intended to provide a high level picture only and should not be interpreted as being complete or comprehensive. In the event of any inconsistency or conflict between the contents of this Schedule and any other part of the Contract, that other part of the Contract shall take precedence.

#### **1.2. Service Continuity**

- 1.2.1. The Authority has developed a reputation for delivering a high quality, reliable and consistent service to its customers through the portfolio of contracts and systems managed by its Customer Experience Directorate. It is essential that this continues and this overview seeks to explain how the Service Provider will operate as part of this portfolio to deliver excellent and potentially more integrated services.
- 1.2.2. Specific requirements covering transition from the Authority's Existing Service Providers, Required Variations (whereby the Authority can instruct Variations to proceed, with the cost and other impacts to be determined afterwards), enhanced co-operation obligations, Service management and flexible handback obligations (including the potential for the Authority to instruct phased handback and/or handback continuing over a period beyond the initial or extended contractual period) have been included to re-enforce and support the need for service continuity.

#### **1.3. Assurance**

- 1.3.1. The Authority has engaged the Service Provider on the basis of the Service Provider's experience, expertise and proposed solution to the delivery of the Services and other obligations under the Contract. The Authority wishes to give the Service Provider latitude to manage its operations effectively; however, the operation of the Services is critical to the Authority's business operations and consequently the Service Provider needs to demonstrate to the Authority that it is complying with the principles and specific requirements and obligations set out in the Contract. This process is called Assurance and is principally set out in Schedule 14 (Assurance).
- 1.3.2. Assurance is an activity performed by the Service Provider to demonstrate compliance to the Authority and includes, but is not limited to, the submission of documents, responding to questions and comments, and



witness testing. Assurance is frequently an incremental process that provides confidence to both parties of successful delivery. It should not, however, be confused with approval from the Authority and does not relieve the Service Provider of its responsibilities or liability under the Contract.

## 2. Document Architecture

The Contract is constructed from three mutually supporting elements:

**Main Terms & Conditions** – this contains the main rights and obligations of the Parties expressed in Clauses;

**Schedules** – these contain further obligations, the Service Scope Specification, Service Levels and contract processes expressed in paragraphs; and

**Supporting Documents** – these are documents (if any) which are incorporated into the Contract by reference.

## 3. Not used

## 4. The Services

4.1. The services to be delivered by the Service Provider are set out in Clause 4 (The Services) and further defined along with the Service Levels in Schedule 8 (Service Management).

| 4.2. Specific requirements on service management, service design, service transition, service operations, incident management and change management are described in Schedule 3 (Transition) and Schedule 8 (Service Management).  
|

## APPENDIX 1 - Service Dependencies and materials

### **3 SCHEDULE 3 - TRANSITION**

#### **1. Introduction**

##### **1.1. Purpose**

1.1.1. The purpose of this Schedule 3 (Transition) is to set out the Service Provider's obligations in relation to Transition and in particular:

- 1.1.1.1. the preparations by the Service Provider to take over responsibility for the delivery of the Services;
- 1.1.1.2. Assurance to be provided by the Service Provider to the Authority that the Service Provider is ready for each phase or stage of Transition and delivery of the Services;
- 1.1.1.3. the carrying out of a smooth transition of Existing Services (so far as relevant to the Services) to the Service Provider;
- 1.1.1.4. the preparation, definition and then delivery of the change activities required to successfully transition the Services; and
- 1.1.1.5. the carrying out of the necessary activities to ensure that the system integrator responsibilities are supported or delivered by the Service Provider.

##### **1.2. Authority Objectives**

1.2.1. The objectives of this Schedule 3 (Transition) are to:

- 1.2.1.1. achieve a smooth handover of responsibility from the Existing Service Provider to the Service Provider on and/or following the Service Commencement Date;
- 1.2.1.2. ensure that there is no adverse impact on customers during Transition;
- 1.2.1.3. minimise any disruption to the Authority during Transition;
- 1.2.1.4. ensure that there is no degradation to the Services during Transition and all transferred Services are delivered by the Service Provider pursuant to the Service Levels from the respective date of transfer of such Services;
- 1.2.1.5. minimise the costs of Transition (although for the avoidance of doubt, the Charges already include and provide for the Service Provider's costs in respect of Transition, except where and to the extent that the right to any additional payment is explicitly provided in this Contract);
- 1.2.1.6. ensure timely development and agreement of Transition Plans and the Service Provider's compliance with those plans;
- 1.2.1.7. ensure that effective business controls are implemented by the Service Provider to manage risks during Transition;
- 1.2.1.8. ensure that Transition activities are effectively monitored and reported;
- 1.2.1.9. ensure effective communications between all parties involved in Transition activities; and

- 1.2.1.10. ensure that the Authority is fully aware of the Service Provider's Transition approach and activities at all times throughout the Transition Period.

### 1.3. Overview of this schedule

- 1.3.1. This Schedule sets out:
  - 1.3.1.1. the Transition Phases, Transition Plans and Transition Milestones in paragraph 2;
  - 1.3.1.2. the obligations and responsibilities of the Service Provider relating to Transition during:
    - 1.3.1.2.1.1. the Pre-Transition Phase in paragraph 3;
    - 1.3.1.2.1.2. the Transition Phase in paragraph 4; and
    - 1.3.1.2.1.3. the Post-Transition Phase in paragraph 5;
  - 1.3.1.3. the requirements for managing and governing the Transition activities in paragraph 6 and Appendix 1 (High-Level Governance Structure) to this Schedule;
  - 1.3.1.4. the Service Provider's High-Level Transition Plan in Appendix 2 (High-Level Transition Plan) to this Schedule; and
  - 1.3.1.5. the Authority Transition Dependencies and Existing Service Provider Transition Dependencies relating to Transition in paragraph 7 (Transition Dependencies) of this Schedule.

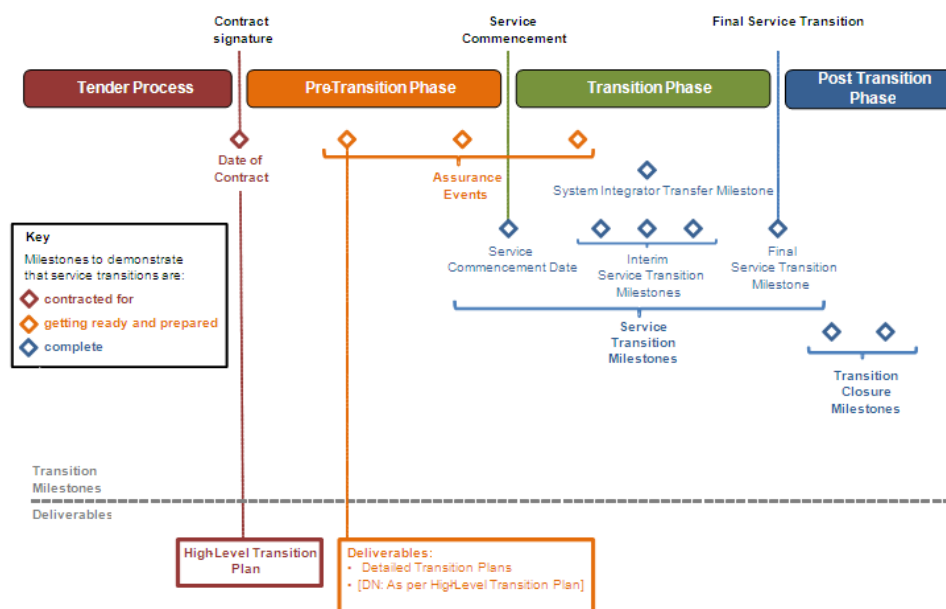
## 2. Transition Phases, Plans and Milestones

### 2.1. The Transition Phases

- 2.1.1. Transition comprises of three phases:
  - 2.1.1.1. the period from (and including) the Contract Commencement Date to (but excluding) the date of transfer of any part of the Services at the Service Commencement Date (the "**Pre-Transition Phase**");
  - 2.1.1.2. the period from (and including) the Service Commencement Date to (and including) the date of completion of the transfer of all of the Services from the Existing Service Provider to the Service Provider at the actual achievement of the Transition Milestone Criteria for the Final Service Transition Milestone (the "**Transition Phase**"); and
  - 2.1.1.3. the period following the achievement of the Transition Milestone Criteria for the Final Service Transition Milestone until any and all outstanding issues relating to Transition have been resolved and/or completed to the Authority's reasonable satisfaction (the "**Post-Transition Phase**").
- 2.1.2. An outline of the transition phases set out in paragraph 2.1.1 above and the types of Transition Milestone applicable during Transition is set out graphically in the following diagram for illustration.

[Note to Service Provider: Diagram below provided for illustration and assumes that transition occurs on a phased basis but it is recognised that the Services

could transition on a “big-bang” basis. Diagram to be replaced by the Service Provider's overview of the High-Level Transition Plan.]



## 2.2. The Transition Plans

2.2.1. The Transition Plans consist of the:

2.2.1.1. High-Level Transition Plan attached in Appendix 2 (High-Level Transition Plan); and

2.2.1.2. Detailed Transition Plan to be developed by the Service Provider in accordance with the provisions of this Schedule and consistent with the High-Level Transition Plan.

2.2.2. The Service Provider shall ensure that all Transition Plans contain all the deliverables required under this Contract to meet the Transition Milestone Criteria including but not limited to those set out in Appendix 3 (Milestone Criteria).

## 2.3. Assurance Events and Transition Milestones

2.3.1. The Assurance Events and Transition Milestones are set out in the High-Level Transition Plan in Appendix 2 and include:

2.3.1.1. a series of Assurance Events to Assure the Authority that preparations are on track culminating in a Transition Milestone for the Service Provider to take over responsibility for the Services or a particular part of the Services;

2.3.1.2. the Transition Milestones and associated Transition Milestone Dates that include:

- 2.3.1.2.1. the Service Commencement Date when the initial set of the Services and/or responsibility for all Services shall transfer to the Service Provider;
- 2.3.1.2.2. if applicable, the Interim Service Transition Milestones when subsequent sets of Services shall transfer to the Service Provider;
- 2.3.1.2.3. if applicable, the systems integrator transfer Milestone when the Service Provider shall take over responsibility for carrying out any system integrator role;
- 2.3.1.2.4. the Final Service Transition Milestone at which point the Service Provider shall deliver all of the Services; and
- 2.3.1.2.5. other Transition Milestones as set out in the High-Level Transition Plan and/or the Detailed Transition Plan.

#### **2.4. Milestone achievement process**

- 2.4.1. Not less than twenty-eight (28) days prior to the Transition Milestone Date for each Transition Milestone the Service Provider shall submit a Transition Milestone Completion Plan to the Authority that shall include:
  - 2.4.1.1. details of the proposed programme for meeting the Transition Milestone Criteria for the Transition Milestone by the relevant Transition Milestone Date;
  - 2.4.1.2. details of all extensions of time arising from Authority Events requested or agreed or determined in accordance with Clause 50 (Authority Event) of the Contract and any consequent changes to the Transition Milestone Date;
  - 2.4.1.3. details of all aspects of the Transition Milestone Criteria already achieved in whole or in part prior to the Transition Milestone Date and achievement of such criteria; and
  - 2.4.1.4. a timetable for achieving all outstanding aspects of the Transition Milestone Criteria,

and the Service Provider shall subsequently provide the Authority with satisfactory evidence of delivery of such outstanding aspects of the Transition Milestone Criteria in all cases within two (2) Business Days of such delivery or achievement, as applicable.
- 2.4.2. The Service Provider shall provide the evidence of achievement of the Transition Milestone Criteria in accordance with the timetable provided to the Authority pursuant to paragraph 2.4.1 above and shall submit an application in writing to the Authority for a Compliance Certificate for each Transition Milestone on the date from which the Service Provider believes that it is entitled to that Compliance Certificate, provided that in relation to each Transition Milestone not more than one application for a Compliance Certificate may be submitted to the Authority and be outstanding at any one time.
- 2.4.3. The Service Provider shall provide such additional information and assistance as the Authority and any nominee may reasonably require to satisfy the Authority that the Service Provider has achieved the Transition

Milestone Criteria. Within ten (10) Business Days of the provision of all such information and assistance, the Authority shall in its absolute discretion issue either:

- 2.4.3.1. a **Compliance Certificate** dated as of the date the Transition Milestone Criteria were achieved by the Service Provider, which shall confirm that the Service Provider has achieved the Transition Milestone Criteria and that it is entitled to the Charges associated with that Transition Milestone from the date of the Compliance Certificate;
- 2.4.3.2. a **Qualified Compliance Certificate** dated as of the date the Authority considers sufficient Transition Milestone Criteria were achieved and which confirms that the Service Provider is provisionally entitled to the Charges associated with that Transition Milestone from the date of the Qualified Compliance Certificate, but that there are other outstanding criteria which the Service Provider must still achieve in order to retain such payments pursuant to paragraph 2.4.17.3.2; or
- 2.4.3.3. a **Non-Compliance Certificate** dated as of the date the Service Provider stated in its application that it believed it was entitled to the Compliance Certificate, which shall state that the Service Provider has not fully achieved the Transition Milestone Criteria for the applicable Transition Milestone and that it is not entitled to the Charges associated with that Transition Milestone or any part of such payments.

The Authority's entitlement to exercise its discretion under this paragraph shall not be limited or otherwise impaired due to a Compliance Certificate having been issued in relation to a different Transition Milestone.

#### ***Dispute Procedure***

- 2.4.4. Where the Service Provider disputes the issue of a Qualified Compliance Certificate or a Non-Compliance Certificate, it may refer the matter for resolution to the Transition Governance Group and/or the Service Provider may refer the matter for resolution in accordance with Clause 33 (Dispute Resolution).

#### ***Non-Compliance Certificate***

- 2.4.5. The Authority shall only be entitled to issue a Non-Compliance Certificate in circumstances where the Service Provider has failed to complete the Transition Milestone Criteria for the Transition Milestone and/or a Non-Compliance Certificate is issued after the Consultation Period in accordance with paragraph 2.4.16.2.
- 2.4.6. Where the Authority issues a Non-Compliance Certificate, it shall include on the certificate specific reasons for the Service Provider's failure to obtain a Compliance Certificate which the Service Provider must address to obtain a Compliance Certificate.
- 2.4.7. As soon as reasonably practicable after the receipt of a Non-Compliance Certificate and in any event within ten (10) Business Days, the Service Provider shall provide the Authority with full details of a revised programme for remedying as soon as possible its failure to satisfy the Transition Milestone Criteria together with a new date by which the failure to

satisfy such Transition Milestone Criteria shall be remedied and the terms of any Corrective Action Notice(s) shall be complied with.

2.4.8. Subject to paragraph 2.4.9, the Service Provider shall carry out the actions in the revised programme referred to in paragraph 2.4.7 by the new date and the Authority and the Service Provider shall comply with this paragraph 2.4 accordingly in relation thereto.

2.4.9. The Authority may, at its discretion, reject a revised programme and/or new Transition Milestone Date submitted in accordance with paragraph 2.4.7, whereupon the Service Provider shall resubmit a further revised programme and/or new Transition Milestone Date in accordance with paragraph 2.4.7 and paragraph 2.4.8 and this paragraph 2.4.9 shall then apply.

#### **Qualified Compliance Certificate**

2.4.10. Where the Authority issues a Qualified Compliance Certificate, it shall include on the certificate specific reasons for the Service Provider's failure to obtain a Compliance Certificate which the Service Provider must address to obtain a Compliance Certificate.

2.4.11. Following the issue of a Qualified Compliance Certificate, the Service Provider shall provide the Authority with all information and assistance as the Authority may reasonably require to confirm that the outstanding Transition Milestone Criteria and Corrective Action Notice(s) (if any) have been or are being properly resolved.

2.4.12. The Service Provider shall address the reasons for failure to obtain a Compliance Certificate and, within fourteen (14) days of the issue of the Qualified Compliance Certificate (or such longer time period as the Authority may in its absolute discretion grant), shall provide the Authority with evidence to the Authority's satisfaction that each of the reasons for failure to obtain the Compliance Certificate and each issue specified in any Corrective Action Notice(s) have been fully resolved.

2.4.13. The Authority shall confirm within five (5) Business Days of the expiry of the time period granted by the Authority for the resolution of the outstanding Transition Milestone Criteria pursuant to paragraph 2.4.12 whether all such outstanding Milestone Criteria have been properly resolved within the time period.

2.4.14. If the Service Provider has resolved all outstanding Milestone Criteria to the Authority's satisfaction within the time period set out in paragraph 2.4.12, The Authority shall endorse the Qualified Compliance Certificate issued pursuant to paragraph 2.4.3.2 with the word "Compliant" and the date of such endorsement. Such Qualified Compliance Certificate shall then be deemed for all purposes to be a Compliance Certificate as if it had been issued as of the date of the Qualified Compliance Certificate.

#### **Consultation process**

2.4.15. If the Service Provider has failed to comply with all outstanding Transition Milestone Criteria and any Corrective Action Notice(s) within the time period set out in paragraph 2.4.12, the Authority, in its absolute discretion, shall either:



- 2.4.15.1. grant the Service Provider such additional time to satisfy the Transition Milestone Criteria as The Authority in its absolute discretion may decide, subject to such additional or amended requirements as the Authority considers in its absolute discretion to be appropriate, whereupon the Qualified Compliance Certificate issued pursuant paragraph 2.4.3.2 shall be amended by the Authority to reflect such additional time and the provisions of this paragraph 2.4 shall apply to such Qualified Compliance Certificate as if such additional time had been included in the original time period granted pursuant to paragraph 2.4.12 for resolution of the outstanding Milestone Criteria; or
- 2.4.15.2. notify the Service Provider in writing:
- 2.4.15.2.1. that it intends to issue a Non-Compliance Certificate in accordance with paragraph 2.4.16 upon the expiry of twenty eight (28) days (or such longer period as the TfL Director of Customer Experience in his absolute discretion determines in accordance with paragraph 2.4.16.2) from the date of such notification; and
- 2.4.15.2.2. the name of the TfL Director of Customer Experience to whom the Service Provider may make a representation in writing in relation to the intention referred to in paragraph 2.4.15.2.1 above.
- 2.4.16. Upon receipt of notification pursuant to paragraph 2.4.15:
- 2.4.16.1. the Service Provider may within fourteen (14) days (the "**Submission Period**") submit in writing to the TfL Director of Customer Experience such details of the situation which resulted in the notification pursuant to paragraph 2.4.15.2 as it, in its absolute discretion, determines are relevant together with a proposal for resolving the situation; and
- 2.4.16.2. the TfL Director of Customer Experience shall make himself reasonably available to consult with a member of Service Provider Personnel during a period of fourteen (14) days from the end of the Submission Period or such longer period as the TfL Director of Customer Experience in his absolute discretion determines (the "**Consultation Period**").
- 2.4.17. Without prejudice to the Authority's other rights and remedies under the Contract, upon expiry of the Consultation Period, the Authority may:
- 2.4.17.1. endorse the Qualified Compliance Certificate with the word "Compliant" and the date of such endorsement, whereupon such Qualified Compliance Certificate shall be deemed for all purposes to be a Compliance Certificate as if it had been issued as of the date of the Qualified Compliance Certificate;
- 2.4.17.2. grant such additional time to satisfy the Transition Milestone Criteria as the Authority in its absolute discretion may decide, subject to such additional or amended requirements as the Authority considers in its absolute discretion to be appropriate and the provisions of this paragraph 2.4 shall apply as if such grant of additional time had been made pursuant to paragraph 2.4.15.1; or
- 2.4.17.3. endorse the Qualified Compliance Certificate with the words "Non-Compliant" and the date of such endorsement, such endorsement

having been countersigned by the TfL Director of Customer Experience, whereupon:

2.4.17.3.1. such Qualified Compliance Certificate shall be deemed to be a Non Compliance Certificate as if it had been dated as of the date of the Qualified Compliance Certificate and the provisions of this paragraph 2.4 shall apply accordingly and for the purposes of paragraph 2.4.7 the date of receipt of such Non-Compliance Certificate shall be the date of endorsement pursuant to this paragraph 2.4.17.3; and

2.4.17.3.2. the Service Provider shall not be entitled to the Charges associated with the Transition Milestone and within thirty (30) days of the date of such endorsement the Service Provider shall repay to the Authority all or a proportion of any such payments that the Authority in its absolute discretion shall specify at the date of such endorsement.

2.4.18. Where the Service Provider obtains a Compliance Certificate in accordance with this paragraph 2.4, the Charges associated with that Transition Milestone shall be payable to the Service Provider from the date written by the Authority on the Compliance Certificate.

## 2.5. Further consequences of not achieving milestones

2.5.1. Without prejudice to other provisions of the Contract, if any of the events in the following table occur, then the consequences associated with the event specified in the table shall apply.

Milestone Event	Milestone consequences
Subject to Clause 50 (Authority Events), the Service Provider does not achieve the Service Commencement Date within [xxx] [DRAFTING NOTE: TO BE POPULATED IN LINE WITH THE AUTHORITY'S REQUIREMENTS IN THE REQUEST FORM, OR WHERE THE AUTHORITY HAS REQUESTED THE SERVICE PROVIDERS' PROPOSALS, SUCH DATE AS THE PARTIES HAVE AGREED FOLLOWING SUBMISSION OF THE SERVICE PROVIDERS PROPOSALS] days of the originally planned date ("the SCD Long-Stop Date").	The Authority shall have the right to terminate the Contract in accordance with Clause 34.1.8).
Subject to Clause 50 (Authority Events), the Compliance Certificate for the Final Service Transition Milestone is not achieved prior to [DRAFTING NOTE: TO BE POPULATED IN LINE WITH THE AUTHORITY'S REQUIREMENTS IN THE REQUEST FORM, OR WHERE THE AUTHORITY HAS REQUESTED THE SERVICE PROVIDERS' PROPOSALS, SUCH DATE AS THE PARTIES HAVE AGREED FOLLOWING SUBMISSION OF THE SERVICE PROVIDERS PROPOSALS] ("the Transition Long-Stop Date").	The Authority shall have the right to terminate the Contract in accordance with Clause 34.1.9.

## 3. Pre-Transition Phase

### **3.1. Preparation and Assurance activities**

- 3.1.1. To prepare for Transition and Assure the Authority that the Service Provider has prepared for Transition, the Service Provider shall:
  - 3.1.1.1. carry out the activities defined in the Transition Plans to prepare for Transition and achieve the Transition Milestone Dates set out in the High-Level Transition Plan and/or the Detailed Transition Plan in accordance with the process set out in paragraph 2.4;
  - 3.1.1.2. carry out detailed Transition planning in accordance with paragraph 3.2 and the High-Level Transition Plan;
  - 3.1.1.3. demonstrate, within the proposed Transition Plans, that relevant and sequential milestones have been set that provide on-going Assurance to the Authority as to the quality and completeness of the Transition Plans and the Service Provider's delivery against such plans;
  - 3.1.1.4. carry out contingency planning; and
  - 3.1.1.5. meet the associated Milestone Criteria in accordance with the High-Level Transition Plan and/or the Detailed Transition Plan.

### **3.2. Detailed Transition planning**

- 3.2.1. Commencing on the Contract Commencement Date the Service Provider shall carry out detailed Transition planning and the Service Provider and the Authority shall work together to agree the Detailed Transition Plan which shall define the detail of the activities and deliverables required to perform Transition and which shall reflect and expand on the High-Level Transition Plan.
- 3.2.2. The Service Provider shall be responsible for drafting the Detailed Transition Plan and shall submit the draft Detailed Transition Plan to TfL within twenty eight (28) days after the Contract Commencement Date, and the Authority shall, and shall use reasonable endeavours to procure that the Existing Service Provider shall, provide reasonable input in relation to the detailed Transition activities to be set out in the Detailed Transition Plan.
- 3.2.3. The Authority and the Service Provider shall use reasonable endeavours to agree the Detailed Transition Plan as soon as reasonably practicable following submission of the draft Detailed Transition Plan to the Authority pursuant to paragraph 3.2.2 and in any event within twenty eight (28) days of the submission, or such later date as the Parties shall agree in writing.
- 3.2.4. If the Parties do not agree the Detailed Transition Plan within the time periods set out in paragraph 3.2.3 above, the matter shall be treated as a Dispute and resolved in accordance with paragraph 6 (Transition Governance and Management) and Clause 33 (Dispute Resolution)
- 3.2.5. Without prejudice to other provisions of this Contract, the Detailed Transition Plan shall be consistent with the High-Level Transition Plan and shall include, at a minimum:
  - 3.2.5.1. detail that is deemed sufficient by the Authority in relation to each of the Transition Milestones, activities, deliverables, criteria and other items

covered under the High-Level Transition Plan and the Service Provider shall ensure that additional detail is included in the Detailed Transition Plan in relation to any of the aforementioned at the Authority's reasonable request;

- 3.2.5.2. the detailed allocation of responsibilities between the Service Provider and any sub-contractors-, and any instances where cooperation of the Authority and/or of the Existing Service Provider is required;
- 3.2.5.3. detailed and clear dependencies on the Authority and the Existing Service Provider in relation to each Transition Milestone or Transition Milestone Criteria provided that unless otherwise agreed by the Authority in writing, such dependencies shall not be more extensive than the Transition Dependencies;
- 3.2.5.4. detailed safeguards to minimise disruption to the Authority's business, customers and/or the Authority's relationship with Third Parties; and
- 3.2.5.5. clear analysis of Transition risks and justifications for the implementation approaches taken in the Detailed Transition Plan.
- 3.2.6. Once the Detailed Transition Plan has been agreed by both Parties pursuant to paragraph 3.2.3, the Service Provider shall comply with and implement such Detailed Transition Plan. Any changes to the agreed version of the Detailed Transition Plan shall be subject to the Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3.2.7. The Service Provider shall take part in joint planning activities with the Existing Service Provider and the Authority in accordance with the High-Level Transition Plan. [Without prejudice to other provisions of this Contract, the Service Provider shall ensure that the Detailed Transition Plan integrates and is consistent with the Existing Contract Handback Plan and Existing Contract Handback Programme] **[Drafting Note: WORDS IN BRACKETS TO BE DELETED IF NO EXISTING CONTRACT HANDBACK PLAN OR PROGRAMME IS AVAILABLE]**

#### **4. Transition Phase**

##### **4.1. Transition principles**

- 4.1.1. The Service Provider shall deliver Transition in accordance with the Transition Plans.
- 4.1.2. Without prejudice to other provisions of the Contract, the Service Provider shall co-operate with the Existing Service Provider in an effective and timely manner to deliver Transition.
- 4.1.3. The Service Provider shall ensure that Transition does not rely on any periods of unavailability or degradation of the Services and/or Existing Services.
- 4.1.4. The Service Provider shall carry out its Transition activities in such a way that:
  - 4.1.4.1. the Transition activities do not adversely affect the Existing Services and/or Services being delivered;

- 4.1.4.2. the Transition activities do not impact the Service Levels throughout Transition; and
- 4.1.4.3. The Authority and the Existing Service Provider are kept informed of Transition progress and status of Transition.
- 4.1.5. The Service Provider shall only Transition and operate any part(s) of the Services from the Transition Milestone Date for those part(s) of the Services and only after the Service Provider has received a Compliance Certificate or Qualified Compliance Certificate with respect to those part(s) of the Services.
- 4.1.6. The Service Provider acknowledges and agrees that continuity of the Existing Services and the Services (as applicable) is of paramount importance to the Authority and the Service Provider shall not compromise the continuity of such services in its Transition Plans or activities.
- 4.1.7. The Service Provider shall manage data security, health, safety, quality and the environment in accordance with industry principles and best practice.
- 4.1.8. The Service Provider shall carry out training in accordance with Schedule 5 (Training) and the Transition Plans, and shall carry out any training as is reasonably required for the efficient Transition of the Services.
- 4.1.9. The Service Provider shall notify the Authority in writing if any Key Personnel become unavailable (due to any period of paid or unpaid leave, illness or otherwise) for more than two (2) weeks during the Transition Period. Where such notification is made then the replacement of Key Personnel should be made in accordance with Clause 15.2 (Key Personnel).

[Note to Service Provider: Service Provider should complete the tables in paragraphs 4.2 and 5 to provide an outline of their High-Level Transition Plan with respect to the different facets of Transition and to make clear distinctions between the implementation of new resources and the transfer of existing resources from the Existing Service Provider.] **[THIS NOTE TO BE REMOVED BEFORE CONTRACT IS SIGNED]**

#### 4.2. Transition of Services

- 4.2.1. The Transition of Services from the Existing Service Provider to the Service Provider shall be carried out in accordance with the Transition Plans and the following Transition Milestones.

Unique Transition Milestone reference	Transition Milestone date	Unique Transition Milestone name	Transition Milestone description
<b>[Note to Service Provider: Table to be completed from relevant milestones in Appendix 2.]</b>			
		Service Commencement Date	[initial services] cutover from the Existing Service Provider to the Service Provider.

		Final Service Transition Milestone	[final services] cutover from the Existing Service Provider to the Service Provider. The Service Provider is responsible for providing all Services from this Transition Milestone.

## 5. Post-Transition Phase

- 5.1.1. The Service Provider shall closedown Transition activities in accordance with the High-Level Transition Plan and the following Transition Milestones:

Unique Transition Milestone reference	Transition Milestone date	Unique Transition Milestone name	Transition Milestone description
			<i>[Note to Service Provider: Table to be completed]</i>

- 5.1.2. NOT USED

## 6. Transition Governance and Management

### 6.1. Transition management and reporting

- 6.1.1. The Service Provider shall manage and report on Transition.
- 6.1.2. The purpose of the Transition Governance Group is to review progress of Transition and address any matters relating to Transition. The Transition Governance Group shall meet each Period or on such other more frequent basis as required by the Authority. The Parties agree that in the lead-up to the Transition Milestones such meetings will be held every week and/or as required by the Authority.
- 6.1.3. The Authority shall prepare the meeting agenda and the TfL Transition Manager shall chair the meeting. At the end of each meeting there shall be an agreed set of actions which the Authority shall circulate within one (1) Business Day and, where necessary, the Authority shall subsequently produce formal minutes of the relevant Transition Governance Group meeting which shall be circulated within three (3) Business Days of each meeting.

6.1.4. Without limiting the earlier provisions in this paragraph 6.1, the following table summarises the required arrangements in respect of Transition Governance Group meetings.

<b>ATTENDEES</b>		
<b>Authority</b>	<b>Service Provider</b>	<b>Third Parties</b>
TfL Transition Manager TfL Service Operations Manager	Transition Project Manager Service Operations Manager	Existing Service Provider: Nominated representative responsible for handback Nominated representative responsible for service operation

<b>FREQUENCY AND LOCATION</b>
Once each Period, or on such other more frequent basis as required by the Authority, in London at a location determined by Authority. In the lead-up to Service Transition Milestones these meetings will be held as a minimum every week.

<b>TRANSITION MANAGEMENT ROLE</b>	
Review of last meeting	<ul style="list-style-type: none"> <li>The Parties shall review and approve the previous Transition Governance Group meeting minutes and action log (if applicable).</li> <li>Authority shall notify the Service Provider if it deems any outstanding actions in the action log to be closed (otherwise, such actions shall remain open until closed by Authority and notified to the Service Provider in writing).</li> </ul>
General	<p>The objectives of the Transition Governance Group meetings are to:</p> <ul style="list-style-type: none"> <li>review and update the risk register for Transition;</li> <li>review the Programme Report for Transition;</li> <li>review progress against the Transition Plans;</li> <li>review and resolve Transition issues, conflicts and discrepancies;</li> <li>review upcoming Transition activities and opportunities;</li> <li>ensure good team/Service Provider relationship with clarity of roles, responsibility and communications; and</li> <li>ensure that Services are being Transitioned and delivered to achieve the required outcomes for users.</li> </ul>

INPUTS AND OUTPUTS	
Required Inputs	<ul style="list-style-type: none"> <li>• a risk register for Transition;</li> <li>• Programme Report for Transition;</li> <li>• Transition Plans;</li> <li>• Discrepancies; and</li> <li>• escalated Transition issues.</li> </ul>
Required Outputs	<ul style="list-style-type: none"> <li>• meeting actions;</li> <li>• meeting minutes where necessary; and</li> <li>• updated project risk register for Transition.</li> </ul>

## 7. Transition Dependencies

### 7.1. General

7.1.1. Any failure by the Authority and/or the Existing Service Provider (as the case may be) to meet a Transition Dependency shall be dealt with pursuant to Clause 50 (Authority Event).

### 7.2. Transition Dependencies

The Transition Dependencies are:

Dependency area	Dependency description
	<p><i>[Note to Service Provider: Table to be completed based on</i></p> <ul style="list-style-type: none"> <li>• <i>TfL dependencies; and</i></li> <li>• <i>Existing Service Provider dependencies</i></li> </ul> <p><i>identified in the Service Provider's High-Level Transition Plan.]</i></p>

### 7.3. Existing Service Provider Transition Dependencies

Appendix 1 – High-level Governance Structure

**[Drafting Note to Service Provider: Service Provider to provide an outline diagram to illustrate the Service Provider's proposed structure of Transition projects and teams within the overall Transition governance structure set out in this Schedule.]**

Appendix 2 – High-Level Transition Plan

**[Drafting Note to Service Provider: The final High-Level Transition Plan will be inserted here.]**

Appendix 3 – Milestone Criteria

**[Drafting Note to Service Provider: Service Provider to provide details of Milestone Criteria as specified in the Contract for Services]**



	Transition Milestone Criteria	Activities	Date required by

#### 4 SCHEDULE 4 – SERVICE SCOPE SPECIFICATION

**[DRAFTING NOTE: THIS SCHEDULE WILL BE INCLUDED AND COMPLETED BY THE AUTHORITY CONSISTENT WITH THE REQUEST FORM OR INVITATION TO TENDER]**

The Services described in this Schedule shall be provided in accordance with the Authority's applicable process documents ("**the Process Documents**") from time to time. The current form of the Process Documents as at the date of this Contract is as set out in the Appendix to this Schedule 4.

**APPENDIX 1 TO SCHEDULE 4 - PROCESS DOCUMENTS AT THE DATE OF THE CONTRACT**

## **5 SCHEDULE 5 – TRAINING**

### **1. Introduction**

#### **1.1. Scope and Purpose**

1.1.1. This Schedule 5 (Training) sets out the requirements for the Service Provider to plan and conduct training of:

1.1.1.1. Service Provider Personnel for the delivery of the Services; [and

1.1.1.2. [xx number ] Authority and Third Party trainers and/or Authority Personnel in relation to the delivery of the Services (and in this Schedule 5, references to “Authority Personnel” shall include any such Authority and Third Party trainers).] **[DRAFTING NOTE: THIS 1.1.1.2 WILL BE INCLUDED AND COMPLETED WHERE AND AS CONSISTENT WITH THE REQUEST FORM AND/OR THE SERVICE PROVIDER’S PROPOSAL FOR A PARTICULAR CALL-OFF]**

1.1.2. [Appendix 1 to this Schedule 5 (Training) contains a list of the training materials which will be provided by the Authority to the Service Provider for the purposes of the Service Provider’s performance of the Services.] **[DRAFTING NOTE: APPENDIX 1 WILL WHERE RELEVANT BE UPDATED TO TAKE ACCOUNT OF THE MATERIALS RELEVANT TO A PARTICULAR CALL-OFF CONTRACT]**

#### **1.2. Documents to be Submitted by the Service Provider**

1.2.1. The Service Provider shall prepare, submit and maintain as appropriate the following documents in accordance with the provisions of this Schedule:

1.2.1.1. a Training Plan;

1.2.1.2. a Training Programme;

1.2.1.3. a Training Log; and

1.2.1.4. training materials.

### **2. Training of Personnel**

#### **2.1. General**

2.1.1. The Service Provider shall be responsible for:

2.1.1.1. ensuring Service Provider Personnel are properly trained to:

2.1.1.1.1. perform their required duties; and

2.1.1.1.2. become and remain familiar with the conditions and processes within the Contract that are relevant to their role.

2.1.1.2. ensuring Service Provider Personnel and where applicable Authority personnel are adequately trained to deliver the Services; and

2.1.1.3. notifying the Authority in sufficient time of any training requirements which are Transition Dependencies (being training to be delivered by the Authority or any other party for whom the Authority is responsible under the Contract) to enable such training to be provided without any adverse

impact on the delivery of the Service Provider's obligations under the Contract.

### **3. Management of Training**

#### **3.1. Training Plan**

- 3.1.1. The Service Provider shall prepare and submit for Assurance and subsequently maintain a "**Training Plan**" which shall set out the scope, methods, means, and timing of all training for Service Provider Personnel and where applicable, Authority Personnel.
- 3.1.2. The Training Plan shall include a list of equipment and applications on which training is to be given.
- 3.1.3. The scope of training as set out in the Training Plan shall include as a minimum:
  - 3.1.3.1. the objectives of the training to be undertaken;
  - 3.1.3.2. the operation of the equipment, and applications;
  - 3.1.3.3. the procedure for manual handling by Service Provider Personnel and, if applicable, Authority Personnel, during delivery of Services;
  - 3.1.3.4. Site safety;
  - 3.1.3.5. the members of Service Provider Personnel or Authority Personnel (as the context requires) to be trained; and
  - 3.1.3.6. the training documentation to be made available to Service Provider Personnel or Authority Personnel (as the context requires)
- 3.1.4. The Training Plan shall specify the tests for the equipment and applications that need to be undertaken by Service Provider Personnel and where applicable Authority Personnel on completion of the training. Where equipment requires the Service Provider Personnel or Authority Personnel to hold a licence, then details of the relevant licensing regime(s) shall be included in the Training Plan.
- 3.1.5. The Service Provider shall, for each of the tests specified in the Training Plan pursuant to paragraph 3.1.4, propose an objective pass or fail criteria for and Service Provider Personnel and where applicable, Authority Personnel and shall maintain details of this within the Training Plan. The Service Provider's proposal shall be subject to TfL's comments which the Service Provider shall incorporate into the relevant objective criteria.
  - 3.1.5.1. The Service Provider shall identify the methods that it will use to train Service Provider Personnel, and where applicable Authority Personnel from both a theoretical and practical perspective.
  - 3.1.5.2. The Service Provider shall include in the Training Plan methods for demonstrating through testing the competency of members of Service Provider Personnel (including those Service Provider Personnel providing training) to an agreed standard of accreditation, being either a relevant industry standard or where no such industry standard exists, a level of competency agreed in advance with the Authority. Where applicable the Service Provider shall ensure that Authority trainers are trained and tested

to the same levels of competency as the members of Service Provider Personnel providing training the training.

3.1.5.3. The Training Plan shall contain an organisational statement including details of the members of Service Provider Personnel who will carry out the training, their qualifications, experience and competence.

3.1.6. The Service Provider shall set out in the Training Plan full details of the proposed training resources including:

3.1.6.1. training materials;

3.1.6.2. locations; and

3.1.6.3. mock ups or trial installations including computer simulations.

### 3.2. **Training Programme**

3.2.1. The Training Plan shall include a "**Training Programme**" which shall set out the timing of all training.

3.2.2. The Training Programme shall be by the Service Provider and provided to the Authority for Assurance.

3.2.3. The Service Provider shall ensure that all training necessary for the delivery of and/or associated with any project or programme shall be included in the relevant project or programme plan and show any associated dependencies on the Authority.

### 3.3. **Training Log**

3.3.1. The Service Provider shall separately maintain a record of all its training of Service Provider Personnel and where applicable Authority Personnel each of which shall include as a minimum the following:

3.3.1.1. details of who has been trained;

3.3.1.2. when they were trained;

3.3.1.3. the scope of training given;

3.3.1.4. the standard achieved including details of pass/fail for each person where appropriate; and

3.3.1.5. details of proposed dates for refresher training,

(the "**Training Log**").

### 3.4. **Review and Updating**

3.4.1. The Service Provider shall submit the Training Plan and Training Programme at least 1 month prior to the Service Commencement Date. The Service Provider shall maintain the Training Plan as current and make it available to the Authority upon request.

### 3.5. **Reports and Meetings**

3.5.1. The Service Provider shall report progress on training in relation to projects and in relation to Services in the Service Performance Report in accordance with Schedule 8 (Service Management), with matters of concern to be discussed at the corresponding review meeting.

APPENDIX~~Appendix 1 – AUTHORITY TRAINING MATERIAL~~ ~~Schedule 5~~  
~~Appendix 1~~

[DRAFTING NOTE: THIS APPENDIX WILL WHERE RELEVANT BE  
UPDATED TO TAKE ACCOUNT OF THE MATERIALS RELEVANT TO A  
PARTICULAR CALL-OFF CONTRACT]

## **6 SCHEDULE 6 – SYSTEMS INTEGRATION**

### **[DRAFTING NOTES:**

**1. DELETE THIS TEXT IF NO AUTHORITY ASSETS ARE BEING PROVIDED BY TFL FOR USE BY THE SERVICE PROVIDER IN PERFORMING THE SERVICES.**

**2. AUTHORITY ASSETS INCLUDE EQUIPMENT, APPLICATIONS AND/OR CONSUMABLES PROVIDED BY TFL.**

**3. IF ACCOMMODATION OR SERVICES ARE BEING PROVIDED BY TFL IN ADDITION TO AND/OR INSTEAD OF ASSETS, PROVISIONS NEED TO BE ADDED TO THIS SCHEDULE 6 TO DEAL WITH THIS – SEE ALSO THE DRAFTING NOTE TO CLAUSE 19.3]**

### **1. Authority Assets to be provided to the Service Provider**

- 1.1. Subject always to Clause 19 (Access to Premises and Assets), as at the date of the Contract the Authority Assets to which it is agreed that the Service Provider is to be given access for the purpose of performance of the Services are as described in Appendix 1 to this Schedule 6.
- 1.2. The Authority Assets are all owned or leased/licensed by the Authority.
- 1.3. The Authority grants the Service Provider the right to use the Authority Assets for the purposes only of providing the Services and fulfilling the Service Provider's other obligations pursuant to this Contract.
- 1.4. The Authority will at all times retain all right and title to the Authority Assets.
- 1.5. The Service Provider will in respect of Authority Assets:
  - 1.5.1. take reasonable and proper care of the Authority Assets and exercise a standard of care that matches or exceeds that which the Service Provider exercises in relation to its own assets;
  - 1.5.2. comply with all of the Authority's reasonable requests (or those of the Authority's authorised nominee) in relation to the Authority Assets;
  - 1.5.3. not remove any labelling or other indication on any Authority Asset which identifies the same as property of the Authority or any person approved by the Authority for this purpose;
  - 1.5.4. if the Authority Assets are subject to a lease or licence, comply with the terms of the such lease or licence as notified by the Authority to the Service Provider from time to time; and
  - 1.5.5. have no encumbrance and ensure no encumbrance is created over or in respect of the Authority Assets.
- 1.6. The Service Provider will ensure that during the Term each Authority Asset in used in accordance with the manufacturer/supplier's technical specifications (if any).
- 1.7. Without limiting paragraph 1.8, the Service Provider shall comply with the requirements of Schedule 8 (Service Management) in respect of the arrangements for facilitating the maintenance, repair and replacement of Authority Assets.



- 1.8. The Service Provider will be responsible for all loss and damage (fair wear and tear excepted) to those Authority Assets which are delivered into the possession of the Service Provider or its sub-contractor, save to the extent that the same results directly from the act or omission of the Authority or a member of the Authority Group.
- 1.9. Where Authority Assets are delivered into the possession of the Service Provider (or its sub-contractor) Service Provider will:
  - 1.9.1. obtain the Authority's consent for where those assets are to be located; and
  - 1.9.2. ensure that those assets are not removed from that location without the Authority's prior written consent.
- 1.10. Without limiting the Handback Plan, the Service Provider will cease to have any right to use an Authority Asset from the End Date applicable to the Service for which that Authority Asset is required and will ensure that the relevant Authority Asset is safely delivered to the Authority (or as may otherwise be provided in the Handback Plan) on such date.

Appendix 1 - ~~List of~~ AUTHORITY ~~authority~~ ASSETS ~~assets to which Service~~  
~~Provider is to be provided access~~

[TO BE POPULATED FOR EACH INDIVIDUAL CALL-OFF BY THE AUTHORITY]

## 7 SCHEDULE 7 – PRICING SCHEDULE

### Defined Terms

In this Schedule, unless the context indicates otherwise the following expressions shall have the following meanings:

“Cost Summary” Shall have the meaning given in paragraph 4.1; **[DRAFTING NOTE: DELETE THESE WORDS WHERE TFL DOES NOT REQUIRE A COST SUMMARY]**

“Payment Period” Shall have the meaning given in paragraph 4.1; **[DRAFTING NOTE: DELETE THESE WORDS WHERE TFL DOES NOT REQUIRE A COST SUMMARY]**

### 1. Introduction

- 1.1. This Schedule outlines the applicable Charges [including the process by which the Service Provider is to provide a Cost Summary of the proposed Charges] **[DRAFTING NOTE: DELETE THESE WORDS WHERE TFL DOES NOT REQUIRE A COST SUMMARY]** payable by the Authority to the Service Provider for the provision of the Services which shall be invoiced in accordance with Clauses 10 (Charges) and 11 (Payment Procedures and Approvals) as varied by the paragraphs below.

### 2. Charges

**[DRAFTING NOTE: TO BE POPULATED IN LINE WITH THE AUTHORITY'S REQUIREMENTS IN THE REQUEST FORM, OR WHERE THE AUTHORITY HAS REQUESTED THE SERVICE PROVIDERS' PROPOSALS, SUCH DATE AS THE PARTIES HAVE AGREED FOLLOWING SUBMISSION OF THE SERVICE PROVIDERS PROPOSALS, AND ON THE BASIS THAT THE SERVICE PROVIDER'S RATES DO NOT EXCEED THOSE PROVIDED IN SCHEDULE 4 (RATES) OF THE FRAMEWORK AGREEMENT]**

### 3. Indexation~~NOT USED~~

- 3.1. The Service Provider acknowledges and agrees that it shall not be permitted at any time to increase the Charges or any part thereof to account for any indexation of the Charges, including (without limitation) any indexation based on the Consumer Price Index and/or the Retail Price Index.

### ~~3.4.~~ Cost Summary

**[DRAFTING NOTE: DELETE WHERE COST SUMMARY IS NOT REQUIRED]**

Clause 11.2, 11.3 and 11.4 shall be deleted and replaced with the following:

- | ~~3.1.4.1.~~ At the end of each 4-week period (or such other period as may be specified in accordance with Clause 11.1) (the “**Payment Period**”), the Service Provider shall submit to the Contract Manager a cost summary in respect of the Charges for that Payment Period (“**Cost Summary**”).
- | ~~3.2.4.2.~~ Each Cost Summary shall:
  - | ~~3.2.1.4.2.1.~~ contain all information required by the Authority including the Contract Reference Number, SAP order number, the Authority Account Details, the Service Provider's name and address and a brief description of the Services provided during the Payment Period to which such Cost Summary relates;
  - | ~~3.2.2.4.2.2.~~ be clear, concise, accurate and adequately descriptive to avoid delays in processing and subsequent payment;
  - | ~~3.2.3.4.2.3.~~ identify any additional charges by virtue of a variation pursuant to Clause 41 (Contract Variation);
  - | ~~3.2.4.4.2.4.~~ any supporting documentation to the Charges detailed in the Cost Summary as requested by the Authority; and
  - | ~~3.2.5.4.2.5.~~ show VAT separately.
- | ~~3.3.4.3.~~ If the Authority considers that the Charges claimed by the Service Provider in any Cost Summary (or revised Cost Summary) have:
  - | ~~3.3.1.4.3.1.~~ been correctly calculated and that such Cost Summary is otherwise correct, the Authority shall notify the Service Provider of its approval within 10 Business Days of receipt of such Cost Summary and the Service Provider shall submit an invoice in respect of such Cost Summary. Each invoice shall contain the SAP order number and any other information reasonably required by the Authority in respect of such invoice. The Service Provider shall send each invoice to the address set out in Schedule 1 (Key Contract Information) and (subject to the provisions of any related guarantee or Clause 25) payment of the approved amount shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1 (Key Contract Information); and
  - | ~~3.3.2.4.3.2.~~ not been calculated correctly and/or if the Cost Summary contains any other error or inadequacy, the Authority shall notify the Service Provider within 10 Business Days of receipt of such Cost Summary and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised Cost Summary to the Authority. Any loss and/or additional expenses incurred by the Service Provider in correcting and/or re-submitting any Cost Summary shall be at the Service Provider's expense.

## 8 SCHEDULE 8 – SERVICE MANAGEMENT

### Defined Terms

In this Schedule, unless the context indicates otherwise the following expressions shall have the following meanings:

<b>“Authority Change Manager”</b>	the person appointed by the Authority to manage the Authority's change control process and the Change Advisory Board;
<b>“Category 1 Major Incident”</b>	shall have the meaning given in Appendix 3 (Major Incident List) of this Schedule;
<b>“Change Advisory Board”</b>	means the committee chaired by the Change Manager and attended by the Authority Change Manager that reviews Change Requests;
<b>“Change Management”</b>	has the meaning set out in paragraph 4.2.1 of this Schedule;
<b>“Change Manager”</b>	shall have the meaning given in paragraph 4.2.3 of this Schedule;
<b>“Change Request”</b>	means a proposal to implement a Change;
<b>“Dashboards”</b>	shall have the meaning given in paragraph 3.1.1 of this Schedule; <b>[DRAFTING NOTE: DELETE THESE WORDS WHERE TFL DOES NOT REQUIRE DASHBOARDS]</b>
<b>“Disaster”</b>	an action, omission, circumstance or event that may cause a loss of the Service Provider's ability to provide the Services or any of them;
<b>“Emergency Change”</b>	a Change that is required immediately to either prevent or restore a service affecting outage;
<b>“Level 1 Help Desk”</b>	means the technical help desk provided by the RCC Contractor;
<b>“Major Incident”</b>	means an incident described in Appendix 3 (Major Incident List) as amended from time to time;
<b>“Major Incident Categories”</b>	the categories of Major Incidents which are detailed in Appendix 3 (Major Incident List) of this Schedule;
<b>“Major Incident List”</b>	means the lists of Incidents and Disasters contained in Appendix 3 (Major Incident List) to this Schedule as may be amended from

	time to time in accordance with paragraph 5 of this Schedule;
<b>“Major Incident Report”</b>	shall have the meaning given in paragraph 6.7.1 of this Schedule;
<b>“Payment Period”</b>	At the end of each 4-week period (or such other period as may be specified in accordance with Clause 11.1)
<b>“Preparedness Tests”</b>	shall have the meaning given in paragraph 6.6.1 of this Schedule;
<b>“Problem Management”</b>	the process used to determine the root cause of one or more Incidents and to develop workarounds and/or permanent fixes in order to minimise the frequency and/or impact of the Incidents;
<b>“Problem Report”</b>	a report issued as part of the investigation of a Problem which would include a summary of the Problem, related Incidents, root cause analysis, workaround and permanent resolutions;
<b>“Problem”</b>	the cause of one or more Incidents;
<b>“RCC Contractor”</b>	means Cubic Transportation Services Limited, or such other person as the Authority notifies the Service Provider is the Authority’s RCC Contractor from time to time;
<b>“Service Bonus”</b>	A measure of the addition to the Charges due to the Service Provider’s performance bettering the specified Service Level and/or other performance criteria;
<b>“Service Credit”</b>	a measure of the reduction to the Charges due to the Service Provider’s performance for failing to meet the specified Service Level and/or other performance criteria;
<b>“Service Day”</b>	the hours for which the services are required from the Service Provider, as defined in Schedule 4 (Service Scope Specification);
<b>“Service Performance Report”</b>	shall have the meaning given in paragraph 8.2 of this Schedule;
<b>“Service Provider Site”</b>	shall mean any building used by the Service Provider to carry out the Services (or any of them) required under the Contract.

## 1. Overview

## 1.1. Scope and Purpose

- 1.1.1. This Schedule sets out the scope and requirements in respect of the management, performance monitoring and reporting for the delivery of the Services.
- 1.1.2. The management of the Service comprises of:
  - 1.1.2.1. provision of all Service Management and other activities set out in this Schedule;
  - 1.1.2.2. managing and delivering Changes; and
  - 1.1.2.3. providing management information and service reporting as set out in Appendix 2 (Service Performance Report).
- 1.1.3. Where this Schedule sets out the requirements for the Service Provider to deliver the Services, these Services shall be provided by the Service Provider to the Authority with effect from the relevant Transition Milestone Dates as set out in the High-Level Transition Plan and/or the Detailed Transition Plan within Schedule 3 (Transition).

## 1.2. Service Management

- 1.2.1. The Service Provider's responsibilities for the management of the Services ("**Service Management**") shall include but are not limited to:
  - 1.2.1.1. meeting the Service Levels as specified in Appendix 1 (Service Levels);
  - 1.2.1.2. Identify scenarios, plan, and test processes and procedures for Major Incidents and respond quickly and effectively in order to minimise or prevent impact to end users and Authority Personnel;
  - 1.2.1.3. providing detailed reports and attending regular meetings on the performance of the Services against agreed performance targets and implementing corrective action and service improvement plans where necessary as set out in paragraphs 4 (Change Management) and 5 (Major Incident Management) and;
  - 1.2.1.4. Incident and Major Incident reporting.

## 2. General Requirements

### 2.1. Performance Measurement

- 2.1.1. Where a Service Level is specified in Appendix 1 (Service Levels), the Service Provider's failure to meet such Service Level will result in the application of Service Credits as set out in the relevant part of that Appendix. Where specifically provided for in Appendix 1 (Service Level) better performance than some Service Levels may, where explicitly stated to do so, result in Service Bonuses being payable.
- 2.1.2. Where the Service Provider can demonstrate to the Authority's satisfaction that a single Incident has directly resulted in the Service Provider's failure to meet multiple Service Levels as a result of which multiple sets of Service Credits have been applied, the Parties agree that

only the highest value single set of Service Credits shall be applied in that instance.

- 2.1.3. Where a performance level is expressed as a "target only" and/or "for information purposes only" these are measures which the Service Provider shall endeavour to achieve and is required to report actual performance against; however, Service Credits and/or (where applicable) Service Bonuses will not be applicable.

### **3. [Dashboards**

#### **3.1. Overview**

- 3.1.1. The Authority requires a dynamic means of monitoring the Service by way of a near real-time visual reporting tool which provides an indication of how the Services are being delivered by the Service Provider as against the Service Levels (the "**Dashboards**").
- 3.1.2. For some Services, the Authority may require the Service Provider to develop and maintain a Dashboard or Dashboards, and section 3.2 below specifies the requirements. Appendix 4 specifies which Dashboards the Authority will provide and which (if any) Dashboards the Service Provider is to provide.

#### **3.2. Requirements**

- 3.2.1. The Service Provider shall provide and maintain the Dashboards in accordance with the requirements set out in Appendix 4 (Dashboard Requirements).
- 3.2.2. Each Party shall, at its own expense, provide for itself the necessary equipment and access configuration to display the Dashboards at their own premises.
- 3.2.3. The Service Provider shall report to the Authority on any Incidents affecting the ability of the Authority to connect to or publish the Dashboards.
- 3.2.4. The Service Provider shall provide a Dashboard solution that does not require any additional investment in software, licensing, or infrastructure by the Authority.
- 3.2.5. The Service Provider shall provide any requisite training to the Authority in order to navigate and make use of the Dashboards.

**DRAFTING NOTE: DELETE WHERE THE AUTHORITY DOES NOT REQUIRE DASHBAORDS FROM THE SERVICE PROVIDER]**

### **4. Change Management**

#### **4.1. Overview**

- 4.1.1. Change Management is required to ensure that any Changes made to the Services have been appropriately communicated, assessed, tested and follows a standard process for delivery.
- 4.1.2. This section sets out the requirements of the Service Provider for the management of Changes.



#### 4.2. Requirements

- 4.2.1. From the Service Commencement Date, the Service Provider shall implement and operate robust processes to facilitate, manage and successfully implement (as appropriate) Change (“**Change Management**”).
- 4.2.2. The Service Provider shall adhere to the Authority's Change Management process, and follow its requirements including submitting a Change Request form (in a form approved by the Authority) where required.
- 4.2.3. The Service Provider shall nominate an appropriate individual to be responsible for such Change Management (the “**Change Manager**”).
- 4.2.4. The Service Provider shall provide evidence, when requested, to Assure the Authority that Changes have been suitably assessed and tested and will have no detrimental effects on the performance or availability of the Service.
- 4.2.5. In the event of an Emergency Change, the Service Provider shall use reasonable endeavours to contact and co-ordinate with the Authority Change Manager regarding the proposed resolution, including attending in person or by phone any emergency Change Advisory Board meeting convened. Where the Authority Change Manager is unavailable and the Emergency Change is required to immediately resolve an Incident then the Service Provider shall contact the Authority service desk referencing the Incident.

#### 5. Incident Management

##### 5.1. Overview

- 5.1.1. The aim of Incident management is to restore the Service to the end user as quickly as possible, often through a work around or temporary fixes, rather than through trying to find a permanent solution.
- 5.1.2. This section sets out the requirements of the Service Provider for the management of Incidents that are not classified as Major Incidents.

##### 5.2. Requirements

- 5.2.1. The Parties shall agree a process for the management of Incidents prior to the Service Commencement Date.
- 5.2.2. The Service Provider shall report incidents as follows:
  - 5.2.2.1. if the Incident meets the criteria of a Major Incident from paragraph 5 (Major Incident Management) then the Service Provider shall manage the Major Incident in accordance with paragraph 6 (Major Incident Management);
  - 5.2.2.2. If the incident is a fault with equipment which the Authority has advised the Service Provider is managed by the RCC Contractor, notify the RCC Contractor's Level 1 Help Desk of the fault and obtain a reference number.
  - 5.2.2.3. If the incident is not a Major Incident nor on RCC Contractor managed equipment, notify the Authority of the Incident to the Authority's Contact Centre operations team via the procedure advised to the Service

Provider by the Authority from time to time, and obtain a reference number; and

5.2.2.4. perform tests, if required, and contact the Authority to confirm the Service has been restored.

5.2.3. The Service Provider shall ensure that Incidents are handed over effectively from one Service Provider Personnel to another at the end of shift or when the original Service Provider Personnel has finished their shift.

5.2.4. The Service Provider shall, upon agreement with the Authority, schedule and implement the workaround required to restore the Service and apply Change Management if requested by the Authority.

## **6. Major Incident Management**

### **6.1. Overview**

6.1.1. The objectives of Major Incident management are to ensure that:

6.1.1.1. The Authority is assured that a failure of any part of the Services will be recovered and all will be brought back into service with the minimum disruption to end users;

6.1.1.2. the integrity of the Services will be maintained as far as possible during any Major Incident; and

6.1.1.3. where practical, the Service Levels will be maintained during any Major Incident.

6.1.2. This section sets out the requirements for the Service Provider to develop and maintain plans for the management of Major Incidents and recovery of the Services after such events.

6.1.3. The Service Provider acknowledges and agrees that Major Incident management in respect of the Services is fully dependent upon the Major Incident Plan, and that it is necessary for the Service Provider to ensure the continuity and the provision of the Services pursuant to the terms of this Contract in all circumstances, events and scenarios, including in respect of and following a Major Incident.

### **6.2. Requirements**

6.2.1. The Service Provider shall prepare, submit and maintain the following documents in accordance with the provisions of this Schedule:

6.2.1.1. prepare, submit and maintain the Major Incident Plan;

6.2.1.2. review and maintain the Major Incident List; and

6.2.1.3. prepare and submit Major Incident Reports.

### **6.3. Major Incident Plan preparation and implementation**

6.3.1. The Service Provider shall within 10 Business Days following the Contract Commencement Date, provide to the Authority for Assurance a draft Major Incident Plan, which will adapt the Service Provider's own disaster recovery plan to address, as a minimum those requirements in respect of it set out in this paragraph 6.

- 6.3.2. The Authority shall review and comment on the draft Major Incident Plan as soon as reasonably practicable. Following such review, the Authority shall, acting reasonably and in good faith, Assure or reject the draft Major Incident Plan no later than 10 Business Days after the date on which the draft Major Incident Plan is delivered to the Authority.
- 6.3.3. If the Authority rejects the draft Major Incident Plan, the Authority shall inform the Service Provider in writing of its reasons for the rejection. The Service Provider shall then revise the draft Major Incident Plan (taking account of the Authority's reasonable comments) and shall re-submit a revised draft Major Incident Plan to the Authority for the Authority's Assurance within 10 Business Days of the date of the Authority's notice of rejection. The provisions of paragraph 6.3.2 and this paragraph 6.3.3 shall apply again to any resubmitted draft Major Incident Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.3.4. The Service Provider shall maintain in accordance with good industry practice and comply with the Major Incident Plan at all times and be able to implement the Major Incident Plan in accordance with its terms at any time.
- 6.3.5. The Major Incident Plan shall, as a minimum, include:
- 6.3.5.1. an introduction describing the purpose and structure of the Major Incident Plan and how to use the Major Incident Plan;
  - 6.3.5.2. the overall strategy for ensuring business and service continuity (and for responding to a Major Incident) in respect of the Services;
  - 6.3.5.3. a risk and issue assessment in relation to all elements of the Services including:
    - 6.3.5.3.1. failure or disruption scenarios and assessments of risk, impact and probability for each identified Major Incident;
    - 6.3.5.3.2. identification of any single points of failure within the Services and associated risk management processes;
    - 6.3.5.3.3. identification of risks arising from the interfaces of the Services with any provided by a Third Party; and
    - 6.3.5.3.4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 6.3.5.4. a description of all methods, processes and procedures and other actions and sequences to be followed in managing and responding to Major Incidents such as:
    - 6.3.5.4.1. identifying the start and finish of Major Incidents;
    - 6.3.5.4.2. categorisation of each Major Incident identified;
    - 6.3.5.4.3. notifying and liaising with the Authority, end users, and Third Parties;
    - 6.3.5.4.4. agreeing with the Authority who should lead the management of a Major Incident and ensuring clarity of responsibility;

- 6.3.5.4.5. the assignment of Service Provider Key Personnel and tasks;
- 6.3.5.4.6. processes and procedures to be adopted;
- 6.3.5.4.7. using or recalling backups or storage;
- 6.3.5.4.8. recovering, re-entering or correcting Data; and
- 6.3.5.4.9. deploying additional Service Provider personnel, processes or procedures;
- 6.3.5.5. management and review activities including:
  - 6.3.5.5.1. the escalation process for each Major Incident category as set out in Appendix 3 (Major Incident List);
  - 6.3.5.5.2. a communications plan (including declaration of the Major Incident and verification of recovery and restoration of the Services); and
  - 6.3.5.5.3. the arrangements for preparing and training Service Provider personnel to deal with Major Incidents;
- 6.3.5.6. details of contingency plans;
- 6.3.5.7. the Major Incident List; and
- 6.3.5.8. how the Service Provider shall manage Major Incidents involving Third Parties.
- 6.3.6. The Service Provider acknowledges that Category 1 Major Incidents would have a greater impact upon end users and/or the operation of the Services and shall ensure that the Major Incident Plan reflects the materiality of such Major Incidents.
- 6.3.7. The Service Provider shall ensure that the Major Incident Plan is designed in such a way to ensure that:
  - 6.3.7.1. it does not depend on any other Third Party adjusting their hardware, software or systems as a result of any Major Incident unless this has been agreed in writing by the Authority;
  - 6.3.7.2. appropriate measures are adopted to ensure that the security of the Services are not compromised where possible and, where this is not possible, that any associated risk is properly managed; and
  - 6.3.7.3. its objective is to allow the Services to be provided by the Service Provider in accordance with the Service Levels and to mitigate the adverse impact of a Major Incident.
- 6.4. Notification of Major Incidents**
  - 6.4.1. Category 1 Major Incidents must be notified to the Authority within 15 minutes and all other Major Incidents within one hour:-
    - 6.4.1.1. of the commencement of the Major Incident; or
    - 6.4.1.2. (if earlier) from when the Service Provider becomes aware that the Major Incident will occur.

#### **6.5. Review of the Major Incident List and the Major Incident Plan**

- 6.5.1. The Parties shall meet at the request of either Party within ten (10) Business Days' prior written notice to review the Major Incident List and agree any amendments reasonably required by the Authority to ensure that the objectives described in paragraph 6.1.1 are achieved. As a minimum, the Major Incident List shall be reviewed annually on the anniversary of the Contract Commencement Date.
- 6.5.2. The Service Provider shall prepare and submit a draft updated Major Incident Plan to the Authority for Assurance:-
  - 6.5.2.1. following any amendment to the Major Incident List;
  - 6.5.2.2. after any Major Incident has occurred (incorporating lessons learned from any Major Incident); and
  - 6.5.2.3. if and as new Services, new systems and other Variations and Changes are introduced and shall issue to the Authority for approval.
- 6.5.3. The provisions of paragraphs 6.3.2 and 6.3.3 shall apply in the same way to any draft updated Major Incident Plan as to the original draft Major Incident Plan.
- 6.5.4. If the Service Provider fails to comply with its obligations pursuant to this paragraph 6.5, then a Corrective Action Notice may be issued to the Service Provider by the Authority

#### **6.6. Testing**

- 6.6.1. The Major Incident Plan shall include the Service Provider's proposals for periodic testing to be undertaken to Assure the Authority that appropriate and sufficient arrangements have been put in place to manage those Major Incidents (the "**Preparedness Tests**").
- 6.6.2. The scope and timing of the Preparedness Tests shall be developed with the Authority, and shall include a planned 'fail over' test to be carried out on the Services on a date agreed by the Parties.
- 6.6.3. The Service Provider shall undertake and manage the Preparedness Tests in full consultation with the Authority and/or any Third Party nominated by the Authority and will liaise with the Authority in respect of the planning, performance and review of each Preparedness Test.

#### **6.7. Reports and Meetings for Major Incidents**

- 6.7.1. Following the resolution of a Major Incident, the Service Provider shall prepare a report (a "**Major Incident Report**") which shall include but shall not be limited to:
  - 6.7.1.1. details of the trigger(s) for the Major Incident;
  - 6.7.1.2. details of the Major Incident (e.g. duration, scope of Services affected, cause of the incident etc.);

- 6.7.1.3. an explanation of the solution deployed by the Service Provider and a summary statement as to how well (or otherwise) the Service Provider handled the Major Incident;
- 6.7.1.4. the lessons learned by the Service Provider as a result of the Major Incident;
- 6.7.1.5. any proposed changes to the Service Provider's procedures and the Major Incident Plan; and if appropriate, the Major Incident List
- 6.7.1.6. proposed amendments to Third Party procedures, systems and plans in the event that the Service Provider's investigations into the trigger for the Major Incident reveal that the Major Incident was caused as the result of an act or omission of a Third Party.
- 6.7.2. A draft of the Major Incident Report shall be prepared and submitted to the Authority within five Business Days of any Major Incident having been resolved and in the event that the Service Provider fails to do so a Corrective Action Notice may be issued to the Service Provider by the Authority.
- 6.7.3. the Service Provider shall meet to discuss the draft Major Incident Report within five (5) Business Days of its submission and the Service Provider shall finalise the Major Incident Report within a further five (5) Business Days of such meeting.
- 6.7.4. The Service Provider shall include a summary of all Major Incidents in the Service Performance Report as per Appendix 2 (Service Performance Reports).

## **7. Problem Management**

### **7.1. Overview**

- 7.1.1. Problem Management is defined as the process used to determine the root cause of one or more Incidents and to develop workarounds and/or permanent fixes in order to minimise the frequency and/or impact of the Incidents

### **7.2. Requirements**

- 7.2.1. Upon request from the Authority the Service Provider shall initiate or assist in a Problem investigation for a particular Incident or set of Incidents.
- 7.2.2. As part of any Problem investigation, if requested, the Service Provider shall produce a Problem Report, for each Problem, containing a description of the Incidents, a trend analysis or timeline of the Incidents, the root cause of the Incidents, potential workarounds, and potential permanent fixes.
- 7.2.3. The Service Provider shall provide the Problem Report to the Authority within the Service Levels in Appendix 1 (Service Levels).
- 7.2.4. The Service Provider shall, upon agreement with the Authority, schedule and implement the workaround and/or permanent fix and apply the Change Management process if required.

## **8. Service Performance Report**

| 8.1. The Service Provider shall prepare and submit to the Authority a Service Performance Report. The Service Provider acknowledges that the timely submission of the Service Performance Report following the end of each Period and properly addressing any comments made by the Authority is essential to the processing of the [Cost Summary and] invoice for the Period by the Authority. Any delay in the submission of the Service Performance Report shall extend the period set out in [Clause 11.4 (Payment Procedures and Approvals) OR paragraph 4 (Cost summary) of Schedule 7 (Pricing Schedule)] for review of any associated Invoice by an equivalent period of time.

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Field Code Changed

[ DRAFTING NOTE: DELETE NON APPLICATABLE WORDING IN BRACKETS WHERE THE AUTHORITY DOES NOT REQUIRE A COST SUMMARY]

| 8.1.8.2. The Service Provider shall deliver a report which details the Service Provider's performance of the Services (the "**Service Performance Report**") each Period within [five (5)] Business Days following the end of each Period. The structure and contents of the report is detailed in Appendix 2 (Service Performance Reports). Additionally, the Service Provider shall provide information in an Excel format or as agreed by the Authority within [three (3)] Business Days of the Period end showing the overall performance against each Service Level of the Contract. [DRAFTING NOTE: TEXT IN BRACKETS IS THE DEFAULT POSITION, WHERE IT MAY BE AMENDED IN THE DRAFT CALL-OFF CONTRACT IN LINE WITH THE AUTHORITY'S REQUIREMENTS IN THE REQUEST FORM, OR WHERE THE AUTHORITY HAS REQUESTED THE SERVICE PROVIDERS' PROPOSALS, SUCH DATE AS THE PARTIES HAVE AGREED FOLLOWING SUBMISSION OF THE SERVICE PROVIDERS PROPOSALS]

| 8.2.8.3. The Authority may apply Service Credits (and, where applicable, Service Bonuses) according to clause 5.3 (Performance Regime) based on the data, including raw supporting data, provided by the Service Provider as part of the Service Performance Report which demonstrates the Service Provider's compliance with the Service Levels specified in Appendix 1 (Service Levels)

| 8.3.8.4. The Authority may, at the Service Review Meeting, advise the Service Provider of any items contained in the Service Performance Report that require correction. The Service Provider shall ensure that agreed corrections are communicated to the Authority.

## 9. Service Review Meetings

### 9.1. Overview

9.1.1. The purpose of the Service Review Meeting is to review the performance of the Service Provider over the previous Period to ensure the best quality and standards of performance in the provision of the Services.

9.1.2. A Periodic Service Review Meeting shall be held within [seven (7)] Business Days of Period end, unless otherwise agreed between the Parties. [DRAFTING NOTE: TEXT IN BRACKETS IS THE DEFAULT POSITION, WHERE IT MAY BE AMENDED IN THE DRAFT CALL-OFF CONTRACT IN LINE WITH THE AUTHORITY'S REQUIREMENTS IN THE REQUEST FORM, OR WHERE THE AUTHORITY HAS REQUESTED THE SERVICE PROVIDERS' PROPOSALS, SUCH DATE AS THE PARTIES HAVE AGREED FOLLOWING SUBMISSION OF THE SERVICE PROVIDERS PROPOSALS]

## **9.2. Requirements**

- 9.2.1. The Service Provider shall send suitably qualified Service Provider Personnel to attend a Periodic Service Review Meeting with the Authority which shall be held at an Authority Premises in London, unless otherwise agreed by the Authority.
- 9.2.2. The agenda for the Service Review Meeting shall initially cover:
  - 9.2.2.1. the previous minutes;
  - 9.2.2.2. a review of the Service Provider's Service Performance Report;
  - 9.2.2.3. other matters as jointly agreed;
  - 9.2.2.4. Service operation, Contract performance and Contract compliance where appropriate;
  - 9.2.2.5. Assurance feedback; and
  - 9.2.2.6. Transition, where applicable.
- 9.2.3. The Authority shall be responsible for the creation and distribution of the agenda and meeting minutes.
- 9.2.4. The Service Provider shall attend scheduled and ad-hoc operational meetings as reasonably requested by the Authority.

## **10. Asset Management**

### **10.1. Overview**

- 10.1.1. The Authority may make available Authority Assets to the Service Provider to use on their premises for the sole purpose of performing the Service. The use of Authority Assets may require the Service Provider to assist the Authority and its sub-contractor(s) in maintaining the Authority Assets in accordance with the requirements in this paragraph.

### **10.2. Requirements**

- 10.2.1. The Service Provider shall provide access, at no charge, to the Authority Personnel for the purpose of planned maintenance, repairs or replacement of any Authority Assets held on the Service Provider's premises.
- 10.2.2. The Service Provider shall provide the Authority with the Service Providers access procedures and arrange any access provisions which may include badges, keys, or passes.
- 10.2.3. The Service Provider shall raise an Incident with the Authority Service Desk for any issues affecting the Authority Assets that could result in an Authority Event.
- 10.2.4. The Service Provider shall provide safe and secure electrical and communication connections to Authority Assets, at no charge, in order for the Authority Assets to operate effectively and safely.



## **11. Continual Service Improvement**

### **11.1. Overview**

- 11.1.1. Continual service improvement uses methods from quality management in order to learn from past successes and failures with the aim of continually improving the effectiveness and efficiency of the Service Management processes and Services.

### **11.2. Requirements**

The Service Provider shall:

- 11.2.1. Review the Services on a regular basis and identify opportunities to improve Service quality where necessary, and identify more economical ways of delivering the Service where possible;
- 11.2.2. Evaluate the Service Management processes on a regular basis. This includes identifying opportunities for establishing process metrics, setting targets for process metrics, identify where targeted process metrics are not reached, and holding regular benchmarking, audits, maturity assessments and reviews;
- 11.2.3. Define specific initiatives aimed at improving the Services and Service Management processes, based on the results of service reviews and process evaluations;
- 11.2.4. Implement initiatives where appropriate to improve the Services and the Service Management; and
- 11.2.5. Verify if improvement initiatives are proceeding according to plan, and to introduce corrective measures where necessary.

## APPENDIX 1 - SERVICE LEVELS

**[DRAFTING NOTE: THESE WILL BE DRAFTED ON A CONTRACT BY CONTRACT BASIS]**

Title	Requirement	Measurement	Applicable Service Credits
Problem Report	Submission to the Authority paragraph 7.2.3		
Category 1 Major Incident notification	To notify the Authority within 15 min paragraph 6.4.1		
Category 2 & 3 Major Incident notification	To notify the Authority within 1 hr paragraph 6.4.1		

## APPENDIX 2 – SERVICE PERFORMANCE REPORTS

The Service Performance Report will consist of the following:

<b>Commentary</b>	The Service Provider shall provide a commentary on <del>Service Level</del> <del>call handling</del> performance, in the format detailed in Schedule 4 (Service Scope Specification),
<b>Complaints and Commendations</b>	The Service Provider shall provide summary information of any complaint or commendation reported to the Authority in the Period, in the format detailed in Schedule 4 (Service Scope Specification).
<b>Incident Management Report</b>	A Periodic report which details the following for each priority level: Ø The total number of Incidents raised: § The number of Incidents by open/close status; § Average time of resolution. Ø Repeat failures Ø For Incidents not resolved within Service Levels: § Incident reference; § Status; § Date raised; § Raised by name; § Incident description; and § Reason for resolution outside of Service Levels.. Ø Summary of Major Incidents
<b>Service Levels performance</b>	The Service Provider shall provide a report in an Excel format or as agreed by the Authority showing the overall Service Level performance against each Service Level of the Contract detailing: Ø The degree of compliance against each and every Service Level specified in Appendix 1: Ø The Service Levels that attract a Service Credit <del>(or/and, where applicable, Service Bonus)</del> Ø The Service Provider's performance against the Service Levels Ø Calculation of total Service Credits <del>(or/and, where applicable), Service Bonuses)</del> Ø any claim for relief from performance at Service Level and/or the application of Service Level Credits to which the Service Provider is entitled
<b>Correct Action Notice</b>	Update and status
<b>Other</b>	Service specific reporting requirement will be detailed in Schedule 4 (Service Scope Specification) and the Authority, may from time to time, request additional reporting information to support the management of a systems and the Service.

### APPENDIX 3 – MAJOR INCIDENT LIST

This Appendix contains:-

1. ~~a~~An initial list (in the table below) of Incidents which are considered as Major Incidents for the purposes of this Contract, and
2. ~~t~~The categorisation of those Incidents, in accordance with the following:
  - Ø Category 1 – a Major Incident which involves a material failure of any part, or all, of the Services or the material unavailability of any Service Provider Site for more than one (1) hour
  - Ø Category 2 – a Major Incident which is not a Category 1 Major Incident but which involves a material failure of a part of the Services at a Service Provider Site or a prolonged customer-facing system failure for more than one (1) hour but less than four (4) hours. Where a Category 2 Major Incident continues for more than four (4) hours, it shall be deemed a Category 1 Major Incident.
  - Ø Category 3 – a Major Incident that is not classified as Category 1 or 2; and

Category 1	Category 2	Category 3
<ul style="list-style-type: none"> <li>✓ Complete loss of communications or power to a Service Provider Site</li> <li>✓ Any security breach</li> <li>✓ Any software change results in unavailability or degradation of all of the Service</li> </ul>	<ul style="list-style-type: none"> <li>✓ System or telephone fault prevents 25% or more of Services being available</li> <li>✓ System or telephone fault prevents 25% of staff on the Contract being able to fulfil all Services</li> <li>✓ Loss of alternative back-up to a Service Provider Site</li> <li>✓ None of any individual stock or other consumable item required for the performance of the contract is available</li> <li>✓ Intermittent communications availability at a Service Provider Site</li> <li>✓ Any software change results in unavailability or degradation of part of the Service</li> </ul>	<ul style="list-style-type: none"> <li>✓ Individual stock or other consumable item required for the performance of the Contract fall below agreed levels and replenishment not available such that it will run out in three days (or other agreed timescale)</li> <li>✓ Where <del>Authority Assets</del><del>TfL-assets</del> are provided, faults are such that 25 per cent of production capacity has been unavailable for more than 24 hours</li> </ul>

3. ~~a~~A list of Disaster events below, which are considered to be Major Incidents for the purposes of this Contract (and which may, depending on the circumstances, give rise to a Category 1, Category 2 or Category 3 Major Incident in accordance with paragraphs 1 and 2 above):-

- A Service Provider's Site closed for reason of fire, flood, natural disaster or other external event.
- Pandemic or epidemic disease or illness affecting more than 25 per cent of the Service Provider's Personnel
- Weather preventing or restricting access to a Service Provider's Site, such as heavy snow, where more than 25 per cent of the Service Provider Personnel scheduled to work are affected.
- Power loss to an area including and beyond just the Service Provider's Site
- Communications loss to an area including and beyond just the Service Provider's Site.
- A Service Provider's Site closed at the request of the Police or other emergency service.
- Terrorism or other violent actions

#### APPENDIX 4 – DASHBOARD REQUIREMENTS

**[DRAFTING NOTE: THESE WILL BE DRAFTED ON A CONTRACT BY CONTRACT BASIS]**

## 9 SCHEDULE 9 – FORM OF VARIATION

### 1. General

In this Schedule:

- 1.1. The Authority's right to require the Service Provider to implement a Variation, or to propose that the Service Provider implements a Variation, is set out in paragraph 2.1;
- 1.2. the Service Provider's right to propose Variations is set out in paragraph 2.2;
- 1.3. the procedures for notifying the other Party of, and specifying, Variations required by the Authority or proposed by the Service Provider (as the case may be) are set out in paragraphs 3 and 4;
- 1.4. the procedures for implementing Variations are set out in paragraph 5;
- 1.5. the Service Provider's overriding obligations to minimise the cost and provide VFM in respect of any Variation are set out in paragraph 6.1; and
- 1.6. the contract management procedures for developing and implementing Variations are set out in paragraph 8.

### 2. Variation Rights

- 2.1. The Authority shall be entitled at any time to:
  - 2.1.1. require the Service Provider to implement a Variation to the Services;  
or
  - 2.1.2. propose a Variation to the Services to the Service Provider, and the Service Provider shall implement each Variation required or authorised in accordance with this paragraph 2.
- 2.2. The Service Provider may propose a Variation to the Services. The Authority shall not be obliged to consider or authorise any such proposal.

### 3. Proposed Variation Notice and Required Variation Notice

For a Variation under paragraph 2.1:

- 3.1. The Authority shall give notice to the Service Provider of a Proposed Variation (by submitting a "**Proposed Variation Notice**") or a Required Variation (by submitting a "**Required Variation Notice**") substantially in the form set out in this Schedule 9 (Form of Variation). The Authority may in its absolute discretion at any time issue a Required Variation Notice in respect of a Variation that has previously been the subject of a Proposed Variation Notice or a Service Provider's Proposal Notice (as the latter is defined in paragraph 4).
- 3.2. The Service Provider shall, within 15 Business Days from the date of delivery of any Proposed Variation Notice or Required Variation Notice (or within any additional period requested by the Service Provider and agreed to in writing by the Authority, the Authority acting reasonably), produce, sign and return a "**Service Provider Response**" substantially in the form set out in this Schedule 9 (Form of Variation) which shall set out the proposed method of implementing the relevant Variation, specifying inter alia:
  - 3.2.1. the time scale for doing so;

- 3.2.2. the effect (if any) on the timing of the performance of other obligations under this Contract (including the effect (if any) on any relevant milestone dates);
- 3.2.3. the impact of effecting the Variation on the provision of the Services;
- 3.2.4. the financial consequences of implementing the Variation (including, but not limited to, showing details of any pricing of the Variation including capital and operating costs);
- 3.2.5. anticipated Authority and/or Third Party dependencies; and
- 3.2.6. the risks associated with the Variation,

provided that any savings made by the Service Provider arising as a result of such Variation or payments to the Service Provider shall be taken into account. Where a Variation is to be charged by reference to the time spent by Service Provider Personnel in relation to the Variation, the rates for such Service Provider Personnel shall not exceed those detailed for this purpose (if any) in Schedule 7 (Pricing Schedule).

- 3.3. In the case of a Required Variation Notice, the Authority shall specify in the Required Variation Notice any requirements in relation to the implementation of the Required Variation.

#### **4. Service Providers Proposal Notice**

- 4.1. For a Variation under paragraph 2.2, the Service Provider shall notify its proposals for a Variation to the Authority by a notice substantially in the form set out in this Schedule 9 (Form of Variation) (the “**Service Provider’s Proposal Notice**”). The Service Provider shall set out the proposed method of implementing the Variation, specifying inter alia:

- 4.1.1. the time scale for doing so;
- 4.1.2. the effect (if any) on the timing of the performance of other obligations under this Contract (including the effect (if any) on any relevant milestone dates);
- 4.1.3. the impact of effecting the proposed Variation on the provision of the Services;
- 4.1.4. the financial consequences of implementing the proposed Variation (including, but not limited to, showing details of any pricing of the Variation including capital and operating costs);
- 4.1.5. anticipated Authority and/or Third Party dependencies; and
- 4.1.6. the risks associated with the Variation,

provided that any savings made by the Service Provider arising as a result of such proposed Variation or payments to the Service Provider shall be taken into account. Where a Variation is to be charged by reference to the time spent by Service Provider Personnel in relation to the Variation, the rates for such Service Provider Personnel shall not exceed those described in paragraph 3.2 above. Within 10 Business Days of the delivery by the Service Provider of a Service Provider’s Proposal Notice, the Authority shall notify the Service Provider whether it wishes to consider the Variation set out in the Service Provider’s Proposal Notice.



## 5. Implementation of the Variation

- 5.1. Following receipt of a Required Variation Notice and unless otherwise instructed by the Authority, the Service Provider shall forthwith implement the Variation required therein within the appropriate and achievable timescale specified in the Required Variation Notice. The Service Provider shall notify the Authority in writing within twenty four (24) hours of receipt of a Required Variation Notice if the Service Provider believes that it is not possible for the Service Provider to implement such Variation or to effect the Variation within the specified timescale. The Service Provider shall ensure that such notification includes a detailed explanation as to why it is not possible for the Service Provider to implement such Variation in the specified timescale.
- 5.2. Subject to paragraph 5.3, the Service Provider shall not implement any Variation set out in any Proposed Variation Notice or Service Provider's Proposal Notice until a notice substantially in the form set out in this Schedule 9) (the "**Authority to Proceed**") has been issued by the Authority for that Variation. For the avoidance of doubt, the Service Provider shall implement each Variation set out in a Required Variation Notice in accordance with paragraph 5.1 without any need for issuance of an Authority to Proceed. The Authority shall not at any time be obliged to issue an Authority to Proceed in respect of any Proposed Variation Notice or Service Provider's Proposal Notice.
- 5.3. The Authority may issue an Authority to Proceed at any time following issue of a Proposed Variation Notice even if the details for implementing that Variation have not yet been determined. In that event the provisions of paragraph 5.1 shall apply with effect from the date of the Authority to Proceed as if the Proposed Variation Notice had been a Required Variation Notice.
- 5.4. Any terms (including costs) of implementing a Variation the subject of an Authority to Proceed issued under paragraph 5.2 or 5.3 or of a Required Variation Notice signed and returned by the Service Provider pursuant to, and setting out the information specified in, paragraph 3.2 that are not agreed by the Parties within 14 days of the issue of the Authority to Proceed or of the return by the Service Provider of the Required Variation Notice (as applicable) may be referred by either Party for determination in accordance with the Dispute Resolution Procedure. On final resolution of the outstanding terms of the Variation pursuant to the Dispute Resolution Procedure or the written agreement of the Parties, The Authority shall either:
  - 5.4.1. issue a notice substantially in the form set out in this Schedule 9 (the "**Required Variation Settlement Notice**") setting out the terms of the Variation; or
  - 5.4.2. withdraw the Required Variation Notice or Authority to Proceed (as applicable) by issuing a notice substantially in the form set out in this Schedule 9 (the "**Withdrawal Notice**") in which case:
    - 5.4.2.1. the Service Provider shall immediately cease to implement the Variation; and
    - 5.4.2.2. the Service Provider shall be entitled to make a claim to recover from the Authority any costs that the Service Provider has reasonably and

properly incurred exclusively in connection with implementing the Variation prior to the Service Provider being sent the Withdrawal Notice.

- 5.4.3. The Authority may withdraw any Required Variation Settlement Notice or Authority to Proceed at any time by issuing a Withdrawal Notice in which case the provisions of paragraph 5.4.2 shall apply.

## **6. Cost Minimisation and Standards**

- 6.1. The Service Provider shall make reasonable efforts to minimise the adverse and maximise the favourable impact on the Authority of any change in timetable or costs resulting from the implementation of a Variation. In particular the Service Provider shall, where appropriate, when submitting proposals in respect of any Proposed Variation Notice, Required Variation Notice or Service Provider's Proposal Notice or before referring any matter for determination pursuant to the Dispute Resolution Procedure and when implementing any Variation:
- 6.1.1. submit a statement to the Authority of its proposed method of implementing the Variation demonstrating the steps that it has taken to minimise the costs of doing so;
- 6.1.2. comply with its VfM obligations in paragraph 7; and
- 6.1.3. shall not in its proposal for the implementation of the Variation claim to be excused from any liability other than on the same grounds and to the same extent amended accordingly (*mutatis mutandis*) as it would have been excused from liability for performing its obligations under this Contract (before the proposed Variation took effect), provided that if the Service Provider considers that the risk inherent in the implementation of the Variation means that the Service Provider should be excused from any liability on other grounds or to a different extent, then the Service Provider shall be entitled to provide contemporaneously to the Authority alternative proposals for the implementation of the Variation. These alternative proposals shall not excuse the Service Provider from any liability other than on the same grounds and to the same extent *mutatis mutandis* as it would have been excused from liability for performing its obligations under this Contract (before the proposed Variation took effect). The alternative proposal(s) shall give details of the extent to which the Service Provider seeks to be excused from liability on other grounds or to a different extent in implementing the Variation and the corresponding change (if any) to the amount of the adjustment to the Charges which would otherwise be required in respect of implementing the Variation.
- 6.2. Unless the Authority requires otherwise, the Service Provider's proposal shall be a fixed price lump sum based on the allocation of risk specified in the Variation. However, the Service Provider may in addition include pricing for alternative options to be considered by the Authority.
- 6.3. The Authority may, from time to time, provide the Service Provider with information in relation to possible future Variations for the express purpose of providing the Service Provider with the means of taking such possible Variations into account in planning its operations and capital expenditure programmes and so as to reduce the costs of implementing such Variations in the future.

## **7. Value for Money**

- 7.1. To enable the Authority to effectively determine whether VfM is being achieved in respect of any Variation, it will be necessary for the Service Provider to be transparent in the pricing of any proposed modification to the Charges arising from that Variation in accordance with this Schedule and its general accounting in so far as these are relevant to demonstrating VfM associated with that Variation.
- 7.2. Proposed modification to the Charges in accordance with a Variation shall be priced on a transparent and "open book" basis in accordance with paragraph 7.3 below.
- 7.3. Open Book Accounting
  - 7.3.1. The Service Provider shall calculate any modifications proposed to the Charges in accordance with this Schedule on a "bottom up" basis.
  - 7.3.2. All modifications to Charges shall represent the actual demonstrable costs to be incurred by the Service Provider or savings to be achieved by the Service Provider in each case with reasonable allowances for:
    - 7.3.2.1. a reasonable level of target profit (having regard to what the Service Provider has achieved and has been and is forecast to achieve under the Contract);
    - 7.3.2.2. overheads (with an explanation of the principles on which they have been appropriated to the Contract and to the Variation); and
    - 7.3.2.3. any additional risks being incurred or existing risks being reduced (as the case may be) having regard to the terms of paragraph 6.1.3.
    - 7.3.2.4. If requested by the Authority, the Service Provider shall evidence the breakdown in relevant costs including by reference to operating expenditure, capital expenditure, human resource costs, third party costs (including any sub-contractor mark-up and any intra-group charges).
- 7.4. The Authority's rights under Clause 24.3 (Records, Audit and Inspection) shall include the right of audit to ensure that the Service Provider has complied with its obligations under paragraph 6 above and this paragraph 7.

## **8. Contract Management of Variations**

- 8.1. For a Variation under paragraph 2.1 and on receipt of a Service Provider's Proposal Notice under paragraph 4, the Authority shall allocate a unique number to the potential Variation and the Authority shall also maintain a sequentially numbered register of all potential and actual Variations. All subsequent correspondence between the Parties in connection with any potential or actual Variation shall bear the number allocated to such Variation.
- 8.2. For the avoidance of doubt, each of the Parties shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with the investigation, preparation or negotiation of each Proposed Variation Notice, Required Variation Notice, Service Provider Response, Service Provider's Proposal Notice, Authority to Proceed, Required Variation Settlement Notice and Withdrawal Notice and otherwise in connection with any acts, omissions or correspondence in connection with agreement on, or determination in

accordance with the Dispute Resolution Procedure of, the terms of any Variation and such costs and expenses shall not be taken into account (or included by the Service Provider) in costing any Variation.

## Required Variation Notice

Variation No. [XXXX]	Date [DD-MMM-YY]		
<b>VARIATION TITLE:</b>			
Service Provider: [Inset Service Provider name] (Contract name and reference no. to be included in header)			
<b>Project Manager</b>	<b>Service Delivery Manager</b>	<b>Commercial Manager</b>	<b>Systems Manager</b>
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Summary	
<p>Ø <b>Scope of Variation to the Services</b></p> <p>Insert a concise summary of the scope of the Variation to the Services, including any specific deliverables to be provided by the Service Provider</p> <p>Full details of the change to the Services required are in Section A</p>	
<p>Ø <b>Performance Management</b></p> <p>Insert a concise summary of the changes to the performance regime including any new, or revised, Service Level or performance regimes including any thresholds or trigger levels</p> <p>Full details of the performance regime is Section B</p>	
<p>Ø <b>Key Constraints</b></p> <p>Insert a concise summary of the constraints on the implementation and/or delivery of the Variation to the Services</p> <p>Full details of the Key Constraints are in Section C</p>	
<p>Ø <b>Key dates/Milestone Dates</b></p> <p>Provide a timetable for the implementation of the Variation including key dates or Milestone dates (including the deliverables or Services that the Service Provider must provide by each relevant key date or Milestone date)</p> <p>Full details of the key dates and Milestone Dates are in Section D</p>	
<p>Ø <b>Assurance</b></p> <p>Insert summary of the key Assurance requirements</p> <p>Full details of the Assurance requirements are in Section E</p>	
<p>Ø <b>Intellectual Property Rights</b></p> <p>Insert summary of any new IPR created Or state that no new IPR will be created as part of this Variation</p> <p>Full details of the Intellectual Property Rights requirements and verification levels are in Section F</p>	
<p>Ø <b>Charges and payment terms</b></p> <p>Insert summary of key payment terms</p> <p>Full details of the proposed payment terms are in Section G</p>	
<p>For the Authority:</p> <p>[Transport for London]</p> <p>[insert name]</p> <p>[insert job title]</p>	<p>Signed:</p>    

## Proposed Variation Notice

Variation No. [XXXX]	Date [DD-MMM-YY]		
<b>VARIATION TITLE:</b>			
Service Provider: [Inset Service Provider name] (Contract name and reference no. to be included in header)			
<b>Project Manager</b>	<b>Service Delivery Manager</b>	<b>Commercial Manager</b>	<b>Systems Manager</b>
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Summary	
<p>Ø <b>Scope of Variation to the Services</b></p> <p>Insert a concise summary of the scope of the Variation to the Services, including any specific deliverables to be provided by the Service Provider</p> <p>Full details of the change to the Services required are in Section A</p>	
<p>Ø <b>Performance Management</b></p> <p>Insert a concise summary of the changes to the performance regime including any new, or revised, Service Level or performance regimes including any thresholds or trigger levels</p> <p>Full details of the performance regime is Section B</p>	
<p>Ø <b>Key Constraints</b></p> <p>Insert a concise summary of the constraints on the implementation and/or delivery of the Variation to the Services</p> <p>Full details of the Key Constraints are in Section C</p>	
<p>Ø <b>Key dates/Milestone Dates</b></p> <p>Provide a timetable for the implementation of the Variation including key dates or Milestone dates (including the deliverables or Services that the Service Provider must provide by each relevant key date or Milestone date)</p> <p>Full details of the key dates and Milestone Dates are in Section D</p>	
<p>Ø <b>Assurance</b></p> <p>Insert summary of the key Assurance requirements</p> <p>Full details of the Assurance requirements are in Section E</p>	
<p>Ø <b>Intellectual Property Rights</b></p> <p>Insert summary of any new IPR created no new IPR will be created as part of this Variation</p> <p>Full details of the Intellectual Property Rights requirements and verification levels are in Section F</p>	
<p>Ø <b>Charges and payment terms</b></p> <p>Insert summary of key payment terms</p> <p>Full details of the proposed payment terms are in Section G</p>	
<p>For the Authority:</p> <p>[Transport for London]</p> <p>[insert name]</p> <p>[insert job title]</p>	<p>Signed:</p>    

## Service Provider Response

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Inset Service Provider name]	
Contract name & reference number: [insert contract name & reference number as it appear on the front cover]	
Service Provider's Project Manager:	Service Provider Contract Manager:
[Insert PM Name]	[Insert Contract Manager Name]

### Project Description

#### Ø METHOD OF IMPLEMENTATION

Detail the implementation schedule with Milestone dates.

#### Ø FINANCIAL CONSEQUENCES (INCLUDING CHARGES AND SAVING)

Detail the financial consequences of implementing the Variation showing details of any pricing of the Variation including savings, Project risk (with description), CAPEX and OPEX costs.

#### Ø KEY COMMERCIAL ISSUES

Detail the impact of effecting the Variation on the provision of the Services.

#### Ø KEY CONSTRAINTS

Detail any constraints on the implementation and/or delivery of the Variation to the Services

#### Ø ASSUMPTIONS, DEPENDENCIES

Detail any anticipated Authority and/or Third Party assumptions and dependencies .

#### Ø PERFORMANCE MANAGEMENT

Detail the affect (if any) on the timing of the performance of other obligations under the Contract, including the affect (if any) on any relevant milestone dates.

#### Ø RISKS

Assessment of risks associated with the Variation, including those contained in other areas of the Project Description

#### Ø ASSURANCE

Detail how the Service Provider shall Assure the Authority that the Service provider will comply with the Contract obligations.

#### Ø INTELLECTUAL PROPERTY RIGHTS

Detail any new IPR created.

#### Ø EXTERNAL INTERFACES

Detail any interfaces with other systems

For the Service Provider: <b>[Service Provider name]</b> [insert name] [insert job title]	Signed:
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## Service Provider's Proposal Notice

Proposal Ref No. [XXXX]	Date [DD-MMM-YY]
PROPOSAL TITLE:	
Service Provider: [Inset Service Provider name]	
Contract name & reference number: [insert contract name & reference number as it appear on the front cover]	
Service Provider's Project Manager:	Service Provider Contract Manager:
[Insert PM Name]	[Insert Contract Manager Name]

### Project Description

#### Ø REASON FOR PROPOSAL

Details the business need for the proposal

#### Ø METHOD OF IMPLEMENTATION

Detail the implementation schedule with Milestone dates.

#### Ø FINANCIAL CONSEQUENCES (INCLUDING CHARGES AND SAVING)

Detail the financial consequences of implementing the Variation showing details of any pricing of the Variation including savings, Project risk (with description), CAPEX and OPEX costs.

#### Ø KEY COMMERCIAL ISSUES

Detail the impact of effecting the Variation on the provision of the Services.

#### Ø KEY CONSTRAINTS

Details any constraints on the implementation and/or delivery of the Variation to the Services

#### Ø ASSUMPTIONS, DEPENDENCIES

Detail any anticipated Authority and/or Third Party assumptions and dependencies.

#### Ø PERFORMANCE MANAGEMENT

Detail the affect (if any) on the timing of the performance of other obligations under the Contract, including the affect (if any) on any relevant milestone dates.

#### Ø RISKS

Assessment of risks associated with the Variation, including those contained in other areas of the Project Description

#### Ø ASSURANCE

Detail how the Service Provider shall Assure the Authority that the Service Provider will comply with the Contract obligations.

#### Ø INTELLECTUAL PROPERTY RIGHTS

Detail any new IPR created.

#### Ø EXTERNAL INTERFACES

Detail any interfaces with other systems

For the Service Provider: <b>[Service Provider name]</b> <b>[insert name]</b> <b>[insert job title]</b>	Signed:
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## Authority to Proceed

Variation No. [XXXX]	Date [DD-MMM-YY]
<b>VARIATION TITLE:</b>	
Service Provider: [Inset Service Provider name] (Contract name and reference no. to be included in header)	

Project Manager	Service Delivery Manager	Commercial Manager	Systems Manager
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Please Refer to Proposed Variation Notice dated [Insert Date] and Service Provider Response dated [Insert Date]. Authority is hereby given for the implementation of the Variation set out below.

Summary	
<p>Ø <b>Summary of changes to the Services</b></p> <p>Insert a concise summary of the changes to the deliverables</p> <p>Full details of the change to the Services required are in Section A</p>	
<p>Ø <b>Value of Variation</b></p> <p>Insert value</p> <p>Full details of the performance regime is Section B</p>	
<p>Ø <b>Amended Terms</b></p> <p>Insert summary of any changes agreed subsequent to the Service Provider Response. This is to include key constraints, key dates, assurances, IPR and performance management.</p> <p>Full details of the Amended Terms are in Section C</p>	
<p>Ø <b>Payment terms</b></p> <p>Insert summary of key payment terms</p> <p>Full details of the key dates and Milestone Dates are in Section D</p>	
<p>For the Authority:</p> <p>[Transport for London]</p> <p>[insert name]</p> <p>[insert job title]</p>	<p>Signed:</p>

## Required Variation Settlement Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Inset Service Provider name] (Contract name and reference no. to be included in header)	

Authority Project Manager:	Authority Commercial Manager:
[Insert PM Name]	[Insert Commercial Manager Name]

Ø Nature of issue

Authority to detail the nature of the issue which is the subject of the Required Variation Settlement Notice

Ø Agreed Variation terms

Authority to detail the terms of the Variation as agreed by the Parties

For the Authority: <b>[Transport for London]</b> [insert name] [insert job title]	Signed:
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## Withdrawal Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Inset Service Provider name]	

Authority Project Manager:	Authority Commercial Manager:
[Insert PM Name]	[Insert Commercial Manager Name]

Dear [Service Provider Contract Manager],

RE: [Contract name and date]

We are hereby withdrawing Variation [Variation no.] – [Title] with immediate effect. Please cease implementation of the Variation and update your records accordingly.

[Please advise whether any abortive costs have been incurred and, if so, provide full details of such costs within 10 Business Days. - **Not to be used for Proposed Variations unless an Authority to Proceed has already been issued**]

Copy to: [Authority Contract Manager], [Authority Project Manager]

For the Authority: <b>[Transport for London]</b> [insert name] [insert job title]	Signed:
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**10 SCHEDULE 10 – NOT USED**

## **11 SCHEDULE 11 – HANDBACK OF SERVICE**

### **1. Introduction**

#### **1.1. Scope & Purpose**

- 1.1.1. This Schedule 11 (Handback of Services):
  - 1.1.1.1. sets out the strategy to be followed on handback of the Services (or services similar to the Services), where appropriate to a member of the Authority Group and/or any Successor Operator(s); and
  - 1.1.1.2. requires the Service Provider to support an orderly, controlled handover of responsibility for the provision of the Services from the Service Provider to a member of the Authority Group and/or any Successor Operator(s) (as applicable), at the Authority's direction, with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Authority by means of the implementation of the Handback Plan.
- 1.1.2. It is recognised that the Contract needs to make provision for a member of the Authority Group and/or any Successor Operator not only to take responsibility for any services that are the same as the Services, but also to provide services which are similar to the Services (or any of the activities comprised within them) and/or which have the same or similar use, function, or application as the Services (in whole or part) or their outputs. This Schedule 11, and in particular references to "handback of the Services" "services similar to the Services" and similar expressions shall be interpreted accordingly.

### **2. Handback**

#### **2.1. Handback Plan**

- 2.1.1. The "**Handback Plan**" shall, in relation to all aspects of the handover of the Services (or services similar to the Services) or part thereof to a member of the Authority Group and/or any Successor Operator(s), include details of the following as a minimum:
  - 2.1.1.1. the organisation arrangements including roles and responsibilities for specific individuals and the allocation of resources for the Services (or services similar to the Services);
  - 2.1.1.2. the rationale considered and any assumptions made in developing the Handback Plan;
  - 2.1.1.3. the interface arrangements with the Authority, any Interfacing Parties, or any other person;
  - 2.1.1.4. a complete breakdown of all tasks and workstreams structured as reasonably required by the Authority;
  - 2.1.1.5. the handback process for the Services and the function of each of them;
  - 2.1.1.6. time frames with milestones for the transfer of the provision of the Services (or services similar to the Services) from the Service Provider to

- any member of the Authority Group and/or any Successor Operator(s) and transfer of or access to Data to any member(s) of the Authority Group and/or any Successor Operator(s);
- 2.1.1.7. implications of the transfer of the relevant Services (or services similar to the Services) including any applicable Third Party software licences and configurations for the Service Provider's requirements under the performance regimes;
- 2.1.1.8. details of the transfer of assets, where appropriate and a timetable for the handback of relevant assets including all Authority Assets;
- 2.1.1.9. NOT USED
- 2.1.1.10. details regarding the transfer of the relevant Service Provider Personnel, as required by TUPE, and information regarding all the Service Provider Personnel who are engaged in the performance of the Service Provider's obligations under the Contract and such other information as set out at Clause 37 (Transfer of Employees on Expiry or Termination), and ongoing access to Key Personnel or any other personnel who the Authority considers key for a smooth transition of Services (or services similar to the Services) to any member(s) of the Authority Group and/or any Successor Operator(s);
- 2.1.1.11. all relevant Data regarding the Services including Service Provider information in such form as the Authority and/or any Successor Operator(s) may reasonably require;
- 2.1.1.12. NOT USED; and
- 2.1.1.13. such other details or information as the Authority may reasonably require.
- 2.1.2. The Handback Plan shall, in accordance with the process set out in paragraphs 2.1.3 to 2.1.5 below:
- 2.1.2.1. make reasonable assumptions using the Service Provider's experience under the Contract as to how the Services can be transferred to a member of the Authority Group and/or any Successor Operator(s) (at the Authority's direction), with details of mitigation actions until such time when the Authority and/or any Successor Operator(s) have defined what such arrangements will be implemented by the Authority and/or any Successor Operator(s) in any future Authority and/or Successor Operator(s) transition plan(s); and
- 2.1.2.2. NOT USED.
- 2.1.3. **[DRAFTING NOTE: THE DATES IN THIS PARAGRAPH WILL BE POPULATED BY THE AUTHORITY TAKING INTO ACCOUNT THE SPECIFIC NATURE AND TERM OF THE PARTICULAR CALL-OFF]** The Service Provider shall submit a draft Handback Plan to the Authority no later than the earlier of the **xx** anniversary of the Service Commencement Date or as required by the Authority in relation to termination of the Contract. The Service Provider shall finalise the Handback Plan:
- 2.1.3.1. not later than six (6) months after the **xth** anniversary of the Service Commencement Date, taking due account of the Authority's comments; or

2.1.3.2. as required by the Authority in relation to a termination of the Contract pursuant to Clause 34 (Breach and Termination of Contract)

(as applicable).

2.1.4. Save as specified in any Successor Plan, all Handback Plans delivered to the Authority shall:

2.1.4.1. in respect of the first Handback Plan due by the Service Provider:

2.1.4.1.1. cater for all Services to have [a co-terminus End Date] [phased End Dates]; **[Drafting Note : Authority will choose most appropriate and populate for each individual Call-Off Contract ]**

2.1.4.1.2. unless otherwise specified by the Authority, be based on handback to a single member of the Authority Group or Successor Operator; and

2.1.4.1.3. be based on any other information reasonably specified by the Authority and/or where necessary any other reasonable assumptions (which shall be explicitly set out in the Handback Plan); and

2.1.4.2. in respect of each Handback Plan thereafter, cater for different Services having phased or staggered End Dates to the extent specified by the Authority in the most recent Successor Plan and/or take account of any notice served by the Authority pursuant to Clause 34.9.

2.1.5. The Service Provider shall, as soon as reasonably practicable and in any event within two (2) months of the first Successor Plan being provided to it, deliver to the Authority an updated Handback Plan which shall reflect such Successor Plan. Thereafter, the Service Provider shall, within one (1) month following its receipt of a change to the Successor Plan, review, update and submit to the Authority for approval a revised Handback Plan which reflects such revised Successor Plan.

2.1.6. The Service Provider shall consult fully with the Authority in relation to the preparation of each version of the Handback Plan, and shall take full account of the Authority's comments.

2.1.7. The Service Provider shall, within fourteen (14) days of receipt of a notification from the Authority, amend the latest Handback Plan to correct identified non-conformities, incorporate any other comments or feedback from the Authority and resubmit it to the Authority. The Authority shall, within fourteen (14) days of resubmission of the Handback Plan, notify the Service Provider of any remaining or new non-conformities. Subject to Clause 33 (Dispute Resolution) and without limiting the Authority's right to issue a Required Variation (including in relation to any aspect of the Handback Plan, the procedure in this paragraph 2.1.7 shall be repeated until the Handback Plan is free from non-conformities and agreed and confirmed by the Authority in writing.

## 2.2. Handback Programme

2.2.1. The Service Provider shall prepare the "**Handback Programme**" and deliver it to the Authority with each Handback Plan. The Handback Programme shall be consistent with the most up to date Handback Plan and shall detail the Service Provider's recommended approach, assumptions,

sequencing, responsibilities and timescales for the handback of all Services (or services similar to the Services). The Handback Programme shall be updated to reflect the comments of the Authority and any changes to the Handback Plan and any revised version of the Handback Programme shall be delivered to the Authority with each update of the Handback Plan or, where no such Handback Plan is to be provided, such date as may be stipulated by the Authority. The Service Provider shall take into account any problems, experience or lessons learned from the Transition Period when it prepares the handback documentation.

2.2.2. When developing the Handback Plan, the Service Provider shall, unless otherwise directed in writing by the Authority, assume that handback will be to an organisation similar in capability to the Service Provider and will not necessitate significant changes to the Services.

2.2.3. The Service Provider shall consult fully with the Authority in relation to the preparation of the Handback Programme, and shall take full account of the Authority's comments in accordance with paragraph 2.2.1.

2.2.4. The Service Provider shall, within five (5) days of receipt of a notification from the Authority, amend the Handback Programme to correct identified non-conformities, incorporate any other comments or feedback from the Authority which may include feedback from any Successor Operator(s), and resubmit it to the Authority. The Authority shall, within five (5) days of resubmission of the Handback Programme, notify the Service Provider of any remaining or new non-conformities. Subject to Clause 33 (Dispute Resolution) and without limiting the Authority's right to issue a Required Variation (including in relation to any aspect of the Handback Plan, the procedure in this paragraph 2.2.4 shall be repeated until the Handback Programme is free from non-conformities, agreed and confirmed by the Authority in writing.

2.2.5. The Handback Programme shall clearly identify when consultation shall begin for any Service Provider Personnel who may be subject to TUPE and how this process should be managed if these people are to be transferred on or before the Expiry Date.

2.2.6. The Handback Programme shall detail all of the work-streams, activities and timescales identified in the Handback Plan.

### **3. NOT USED**

### **4. Reports and Meetings**

#### **4.1. NOT USED**

#### **4.2. Performance Reports and Meetings**

4.2.1. The Service Provider shall report on progress of handback in the Service Performance Report and matters affecting handback shall be discussed at the Service Review Meeting.



**12 SCHEDULE 12 – NOT USED**

**13 SCHEDULE 13 – NOT USED**

## **14 SCHEDULE 14 – ASSURANCE**

### **1. Overview**

- 1.1. The Service Provider shall provide Assurance to the Authority to ensure the Authority gains the necessary levels of confidence that the Service Provider is complying with its obligations under the Contract and, in particular, in relation to the delivery of the Services.
- 1.2. The purpose of the Assurance process set out below is to provide clarity and visibility of the methods by which the Authority will gain Assurance.
- 1.3. In relation to a project or a programme, the Service Provider shall propose how it plans to Assure the Authority that it will comply with its Contract obligations. The Authority may at its sole discretion require additional Assurance activities.
- 1.4. Given the size and complexity of the Services and the Authority's business, the Service Provider agrees that several different business units and groups internal and external to the Authority may be affected by Changes, and may require to be involved in the Assurance process at different times and to varying levels. Notwithstanding this, the Contract Manager shall be the Authority's prime point of contact with the Service Provider in accordance with Clause 13 (Operational Management).

### **2. General Assurance Process**

- 2.1. The Service Provider shall ensure that the Authority gains Assurance:
  - 2.1.1. through the Service Provider's maintenance and submission of the documentation and information set out in Clause 9 (Major Incident Management) and in Schedules 3 (Transition) to 11 (Handback of Service) inclusive;
  - 2.1.2. through the processes set out in Schedule 8 (Service Management);
  - 2.1.3. NOT USED; and
  - 2.1.4. through a programme of Assurance audits in accordance with paragraph 3 of this Schedule, Assurance Events and/or milestones as provided for under the Contract.
- 2.2. The Service Provider acknowledges and agrees that the Authority may use (as the Authority sees appropriate), as a minimum, the following general methods throughout all phases of the Assurance process as a means of gaining Assurance regarding the Service Provider's performance:
  - 2.2.1. assessing the Service Provider's approach to identifying, evaluating and resolving emerging issues and unforeseen problems;
  - 2.2.2. auditing the Service Provider's processes and operations against the documents submitted by the Service Provider;
  - 2.2.3. measuring the Service Provider's performance for compliance with the Service Levels set out in Schedule 8 (Service Management);

- 2.2.4. reviewing the Service Provider's performance in the achievement of identified events in individual project or programme plans; and
- 2.2.5. reviewing the Service Provider's performance at regular meetings.

### **3. TfL Assurance Audit Programme**

- 3.1. The Authority and/or its nominees shall be entitled to conduct formalised Assurance audits throughout the Term pursuant to Clause 24 (Records, Audit and Inspection) and may develop the TfL Assurance Audit Programme (being a programme of audits which the Authority proposes to undertake as part of the Assurance process) which it may maintain and issue to the Service Provider from time to time. The TfL Assurance Audit Programme will form the basis of the Authority's and/or its nominees' Assurance audits but shall not be construed as exhaustive.
- 3.2. The TfL Assurance Audit Programme shall be a twelve (12) month rolling programme of audits which shall be reviewed, updated and re-issued at least every twelve (12) months by the Authority to the Service Provider.
- 3.3. The Authority and/or its nominees shall carry out Assurance audits to check the Service Provider's compliance with the documents developed in response to the requirements of the Contract and any or all of the processes, procedures, documentation, methods of working, testing, commissioning and operations detailed therein.
- 3.4. The Authority shall, without prejudice to Clause 24 (Records, Audit and Inspection) and at least seven (7) Business Days in advance of each scheduled audit listed in the TfL Assurance Audit Programme, confirm that the audit shall take place and shall provide the Service Provider with such further information to ensure that the audits are carried out in an efficient manner with minimum disruption to the Service Provider's day-to-day operations. The Authority shall provide a detailed scope of each scheduled audit and where appropriate a list of the topics or questions to be covered so that the Service Provider can properly prepare for the Assurance audit.
- 3.5. The Authority and/or its nominees may carry out some Assurance audits and inspections without prior notice in accordance with the provisions of Clause 24 (Records, Audit and Inspection).
- 3.6. In areas of persistent or significant non-compliance by the Service Provider with its obligations pursuant to this Contract, the Authority shall be entitled to require the Service Provider to provide a report on such non-compliance and the Service Provider shall either provide a detailed report within five (5) Business Days of each such request by the Authority or agree with the Authority within five (5) Business Days an action plan for producing a report. The Service Provider shall also attend such meetings to discuss areas of persistent or significant non-compliance as the Authority reasonably requires.

### **4. Corrective Action Notices**

- 4.1. After each Authority Assurance audit in accordance with paragraph 3 of this Schedule and/or Clause 24 (Records, Audit and Inspection) the TfL Contract Manager will prepare an audit report reviewing the Service Provider's performance. Copies of Contract Manager's Assurance audit reports shall be issued to the Service Provider along with any comments or observations. If the

Contract Manager determines that the Service Provider is non-compliant with any part of the Contract, the Contract Manager may issue a Corrective Action Notice in accordance with the provisions of Clause 16 (Corrective Action Notices).

- 4.2. In addition to any Corrective Action Notices issued as a result of an Assurance audit in accordance with paragraph 4.1 of this Schedule, the Contract Manager may, from time to time, issue such other Corrective Action Notices on any other matter where it considers that the Service Provider has failed to comply with its obligations under the Contract, in accordance with the provisions of Clause 16 (Corrective Action Notices).
- 4.3. Each Corrective Action Notice shall state clearly the reason why the Authority believes that the Service Provider is not complying with its obligations under the Contract. The Service Provider shall respond to the Contract Manager within ten (10) Business Days of the Corrective Action Notice being issued:
  - 4.3.1. stating the action it proposes to take and the timescale for completing the action; or
  - 4.3.2. providing an alternative proposal for achieving the objective(s) as set out in the relevant Corrective Action Notice and/or timescale for resolving the non-conformance along with a reasoned explanation. The Authority shall consider any such alternative proposal and at its sole discretion instruct the Service Provider to implement such a proposal which may include such amendments as are agreed with the Service Provider.
- 4.4. The Service Provider shall then implement the corrective action(s) as agreed with the Authority under paragraph 4.3 of this Schedule.
- 4.5. The Service Provider shall provide a Corrective Action Notice status report each Period in the Service Performance Report produced in accordance with Schedule 8 (Service Management) or as otherwise instructed by the Authority.
- 5. Assurance Feedback**
  - 5.1. The Authority shall provide feedback to the Service Provider at each Service Review Meeting held in accordance with Schedule 8 (Service Management) in relation to the Services on the level of Assurance that the Authority has gained in the Service Provider's performance during the preceding four (4) week period or over a longer period as appropriate.
  - 5.2. The Authority shall identify and notify the Service Provider of areas where the Service Provider needs to increase its efforts to provide Assurance and the Service Provider shall comply with the Authority's reasonable instructions to provide such Assurance.

## 15 SCHEDULE 15 – SERVICE PROVIDER CONFIDENTIAL INFORMATION

[Drafting Note: To be populated by the Authority taking into account the Service Provider's proposals for information to be treated as Service Provider Confidential Information]

## 16 SCHEDULE 16 – SUPPLIER DIVERSITY

### 1 Compliance

#### 1.1 Without limiting the generality of any other provision of this Call-Off Contract, the Service Provider:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate, and
- (c) shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate in relation to the Services,

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.

#### 1.2 The Service Provider acknowledges that the Authority as a public authority is subject to a statutory 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 Service Provider shall assist and cooperate with Authority where possible in satisfying this duty.

#### 1.3 The Service Provider acknowledges where the Authority is TfL, TfL 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:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination;
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and

in providing the Services, the Service Provider shall assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty.

#### 1.4 TfL's Harassment, Bullying and Discrimination Policy (“Policy”) as up-dated from time to time (copies of which are available on request from TfL) requires TfL's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

- (a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

## 2 Strategic Equality & Diversity Plan

2.1 For the duration of this Contract, the Service Provider shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Call-Off Contract which is at least as extensive in scope as that agreed with TfL and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this Contract the expression "Agreed Strategic Equality & Diversity Plan" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached as Appendix 1 to this Schedule, headed "**Agreed Strategic Equality & Diversity Plan**".

2.2 Where a subcontractor has, pursuant to paragraph 2 or otherwise, adopted a Strategic Equality & Diversity Plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

## 3 Diversity Training

3.1 For the duration of this Contract, the Service Provider shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached as Appendix 2 to this Schedule, headed "**Agreed Training Plan**". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and



- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of this Contract which is at least as extensive in scope as the Agreed Training Plan.

- 3.2 Where a subcontractor has, pursuant to paragraph 1 or otherwise, adopted a diversity training plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide

a copy of its diversity training plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

#### 4 Supplier Diversity

- 4.1 For the duration of this Contract the Service Provider shall at all times comply with the "**Agreed Supplier Diversity Plan**". For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached as Appendix 3 to this Schedule, headed "**Supplier Diversity Plan**". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement

a supplier diversity plan in relation to the performance of this Contract which is at least as extensive as the Agreed Supplier Diversity Plan.

- 4.2 Where a subcontractor has, pursuant to paragraph 4.1 or otherwise, adopted a supplier diversity plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

#### 5 Communications Plan

- 5.1 For the duration of this Contract and in all dealings with the Local Community, the Service Provider shall comply with the Agreed Communications Plan. For

the purposes of this Call-Off Contract the expression "**Agreed Communications Plan**" means the communications plan agreed and attached as Appendix 4 to this Schedule, headed "**Agreed Communication Plan**" and the expression "**Local Community**" means those areas of London affected by the Works from time to time.

## 6 Monitoring and Reporting

6.1 Subject to paragraph 6.2, the Service Provider shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from the date or such other frequency as the Authority may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in paragraphs 2 to 5. The annual report should set out:

- (a) the performance of the Service Provider over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with paragraph 6.1 (d)
- (b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:
  - (i) female;
  - (ii) of non-white British origin or who classify themselves as being non-white British;
  - (iii) from the Local Community;
  - (iv) disabled
- (c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.
- (d) a plan of action for the forthcoming 12 months showing what the Service Provider plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the attached document called TfL Supplier Diversity Definitions.

6.2 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Authority pursuant to paragraph 6.1.

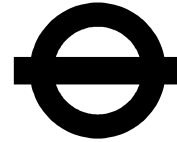
## 7 Equality and Diversity Infractions

- 7.1 If the Service Provider or any of its direct subcontractors commits a Equality & Diversity Infraction, the Authority shall be entitled (but not obliged) to act as follows:
- (a) if a Equality & Diversity Infraction is committed by the Service Provider then the Authority may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
  - (b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Service Provider, the Authority may serve written notice upon the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Service Provider of such notice (or such longer period as may be specified in the notice). If the Service Provider fails to procure the remedy of the Diversity Infraction, the Authority may serve a further written notice upon the Service Provider and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Service Provider shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 2 to 5 of this Schedule.
- 7.2 It shall be a fundamental term and condition of the Contract that the Service Provider complies with its obligations under paragraphs 7.1 (a) to 7.1(b). Where, following receipt of a notice given pursuant to clause paragraph 7.1(a) or 7.1(b) the Service Provider fails to remedy a Diversity Infraction to the satisfaction of the Authority or in the case of paragraph 7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in paragraph 7.1(b) the Service Provider will be in breach of the Contract and the Authority shall be entitled (but not obliged) to terminate the Contract, without further notice to the Service Provider, in accordance with Clause 34 (Breach and termination of the Contract).
- 7.3 For the purposes of this paragraph 7 "Equality & Diversity Infraction" means any breach by the Service Provider of its obligations specified in paragraphs 2 to 5 of this Schedule and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 2 to 5 of this Schedule.
- 8 Equality and Diversity Audit
- 8.1 The Authority or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with paragraphs 2 to 5

- 8.2 The Authority's rights pursuant to this paragraph shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of paragraphs 2 to 4 indirect subcontractors and shall include the Minimum Records.
- 8.3 The Service Provider shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with paragraphs 2 to 5. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of paragraphs 2 to 4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with paragraphs 2 to 4. The Service Provider shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of paragraphs 2 to 4 each subcontract between its direct subcontractor and any indirect subcontractor of the Service Provider shall contain rights of audit in favour of and enforceable by the Authority substantially equivalent to those granted by the Service Provider pursuant to this paragraph 8.
- 8.4 The Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).
- 8.5 The Service Provider shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of paragraphs 2 to 4 indirect subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;
  - (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor's obligations specified in paragraphs 2 to 4 wherever situated and whether the Service Provider's own equipment or otherwise; and
  - (c) complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor's performance of its subcontract.
- 8.6 For the purposes of this paragraph 8 the expression Minimum Records means all information relating to the Service Provider's performance of and compliance with paragraphs 2 to 5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier

diversity plan by each direct and, where applicable, subject to the provisions of paragraphs 2 to 4 indirect subcontractor of the Service Provider.

# Transport for London



## TfL Supplier Diversity Definitions

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Issue Date: February 2010

Effective: February 2010

## 1. **Document Outline**

### 1.1 **Background**

Encouraging a diverse base of supplier forms a part of the GLA Group Responsible Procurement Policy. The TfL Supplier Diversity Definitions ensure consistency across Supplier Diversity activities across TfL. These definitions form a basis for the TfL Supplier Diversity Policy and act as a basis for alignment in the measurement of diverse suppliers.

### 1.2 **Version Control**

Version Date	Author	Notes
26 February 2010	C Cottam	Turnover/Balance Sheet Amendment
02 February 2009	C Cottam	SME definition update
31 January 2008	J Gall	Ownership categorisation
8 <sup>th</sup> May 2006	J Gall	EU definitions
19 <sup>th</sup> October 2005	J Gall	Updates/clarifications

## 2. **Diverse Suppliers**

For the purposes of TfL's Procurement Supplier Diversity Programme, "**Diverse Suppliers**" comprise the following four subsets:

2.1 Small and Medium Enterprises (SMEs)

2.2 Black, Asian and Minority Ethnic (BAME) businesses

2.3 Suppliers from other under-represented or protected groups

2.4 Suppliers demonstrating a diverse workforce composition

The more detailed explanations of the four above subsets are given in the sections below.

## 3. **Small and Medium Enterprises (SMEs)**

3.1 A **Small Enterprise**<sup>5</sup> is a business which has both the following:

i) 0-49 Full Time Equivalent employees<sup>1</sup>;

AND EITHER

ii) Turnover<sup>2</sup> per annum of no more than £5.6 million net (or £6.72 million gross); in the last financial year;

OR

iii) Balance sheet total<sup>4</sup> of no more than £2.8 million net (£3.36 million gross).

3.2 A **Medium Enterprise**<sup>5</sup> is a business which has both the following:

i) 50-249 Full Time Equivalent employees<sup>1</sup>;

AND EITHER

- ii) Turnover<sup>2</sup> per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- iii) Balance sheet total<sup>4</sup> of no more than £11.4 million net (or £13.68 million gross).

**3.3 A Large Enterprise<sup>5</sup>** is a business which has both the following:

- i) 250 and over Full Time Equivalent employees<sup>1</sup>;

AND EITHER

- ii) Turnover<sup>2</sup> per annum over £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- iii) Balance sheet total<sup>4</sup> of over £11.4 million net (or £13.68 gross).

<sup>1</sup> Full Time equivalent employees is defined in Section 7.1

<sup>2</sup> Turnover is defined in Section 7.3

<sup>4</sup> Balance Sheet Total is defined in Section 7.5

<sup>5</sup> Further explanation is outlined in Section 7.7 (Definition of Size) & 7.8 (Ownership Categorisation)



#### **4. *Black, Asian and Minority Ethnic (BAME) owned businesses***

A Black, Asian and Minority Ethnic (BAME) owned business is a business which is 51% or more owned by members of one or more Black, Asian or Minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'White British'.

The minority ethnic classification groups used by TfL for monitoring purposes are:

<u>Ethnic group</u>	<u>Racial origin</u>
White	Irish Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian or Asian British	Indian Pakistani Bangladeshi Any other Asian background
Black or Black British	Caribbean African Any other Black background
Chinese or other Ethnic Group	Chinese Any other Ethnic Group

#### **5. *Suppliers from other under-represented groups or protected groups***

**5.1** A Supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

- 5.1.1 Women (gender)
- 5.1.2 Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;
- 5.1.3 Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and
- 5.1.4 Older people (aged 60 or over), young people (aged 24 or under) (age)

**5.2** A Supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

#### **6. *Suppliers demonstrating a diverse workforce composition***

This relates to Full Time Equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in II and III above.

## **7. Other Definitions & Information**

### **7.1 Full-Time Equivalent Employees**

Where employee numbers are used, these refer to Full-Time Equivalents (FTEs) expressed in **Annual Work Units** (see below). Staff headcount should include full-time, part-time and seasonal staff and includes the following:

- Employees
- Persons working for the enterprise being subordinated to it and considered to be employees under national law
- Owner managers
- Partners engaged in regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Full-time workers are expressed as hours worked per week. TfL refer to standard UK hours of work as full time workers – i.e. those who work 35 hours a week and 52 weeks a year (including annual leave).

### **7.2 Annual Work Units**

Refer to anyone who worked, over the past year, full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

### **7.3 Turnover**

Turnover is in line with that defined in the Companies Act 1985:

The amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:

- i) trade discounts
- ii) value added tax

Please refer to Section 7.8 regarding ownership categorisation to understand how to interpret ownership, where an enterprise is part of a parent organisation.

### **7.4 Financial Year**

Financial Year relates to 1<sup>st</sup> April – 31<sup>st</sup> March or any other 12 month period as defined by the company.

All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

### **7.5 Balance Sheet Total**

The annual balance sheet total refers to the value of your company's main assets.

### **7.6 Ownership**

Individual or those in named control holding capital or voting rights - either through private or shared ownership - of any given business entity.

### **7.7 Definition of Size**

Where headcount and turnover and/or balance sheet conditions apply to different size definitions, headcount acts as the more predominant aspect, in defining size.

An organisation does not need to satisfy both turnover and balance sheet total, only one of the conditions and may exceed one of them without losing its status. This is illustrated by an organisation which has 30 employees, a turnover of £12 million and a balance sheet total of £10 million. The number of employees figure would class the organisation as a small organisation, however the turnover and balance sheet total define the organisation as medium. In this case, the headcount would be used to define the classification of the organisation. This organisation would be classed as a small organisation.

To illustrate this, the following scenarios have been mapped for the different characteristics of supplier diversity definitions (based on information from the Department for Trade & Industry (now Department for Business Enterprise & Regulatory Reform)):

		Turnover/Balance Sheet Total		
		£5.6m net(up to)/ £2.8m net (up to )	£22.8m net(up to/incl.)/ £11.4m net (up to/incl.)	£22.8m net(over)/ £11.4m net (over)
Employees	0-49	ü	Employees more predominant	Employees more predominant
	50-249	Employees more predominant	ü	Employees more predominant
	250+	Employees more predominant	Employees more predominant	ü

## 7.8 Ownership Categorisation

### EU Commission Definition on Enterprise Ownership Categorisation

The European Commission's Guidance published in 2005 "The New SME Definition: User Guide and Model Declaration"<sup>6</sup>, outlines parameters for defining an organisation's ownership categorisation and whether an organisation is autonomous, partner or linked.

#### 7.8.1 Autonomous

This is the most common category of ownership.

An organisation is autonomous if:

- It is totally independent, i.e. there is no participation in other enterprises and no enterprise has a participation.

- It has a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If an organisation is autonomous, it means that it is not a partner or linked to another enterprise

### **7.8.2 Partner**

An enterprise is a partner enterprise if:

- It has a holding equal to or greater than 25%, of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in the other.

It is not linked to another enterprise. This means, among other things, that voting rights in the other enterprise (or vice versa) do not exceed 50%.

### **7.8.3 Linked**

Enterprises formed as a **group** through the direct or indirect control of the majority of voting rights. An enterprise owned by another or through the ability to exercise a **dominant influence** on another enterprise.

Two or more enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.

- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.

- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.

- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

<sup>6</sup>Refer directly to the EU Commission Definitions for more guidance:  
[http://ec.europa.eu/enterprise/enterprise\\_policy/sme\\_definition/sme\\_user\\_guide.pdf](http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf)

## **8. Document Owner & Contact Details**

For further information, please contact Carina Cottam, Programme Team, Group Procurement, Finance, Transport for London via email: [carinacottam@tfl.gov.uk](mailto:carinacottam@tfl.gov.uk)

## Schedule 16 – Appendix 1

### Strategic Equality & Diversity Plan

*[Note: there will be inserted here in the Call-Off Contract template form included for the Service Provider in its Framework Agreement, the form of Strategic Equality & Diversity Plan agreed with the Service Provider as part of the Framework Agreement procurement]*

## Schedule 16 – Appendix 2

### Agreed Training Plan

***[Note: there will be inserted here in the Call-Off Contract template form included for the Service Provider in its Framework Agreement, the form of agreed diversity training plan agreed with the Service Provider as part of the Framework Agreement procurement]***

## Schedule 16 – Appendix 3

### Agreed Supplier Diversity Plan

*[Note: there will be inserted here in the Call-Off Contract template form included for the Service Provider in its Framework Agreement, the form of agreed Supplier Diversity Plan agreed with the Service Provider as part of the Framework Agreement procurement]*

## Schedule 16 – Appendix 4

### Agreed Communications Plan

*[Note: there will be inserted here in the Call-Off Contract template form included for the Service Provider in its Framework Agreement, the form of agreed Communications Plan agreed with the Service Provider as part of the Framework Agreement procurement]*



## 17 SCHEDULE 17 – STRATEGIC LABOUR NEEDS AND TRAINING TERMS AND CONDITIONS

### 1 Introduction

1.1 Without prejudice to the other provisions in this Contract relating to Service Provider Personnel, this Schedule sets out the Service Provider's obligations in respect of:

- (A) supporting the Authority Group (and Third Parties nominated by the Authority Group) in the implementation of the Skills and Employment Strategy; and
- (B) ensuring that the Service Provider attracts, develops and retains Service Provider Personnel with the skills necessary to deliver the Services, throughout the Term.

1.2 In this Schedule, the following terms shall have the corresponding meanings:

<b>“Apprentice”</b>	means a member of Service Provider Personnel who is registered as an apprentice or technician with an industry recognised body;
<b>“Agreed SLNT Plan”</b>	means the Service Provider's strategic labour needs and training plan set out at Appendix 3 ( <i>Initial/Agreed SLNT Plan</i> ) to this Schedule, to be prepared in accordance with the SLNT Plan Template and approved by the Authority;
<b>“Initial SLNT Plan”</b>	means the initial strategic labour needs and training plan set out at Appendix 3 ( <i>Initial/Agreed SLNT Plan</i> ), submitted by the Service Provider prior to the Contract Commencement Date and to be agreed between the Parties in accordance with paragraph 2 of this Schedule;
<b>“Monthly SLNT Monitoring Report”</b>	means the report to be prepared by the Service Provider in the form set out at Appendix 4 ( <i>Monthly SLNT Monitoring Report Template</i> ) and submitted to the Authority in accordance with the provisions of paragraph 6 of this Schedule;
<b>“Relevant Employment Vacancy”</b>	means an employment vacancy within the Service Provider's organisation for a member of Service Provider Personnel;
<b>“Skills and Employment Strategy”</b>	means the TfL Group's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy dated March 2011 is provided at Appendix 1 ( <i>Skills and Employment Strategy</i> ) to this Schedule;
<b>“SLNT Co-ordinator”</b>	has the meaning set out in paragraph 3.1 of this Schedule;

<b>“SLNT Infraction”</b>	means any breach by the Service Provider of any of its obligations under this Schedule;
<b>“SLNT Output”</b>	means the minimum number of Apprentice positions or equivalent to be delivered by the Service Provider (either directly through its own personnel and the personnel of its Sub-Contractors) under this Contract, as identified and agreed in the Agreed SLNT Plan;
<b>“SLNT Plan Template”</b>	means the template for the SLNT Plan set out at Appendix 2 ( <i>SLNT Template</i> ) to this Schedule, to be completed by the Service Provider;
<b>“Trainee”</b>	means a member of Service Provider Personnel who is registered as a trainee with an industry recognised body; and

## 2 **Agreed SLNT Plan**

### 2.1 Based on the Initial SLNT Plan, the Service Provider shall:

- (A) further develop the Initial SLNT Plan to reflect the comments and requirements of the Authority; and
- (B) submit a revised copy of the Initial SLNT Plan to the Authority for Assurance within twenty (20) Working Days of the Contract Commencement Date.
- (C) provide an Implementation Plan as contained in Appendix 4 of this Schedule based on the revised copy of the Initial SLNT Plan within forty (40) Business Days of the Contract Commencement Date;

### 2.2 If the Initial SLNT Plan is:

- (A) Approved, it shall be adopted immediately and become the Agreed SLNT Plan; or
- (B) not approved, the Service Provider shall amend the Initial SLNT Plan and re-submit it to the Authority for Assurance within the time period agreed in writing between the Parties. If the Authority does not approve the Initial SLNT Plan following its resubmission, the matters preventing such approval shall be resolved in accordance with the Dispute Resolution Procedure.

### 2.3 Without limiting any other provision of this Contract, the Service Provider shall:

- (A) comply with provisions of the Agreed SLNT Plan; and
- (B) at no additional cost to the Authority and subject to the provisions of paragraph 2.4 below, review and amend the Agreed SLNT Plan and Implementation Plan every twelve (12) Months following the Services Commencement Date or at other times requested by the Authority, to reflect:
  - (a) good industry practice;
  - (b) any changes to the nature of the Services; and
  - (c) any amendments proposed by the Authority.

- 2.4 Any changes or amendments to the Agreed SLNT Plan shall be subject to the variation provisions in this Contract and shall not be implemented until approved in writing by the Authority.

### **3 SLNT Co-ordinator**

- 3.1 Within twenty (20) Business Days of the Contract Commencement Date, the Service Provider shall nominate a member of Service Provider Personnel with the necessary skills and authority to:
- (A) be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan; and
  - (B) act as the single point of contact between the Authority Personnel on all matters concerning the Agreed SLNT Plan,
- (the “**SLNT Co-ordinator**”).
- 3.2 The Parties shall add the SLNT Co-ordinator to the list of Key Personnel set out Schedule 1 (Key Contract Information).

### **4 Community Relations**

- 4.1 The Service Provider acknowledges and accepts that members of the Authority Group work closely with Third Party organisations to implement the Skills and Employment Strategy.
- 4.2 Accordingly, the Service Provider shall:
- (A) at the time of placing an advertisement for a Relevant Employment Vacancy, notify the relevant member of Authority Personnel (and/or any Third Parties nominated by the Authority Group) of such advertisement, providing details of the:
    - (1) Relevant Employment Vacancy;
    - (2) date of the advertisement; and
    - (3) publication in which the advertisement is scheduled to appear or appeared (as applicable); and
  - (B) attend a minimum of two (2) events each year, at a time and location specified by the Authority, to publicise employment and training opportunities arising from the provision of the Services.

### **5 Monitoring and Reporting**

- 5.1 Subject to paragraph 6.2 below, the Service Provider shall provide the Authority with a Monthly SLNT Monitoring Report by the Performance Indicator Report Date detailing the Service Provider's performance against the Agreed SLNT Plan.
- 5.2 Failure to provide the Authority with a copy of the Monthly SLNT Monitoring Report within the timescales set out in paragraph 6.1 above shall entitle the Authority to issue a Corrective Action Notice (without limiting any other right the Authority may have).
- 5.3 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the:

- (A) development and maintenance of training plans pursuant to this Schedule; and
- (B) collection and reporting of the information to the Authority pursuant to paragraph 6.1 above.

## **6 SLNT Infractions**

### **6.1 Failure to:**

- (A) ensure that each SLNT Output for the monitoring period is delivered in accordance with Agreed SLNT Plan; and/or
- (B) review the Agreed SLNT Plan in accordance with paragraph 2.3 of this Schedule (*Strategic Labour Needs and Training*),

shall entitle the Authority to issue a Corrective Action Notice (without limiting any other right the Authority may have).

## **7 SLNT Audit**

- 7.1 The Authority may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance the provisions of this Schedule.
- 7.2 The Service Provider shall maintain and retain records relating to the Agreed SLNT Plan and its compliance with the provisions of this Schedule for a minimum of seven (7) years.
- 7.3 The Authority shall use reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider is not, without due cause, disrupted or delayed in the performance of the Service Provider's obligations under this Contract.
- 7.4 The Service Provider shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
  - (A) granting or procuring the grant of access to any:
    - (1) premises used in the Service Provider's performance of this Agreement, whether the Service Provider's own premises or otherwise;
    - (2) equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's obligations under this Schedule, wherever situated and whether the Service Provider's own equipment or otherwise; and
  - (B) complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of this Contract.

## **APPENDIX 1 TO SCHEDULE 17**

### **Skills and Employment Strategy**

A copy of the Skills and Employment Strategy can be obtained from:

<http://www.tfl.gov.uk/assets/downloads/corporate/skills-employment-strategy.pdf>

## APPENDIX 2 TO SCHEDULE 17

### SLNT Template

***[NOTE TO BIDDERS: The SLNT Template shall take the form of the document provided in the ITT at [\[Section/ Appendix XX\]](#) (SLNT Requirements)***

### APPENDIX 3 TO SCHEDULE 17

#### Initial/Agreed SLNT Plan

***[NOTE TO BIDDERS: Bidders are required to submit their proposed Strategic Labour Needs and Training Plan in accordance with the requirements described in [Section/ Appendix XX] of the ITT. The Initial SLNT Plan will be inserted in this Appendix 3 to the Template Call-Off Contract contained in the Service Provider's Framework Agreement. When the content of such plan is approved in the context of a particular Call-Off such plan shall become the Agreed SLNT Plan and replace the Initial SLNT Plan for the purpose of that Call-Off Contract.]***

## APPENDIX 4 TO SCHEDULE 17

### Implementation Plan

***[NOTE TO BIDDERS: The implementation plan is required to be undertaken post contract award within the period specified in Paragraph 2.1(C) of this schedule. The implementation plan is designed to provide additional information to TfL that allows the practical implementation of the bidders SLNT requirements, to be undertaken. The format of the implementation is appended below:***

#### SLNT Implementation Plan

##### 1. Contact Information

TfL Contract

Supplier Skills Manager

Company

SLNT Co-ordinator

Contract Manager

Contact Phone Number

TfL Stakeholder / SRM

Contact Email

Reporting Requirements Quarterly / Monthly / Periodically

Report Period

Implementation Plan Review Date

##### 2. Overview and Background

**2.1 - Overview:** Please provide an overview of the contract / project to which the SLNT requirements have been applied

**2.2 - Method:** Please outline how you will deliver your SLNT requirements with particular focus on TfL priority outputs



**2.3 - Forecasted Outputs:** Please indicate in the table below forecasted SLNT outputs

	Worklessness			New Entrants			Trainee's		Current workforce		Educational Activities
	Apprenticeship (FTE)	Job Starts (FTE)	Placement Positions	Apprenticeship (FTE)	Job Starts (FTE)	Graduates (FTE)	Placement Positions (Nos)	Taster Positions (Nos)	Adult Apprenticeships	Workforce Skills (days)	
Previous Year											
March											
April											
May											
June											
July											
August											
September											
October											
November											
December											
January											
February											
March											
Annual Total	0	0	0	0	0	0	0	0	0	0	0
Future Years											
TOTAL	0	0	0	0	0	0	0	0	0	0	0

**2.4 - Milestones:** Please detail key milestones related to the delivery of your SLNT outputs

Milestone 1		Milestone 6	
Milestone 2		Milestone 7	
Milestone 3		Milestone 8	
Milestone 4		Milestone 9	
Milestone 5		Milestone 10	

**2.5 - Partners:** Please detail any partner organisations that will assist you in your SLNT delivery (Organisation and Key Contact)

Partner 1		Partner 6	
Partner 2		Partner 7	
Partner 3		Partner 8	
Partner 4		Partner 9	
Partner 5		Partner 10	

**3. Risks:** Please detail any risks and associated mitigation measures for the delivery of your SLNT requirements

	Risk	Likelihood	Risk Mitigation
1			
2			
3			
4			
5			

**4. Communications:** Please outline any planned SLNT communication, events or publications (internal and external) and how TIL will be notified

**5. Monitoring:** You are required to complete the two monitoring templates attached to this document (Sheets 1 and 2 of this document)

**1. SLNT Monitoring Form** - Outlines SLNT outputs for each reporting period

**2. Job Start Monitoring Form** - Outlines specific information for TIL Priority SLNT outputs

**6. Sign Off:**

Suppliers SLNT Co-ordinator (Name)	Signature	Date
TIL Supplier Skills Manager (Name)	Signature	Date
Implementation Plan Review Date		

## APPENDIX 5 TO SCHEDULE 17

### Monthly SLNT Monitoring Report Template

Organisation	
TfL Contract / Project	
Date	
SLNT Reporting Period	

SLNT Category	TfL Priority	Numbers				Additional Detail / Information
		Annual Target	Annual Forecast	Outputs this Period	Outputs To Date	
<b>Worklessness</b>						
- Apprentices (FTE)	Y					
- Job Starts (FTE)	Y					
- Placement Positions (Nos)	Y					
<b>New Entrants</b>						
- Apprentices (FTE)	Y					
- Job Starts (FTE)						
- Graduates (FTE)						
<b>Trainee's</b>						
- Placement Positions (Nos)						
- Taster Positions (Nos)						
<b>Current Workforce</b>						
- Adult Apprentices (FTE)	Y					
- Workforce Skills (Days)						
<b>Educational Activities (Days)</b>						

<b>Additional Information</b>
<b>Highlights</b>
<b>Issues / Concerns / Risks</b>

## Job Start Monitoring Form

(To be Completed and Submitted with the SLNT Monitoring Form)

[illegible]