

Transport for London

Revenue Collection Services

Schedule 7.4 – Sub-Contracting

TfL RESTRICTED

Restricted to: TfL Group, Contractor Group and Consultants with NDA

Copyright Transport for London 2014

Contents

1	Sub-Contracting	3
1.1	Scope and Purpose.....	3
2	Sub-Contract Categories.....	4
2.1	General	4
2.2	Category 1 Sub-Contracts	4
2.3	Category 2 Sub-Contracts	4
2.4	Category 3 Sub-Contracts	5
3	Sub-Contract Obligations	6
3.1	Notification Obligations.....	6
3.2	Category 1 Sub-Contracts Obligations	6
3.3	Category 2 Sub-Contracts Obligations	7
3.4	Category 3 Sub-Contracts Obligations	7
4	Sub-Contracting Process	8
4.1	General	8
4.2	Sub-Contract Planning	8
4.3	Sub-Contract Procurement.....	9
4.4	Competitive Terms	9
5	Sub-Contract Documentation	11
5.1	Contract Register	11
5.2	Request for Consent to Appoint Category 1 Sub-Contractors.....	11
5.3	Reports and Meetings	12
5.4	Development of the Key Sub-Contract Terms and Conditions.....	12
	Appendix 1 – Sub-Contract Obligations.....	14
	Scope and Purpose	14
	Required provisions to be contained in each Sub-Contract.....	14
	Appendix 2 – Service Continuity Obligations	18
	Scope and Purpose	18
	Required provisions to be contained in Sub-Contract.....	18
	Appendix 3 – TTL Third Party Rights.....	20
	Scope and Purpose	20
	Required provisions to be contained in Sub-Contract.....	20

1 Sub-Contracting

1.1 Scope and Purpose

1.1.1 This Schedule 7.4 (Sub-Contracting) describes:

- (a) the different categories of Sub-Contracts;
- (b) the obligations of the Contractor relating to each Sub-Contract category;
- (c) the processes and documentation that the Contractor shall comply with relating to Sub-Contracts; and
- (d) the reporting requirements in relation to Sub-Contracts.

1.1.2 The objectives of this Schedule, which shall be deemed TTL Objectives for purposes of Clause 3 (Objectives), are to ensure that:

- (a) TTL is aware of all the Sub-Contracts currently in effect and any future sub-contracting being planned by the Contractor;
- (b) appropriate provisions are included in each Sub-Contract to ensure:
 - (i) continuity, quality and contractual compliance of the Services;
 - (ii) that Sub-Contractors are suitable to work safely on the Sites;
 - (iii) appropriate transfer of ownership to, or licencing of, Intellectual Property Rights; and
 - (iv) that Personal Data is properly managed and protected;
- (c) Value for Money is being achieved through each Sub-Contract; and
- (d) TTL is able to properly manage its input and resources associated with Sub-Contracts.

2 Sub-Contract Categories

2.1 General

2.1.1 Where the Contractor wishes to sub-contract elements of the Services, such Sub-Contracts will be categorised in accordance with paragraphs 2.2 to 2.4 of this Schedule.

2.2 Category 1 Sub-Contracts

2.2.1 A "**Category 1 Sub-Contract**" means any Sub-Contract which falls within one or more of the following sub-categories:

- (a) Category 1A Core Sub-Contract;
- (b) Category 1B Health & Safety Critical Sub-Contract; or
- (c) Category 1C Bespoke IPR Sub-Contract,

where

"**Category 1A Core Sub-Contract**" means any Sub-Contract which is fundamental to the continuity of the Services and could not be readily procured and transitioned in the event of termination and includes the provision of:

- (a) helpdesk services and hosting services;
- (b) maintenance services which directly interact with the System (for example, front office engineers but excluding logistics, workshop, warehousing);
- (c) System and/or IRC System security management;
- (d) parts of the Services the value of which, under that Sub-Contract or in combination with other Sub-Contracts with the same Sub-Contractor of the same or similar services, is expected to exceed in aggregate [REDACTED] [REDACTED] in any twelve (12) month period; or
- (e) any further part of the Services specified by TTL in a Variation as constituting a Category 1A Core Sub-Contract;

"**Category 1B Health & Safety Critical Sub-Contract**" means any Sub-Contract where the Sub-Contractor is required to carry out work at any TTL Site; and

"**Category 1C Bespoke IPR Sub-Contract**" means any Sub-Contract which will involve the creation of new Foreground IPR which will be incorporated within the System.

2.3 Category 2 Sub-Contracts

2.3.1 A "**Category 2 Sub-Contract**" means any Sub-Contract which falls within one or more of the following sub-categories:

- (a) Category 2A Personal Data Sub-Contract; or
- (b) Category 2B IPR Sub-Contract,

where:

"**Category 2A Personal Data Sub-Contract**" means any Sub-Contract where the Sub-Contractor processes any Personal Data; and

"Category 2B IPR Sub-Contract" means any Sub-Contract where the Sub-Contractor provides IPR for incorporation within the System and/or IRC System but which does not constitute a Category 1C Bespoke IPR Sub-Contract including the provision of Hardware and/or Software which will be incorporated within the System where:

- (1) the Sub-Contractor only permits licensing of the associated IPR on their own terms and any Hardware or Software will be provided without customisation ("**B1 - Commercially Available Off The Shelf**" or "**COTS Sub-Contract**"); or
- (2) the Sub-Contractor only permits licensing of the IPR but is willing to vary the terms of the licence ("**B2 - Licensed IPR Sub-Contract**").

2.4 Category 3 Sub-Contracts

- 2.4.1 Any Sub-Contract which does not fall within a Category 1 Sub-Contract or a Category 2 Sub-Contract shall be considered to be a "**Category 3 Sub-Contract**" unless otherwise agreed by the Parties in writing.

3 Sub-Contract Obligations

3.1 Notification Obligations

- 3.1.1 The obligations of the Contractor with regard to Sub-Contracts is dependent on which category the relevant Sub-Contract falls within as defined in paragraph 2 of this Schedule. Where a Sub-Contract falls within multiple categories then all obligations in all categories will apply to that Sub-Contract. In the event of a conflict or inconsistency between such obligations, the Contractor shall promptly notify TTL in writing of such conflict or inconsistency and TTL shall, acting reasonably, determine how such conflict or inconsistency will be resolved.
- 3.1.2 Without prejudice to TTL's other rights and remedies under the Contract, the Contractor must:
- (a) in relation to any Category 1 Sub-Contract or Category 2 Sub-Contract, notify TTL in writing before:
 - (i) entering into the relevant Sub-Contract (which for the purposes of this paragraph, shall include having a contract assigned, novated or otherwise transferred to the Contractor);
 - (ii) varying any terms of, or any Sub-Contractor varies any terms of, the relevant Sub-Contract so that it no longer contains the Key Sub-Contract Terms and Conditions applicable to that category of Sub-Contract pursuant to this paragraph 3 and Appendix 1 - Sub-Contract Obligations of this Schedule; or
 - (iii) terminating the relevant Sub-Contract; and
 - (b) in relation to any Category 3 Sub-Contract, maintain records of and provide to TTL on request from TTL promptly, and, in any event, in accordance with Clause 65 (Records, Audit and Inspection), details of any Category 3 Sub-Contracts that the Contractor has entered into in connection with the Services or this Contract promptly.

3.2 Category 1 Sub-Contracts Obligations

- 3.2.1 The Contractor shall not enter into, terminate, vary the terms of or vary the scope beyond that for which any prior TTL consent has been granted for that Sub-Contract of, any Category 1 Sub-Contract without the prior written consent of TTL.
- 3.2.2 The Contractor shall procure that the terms and conditions for each Category 1 Sub-Contract reflect the obligations referred to in the relevant part of Appendix 1 – Sub-Contract Obligations to this Schedule to the satisfaction of TTL. TTL may waive the requirement to reflect any individual obligation referred to in Appendix 1 - Sub-Contract Obligations to this Schedule where the Contractor can demonstrate to TTL's satisfaction that the obligation is not:
- (a) relevant to the specific Category 1 Sub-Contract due to the scope of that Sub-Contract; or
 - (b) capable of being procured in the market, and

such a waiver must be granted by TTL (at TTL's discretion) in writing prior to the Contractor entering into the Category 1 Sub-Contract.

- 3.2.3 To ensure that TTL is able to manage any risk relating to the continuity of the Services the Contractor shall procure that each Category 1A Core Sub-Contract contains the specific additional obligations detailed in Appendix 2 – Service Continuity Obligations to this Schedule.
- 3.2.4 To ensure that TTL is able to benefit from the Intellectual Property Rights being created the Contractor shall procure that each Category 1C Bespoke IPR Sub-Contract contains the specific additional obligations detailed in Appendix 3 – TTL Third Party Rights to this Schedule.

3.3 Category 2 Sub-Contracts Obligations

- 3.3.1 The Contractor may enter into any Category 2 Sub-Contract without the prior consent of TTL provided that the Contractor procures that the terms and conditions of the Sub-Contract reflect the obligations referred to in the relevant part of Appendix 1 – Sub-Contract Obligations to this Schedule.
- 3.3.2 TTL may waive the requirement to reflect any individual obligation referred to in Appendix 1 - Sub-Contract Obligations to this Schedule where the Contractor can demonstrate to TTL's reasonable satisfaction that the obligation is not relevant to the specific Category 2 Sub-Contract due to the scope of that Sub-Contract. The Contractor shall request any such waiver as soon as reasonably practicable and, in any event, at least twenty (20) Business Days prior to the proposed date of appointing the Category 2 Sub-Contractor and in accordance with the Submission Procedure set out in Schedule 11.1 (Document Management). Such a waiver must be granted by TTL (at TTL's discretion) in writing prior to the Contractor entering into the Category 2 Sub-Contract.

3.4 Category 3 Sub-Contracts Obligations

- 3.4.1 Subject to compliance with paragraph 3.1, the Contractor may enter into any Category 3 Sub-Contract without the prior consent of TTL.

4 Sub-Contracting Process

4.1 General

4.1.1 The Contractor shall include details of its processes for the appointment and management of Sub-Contractors within its Quality Plan in response to the requirements of paragraph 3 of Schedule 8.5 (SQE).

4.2 Sub-Contract Planning

4.2.1 The Contractor shall prepare, maintain and submit to TTL each Period a plan of all the procurement being proposed in connection with the Services or the Contract within the following twelve (12) months (including Category 1, Category 2 and Category 3 Sub-Contracts and Sub-Contracts intended to be entered into with any member of the Contractor Group) (the “**Sub-Contracting Plan**”). The Sub-Contracting Plan shall also set out any date on which any existing Sub-Contract between the Contractor and a Sub-Contractor can be terminated by the Contractor for convenience (without termination fees) or is due to expire.

4.2.2 For each proposed Sub-Contract procurement, the Sub-Contracting Plan shall contain as a minimum:

- (a) the scope of the Services to be sub-contracted;
- (b) whether the Sub-Contract is intended to be a framework or not;
- (c) the procurement route being proposed;
- (d) the key proposed target dates for the procurement process including as a minimum:
 - (i) the date of notification to the market;
 - (ii) the date of issue of tender documentation;
 - (iii) the date for completion of tender evaluation; and
 - (iv) the date of contract award;
- (e) the category of Sub-Contract as set out in paragraph 2 to this Schedule;
- (f) the anticipated value of the Sub-Contract; and
- (g) a description of any Project or Programme dependencies, Milestones and/or due dates.

4.2.3 Where a requirement to procure a Sub-Contract arises under a Variation, the Contractor shall identify the scope of such a potential Sub-Contract and the likely category for such Sub-Contract in accordance with paragraph 2 of this Schedule in its Contractor's Proposal.

4.2.4 The Contractor shall notify TTL of any actual Sub-Contract procurement as soon as reasonably practicable and, in any event, no later than five (5) Business Days before the procurement process commences. Where the Contractor fails to provide such

advance notification the Contractor shall prepare and issue a Corrective Action Plan in accordance with Schedule 12.4 (Contract Management).

4.3 Sub-Contract Procurement

- 4.3.1 The Contractor shall offer all Sub-Contracts, excepting those set out in Schedule 7.5 (Approved Sub-Contractors), with an anticipated value in excess of [REDACTED] for open competitive tender to a minimum of three (3) prospective suppliers. The Contractor shall submit a written procurement strategy to TTL together with the proposed form of requirements for the tender documents (the "**Tender Requirements**") in advance of each such procurement and TTL shall be entitled to comment on the procurement strategy and requirements all in accordance with the Submission Procedure as set out in Schedule 11.1 (Document Management).
- 4.3.2 If the Contractor is unable to offer any Sub-Contract for open competition in accordance with paragraph 4.3.1 then the Contractor must submit a full written justification to TTL for approval demonstrating to TTL's satisfaction how the alternative approach being proposed will offer the best Value for Money for TTL and/or meet any programme requirements specified by TTL.
- 4.3.3 The Contractor shall use Good Industry Practice in the procurement of all Sub-Contracts.
- 4.3.4 TTL shall be entitled to review and comment on all documentation produced by the Contractor in connection with any Sub-Contract procurement including but not limited to the procurement strategy, pre-qualification questionnaire, tender documentation, evaluation process and evaluation guides. TTL shall be entitled to review tender submissions and to have representatives attend evaluation meetings as observers. TTL may provide comments to the Contractor in relation to the selection of any Sub-Contractor and the Contractor shall, acting reasonably and in good faith, take such comments into account in the evaluation and selection process.
- 4.3.5 Subject to TTL's prior written consent where such consent is required in accordance with this Schedule, the Contractor shall appoint as Sub-Contractor the supplier which the Contractor has determined to have submitted the compliant tender which offers best Value for Money to provide the relevant services.
- 4.3.6 The Contractor shall bear all of its own costs and expenses associated with running any procurement process in accordance with this paragraph 4 and each prospective supplier shall be required to bear their own costs of tendering.

4.4 Competitive Terms

- 4.4.1 If TTL is able to obtain from any Sub-Contractor (other than in respect of any Sub-Contract set out in Schedule 7.5 (Approved Sub-Contractors)) or any other Third Party more favourable commercial terms with respect to the supply of any goods, Software or services used by the Contractor in the supply of the Services, then TTL may:
- (a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by TTL in respect of the relevant item; or

- (b) subject to paragraph 4.4.3, enter into a direct agreement with that Sub-Contractor or Third Party in respect of the relevant item and require that the goods, Software or services supplied are incorporated into the System and/or Services as appropriate.
- 4.4.2 If TTL exercises either of its options pursuant to paragraph 4.4.1 above, then the Parties shall follow the Variation Procedure in order to revise the Charges and make any consequential changes to the Contract as appropriate.
- 4.4.3 TTL's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) TTL making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Services and such supply being a Dependency; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

5 Sub-Contract Documentation

5.1 Contract Register

- 5.1.1 The Contractor shall prepare, maintain and submit to TTL each Period a list of all Sub-Contracts (the "**Contract Register**") entered into in connection with the Contract (including, without limitation, all Category 1, Category 2 and Category 3 Sub-Contracts and all Sub-Contracts entered into with any member of the Contractor Group).
- 5.1.2 The Contractor shall ensure that the Contract Register contains the following information as a minimum:
- (a) details of the Services which are sub-contracted;
 - (b) the name of each Sub-Contractor;
 - (c) the category of Sub-Contract as set out in paragraph 2 of this Schedule;
 - (d) the date the Sub-Contract was awarded and the date it is due to expire;
 - (e) the current status of the Sub-Contract (e.g. 'in progress', 'complete'); and
 - (f) a summary of the options to extend, novate and/or assign the Sub-Contract

5.2 Request for Consent to Appoint Category 1 Sub-Contractors

- 5.2.1 In obtaining the consent required pursuant to paragraph 3.2 of this Schedule, the Contractor shall submit a standard form Document to TTL that includes the following details:
- (a) the name of the proposed Sub-Contractor;
 - (b) a description of the work package to be sub-contracted;
 - (c) the reason(s) for engaging the Sub-Contractor;
 - (d) the proposed programme for the supply of the goods, Software and/or services including any milestones and/or due dates;
 - (e) a reference to the activities on the Programme Portfolio Plan affected by the Sub-Contract (if applicable) highlighting those activities that are on critical paths and any other Programme dependencies;
 - (f) the degree of interface with TTL operations (e.g. low, medium, high);
 - (g) the target appointment date of the Sub-Contract;
 - (h) the terms on which the Sub-Contractor is proposed to be engaged;
 - (i) a document showing how the obligations required by paragraph 3.2 of this Schedule have been incorporated into the proposed Sub-Contract terms and conditions; and
 - (j) such other information as may be reasonably necessary to assist TTL.

- 5.2.2 The Contractor shall, where possible, provide the information required under paragraph 5.2.1 above to TTL as soon as reasonably practicable and, in any event, at least twenty (20) Business Days prior to the proposed date of appointing the Category 1 Sub-Contractor and in accordance with the Submission Procedure set out in Schedule 11.1 (Document Management). The Contractor shall update the information provided under paragraph 5.2.1 above as is necessary until TTL's consent is given pursuant to paragraph 3.2 with respect to that Category 1 Sub-Contractor or until the Contractor no longer wishes to sub-contract with that Sub-Contractor.
- 5.2.3 If the Contractor fails to provide the information required under paragraph 5.2.1 above to TTL at least twenty (20) Business Days prior to the proposed date of appointing the Category 1 Sub-Contractor the Contractor shall prepare and submit a Corrective Action Plan in accordance with Schedule 12.4 (Contract Management). Where such failure occurs three (3) or more times in any thirteen (13) consecutive Periods then TTL may issue a Minor Warning as set out in Schedule 12.4 (Contract Management).

5.3 Reports and Meetings

- 5.3.1 The Contractor shall report progress information on all relevant Sub-Contracts either in the Programme Portfolio Report pursuant to Schedule 10.2 (Programme and Project Lifecycle) or the Service Performance Report pursuant to Schedule 4.1 (Service Delivery).
- 5.3.2 Where TTL reasonably considers that the performance of a Sub-Contractor is likely to have a significant adverse impact on the delivery of the Services pursuant to Schedule 4 (The Services) and the Contractor has not assuaged TTL's concerns, then the Contractor shall arrange for the preparation of such reports and attend such meetings that TTL reasonably deems necessary to alleviate TTL's concerns and provide Assurance that the Services will be delivered.
- 5.3.3 Where TTL calls for a meeting to discuss a Sub-Contractor's performance the Contractor shall ensure that appropriate personnel of the Sub-Contractor attend.

5.4 Development of the Key Sub-Contract Terms and Conditions

- 5.4.1 As at the Service Commencement Date the Contractor shall have developed standard terms and conditions for each category of Key Sub-Contract (the "**Key Sub-Contract Terms and Conditions**") so that the Contractor's obligations under the Contract can be flowed down to its Category 1 Sub-Contracts and Category 2 Sub-Contracts in accordance with paragraph 3 of this Schedule.
- 5.4.2 Without prejudice to TTL's other rights or remedies under the Contract, the Contractor shall ensure that:
- (a) all Key Sub-Contracts entered into by the Contractor provide that payment by the Contractor to the relevant Sub-Contractor shall be made no later than thirty (30) days from receipt of an invoice;
 - (b) any rights and/or benefits of TTL and/or its nominee under each Key Sub-Contract can be enforced directly by TTL and/or its nominee (as the case may be); and
 - (c) all Services (and any parts thereof), directly related to the operation, maintenance or performance of the System are:

- (i) carried out or conducted only at Designated Premises and not at any other site, premises, facility, location or jurisdiction; and
- (ii) carried out or performed by an entity registered or incorporated in the United Kingdom (or an employee of such an entity in the United Kingdom),

unless otherwise agreed by TTL in writing in advance.

Appendix 1 – Sub-Contract Obligations

Scope and Purpose

This Appendix sets out the provisions which shall be contained in each Category 1 Sub-Contract and Category 2 Sub-Contract as specified.

Required provisions to be contained in each Sub-Contract

In the table below:

- 1A** means a Category 1A Core Sub-Contract in accordance with paragraph 2.2 of this Schedule.
- 1B** means a Category 1B Health & Safety Critical Sub-Contract in accordance with paragraph 2.2 of this Schedule.
- 1C** means a Category 1C Bespoke IPR Sub-Contract in accordance with paragraph 2.2 of this Schedule.
- 2A** means a Category 2A Personal Data Sub-Contract in accordance with paragraph 2.3 of this Schedule.
- 2B1** means a B1 – COTS Sub-Contract sub-category of Category 2 IPR Sub-Contracts in accordance with paragraph 2.3 of this Schedule.
- 2B2** means a B2 – Licensed IPR Sub-Contract sub-category of Category 2 IPR Sub-Contracts in accordance with paragraph 2.3 of this Schedule.

Revenue Collection Services
Schedule 7.4 – Sub-Contracting

Cl./Par. Ref.	Clause/Paragraph Title	1A	1B	1C	2A	2B1	2B2
Terms and Conditions							
14.1 14.2 14.4 14.5 14.6 14.11	The System and Maintenance	✓					
27.2 27.3 27.4	Security	✓			✓		
28.1 28.2.3 28.3 28.5 28.7 28.8 28.9 28.10 28.11	Information Governance				✓		
29	Subject Access Requests				✓		
30.1 30.2	Contractor Personnel	✓					
30.3 30.4	Right to Exclude Contractor Personnel from Premises and/or the Provision of Services	✓	✓				
33	London Living Wage	✓					
34	Non-Solicitation	✓					
35.1	Access to Sites	✓	✓				
45	Financial Distress	✓					
48.2 48.4	Step In	✓					
51.1 51.11 51.17 51.18 51.20 51.27 51.28 51.34 51.35.2 51.36	Intellectual Property Rights			✓			✓
51.4	Intellectual Property Rights			✓			

Revenue Collection Services
Schedule 7.4 – Sub-Contracting

CI./Par. Ref.	Clause/Paragraph Title	1A	1B	1C	2A	2B1	2B2
51.5 51.7 51.8 51.31							
54.2.2	Travel Permits		✓				
54.3.1(A) 54.3.1(D) 54.3.2	Utilities		✓				
57 ¹	Sub-Contracting	✓	✓	✓	✓		✓
65.1 65.2	Records	✓	✓	✓	✓		✓
65.10 65.12 65.13	Audit and Inspection	✓	✓	✓	✓		
66.1 66.2 66.3 66.4 66.5 66.12 66.15 66.16 66.17	Confidentiality, Transparency and Publicity	✓	✓	✓	✓		
67.1 67.2	Freedom of Information				✓		
69.2.4 69.2.5	Construction (Design and Management) Regulations		✓				
70	Crime and Disorder Act 1988	✓					
71	Waste Electrical and Electronic Equipment Regulations 2006	✓					
82.2 82.3 82.8 82.11	Co-operation in Relation to Handback of Services	✓					
82.4.3	Handback Procedure		✓				
82.5 82.6	Transfer and Removal of Assets	✓					

¹ Note: Applicable to the extent the provisions of Clause 57 (Sub-Contracting) apply to the relevant category of Sub-Contractor to which they are being flowed-down.

Revenue Collection Services
Schedule 7.4 – Sub-Contracting

Cl./Par. Ref.	Clause/Paragraph Title	1A	1B	1C	2A	2B1	2B2
85.2 85.3	Further Assurance	✓	✓				
Schedules							
Sch 8.4	Access Rights		✓				
Sch 8.5 1.1.2(a) and 1.3.1(a)			✓				
Sch 8.5 1.1.2(b) and 1.3.1(b)		✓					
Sch 8.5 2.1.3			✓				
Sch 20 ²	TUPE and Employees	✓	✓	✓	✓		✓

² Note: Applicable to the extent TUPE would apply to the nature of the services provided under the relevant Sub-Contract.

Appendix 2 – Service Continuity Obligations

Scope and Purpose

This Appendix sets out the provisions which shall be contained in each Category 1A Core Sub-Contract.

The Contractor shall, to TTL's reasonable satisfaction, endeavour to agree the inclusion of the provisions at 2.1 below without amendment. Should a relevant Sub-Contractor not agree to such inclusion, the Contractor may, having obtained TTL's express prior written consent, offer the following additional qualifying language at the end of that clause:

[provided that TTL delivers to the [Sub-Contractor], within five (5) Business Days of its receipt of the [Sub-Contractor's] notice regarding the commencement of the sixty (60) days period, a signed letter undertaking to pay the [Sub-Contractor] all charges which become due and payable to the [Sub-Contractor] under the [Sub-Contract] during the sixty (60) days period and for so long thereafter as TTL requires the [Sub-Contractor] to continue performing the [Sub-Contract]. For the avoidance of doubt, if TTL fails to deliver such a letter to the [Sub-Contractor] within five (5) Business Days of its receipt of the [Sub-Contractor's] notice regarding the commencement of the sixty (60) days period, the [Sub-Contractor] shall be entitled to terminate the [Sub-Contract] either immediately or on such other date as may be notified by the [Sub-Contractor] to TTL and the Contractor]

Required provisions to be contained in Sub-Contract

TTL Step-In

- 2.1 The [Sub-Contractor] shall not exercise any right to terminate, or give notice to terminate, the [Sub-Contract], treat the [Sub-Contract] as having been repudiated by the Contractor or discontinue the performance of any obligations, warranties or covenants to be performed by the [Sub-Contractor] pursuant to the [Sub-Contract] without giving TTL not less than sixty (60) days' prior written notice.
- 2.2 Following receipt of a notice pursuant to clause 2.1 above, TTL shall be entitled to take action in accordance with clauses 2.3 to 2.6 below.
- 2.3 Notice to the [Sub-Contractor]

The [Sub-Contractor] acknowledges that if clause 2.1 applies and TTL wishes to take action in accordance with clauses 2.4 to 2.6, TTL shall notify the Contractor (who shall promptly notify the [Sub-Contractor]) in writing of the following:

 - 2.3.1 the action TTL wishes to take and/or the action TTL wishes the [Sub-Contractor] to take;
 - 2.3.2 the reason for such action;
 - 2.3.3 the date TTL wishes to commence such action and/or wishes the [Sub-Contractor] to commence such action;
 - 2.3.4 the time period which TTL believes will be necessary for such action; and
 - 2.3.5 to the extent practicable, the effect on the [Sub-Contractor] and its obligation to provide the Services during the period such action is being taken.
- 2.4 Instructions from TTL
 - 2.4.1 Following service of a notice under clause 2.3, the [Sub-Contractor] shall only accept the instructions of TTL or its appointee and TTL or its appointee shall have or assume the rights and obligations of the [Sub-Contractor]'s counterparty under the [Sub-Contract] from the date of the notice given under

clause 2.3. The [Sub-Contractor] shall continue to perform the Services subject to the terms of the [Sub-Contract].

2.5 Action by TTL

2.5.1 The [Sub-Contractor] acknowledges that following service of a notice under clause 2.3, TTL shall take such action as notified in such notice and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the [Sub-Contractor] shall give all reasonable assistance to TTL while it is taking the Required Action. TTL shall provide the [Sub-Contractor] with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as soon as is reasonably practicable of its anticipated completion.

2.5.2 Where the Required Action has been taken otherwise than as a result of a breach by the [Sub-Contractor], TTL shall (insofar as is reasonably possible in the circumstances) take such Required Action in accordance with Good Industry Practice.

2.6 For as long as and to the extent that the Required Action is taken, and this prevents the [Sub-Contractor] from providing any part of the Services:

2.6.1 the [Sub-Contractor] shall be relieved from its obligations to provide such part of the Services; and

2.6.2 in respect of the period in which TTL is taking the Required Action and provided that the [Sub-Contractor] provides the Contractor and TTL with reasonable assistance (such assistance to be at the expense of the Contractor to the extent that incremental costs are incurred), the amount due from TTL to the [Sub-Contractor] shall equal the amount the [Sub-Contractor] would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

Assignment

3.1 The [Sub-Contractor] shall not assign, transfer, novate or sub-contract the benefit of this Contract nor sub-contract its obligations under it without the prior written consent of the Contractor and TTL.

3.2 This Agreement shall be assignable or otherwise transferable, to TTL or to TTL's nominee without the consent of the [Sub-Contractor].

Rights of direct enforcement

4.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999), except that the rights and benefits of TTL and its nominee under this Agreement may be enforced directly by TTL and its nominee.

Appendix 3 – TTL Third Party Rights

Scope and Purpose

This Appendix sets out provisions which shall be contained in each Category 1C Bespoke IPR Sub-Contract.

The Contractor shall, to TTL's reasonable satisfaction, endeavour to agree the inclusion of the provisions at 2.1.2 below without amendment. Should a relevant Sub-Contractor not agree to such inclusion, the Contractor may, having obtained TTL's express prior written consent, offer the following additional qualifying language at the end of that clause:

[provided that TTL delivers to the [Sub-Contractor], within five (5) Business Days of its receipt of the [Sub-Contractor's] notice regarding the commencement of the sixty (60) days period, a signed letter undertaking to pay the [Sub-Contractor] all charges which become due and payable to the [Sub-Contractor] under the [Sub-Contract] during the sixty (60) days period and for so long thereafter as TTL requires the [Sub-Contractor] to continue performing the [Sub-Contract]. For the avoidance of doubt, if TTL fails to deliver such a letter to the [Sub-Contractor] within five (5) Business Days of its receipt of the [Sub-Contractor's] notice regarding the commencement of the sixty (60) days period, the [Sub-Contractor] shall be entitled to terminate the [Sub-Contract] either immediately or on such other date as may be notified by the [Sub-Contractor] to TTL and the Contractor]

Required provisions to be contained in Sub-Contract

Payment by TTL

- 2.1 Where any amount that is payable to the [Sub-Contractor] by the Contractor under the [Sub-Contract] is not paid by the due date for such payment (whether by set off, retention or otherwise):
 - 2.1.1 the [Sub-Contractor] shall promptly notify TTL and the Contractor that such amount has not been paid; and
 - 2.1.2 the [Sub-Contractor] shall not exercise any right to terminate, or give notice to terminate, the [Sub-Contract], treat the [Sub-Contract] as having been repudiated by the Contractor or discontinue the performance of any obligations, warranties or covenants to be performed by the [Sub-Contractor] pursuant to the [Sub-Contract] without giving TTL not less than sixty (60) days prior written notice.
- 2.2 Following receipt of a notice pursuant to clause 2.1 above:
 - 2.2.1 the [Sub-Contractor] shall provide TTL with as much information in relation to such amount as TTL may reasonably require; and
 - 2.2.2 TTL shall be entitled to pay, or to procure its nominee pay, to the [Sub-Contractor] any amounts which are, or subsequently become, properly due and payable to the [Sub-Contractor] under the Agreement, provided that:
 - (A) nothing in this clause shall oblige TTL to make any payment whatsoever to the [Sub-Contractor];
 - (B) the Contractor shall remain fully liable for its obligations under the Agreement; and
 - (C) where payment is made by TTL or its nominee under this clause, any amounts due from the Contractor to the [Sub-Contractor], in respect of

which payment is made by TTL or TTL's nominee under this clause, shall be properly and fully discharged.

Assignment

- 3.1 The [Sub-Contractor] shall not assign, transfer, novate or sub-contract the benefit of this Agreement nor sub-contract its obligations under it without the prior written consent of the Contractor and TTL.
- 3.2 This Agreement shall be assignable or otherwise transferable, to TTL or to TTL's nominee without the consent of the [Sub-Contractor].

Rights of direct enforcement

- 4.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999), except that the rights and benefits of TTL and its nominee under this Agreement may be enforced directly by TTL and its nominee.