

TRANSPORT TRADING LIMITED

and

CUBIC TRANSPORTATION SYSTEMS LIMITED

**REVENUE COLLECTION
CONTRACT**

TfL RESTRICTED

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THIS CONTRACT is made as a deed on 2014 between:

- (1) **TRANSPORT TRADING LIMITED ("TTL")** (company registration number 03914810) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (a subsidiary of Transport for London, a body corporate established under section 154 of the Greater London Authority Act 1999); and
- (2) **CUBIC TRANSPORTATION SYSTEMS LIMITED** (the "**Contractor**") (company registration number 01381707) whose registered office is at AFC House, Honeycrock Lane, Salfords, Redhill, Surrey RH1 5LA.

WHEREAS

- (A) On 29 March 2013, Transport for London ("**TfL**") issued a notice in the Official Journal of the European Union ("**OJEU**") in connection with the re-procurement of TfL's existing ticketing and fare collection system and provision of revenue collection services on behalf of TTL, a subsidiary of TfL.
- (B) Following the issue of the OJEU notice, TfL ran a competitive procurement process involving a number of potential suppliers. On 22 April 2014, the Contractor submitted its final tender as part of the competitive procurement process and TfL subsequently selected the Contractor as the successful tenderer on the basis of such final tender.
- (C) This Contract is excluded from the application of Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of the Construction Contracts (England and Wales) Exclusion Order 1998 on the basis that this Contract has been entered into under a project employing principles similar to the private finance initiative because:
 - (i) the consideration due under this Contract is determined at least in part by reference to the standards attained in the performance of ticketing machine supply services, the provision of which is one of the principal purposes for which the electronic ticket machines and associated systems for issuing tickets are being constructed; and
 - (ii) TTL is a company wholly-owned by a body whose accounts are open to the inspection of the Comptroller and Auditor General.
- (D) The Contractor has agreed to provide the Services and carry out its other obligations in accordance with the terms of this Contract.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the words and expressions defined in Schedule 1 (Definitions) shall, except where the context otherwise requires, have the meaning assigned to them in that Schedule.
- 1.2 In this Contract, words and expressions defined in the Companies Act 2006 shall bear the same meaning as in that Act unless expressly stated otherwise.
- 1.3 In this Contract, except where the context otherwise requires:
 - 1.3.1 any reference to this Contract includes the Schedules and Appendices to it, each of which forms part of this Contract for all purposes;
 - 1.3.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment,

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- statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.3.3 words in the singular shall include the plural and vice versa;
- 1.3.4 references to one gender include other genders;
- 1.3.5 a reference to a person includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representative(s);
- 1.3.6 a reference:
- (A) to a Clause shall be a reference to a clause of this Contract;
 - (B) to a Schedule (other than to a schedule to a statutory provision) shall be a reference to a schedule of this Contract;
 - (C) within a Schedule of this Contract to a paragraph or a section, shall be a reference to a paragraph or section of that Schedule;
 - (D) within a Schedule to a Part shall be a reference to a Part of that Schedule;
 - (E) within a Schedule to an Appendix shall be a reference to an Appendix to that Schedule; and
 - (F) within an Appendix to a section (other than to a schedule to a statutory provision), shall be a reference to a section of that Appendix;
- 1.3.7 references to dates which do not fall on a Business Day shall be construed as references to the immediately subsequent Business Day;
- 1.3.8 references to the time of day shall be a reference to the time in London, England;
- 1.3.9 other than in respect of periods of time expressed in Business Days, if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.3.10 in respect of periods of time expressed in Business Days, if a period of time is specified from a given day, or from the day of an act or event, it shall be calculated as inclusive of such day unless such act or event occurs after Office Hours during that day;
- 1.3.11 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.3.12 references to "**writing**" and "**written**" shall include any modes of reproducing words in any legible, non-transitory form, and, subject to Clause 55.1.3, includes electronic mail;
- 1.3.13 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;

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- 1.3.14 a reference to "**includes**", "**including**", "**for example**" or other similar terms shall be construed without limitation;
 - 1.3.15 the words "**other**" and "**otherwise**" are not to be construed as being limited by any words preceding them;
 - 1.3.16 the word "**property**" includes choses in action and other intangible property;
 - 1.3.17 the contents page and headings in this Contract are for convenience only and shall not affect its interpretation; and
 - 1.3.18 references to this Contract include this Contract as amended, supplemented or varied in accordance with its terms.
- 1.4 In the event of a conflict between the provisions of this Contract and the Schedules and/or the Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the Clauses of the Contract; then
 - 1.4.2 the Schedules of the Contract; then
 - 1.4.3 the Appendices to the Contract; then
 - 1.4.4 any document attached to the Contract; and then
 - 1.4.5 any document incorporated by reference into the Contract.
- 1.5 Any reference to TTL being required to act reasonably or to exercise its discretion acting reasonably shall be construed as if the terms "**reasonably**" and "**reasonable**" were an objective test of the reasonableness of TTL, but subject always to the following exception: TTL shall be entitled to take into account, and to give such weight as it shall in good faith consider proper as to the requirement (which shall be regarded as paramount) to discharge its statutory functions and deliver safe, integrated, reliable, efficient and economic transport facilities and services to, from and within Greater London, provided that such exception shall not be used by TTL to unreasonably impose on the Contractor any additional obligations which are not set out in this Contract.
- 1.6 The term "**remedy**" or "**remedied**" shall include, in respect of a breach or default on the part of the Contractor, that the Contractor has corrected all the technical, procedural and management errors and failures that led directly to the breach or default and has taken all appropriate corrective steps to minimise the possibility of any similar breach or default occurring again in the future and that the Contractor has restored the affected service, system or activity to the level of service required by this Contract and that the Contractor has cured all adverse consequences resulting from such breach or default, such that none of TTL or any other member of the TTL Group is in any worse position than it would have been had that breach or default not occurred and that any similar breach is unlikely to occur in the future.

PART A: ENTRY

ENTRY REQUIREMENTS

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges and agrees that it:
- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of TTL;

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- 2.1.2 has raised all relevant due diligence questions with TTL before the Date of Contract;
- 2.1.3 has entered into this Contract in reliance on its own due diligence alone;
- 2.1.4 has completed all due diligence it deems necessary prior to entering into this Contract;
- 2.1.5 shall not be entitled to make or request any amendments, alterations or variations to this Contract as a result of any due diligence that it conducts after the Date of Contract except as expressly provided for in this Contract; and
- 2.1.6 shall not be entitled to make any claim whatsoever (including any claim for additional money) against TTL on the grounds that incorrect or insufficient information on any matter relating to the Services, the System and/or the IRC System was given to it by any person, whether or not a member of the TTL Group.

3. OBJECTIVES

- 3.1 TTL's objectives for the Contract are, without limitation:
 - 3.1.1 to develop an efficient contracting structure to eliminate layers of overheads and other non-productive costs;
 - 3.1.2 to leverage other contracts and competitive procurement where this can lead to achievement of cost savings;
 - 3.1.3 to leverage, where possible, in-house provision of services by TTL where there is a compelling business case;
 - 3.1.4 to maximise pricing transparency;
 - 3.1.5 to achieve value for money throughout the Term;
 - 3.1.6 to develop performance regimes to deliver better performance and/or reduce operating costs;
 - 3.1.7 to align performance under the Contract with the TTL Objectives;
 - 3.1.8 to develop and maintain an open, collaborative and trust-based working relationship between TTL and the Contractor;
 - 3.1.9 to provide end-to-end performance standards and performance measurement across all Services and Third Party services that support or inter-relate with the Services;
 - 3.1.10 to enable TfL to provide excellent and safe services to all Customers and Operator Personnel;
 - 3.1.11 to support flexibility and development of strategies for continuous improvement and foreseeable changes throughout the Term;
 - 3.1.12 to preserve the ability for TTL to instruct Changes to meet urgent business needs;
 - 3.1.13 to ensure revenue security;
 - 3.1.14 to ensure the security and protection of Personal Data;
 - 3.1.15 to ensure Data accuracy;
 - 3.1.16 to ensure service continuity;

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- 3.1.17 to enable TTL to run an effective competition to procure a replacement contract with a Successor Operator; and
- 3.1.18 any and all other objectives set out and identified as TTL Objectives in the Schedules,
(the "**TTL Objectives**").
- 3.2 Clause 3.1 is not intended to expand the scope of the Parties' obligations under this Contract or alter the plain meaning of this Contract. However, to the extent that any provisions of this Contract do not address a particular circumstance or are unclear or ambiguous, such provisions shall be interpreted so as to give full effect to the TTL Objectives. TTL and the Contractor will work together to achieve any necessary behavioural and process changes to ensure that the TTL Objectives are achieved.
- 4. CONDITIONS TO THE CONTRACT**
- 4.1 Subject to Clause 4.2, all obligations of TTL under this Contract shall be conditional upon the Contractor delivering to TTL a parent company guarantee in the form set out in Schedule 21.2 (Form of Parent Company Guarantee), executed as a deed for and on behalf of the Guarantor by duly authorised representatives (the "**Guarantee**").
- 4.2 TTL shall be entitled, by notice to the Contractor, to waive the condition precedent referred to in Clause 4.1.
- 4.3 The condition precedent referred to in Clause 4.1 shall be fulfilled by the Contractor or waived by TTL on or before the Date of Contract.
- 5. COMMENCEMENT AND TERM**
- 5.1 The Contract shall commence on the Date of Contract, subject to Clause 4 (Conditions to the Contract).
- 5.2 Subject to earlier termination in accordance with Clauses 77 to 80 (inclusive), the Contract will have an initial fixed term of seven (7) years from the Service Commencement Date (the "**Initial Term**").
- 5.3 Subject to TTL's other rights under the Contract, TTL will have the right to terminate the Contract effective no earlier than the end of the fifth (5th) Contract Year (the "**Early Termination Option**"). TTL will provide to the Contractor at least twelve (12) months' notice if it wishes to exercise the Early Termination Option. In the event that TTL exercises the Early Termination Option, the Contractor shall be entitled to recover the Termination Payment in accordance with Schedule 18 (Payments on Termination).
- 5.4 TTL will have the option to extend the Initial Term one or more times (each an "**Extended Term**") on the same terms and conditions by serving notice to the Contractor of at least twelve (12) months provided that the total Term (excluding the Handback Period) will not exceed ten (10) years.
- 5.5 Following the later of the Initial Term or any Extended Term pursuant to Clause 5.4 (as applicable), the Handback Period will apply pursuant to Clause 82 (Handback of Services) and Schedule 19 (Handback of Services) and the provisions of the Contract will remain in full force and effect until the Expiry Date.
- 5.6 Notwithstanding Clause 5.1, the Parties acknowledge their common intention that their respective rights and obligations under the Contract should only come into effect on and from the Service Commencement Date.

6. **NOT USED**

7. **CROSSRAIL**

- 7.1 The Contractor's obligation to provide Assets and Services in relation to Crossrail will be implemented through a Variation.

PART B: OPERATIONS

8. **SERVICE SPECIFICATIONS AND DELIVERY**

- 8.1 From the Service Commencement Date, the Contractor will provide the relevant Services in accordance with this Contract, including Schedule 4 (The Services) and Schedule 7 (Systems Integration). The Services will be deemed to include, and the Contractor will, at no additional cost to TTL, provide all activities, functions, necessary responsibilities and obligations for the proper provision of, ancillary to or customarily included as part of the Services.

- 8.2 From the Service Commencement Date, the Contractor will provide the Services to TTL:

8.2.1 in accordance with Good Industry Practice and with sufficient resources, including project management resources;

8.2.2 in conformance with TTL's technical architecture and products standards including the System Design and Operating Principles set out in Schedule 9.2 (System Design and Operating Principles) and the Standards as set out in Schedule 9.3 (Standards);

8.2.3 in accordance with all lawful and reasonable directions of TTL relating to its performance of the Services;

8.2.4 having due regard to the integrity and reputation of TTL and in a manner which will not harm the integrity and reputation of TTL; and

8.2.5 in a manner that is safe, free from any unreasonable or avoidable risk to any person's health or well-being, and economic and efficient.

- 8.3 The Contractor will acknowledge that it has sufficient information about the Services and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Contract.

- 8.4 TTL's discretion in carrying out its statutory duties will not be affected in any way by any provisions of this Contract.

- 8.5 The Contractor will promptly notify TTL in writing as soon as it becomes aware that any aspect of this Contract is not being or is unable to be performed.

9. **PERFORMANCE REGIME**

- 9.1 From the Service Commencement Date the Contractor will provide the Services in accordance with the required service levels set out in Schedule 4 (The Services), each being a "**Service Level**".

- 9.2 The Contractor will report to TTL in relation to its provision of the Services as required by the reporting regime specified in this Contract (including Schedules 4 (The Services) and 7 (Systems Integration)).

- 9.3 If the Contractor fails to provide the Services in accordance with the Service Levels, then the Contractor 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 Contractor betters certain identified Service

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Levels as set out in Schedule 4 (The Services) then the Contractor 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 TTL 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 TTL under the Contract or otherwise.

10. SYSTEM SPECIFICATIONS

10.1 Without prejudice to the Contractor's other obligations under this Contract, including the Contractor's obligation to provide the Services, from the Service Commencement Date the Contractor will assume responsibility and deliver the functionality for the System (or relevant part of the System, as applicable) in accordance with this Contract, including the System Specifications set out in Schedules 5 (Front Office Specifications) and 6 (Back Office Specifications) to the extent that such System Specifications accurately describe the functions which the System performed or was capable of performing at the Service Commencement Date, as such functions are amended as the result of a Variation from time to time.

10.2 The Contractor will, at no cost to TTL, ensure that throughout the Term the System performs any functions not specifically described in Schedules 5 (Front Office Specifications) and 6 (Back Office Specifications) but which the System performed or was capable of performing at the Service Commencement Date, as such functions are amended as the result of a Variation from time to time.

11. SYSTEMS INTEGRATION

General Principles

11.1 The Parties acknowledge that in order for TTL to meet the changing demands of TTL's business and its Customers, TTL requires:

11.1.1 flexibility in terms of whether TTL, the Contractor or any Third Party delivers New Technologies and/or New Services that need to interface with the System;

11.1.2 integration of the Modules, the System and the Related Systems within the IRC System to enable controlled system changes and on-going performance of the Services in accordance with the Service Levels;

11.1.3 integration of the IRC System with all Interfacing Systems to enable controlled changes that do not adversely impact such systems.

Systems Integrator Role

11.2 The Contractor will perform the role of Systems Integrator from (and including) the Service Commencement Date for the entire Term in accordance with the requirements for the System Integrator set out in this Contract, including Schedule 7.2 (System Integrator).

System Interfaces

11.3 The Contractor will be responsible for updating and maintaining the Interface Register and the Interface Specification Catalogue in accordance with the requirements set out in Schedule 7.3 (System Interfaces) from the Service Commencement Date for the entire Term.

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12. TICKET SALES AND FARES REVENUE

12.1 The Contractor shall provide the Services and operate the System (including in accordance with the specifications set out in Schedule 5 (Front Office Specifications) and Schedule 6 (Back Office Specifications)) in each case in accordance with this Contract in such a way that neither hinders nor prevents, but both enables and ensures the collection of revenue by TTL (or its nominees) of any and all amounts due and payable to TTL (or its nominees) for the use of the Transport Network by Customers, including by:

12.1.1 capturing and reporting all relevant Data;

12.1.2 reconciling all revenues received to Travel Products sold under Retail Agreements; and

12.1.3 accounting to TTL for all revenue generated by Travel Product.

12.2 The Contractor shall on demand indemnify and keep indemnified the TTL Group from and against (and shall pay on demand) any revenues generated from the sale of Travel Products that have not been accounted for by the Retail Agent(s) or FTIC(s).

13. CONTRACTOR COOPERATION

13.1 The Contractor shall, at no additional cost to TTL, cooperate fully and promptly with TTL and the Related Contractors and/or Interfacing Parties and any other parties reasonably requested by TTL, as applicable, including by:

13.1.1 providing such information about the manner in which the Services are provided as is reasonably necessary for the Related Contractors and/or Interfacing Parties to provide their services to TTL or carry out such activities as have been delegated by TTL;

13.1.2 making information available to, or accepting information from, the Related Contractors and/or Interfacing Parties and developing any relevant documentation;

13.1.3 meeting with TTL and the Related Contractors and/or Interfacing Parties to discuss the Services and the services provided by the Related Contractors and/or Interfacing Parties and engaging in joint problem resolution;

13.1.4 providing electronic and physical access to the business processes and associated tools, Software and systems being used to provide the Services to enable the Related Contractors and/or Interfacing Parties, if applicable, to perform the work assigned to them and to provide written requirements, standards, policies or other documentation for such business processes and associated tools, Software or systems to permit the Related Contractors to integrate the Related Services and the Related Systems and/or the Interfacing Parties to integrate the Interfacing Services and the Integrating Systems;

13.1.5 providing access to operational and technical Contractor Personnel to answer questions;

13.1.6 participating in any joint testing initiatives;

13.1.7 licensing to the Related Contractors and/or Interfacing Parties, if applicable, any Contractor Background IPR to the extent necessary in connection with delivery to TTL of the Related Services and/or the Interfacing Services (as applicable); and

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- 13.1.8 providing such other cooperation as reasonably required by TTL in relation to the end-to-end service delivery for the revenue collection services.
- 13.2 The Contractor will inform TTL of any disputes or disagreements between it and any Related Contractor and/or any Interfacing Party that arise when fulfilling obligations and will use all reasonable endeavours to resolve such disputes or disagreements as soon as possible so as to avoid or minimise disruption to the provision of the Services or the performance of any of its obligations under the Contract.

14. THE SYSTEM AND MAINTENANCE

The System

- 14.1 The Contractor acknowledges and agrees that the System (and all elements comprised therein from time to time), is provided solely and exclusively for the TTL Group and for the benefit of the Benefitting Parties, the Related Contractors, the Interfacing Parties, and Customers and the Contractor shall not use the System (and each part thereof), nor permit such use by any member of the Contractor Group or any Sub-Contractor, in any other way without TTL's prior written consent.
- 14.2 Subject to the Contractor's rights under Clause 14.3, all rights, title and interest in and to the Assets (and all elements comprised therein from time to time) shall at all times vest in TTL or its Third Party nominees, assignees or licensors, subject only to Clauses 54 (Rights and Obligations of TTL) and 51 (Intellectual Property Rights). To the extent that the Contractor or any Sub-Contractor acquires any rights, title and interest in any Assets, the Contractor shall:
- 14.2.1 immediately transfer or cause the transfer of such rights, title and interest to TTL or any Third Party nominated by TTL from time to time with full title guarantee and free from all encumbrances and/or liens together with the full benefit of all warranties, maintenance or support and other rights, in so far as they are available, from original equipment manufacturers or other suppliers; and
- 14.2.2 procure that such rights, title and interest vest in TTL or its Third Party nominees, assignees or licensors at the earliest possible time and in any event no later than the time that TTL makes payment to the Contractor relating to the relevant elements of the Assets.
- 14.3 With effect from the Service Commencement Date, TTL will make available to the Contractor and the Contractor may use the System, the IRC System, the Assets, and any part thereof, in accordance with and for the sole purpose of performing this Contract at all times subject to this Clause 14 provided that nothing in this Clause 14.3 shall require any access to or availability of any goods, equipment, consumables, materials, hardware, software, systems information, data, personnel, premises or utilities of any Benefitting Party, Interfacing Party or any other Third Party in any way unless expressly required otherwise under Clause 54 (Rights and Obligations of TTL). TTL represents and warrants to the Contractor that, as of the Service Commencement Date, TTL will have full power and authority (having obtained all necessary consents, where required), to perform its obligations under this Clause 14.3. This Clause 14.3 shall be subject to Clause 51 (Intellectual Property Rights).
- 14.4 The Contractor undertakes to TTL that, save with the prior written consent of TTL, it will not grant or attempt or purport to grant or permit or subscribe any Security Interest over the whole or any part of the Assets or the System or the Intellectual

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Property Rights therein.

- 14.5 The Contractor shall ensure that no Asset (or part thereof) comprised in or relating to the System (or any part thereof) is moved without obtaining TTL's prior written approval, other than if an Asset is moved in the normal course of the Contractor operating or maintaining the System pursuant to the provisions of this Contract.
- 14.6 Without limiting any other provision in this Clause 14 (The System and Maintenance), the Contractor undertakes to TTL that it shall not sell, lease, transfer, grant rights over or otherwise dispose of any interest in or part with possession of any Asset or the System without first complying with the provisions of Clause 14.7.
- 14.7 Not less than fourteen (14) days prior to the proposed occurrence of any of the matters referred to in Clause 14.6 in respect of any Asset or the System (or any part of it), the Contractor shall notify TTL in writing of such event and, in any event, shall not do or permit to be done any of the matters referred to in Clause 14.6 in respect of any Asset or the System (or any part of it) without first obtaining the prior written consent of TTL. Any consent granted by TTL shall be subject to such conditions as TTL may specify (including as to price and that any proceeds, including any related profit, is remitted to and belongs to TTL or as it may direct).

Maintenance

- 14.8 The Contractor will comply with the asset management and maintenance requirements set out in Schedule 8.2 (Asset Management and Maintenance) in order to, amongst other things, ensure Service continuity and facilitate continued operation of the Assets by any Successor Operator.
- 14.9 The Contractor shall ensure on a continuing basis that at all times, its maintenance and operating procedures are sufficient to ensure that, from the Service Commencement Date, the relevant Services are provided in accordance with the provisions of this Contract and:
- 14.9.1 all Assets and elements of the System are installed, used and maintained in accordance with the relevant manufacturers', authors' or suppliers' technical specifications and maintained and supported pursuant to the Contractor's obligations under Clause 16 (Residual Life of Assets);
- 14.9.2 it shall maintain or procure records of all maintenance and support procedures carried out during the Term and the Contractor shall have such records and reports available for TTL in accordance with Clause 65 (Records, Audit and Inspection); and
- 14.9.3 Documentation is kept up to date throughout the Term and is amended to reflect any Changes made to the Services (including any Technical Changes to the Software) or to the practices and procedures used by the Contractor or its Sub-Contractors in the provision of the Services,
- and the Contractor shall implement those maintenance and operating procedures throughout the Term.
- 14.10 Subject always to Clause 69 (Safety, Quality and Environment), the Contractor shall be responsible for carrying out at its own cost (unless TTL is required to pay as expressly set out in any Variation) all works required to perform the Services, and to enable the installation, maintenance and Performance Assurance of the System, and any part thereof.

Ongoing Supply

- 14.11 Without prejudice to TTL's other rights or remedies under the Contract, the Contractor shall provide TTL with details of its sourcing processes and procedures at any time on the reasonable request of TTL. The Contractor shall ensure that, from the Service Commencement Date in relation to any Changes to the System and/or the Services, all Assets, Devices and other elements of the System or part thereof:
- 14.11.1 are available for the applicable working life of the System and/or the IRC System;
 - 14.11.2 are widely available and in use in different industry sectors;
 - 14.11.3 are sourced from Third Parties and not developed by or on behalf of the Contractor Group or by a Sole Supplier; and
 - 14.11.4 have maintenance and support available from Third Parties, or are capable of being easily maintained or supported by Third Parties, on an ongoing basis up to a period of two (2) years following the Expiry Date, unless in each case the Contractor demonstrates to TTL that it would be beneficial to the System, the IRC System and/or the Services for the above principles not to be applied in a particular case and obtains TTL's prior written consent to the Contractor's non-compliance with the principles set out in this Clause 14.11.
- 14.12 The Contractor shall ensure on a continuing basis that at all times, its maintenance and operating procedures are sufficient to ensure that, from the Service Commencement Date:
- 14.12.1 it shall ensure that during the Term and as at the Expiry Date, maintenance and support for any part of the System which is Commercial Off-The-Shelf is publicly available from a Third Party (other than a member of the Contractor Group) on substantially the same terms and conditions for TTL or any relevant Third Party as under this Contract;
 - 14.12.2 it shall ensure that no modification, adaptation or enhancement is made, or development undertaken in any way, by or on behalf of the Contractor in respect of any part of the System which is Commercial Off-The-Shelf without the prior written consent of TTL in each case, and in any event provided that:
 - (A) prior to any such consent being granted, the Contractor shall inform TTL in writing of the effects of any such modification, adaptation, enhancement or development on the classification of any part of the System as Commercial Off-The-Shelf and on the availability (or otherwise) of support for that part of the System including without limitation as envisaged under Clause 14.12.1;
 - (B) unpublished, undocumented or publicly unavailable features, tools, kits, debugging aids, application programming interfaces, drivers, hardware, sample code, technical notes or documentation or other development methods, environments or utilities are in no way used in connection with any part of the System which is Commercial Off-The-Shelf; and
 - (C) it shall liaise with the Related Contractors, Interfacing Parties and Benefitting Parties with whom the System interfaces, integrates or interoperates in order to resolve any interfacing, integration or interoperability problems, in respect of Related Contractors and

Interfacing Parties.

15. **LEVEL 1 HELP DESK**

- 15.1 The Contractor will provide a Level 1 Help Desk to TTL in accordance with the requirements set out in Schedule 4.1 (Service Delivery).
- 15.2 The Contractor shall assume and retain responsibility for the management, and where appropriate the resolution, of all System Incidents, Incidents, System Faults and Faults from the time that such System Incident, Incident, System Fault or Fault is logged in the Contractor's Trouble Ticketing System until such event is resolved by the assigned Resolver Group, irrespective of whether that Resolver Group is the Contractor.
- 15.3 The Contractor shall resolve Incidents, Faults and System Failures in accordance with the provisions set out in Schedule 7.2 (System Integrator).

16. **RESIDUAL LIFE OF ASSETS**

- 16.1 Subject to Clause 16.2, the Contractor shall ensure that as at the relevant End Date the condition of each Asset is such that it is operating or (if not operating as at that date) is readily able to operate in a manner that will (due allowance being made for routine maintenance at ordinary levels and for planned renewals in upgrades covered by future operating costs) satisfy the requirements of the Performance Test for the remaining expected useful life for that class of Asset.
- 16.2 As at the Expiry Date, the requirements of the Performance Test need only be satisfied for a period of two (2) years following that date.
- 16.3 For the purpose of ascertaining the remaining expected useful life of any Asset, it is to be regarded as belonging to the class of Asset set out in the Asset Register prepared in accordance with Schedule 8.2 (Asset Management and Maintenance) which contains the description of Asset type to which the Asset most closely approximates. The remaining expected useful life of each class of Asset and of each Asset in each such class as at the expected transfer date of each relevant Asset to TTL and/or any Successor Operators (the "**Residual Life**") will be specified in the Device templates as provided under Schedule 8.2 (Asset Management and Maintenance).
- 16.4 TTL shall be provided, at such times and at such places as it may require, with such rights of audit and inspection of and with such information regarding Assets as may be necessary or in the opinion of TTL desirable to reach an informed view as to the remaining useful life of any Asset.
- 16.5 Compliance by the Contractor with the Asset Plans shall not excuse the Contractor from or be deemed to constitute performance by the Contractor of its obligations under this Contract.

17. **CHANGE MANAGEMENT**

- 17.1 Without prejudice to the Variation Procedure, where a Change is required by TTL, the Contractor or any Related Contractors, the Contractor shall facilitate, manage and implement (as appropriate) such Change in accordance with Schedule 10.1 (Change Management) in order to ensure, amongst other things, the effective co-ordination and communication of Changes.
- 17.2 Fares Revisions will be implemented in accordance with Schedule 10.3 (Fares Revisions) in order to ensure, amongst other things, the timely and effective

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implementation of such Fares Revisions.

- 17.3 New Travel Products and Services will be implemented in accordance with Schedule 10.4 (New Travel Products and Services) in order to ensure, amongst other things, the timely and effective implementation of such New Travel Products and Services.

18. ASSURANCE

The Contractor shall provide Assurance to TTL in accordance with the requirements of Schedule 10.5 (Assurance) in order to provide clarity and visibility to TTL in relation to the Contractor's compliance with its obligations under this Contract.

19. TECHNICAL AUTHORITY

- 19.1 The Contractor will comply with the requirements set out in Schedule 9.1 (Technical Authority) in order to support TTL in the performance of its role as Technical Authority and to ensure that the implementation and/or integration of Technical Changes does not adversely impact the performance of the Services.

- 19.2 TTL will be the Technical Authority.

20. STANDARDS

The Contractor will, from the Service Commencement Date (unless specified otherwise), comply with the requirements of Schedule 9.3 (Standards) and the Standards set out therein, and will, prior to the Service Commencement Date and thereafter, maintain at the Contractor's own cost formal accreditation with such Standards and/or certification of such compliance (as applicable).

21. CONTROL OVER SYSTEMS ARCHITECTURE

- 21.1 TTL will at all times retain control over the systems architecture, infrastructure and technical underpinnings, business rules, roadmaps, standards and specifications in relation to the System and its interface with the Services.

22. MAJOR INCIDENT MANAGEMENT

Major Incident Management and Back-Up

- 22.1 The Contractor shall throughout the Term comply with the provisions of Schedule 8.3 (Major Incident Management) including creating, maintaining, updating and implementing (where required) the Service Recovery Plan which will (without limitation):

22.1.1 be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the Services in any circumstances where the ability of the Contractor to provide the Services would otherwise be impaired;

22.1.2 make provision for action to be taken by the Contractor in the event of non-availability of the System; and

22.1.3 include a communications plan for relevant Contractor Personnel and TTL, in respect of which the Contractor will consult with TTL and incorporate TTL's requirements.

- 22.2 Subject to Clause 22.3, the Contractor shall implement and maintain suitable, stand-alone back-up facilities for the System in accordance with the Service Recovery Plan.

- 22.3 Nothing in Clause 22.2 (or the Contractor's compliance therewith) shall operate to exclude, limit or reduce the extent of the Contractor's liability to TTL arising out of

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or related to the circumstances giving rise to the implementation of back up facilities for the System in accordance with the Service Recovery Plan.

22.4 Without prejudice to Schedule 8.3 (Major Incident Management), the Contractor shall:

22.4.1 update the Service Recovery Plan to ensure that the Service Recovery Plan is at all times proportional to the scale and nature of Services provided by the Contractor. Such updates shall be provided on such dates as the Parties may agree from time to time in writing and as TTL may request from time to time; and

22.4.2 produce all enhancements and upgrades required under Clause 22.4.1 in advance of any agreed or anticipated volume changes in, or Variations to, the Services.

Periodic Tests

22.5 The Contractor shall undertake Preparedness Tests in accordance with the Service Recovery Plan and notify TTL in a timely manner in advance of such tests and any TTL Group employees may, at TTL's discretion, witness the testing. TTL reserves the right to have its own TTL Group employees conduct the tests described in the Service Recovery Plan. Any additional testing required by TTL and not described in the Service Recovery Plan shall be carried out at the cost of TTL.

23. CORRECTIVE ACTION NOTICES

23.1 Where the Contractor fails to comply with any part of this Contract the TTL Contract Manager may issue to the Contractor a Corrective Action Notice and the provisions of Schedule 10.5 (Assurance) shall apply.

23.2 The Parties acknowledge and agree that:

23.2.1 a Corrective Action Notice does not constitute a notice given by TTL pursuant to Clause 78 (TTL's Termination Rights) but that a Corrective Action Notice shall not restrict or prevent TTL from terminating this Contract in accordance with that Clause; and

23.2.2 a Corrective Action Notice shall not restrict or prevent TTL 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 (or pursuant to which any other Corrective Action Notice was issued or otherwise) or a Minor Warning.

24. BUSINESS MANAGEMENT

24.1 Document Management

The Contractor will comply with the requirements set out in Schedule 11.1 (Document Management) in order to ensure, amongst other things, that Documents and information are maintained and shared in a manner which supports Project and Service delivery.

24.2 Risk Management

The Contractor will comply with the requirements set out in Schedule 11.2 (Risk Management) in order to, amongst other things, manage and minimise the impact of Risks relating to the Services and/or the IRC System.

24.3 Fraud Management

The Contractor will comply with the requirements set out in Schedule 11.3 (Fraud

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Management) in order to, amongst other things, manage, prevent and, where possible, eliminate the occurrence and impact of fraud.

25. PROGRAMME AND PROJECT LIFECYCLE

The Contractor will comply with the requirements set out in Schedule 10.2 (Programme and Project Lifecycle) in order to ensure, amongst other things, that TTL is able to respond to changing Customer and business needs in a timely and cost effective manner.

26. CONSTRUCTION INDUSTRY SCHEME

26.1 In this Clause 26 (but not otherwise):

26.1.1 "**the Scheme**" means the Construction Industry Scheme as implemented by Chapter 3 of Part 3 Finance Act 2004 ("**the Act**"), the Income Tax (Construction Industry Scheme) Regulations (SI 2005/2045) ("**the Regulations**"), any regulations made under any provision contained in Chapter 3 of Part 3 of Finance Act 2004 and any other statute or subordinate legislation relating to the Construction Industry Scheme as from time to time modified or replaced whether before or after the date of this Contract;

26.1.2 "**CIS Payer**" means a person who is a contractor within the meaning of section 57(2)(b) of the Act;

26.1.3 "**CIS Recipient**" means a person who is a sub-contractor within the meaning of section 58 of the Act;

26.1.4 "**relevant percentage**" means:

(A) in the case of a CIS Recipient who is registered for payment under deduction under section 63(3) of the Act, 20%; and

(B) in the case of a CIS Recipient who is not registered for payment under section 63 of the Act, 30%,

or such other percentages as may be specified from time to time in regulations made under section 61 of the Act;

26.1.5 "**statutory deduction**" means the deduction referred to in section 61 of the Act or such other deduction as may be required to be made at the relevant time, pursuant to the Scheme; and

26.1.6 "**tax month**" means the period beginning on the sixth day of a calendar month and ending on the fifth day of the following calendar month.

26.2 If TTL or the Contractor is a CIS Recipient for the purposes of the Scheme and the Scheme requires that person as CIS Recipient to register for gross payment under section 63(2) of the Act for it to receive payments which are not subject to the statutory deduction, the CIS Recipient will use its best endeavours to obtain such registration so that TTL or the Contractor (as appropriate) as CIS Payer under the Scheme may be entitled to make any and all payments which it makes to the CIS Recipient pursuant to this Contract free and clear from the statutory deduction.

26.3 If the CIS Recipient successfully obtains such registration pursuant to section 63(2) of the Act, it will use its best endeavours to ensure that the registration remains valid and shall immediately inform the CIS Payer in writing if there is any change in its registration status under the Scheme giving the nature and date of such change.

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- 26.4 Not later than fifteen (15) Business Days before the first payment under this Contract to which the Scheme applies is due to be made to the CIS Recipient (or, after this clause applies for the first time, not later than fifteen (15) Business Days before the next payment under this Contract to which the Scheme is due to be made to the CIS Recipient), the CIS Recipient shall, to the extent appropriate under the Scheme, provide the CIS Payer with all information and assistance which may be reasonably required by the CIS Payer in order to verify the CIS Recipient's entitlement to be paid without the statutory deduction including (but not limited to) the items specified in regulation 6(2)(b) of the Regulations.
- 26.5 The CIS Payer shall, before making any payment to the CIS Recipient to which the Scheme applies, verify with the Commissioners for HM Revenue and Customs whether the CIS Recipient is registered for gross payment unless it is not required to do so by virtue of regulation 6(4) of the Regulations.
- 26.6 If the CIS Payer decides (acting reasonably) or is informed by HM Revenue and Customs that the CIS Recipient is not entitled (in accordance with the Scheme) to receive payments pursuant to this Contract free and clear from the statutory deduction, it shall as soon as reasonably practicable notify the CIS Recipient in writing, and if the CIS Payer decides (acting reasonably) or is informed by HM Revenue and Customs that a statutory deduction is required in respect of any payment Clause 26.7 below shall apply.
- 26.7 Where this clause applies, the CIS Payer shall either:
- 26.7.1 make a statutory deduction at the relevant percentage from any payment to the CIS Recipient; or
 - 26.7.2 (if the CIS Recipient requests in writing and the CIS Payer, in its absolute discretion, agrees) delay making any payment to the CIS Recipient until the CIS Payer is satisfied that the CIS Recipient is registered (in accordance with the Scheme) to receive payments either without any statutory deduction or subject to a statutory deduction at a lower relevant percentage than the relevant percentage which would have applied if the CIS Payer had not decided pursuant to this Clause 26.7.2 to delay making the relevant payment.
- 26.8 Where the CIS Payer decides (acting reasonably) or is informed by HM Revenue and Customs that, as at the date of a payment under this Contract to which the Scheme applies, the CIS Payer is entitled to make the payment to the CIS Recipient free and clear from the statutory deduction then it shall make such payment (in accordance with the provision of this Contract requiring payment) to the CIS Recipient and shall apply the Scheme to said payment accordingly.
- 26.9 Any statutory deduction made by the CIS Payer in accordance with this Clause 26 shall be made in accordance with section 61 of the Act or such other statutory provision as amends or replaces it and in that connection where a statutory deduction is required the CIS Recipient shall at least ten (10) Business Days prior to the date of the payment in question give to the CIS Payer a statement showing the direct cost of materials to the CIS Recipient and to any other persons to be included in the payment, in the absence of which the CIS Payer shall be entitled to assume that no amount of the payment represents the direct cost of materials to the CIS Recipient or any other person.
- 26.10 Where the CIS Payer has reasonable grounds to believe that any statement provided in compliance with Clause 26.9 is incorrect, the CIS Payer shall make an

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estimate of the direct cost of materials, the amount of such estimate being entirely at the CIS Payer's discretion.

26.11 The CIS Payer shall not be bound to rely on any statement or information received from the CIS Recipient in accordance with Clause 26.9 but if it does so either by relying on:

26.11.1 the statement in its entirety; or

26.11.2 any part of or information in the statement in determining its estimate in accordance with Clause 26.10 where the CIS Payer's estimate in accordance with that Clause is less than the amount in the statement,

the CIS Recipient shall indemnify the CIS Payer on an after-tax basis against any tax interest, fine or penalty or other amount due to or demanded by HM Revenue and Customs caused to the CIS Payer by such reliance, less any amount already paid to the Contractor under Clause 26.14.2 in respect of the same error in the statement.

26.12 Any sum deducted pursuant to this Clause 26 shall be paid to HM Revenue and Customs by the CIS Payer within fourteen (14) days after the end of the tax month in which the payment was made.

26.13 The CIS Payer shall deliver a return to the CIS Recipient not later than fourteen (14) days after the end of any tax month in which a payment to which the Scheme applies (other than a payment without any statutory deduction) was made showing the total sum of all statutory deductions made in that tax month.

26.14 Where any error or omission has occurred in calculating or making the statutory deduction then:

26.14.1 in the case of an over-deduction, the CIS Payer shall correct that error by repayment of the sum over-deducted to the CIS Recipient; and

26.14.2 in the case of an under-deduction, the CIS Recipient shall correct that error or omission by repayment of the sum under-deducted to the CIS Payer.

26.15 Clause 38 (Tax) shall not apply to a payment or payments to which this Clause 26 applies.

DATA AND SECURITY REQUIREMENTS

27. SECURITY

27.1 The Contractor is responsible for the security of the System, the secure transmission of Data on the IRC System, and for advising on the security of the IRC System and will at all times comply with the requirements set out in Schedule 9.4 (Security Management).

Ownership of Data and Data Security

27.2 The Data and the Security Materials shall be and shall remain the property of TTL.

27.3 The Contractor shall keep all Data and Security Materials safe, secure, updated and confidential, protect and defend TTL's title to such Security Materials and Data against all persons claiming against or through the Contractor and shall use its reasonable endeavours to keep such Security Materials and Data free from any distress, execution or other legal process.

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- 27.4 The Contractor shall establish and maintain proper security measures and procedures to provide for the safe custody of the Security Materials and Data and to prevent unauthorised access thereto or use thereof.
- 27.5 TTL shall keep any Security Materials which it has in its possession safe, secure, updated and confidential, and shall establish and maintain proper security measures and procedures both to provide for the safe custody of those Security Materials and to prevent unauthorised access thereto or use thereof.

28. INFORMATION GOVERNANCE

- 28.1 The Contractor warrants and undertakes as follows:
- 28.1.1 the Contractor shall in relation to this Contract comply with the DPA, the PECED and all relevant, subordinate or successor legislation relating to each of them including, without limitation, the Eight Data Protection Principles set out in the DPA;
- 28.1.2 the Contractor has duly registered and will maintain the registration of its respective particulars in accordance with the provisions of the DPA and will provide to TTL a copy of such registration, together with any amended particulars which may be filed from time to time;
- 28.1.3 the Contractor acknowledges that TTL will rely upon the Contractor to enable TTL to comply with its obligations under FOIA Legislation and the RPSI in relation to the Services and this Contract and that the processes and procedures set out in this Contract with which the Contractor is required to comply are important for the purposes of ensuring such compliance;
- 28.1.4 if there is dispute over what is required for compliance with the DPA and the other named Acts and Regulations, the Contractor will comply with the reasonable written instructions of TTL's legal advisers, except where it is illegal for the Contractor to do so; and
- 28.1.5 the Contractor agrees to provide promptly all reasonable additional information and co-operate fully with any investigations by TTL in relation to complaints under the DPA, FOIA, EIRs, RPSI, PECED and Computer Misuse Act 1990, including investigations relating to complaints by the Information Commissioner's Office, the Information Tribunal and the Courts of England.

Data Protection

- 28.2 The Contractor shall:
- 28.2.1 take and implement appropriate technical and organisational security measures, that are satisfactory to TTL from time to time, against unauthorised or unlawful Processing of Personal Data and against accidental loss, destruction of, or damage to such Personal Data including but not limited to implementing the ISMS and shall procure its Sub-Contractors to do the same;
- 28.2.2 without prejudice to Clause 28.2.1, wherever the Contractor uses any mobile or portable device for the transmission or storage of TTL Personal Data, ensure that each such device encrypts TTL Personal Data;
- 28.2.3 obtain and maintain throughout the Term all necessary registrations that the Contractor or its applicable Sub-Contractors are obliged to obtain and

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- maintain pursuant to the DPA and all other applicable Law in respect of providing the Services;
- 28.2.4 provide TTL with such information as TTL may from time to time require to satisfy itself of compliance by the Contractor (and/or any Sub-Contractor) with Clauses 28.2.1 and 28.2.2. This shall include a full report recording the results of any privacy audit carried out at the request of the Contractor itself or TTL;
- 28.2.5 co-operate with TTL in responding to any enquiry made or investigation or assessment of Processing initiated by the Information Commissioner in respect of any TTL Personal Data (provided that no response shall be made by the Contractor directly to the Information Commissioner unless the Contractor has first obtained TTL's written confirmation and consent to do so);
- 28.2.6 where requested to do so by TTL, and where Processing operations present specific risks to privacy, carry out a privacy impact assessment in accordance with guidance from the Information Commissioner or statutory requirements and make the results of such an assessment available to TTL;
- 28.2.7 maintain, and make available to TTL on its request, documentation, central register or inventory which describes the Processing operations for which it is responsible and specifies:
- (A) the purposes for which the TTL Personal Data are processed including the legitimate interests pursued by TTL where Processing is based on this lawful basis;
 - (B) the categories of Personal Data and Data Subjects involved;
 - (C) the source of the data;
 - (D) the recipients of the data; and
 - (E) the location(s) of any overseas Processing of that data;
- 28.2.8 when notified by TTL, comply with any agreement between TTL 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 TTL Personal Data;
- 28.2.9 when notified by TTL, comply with any agreement between TTL and any Data Subject in relation to any objections by the Data Subject with regard to Processing or other request requiring the rectification, blocking, erasure or destruction of any TTL Personal Data;
- 28.2.10 take reasonable steps to ensure the reliability of Contractor Personnel having access to TTL Personal Data and to ensure that such Contractor Personnel are fully aware of the measures to be taken and the Contractor's obligations under this Clause 28.2 when Processing TTL Personal Data; and
- 28.2.11 not Process any TTL Personal Data outside the European Economic Area without TTL's explicit prior written consent (which consent may be subject

to additional conditions imposed by TTL in its sole discretion) and then only if the transfer is:

- (A) between member states of the European Union;
- (B) from any member state of the European Union to any country or territory which is at the time subject to a current finding by the European Commission under Article 25(5) of the EU Data Protection Directive that it provides adequate protection for personal data within the meaning of Article 25(2) of the EU Data Protection Directive which is applicable to the transfer, provided that the Contractor has given TTL sufficient notice of, and information regarding, the transfer reasonably to enable TTL to meet any notification, registration or approval requirements of Data Protection Legislation in relation to the transfer; and
- (C) done after the data that is to be transferred has been rendered anonymous so that it does not constitute Personal Data.

Prior consent will be required in respect of the use of any cloud computing solutions which could entail hosting or transfer of TTL Personal Data outside of the European Economic Area (EEA) at any time.

28.3 The Contractor shall, if requested by TTL at any time in relation to a transfer of Personal Data, promptly enter into an agreement with TTL in the form of the standard contractual clauses approved by European Commission decision 2010/87/EU for the transfer of Personal Data to processors established in third countries, unamended but completed in such manner as TTL may reasonably stipulate in order that the data protection requirements are maintained at the level required by TTL or such other form as the Parties may agree in writing.

28.4 TTL remains solely responsible for determining the purposes and manner in which TTL Personal Data are to be Processed. The Contractor shall not share any TTL Personal Data with any Sub-Contractor or Third Party without prior written consent from TTL (in the Contract or otherwise) and unless there is a written contract in place with the Contractor (a copy of which shall be submitted in advance to TTL for approval) which requires the Sub-Contractor or Third Party:

28.4.1 only to Process TTL Personal Data in accordance with TTL's instructions to the Contractor; and

28.4.2 to comply with the same obligations with which the Contractor is required to comply with under Clause 28.2,

provided always that no Sub-Contractor may assign or sub-contract (in whole or part) their rights or obligations under such (sub) contract and/or may not Process or permit the Processing of TTL Personal Data outside the United Kingdom without the explicit prior written consent of TTL.

28.5 Following termination or expiry of this Contract, howsoever arising, the Contractor:

28.5.1 may Process the TTL Personal Data only for so long and to the extent as is necessary properly to comply with its non-contractual obligations arising under applicable Law (and will then comply with Clause 28.5.2);

28.5.2 subject to Clause 28.5.1, will not retain any copy, abstract, precis or summary of any TTL Personal Data and will at the instructions of TTL, either securely destroy or securely and promptly return to TTL (in such usable format as and to the extent TTL may require) the Personal Data and relevant records and documentation accordingly. TTL Personal Data

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may not be Processed by the Contractor following termination or expiry of the Contract (even after the expiry of a further five (5) years) save as permitted by this Clause 28.

- 28.6 Details of the Personal Data to be processed by the Contractor and the purposes of such Processing shall be notified by TTL to the Contractor from time to time.
- 28.7 The Contractor agrees that, and will procure that any Sub-Contractor will agree that, TTL Personal Data:
- 28.7.1 must only be Processed in accordance with TTL's obligations to comply with the DPA and by such Contractor Personnel as need to have access to TTL Personal Data;
 - 28.7.2 must only be used as instructed by TTL and as reasonably necessary to perform the Contract in accordance with its terms;
 - 28.7.3 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 TTL (or otherwise), whether on renewal of this Contract or otherwise, without the prior written consent of TTL);
 - 28.7.4 shall not be Processed for the Contractor's (or Sub-Contractor's) own purposes or include TTL Personal Data in any product or service offered to Third Parties, or carry out any further research, analysis or profiling activity which involves the use of any part of the TTL Personal Data. The Contractor shall not itself exercise control, nor shall it transfer, or purport to transfer, control of the TTL Personal Data to a Third Party, except as specifically instructed by TTL;
 - 28.7.5 must be kept logically separate from data Processed on behalf of any Third Party; and
 - 28.7.6 must not be used so as to place TTL in breach of the DPA and/or to expose it to risk of actual or potential:
 - (A) enforcement action, fine or public censure by the Information Commissioner;
 - (B) liability to Data Subjects;
 - (C) reputational damage; and/or
 - (D) order being made against TTL preventing, suspending or limiting the Processing of TTL Personal Data.
- 28.8 The Contractor shall, and shall procure that any Sub-Contractor shall (as appropriate):
- 28.8.1 promptly notify TTL by telephone and within twelve (12) hours by written notice with all relevant details reasonably available of any actual or suspected breach of security and/or of this Contract and/or Clause 28.2 in relation to TTL Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any TTL Personal Data ("**Data Security Breach**") which shall include the type of TTL Personal Data believed to be affected and the identity of each affected person as soon as such becomes available as well as any other

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- information which TTL reasonably requests relating to the Data Security Breach;
- 28.8.2 take action immediately to investigate the Data Security Breach and to identify, prevent and make reasonable efforts to mitigate the effects of any such Data Security Breach and, with TTL's prior written agreement, to carry out any recovery or other action necessary to remedy or mitigate the Data Security Breach. The Contractor shall not release or publish any filing, communication, notice, press release, or report concerning the Data Security Breach in respect of any TTL Personal Data without TTL's prior approval;
- 28.8.3 keep TTL properly and regularly informed subsequently;
- 28.8.4 fully and promptly cooperate with the reasonable instructions of TTL in relation to the Processing and security of TTL Personal Data in accordance with the Contract and in compliance with the DPA (including procuring access to Sub-Contractor premises);
- 28.8.5 cooperate as TTL requires with any investigation or audit in relation to TTL Personal Data and/or its Processing including by 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 this Contract, in relation to the DPA or in relation to any actual or suspected breach), whether by TTL (or on its behalf), by any central or local government audit authority, the Information Commissioner, the police or otherwise and shall do so both during this Contract and after its termination or expiry (for so long as the Party concerned retains and/or otherwise Processes TTL Personal Data);
- 28.8.6 implement within timescales set by TTL any recommendations from Data Protection audits carried out pursuant to Clause 65;
- 28.8.7 where the Data Security Breach results from a breach of Clause 27 (Security) by the Contractor, agree that the actions and steps described in Clause 28.8 shall be without prejudice to TTL's right to seek any legal remedy as a result of the breach, shall be undertaken at the expense of the Contractor and the Contractor shall reimburse TTL for its costs and losses in relation thereto;
- 28.8.8 ensure all Contractor Personnel who can and/or do access TTL Personal Data are suitably trained in relation to the obligations to protect Personal Data in accordance with the DPA and this Contract, understand such obligations and comply with them and that such training is updated at reasonable intervals; and
- 28.8.9 comply during the course of this Contract with any data retention and/or deletion policy notified to the Contractor by TTL from time to time.
- 28.9 The Contractor acknowledges and agrees, and shall procure that any Sub-Contractor acknowledges and agrees:
- 28.9.1 the importance to Data Subjects and TTL of safeguarding TTL Personal Data and Processing it only in accordance with this Contract;
- 28.9.2 the loss and damage (including any monetary penalty imposed by a regulatory body) that TTL is likely to suffer in the event of a breach of this Contract or negligence in relation to TTL Personal Data;

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- 28.9.3 that any breach of any obligation in relation to TTL Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of this Contract;
- 28.9.4 that if the Contractor has committed a material breach under Clause 28.9.3 on two (2) or more separate occasions, TTL may at its option:
- (A) exercise its Step-In Rights pursuant to Clause 48 (Step-In);
 - (B) withdraw authorisation for Processing by a specific Sub-Contractor by immediate written notice; or
 - (C) terminate this Contract in whole or part with immediate written notice to the Contractor, pursuant to Clause 78.1.8(B).
- 28.10 Without prejudice to Clause 81 (Effect of Termination), the obligations in this Clause 28 shall apply following termination or expiry of this Contract to the extent the Party concerned retains or otherwise Processes TTL Personal Data.

Privacy and Electronic Communications (EC Directive) Regulations 2003

- 28.11 The Contractor shall, and shall procure that its Sub-Contractors, employees and agents shall, comply with the PECED in all contact with Customers.

Governmental and Other Requests

- 28.12 The Contractor shall inform TTL promptly, and in any event within five (5) Business Days, of any inquiry, communication, request or complaint received from any Governmental, regulatory or supervisory authority, including but not limited to the Information Commissioner, relating to the Services, any Personal Data or any obligations under applicable Law, and will furnish all reasonable assistance to TTL to enable TTL to respond to such inquiries, communications, requests or complaints in accordance with applicable statutory or regulatory deadlines.
- 28.13 If the Contractor or any Sub-Contractor is required by applicable Law, court order, warrant, subpoena, or other legal judicial process to disclose any Personal Data being processed by it pursuant to this Contract to any person other than TTL, the Contractor shall notify TTL and will furnish all reasonable assistance to TTL to enable TTL to respond or object to, or challenge, any such demands, requests, inquiries or complaints in accordance with applicable statutory or regulatory deadlines.

Indemnity

- 28.14 The Contractor shall indemnify and hold harmless each member of the TTL Group from and against all Losses (including all Losses suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any breach by the Contractor of the requirements set out in this Clause 28 (Information Governance), except that without prejudice to any other rights or remedies TTL may have:
- 28.14.1 this Clause 28.14 shall not apply in respect of any Losses suffered by any member of the TTL Group as a result of a breach by the Contractor of the requirements of the PECED; and
- 28.14.2 in the event of a breach by the Contractor of the requirements set out in Clause 28.12, this Clause 28.14 shall only apply to the extent that such breached requirements relate to Personal Data.

29. SUBJECT ACCESS REQUESTS

- 29.1 The Contractor shall, and shall procure that any Sub-Contractor shall (as appropriate), at no additional cost to TTL, assist and co-operate fully with TTL in responding to Subject Access Requests made to TTL, including but not limited to:
- 29.1.1 subject to Clause 29.2, promptly upon request by TTL (and in any event within five (5) Business Days of receipt of such request) providing all information requested by TTL in relation to the relevant Data Subject(s) including but not limited to:
 - (A) the purposes for which such information is held;
 - (B) the recipients or types of recipients to whom the information has been disclosed;
 - (C) any available information as to the sources of the information; and
 - (D) an explanation of any codes and abbreviations used;
 - 29.1.2 immediately notifying the TCM of any Subject Access Requests received by the Contractor and sending such requests to TTL as soon as possible and in any event within five (5) Business Days of receipt of the same;
 - 29.1.3 ensuring that there is at all times a member of Contractor Personnel with sufficient seniority and understanding to manage the provision of information for Subject Access Requests; and
 - 29.1.4 ensuring that all Contractor Personnel are trained to recognise a Subject Access Request and know what they should do when one is identified.
- 29.2 Notwithstanding Clause 29.1, the Contractor shall not be required to comply with a request for the provision of information if the Contractor can demonstrate to TTL's satisfaction (determined by TTL at its sole discretion) that the information should be withheld from the Data Subject. The Parties agree that information can be withheld for the prevention or detection of crime where provision of such information may prejudice a criminal investigation.

PERSONNEL

30. CONTRACTOR PERSONNEL

Contractor Personnel – General Provisions

- 30.1 The Contractor shall provide such Contractor Personnel as necessary for the proper and timely performance and management of the Services in accordance with the terms of the Contract. In particular, the Contractor shall (without limiting any other provision of this Contract):
- 30.1.1 at all times use sufficient Contractor Personnel appropriate to the size, nature and type of work to be carried out in relation to the relevant Services;
 - 30.1.2 ensure that all Contractor Personnel have the right to work in the United Kingdom and are appropriately trained and possess the appropriate skills, qualifications and experience to perform the tasks assigned to them;
 - 30.1.3 ensure that all Contractor Personnel are properly managed and supervised;

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- 30.1.4 ensure that all Contractor Personnel are provided with a copy of applicable TTL policies and procedures and comply with such policies and procedures;
 - 30.1.5 use all reasonable efforts to ensure continuity of Contractor Personnel;
 - 30.1.6 promptly on request by or on behalf of TTL (and in any event, no later than ten (10) Business Days following such request) provide such information relating to the organisation, roles, management and supervision of Contractor Personnel as TTL may reasonably require; and
 - 30.1.7 promptly on request by or on behalf of TTL (and in any event, no later than ten (10) Business Days following such request) provide such other details relating to Contractor Personnel as TTL may request from time to time save where the Contractor's compliance with such a request would result in a breach of the requirements of the DPA by the Contractor.
- 30.2 Nothing contained in this Contract shall be construed or have effect as creating or constituting any employment, agency or partnership relationship between TTL and any Contractor Personnel and the Contractor shall be solely responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to Contractor Personnel.

Right to exclude Contractor Personnel from premises and/or the provision of Services

- 30.3 Without prejudice to its rights under Clause 30.4, if TTL, acting reasonably, considers the performance or conduct of any member of Contractor Personnel unsatisfactory in any respect, TTL may, by written notice to the Contractor, request the Contractor to take remedial action in relation to such individual. If within twenty (20) Business Days of such notice TTL reasonably considers that the matter is still unresolved then TTL may, by written notice to the Contractor, require the removal of such individual from the provision of the Services and/or deny any member of Contractor Personnel access to any TTL Sites and/or Assets, in each case with immediate effect. The exercise of this right by TTL will not relieve the Contractor of its obligations under this Contract.
- 30.4 TTL may, acting reasonably, and by written notice to the Contractor, require the removal of any member of Contractor Personnel from the provision of Services and/or deny any member of Contractor Personnel access to any TTL Sites and/or Assets, in each case with immediate effect, in circumstances where TTL considers that such member of Contractor Personnel:
- 30.4.1 is a risk to security or could present a danger to any person;
 - 30.4.2 has engaged in conduct having a detrimental impact on the provision of the Services and/or on the performance of the Contractor's obligations under the Contract;
 - 30.4.3 is guilty of negligence, breach of duty or misconduct;
 - 30.4.4 has committed a breach of any policy, practice or procedure applicable to TTL;
 - 30.4.5 has failed to complete appropriate training pursuant to the requirements of the Training Log or otherwise;
 - 30.4.6 has performed his or her duties to an unsatisfactory standard;
 - 30.4.7 has engaged in any conduct which is prejudicial to health and/or safety or

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has failed to carry out or has failed or refused to undergo adequate safety training; and/or

30.4.8 has committed an offence involving fraud or other dishonesty or violence or has been charged with such an offence,

and in such circumstances TTL may require the Contractor to replace such member of Contractor Personnel with a competent substitute forthwith.

30.5 The Contractor shall have no claim against TTL to the extent that access to TTL Sites and/or Assets is denied in one or more of the circumstances set out at Clause 30.4 above.

30.6 If the Contractor replaces any Contractor Personnel for whatever reason and whether temporarily or permanently (including pursuant to Clauses 30.3 or 30.4 above), the cost of effecting such replacement shall be borne solely by the Contractor (including any costs of training, induction or other efforts involved in bringing the replacement up to the requisite level of knowledge and skill).

31. KEY PERSONNEL

31.1 The Contractor shall make available for the provision of the Services the services of the Key Personnel and shall ensure that each member of Key Personnel devotes his or her time and effort to the performance of the Services, as set out in Schedule 8.1 (Organisation and Governance). Without prejudice to the provisions of Schedule 8.1 (Organisation and Governance), the Contractor shall procure that the Key Personnel:

31.1.1 diligently supervise the performance of the Services;

31.1.2 attend all contract meetings with TTL at such times and in such locations as TTL may require; and

31.1.3 make themselves available to TTL to resolve any issues arising in connection with the provision of the Services.

31.2 The Contractor acknowledges that the Key Personnel are essential to the provision of the Services and (without prejudice to Clause 30.1) shall ensure that all Key Personnel have appropriate relevant work experience.

31.3 Without prejudice to TTL's rights under Clause 35 (Access to Sites) and Clause 54 (Rights and Obligations of TTL), the Contractor shall obtain the prior written consent of TTL (not to be unreasonably withheld) before appointing any Key Personnel.

31.4 The Contractor shall take all reasonable steps to ensure that it retains all members of Key Personnel and shall not remove or replace Key Personnel or change the duties of Key Personnel without TTL's prior written consent (except that such consent is not required where such removal or replacement or change is due to the Good Cause Dismissal, resignation, long-term illness or absence of any member of Key Personnel or is in accordance with Clauses 30.3 or 30.4 above). The Contractor shall use reasonable endeavours to provide at least three (3) Periods' notice to TTL of its intention to remove or replace any member of Key Personnel or to make any change to the duties of such member of Key Personnel.

31.5 The performance of each member of Key Personnel may be evaluated and scored by TTL on an annual basis in accordance with a pre-agreed score card.

32. TRAINING

32.1 The Contractor shall provide or procure the provision of appropriate training for

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Contractor Personnel and Operator Personnel in respect of all aspects of its performance of the Contract in accordance with Schedule 8.6 (Training).

33. LONDON LIVING WAGE

33.1 The Contractor will comply with the provisions set out in paragraph 5.3 of Schedule 12.2 (Value for Money) in order to ensure amongst other things, that all London Living Wage Employees are paid no less than the London Living Wage.

34. NON-SOLICITATION

34.1 Subject to Clause 34.2, for the Term and for twelve (12) months thereafter, neither Party shall, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:

34.1.1 solicit, induce or entice away or endeavour to solicit, induce or entice away or cause to be solicited, induced or enticed away from the other Party or any of its Affiliates; and/or

34.1.2 employ, engage or appoint,

any person employed by or contracted to the other Party or any of its Affiliates, whether or not such person would breach his or her contract of employment or engagement by leaving that Party or any relevant Affiliate.

34.2 The restriction at Clause 34.1 shall not apply:

34.2.1 if an individual is employed, engaged or appointed as a result of a response by or on behalf of that individual to a public advertisement;

34.2.2 if an individual is employed, engaged or appointed as a result of the operation of TUPE; or

34.2.3 if, at the date upon which the offer of employment, engagement or appointment is made, the Party making such offer had no material confidential information in relation to such individual (including in relation to the individual's experience, attributes or remuneration) and if the Party had not worked with the individual at any time in the twelve (12) months prior to the Party making the offer of employment, engagement or appointment.

PREMISES AND EQUIPMENT

35. ACCESS TO SITES

35.1 The Parties shall comply with their respective access requirements and other obligations set out in Schedule 8.4 (Access Management) in order to ensure, amongst other things, that:

35.1.1 the Contractor can gain access to the TTL Sites to perform its obligations under this Contract with minimal impact on the operation of those TTL Sites, the System and provision of the Services; and

35.1.2 TTL (and its nominees) can gain access to the Contractor Sites to exercise its rights under this Contract with minimal impact on the operation of those Sites, the System and provision of the Services.

35.2 TTL shall, as a Dependency, secure the agreement of each Site Operator to enable access to the TTL Sites by the Contractor except where:

35.2.1 TTL fails to secure the agreement of a Site Operator to enable access to the TTL Sites by the Contractor; or

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35.2.2 the Contractor is otherwise unable to access a TTL Site, in either case as a (direct or indirect) result of the Contractor's failure to perform one or more of its obligations under this Contract.

35.3 The Parties shall enter into the Baker Street Lease and TTL shall procure that LUL enters into the Baker Street Lease on or before the Service Commencement Date.

PART C: GENERAL TERMS

COMMERCIAL MANAGEMENT

36. CHARGES

36.1 General

36.1.1 In consideration for the Contractor carrying out its obligations, including the provision of the Services by the Contractor in accordance with this Contract, TTL shall pay the Charges to the Contractor. Subject to indexation in accordance with Clause 37 (Indexation), and unless expressly provided otherwise under this Contract, the Charges shall be fixed for the Term.

36.1.2 No payment made by TTL pursuant to this Clause 36 or any act or omission or approval by TTL shall:

(A) indicate or be taken to indicate TTL's acceptance or approval of the Services or any part of the Services or any act or omission of the Contractor, or otherwise prejudice any rights, powers or remedies which TTL may have against the Contractor under this Contract; or

(B) prevent TTL from recovering any amount overpaid or wrongfully paid to the Contractor.

36.1.3 Without prejudice to the other provisions of this Contract, and except where expressly stated otherwise, the Charges will be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Contractor in discharging its obligations under this Contract.

36.2 Financial Model

The Contractor shall maintain the Financial Model in accordance with paragraphs 2, 3 and 5 of Schedule 12.1 (Charges and the Financial Model).

36.3 Financial Report

The Contractor shall develop, deliver to TTL and maintain the Period Cost Report and the Financial Report in accordance with paragraph 3 of Schedule 12.2 (Value for Money).

36.4 Invoicing

36.4.1 The Contractor shall invoice TTL in arrears for amounts due pursuant to Clause 36.1 and paragraph 6 of Schedule 12.1 (Charges and the Financial Model) in respect of each Period in accordance with the invoicing requirements set out in Schedule 12.1 (Charges and the Financial Model).

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36.4.2 Subject to the following section of the paragraph, TTL shall pay the amount set out in a correct and complete Invoice by bank transfer or such other method as TTL may choose from time to time within fifteen (15) Business Days of receipt of the Invoice: if any part of an Invoice is disputed by TTL, then the Contractor shall cancel that Invoice and issue an Invoice for the undisputed amount.

36.5 Interest

Interest shall accrue at the interest rate of two per cent (2%) above the base London Inter-Bank Offered Rate (LIBOR) 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 judgment). 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.

36.6 Payments in Error

Without prejudice to TTL's other rights or remedies under the Contract, if at any time it becomes apparent (whether through an audit in accordance with Clause 65 (Records, Audit and Inspection), a reconciliation of Charges or otherwise) that an incorrect amount has been paid by TTL to the Contractor then:

36.6.1 if TTL has overpaid any amounts, the Contractor will promptly notify TTL and/or TTL will promptly notify the Contractor, in each case upon becoming aware of such overpaid amounts. Such overpaid amounts will then be deducted from any payment due from TTL to the Contractor in the relevant following Period Invoice and will be separately identified in such Invoice. Where no further Invoices are due under this Contract, or the amount of such overpaid amounts exceeds the total amount payable under any further Invoices due under this Contract, the Contractor will pay such overpaid amounts to TTL within thirty (30) days of the date of the earliest notification of such overpayment; or

36.6.2 if TTL has been undercharged by the Contractor for any Charges, TTL shall make an appropriate correcting payment to the Contractor within thirty (30) days of receipt of a correct and complete Invoice provided that:

- (A) TTL shall not be responsible for paying interest in accordance with Clause 36.5 (Interest) on any such undercharged amounts; and
- (B) TTL shall not be obliged to pay any amounts which were incurred more than thirteen (13) Periods prior to the date that the amount was notified to TTL.

37. INDEXATION

All sums expressly set out in this Contract as being subject to indexation shall be adjusted annually in accordance with paragraph 5.2 of Schedule 12.2 (Value for Money).

38. TAX

38.1 If any amount paid or due by either Party under an indemnity under this Contract is a taxable receipt of the relevant Party then the amount so paid or due (the "**Net Amount**") shall be increased to an amount which, after subtraction of the amount of any tax on such increased amount which arises, or would arise but for the

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availability of any relief from tax on TTL or the Contractor (as the context requires), shall equal the Net Amount provided that if any payment is initially made on the basis that the amount due is not taxable in the hands of TTL and it is subsequently determined that it is, or vice versa, appropriate adjustments shall be made between TTL and the Contractor.

38.2 All payments due to either Party (except those detailed in Clause 38.1) shall be calculated without any deduction or withholding for any applicable taxes unless such deduction or withholding is required by applicable Law.

38.3 The Parties agree that:

38.3.1 all sums payable under or pursuant to this Contract are exclusive of VAT (if any). Accordingly, where any taxable supply for VAT purposes is made under or in connection with this Contract by one Party to another, the recipient of that supply shall, in addition to any payment due for that supply, pay to the supplier such VAT as is chargeable in accordance with applicable Law in respect of the supply at the same time as payment is made or in any other case when demanded by the supplier, provided that the payee has provided the payer with a valid VAT invoice in respect of any payment of VAT; and

38.3.2 if any payment in respect of VAT is made under this Contract in circumstances where VAT was not properly chargeable, then, where the supplier has accounted for such VAT to HM Revenue & Customs, the supplier's obligation to repay any amount to the payer shall be limited to such amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue & Customs in respect of the VAT wrongly paid.

38.4 The Contractor shall indemnify TTL and keep TTL indemnified against any and all liability, including any interest, penalties or costs, incurred by TTL at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract.

39. SET-OFF

39.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by TTL or any member of the TTL Group arising out of or attributable to this Contract may be deducted by TTL or any member of the TTL Group from monies due or which may become due to the Contractor under this Contract.

39.2 All amounts due under this Contract shall be paid by the Contractor to TTL in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

40. BENCHMARKING

TTL shall have the rights and the Contractor shall have the obligations as set out in paragraph 6 of Schedule 12.2 (Value for Money).

41. VALUE FOR MONEY AND OPEN BOOK

TTL shall have the rights and the Contractor shall comply with its obligations as set out in Schedule 12.2 (Value for Money) in order to deliver VfM to TTL in the performance of this Contract.

42. **EXCESS PROFIT**

In respect of each Contractor Financial Year, the Contractor shall pay to TTL the Excess Profit Amount, if any, calculated in accordance with paragraph 4 of Schedule 12.2 (Value for Money) in order to ensure that the profits earned by the Contractor under this Contract do not exceed a level that is fair and reasonable.

43. **DISCRETIONARY RELATIONSHIP BONUS**

43.1 TTL may, in its sole discretion, award an annual relationship bonus to the Contractor of up to [REDACTED] (the "Relationship Bonus").

43.2 The award of any Relationship Bonus will be based on an annual assessment of the Contractor's performance against and achievement of prescribed Relationship Indicators.

43.3 The "Relationship Indicators" for the first Contract Year shall be set by the TCM, and for each year thereafter shall be notified to the Contractor by TTL no later than one (1) Period prior to the start of each such year. Relationship Indicators will be set to encourage the Contractor to work collaboratively, demonstrate drive and commitment, and operate in a pro-active solution-focussed manner which is aligned with TTL's Objectives and achieves a cultural fit with TTL and the wider Transport for London organisation. TTL will have absolute and sole discretion in setting and revising the Relationship Indicators.

43.4 TTL will score the Contractor's performance against and achievement of such Relationship Indicators annually. Notwithstanding the Contractor's performance and achievement of some or all prescribed Relationship Indicators, and the scores achieved, TTL shall be under no obligation to award part or all of the available Relationship Bonus to the Contractor.

44. **CONTRACT VARIATION**

The Parties shall have the rights and obligations as set out in Schedule 12.3 (Contract Variation Procedure) in order to ensure, amongst other things, the timely and effective consideration and/or implementation of Variations with the common aim of continually developing and expanding the System and the Services.

45. **FINANCIAL DISTRESS**

The Contractor shall, and shall procure that the Guarantor and each Category 1A Core Sub-Contractor shall, comply with the financial distress obligations set out in Schedule 13 (Financial Distress) in order to ensure, monitor, maintain and minimise the impact of any deterioration in the financial standing of the Contractor, the Guarantor and each Category 1A Core Sub-Contractor.

46. **RELIEF EVENTS**

46.1 Where the Contractor fails to perform its obligations under this Contract, or TTL or the Existing Contractor fails to fulfil a Dependency expressly set out in this Contract, then if, and only to the extent that, the Contractor can demonstrate to TTL's reasonable satisfaction that:

46.1.1 the failure results directly from failure to fulfil a Dependency or Existing Contractor Dependency ("**Dependency Failure**");

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- 46.1.2 it has provided TTL (and the Existing Contractor, if applicable):
- (A) (where the Dependency Failure is reasonably foreseeable) with the earliest possible advance written notice of the circumstances which may lead to such Dependency Failure so as to allow TTL and/or the Existing Contractor (as applicable) to attempt to prevent that Dependency Failure; and
 - (B) with prompt notice of the occurrence of such Dependency Failure so as to give TTL or the Existing Contractor (as applicable), where possible, a reasonable opportunity to remedy or to mitigate the impact of the Dependency Failure, such notice to be supplemented in all cases with written notice of such Dependency Failure being given to TTL (and the Existing Contractor, if applicable) within three (3) Business Days of the Contractor becoming aware of the occurrence of such Dependency Failure;
- 46.1.3 it has otherwise complied with its obligations under this Contract relating to the Dependency Failure, including its obligations to co-operate with the Existing Contractor and any other Third Parties;
- 46.1.4 it has used or will use (as appropriate) all reasonable efforts to perform its obligations under this Contract notwithstanding the Dependency Failure and has mitigated (or will mitigate) as far as possible the impact of the Dependency Failure on the provision of the Services; and
- 46.1.5 it has maintained and operated all contingency plans as it is required to maintain and operate under this Contract or as it would reasonably be expected to maintain and operate acting in accordance with Good Industry Practice,

then a "**Relief Event**" shall occur.

46.2 The Contractor shall, as soon as is reasonably practicable but in any event within five (5) Business Days of the date of the Contractor initially notifying TTL of the occurrence of a Dependency Failure pursuant to Clause 46.1.2(B) above, provide to TTL full details of:

- 46.2.1 the cause and extent of the Dependency Failure on the Contractor's ability to perform its obligations under this Contract; and
- 46.2.2 any measures, options, workarounds or solutions that the Contractor proposes to adopt to reduce the effects of the Dependency Failure and to enable the Contractor to comply, or resume compliance, with its obligations under this Contract, including:
- (A) a recommendation as to the best course of action that it considers should be taken, acting in accordance with Good Industry Practice;
 - (B) an estimate of any additional time required to achieve or resume such compliance; and
 - (C) an estimate of any Incremental Costs that it will incur in connection with its recommended course of action,

the "**Relief Event Proposal**".

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46.3 TTL will promptly consider the Relief Event Proposal and, as soon as is reasonably practicable but in any event within five (5) Business Days of receipt of the Relief Event Proposal, will respond to the Contractor in writing:

46.3.1 requesting such additional supporting information as TTL considers necessary to be provided, and the Contractor shall provide such requested supporting information to TTL as soon as is reasonably practicable and in any event within five (5) Business Days of receipt of such request. If such requested supporting information cannot be provided, or cannot be provided within this timeframe, the Contractor shall notify TTL in writing with details of:

- (A) the requested supporting information that cannot be provided;
- (B) the reasons why such requested supporting information cannot be provided; and
- (C) whether it will be possible to provide such supporting information at a later date, and if so, when that would be; or

46.3.2 identifying the course of action the Contractor must take, and the Contractor shall proceed with the adoption and implementation of such course of action, provided always that the principles set out in Clause 46.4 shall apply.

In the event that TTL responds to the Relief Event Proposal in accordance with Clause 46.3.1, Clause 46.3 shall apply on the basis that TTL must respond within five (5) Business Days of receipt of such additional supporting information. If TTL fails to respond to the Contractor within the timeframe set out in Clause 46.3, the Contractor shall be entitled to proceed with the adoption and implementation of the course of action it recommended in the relevant Relief Event Proposal, except in the case of an Emergency Change where the Contractor shall be entitled to proceed in accordance with the provisions of Schedule 10.1 (Change Management).

46.4 Where a Relief Event occurs, then provided the Contractor has complied with this Clause 46 and its other obligations under this Contract, the Contractor shall be entitled:

46.4.1 to recover from TTL its direct Incremental Costs incurred in respect of such Relief Event if, and only to the extent that;

- (A) the Contractor demonstrates to TTL's reasonable satisfaction that the relevant Dependency Failure directly caused the Contractor to incur such Incremental Costs;
- (B) the Contractor's total Incremental Costs directly incurred in relation to that Relief Event are greater than [REDACTED] subject to Indexation;
- (C) the Contractor provided an estimate of such Incremental Costs in its Relief Event Proposal;

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- (D) the Contractor provides evidence to TTL's reasonable satisfaction of such Incremental Costs actually being incurred by the Contractor; and
- (E) the Contractor has taken all reasonable steps to mitigate and minimise such Incremental Costs, including having consulted with TTL in relation thereto,

such Incremental Costs being the "**Relief Event Costs**" associated with that Relief Event; and/or

- 46.4.2 to an extension of time as may be reasonable in the circumstances for the performance of its obligations under this Contract that have been impacted by the relevant Dependency Failure, in which case the extension of time set out in TTL's response to the Contractor's Relief Event Proposal provided in accordance with Clause 46.3.2 or, if no such response is provided within the required timeframe, as set out in the Contractor's Relief Event Proposal, shall be granted.
- 46.5 Any extension of time for the performance of certain of the Contractor's obligations under this Contract granted to the Contractor under this Clause 46 shall not of itself entitle the Contractor to any extension of time for the performance of the Contractor's other obligations under this Contract.
- 46.6 Any Relief Event Costs recovered and/or extension of time granted under Clause 46.4 shall be in full compensation and satisfaction of any and all Losses, costs and/or other liabilities sustained or sustainable by the Contractor in respect of the relevant Relief Event, and the remedies set out in this Clause 46 (Relief Events) shall be the only remedies available to the Contractor in respect of any Losses suffered by the Contractor in connection with a Dependency Failure, whether in contract, tort or, to the extent legally permitted, under applicable Law.

STEP-IN, CHANGE OF LAW AND FORCE MAJEURE

47. ENHANCED CO-OPERATION

- 47.1 If the Contractor is not performing any of its obligations under this Contract, including failing to meet the Service Levels, TTL may by notice to the Contractor require the Contractor to engage in enhanced co-operation in accordance with Clause 47.2 at no additional cost to TTL.
- 47.2 Where TTL has issued a notice to the Contractor in accordance with Clause 47.1, the Contractor shall continue to perform all of its obligations under this Contract and shall:
 - 47.2.1 devote all necessary Contractor Personnel and resources to the resolution of the breach or failure to ensure that the breach or failure is resolved immediately;
 - 47.2.2 immediately provide TTL with such information (in addition to any information required to be provided under the other provisions of this Contract) as TTL may reasonably request, or requires in order to fully understand the nature and causes of the breach or failure and the action that has been taken or is considered being taken by the Contractor to rectify the breach or failure;

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- 47.2.3 promptly give or procure for TTL access to Contractor Personnel responsible for causing and/or rectifying the breach or failure;
 - 47.2.4 permit TTL to attend Contractor Sites upon notice during normal working hours to observe and monitor the Contractor's performance of its obligations under this Contract and implementation of any remedial plan or service improvement plan;
 - 47.2.5 co-operate and promptly meet with TTL to agree on a strategy to be implemented by the Contractor for the resolution of that breach or failure;
 - 47.2.6 notify TTL of internal meetings of the Contractor relating to the planning and implementation of that strategy and allow TTL to attend such meetings;
 - 47.2.7 report to TTL on a daily basis on the Contractor's progress against the strategy implemented by the Contractor;
 - 47.2.8 promptly notify TTL of any changes to the strategy from time to time and the reasons for those changes; and
 - 47.2.9 make any further changes to the strategy from time to time which TTL considers are necessary to remedy the relevant breach or failure.
- 47.3 The exercise by TTL of its rights under Clause 47.2 is without prejudice to any other rights or remedies which it may have under this Contract. TTL may exercise its rights pursuant to Clause 47.2 prior to completion of any remedial plan or service improvement plan.
- 47.4 The Contractor shall consult and cooperate with any Third Party nominated by TTL in relation to the exercise of TTL's rights under Clause 47.2.
- 47.5 The exercise of TTL's rights under Clause 47.2 shall not prejudice the Contractor's obligation to satisfactorily and expeditiously resolve any Contractor breach or failure.
48. **STEP IN**
- 48.1 Without prejudice to any other right or remedy of TTL under this Contract, if TTL serves notice to terminate this Contract pursuant to Clause 78 (TTL's Termination Rights), TTL may serve notice in writing on the Contractor specifying:
- 48.1.1 which of the circumstances set out in Clause 78 (TTL's Termination Rights) applies;
 - 48.1.2 the action TTL intends to take and the reason for such action;
 - 48.1.3 the date on which TTL intends to commence such action, which may be the date that the Step-In Notice is served;
 - 48.1.4 the time period which it believes will be reasonably necessary for such action; and
 - 48.1.5 the Contractor's obligations under the Contract that TTL chooses to waive, pursuant to Clause 48.7.2,
- (a "**Step-In Notice**").

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- 48.2 At any time after TTL has issued a Step-In Notice, TTL may, for such period as TTL deems necessary, itself take such action, or appoint one or more Third Parties to take such action (and any consequential additional action as it believes necessary) as TTL considers appropriate (each, a "**Step-In Action**"). Without limitation to the generality of the foregoing, a Step-in Action may include:
- 48.2.1 taking over any or all or any part of the Services as specified in the Step-In Notice. If and to the extent that TTL expressly confirms in the Step-In Notice that it is taking over such Services, the obligation of the Contractor to provide such Services shall be suspended as specified in the Step-In Notice. The Contractor shall continue to provide the Services which are not the subject of the Step-In Action in accordance with the provisions of the Contract;
 - 48.2.2 entering the Contractor Sites (and the Contractor shall procure that TTL and any Third Party engaged by TTL is able to enter the Contractor Sites at no cost to TTL or to such Third Party);
 - 48.2.3 having access to, and the right to use the System and all records, documents (including but not limited to Documentation) and Data relevant to the provision of the Services;
 - 48.2.4 using, accessing, testing, operating and doing all such things as may be required by TTL in respect of any Proprietary Tools. The Contractor hereby grants to TTL and any Third Party engaged by TTL (and shall procure that its Sub-Contractors shall grant) such rights as are necessary for TTL or any Third Party to exercise its rights under this Clause 48;
 - 48.2.5 requiring the Contractor to use all reasonable endeavours to retain Key Personnel during the period of the Step-In Action;
 - 48.2.6 identifying any Sub-Contracts that TTL requires the Contractor to assign or novate to TTL in which case the Contractor shall promptly take all necessary steps to give effect to any such assignment or novation; and/or
 - 48.2.7 doing all other things that TTL deems necessary for the purposes of taking such Step-In Action including entering into legally binding agreements with Third Parties for and on behalf of the Contractor ("**Arrangements**") and, unless and until a Step-Out Notice is served on the Contractor by TTL, the Contractor shall not do, permit to be done, omit to do or permit not to be done, anything which will or may terminate or breach the terms of such Arrangements.
- 48.3 If TTL wishes to engage the services of any Third Party to assist it in the performance of the Step-in Action, TTL shall notify the Contractor of such Third Party. If such Third Party is to be granted access to any Confidential Information of the Contractor, TTL shall procure that the Third Party enters into a confidentiality agreement substantially in the form set out in Schedule 21.1 (Form of Confidentiality Undertaking) prior to being engaged in any Step-in Action.
- 48.4 The Contractor shall co-operate fully with TTL in relation to any Step-in Action and shall provide all requested assistance for the purposes of or relating to the Step-In Action including:

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- 48.4.1 providing access to or copies of Data and such other financial, operational, management or other information as requested by TTL relevant to the provision of the Services;
 - 48.4.2 providing access to and the right to use its equipment, facilities and Proprietary Tools; and
 - 48.4.3 procuring the prompt assistance and availability of all relevant Contractor Personnel.
- 48.5 In relation to each Step-In Action the Contractor shall indemnify TTL for all expense, cost, liability, loss, damage, actions, demands, claims or proceedings (including all legal fees and expenses on a full indemnity basis) which TTL reasonably incurs or suffers in relation to such Step-In Action (including reasonably allocated overheads and other internal costs and all advisers and legal fees).
- 48.6 Where TTL exercises its rights under Clause 48.2, TTL shall indemnify the Contractor against loss or damage to the extent suffered or incurred by the Contractor as a direct result of the negligent or reckless acts or omissions of TTL or of any Third Party or other alternative source engaged by TTL pursuant to Clause 48.2 in carrying out any and all Step-In Actions up to a maximum of [REDACTED]).
- 48.7 For so long as the Step-in Action is taken and the Contractor complies with Clause 48.4:
- 48.7.1 the Contractor shall continue to be paid the Charges, against which the following shall be set-off:
 - (A) an amount equal to the Service Credits arising as a result of the Contractor's failure to perform the Services and/or meet the Service Levels to which the Step-In Action relates for each Period during which the Step-In Action is taken;
 - (B) all other deductions which TTL is entitled to make from such Charges under this Contract; and
 - (C) all costs and expenses due in accordance with Clause 48.5 (as applicable);
 - 48.7.2 TTL shall waive those of the Contractor's obligations under the Contract that the Contractor reasonably demonstrates should not be required to be performed by the Contractor as a result of the Step-In Action being performed;
 - 48.7.3 TTL shall, in relation to the exercise of its rights pursuant to this Clause 48 act in a reasonable and proportionate manner taking into account the gravity and extent of the Contractor's relevant obligations being carried out under such Step-In Action; and
 - 48.7.4 TTL shall, as a Dependency, perform or procure the proper performance of the Step-In Action.
- 48.8 If and to the extent that the aggregate deductions referred to in Clause 48.6, exceed the aggregate amount of Charges, the Contractor shall promptly upon demand pay to TTL a sum equal to the difference.

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- 48.9 Neither TTL nor any Third Party engaged by TTL in accordance with this Clause 48 shall have any liability to the Contractor for any damage which has occurred prior to the date specified in TTL's Step-In Notice for commencement of Step-In Action and which has either been caused by the Contractor or for which the Contractor is otherwise liable, or which results from a breach by the Contractor of its obligations under this Contract, and the Contractor shall indemnify TTL for all and any expense, cost, liability, loss, damage, actions, demands, claims or proceedings (including all legal fees and expenses on a full indemnity basis) which TTL or a Third Party incurs or suffers as a consequence of, or would not have arisen but for, such damage and/or such breach by the Contractor.
- 48.10 Without prejudice to TTL's right to exercise its Step-In Rights and/or its continuing right to remain stepped-in once Step-In Action has been taken:
- 48.10.1 the Contractor shall, if requested to do so in the Step-In Notice or as notified to the Contractor by TTL from time to time during the period of Step-In Action, promptly develop and put forward to TTL proposals demonstrating that the Contractor is and will continue to be capable of providing the Services in respect of which Step-In Action has been, or may be, taken together with what steps, if any, the Contractor proposes taking;
- 48.10.2 upon receipt of the Contractor's proposals, TTL may, if TTL in its sole discretion deems it appropriate, subject to such conditions as TTL deems appropriate and in any event without prejudice to TTL's rights under this Clause 48, permit the Contractor to continue to perform or recommence, as appropriate, performance of all or part of the Services in respect of which the Step-In Action has been taken;
- 48.10.3 any permission given under Clause 48.10.2 shall be set out in a notice to the Contractor (a "**Step-Out Notice**") informing the Contractor that from the date specified in such Step-Out Notice, the Contractor shall continue to perform or recommence performance, as appropriate, of all or part of the Services in respect of which the Step-In Rights were exercised and TTL will withdraw its own Personnel (and any Personnel of Third Parties appointed by TTL as referred to in Clause 48.2) from such parts of the Services as the Contractor is to recommence performance. The Contractor shall resume full performance of and responsibility for the provision of such parts of the Services from the date specified in the Step-Out Notice; and
- 48.10.4 TTL may, in its absolute discretion, include in the Step-Out Notice a requirement for the Contractor to submit a detailed plan for its resumption of the performance of responsibility for the provision of such parts of the Services, and to demonstrate its ongoing compliance with the Step-Out Notice and such plan.
- 48.11 Notwithstanding the foregoing, TTL may, at its sole discretion, decide at any time that it is inappropriate for TTL to continue with its Step-In Action or that the grounds for the exercise of its rights under Clause 48.2 no longer exist in respect of all or any part of the suspended Services and may serve a Step-Out Notice specifying:
- 48.11.1 the parts of the Services in respect of which the Contractor is to resume full performance; and

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- 48.11.2 the date on which the Contractor's provision of and responsibility for such Services is to resume,
in which case the notice to terminate this Contract which gave rise to the Step-In Action shall be deemed to be amended so as not to apply to those Services set out in the Step-Out Notice.
- 48.12 TTL may issue more than one Step-Out Notice in relation to Services affected by a single Step-In Notice and TTL may require the Contractor to recommence the provision of suspended Services in their entirety, partially or gradually.
- 48.13 The Contractor shall comply fully with the terms of any Step-Out Notice.
- 48.14 Without prejudice to any other rights TTL may have to terminate this Contract, TTL shall be entitled in its sole discretion to issue a TTL Required Variation, in relation to the Services it provides through its Step-in Actions, except that in the event of such Variation, the Contractor shall not be entitled to recover, and TTL shall not be required to make any payments to the Contractor resulting from such Variation, including in respect of the Contractor's loss of profit or loss of revenue.
- 48.15 References (however worded) in this Clause 48 to any steps or action being taken by TTL under this Clause 48 are references to such steps or action being taken either by TTL itself or by persons engaged by TTL for that purpose.
- 48.16 The issuing of a Step-In Notice and taking of Step-In Action by TTL:
- 48.16.1 shall not give the Contractor the right to terminate this Contract; and
- 48.16.2 shall be without prejudice to TTL's right to terminate this Contract or to partially terminate in accordance with Clauses 78 (TTL's Termination Rights) and 80 (Partial Termination), whether the event permitting TTL to do so arose before, on or after the date of the Step-In Notice.
- 48.17 Other than as provided for in Clause 48.6, TTL shall not be liable for any cost, loss, damage or claim suffered or incurred by the Contractor or any Sub-Contractor arising from any deterioration in any elements of the System and/or the Services operated by it whilst taking the Step-in Action.
- 48.18 TTL shall use reasonable endeavours not to disturb or adversely affect the provision of the Services more than is required for the purposes of the Step-in Action.
- 49. CHANGE OF LAW**
- 49.1 If a Change of Law results directly in an increase in the Contractor's costs for providing the Services, the Parties shall implement a Variation whereby TTL compensates the Contractor for such increase resulting from such Change of Law.
- 49.2 If a Change of Law results directly in a reduction in the Contractor's costs for providing the Services, the Parties shall implement a Variation whereby the Contractor compensates TTL for such reduction resulting from such Change of Law.
- 49.3 For the purposes of Clauses 49.1 and 49.2, the Contractor shall use all reasonable endeavours to minimise any increase in costs and to maximise any decrease in costs incurred in connection with a Change of Law.
- 49.4 As soon as is reasonably practicable prior to a Change of Law which would bring about a change in the Contractor's costs, the Contractor shall notify TTL of such a

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Change of Law (or TTL may itself notify the Contractor without prejudice to the Contractor's obligation to notify TTL) and the Contractor shall provide such information as TTL requires about the effect of such Change of Law on the Contractor's costs (including giving all details in this respect as are required to be given pursuant to Clause 44 (Contract Variation)).

49.5 If the Parties fail to agree the financial consequences of a Change of Law, either Party may refer the Dispute for determination in accordance with the provisions of Schedule 15 (Dispute Resolution Procedure).

49.6 Except as expressly set out in this Contract, an event shall not constitute a Change of Law (and the Contractor's obligation to comply with any changes to applicable Law at no additional cost to TTL pursuant to Clause 49.7 will apply) if and to the extent:

49.6.1 it does not relate to the provision of passenger transport services by railway (including underground, overground, light rail and tram) and bus services, including changes in Law relating to taxation, data protection, disability discrimination and employment; or

49.6.2 on the Date of Contract:

(A) the proposed change has been published in substantially the same form as such Law takes when it has legal effect; or

(B) the Contractor knew, or should have known acting in accordance with Good Industry Practice, of such change in Law.

49.7 Except as set out in this Clause 49 (Change of Law), the Contractor's compliance with applicable Law, as required under this Contract (including in accordance with Clause 68 (Compliance with applicable Laws and TTL Policies)), including any changes to such applicable Law, shall be at no additional cost to TTL.

50. FORCE MAJEURE

50.1 Subject to Clause 50.3, neither Party shall be deemed to be in breach of this Contract or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Contract if and to the extent that such delay or failure is due to the occurrence of a Force Majeure Event.

50.2 If the Contractor alone is affected by the Force Majeure Event, TTL shall be relieved from any obligation to make payments to be provided under this Contract to the Contractor for so long as the same continues, except in respect of Services which have been actually supplied.

50.3 The Contractor shall not be entitled to rely on Clause 50.1 if and to the extent that the Contractor has failed to comply with the Service Recovery Plan.

50.4 A Party whose performance of its obligations under this Contract is delayed or prevented by a Force Majeure Event:

50.4.1 shall forthwith notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event. As soon as possible following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of this Contract;

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50.4.2 shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Contract including:

- (A) compliance with the Service Recovery Plan (in the case of the Contractor); and
- (B) the making of any alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense; and

50.4.3 shall forthwith after the cessation of the Force Majeure Event, notify the other Party thereof and resume full performance of its obligations under this Contract.

50.5 If, on the expiry of eighty four (84) days after the occurrence of a Force Majeure Event where the Contractor is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on the Contractor's performance of all or substantially all of the Services then, provided that such Force Majeure Event continues and has that effect, at any time thereafter TTL shall have the right to terminate this Contract in its entirety or may partially terminate in accordance with Clauses 78 (TTL's Termination Rights) or 80 (Partial Termination), respectively.

OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY RIGHTS

51. INTELLECTUAL PROPERTY RIGHTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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Revenue Collection Services
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[Redacted]

CONTRACT MANAGEMENT, GOVERNANCE AND DISPUTE RESOLUTION

53. CONTRACT MANAGEMENT

53.1 The Parties shall have the relevant rights and obligations set out in Schedules 8.1

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(Organisation and Governance) and 12.4 (Contract Management) in order to ensure, amongst other things, the robust, efficient and disciplined performance of this Contract.

The Contract Managers

- 53.2 The Parties shall each appoint a Contract Manager (the "TCM" in the case of TTL and the "CCM" in the case of the Contractor) in accordance with Schedule 8.1 (Organisation & Governance) to, amongst other things, administer and direct the performance of this Contract on behalf of each Party.
- 53.3 The TCM shall be authorised to act as TTL's representative for all purposes of this Contract other than for the purposes of:
- 53.3.1 serving notices pursuant to Clauses 5 (Commencement and Term), 77 (Early Termination by TTL of Pre-determined Services), 78 (TTL's Termination Rights) and 80 (Partial Termination); and
- 53.3.2 authorising the withholding of any disputed [REDACTED] (Charges).
- 53.4 Once TTL has served written notice of revocation or appointment of the TCM on the Contractor, the Contractor will be bound by such written appointment or revocation but not otherwise.
- 53.5 Each Contract Manager may from time to time as he sees fit delegate any of the powers, functions and authorities vested in him to an assistant or assistants or agent and may at any time revoke any such delegation. Any such delegation shall only be to a person that such Contract Manager reasonably considers has appropriate seniority, skill and experience to undertake the tasks delegated to such person. Decisions made by such person may be challenged by the Party who's Contract Manager's powers, functions and/or authorities have not been delegated to such person only to the extent that such Party would have been able to challenge the decision if it had been made by the other Party's Contract Manager. A Party shall not in any circumstances be entitled to challenge the validity of such person's appointment or such person's power and authority to carry out any of the powers, functions or authorities delegated by the other Party's Contract Manager to such person. Any such delegation or revocation shall be in writing signed by the relevant Contract Manager and shall state which power, function or authority is thereby delegated or revoked and the person or persons to whom or from whom the same are delegated or revoked respectively. No such delegation or revocation shall have effect until the other Party receives it in writing. The terms of such written delegated authority or revocation shall be conclusive and the other Party shall have no claim if it relies on or takes instructions or directions from any person in the absence of such written delegated authority or disregarding such written revocation (as the case may be).
- 53.6 The TCM shall exercise such rights, powers, discretions or options as he has under this Contract on behalf of TTL, but in each case (to the extent reasonably practicable) having considered any views of the Contractor which are made known to him in respect of the relevant matter provided that, unless he is expressly required to do so under this Contract, he shall not be bound to solicit such views from the Contractor prior to exercising any such rights, powers, discretions or options.

No Discharge

- 53.7 No act of, or omission by, TTL (whether acting directly or through its TCM, agents or sub-contractors) in performing any of its respective duties under this Contract shall in any way operate to relieve the Contractor of any of its duties, responsibilities, obligations or liabilities under this Contract unless otherwise expressly set out in this Contract.
- 53.8 The giving or issue of any approval, agreement, acceptance, consent or certificate by TTL, the TCM or any other employee, contractor or agent of the TTL Group under, or in connection with, this Contract shall not relieve the Contractor from performance of any obligation under this Contract nor relieve the Contractor from any liability to the TTL Group arising out of, or in any way connected with, the Contractor's performance or non-performance of this Contract. This Clause shall not apply in respect of any instruction given by the TCM or any other duly authorised person that does not affect the performance of the Contractor's obligations. Save as provided above, the Contractor shall be entitled to relief as expressly provided in this Contract or in any Variation implemented pursuant to Clause 44 (Contract Variation).

Exchange of Information

- 53.9 Clauses 53.9 to 53.14 are intended to assist the TTL Group in being able to take over the management and/or operation of the System, the IRC System and/or Services or any part or replacement thereof, or to appoint a Third Party to do so, when expressly permitted under this Contract. These Clauses are not intended to govern the requirements for regular reporting and meetings in order to administer this Contract including to deal with actual or possible Variations from time to time. These Clauses are also intended to operate in addition to the provisions relating to Retendering Support, the Handback Preparation Period and the Handback Period referred to under Clause 82 (Handback of Services).
- 53.10 The Parties (and any nominees appointed from time to time) shall, no less than every six (6) months during the Term, meet and brief each other fully on the Services, the System, the IRC System and Proprietary Tools (each an "**Information Exchange Session**").
- 53.11 The Parties acknowledge and agree that the objectives of the Information Exchange Sessions for TTL shall be that TTL (and its nominees) shall:
- 53.11.1 be aware of all relevant knowledge, documentation, information, Intellectual Property Rights and Know-How and processes and procedures relating to the provision of Services and the operation and workings of the System and/or the IRC System;
 - 53.11.2 understand the precise nature of the Services the Contractor is providing, and when and how those Services are provided;
 - 53.11.3 be aware of any significant changes to the Contractor's provision of the Services that either occurred since the previous Information Exchange Session or are planned in the next six (6) months;
 - 53.11.4 be able to understand and operate the System and the IRC System and each part thereof;
 - 53.11.5 be able to discuss with the Contractor, and understand from the Contractor the implications of any actual or anticipated New Technologies

and/or New Services; and

- 53.11.6 understand the Services and the use of Proprietary Tools sufficiently to be able to provide the Services or replacement services or appoint a Successor Operator to do so,
(the “**Information Exchange Objectives**”).
- 53.12 The Contractor shall conduct each Information Exchange Session in order to satisfy the Information Exchange Objectives using suitably qualified Connected Persons, to be attended by Personnel of the TTL Group and its nominees (including any Related Contractors, Interfacing Parties and/or Benefitting Parties) that TTL notifies to the Contractor in advance of such session.
- 53.13 The Contractor shall ensure that each Information Exchange Session includes:
- 53.13.1 an overview of and informed updates as to the progress and status of any significant Variations and architectural and technical developments undertaken as part of the Services since the previous Information Exchange Session and advice to TTL as to their potential impact on the Contractor's provision of the Services;
 - 53.13.2 an overview of key decisions and any significant changes (including changes to Contractor's processes, tools, resources and resource skills) in relation to the Contractor's provision of the Services that have been made since the previous Information Exchange Session and advice from the Contractor as to their potential impact on the Contractor's provision of the Services;
 - 53.13.3 an explanation of how the System and the IRC System works and operates;
 - 53.13.4 an explanation of how the Services are delivered;
 - 53.13.5 an overview of the Contractor's plans for the next six (6) months in relation to agreed Variations, application architecture, data architecture and operational and organisational processes;
 - 53.13.6 an overview of potential key decisions it is aware of or considers may need to be made in the next six (6) months by TTL and/or the Contractor in relation to the Services; and
 - 53.13.7 the handover of relevant documentation relating to the Information Exchange Session.
- 53.14 The Contractor shall, upon request from TTL pursuant to Clause 44 (Contract Variation), arrange additional training to that required to be provided pursuant to Clause 32 (Training) and Schedule 8.6 (Training) and/or shadowing of Connected Persons by TTL Group Personnel or nominee Personnel in order to achieve the Information Exchange Objectives.

54. **RIGHTS AND OBLIGATIONS OF TTL**

54.1 **Alterations to the System**

- 54.1.1 Subject to Clause 54.1.2, TTL shall not without the consent of the Contractor (such consent not to be unreasonably withheld or delayed) make any alteration during the Term to the System except in an emergency, in which event, the Contractor shall be entitled to recover its

reasonable costs of restoring any part of the System to its condition prior to the alteration save where the emergency is caused by the Contractor or any of its Sub-Contractors or a failure by the Contractor to comply with its obligations under this Contract, in which case the Contractor shall not be entitled to recover its costs from TTL.

54.1.2 TTL may make alterations to the System:

- (A) if and to the extent necessary to enable TTL to exercise its rights under Clause 48 (Step In) effectively; and
- (B) in any event on or after the relevant End Date (in respect of the relevant aspects of the System to which the Services ceasing on the relevant End Date apply). Nothing in this Clause 54 shall prohibit or restrict TTL's rights under Clauses 11 (Systems Integration), 14 (The System and Maintenance), 21 (Control over Systems Architecture) and 82 (Handback of Services).

54.2 Storage and Travel Permits

54.2.1 TTL shall use reasonable endeavours to make storage facilities at TTL Sites available to the Contractor to the extent that such facilities are available and designated for such purpose from time to time having regard always to safety and operational contingencies.

54.2.2 TTL shall provide travel permits to named employees of the Contractor or its Sub-Contractors free of charge for the sole purpose of enabling those employees to perform the Contractor's obligations under this Contract and subject to such further terms and conditions which TTL may in its absolute discretion impose from time to time.

54.3 Utilities

54.3.1 Subject to Clause 54.3.2, TTL shall provide at its own cost the following for the sole purpose of the performance by the Contractor of its obligations under this Contract:

- (A) electrical and pneumatic power (to the extent that such pneumatic power is required to power Gates as at the Service Commencement Date) and water in each case within the TTL Sites and at the premises specified in the Baker Street Lease to the extent reasonably required by the Contractor to perform the Services;
- (B) access to the communications network for the transmission of data in accordance with the parameters set out in the relevant Interface Specifications for the operation of such Devices and equipment;
- (C) access to TTL's internal telephone network on request;
- (D) access to TTL's staff accommodation, lavatories and washing facilities.

54.3.2 Where, as a result of a Variation, TTL's obligation to provide the services described in Clause 54.3.1 is materially increased and TTL was not notified by the Contractor that the same would occur prior to TTL approving the TTL Proposed Variation or Contractor Proposed Variation,

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then TTL may refuse to incur such additional costs or expenses necessary to provide the increased level of services; and, in addition, TTL's obligation to provide the services described in Clause 54.3.1(D) shall be subject to TTL's right to withdraw such services at TTL's sole discretion where any such services are being abused by the Contractor or any of the Contractor's Sub-Contractors.

54.3.3 TTL shall procure that Operator Personnel use reasonable endeavours, without using any specialist tools (other than any security device provided by the Contractor and required to gain access to an Asset) or specialist training to clear any obstructions or jams to any LU Devices caused by:

- (A) bent coins, damaged notes and other objects (unless that object has been provided by or is maintained by the Contractor, except in circumstances of an error in the use of that object by Operator Personnel); or
- (B) minor acts of vandalism.

54.4 TTL's Overriding Rights

Nothing in this Contract shall restrict TTL in the proper discharge of any statutory duty or discretion or provide the Contractor with any rights in respect of TTL's operation or procurement of public transport passenger services. The Contractor acknowledges in particular, but without limitation, that TTL may at its sole discretion at any time:

54.4.1 determine TTL's fares revision policy including fare levels, dates and frequency of fares increases or decreases or changes to the structure of zones or person specificity or discount structures or time of day routing structures;

54.4.2 undertake and give effect to marketing, advertising and sales strategies to generate revenue in respect of travel on the Transport Network;

54.4.3 negotiate, conclude and implement agreements with operators of other modes of travel and others to provide and market through-ticketing schemes; and

54.4.4 determine the order, times and other terms of access to Stations, provided that to the extent the exercise of such rights, as they relate to access to Stations only, is of a manner that is:

- (A) materially different to that set out in Schedule 8.4 (Access Management); and
- (B) directly prevents the Contractor from being able to perform its obligations under this Contract,

then such exercise shall be treated as if it had been a Dependency Failure and the provisions of Clause 46 (Relief Events) shall apply.

55. NOTICES

55.1 Subject to Clause 55.2 below, a notice (including any approval, consent or other communication) in connection with this Contract:

55.1.1 must be in writing in the English language and signed by or on behalf of the Party giving it; and either

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55.1.2 must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted from a place outside the United Kingdom) to the address of the addressee in each case which is specified in this Clause 55 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each Party at the date of this Contract are:

Transport Trading Limited

Address: Windsor House
42-50 Victoria Street
London
SW1H 0TL

Attention: TTL Contract Manager

with a copy to: General Counsel

Cubic Transportation Systems Limited

Address: AFC House
Honeycrock Lane
Salfords
Redhill
Surrey
RH1 5LA

Attention: Company Secretary

with a copy to:

Address: Cubic Corporation
9333 Balboa Avenue
San Diego
California 92123
USA

Attention: General Counsel

; or

55.1.3 must be sent by electronic mail, in which case, such electronic mail must have clear wording in its "subject" line to indicate that it is a notice given under this Contract and be sent to [REDACTED] and copied to [REDACTED].

55.2 Key Notices must be sent both physically (in accordance with clause 55.1.2 above) and electronically (in accordance with clause 55.1.3 above) in order to be validly delivered.

55.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 55.4 below.

55.4 Subject to Clause 55.5 below, a notice is deemed to be received:

55.4.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

55.4.2 in the case of prepaid recorded delivery, forty-eight (48) hours from the

date of posting; and

55.4.3 in the case of a notice sent by electronic mail, upon receipt of the electronic mail.

55.5 A notice received or deemed to be received in accordance with Clause 55.4 on a day that is not a Business Day, or after 5pm on any Business Day, shall be deemed to be received on the next following Business Day.

55.6 Notwithstanding Clause 55.1.3, where the Contractor intends to give notice to TTL under Clause 55.1.2, the Contractor shall promptly following the decision to give such notice, send an email to TTL at the email address: [REDACTED] (or such other email address as notified to the Contractor from time to time) setting out details of the notice to be given.

56. **DISPUTE RESOLUTION**

56.1 Subject to Clause 96.3 (Governing Law and Jurisdiction), the Parties shall resolve Disputes arising out of or in connection with the Contract in accordance with the Dispute Resolution Procedure.

56.2 Unless the Contract has already been repudiated (and such repudiation has been accepted) or validly terminated in accordance with the provisions of the Contract, the Parties shall continue to carry out their obligations in accordance with the Contract notwithstanding that any Dispute exists and/or has been referred to be resolved in accordance with the Dispute Resolution Procedure.

SUPPLY CHAIN RIGHTS AND ASSIGNMENT

57. **SUB-CONTRACTING**

57.1 Each Party shall comply with its respective obligations under Schedule 7.4 (Sub-Contracting) in order to ensure, amongst other things, a timely, efficient and consistent approach to the appointment of Sub-Contractors that delivers VfM.

57.2 TTL is deemed to have consented to the entry by the Contractor into the Category 1 Sub-Contracts and the Category 2 Sub-Contracts listed in Schedule 7.5 (Approved Sub-Contractors) provided that the Contractor shall ensure that each such Sub-Contract contains the applicable flow down terms in accordance with paragraph 3 and Appendix 1 (Sub-Contract Obligations) of Schedule 7.4 (Sub-Contracting), unless expressly agreed otherwise in writing by TTL.

57.3 Notwithstanding any provisions of this Clause 57 or Schedule 7.4 (Sub-Contracting):

57.3.1 the Contractor shall be liable to TTL for any act or omission of a Sub-Contractor (or a proposed sub-contractor) in connection with this Contract and/or the relevant Sub-Contract; and

57.3.2 the appointment of a Sub-Contractor shall not relieve the Contractor of any of its obligations under the Contract, including the responsibility for ensuring that the Services meet the requirements of the Contract.

57.4 The Contractor shall ensure that any Sub-Contractor has the required technical ability, competence, experience and financial resources to be able to perform its obligations under its respective Sub-Contract satisfactorily.

57.5 TTL may require the Contractor to investigate or procure the investigation of any Sub-Contractor that, in the reasonable opinion of TTL, has perpetrated any misconduct or displayed any incompetence or negligence in the proper performance of its duties under the relevant Sub-Contract. If, in the performance

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of its obligations under the relevant Sub-Contract, any Sub-Contractor:

57.5.1 jeopardises the health, safety or well-being of any TTL Personnel or any other person;

57.5.2 jeopardises the standing and reputation of the TTL Group; or

57.5.3 gives rise to any action being taken for failing to comply with environmental law,

and if, having regard to all the circumstances, it is reasonable to do so, TTL shall, subject to Clause 57.6, be entitled to give notice in writing to the Contractor requiring the immediate cessation by that Sub-Contractor of the performance of the relevant Services, and the Contractor shall immediately procure such cessation.

57.6 TTL shall not be entitled to require the immediate cessation by a Sub-Contractor pursuant to Clause 57.5 if, within five (5) Business Days of receipt of such notice, the Contractor terminates or procures the termination of the relevant Sub-Contract and procures the performance of such part of the Services by itself or another Sub-Contractor.

57.7 The Contractor shall not be excused performance of its obligations under this Contract as a result of:

57.7.1 any action taken by it to remove or procure the removal of such Sub-Contractor pursuant to Clause 57.5; or

57.7.2 any action taken by it pursuant to Clause 57.6.

57.8 In respect of those Sub-Contracts which are required to be assignable or otherwise transferable to TTL or to TTL's nominee without the consent of the relevant Sub-Contractor pursuant to the provisions of this Clause 57 and Schedule 7.4 (Sub-Contracting), the Contractor shall fully indemnify TTL against all expense, liability, loss and claims whatsoever in respect of any claims made against TTL by any relevant Sub-Contractor concerning any breach by the Contractor or any other member of the Contractor Group of the applicable Sub-Contract, where such breach occurred prior to the effective date of novation or transfer (as the case may be) of the applicable Sub-Contract.

58. THIRD PARTY AGREEMENTS

58.1 The Contractor shall perform this Contract in a way that does not preclude, prevent or otherwise hinder any member of the TTL Group from performing any of its obligations under any of the agreements listed in Schedule 7.6 (Third Party Agreements).

58.2 Where, at any time the terms and conditions of any Third Party Agreement are varied by the parties to that agreement then the Contractor shall, subject to Clause 58.3 below, ensure that the performance of its obligations under the Contract does not preclude, prevent or otherwise hinder any member of the TTL Group from performing any of its obligations under the Third Party Agreement which is the subject of that variation. Where TTL determines that compliance by the Contractor with such requirement (including any probable change in relation to any proposed variation to a Third Party Agreement) is likely to materially alter the method by which the Contractor provides the Services and TTL notifies the Contractor of such determination, the Contractor shall consult fully with TTL and provide TTL with such information as TTL may reasonably require so as to ensure that any disruption to the provision of the Services and the impact of such disruption is minimised.

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58.3 Where a variation to a Third Party Agreement arises and there is a change to the Contractor's performance of its obligations under this Contract which:

58.3.1 is required so as not to preclude, prevent or otherwise hinder any member of the TTL Group from performing any of its obligations under such Third Party Agreement; and

58.3.2 increases the cost to the Contractor of providing the Services,

then, subject to the Contractor mitigating such increased costs, such change to the Contractor's performance of its obligations shall be dealt with as a Variation under Clause 44 (Contract Variation).

59. ASSIGNMENT AND NOVATION

59.1 Subject to Schedule 7.4 (Sub-Contracting), the rights and obligations of the Contractor under this Contract are personal to the Contractor and shall not be assigned (whether absolutely or by way of security and whether in whole or in part), novated (in whole or in part), sub-contracted, delegated, transferred, mortgaged, charged, declared in trust for a Third Party, or otherwise disposed of in any manner whatsoever (each of the above a "**dealing**") without the prior written consent of TTL (which may be withheld at TTL's sole discretion). Any such purported dealing in contravention of this Clause 59.1 shall be ineffective and shall constitute a material breach of this Contract for the purposes of Clause 78.1.1.

59.2 Subject to the provisions of Clause 59.3, TTL may not assign (whether absolutely or by way of security and whether in whole or in part), novate (in whole or in part), sub-contract, delegate, transfer, mortgage, charge or otherwise dispose in any manner whatsoever of its rights and obligations under this Contract without the prior written consent of the Contractor (not to be unreasonably withheld, delayed or conditioned).

59.3 TTL may assign (whether absolutely or by way of security and whether in whole or in part), novate (in whole or in part), sub-contract, delegate, transfer, mortgage, charge or otherwise dispose in any manner whatsoever of its rights and obligations under this Contract as it may see fit, and without the consent of the Contractor, to any member of the TTL Group. Within ten (10) Business Days of a written request from TTL, the Contractor shall, at the Contractor's own expense, execute such agreement as TTL may reasonably require to give effect to any such transfer of all or part of its rights and/or obligations under this Contract to one or more persons nominated by TTL.

60. CHANGE OF CONTROL OF CONTRACTOR

60.1 The Contractor represents, warrants and undertakes to TTL that as at the Date of Contract the Contractor is a wholly owned Subsidiary of the Guarantor.

60.2 The Contractor shall promptly and in any event within ten (10) Business Days notify TTL in writing where:

60.2.1 there is any change in ownership (or series of connected changes) of twenty-five per cent (25%) or more of the issued share capital of the Contractor;

60.2.2 there is a change in the person possessing, directly or indirectly and whether by ownership of share capital, the possession of voting power, contract or otherwise, the power to appoint or remove (or both) all of the members of the board of directors or other governing body of the Contractor as are able to cast the majority of the votes capable of being cast by the members of that board or body on all, or substantially all,

- 60.2.2 matters, or otherwise to control or have the power to control the policies and affairs of the Contractor;
- 60.2.3 there is any change in the ownership (or series of connected changes) of twenty-five per cent (25%) or more of the issued share capital of the Guarantor; or
- 60.2.4 there is a change in the person possessing, directly or indirectly and whether by ownership of share capital, the possession of voting power, contract or otherwise, the power to appoint or remove (or both) all of the members of the board of directors or other governing body of the Guarantor as are able to cast the majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of the Guarantor.
- 60.3 TTL will have the right to terminate this Contract pursuant to Clause 78 (TTL's Termination Rights) upon the occurrence of any of the events described above, such right being exercisable within ninety (90) days of receipt of such notice from the Contractor pursuant to Clause 60.2 unless, in the case of a sale affecting the Guarantor, the Contractor has within such period provided to TTL a guarantee from a replacement guarantor acceptable to TTL in terms identical to the Guarantee.

WARRANTIES, LIABILITIES AND COMPLIANCE PROVISIONS

61. REPRESENTATIONS AND WARRANTIES

- 61.1 Without prejudice to any other warranties or representations expressed elsewhere in this Contract or implied by Law, TTL and the Contractor hereby warrants, represents and undertakes to the other that:
- 61.1.1 it has full capacity and authority and all authorisations, consents, approvals and permits necessary (including without limitation all necessary shareholder and board approvals) for it to enter into and discharge its obligations under this Contract and that this Contract has been executed by a duly authorised representative of the Contractor;
- 61.1.2 this Contract constitutes and the documents to be executed pursuant to the Contract when executed will constitute, valid and binding agreements of each Party;
- 61.1.3 there are no actions, suits or proceedings pending or, to the best of its knowledge and belief, threatened against or affecting TTL or the Contractor (as the context requires) before any court or administrative body or arbitral tribunal that might affect the ability of TTL or the Contractor (as the context requires) to meet and carry out its obligations under this Contract; and
- 61.1.4 no order has been made for the winding up of that Party, nor any action taken in relation to the appointment of an administrator, liquidator, receiver or administrative receiver, and no events have occurred which, under applicable Law, would justify any such proceedings.

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- 61.2 Without prejudice to any other warranties or representations expressed elsewhere in this Contract or implied by Law, the Contractor hereby warrants, represents and undertakes to TTL that:
- 61.2.1 it is entering into this Contract as principal and not as agent for any person and it will act as an independent contractor in carrying out its obligations under this Contract;
 - 61.2.2 it has not, prior to or on the Date of Contract, committed any of the acts referred to in Clause 73 (Ethics, Bribery and Corruption);
 - 61.2.3 the Contractor is aware of the purpose for which the Services are required and acknowledges that TTL is relying upon the Contractor's expertise and knowledge in the provision of the Services; and
 - 61.2.4 any and all information supplied in writing after the date of the OJEU notice dated 29 March 2013 (document reference 105987-2013) by or on behalf of the Contractor to TTL or to any of its advisers, including all responses to the clarification process of the procurement, in connection with the award of contract to the Contractor and in response to the invitation to engage and/or invitation to tender in connection with the provision of Services made by the Contractor was, at the time it was provided, true and accurate and it shall advise TTL of any fact, matter or circumstance of which it may or has become aware which would render any material statement or representation to be false or misleading.
- 61.3 Without prejudice to any other warranties or representations expressed elsewhere in this Contract or implied by Law, the Contractor hereby warrants, represents and undertakes (as applicable) to TTL that:
- 61.3.1 it shall carry out the Services:
 - (A) in accordance with all applicable Laws, regulations, standards and codes of conduct, including those of any regulatory authority;
 - (B) with all due skill, care and diligence, including in accordance with Good Industry Practice; and
 - (C) in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons using, operating or maintaining the assets used in the provision of the Services or involved in the management thereof and free from the risk of pollution, nuisance, interference or hazard;
 - 61.3.2 it has and shall continue to hold for the Term all necessary regulatory approvals from applicable Regulatory Bodies necessary to perform its obligations under the Contract;
 - 61.3.3 the System shall be developed, serviced, maintained, inspected and repaired, in each case:
 - (A) with all due skill, care and diligence including in accordance with Good Industry Practice;
 - (B) in accordance with the best modern design and engineering principles and practices in the activity concerned; and

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- (C) in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons using, operating or maintaining such assets or involved in the management thereof and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard;
- 61.3.4 all materials, equipment and goods used or supplied by the Contractor in connection with the provision of the Services, including those adopted by the Contractor pursuant to paragraph 4.4 of Schedule 7.4 (Sub-Contracting) but otherwise with the exception of those supplied to the Contractor by TTL, a member of the TTL Group and/or any Related Contractor, and without prejudice to the obligations of the Contractor as System Integrator, shall:
- (A) be free from material defects, shall be Fit For Purpose for which they are intended and of satisfactory quality;
 - (B) conform strictly to the System Specifications and applicable Standards and be of sound design; and
 - (C) not hinder or prevent TTL's compliance with applicable Laws;
- 61.3.5 any Software, Hardware or computer system used by the Contractor in connection with this Contract shall:
- (A) individually and together with the other parts of the System and/or IRC System as a whole be Fit For Purpose and with a rate of deterioration not worse than that reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction, and shall be so Fit For Purpose of this Contract and remain so fit for their design life;
 - (B) be capable of running in combination and interface appropriately with Related Systems and Interfacing Systems, or any Data, Database, Software, Hardware or any computer system used by TTL;
 - (C) be Date Compliant;
 - (D) be stable and resistant; and
 - (E) be capable of meeting any additional expansion required by each Variation after implementing the Changes (if any) specified in such Variation without any degradation in functionality or performance.
- 61.3.6 it will use an adequate number of Contractor Personnel with appropriate skill sets and training who are appropriately experienced, qualified and competent to perform the Services and undertake the tasks assigned to them in connection with this Contract and such Personnel will perform the Services and such tasks assigned to them in a timely manner; and
- 61.3.7 the Contractor has used and shall at all times have in place systems, configurations and processes to prevent Viruses on any part of the System and use the latest commercially available state of the art Virus protection Software, in accordance with Good Industry Practice, on the

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System or parts of the System and shall take all reasonably necessary steps to promote such use on the IRC System.

- 61.4 For the purposes of construing the warranties and representations in this Clause 61, references to the Services shall include any part of the Services.
- 61.5 The warranties, representations and undertakings set out in this Clause 61 shall be deemed provided on a continuous basis throughout the Term.
- 61.6 Each warranty and representation shall be construed as a separate warranty or representation and, subject to Clauses 62 (Liability Provisions and Indemnities), 46 (Relief Events) and 50 (Force Majeure), shall not be limited or restricted by any other term of this Contract.

62. LIABILITY PROVISIONS AND INDEMNITIES

62.1 Notwithstanding any other provision of this Contract, neither Party limits or excludes its liability under or in connection with this Contract for:

- 62.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
- 62.1.2 fraudulent misrepresentation or fraud by it or its employees or agents;
- 62.1.3 wilful default, wrongful termination of the Contract or abandonment of work, in each case by the Contractor;
- 62.1.4 breach of any condition as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or
- 62.1.5 any other liability to the extent that it cannot be limited or excluded by Law.

62.2 Subject to the following provisions of this Clause 62, the Contractor shall on demand indemnify and keep indemnified the TTL Group from and against (and shall pay on demand) any Losses which may arise out of, by reason of or in connection with the loss or damage to property (including property belonging to any member of the TTL Group or for which it is responsible) that may arise out of or in relation to, or in consequence of, the Contractor's or any Connected Person's performance or non-performance of this Contract or the operation of the System or of the presence of the Contractor or any Connected Person on TTL's or Third Parties' premises, whether such Losses are caused by negligence or otherwise.

62.3 Subject to the following provisions of this Clause 62 and the provisions of Schedule 16 (Loss of Revenue from List Management), the Contractor shall on demand indemnify and keep indemnified the TTL Group from and against (and shall pay on demand) any loss of revenue (which shall include any revenue payable by the Contractor to TTL, by TTL to other operators or Third Parties, and to TTL from other operators or Third Parties) that may arise out of or in relation to, or in consequence of, the Contractor's or any Connected Person's Default.

62.4 Loss of Revenue from List Management

The Contractor will comply with the requirements of Schedule 16 (Loss of Revenue from List Management) in order to ensure, amongst other things, that any loss of revenue by TTL is avoided or, where unavoidable, minimised.

62.5 Failure to Collect Revenue relating to a Journey

62.5.1 If TTL is unable to collect revenue from the sale of Travel Products or relating to Customer journeys as a result of the limited availability, or unavailability, of the ticket selling functions and/or the functionality of some or all of the Card Readers and/or Devices on a calendar day or any part thereof (a "**Failure Day**"), the Contractor shall on demand indemnify and keep indemnified the TTL Group from and against (and shall pay on demand) any loss of revenue (which shall include any revenue payable by the Contractor to TTL, by TTL to other operators or Third Parties, and to TTL from other operators or Third Parties) that may arise as a consequence in an amount equal to the difference between the total amount of revenue collected by TTL on the Failure Day and the total amount of revenue collected by TTL on a comparable day, provided that the Contractor's obligation to indemnify TTL under this Clause 62.5.1 shall only arise where the indemnified loss of revenue exceeds [REDACTED]

62.5.2 For the purposes of Clause 62.5.1, the term "comparable day" shall mean the calendar day occurring seven (7) calendar days prior to the relevant Failure Day, or such other day on which, in the reasonable opinion of TTL, the circumstances applicable at the relevant Station are comparable to the circumstances applicable on the Failure Day.

62.6 Subject to Clause 62.1, the Contractor's total aggregate liability:

62.6.1 in respect of the indemnities given by the Contractor in Clause 28 (Information Governance) and Schedule 20 (TUPE and Employees) shall be unlimited;

62.6.2 in respect of the indemnities given by the Contractor in Clause 52 (Intellectual Property Rights Indemnity) shall be limited to [REDACTED]

62.6.3 in respect of the indemnity given by the Contractor in Clause 62.2 shall be limited to [REDACTED]; and

62.6.4 for each relevant Contract Year, in respect of all other Losses, whether arising from tort (including negligence), breach of contract, breach of statutory duty or otherwise under or in connection with this Contract for that Contract Year, shall in no event exceed [REDACTED]

62.7 Subject to Clause 62.1, TTL's total aggregate liability:

62.7.1 in respect of the indemnities given by TTL in Schedule 20 (TUPE and Employees) shall be unlimited;

62.7.2 in respect of the indemnities given by TTL in Clause 52 (Intellectual Property Right Indemnity) shall be limited to [REDACTED]

62.7.3 for all other Losses (other than a failure to pay any of the Charges that are properly due and payable pursuant to the Contract), whether arising from tort (including negligence), breach of contract, breach of statutory duty or otherwise under or in connection with this Contract, shall in no event exceed [REDACTED]

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- 62.8 Subject to Clause 62.1 and Clause 62.9:
- 62.8.1 neither Party shall in any circumstances be liable under or in connection with this Contract for any indirect, special or consequential loss or damage of whatever nature; and
 - 62.8.2 TTL shall not in any circumstances be liable under or in connection with this Contract for any direct or indirect loss of profit by the Contractor.
- 62.9 The provisions of Clause 62.8 shall not limit any member of the TTL Group's right to recover any of the following from the Contractor:
- 62.9.1 any loss or corruption of Data and the costs of reconstituting any such lost or corrupted Data;
 - 62.9.2 the costs of replacing stolen or damaged components or parts of the System and/or the IRC System arising from the Contractor's or a Connected Person's Default;
 - 62.9.3 loss of management time or other wasted expenditure to procure and coordinate other suppliers, including the cost of putting in place workarounds arising from the Contractor's or a Connected Person's Default;
 - 62.9.4 the costs of procuring replacement services arising from the Contractor's or a Connected Person's Default;
 - 62.9.5 any fines imposed by any Regulatory Body arising from the Contractor's or a Connected Person's Default;
 - 62.9.6 any loss resulting from failure by the Contractor or a Connected Person to properly account for VAT or other applicable taxes;
 - 62.9.7 any loss arising from inability of the Contractor to provide fare reconciliation;
 - 62.9.8 any loss due to the inability of the Contractor to service and provide information to TTL Group customers; or
 - 62.9.9 any loss arising from the Contractor's or a Connected Person's Default resulting in overcharging of TTL Group customers including failure by the Contractor or a Connected Person to correctly apply fare capping.
- 62.10 Neither Party shall be entitled to recover from the other Party in respect of any Loss suffered to the extent that it has previously recovered for the same Loss under the terms of this Contract.
- 62.11 Except in relation to any fines imposed by any Regulatory Body, each Party shall take all reasonable steps to mitigate any Losses incurred or which might be incurred as a result of a default or breach of this Contract by the other Party including where it has the benefit of an indemnity under this Contract.

63. INSURANCE REQUIREMENTS

Without prejudice to its liability to indemnify TTL under Clause 62 (Liability Provisions and Indemnities) or any other provision of this Contract, the Contractor shall comply with its obligations as set out under Schedule 17 (Insurance Requirements) in order to ensure, amongst other things, that the Contractor obtains and maintains types and levels of insurance appropriate to the performance of its role as Contractor under this Contract.

64. **REPORTING**

The Contractor shall comply with its information collection, reporting and other obligations set out in Schedules 11.4 (Revenue and Accounting) and 11.5 (Information and Reporting) in order to, amongst other things, enable TTL to meet its statutory, contractual and other reporting and accounting obligations.

65. **RECORDS, AUDIT AND INSPECTION**

Records

65.1 The Contractor shall, and shall procure that its Sub-Contractors shall:

65.1.1 maintain a complete, current and accurate set of records pertaining to all activities relating to the provision of the Services and all transactions entered into by the Contractor for the purposes of this Contract (or, in the case of a Sub-Contractor, all transactions entered into by the Sub-Contractor for the purposes of the relevant Sub-Contract);

65.1.2 retain all such records throughout the Term and for a period of not less than seven (7) years (or such longer period as may be prescribed by Law) following the Expiry Date (the "**Retention Period**") and at the end of such Retention Period TTL may require that a subset of documents relevant to its then existing requirements be delivered by the Contractor to TTL; and

65.1.3 provide TTL with a copy of any or all of the documents referred to in Clause 65.1.1 free of charge within ten (10) Business Days of TTL's request for the same made during the Term and/or the Retention Period.

65.2 The records referred to in Clause 65.1 shall include but are not limited to the following, insofar as they relate to the Services or this Contract:

65.2.1 records of all Contractor Personnel involved in the provision of the Services including names, training records, timesheets and National Insurance numbers;

65.2.2 all sub-contracts (including proposals of successful and unsuccessful bidders, bids and rebids), commitments, leases, manufacturer's specifications and details, purchase orders and data relating to procurement of the Services or any part of the Services;

65.2.3 management accounts, information from management information systems and any other management records;

65.2.4 accounting records (in hard copy as well as computer readable data);

65.2.5 original estimates;

65.2.6 estimating worksheets;

65.2.7 correspondence;

65.2.8 variation, claims and compensation events files (including documentation covering negotiated settlements);

65.2.9 general ledger entries detailing cash and trade discounts and rebates;

65.2.10 detailed inspection records;

65.2.11 information relating to performance of the Services; and

65.2.12 any other information specified in this Contract.

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- 65.3 Except as expressly provided elsewhere in this Contract, the Contractor shall not be excused (in whole or in part) from performance in full of each of its obligations under this Contract nor entitled to make any claim against TTL for additional monies in respect of:
- 65.3.1 any mistake, inaccuracy, discrepancy or omission in the records and other information described in Clauses 65.1 and 65.2 (Records) provided by or on behalf of the Contractor whether or not the same shall have been approved by TTL and the Contractor shall correct the same without delay;
 - 65.3.2 any failure by the Contractor properly to prepare any of the records and other information described in Clauses 65.1 and 65.2 (Records) or submit the same to TTL in due time; or
 - 65.3.3 any failure by the Contractor to draw to the attention of TTL any mistake, inaccuracy, discrepancy or omission in any documents, drawings or information provided by TTL, the Contractor having had a reasonable opportunity to do so and the mistake, inaccuracy, discrepancy or omission being one which a competent contractor would reasonably have detected.
- 65.4 Neither the submission of records and other information described in Clauses 65.1 and 65.2 (Records) to TTL nor the review, comment, approval or disapproval by TTL of the records and other information described in Clauses 65.1 and 65.2 (Records) (or any part thereof) shall relieve the Contractor of any of its responsibilities under this Contract nor shall such submission, review, comment, approval or disapproval constitute a Variation or grounds for a Variation or involve TTL in any additional cost or expense.
- 65.5 The Contractor shall maintain such contemporaneous business and other records and other documentation as shall be required by TTL to support prosecutions for fare evasion and to support any member of the TTL Group in civil proceedings by or against any member of the TTL Group. The Contractor shall ensure that all such records and other documentation are complete and accurate and shall provide all reasonable assistance as may be required by TTL to carry out any prosecutions of fare evaders, including the attendance at court by, and the provision of material in a form compliant with the rules from time to time on admissibility of evidence including certificates confirming relevant documents as business records, and evidence from officers, employees, agents and representatives of relevant Connected Persons and in addition shall provide assistance as above in relation to criminal or civil proceedings where the Contractor or the Connected Persons might have information that is relevant to such proceedings.
- 65.6 The Contractor acknowledges and agrees that TTL and any Third Party may access, use and disclose the records and information referred to in this Clause 65 for any purpose provided for by this Contract, including:
- 65.6.1 in connection with the provision, or the possible provision, of any New Services and/or New Technologies or any services provided by or on behalf of any Interfacing Parties from time to time;
 - 65.6.2 to its professional advisors, auditors and/or any independent Third Party benchmarker conducting any Benchmarking;

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- 65.6.3 to assure to any person authorised to receive the benefit of the Services hereunder the full benefit of those Services including any Benefitting Parties;
 - 65.6.4 in connection with any tender or possible tender or notice at any time in contemplation of any termination or expiry of this Contract for any reason or any Downward Variation; and/or
 - 65.6.5 any other express rights granted to TTL or any Third Party pursuant to this Contract, including under Clause 54 (Rights and Obligations of TTL), 48 (Step-In), 51 (Intellectual Property Rights) and 82 (Handback of Services), Schedule 8.2 (Asset Management & Maintenance), Schedule 14 (IPR Management and Licences) and Schedule 19 (Handback of Services).
- 65.7 The provisions of Clause 51 (Intellectual Property Rights) shall apply to the extent that any Intellectual Property Rights of the Contractor Group are to be provided to any applicable Third Party.
- 65.8 Nothing in this Clause 65 shall operate to exclude or limit TTL's rights to any other data, information, records, reports, documentation, access or assistance as expressly set out elsewhere in this Contract.

Audit & Inspection

- 65.9 The Contractor shall procure that each Sub-Contract into which it enters shall contain:
- 65.9.1 equivalent rights of audit, inspection and access in favour of TTL (and any Third Party to whom rights of audit, inspection and access are granted pursuant to this Clause 65); and
 - 65.9.2 equivalent obligations on the relevant Sub-Contractor, to those set out in this Clause 65.
- 65.10 TTL, its Affiliates and nominees and its and their authorised representatives and agents will be entitled at any time and without prior warning to undertake any inspection and/or audit of the Services, the System, the IRC System, the Documentation and/or any of records and other information described in Clauses 65.1 and 65.2 (Records) for any business purpose including in order to check:
- 65.10.1 the recording, calculation and accuracy of the Charges, Service Credits, Service Bonuses and Invoices;
 - 65.10.2 any audits and/or examinations undertaken by regulatory authorities or other Third Parties;
 - 65.10.3 the Contractor's performance under this Contract;
 - 65.10.4 the delivery of Value for Money in accordance with Schedule 12.2 (Value for Money);
 - 65.10.5 the efficiency of the Contractor in performing the Services under this Contract;
 - 65.10.6 without prejudice to any other provisions of this Contract, any audits of the Contractor's compliance with the requirements of Schedules 9.1 (Technical Authority), 9.2 (System Design and Operating Principles), 9.3 (Standards), 10.1 (Change Management) and 14 (IPR Management and Licences);

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- 65.10.7 calculation of the Excess Profit Amount in accordance with Clause 42 (Excess Profits);
 - 65.10.8 the implementation of the ISMS and compliance with Schedule 9.4 (Security Management);
 - 65.10.9 the method of report production and Data transformations including conditions used for extraction of Data from the System and/or the IRC System and reconciliation of source to target Data;
 - 65.10.10 compliance with the information governance provisions in Clause 28 (Information Governance);
 - 65.10.11 testing in accordance with Schedule 10.2 (Programme and Project Lifecycle);
 - 65.10.12 compliance with Schedule 7.4 (Sub-Contracting);
 - 65.10.13 compliance with the provisions of Clause 76 (Ethical Sourcing); and/or
 - 65.10.14 the evaluation of claims, compensation events or Variations.
- 65.11 TTL may in its absolute discretion inform the Contractor of the objective of the audit prior to its commencement.
- 65.12 The Contractor shall grant identical inspection, audit and/or checking rights to those described in Clause 65.10 where the same shall have been requested by any national or local Government body or department whether currently in existence or coming into existence during the Retention Period.
- 65.13 The Contractor shall, at no additional cost to TTL, promptly co-operate and provide all reasonable assistance in relation to any inspection, audit or check undertaken pursuant to Clause 65.10 above, including (without limitation) to the extent relevant to the particular inspection, audit or check:
- 65.13.1 granting or procuring the grant of access to any premises used in the Contractor's performance of this Contract, whether the Sites, a Sub-Contractor's premises or otherwise;
 - 65.13.2 granting or procuring the grant of access to any equipment (including all Hardware and Software and any Proprietary Tools) used (whether exclusively or non-exclusively) in the performance of the Contractor's obligations under this Contract, wherever situated and whether the Contractor's own equipment, a Sub-Contractor's equipment or otherwise;
 - 65.13.3 granting access to enable Data (including standing data and transaction data processed by the System and/or the IRC System and security settings) to be downloaded from any computer systems operated by the Contractor or a Sub-Contractor;
 - 65.13.4 affording full opportunity to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon; and the Contractor shall give due notice to TTL whenever such work or foundations is or are ready or about to be ready for examination;
 - 65.13.5 uncovering any part or parts of the works or making openings through the same as TTL may direct from time to time and reinstating and making good such part or parts to TTL's satisfaction;
 - 65.13.6 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to, Data during the

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- audit; the Contractor shall, in addition, maintain records of all and any fraudulent access attempts which may compromise the security of the Services, the System and/or the IRC System;
- 65.13.7 making the Documentation and any logs, documents and records required to be maintained under this Contract (whether exclusively or non-exclusively) available for inspection;
- 65.13.8 providing a reasonable number of copies of any documents or records and/or granting copying facilities for the purposes of making such copies;
- 65.13.9 complying with TTL's requests for access to Contractor Personnel engaged in the Contractor's performance of this Contract;
- 65.13.10 procuring that all Contractor Personnel fully co-operate with TTL in relation to any audit or inspection conducted pursuant to this Clause 65; and
- 65.13.11 providing all requested support at its own facilities to TTL or its representatives in the discharge of their functions and allowing them use of suitable office accommodation if necessary.
- 65.14 Without limitation to the generality of the foregoing provisions of this Clause 65, the audit methodology of the Contractor used in providing information and reports to TTL will be subject to audit by TTL from time to time, as required by TTL. The Contractor shall:
- 65.14.1 ensure that the audit methodology identifies omissions in the relevant process being audited and that all features, functions and facilities ascribed as part of the Services (or any part of the Services or between any part of those features, functions and facilities) which are not provided or managed by the Contractor in accordance with this Contract are identified and addressed;
- 65.14.2 provide details of its audit methodology which shall be at least equivalent to Good Industry Practice and to TTL's satisfaction; and
- 65.14.3 implement the audit methodology.
- 65.15 Without prejudice to the foregoing provisions of this Clause 65, if TTL considers that the Contractor's audit methodology is not at least equivalent to Good Industry Practice, TTL shall be entitled to require the Contractor to:
- 65.15.1 adopt a more rigorous methodology in line with Good Industry Practice. Such methodology shall be adopted by the Contractor within twenty-five (25) Business Days of TTL serving notice on the Contractor requiring it to do so; and/or
- 65.15.2 implement any other recommendations made by TTL in relation to the Contractor's audit methodology from time to time at no additional cost to TTL.
- 65.16 In addition to its obligations under Clauses 65.1 to 65.15 inclusive, the Contractor shall promptly provide to TTL at no additional cost and as and when requested:
- 65.16.1 such technical information, assistance and advice as TTL may reasonably require in connection and in accordance with this Contract; and/or
- 65.16.2 such information (in a format and in such detail as requested by TTL) in respect of the Contractor's internal programmes, progress of work under this Contract and Contractor Personnel available to the Contractor,

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irrespective of whether the information is included within the documents kept pursuant to Clause 65.1 or otherwise.

- 65.17 Without prejudice to any other rights or remedies of TTL, if TTL, as a result of audit or inspection whether or not undertaken in accordance with this Clause 65, identifies any failures by the Contractor in complying with the requirements of this Contract, TTL may notify the Contractor to this effect. Promptly following receipt of such notice, and in any event no later than the date reasonably set out by TTL in such notice, the Contractor shall rectify such failures to the satisfaction of TTL, at no cost to TTL.
- 65.18 In the event that an inspection, audit or check reveals that information previously supplied to TTL pursuant to this Clause 65, or otherwise, was inaccurate and:
- 65.18.1 such information was inaccurate in any material respect; and/or
- 65.18.2 any inaccuracy results in or creates any adverse impact on TTL or its business,
- the cost incurred by TTL and the Contractor in respect of any such inspection, audit or check shall be borne by the Contractor.
- 65.19 Any dispute over the existence of an inaccuracy under Clause 65.18, or a dispute as to whether fraudulent activity on the part of the Contractor, its agents, employees or Sub-Contractors has taken place and/or the extent of such fraudulent activity, may be referred by either Party for determination in accordance with the provisions of Schedule 15 (Dispute Resolution Procedure).
- 65.20 In respect of any accounting information supplied by the Contractor to TTL such statement shall, at the request of TTL, be accompanied by a separate audit certificate from the appointed auditor of TTL or an independent auditor nominated by TTL and at TTL's request, subject to Clause 65.18, the reasonable cost of such audit certificate to be borne by TTL.
- 65.21 The Contractor grants to TTL, its Affiliates and their agents the right, at any time, to audit and/or test the security and robustness of the Services, the System, the IRC System and/or the Contractor's compliance with TTL's requirements on security, data integrity and protection and information governance against breach of confidentiality. Such audits and tests may include penetration testing and ethical hacking and the Contractor grants consent for such tests and audits to be performed notwithstanding any provisions contained within the Computer Misuse Act 1990 or the Police and Justice Act 2006. In view of the fact that such audits and testing may be intended to simulate a criminal attack, the Contractor agrees not to take any action against TTL, its Affiliates or their agents performing the audits or tests and that TTL, its Affiliates and their agents shall not be responsible or liable for any loss, damage, expenses or claims incurred by the Contractor as a result of such tests or audits, including any loss or damage caused to the Contractor's systems or the Contractor's business or any Third Party claims brought against the Contractor relating to or arising out of such tests or audits except to the extent that it would be unlawful for TTL not to be responsible or liable. The Contractor agrees to indemnify TTL, its Affiliates and their agents against any loss, damage or expenses that TTL, its Affiliates or their agents may incur by reason of claims, actions, demands or proceedings brought against them by Third Parties, including the Contractor's suppliers, arising out of or in connection with such audits or tests.

66. **CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**

TTL Confidential Information

66.1 The Contractor acknowledges that during the Term it may receive, obtain, prepare or create TTL Confidential Information. The Contractor undertakes, subject to Clause 66.2, that:

66.1.1 it shall receive and/or maintain the TTL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;

66.1.2 it shall not use the TTL Confidential Information for any purposes whatsoever (and in particular shall not use the TTL Confidential Information to the detriment of TTL) other than for the purpose of the performance of the Services, compliance with its obligations under this Contract or exercise of its rights under this Contract;

66.1.3 it shall not disclose the TTL Confidential Information to any Third Party without the prior written consent of TTL except that it is entitled to the extent strictly necessary to disclose the TTL Confidential Information:

(A) to such of the Contractor Personnel, Personnel of the Contractor Group and advisers who need to know the TTL Confidential Information for the performance of the Services provided that the Contractor shall be responsible for any breach of its obligations occasioned by any act or omission of such Contractor Personnel and shall, before disclosing TTL Confidential Information to members of Key Personnel either: (i) require such Key Personnel to enter into a written confidentiality undertaking in the form set out in Schedule 21.1 (Form of Confidentiality Undertaking); or (ii) have obtained prior written notice from TTL confirming that the obligations of confidentiality imposed on such members of Key Personnel by the Contractor are sufficient and that no such written undertaking is required; or

(B) to the Contractor's auditors and any other person or body having a legal right or duty to know the TTL Confidential Information in connection with the Contractor's business provided that prior to such disclosure the Contractor consults with TTL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TTL Confidential Information is disclosed;

66.1.4 it shall inform each of the persons referred to in Clauses 66.1.3(A) and 66.1.3(B) to whom TTL Confidential Information is disclosed of the restrictions as to use and disclosure of the TTL Confidential Information set out in this Contract;

66.1.5 it shall not, except where provided in Clause 66.1.3, or without the prior written consent of TTL, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the TTL Confidential Information; and

66.1.6 it shall ensure that any copies of TTL Confidential Information shall bear a notice that such materials and data are the property and confidential information of TTL.

66.2 The obligations set out in Clause 66.1 do not apply to any TTL Confidential

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Information to the extent that such TTL Confidential Information:

- 66.2.1 is shown by documentary evidence to have already been in the Contractor's lawful possession and at its free disposal before the disclosure to the Contractor by TTL;
 - 66.2.2 is lawfully disclosed to the Contractor otherwise than in accordance with the provisions of this Contract where such disclosure is not in breach of an obligation of confidentiality to any member of the TTL Group;
 - 66.2.3 is or has come into the public domain through no fault of the Contractor or its Personnel, agents or Sub-Contractors; or
 - 66.2.4 is required by Law or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers and its successor(s)) to which the Contractor is subject or by order of a court of competent jurisdiction to be disclosed.
- 66.3 If the Contractor becomes required, in circumstances contemplated by Clause 66.2.4, to disclose any information it shall (if permitted by Law) give to TTL such notice as is practical in the circumstances of such disclosure and shall co-operate with TTL, having due regard to TTL's views, and take such steps as TTL may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.
- 66.4 The Contractor acknowledges that damages may not be an adequate remedy for any breach of Clause 66.1 and that (without prejudice to all other remedies which TTL may be entitled to as a matter of Law) TTL shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 66.4 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 66.4.
- 66.5 The TTL Confidential Information shall be and shall remain the property of TTL.

Contractor Confidential Information

- 66.6 TTL acknowledges that during the Term it may receive Contractor Confidential Information. TTL undertakes, subject to Clause 66.7, that:
- 66.6.1 it shall receive and/or maintain the Contractor Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
 - 66.6.2 it shall not use the Contractor Confidential Information for any purposes whatsoever (and in particular shall not use the Contractor Confidential Information to the detriment of the Contractor) other than for the purpose of the receipt of the Services, compliance with its obligations under this Contract or exercise of its rights under this Contract;
 - 66.6.3 it shall not disclose the Contractor Confidential Information to any Third Party without the prior written consent of the Contractor except that it is entitled to the extent strictly necessary to disclose the Contractor Confidential Information:
 - (A) to such of its employees, officers, agents and advisers who need to know the Contractor Confidential Information provided that TTL shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or
 - (B) to TTL's auditors, any other person or body having a legal right or duty to know the Contractor Confidential Information in connection

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with TTL's business and any other person to whom Contractor Confidential Information may be disclosed under this Contract, provided that prior to such disclosure TTL consults with the Contractor as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before Contractor Confidential Information is disclosed;

- 66.6.4 it shall inform each of the persons referred to in Clauses 66.6.3(A) and 66.6.3(B) to whom Contractor Confidential Information is disclosed of the restrictions as to use and disclosure of the Contractor Confidential Information set out in this Contract; and
 - 66.6.5 it shall not, except where provided in Clause 66.6.3, or without the prior written consent of the Contractor, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the Contractor Confidential Information.
- 66.7 The obligations set out in Clause 66.6 do not apply to any Contractor Confidential Information to the extent that such Contractor Confidential Information:
- 66.7.1 is shown by documentary evidence to have already been in TTL's lawful possession and at its free disposal before the disclosure to TTL by the Contractor;
 - 66.7.2 is lawfully disclosed to TTL otherwise than in accordance with the provisions of this Contract where such disclosure is not in breach of an obligation of confidentiality to the Contractor;
 - 66.7.3 is or has come into the public domain through no fault of TTL or its employees, officers, agents or advisers;
 - 66.7.4 TTL determines should be disclosed in accordance with FOIA Legislation;
 - 66.7.5 is required to be disclosed to Parliament, any Parliamentary committee, HM Government, the National Audit Office or the District Auditor, or any of their respective officials;
 - 66.7.6 is required by Law or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers and its successor(s)) to which TTL is subject or by order of a court of competent jurisdiction to be disclosed; or
 - 66.7.7 is required to be disclosed in accordance with the requirements of Schedule 19 (Handback) or Schedule 20 (TUPE and Employees) (other than any information provided to TTL pursuant to paragraph 1.3.3(f) of Schedule 20 (TUPE and Employees)).
- 66.8 If TTL becomes required, in circumstances contemplated by Clause 66.7.6, to disclose any information it shall give to the Contractor such notice as is practical in the circumstances of such disclosure and shall co-operate with the Contractor, having due regard to the Contractor's views, and take such steps as the Contractor may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.
- 66.9 TTL acknowledges that damages may not be an adequate remedy for any breach of Clause 66.6 and that (without prejudice to all other remedies which the Contractor may be entitled to as a matter of Law) the Contractor shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 66.9 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 66.9.

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66.10 The Contractor Confidential Information shall be and shall remain the property of the Contractor, the relevant member of the Contractor Group or the relevant Subcontractor, as applicable.

Return of Confidential Information

66.11 Upon the relevant End Date, the Contractor shall on TTL's request:

66.11.1 transfer onto hard copies or electromagnetic media in industry standard format and programming languages and deliver to TTL any TTL Confidential Information in its possession or control;

66.11.2 return to TTL all copies (whether hard copy or on electromagnetic media) of TTL Confidential Information in its possession or control;

66.11.3 destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive, all TTL Confidential Information;

66.11.4 procure that all Connected Persons comply with Clauses 66.11.1, 66.11.2 and 66.11.3 above in relation to any TTL Confidential Information in their possession or control; and

66.11.5 within four (4) weeks deliver to TTL an unqualified certificate signed by the directors of the Contractor that this Clause 66.11 has been performed in all respects.

Transparency

66.12 The Contractor acknowledges that TTL is subject to the Transparency Commitment. Accordingly, subject to TTL's obligations pursuant to Clause 66.6, the Contractor hereby gives its consent for TTL to publish the Contract Information to the general public.

66.13 TTL 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 TTL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOIA Legislation. TTL may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 66.12. TTL shall make the final decision regarding publication and/or redaction of the Contract Information.

Publicity

66.14 Subject to Clause 66.16 and whether or not any restriction contained in Clause 66.1 (Confidentiality) is dis-applied pursuant to Clause 66.2, the Contractor shall not, and shall procure that Contractor Personnel and Sub-Contractors do not, make any announcement (including, without limitation, any communication to the public, to any clients or suppliers of either Party or to all or any of the employees of either Party or to representatives of the general or technical press, television, radio or other media) concerning the existence, provisions or subject matter of this Contract or containing any information about TTL (including, without limitation TTL Confidential Information) without the prior written approval of TTL.

66.15 The Contractor shall not use, and shall not grant permission to any of its Contractor Personnel, Affiliates, Sub-Contractors or other Third Parties for the use of the System and/or any TTL Sites for the purpose of advertising or any promotional activity.

66.16 Clause 66.14 shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over either Party (including but, not limited to, the Financial

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Conduct Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that (unless prohibited by Law) any such announcement will be made only after consultation with the other Party.

Indemnity

- 66.17 The Contractor shall on demand indemnify and keep indemnified each member of the TTL Group from and against (and shall pay on demand) any and all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) suffered or incurred or which may be brought against them in any jurisdiction howsoever arising (directly or indirectly, including without limitation in contract or tort) out of, in respect of or in connection with any breach by the Contractor (or for which the Contractor is responsible) of the obligations set out in this Clause 66.
- 66.18 TTL shall on demand indemnify and keep indemnified the Contractor from and against (and shall pay on demand) any and all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) suffered or incurred or which may be brought against them in any jurisdiction howsoever arising (directly or indirectly, including without limitation in contract or tort) out of, in respect of or in connection with any breach by TTL of the obligations set out in this Clause 66.

Consent

- 66.19 TTL shall have absolute discretion in deciding whether to give its consent as referred to in this Clause 66.

Survival

- 66.20 The obligations and restrictions contained in this Clause 66 will survive termination of the Contract and continue without limit of time.

67. FREEDOM OF INFORMATION

- 67.1 The Contractor acknowledges that TTL:
- 67.1.1 is subject to the FOIA Legislation and agrees to assist and co-operate with TTL to enable TTL to comply with its obligations under the FOIA Legislation; and
 - 67.1.2 may be obliged under the FOIA Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- 67.2 Without prejudice to the generality of Clause 67.1, the Contractor shall and shall procure that its Sub-Contractors (if any) shall (in each case at no cost to TTL):
- 67.2.1 transfer to TTL (or such other person as may be notified by TTL to the Contractor) each Information Request relevant to the Contract, the Services and/or any member of the TTL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and
 - 67.2.2 in relation to Information held by the Contractor on behalf of TTL, provide TTL with details about and/or copies of all such Information that TTL requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Contractor (or such other period as

TTL may reasonably specify), and in such forms as TTL may reasonably specify.

- 67.3 TTL shall be responsible for determining whether Information is exempt information under the FOIA Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOIA Legislation. The Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by TTL.

68. COMPLIANCE WITH APPLICABLE LAWS AND TTL POLICIES

Compliance with applicable Laws

- 68.1 The Contractor shall provide the Services in compliance with all applicable Laws in force from time to time.
- 68.2 Without prejudice to the generality of Clause 68.1, the Contractor shall obtain and maintain in full force and effect and pay all fees required to be paid in relation to all permits, authorisations, franchises, licences, exemptions, clearances, consents (including any planning and other consents required in order to carry out works under this Contract at TTL Sites) and other necessary approvals in relation to the provision of the Services and as required for the proper performance of the Contractor's duties and obligations under this Contract.
- 68.3 Without prejudice to the generality of Clause 68.1, the Contractor shall give all notices and pay all fees including licence fees required to be given or paid by any enactment or any regulation or by-law of any relevant authority in relation to the provision of the Services and as required for the proper performance of the Contractor's duties and obligations under this Contract.

Compliance with TTL Policies

- 68.4 The Contractor (at no cost to TTL) shall, and shall procure that all the Contractor Personnel and Sub-Contractors shall, during the performance of its obligations under this Contract, comply with all TTL policies relating to drugs and alcohol and all other TTL policies referred to in this Contract requiring such compliance.

69. SAFETY, QUALITY AND ENVIRONMENT

69.1 General Provisions

Without prejudice to the generality of Clause 68 (Compliance with applicable Laws and TTL Policies), the Contractor shall in performing its obligations under this Contract comply with the requirements of Schedule 8.5 (Safety, Quality and Environment) in order to ensure, amongst other things, the robust, effective and appropriate management of safety, quality and the environment in the performance of this Contract.

69.2 Construction (Design and Management) Regulations

69.2.1 With effect from the Service Commencement Date, the Contractor:

- (A) is hereby appointed as, and shall carry out all the obligations imposed by, the CDM Regulations on the Principal Contractor in relation to the performance of the Services other than where, as part of a Variation, TTL specifies that a Third Party will act as Principal Contractor in relation to a Project or a Programme;

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- (B) confirms that it has the necessary degree of competence referred to in regulation 4 of the CDM Regulations to perform the role of Principal Contractor; and
 - (C) shall promptly notify TTL if it no longer has the necessary degree of competence referred to in regulation 4 of the CDM Regulations to perform the role of Principal Contractor.
- 69.2.2 TTL and the Contractor are both clients (as defined in the CDM Regulations) in respect of the Services (insofar as they consist of or include construction work as defined in the CDM Regulations). However, TTL and the Contractor agree that in relation to the performance of the Services the Contractor shall be treated as the only client for the purposes of the CDM Regulations and the Contractor agrees that it shall comply with the requirements imposed upon a client by the CDM Regulations.
- 69.2.3 Without prejudice to Clause 69.2.2, the Contractor shall:
 - (A) provide TTL with all advice, input and assistance and inform TTL of any documents or information which TTL may reasonably require to enable TTL to comply with its obligations under the CDM Regulations, notwithstanding the obligations assumed by the Contractor pursuant to Clause 69.2.2; and
 - (B) take all reasonable steps to ensure that TTL is aware of what is required by or from TTL from time to time so as to ensure that TTL can act in compliance with, and meet its obligations under the CDM Regulations at all times.
- 69.2.4 The Contractor shall:
 - (A) comply at no additional cost to TTL with all the requirements of the CDM Co-ordinator appointed by TTL and, where the Contractor ceases to act as Principal Contractor, the Principal Contractor, to the extent that such requirements are necessary for compliance with the CDM Regulations and, notwithstanding any other provision of this Contract, the Contractor shall not be entitled to any extension of time in respect of such compliance which shall be treated as at the Contractor's risk; and
 - (B) require that all Sub-Contractors (and the Contractor shall be responsible if those Sub-Contractors do not) liaise and co-operate fully with the CDM Co-ordinator.
- 69.2.5 The Contractor shall require that all Sub-Contractors (and the Contractor shall be responsible if those Sub-Contractors do not) comply with their respective obligations under the CDM Regulations.
- 69.2.6 Notwithstanding any clause to the contrary herein, if, in its reasonable opinion, TTL considers it should replace the Contractor in the performance of any of the roles the Contractor has been appointed to perform in relation to the CDM Regulations in order for TTL to comply with its own duties or obligations arising under the CDM Regulations, TTL may at any time arrange for any duties which the Contractor has been appointed to perform in relation to the CDM Regulations pursuant to this Contract to be performed by a Third Party and the Contractor hereby

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waives any claim it may have against TTL in connection with the appointment of such a Third Party and the omission of such duties (including for loss of profit).

69.2.7 The Contractor shall keep TTL indemnified against all actions, claims, losses, damages, costs and expenses resulting from any breach of the CDM Regulations by the Contractor (in whatever capacity it acts) save to the extent that such actions, claims, losses, damages, costs and expenses result from TTL's own negligence or that of its agents or sub-contractors (other than to the extent such agent or sub-contractor is acting as agent or sub-contractor to the Contractor).

70. CRIME AND DISORDER ACT 1998

70.1 The Contractor acknowledges that TTL is under a duty in accordance with section 17 of the Crime and Disorder Act 1998:

70.1.1 to have due regard to the impact of crime, disorder and community safety in the exercise of TTL's duties;

70.1.2 where appropriate, to identify actions to reduce levels of crime and disorder; and

70.1.3 without prejudice to any other obligation imposed on TTL, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Contract, the Contractor will assist and co-operate with TTL, and will use reasonable endeavours to procure that its Sub-Contractors observe these duties and assist and co-operate with TTL where possible to enable TTL to satisfy its duty.

71. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006

71.1 When procuring any WEE Equipment for use in accordance with the Services (whether by direct purchase by the Contractor, purchase on behalf of TTL, lease or otherwise) the Contractor shall ensure that, in accordance with the WEEE Regulations, the producer of the WEE Equipment (whether that be the Contractor or a Third Party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of:

71.1.1 all waste electrical and electronic equipment arising from the WEE Equipment; and

71.1.2 all waste electrical and electronic equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEE Equipment and the WEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.

71.2 The Contractor shall indemnify and keep indemnified TTL and/or any member of the TTL Group as a result of any Losses incurred by TTL and/or any member of the TTL Group as a result of any failure on the part of the Contractor to comply with its obligations under this Clause 71.

72. CONFLICT OF INTEREST

72.1 The Contractor warrants and undertakes that it does not and will not during the Term have any interest in any matter where there is or is reasonably likely to be a

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conflict of interest in relation to its performance of the Services or any member of the TTL Group, save to the extent fully disclosed to and approved by TTL.

- 72.2 The Contractor 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 TTL in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the TTL Group and shall work with TTL 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 TTL's satisfaction.

73. ETHICS, BRIBERY AND CORRUPTION

- 73.1 Without prejudice to the generality of Clause 68 (Compliance with applicable Laws and TTL Policies), the Contractor shall in performing its obligations under this Contract comply with all Corruption Laws.

- 73.2 With respect to any of the matters which are the subject of this Contract or in connection with this Contract and any matters resulting from it, the Contractor undertakes that it and its group undertakings and any person acting on its or their behalf, including directors, officers, employees and agents (together, "**Representatives**"), either in private business dealings or in dealings with the public or government sector, directly or indirectly:

73.2.1 have not given, made, offered, or received (or agreed to give, make, offer or receive); and

73.2.2 will not give, make, offer or receive (nor agree to give, make, offer or receive),

any payment, gift or other advantage which: (i) would violate any applicable Laws; (ii) was intended to, or did, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (iii) was made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (iv) a reasonable person would otherwise consider to be unethical, illegal or improper.

- 73.3 Without prejudice to Clauses 73.1 and 73.2 above, the Contractor shall not, and shall procure that its employees, agents and Sub-Contractors shall not, without TTL's prior written approval:

73.3.1 pay any commission, fees, or grant any rebates to any employee, officer or agent of the TTL Group;

73.3.2 favour any employee, officer or agent of the TTL Group with gifts or entertainment of significant cost or value; or

73.3.3 enter into any business arrangement with employees, officers or agents of the TTL Group other than as a representative of TTL.

Each of the acts prohibited under Clauses 73.1 and 73.2 above and this Clause 73.3 shall be a "**Corrupt Act**".

- 73.4 With respect to any of the matters which are the subject of this Contract or in connection with this Contract and any matters resulting from it, the Contractor undertakes that it and its Representatives will not:

73.4.1 request any action, inaction or services that would violate applicable Laws; or

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73.4.2 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.

73.5 The Contractor represents that, save as disclosed to TTL, neither it nor any of its Representatives:

73.5.1 has been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any Corrupt Act by any law enforcement, regulatory or other governmental agency or any customer or supplier;

73.5.2 has admitted to, or been found by a court in any jurisdiction to have engaged in, any Corrupt Act;

73.5.3 has been debarred from bidding for any contract or business; or

73.5.4 are Public Officials or persons who might otherwise reasonably be considered likely to assert a corrupt or illegal influence on behalf of TTL or any member of the TTL Group.

The Contractor agrees that if, at any time, it becomes aware that any of the representations set out in this Clause 73.5 is no longer correct, it will notify TTL of this immediately in writing.

73.6 TTL or its nominee shall be entitled to have access to, inspect and audit all invoices and accompanying documents issued by, and the financial books and records of, the Contractor in order to verify compliance with this Clause 73 at any time during performance of this Contract in accordance with Clause 65.1 (Records). The Contractor undertakes that it will co-operate fully and promptly with any such audit or inspection conducted by or on behalf of TTL pursuant to this Clause 73.6.

73.7 The Contractor undertakes that it and its Representatives will report to TTL, where permitted by Law, any suspected violations of any Corruption Law in connection with any matters to which this Contract relates (which includes acts or omissions which may affect directly or indirectly TTL or any member of the TTL Group). The Contractor consents to TTL making any disclosures of this information as may reasonably be required, provided that, to the extent it is legally permitted to do so, where TTL intends to so disclose it will give the Contractor reasonable notice of this disclosure and, where notice of disclosure is not prohibited and is given in accordance with this Clause 73.7 TTL will take into account the reasonable request of the Contractor in relation to the content of such disclosure.

73.8 The Contractor undertakes to fully and effectively indemnify, keep indemnified and hold harmless each member of the TTL Group from and against all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any alleged or actual violations of any Corruption Law.

73.9 Without prejudice to any other express remedies referred to elsewhere in this Contract or any remedies available at law or in equity, in the event of a breach by the Contractor of any of the undertakings contained in this Clause 73, TTL reserve(s) the right to take whatever action it deems appropriate (including termination of this Contract for material breach under Clause 78.1.14) to ensure

that it is in compliance with all Corruption Laws.

74. **QUALITY AND BEST VALUE**

The Contractor acknowledges that TTL is a best value authority for the purposes of the Local Government Act 1999 and as such TTL 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. Without prejudice to the provisions of Clause 41 (Value for Money and Open Book), the Contractor shall assist TTL to discharge its duty wherever possible, and in doing so, it shall *inter alia* carry out any reviews of the Services requested by TTL from time to time. Without prejudice to any other provision of this Contract, the Contractor agrees to negotiate in good faith (acting reasonably) any changes to the Contract in order for TTL to achieve best value.

75. **EQUALITY AND INCLUSION**

75.1 Without limiting any other provision of this Contract, the Contractor shall comply (and shall procure that all Contractor Personnel and/or all Sub-Contractors shall comply), in relation to the Services, with the provisions of the Equality Act 2010 and/or any other relevant enactments in force from time to time relating to unlawful discrimination in employment or the provision of services and the promotion of equal opportunities.

75.2 The Contractor acknowledges that Transport for London as a public authority is under the following duties:

75.2.1 under section 149 of the Equality Act 2010:

- (A) to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010 because of age, disability, gender reassignment, pregnancy or maternity, race, religion or belief, sex or sexual orientation (together, "**protected characteristics**") and marriage or civil partnership; and
- (B) to promote equality of opportunity and good relations between persons who share a relevant protected characteristic and persons who do not share it,

(the "**Equality Duty**");

75.2.2 under the Equality Act 2010 (Specific Duties) Regulations 2010:

- (A) to publish equality information annually to demonstrate compliance with the Equality Duty (including information about employees and other persons affected by policies and practices); and
- (B) to publish every four years one or more equality objectives it considers it should achieve to comply with the Equality Duty;

75.2.3 by virtue of a Mayor's direction under section 155 of the Greater London Authority Act 1999 (in respect of the Greater London Authority's duty under section 404(2) of the Greater London Authority Act 1999) to have due regard to the need to:

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

and in the performance of this Contract, the Contractor shall, and shall procure that its Sub-Contractors shall, assist and co-operate with TTL and/or any of its Affiliates where possible to enable TTL and/or any of its Affiliates to satisfy such duties.

75.3 In all cases, the costs of compliance with this Clause 75 shall be borne by the Contractor.

76. ETHICAL SOURCING

76.1 TTL is committed to ensuring that workers employed in its supply chain throughout the world are treated fairly, humanely and equitably. In the course of providing the Services and otherwise complying with this Contract, the Contractor shall comply with, and shall procure that its Sub-Contractors shall comply with the following principles to ensure that its and its Sub-Contractors' Personnel are treated fairly, humanely and equitably:

- 76.1.1 employment must be freely chosen;
- 76.1.2 working conditions must be safe and hygienic;
- 76.1.3 child labour must not be used;
- 76.1.4 working hours must not be excessive;
- 76.1.5 no discriminatory practices can be employed;
- 76.1.6 regular employment must be provided; and
- 76.1.7 no harsh or inhumane treatment can be permitted, together the "**Ethical Sourcing Principles**".

76.2 Throughout the Term, TTL has the right to request the Contractor to carry out one or more audits using a reputable auditor to verify whether the Contractor is complying with the Ethical Sourcing Principles. The identity of the auditor is to be approved by TTL, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by TTL.

PART D: TERMINATION AND EXIT

77. EARLY TERMINATION BY TTL OF PRE-DETERMINED SERVICES

77.1 Without prejudice to any other rights or remedies it may have, TTL may terminate each of the Services described in Clauses 77.1.1 to 77.1.3 below (the "**Pre-determined Services**") in whole (but not in part only) by written notice to the Contractor with immediate effect or effective from such date as TTL may specify in such notice:

- 77.1.1 the Services provided in respect of Prestige as set out in Schedules 4.8 (Prestige Back Office Services), 4.10 (Sales and Consumables), 5.5 (Prestige Cards and Enablement) and 6.4 (Prestige Back Office System);

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- 77.1.2 the Legacy Bus Services as set out in Schedule 4.2 (Surface Transport Systems);
 - 77.1.3 the Retail Network Services as set out in Schedule 4.9 (Retail Management Services);
 - 77.1.4 the Hosting Services provided by the Contractor which, at the Date of Contract, are provided by Adapt Services Limited; and
 - 77.1.5 the procurement of original equipment manufacturer support and Performance Assurance for the TTL Module Infrastructure Services.
- 77.2 Upon termination of any of the Pre-determined Services, TTL shall, subject to Clause 39 (Set-Off), pay the Contractor:
- 77.2.1 any Charges for such terminated Pre-determined Services which have been provided by the Contractor but not yet paid for by TTL; and
 - 77.2.2 the Termination Payments payable in respect of such terminated Pre-determined Services pursuant to Schedule 18 (Payments on Termination).
- 77.3 Magnetic Tickets**
- 77.3.1 TTL does not envisage Magnetic Tickets continuing in use for the duration of the Term, and the Parties acknowledge and agree that TTL may terminate (in whole or in part) any and/or all of the Services provided by the Contractor in respect of Magnetic Tickets by written notice to the Contractor with immediate effect or effective from such date as TTL may specify in such notice.
 - 77.3.2 Upon such termination becoming effective:
 - (A) TTL shall, subject to Clause 39 (Set-Off), pay the Contractor any Charges for such terminated Service(s) which have been provided by the Contractor but not yet paid for by TTL; and
 - (B) except as set out in Clause 77.3.2(A), TTL shall not be liable for, and the Contractor shall indemnify and keep indemnified TTL from and against any amounts claimed or otherwise payable in respect of Services terminated in accordance with Clause 77.3.1.
 - 77.3.3 Any termination of Services in accordance with Clause 77.3.1 shall not constitute a Downward Variation.

78. TTL'S TERMINATION RIGHTS

- 78.1 Without prejudice to any other rights or remedies it may have, TTL may terminate this Contract in whole or in part by notice to the Contractor with immediate effect (or effective from such date as TTL may specify in such notice) upon the occurrence of any of the following events or circumstances:
- 78.1.1 the Contractor commits one or more material breach(es) of this Contract and, to the extent such breach(es) are capable of being remedied, has failed to remedy such breach(es) within ten (10) Business Days of receipt of written notice from TTL. Without limitation to this Clause 78.1.1, the Parties acknowledge and agree that the following shall, in any event amount to or be deemed to be a material breach of this Contract:

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- (A) any breach of Clause 12 (Ticket Sales and Fares Revenue);
 - (B) any fraud of the Contractor, its agents or Key Sub-Contractors, falsification of Data or the persistent supply of materially inaccurate Data for whatever reason provided that TTL shall in relation to the exercise of its rights pursuant to this Clause 78.1.1(B):
 - (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act; and
 - (2) give all due consideration, where appropriate, to action other than termination of this Contract, including (i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of any of those Sub-Contractors; and (ii) requiring the Contractor to procure that the person performing the prohibited act (whether employed by the Contractor or a Third Party) is forthwith barred from the Contractor's performance of this Contract;
- 78.1.2 the Contractor commits a series of breaches of this Contract, which taken together constitute a material and persistent breach of this Contract and, to the extent such breach(es) are capable of being remedied, has failed to remedy such breach(es) within ten (10) Business Days of receipt of written notice from TTL;
- 78.1.3 the Guarantor commits one or more material breach(es) of its obligations under the Guarantee or any equivalent agreement that it has entered into with TTL pursuant to or in connection with this Contract and, to the extent such breach(es) are capable of being remedied, has failed to remedy such breach(es) within ten (10) Business Days of receipt of written notice from TTL;
- 78.1.4 without limitation to the foregoing, the occurrence of any other event giving rise to a right for TTL to terminate the Guarantee or any equivalent agreement that the Guarantor has entered into with TTL pursuant to or in connection with this Contract;
- 78.1.5 Not used;
- 78.1.6 TTL has issued four (4) Major Warning Notices in any three (3) consecutive Periods;
- 78.1.7 more than five (5) Major Warning Notices remain concurrently unresolved;
- 78.1.8 the Contractor commits a material breach of:
- (A) Clause 27 (Data and Security Requirements);
 - (B) Clause 28 (Information Governance), other than where termination is separately provided for in Clause 28.9.3 (Data Protection); or
 - (C) Clause 66 (Confidentiality, Transparency and Publicity);
- 78.1.9 an Insolvency Event affecting the Contractor or the Guarantor occurs;
- 78.1.10 in the circumstances described in Clause 50.5 (Force Majeure);

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- 78.1.11 in the circumstances described in Clause 60 (Change of Control of Contractor);
 - 78.1.12 in the circumstances described in Schedule 17 (Insurance Requirements);
 - 78.1.13 there is a Change of Law which renders performance of substantially all of the Contractor's obligations under this Contract illegal;
 - 78.1.14 the Contractor or any of its employees, officers or agents commit any act of bribery as described in any Corruption Law, provided that TTL shall in relation to the exercise of its rights pursuant to this Clause 78.1.14:
 - (A) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act; and
 - (B) give all due consideration, where appropriate, to action other than termination of this Contract, including (i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of any of those Sub-Contractors; and (ii) requiring the Contractor to procure that the person performing the prohibited act (whether employed by the Contractor or a Third Party) is forthwith barred from the Contractor's performance of this Contract;
 - 78.1.15 the Contractor commits any of the money laundering related offences listed in the Public Contract Regulations 2006 or Utilities Contracts Regulations 2006;
 - 78.1.16 following a declaration of ineffectiveness in relation to this Contract made by a court pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006;
 - 78.1.17 in the circumstances described in paragraph 5 of Schedule 13 (Financial Distress);
 - 78.1.18 if claims have been made in good faith by TTL or any member of the TTL Group under this Contract with a value equal to or in excess of:
 - (A) one hundred per cent (100%) of the Contractor's financial limit on liability set out in Clauses 62.6.2 and/or 62.6.3 (Liability Provisions and Indemnities); and/or
 - (B) eighty per cent (80%) of the Contractor's financial limit on liability set out in Clause 62.6.4 (Liability Provisions and Indemnities),in each case, the "**Claims Amount**";
 - 78.1.19 in the circumstances described in Clause 52.7 (Intellectual Property Rights Indemnity);
 - 78.1.20 in the circumstances described in Clause 59.1 (Assignment and Novation); and/or
 - 78.1.21 as otherwise expressly provided for in this Contract.
- 78.2 The Contractor shall, promptly upon becoming aware that one or more of the events or circumstances set out in Clause 78.1 has or have arisen, or is or are likely to arise, notify TTL with full details of this occurrence or likely occurrence.

79. CONTRACTOR'S TERMINATION RIGHTS

79.1 Without prejudice to any other rights or remedies it may have, the Contractor may terminate this Contract in whole (but not in part only) by written notice to TTL if:

79.1.1 at any time undisputed Charges exceeding the equivalent of twenty-five per cent (25%) of the total aggregate Charges properly arising over the entire course of that relevant Contract Year (or, if such Charges have not actually arisen, such Charges as set out in the Financial Model) remain unpaid (excluding non-payment of any Disallowed Sums in accordance with paragraph 6 of Schedule 12.1 (Charges and the Financial Model)) for a period in excess of thirty (30) days from the date of the final relevant invoice, *provided that* the Contractor has first served a warning notice to TTL no later than ten (10) days prior to the expiry of such thirty (30) day period with details of TTL's non-payment of such outstanding Charges and indicating the Contractor's intention to exercise its right to terminate this Contract in accordance with this Clause 79.1 in the event that such Charges remain unpaid at the expiry of such thirty (30) day period;

79.1.2 a Force Majeure Event which has a material adverse effect on TTL's ability to make payments to the Contractor under this Contract continues for more than eighty four (84) days;

79.1.3 TTL ceases to be owned, directly or indirectly, by the Crown and becomes owned by a Contractor Competitor or a person who at the time of such ownership or control passing does not have the Designated Credit Rating, provided that this Clause 79.1.3 shall not apply in respect of any amalgamation, reconstruction or merger within the TTL Group from time to time or any member of the TTL Group ceasing to carry on any part of its business at any time or disposing of any of its assets at any time. For the purposes of this Clause 79.1.3:

(A) TTL shall be regarded as owned, directly or indirectly, by the Crown at any time when it is owned and controlled, directly or indirectly, by or on behalf of:

- (1) a Minister of the Crown;
- (2) Transport for London;
- (3) a public or statutory corporation or limited liability company which is owned and controlled (as defined below but with the substitution of "100%" for "90%" in each place it appears in the definition) by a Minister of the Crown; or
- (4) a wholly-owned subsidiary of any of the foregoing; and

(B) the expression "owned and controlled" shall mean possessing:

- (1) in relation to a body corporate having a share capital, ninety per cent (90%) or more of the issued equity share capital of that body having voting power exercisable at general meetings of that body; and
- (2) in relation to any other body (whether or not corporate), the power to appoint or remove all or substantially all of the

members of the Board of that body. For this purpose "Board" means the persons who have the management and control of the relevant entity and similar powers and responsibilities to those of directors of a body corporate;

- 79.1.4 an Insolvency Event affecting TTL occurs; and/or
 - 79.1.5 there is a Change of Law which renders performance of substantially all of TTL's obligations under this Contract illegal.
- 79.2 If the Contractor properly serves a valid termination notice in accordance with the requirements of Clause 79.1:
- 79.2.1 subject to Clauses 79.2.2 and 84, this Contract will terminate with immediate effect; and
 - 79.2.2 the Contractor's obligations under Clause 82 (Handback of Services) and Schedule 16 (Handback of Services) will apply.
- 79.3 The Contractor shall not have the right to terminate or rescind this Contract, or accept any repudiation of this Contract in any circumstances, except as set out in this Clause 79.

80. **PARTIAL TERMINATION**

Without prejudice to TTL's other rights or remedies under this Contract, if TTL wishes to partially terminate this Contract other than the Services as described in Clause 77 (Early Termination by TTL of Pre-determined Services), the effect of such termination shall be a Variation as agreed by the Parties through the Variation Procedure.

81. **EFFECT OF TERMINATION**

- 81.1 Subject to Clause 77.3 (Magnetic Tickets), upon termination or partial termination of this Contract, TTL shall, subject to Clause 39 (Set-Off):
- 81.1.1 pay the Contractor the relevant Charges due and payable to the Contractor under this Contract up to (but excluding) the date such termination or partial termination takes effect; and
 - 81.1.2 comply with the requirements of Schedule 18 (Payments on Termination).
- 81.2 With effect from the Expiry Date, and subject to Clause 84 (Survival), the rights and obligations of the Parties shall terminate and be of no future effect. This Clause 81.2 is without prejudice to either Party's rights and remedies which may have accrued prior to the Expiry Date.
- 81.3 The Contractor acknowledges and agrees that a dispute as to whether:
- 81.3.1 an event has occurred enabling TTL to serve a notice of termination; or
 - 81.3.2 TTL has properly served a notice of termination,
- in each case in accordance with Clauses 77 (Early Termination by TTL of Pre-determined Services) and/or 78 (TTL's Termination Rights), shall not affect the validity of the notice of termination. In the event that a determination is made that TTL was not entitled to serve such notice then the provisions of Schedule 18 (Payments on Termination) shall apply to such termination.
- 81.4 Subject to Clause 81.5, termination, partial termination or expiry shall not affect or prejudice any right to damages or other remedy which the terminating Party may

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have in respect of the circumstances which gave rise to the termination or partial termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Contract which existed at or before the End Date, partial termination date or Expiry Date subject always to Clause 62 (Liability Provisions and Indemnities) and Clause 81.5.

81.5 Where this Contract is terminated or partially terminated properly and in accordance with the provisions of this Contract, the Contractor shall have no claim against TTL in relation to the termination or partial termination of this Contract or the events directly giving rise to termination or partial termination, where relevant, other than amounts due but unpaid by TTL or as expressly provided in this Clause 81.

81.6 In the event of termination of this Contract in accordance with Clause 78.1.16, the Contractor shall be entitled to bring a claim against TTL for damages, but the provisions of Schedule 18 (Payments on Termination) shall not apply.

81.7 Following termination or partial termination of this Contract, each of the Parties shall use all reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination or partial termination for which they are to be compensated by the other Party in accordance with paragraph 2.4 of Schedule 18 (Payments on Termination).

82. HANDBACK OF SERVICES

82.1 The Contractor will comply with the Contractor's obligations under Schedule 19 (Handback of Services) in order to ensure, amongst other things, Service continuity and minimisation of disruption to Customers during the Handback Period.

82.2 Cooperation in Relation to Handback of Services

Without limiting Schedule 20 (TUPE and Employees) and Clause 65 (Records, Audit and Inspection), the Contractor shall pro-actively co-operate and work with the TTL Group and/or any Successor Operator(s):

82.2.1 from the earliest of:

- (A) the Service Commencement Date; or
- (B) the date on which any notice to terminate this Contract is issued by TTL or the Contractor,

until the Expiry Date or, if earlier, the date on which this Contract terminates in its entirety in accordance with Clauses 78 (TTL's Termination Rights) or 79 (Contractor's Termination Rights) (the "**Handback Preparation Period**");

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

- (A) as described in the Handback Plan and/or the Handback Programme;
- (B) in respect of the provision of the Services (or services which are

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substantially similar to the Services);

- (C) in respect of the System and/or the IRC System and/or the Service Levels;
- (D) in relation to any Intellectual Property Rights within the scope of Clauses 51.11.1(H) and 51.12.1(D) (Intellectual Property Rights), subject always to Clauses 51.22 to 51.26 (Disclosure of Intellectual Property Rights);
- (E) to understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools;
- (F) in relation to the Sub-Contracts, the premises used by or on behalf of the Contractor in connection with the System and/or the IRC System and/or the Services and all employees within the scope of Schedule 20 (TUPE and Employees) including but not limited to the areas of the System such employees primarily interact with and where such employees are located; and
- (G) in respect of TTL 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 Contractor or a member of the Contractor Group is a recipient of or invited by the TTL Group to be involved in such process (the "**Retendering Support**"); and

82.2.3 in order to:

- (A) facilitate (i) the invitation of bids from, (ii) the selection of, and (iii) the appointment of, any Successor Operator(s) (whether as part of an open tender, in connection with step-in pursuant to Clause 48 (Step-In) or otherwise);
- (B) prepare for an orderly and smooth transfer to any member of the TTL Group and/or any Successor Operator(s) of the provision of the Services (or services substantially similar to the Services) and/or the System (or any relevant part thereof);
- (C) minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and/or the System and/or the IRC System (or any part or replacements thereof), the TTL Group, the Related Contractors, the Benefitting Parties, the Interfacing Parties, Customers and any other person including in relation to health and safety;
- (D) provide the TTL Group and/or any Successor Operator(s) with access to sites and premises under the control of the Contractor Group or the Sub-Contractors, access to and use of the System (or any part thereof), including any test facilities, systems, equipment and tools in order to carry out any preparation or

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- testing, access to the Connected Persons and access to and assistance with obtaining a detailed understanding of the Proprietary Tools;
- (E) understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools;
 - (F) facilitate the engagement of Successor Operator(s) and/or the resumption by any member(s) of the TTL Group of the provision of part or all of the Services (or services substantially similar to the Services) and/or the System and/or the IRC System (or any relevant part thereof) and to ensure that the handover of responsibility is properly managed and transitioned and (if required by the TTL Group) carried out in a phased manner;
 - (G) provide to TTL, upon request, all relevant operation and maintenance manuals and any other materials, information, data and/or assistance required by the TTL Group and/or the Successor Operator(s) to understand and/or operate the System and/or the IRC System (or any part thereof) and/or to provide part or all of the Services (or services substantially similar to the Services);
 - (H) ensure that the Handback Items are provided in a secure, understandable and useable condition including, where relevant, as specified by TTL and ensure that Data is provided, upon request, to a member of the TTL Group and/or a Successor Operator (as specified by TTL) in a secure, understandable and useable condition and in such form as TTL may specify;
 - (I) effect any communications plan which the TTL Group and/or the Successor Operator(s) wish to effect, whether in relation to external or internal communications (including in respect of relevant Personnel);
 - (J) ensure that the System:
 - (1) (after making due allowance for removal of any Assets required by TTL to be removed pursuant to Clause 81.5) is handed over to the TTL Group and/or any Successor Operator(s) in accordance with the provisions of this Clause 82 and in a state that satisfies the provisions of Clause 16 (Residual Life of Assets) and Clause 61 (Representations and Warranties) and Schedule 8.2 (Asset Management and Maintenance); and
 - (2) is fit for use so as to enable the TTL Group and/or any Successor Operator(s) to operate a safe, reliable, regular, economic and efficient passenger railway (including underground, overground, light rail and tram), bus and river services; and
 - (K) without limiting the foregoing, ensure the orderly and smooth transfer, with minimal disruption, inconvenience or risk, of the

System Integrator functions from the Contractor to a member of the TTL Group and/or a Successor Operator (as specified by TTL).

82.3 Service End Dates

82.3.1 Subject to TTL's Early Termination Option pursuant to Clause 5 (Commencement and Term), TTL may, in its absolute discretion and by giving written notice to the Contractor:

- (A) specify an End Date in relation to the termination of any particular Service and/or part of the System having regard for the proper management and transitioning of the relevant Service or part of the System and any phasing of various individual End Dates; and/or
- (B) revise or delay the relevant End Date for any reason including where the TTL Group and/or any Successor Operator is not ready to take over responsibility for the Service (or any replacing service) and/or the System and/or the IRC System (or any part thereof),

provided that TTL shall not specify or require as an End Date any date which is prior to any notice to terminate this Contract or any part thereof taking effect in relation to any termination of that Service pursuant to Clauses 77 (Early Termination by TTL of Pre-determined Services), 78 (TTL's Termination Rights), 79 (Contractor's Termination Rights) and/or 80 (Partial Termination) or otherwise prior to the end of the Initial Term. The Contractor shall continue to provide the relevant Service and/or part of the System and any other required activities pursuant to this Contract until the relevant End Date.

82.3.2 Without prejudice to Clauses 82.2 and 82.3, on the End Date in relation to any Service or the expiry or termination of this Contract for any reason:

- (A) the Contractor shall ensure that there is an orderly and smooth transfer of the operation of such Service (or service replacing such Service) and the transfer of responsibilities in relation to the System (or any relevant part thereof) to the TTL Group and/or a Successor Operator (as nominated by TTL in its absolute discretion) and insofar as possible any disruption, inconvenience or any risk is avoided, minimised or mitigated;
- (B) the Contractor shall co-operate fully with the TTL Group and/or any Successor Operator of such Service (or service replacing such Service) in order to achieve an orderly and smooth transfer of the operation of such Service (or service replacing such Service) and the transfer of responsibilities in relation to the System and/or the IRC System (or any relevant part thereof);
- (C) the Contractor shall provide to the TTL Group and/or to any Successor Operator(s) all such advice, assistance, support, information, documentation, data, access and take such steps as are reasonably requested by TTL in relation to the Services (or service replacing such Service) and/or the System and/or the IRC System (or any part thereof); and

- (D) the Contractor shall provide any training in relation to the Services (or services substantially similar to the Services) as is reasonably required for the efficient transfer of responsibility for their operation and performance (including any secondment referred to under paragraph 1.7 of Schedule 20 (TUPE and Employees)),

and the provisions of Clause 82.4 shall apply.

82.4 Handback Procedure

82.4.1 TTL shall provide to the Contractor as much information as is reasonably practicable regarding TTL'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 TTL Group (as the case may be) (the "**Successor Plan**"). If there are changes to the Successor Plan, TTL shall update such information and shall provide such updated information to the Contractor.

82.4.2 The Contractor shall prepare the following in accordance with paragraphs 2.1, 2.2, 2.3 and 4.1 (respectively) of Schedule 19 (Handback of Services):

- (A) the Handback Plan and any updates thereto;
- (B) the Handback Information and Support;
- (C) the Handback Programme and any updates thereto; and
- (D) the Handback Status Reports and any updates thereto.

82.4.3 On either the relevant End Date in relation to any relevant Service or such later date as may be notified to the Contractor by TTL any rights of access to any land granted by TTL to the Contractor or any Connected Person pursuant to the terms of this Contract shall automatically cease. TTL will extend the Contractor's rights of access beyond the End Date in relation to any Service to the extent reasonably necessary for the performance of its residual obligations in relation to the Handback Plan and to complete any tasks in progress at such date.

82.4.4 Without limiting Clause 82.3, the Contractor acknowledges and agrees that the transfer to or on behalf of TTL and/or any Successor Operator(s), or assumption of responsibility by or on behalf of TTL and/or any Successor Operator(s), in relation to each Service may take place in stages, in which case:

- (A) the End Date in relation to a particular Service or sub-set of the Services shall be specified in the Successor Plan and reflected in the Handback Plan;
- (B) TTL may decide, in its sole discretion, to change any previously notified End Date by issuing the Contractor with a revised Successor Plan; and/or

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- (C) TTL may, in its sole discretion, change the manner or order in which any activities under the relevant Handback Plan are to occur by issuing the Contractor with a revised Successor Plan.

82.5 Transfer and Removal of Assets

82.5.1 On the End Date in relation to any Service, or termination of this Contract in accordance with its terms, the Contractor shall:

- (A) hand over to TTL (or to such other party as TTL may direct):
 - (1) possession of the Assets which relate to such Services (other than the Contractor's Proprietary Tools), which shall be in the state required in accordance with Clause 16 (Residual Life of Assets) and Schedule 8.2 (Asset Management);
 - (2) all relevant Handback Items; and
 - (3) all Data from Proprietary Tools for replacement tools (but TTL acknowledges and agrees that the Proprietary Tools themselves will not be available for on-going use by the TTL Group or any Successor Operator after the Expiry Date). In addition, the Contractor shall hand over to TTL (or such other party as TTL may direct) such Data and configuration specifications from Proprietary Tools for replacement tools at such earlier date as may be determined by TTL and notified to the Contractor in writing;
- (B) procure that the benefit of all manufacturers' warranties in respect of relevant mechanical and electrical equipment obtained pursuant to Clause 14 (The System and Maintenance) and which have not been assigned are assigned to TTL (or to such other party as TTL directs); and
- (C) assign (or procure that there is assigned) to TTL (or to such other party as TTL may specify) the benefit of any Sub-Contract to which the Contractor or any Sub-Contractor is a party which is:
 - (1) specified by TTL in writing giving reasonable notice in advance; and
 - (2) required and enabled to be so assignable pursuant to Clause 57 (Sub-Contracting) and Schedule 7.4 (Sub-Contracting).

82.5.2 Subject to Clause 82.5.1(A), the Contractor shall grant to TTL an option, exercisable:

- (A) on the End Date in relation to any Service (or such earlier date as may be determined by TTL and notified to the Contractor in writing); or
- (B) termination of this Contract in accordance with its terms,

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to purchase or hire (as determined by TTL in its sole discretion) from the Contractor and/or any Connected Person (as applicable), at a fair market value (as between willing counterparties, with any Disputes as to such fair market value being determined in accordance with Schedule 15 (Dispute Resolution Procedure)) and free from any security interest, all or any part of the plant or machinery used in connection with the provision of such Services not forming part of the Assets or the System and/or the IRC System and the Contractor shall procure that, to the extent necessary to give effect to this Clause, the Connected Persons comply with the same.

- 82.5.3 TTL may by service of written notice on the Contractor at any time or times prior to the date which is eighty four (84) days after the relevant End Date, require the Contractor to remove, at the Contractor's cost, any Assets which are obsolete, and the Contractor shall, as soon as is reasonably practicable, remove all such Assets, making good all damage (if any) caused by such removal.

82.6 Treatment of Assets at the Expiry or Termination Date

- 82.6.1 At the Expiry Date, the Contractor shall have no further right to use, and shall give vacant possession of, any Assets licensed to the Contractor under Clause 14 (The System and Maintenance) or which have since the date of the Contract become the property of TTL (whether expressly or under operation of law).

- 82.6.2 At the relevant End Date, the Contractor shall have no further right to use, and shall give vacant possession of, any Assets relating to the relevant part(s) of the System and/or Service that have been licensed to the Contractor under Clause 14 (The System and Maintenance) or which have since the date of the Contract become the property of TTL (whether expressly or under operation of law).

82.7 Contractor's Warranty

The Contractor warrants that the information contained in each version of the Handback Plan, the Handback Programme, the Handback Status Report and the Handback Information and Support is accurate and up to date as at the time it is provided to TTL and TTL may rely upon it in the preparation of any tender documents for any Successor Operator(s).

82.8 Continued Support

If requested by TTL in writing, the Contractor shall provide to the TTL Group and/or the Successor Operator(s) such:

- 82.8.1 advice and assistance as TTL may reasonably require;
- 82.8.2 access to data, information, reports, diagrams and details relating to the provision of the Services and the operation and maintenance of the System and/or the IRC System;
- 82.8.3 on-going support and/or maintenance in relation to the System and/or the IRC System or any part thereof;

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82.8.4 Projects being developed, implemented or performed under this Contract until their completion to TTL's satisfaction; and/or

82.8.5 availability of Connected Persons who are required to perform the services that TTL considers critical to properly perform its business operations or services,

for six (6) months following the Expiry Date (or such shorter period as TTL may, in its sole discretion, specify). TTL shall, wherever practical, provide the Contractor with sufficient advance notice in the event that it is likely to require support and/or assistance pursuant to this Clause 82.8.

82.9 Handback Charges and Charging Principles

82.9.1 Save as otherwise expressly provided in this Contract, the Contractor shall comply with this Clause 82 (Handback of Services), Clause 16 (Residual Life of Assets) and Schedule 19 (Handback of Services) at no additional cost to TTL.

82.9.2 Notwithstanding Clause 82.9.1:

- (A) if the Contractor considers that it will incur any necessary, demonstrable and material increased additional cost or expense as a direct result of performing its obligations under this Clause 82 (with due consideration for the number of Successor Plans the Contractor is required to take into account pursuant to Clause 82.4), the Contractor shall issue to TTL a Variation within a reasonable time and prior to incurring such costs. If TTL in its sole discretion considers that such activities would not be expected of a contractor acting in accordance with Good Industry Practice and provided that TTL has not instructed the Contractor to not carry out those activities, the Contractor shall be entitled to recover its reasonable additional and demonstrable costs and expenses from TTL as set out in the relevant Variation; and
- (B) the Services to be provided pursuant to Clause 82.8 shall be provided on the same terms and conditions as they were provided under this Contract, provided that the Charges payable by TTL to the Contractor for any services rendered after the Expiry Date shall be calculated on the basis of services actually provided in accordance with the relevant sums set out in the Financial Model.

82.10 Non-Chargeable Services

82.10.1 Without prejudice to other provisions of the Contract, the Contractor shall not charge for any services provided pursuant to this Clause 82 and/or Schedule 19 (Handback of Services) if:

- (A) the Contractor incurs increased costs or expenses as a result of its default, negligence, inaction or any omission on its part;
- (B) the performance of such services is not required and/or does not directly give rise to any demonstrable and material increased cost;

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- (C) in relation to all or part of the Services being provided pursuant to this Clause 82 and/or Schedule 19 (Handback of Services), such services are required to remedy a default or breach of this Contract by the Contractor; and
- (D) the Contractor is required to perform such services as a matter of applicable Law, to the extent such applicable Laws specifically relate to the business or operations of the Contractor.

82.11 Disclosure

Notwithstanding the confidentiality obligations contained in Clause 66 (Confidentiality, Transparency and Publicity) and without prejudice to TTL's other rights under the Contract, TTL shall be entitled to disclose the Handback Plan, the Handback Programme and the Handback Status Report to, and to share other information and Data with any member of TTL Group and/or any Successor Operator(s) for the purpose of tendering services and the provision of those or related services. The provisions of Clause 51 (Intellectual Property Rights) shall apply to the extent that any Intellectual Property Rights of the Contractor Group are to be provided to any applicable Third Party.

83. TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION

83.1 Schedule 20 (TUPE and Employees) shall apply and each party will comply with its obligations thereunder to effect, amongst other things, the transfer of relevant Contractor Personnel in accordance with applicable Laws.

84. SURVIVAL

84.1 Termination or expiry of this Contract shall not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination, including the following:

84.1.1 Clauses 1 (Definitions and Interpretation), 28 (Information Governance), 29 (Subject Access Requests), 34 (Non-Solicitation), 42 (Excess Profit), 51 (Intellectual Property Rights), 52 (Intellectual Property Rights Indemnity), 55 (Notices), 56 (Dispute Resolution), 63 (Insurance Requirements), 65 (Records, Audit and Inspection), 66 (Confidentiality, Transparency and Publicity), 67 (Freedom of Information), 73 (Ethics, Bribery and Corruption), 81 (Effect of Termination), 82 (Handback of Services), 83 (Transfer of Employees on Commencement and Expiry or Termination), 84 (Survival), 85 (Further Assurance), 86 (Costs), 87 (Relationship of the Parties), 88 (Illegality and Severability), 89 (Third Party Rights), 90 (Entire Agreement), 91 (No Exclusivity), 92 (Waiver/Rights Cumulative), 93 (Language), 94 (Variation), 95 (Counterparts) and 96 (Governing Law and Jurisdiction); and

84.1.2 the Schedules to the extent that they relate to the Clauses listed in Clause 84.1.1.

PART E: MISCELLANEOUS AND GOVERNING LAW

85. FURTHER ASSURANCE

85.1 Each Party shall at its own expense execute all documents and do all acts and things reasonably required to give effect to the terms of this Contract. In addition,

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the Parties shall execute all such further deeds and documents as may reasonably be required, or to the extent necessary for the provision of the Services, to document, secure, register, acknowledge and perfect the vesting, assignments and licences in relation to any Intellectual Property Rights arising under this Contract in accordance with the terms of this Contract.

85.2 The Contractor shall at all times co-operate with TTL, its other contractors from time to time, the police, the other emergency services and Authorised Third Parties.

85.3 The Contractor shall not obstruct, interrupt or hinder or permit any obstruction, interruption or hindrance by Connected Persons or any of their respective servants or agents to:

85.3.1 any TTL Sites;

85.3.2 the Transport Network or any part of it;

85.3.3 the property, business or undertaking of Network Rail, DLR or CRL; or

85.3.4 the property, business or undertaking of any Third Party including any Train Operating Company or Bus Operating Company.

86. COSTS

Unless expressed to the contrary in this Contract, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution, registration, and performance of its obligations under this Contract and all matters related to or connected with it.

87. RELATIONSHIP OF THE PARTIES

87.1 Nothing in this Contract or any document referred to in it or any arrangement contemplated by it shall constitute, or shall be deemed to constitute, either Party a partner of the other, nor shall the execution, contemplation and implementation of this Contract confer on either Party any power to bind or impose any obligations to any Third Parties on the other Party or to pledge the credit of the other Party.

87.2 Except as expressly provided to the contrary in this Contract, neither Party shall have any right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other Party or bind the other Party in any way.

88. ILLEGALITY AND SEVERABILITY

88.1 If any provision or part of this Contract is void or unenforceable due to any applicable Law, it shall be deemed to be deleted and the remaining provisions of this Contract shall continue in full force and effect. Subject to Clause 88.2, if any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it valid, legal and enforceable.

88.2 If in TTL's reasonable opinion any provision or part of this Contract held to be void or unenforceable due to any applicable Law is a provision or part so fundamental as to prevent the accomplishment of TTL's Objectives, TTL shall notify the Contractor of the same and TTL and the Contractor shall immediately commence good faith negotiations to remedy the offending provision or part.

89. THIRD PARTY RIGHTS

89.1 This Contract 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:

89.1.1 any member of the TTL Group will have the right to enforce the terms of this Contract in accordance with the Contracts (Rights of Third Parties) Act 1999;

89.1.2 rights conferred on any Successor Operator under Clause 83 (Transfer of Employees on Commencement and Expiry or Termination and Employee Information) will be enforceable by the relevant Successor Operator in accordance with the Contracts (Rights of Third Parties) Act 1999; and

89.1.3 rights conferred on any Successor Operator under Clause 82 (Handback of Services) (including under Schedule 19 (Handback of Services)) will be enforceable by the relevant Successor Operator in accordance with the Contracts (Rights of Third Parties) Act 1999.

89.2 The rights of the Parties to terminate or agree any amendment or variation under this Contract are not subject to the consent of any person that is not a party to this Contract.

90. ENTIRE AGREEMENT

90.1 Each of the Parties to this Contract confirms that this Contract represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect to its subject matter.

90.2 Each Party confirms that:

90.2.1 in entering into this Contract it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Contract; and

90.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Contract are pursuant to this Contract, and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Contract).

91. NO EXCLUSIVITY

The Parties acknowledge and agree that the provision and receipt of the Services between TTL and the Contractor shall be non-exclusive. Each of TTL and the Contractor shall be free to procure and provide (as applicable) services to any Third Party.

92. WAIVER/RIGHTS CUMULATIVE

92.1 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever. Without prejudice to the generality of the foregoing the Contractor acknowledges that exercise by TTL of its rights pursuant to Clause 48 (Step-In) shall not impair or constitute a waiver of any

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right, power, privilege or remedy of TTL under this Contract.

92.2 No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

92.3 Save as expressed to the contrary in this Contract, each Party's rights and remedies under this Contract are cumulative and shall not apply to exclude or limit any right or remedy at statute, common law or any claim for equitable relief.

92.4 No waiver of any of the provisions of this Contract shall be 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 55 (Notices).

93. LANGUAGE

English shall be the language of this Contract and all documentation or information required or produced in the course or in connection with the Contractor's performance of this Contract shall be in English.

94. VARIATION

No variation of this Contract shall be valid unless it is in writing and signed by or on behalf of each of the Parties to it by its respective duly authorised representatives. The expression "**variation**" shall include any variation, amendment, supplement, deletion or replacement however effected.

95. COUNTERPARTS

This Contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same agreement.

96. GOVERNING LAW AND JURISDICTION

96.1 This Contract and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes or claims) shall be governed by and construed in accordance with the laws of England.

96.2 Without prejudice to Clause 56.1 (Dispute Resolution), the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims), save that TTL has the absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated.

96.3 Notwithstanding the foregoing, nothing in this Contract shall prevent either Party from seeking injunctive relief in any court of competent jurisdiction.

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SCHEDULE 7 – SYSTEMS INTEGRATION

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SCHEDULE 8 – SERVICE OPERATIONS

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SCHEDULE 9 – TECHNICAL SYSTEM MANAGEMENT

SCHEDULE 9.1 – TECHNICAL AUTHORITY

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SCHEDULE 10.1 – CHANGE MANAGEMENT

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SCHEDULE 10.5 – ASSURANCE

SCHEDULE 11 – BUSINESS MANAGEMENT

SCHEDULE 11.1 – DOCUMENT MANAGEMENT

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SCHEDULE 12.1 – CHARGES AND THE FINANCIAL MODEL

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SCHEDULE 16 – LOSS OF REVENUE FROM LIST MANAGEMENT

SCHEDULE 17 – INSURANCE REQUIREMENTS

SCHEDULE 18 – PAYMENTS ON TERMINATION

SCHEDULE 19 – HANDBACK OF SERVICES

SCHEDULE 20 – TUPE AND EMPLOYEES

SCHEDULE 21 – STANDARD FORMS

SCHEDULE 21.1 – FORM OF CONFIDENTIALITY UNDERTAKING

SCHEDULE 21.2 – FORM OF PARENT COMPANY GUARANTEE

SCHEDULE 21.3 – FORM OF BAKER STREET LEASE