



[SUBJECT TO CONTRACT]

Agreement Reference Number:

Date:

**Agreement for a Trial Demand Responsive Bus
Service**

between

London Bus Services Limited

and

[Name of Operator]

Version 1: issued with EOI

Version 2: 24.8.18 issued with ITT (all changes tracked from EOI version)

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DRAFT

THIS AGREEMENT is made the

day of 2018

BETWEEN:

- (1) London Bus Services Limited, a company registered in England and Wales, (Company Registration Number 03914787) whose registered office is 55 Broadway, London, SW1H 0BD ("**the Corporation**"); and
- (2) [], a company registered in [England and Wales][insert as appropriate] (Company Registration Number []) whose registered office is at [] ("**the Operator**").

RECITALS:

- A. The Corporation wishes to understand the potential of demand responsive bus service to improve public transport outcomes in Greater London.
- B. The Corporation wishes the Operator to provide the Service and the Operator is willing to provide the Service to the Corporation on the terms and conditions set out in this Agreement.
- C. The Operator should be aware that the Corporation does not offer any guarantee or minimum volume of the Service that may be delivered under this Agreement and does not offer any exclusivity to the Operator.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

In the Agreement (including the Recitals):

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

"Agreement Commencement Date" means the date for commencement of the Agreement specified in Schedule 1;

"Agreement Information" means:

 - a) the Agreement in its entirety (including from time to time agreed changes to the Agreement); and
 - b) data extracted from claims and invoices submitted pursuant to Clause 9 and the Statement of Requirements which shall consist of the Operator's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

"Agreement Price" means the amount set out in the Payment Schedule being the total annual price in respect of the provision of the Service as calculated and adjusted in accordance with the Payment Schedule, or as otherwise advised or varied in accordance with the Agreement;

"Applicable Laws" means all requirements of the common law, all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions, (insofar as legally binding), bye-laws, treaties, and other regulatory requirements relevant to either or both of the Operator's business or the Corporation's business from time to time in force which are or may become applicable to the Service;

"Background IPR" means any Intellectual Property Rights owned or licensed to a Party before the Agreement Commencement Date or later developed or otherwise acquired by a Party and/or its Related Companies or any member of the Tfl Group other than through participation in this Agreement or the Service;

"Change of Control" means any event where any single person or group of persons acting in concert (within the meaning of The City Code on Take-overs and Mergers (the "Take-over Code")):

- a) acquires control (as defined in Section 450 of the Corporation Tax Act 2010) of the Operator; or
- b) increases its or their interest in the relevant share capital (as defined in Section 792 of the Companies Act 2006) of the Operator which is subject to the Take-over Code such that that person or group of persons would be obliged to make an offer for the Operator under Rule 9 of the Take-over Code or would be so obliged, but for any "whitewash" carried out pursuant to the Notes on Dispensations from Rule 9 of the Take-over Code.

For the purposes of this definition, the "Operator" includes the Operator and each body corporate which is from time to time directly or indirectly its holding company (as defined in Section 1159 of the Companies Act 2006);

"Change of Ownership" means any:

- a) material change in the ownership of any shareholding in the Operator (that carries the right to vote in general meetings of the shareholders of the Operator); and/or
- b) the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company;

and a change in the ownership is material for the purposes of clause 1.4.1 if it is a change of 10% or more of the Operator's issued share capital during the duration of the Agreement;

“Customers” means member of the public which will use the demand responsible bus service run by the Operator including the Operator’s IT Systems;

“Data Protection Legislation” means:

- a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 95/45/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- b) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);
- c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and
- d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation;

“DRT Trial Manager” means the person named as such in Schedule 1 or such other person as notified to the Operator by the Corporation;

“Exit Plan” means the Operator’s exit plan to be implemented on termination or expiry of this Agreement which will be agreed between the Parties before the Service Commencement Date;

“Foreground IPR” means any Intellectual Property Rights (excluding any Intellectual Property Rights related to the Operator’s software or hardware) created and/or generated during the Term of the Agreement (howsoever caused) regardless of whether it was generated by one or more parties or by a third party or parties on its or their behalf respectively;

“GLA” means the Greater London Authority;

“GLA Act” means the Greater London Authority Act 1999;

“GLA Group Branding” means any Intellectual Property Rights either owned or licensed to the GLA which the GLA is entitled to use;

“Holding Company” means any company which from time to time directly or indirectly controls the Operator as set out by section 1159 of the Companies Act 2006;

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

"London Buses" means the trading name of the Corporation;

"Operators Manager" means the person named as such in Schedule 1 or such other person as notified to the Corporation by the Operator;

"Motor Insurance Database" means the central database managed by the Motor Insurance Bureau;

"Party" means each company or person who is a party to this Agreement and any permitted assignees;

"Payments Calendar" means the payments calendar referred to in the Statement of Requirements;

"Payment Date" means each of the Intermediate Payment Date and Final Payment Date specified as such in the Payments Calendar;

"Payment Documents" means in relation to each Payment Period:

- a) a claim submitted by the Operator to the Corporation setting out the Period Contract Payment or other payment due in respect of the Payment Period less any sums previously paid in respect of the Agreement in relation to that Payment Period whether on the Intermediate Payment Date or otherwise; and
- b) a report in respect of each Payment Period by the Operator to the Corporation relating to mileage in the form set out in Statement of Requirements;

"Payment Period" means each of the periods identified as such in the Payments Calendar;

"Payment Statement" means the statements issued by the Corporation to the Operator before each Final Payment Date (as set out in the Payments Calendar) and as further described in Statement of Requirements;

"Payment Year" means the periods set out in Statement of Requirements as determined by the Corporation in accordance with the Statement of Requirements. The Payment Year includes, as the context requires the "Initial Payment Year";

"Period Contract Payment" means the sum due to the Operator from the Corporation in respect of each Payment Period as set out in or calculated in accordance with Statement of Requirements;

"Personnel" means all such employees, officers, suppliers, sub-contractors and agents of the Operator as are engaged in the performance of any of the Service;

"Public Schedule" means the information provided to the public, which summarises the Service and as further detailed in the Statement of Requirements;

“Related Company” means any parent company of a Party, and any subsidiary or affiliate in which it owns or control, directly or indirectly, at least 25% of the voting stock, partnership interest or other ownership interest;

“Service” means the trial demand responsive bus service to be provided under this Agreement as further described in the Statement of Requirements;

“Service Area” means the area in which the Operator provides the Service and as further set out in Schedule 4;

“Service Commencement Date” means the date for commencement of the Service set out in Schedule 1;

“Service Levels” means the minimum service levels for the Operator to comply with in relation to the Services as set out in the Statement of Requirements;

“Statement of Requirements” means the specification and other requirements as set out in Schedule 2;

“Term” means the period during which the Agreement continues in force as set out in Schedule 1;

“TfL” means Transport for London and its successors in title;

“TfL Group” means Transport for London and any subsidiary (as defined in Section 1159 of the Companies Act 2006) thereof from time to time, including as the context so admits the Corporation;

“TfL Group Branding” means any Intellectual Property Rights either owned or licensed to the Corporation and/or the TfL Group which the Corporation is entitled to use;

“TfL Premises” means any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group (including the Corporation);

“Transparency Commitment” means the Corporation’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Corporation’s own published transparency commitments; and

“Working Day” means any day Monday to Friday inclusive except public holidays in England.

1.2 In this Agreement unless the context otherwise requires:

- 1.2.1 references to the singular shall include the plural and vice versa and references to the masculine shall include the feminine and vice versa;
- 1.2.2 references to clauses shall be to the clauses in this Agreement, references to Schedules shall be to the schedules as the context so

requires and references to paragraphs shall be to the relevant paragraph of the Schedule in which the reference occurs;

1.1.3 headings are inserted for convenience only and shall not affect its construction; and

1.1.4 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment order, regulation or instrument as amended or re-enacted by and subsequent statute, enactment, order, regulation or instrument and shall include all statute, instrument or order made pursuant to it whether replaced before or after the date of execution of this Agreement;

1.2 In the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:

1.2.3 The conflicting part of the Schedule is explicitly expressed to take precedence; or

1.2.4 The conflict is with a provision in Schedule 2 (Statement of Requirements) in which case the provisions in Schedule 2 shall prevail.

2. TERM

This Agreement commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement or extended beyond the Term at the sole discretion of the Corporation for up to three (3) months.

3. THE SERVICE

3.1 The Operator shall provide the Service from the Service Commencement Date exercising all skill and diligence and in accordance with the terms and conditions of this Agreement.

3.2 The Operator:

3.2.1 acknowledges that it has sufficient information about the Corporation and this Agreement and that it has made all appropriate and necessary enquiries to enable it to perform the Service in accordance with the Agreement;

3.2.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement due to any misinterpretation or misunderstanding by the Operator of any fact relating to the Agreement; and

3.2.3 shall comply with all lawful and reasonable directions of the Corporation relating to its performance of the Service.

3.3 The Operator is authorised to enter into contracts of carriage with passengers on the Service on the terms and conditions of carriage applicable to the Service being

provided pursuant to the Agreement as amended from time to time and in accordance with the terms and conditions of this Agreement as the Corporation's agent. The Operator shall carry out such ticket checking and/or validation tasks as may be required by the Corporation from time to time. Otherwise, the activities of the Operator pursuant to this Agreement shall be conducted by it as principal and the Operator shall not hold itself out or describe itself to any person as an agent or representative of the Corporation, except as expressly authorised herein.

3.4 The Operator shall not operate the Service on 25 December each year, unless otherwise agreed with the Corporation.

3.5 The Service shall be operated from the Service Area as detailed in Schedule 4. The Operator shall require prior written agreement from the Corporation before operating the Service from any other area and will meet any applicable requirements as required by the Corporation (as detailed in the Statement of Requirements).

4. THE VEHICLES AND EQUIPMENT

4.1 The Operator shall provide the Service using only vehicles which comply with the Statement of Requirements including the permitted branding of the vehicles.

4.2 Where the Corporation considers that the operation of a vehicle provided by the Operator could affect the safety of passengers or the general public the Corporation may instruct the Operator not to operate that vehicle. In such circumstances the Operator shall provide at its own expense an alternative vehicle which complies with the Statement of Requirements for the performance of the Service and provide the Corporation with prior written notice before such vehicle is used as part of the Service.

4.3 The Operator shall ensure at all times that all vehicles used in providing the Service are in a clean and serviceable condition (both internally and externally) and fit for the purpose.

4.4 The Operator shall comply with the Corporation's "*Engineering Quality Monitoring*" system (as set out in Statement of Requirements).

4.5 The Corporation its employees agents and contractors shall have the right at any time to enter the Operator's premises for the purposes of inspecting the vehicles used in the provision of the Service, the Operator's maintenance facilities and/or the maintenance records kept for the said vehicles and for the purpose of conducting emission checks. The Corporation may require the Operator (at the Operator's expense) to remedy any issues or faults with the Operator's vehicles, premises or facilities that do not comply with any Applicable Laws and/or the Statement of Requirements following providing the Operator with a written report setting out the issues and or faults which require repair. The Corporation may (on reasonable notice) enter the Operator's premises to inspect and confirm whether such issues or faults have been remedied.

- 4.6 The Corporation, its employees, agents and contractors shall, whilst on the Operator's vehicles or premises pursuant to clauses 4.5, comply with the Operator's reasonable instructions.
- 4.7 In addition to and without prejudice to clause 7, the Operator shall comply with Regulation 10(1), 10A, 10B and 10C of The Road Vehicles (Construction and Use) Regulations 1986 and, for the purposes of this Agreement, the exceptions to Regulation 10 (1) and 10A (1) mentioned therein shall not apply.
- 4.8 Nothing in clauses 4.1 to 4.8 shall relieve the Operator from its obligation to ensure that a vehicle is ready to enter into service on the Service Commencement Date.

5. SAFETY REQUIREMENTS

- 5.1 In providing the Service the Operator shall take all steps necessary to ensure the safety and wellbeing of all persons including:
- 5.1.1 members of the public;
 - 5.1.2 passengers boarding, travelling on and alighting from the vehicles used in operating the Service;
 - 5.1.3 all employees, agents and contractors of the Corporation whilst on or visiting any of the Operator's vehicles or premises used in the provision of the Service for any purpose in connection with this Agreement; and
 - 5.1.4 other road users.
- 5.2 The Operator shall:
- 5.2.1 comply with the requirements to produce information on health and safety and other issues as set out in the Statement of Requirements;
 - 5.2.2 comply with and produce for inspection by the Corporation when required to do so the Operator's health and safety policy statement and supporting documentation; and
 - 5.2.3 comply with all other requirements as set out in the Statement of Requirements.
- 5.3 The Corporation its employees agents and contractors shall have the right at any time to enter the Operator's premises if it comes to the Corporation's attention that there may be unsafe work practices being undertaken by the Operator. The Operator will cooperate with the Corporation as further detailed in the Statement of Requirements.
- 5.4 Without prejudice to clause 23.1.11, the Parties agree and acknowledge that where persistent minor breaches or a material breach of the safety requirements under this Agreement arise, such breaches may not be capable of remedy if the Corporation forms the view that as a result of such breach or breaches there is a significant risk that the Operator has or will compromise the Corporation's performance of its statutory functions, or any statutory duties to which the

Corporation may become subject from time to time, or, if the Service were to continue, would be likely to compromise such performance in the future.

6. OPERATOR'S LICENCE

- 6.1 The Operator shall have and keep in force a Public Service Vehicles Operator's licence granted under Section 12 of the Public Passenger Vehicles Act 1981 which permits the lawful operation of the Service and shall produce the licence at any time upon request for inspection by the Corporation.
- 6.2 If at any time the Operator's licence referred to in clause 6.1 is removed, revoked, restricted or suspended, the Corporation, without prejudice to any of its other rights or remedies under this Agreement including without prejudice to the generality of the foregoing the right pursuant to clause 16 to recover any losses, costs or expenses incurred by the Corporation as a result of the Operator's breach of clause 6.1 (including without limitation the cost of engaging a temporary or replacement operator at short notice), may at its sole discretion notify the Operator in writing that the Service is to be suspended but that the Agreement is to continue in force and effect. If the Operator's licence is restored, the Corporation may by written notice require the Operator to recommence provision of the Service and the Operator shall recommence such provision immediately upon receipt of such written notice. If the Corporation gives such notice of suspension of the Service to the Operator, the Corporation may at any time thereafter whilst the Operator's licence continues to be removed, revoked, restricted or suspended notify the Operator that the Agreement is terminated in accordance with clause 23.1.2.
- 6.3 The removal, revocation, restriction or suspension of the Operator's licence referred to in clause 6.1 shall be deemed to be a matter entirely within the control of the Operator.
- 6.4 The Operator shall notify the Corporation immediately of any circumstances relating to the Operator's licence being (or about to be) removed, revoked, restricted, suspended or any other issues relevant to the Operator's licence including without limitation notifying the Corporation in advance of any hearing or formal enquiry with the Traffic Commissioner.
- 6.5 The Operator shall copy to the Corporation all correspondence with/from the Traffic Commissioner relating to the Operator's licence being (or about to be) removed, revoked, restricted or suspended and any other correspondence relevant to any circumstances arising under clause 6.4.

7. COMPLIANCE WITH THE GENERAL LAW AND ENVIRONMENTAL REQUIREMENTS

- 7.1 The Operator at no additional cost to the Corporation :
- 7.1.1 shall carry out all of its obligations so as to comply with all relevant Applicable Laws, including without limitation ensuring that the Service is operated in all respects in accordance with all requirements of all relevant health and safety legislation codes and guidelines (whether such are mandatory or permissible); and

- 7.1.2 undertakes to procure that all of the Operator's Personnel comply with the Corporation's policies and standards that are relevant to the Service as set out in the Statement of Requirements. The Corporation shall provide the Operator with copies of such policies and standards on request.
- 7.2 Without prejudice to clause 7.1, the Operator shall maintain the vehicles used for the operation of the Service in all respects and comply with all Applicable Laws, which are or may become applicable to Public Service Vehicles (as defined in Section 1 of the Public Passenger Vehicles Act 1981).
- 7.3 The Operator shall promptly notify the Corporation of any notice, order, direction, licence, prohibition, or charge relating to the performance by the Operator of the Service or which relates to or may in any way adversely affect the Operator's performance of the Service and/or the operation by the Operator of Public Service Vehicles.
- 7.4 Without prejudice to the generality of clause 7.1, 7.2 and 7.3 the Operator shall:
- 7.4.1 have regard to the need to preserve and protect the environment and the need to mitigate any adverse effects on the environment and shall, so far as possible, ensure that all materials and consumables (including without limitation all bus consumables, tyres, batteries, fuel, oil, anti-freeze and solvents) used in the performance of its obligations under this Agreement are environmentally friendly and minimise pollution to the environment, any property and members of the public and are kept and/or disposed of in a safe and lawful manner so as not to interfere unnecessarily or improperly with the environment, any property or any member of the public;
 - 7.4.2 take all steps necessary to ensure the protection of the environment in accordance with legislation and TfL environmental objectives, targets and best practice;
 - 7.4.3 reasonably pursue opportunities to reduce any negative environmental impact of its provision of the Service in accordance with the Mayor of London's Air Quality, Biodiversity, Ambient Noise, Climate Change Mitigation and Energy, Climate Change Adaptation, Business Waste and Municipal Waste strategies as published by the Greater London Authority from time to time and TfL environmental objectives, targets and Health Safety and Environmental Policy in force from time to time.
 - 7.4.4 have regard to reducing environmental impacts across all aspects of its operations including (without limitation) taking all reasonable steps to reduce:
 - 7.4.4.1 Carbon Dioxide emissions arising from fuel use including the Operator's adoption of measures to reduce vehicle fuel consumption such as the introduction of fuel efficient driver training programmes, installation of fuel monitoring systems and the procurement of vehicles with good fuel consumption and low Carbon Dioxide emissions;

- 7.4.4.2 Emissions of local pollutants Oxides of Nitrogen (NOx) and Particulates including: ensuring that any exhaust after treatment systems are operated, maintained and serviced as per manufacturer requirements to ensure efficiency, and taking account of NOx and particulate emissions performance of vehicles when selecting new vehicles for operation under this Agreement;
- 7.4.4.3 noise including: ensuring that all components that may give rise to excessive noise are serviced regularly and silencers are checked and replaced where necessary and taking account of the noise performance of vehicles when selecting new vehicles for operation under this Agreement.

7.5 The Operator shall on request by the Corporation demonstrate to the Corporation's satisfaction that it has appropriate environmental management systems in place to ensure compliance with clause 7.4.

7.6 The Operator shall supply to the Corporation all information and data relating to the Operator's environmental performance, including environmental projects and initiatives upon request.

8. FARES, TICKETS AND PASSES

8.1 The fares payable by passengers will be set in the Fares Direction as described in the Statement of Requirements.

8.2 The Corporation shall be entitled to vary the fares within the scope of the Fares Direction of described in the Statement of Requirements by giving the Operator at least 24 hours written notice of any such variation in accordance with Clause 21 and issuing a revised fares chart to the Operator.

8.3 The Operator shall accept the passes and special tickets referred to and in accordance with the Statement of Requirements as amended from time to time, and shall take such other actions as necessary to validate any passes and tickets, as may be required by the Corporation from time to time.

9. AGREEMENT PRICE

DRAFTING NOTE: The "Agreement Price" will be settled during the bidding process; please see section 4.3 of Volume 1 of the ITT. .

9.1 In consideration of the provision by the Operator of the Service

the Corporation shall pay the Operator the Agreement Price.

in the manner and at the times set out or calculated in accordance with the Statement of Requirements and Schedule 5.

9.2 The Agreement Price shall be fixed save where varied or adjusted in accordance with this Agreement. For the avoidance of doubt, except where provided in the Agreement Price Adjustment Formula, no adjustment shall be made to the

Agreement Price in the event of the abolition or material change of fuel duty rebate or its relationship with fuel duty or any increases in fuel duty.

- 9.3 All claims submitted by the Operator to the Corporation pursuant to this Agreement shall be addressed to London Bus Services Limited, DRT Trial Manager, Palestra, 10th Floor, 197 Blackfriars Road, London SE1 8NJ or such other address as the Corporation may notify in writing from time to time.
- 9.4 The Corporation shall be entitled to retain any part of the Agreement Sum due to the Operator in the final Payment Period under this Agreement if it knows or has reasonable grounds to believe that the Operator owes any sum of money to the Corporation under this Agreement [or any other contract with the Corporation] provided that (and without prejudice to clause 33) such retention shall be for a maximum period of 3 months following the expiry of the Term or such extension as the case may be.
- 9.5 Any payments made by the Corporation under this Agreement including final payment under the Agreement shall not prevent the Corporation from recovering any amount overpaid or wrongfully paid however such payments have arisen including but not limited to those paid to the Operator by mistake of law or of fact. The Corporation shall be entitled to withhold from any sums due any amount which on the basis of the Corporation's bona fide estimate the Corporation considers due to it from the Operator. Such estimate shall be binding on the Operator unless and until varied by agreement between the Parties or any award, order or judgement.

10. FINANCIAL PROVISIONS

- 10.1 All payments and receipts referred to in this Agreement are exclusive of Value Added Tax (VAT) which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

11. FARE COLLECTION ARRANGEMENTS

- 11.1 The Operator will have an online booking system that passengers can use to pre-book and pre-pay for their journeys and as further described in the Statement of Requirements.
- 11.2 The Operator shall provide to the Corporation or to such other persons as the Corporation may from time to time notify to the Operator in writing the data and information from the ticketing equipment in the manner and at the times set out in the Statement of Requirements.

12. THE OPERATOR'S PERSONNEL

- 12.1 The Operator shall employ or engage drivers and Personnel who are suitably qualified in all respects in accordance with:

12.1.1 all Applicable Laws from time to time in force;

- 12.1.2 and ensure all such drivers shall comply with all traffic regulation orders made from time to time and any conditions of any licences appertaining thereto; and
- 12.1.3 all applicable requirements as set out in the Statement of Requirements
- and the Operator shall ensure all Personnel are properly managed and supervised as appropriate.
- 12.2 Without prejudice to the generality of clause 12.1, the Operator shall use its best endeavours to ensure that:
- 12.2.1 all of its Personnel dealing or likely to deal with the public are at all times helpful, polite and smartly and suitably dressed;
- 12.2.2 its Personnel do not smoke in any circumstances whilst on any vehicle;
- 12.2.3 its Personnel do not report for duty or carry out their duties whilst under the influence of alcohol or any illegal drug and that they do not consume alcohol or any illegal drug while on duty (including during meal and other breaks);
- 12.2.4 suitable working rosters are put in place to avoid driver fatigue and to check Personnel for fatigue on reporting for work;
- 12.2.4 its drivers take account of the needs of all passengers (in particular older and disabled passengers) by displaying a high standard of driving skill including without limitation ensuring that its drivers avoid unnecessarily rapid acceleration, do not drive at inappropriate speeds or apply harsh braking unnecessarily, where appropriate pull-in at stops parallel with and close to the kerb and give sufficient time for passengers to board, become seated or stand securely (using handrails and/or other assistive fittings) and/or alight in safety and comfort before moving off; and
- 12.2.5 all Personnel who have dealings with the public (or support such staff) are provided with disability awareness training to a standard prescribed by the Corporation and which ensures compliance with the Equality Act 2010 and if requested by the Corporation, the Operator shall provide the Corporation with details of training provided pursuant to this clause 12.2.5.
- 12.3 Not used.
- 12.4 Without prejudice to any of the Corporation's other rights, powers or remedies, the Corporation may (without liability to the Operator) deny access to such of the Operator's Personnel to any TfL Premises and/or require any of the Operator's Personnel be immediately removed from performing the Service if such Operator's Personnel in the Corporation's view have not been properly trained in any way required or as set out in the Statement of Requirements, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Corporation shall notify the Operator of such denial and/or requirement in

writing and the Operator shall comply with such notice and provide a suitable replacement. The Operator is not relieved of its obligations under this Agreement if this Clause 12.4 is invoked.

London Living Wage

- 12.5 For the purposes of clause 12.5 the term London Living Wage means the basic hourly wage (before tax, other deductions and any increase for overtime) as updated from time to time by the GLA Economics Unit or any relevant replacement organisation and as notified to the Operator.
- 12.6 Without prejudice to any other provision of this Agreement, the Operator shall:
- 12.6.1 ensure that no person employed and/or engaged in or about the provision of the Service are paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 12.6.2 ensure that no person employed and/or engaged in or about the provision of the Service are paid less than the amount to which they are entitled in their respective contracts of employment;
 - 12.6.3 provide to the Corporation such information concerning the London Living Wage as the Corporation or its nominees may reasonably require from time to time;
 - 12.6.4 disseminate on behalf of the Corporation to persons employed and/or engaged in or about the provision of the Service such perception questionnaires as the Corporation may reasonably require from time to time and promptly collate and return to the Corporation responses to such questionnaires; and
 - 12.6.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- 12.7 Any breach by the Operator of the provisions of clause 12 shall be treated as a material breach capable of remedy.
- 12.8 The Corporation reserves the right to audit (acting by itself or its nominees(s)) the provision of the London Living Wage to the Operator's staff and the staff of its sub-contractor/s.

London Bus Driver Professional Wage

- 12.9 For the purposes of clauses 12.9, 12.10, 12.11 and 12.12 the term London Bus Driver Professional Wage ("LPW") means annual earnings of a bus driver employed by the Operator (before tax, other deductions and any pay for overtime) based on a 40 hour rostered week as averaged across the year.
- 12.10 The Operator shall:

- 12.10.1 ensure that no person with a valid full Category D driving licence employed as a public service vehicle driver in the direct provision of the Service are paid less than the LPW;
- 12.10.2 provide to the Corporation such information concerning the LPW as the Corporation or its nominees may reasonably require from time to time; and
- 12.10.3 co-operate and provide all reasonable assistance in monitoring the effect of the LPW.

12.11 The rate of the LPW is determined as follows:

- 12.11.1 The initial LPW is £23,912 per annum from 1 April 2018.
- 12.11.2 The LPW will be adjusted on a date determined by the Operator which is not later than 1 April each year by the change in the Retail Price Index (as set out in the RPI All Items Index published by the Office for National Statistics) published in the previous October in respect of the 12 month period preceding that October and this adjustment will be applied on a date to be determined by the Operator not later than 1st April the following year;
- 12.11.3 The LPW is based upon rostered hours (from sign on to sign off) and subject to a pro rata increase or decrease if more or less than 40 rostered hours a week are worked on average across the year;
- 12.11.4 The components of pay which form part of the LPW will be determined by the Operator, save that it will include all hourly pay and rate enhancements applicable to rostered hours and any bonuses and exclude any pay for overtime over and above rostered duties;
- 12.11.5 If a driver chooses to change his or her rostered duty for one that pays less (whether due to the number of hours worked or different enhancements), the LPW will be reduced accordingly; and
- 12.11.6 The LPW is based upon an annual period of work and are subject to a pro rata reduction for any part of the year spent on leave or other absence which is unpaid or paid at a lower rate than normal pay (excluding contractual holiday entitlement).

12.12 Any breach by the Operator of the provisions of clauses 12.9, 12.10 and 12.11 shall be treated as a material breach capable of remedy.

DRAFTING NOTE: Further Clauses may be included depending on what is agreed with Bidders in relation to Operators being encouraged to adopt modern working practices as further set out in Statement of Requirements.

13. RIGHTS TO INFORMATION, RIGHTS TO ACCESS TO THE OPERATOR'S PREMISES AND RIGHTS OF AUDIT

- 13.1 The Operator shall supply the Corporation with the information specified in the Statement of Requirements to enable the Corporation to monitor the Service.
- 13.2 The Corporation (and its agents or contractors) shall have the rights of access and the rights of audit and/or inspection as set out in this Agreement.
- 13.3 The Corporation shall provide the Operator with reasonable notice (which shall normally be a minimum of one Working Day) of its intention to exercise any rights under clause 13.2 and shall so far as practicable exercise such rights so as not to prejudice the ability of the Operator to provide the Service provided that the Corporation may exercise such rights without notice where the Corporation considers it reasonably necessary to achieve the purpose of any audit or inspection.
- 13.4 The Operator shall provide or make available to the Corporation its employees agents and contractors:
- 13.4.1 all assistance as may reasonably be required;
 - 13.4.2 all records, data and other information as may reasonably be required;
 - 13.4.3 the use of a telephone, photocopier and such other office equipment as may be reasonably required;
 - 13.4.4 reasonable access to persons employed and/or engaged in or about the provision of the Service; and
 - 13.4.5 a suitable work area during the exercise by the Corporation of its rights under clause 13.2 at any premises of the Operator.
- 13.5 The Operator agrees (and shall procure that its subcontractors agree), to retain all records (which shall mean all records relating to or in connection with the Agreement and any other information reasonably required by the Corporation or specified in the Agreement) for a period of not less than six years (or such other period as may be expressly stated in the Agreement or as required by law whichever is longer) after expiry or termination of this Agreement (the "Retention Period").
- 13.6 The Operator shall (and shall procure that its subcontractors shall) maintain a true and accurate set of records which shall be stored in a safe and secure manner appropriate to preserve the condition of the records during the Retention Period and to prevent loss or unauthorised disclosure of such records. The Corporation (and its contractors and agents) shall have the rights of access and the rights of audit and/or inspection of any or all such records in accordance with the provisions set out in this Agreement and such rights shall continue to apply during the Retention Period.

14. BUS STANDS, STATIONS, AND EMERGENCY PROCEDURES

14.1 As required and as set out in the Statement of Requirements, the Operator shall use its best endeavours to ensure that its Personnel shall comply with *"London Buses Officials Attending and Dealing with On The Road Accidents and Incidents Involving Contracted Service Buses, Passengers and/or Staff"* and with all instructions given to them from time to time by the Corporation's authorised officials in respect of:

14.1.1 the use of bus stands, bus stations, bus stops and other infrastructure owned, occupied or managed by the Corporation (or its agents or contractors) and used by the Operator;

14.1.2 emergency situations and/or diversions from the Service Area; and

14.1.3 any other safety or security related matters.

14.2 The Operator shall, and shall ensure that its Personnel shall, comply with the *"General Conditions Relating to the use of London Buses Bus Stations and Stands"* (as set out in the Statement of Requirements) and as amended by the Corporation from time to time. In particular, the Operator shall ensure that when at a bus station, stand (off or on highway) or on any part of the public highway its Personnel switch off engines at all times when parked.

15. SECURITY ALERTS CARRIAGE OF ANIMALS AND CORRESPONDENCE WITH THE PUBLIC

15.1 The Operator shall use its best endeavours to comply and ensure that its Personnel comply with the procedures as amended from time to time by the Corporation and set out in the Statement of Requirements in relation to suspicious packages, the carriage of animals and particular driving requirements.

15.2 The Operator shall comply with the requirements set out in the Statement of Requirements and *"Dealing with Customer Contacts: Standards and Monitoring"*, (as set out in the Statement of Requirements) in relation to public correspondence.

16. INDEMNITY AND INSURANCE

DRAFTING NOTE: it is anticipated the contract will include a cap on liability. This will either be one overall cap, or several caps on liability depending on the nature of the breach. These questions will be settled during the bidding process. We have included an obligation in clause 16.2 below to maintain professional indemnity insurance in relation to the design of the app.

[16.1 The Operator shall be responsible for and shall release and indemnify the Corporation its employees, agents and contractors from and against all liability for: death or personal injury, loss of or damage to property (including property belonging to the Corporation or for which it is responsible and including property provided to the Operator pursuant to clause 4 or the Statement of Requirements; and any other loss, damage, cost and/or expense which may arise out of or in the course of or by reason of the performance or non-performance of this Agreement by the Operator, its employees or agents whether such injury, loss, damage, cost and/or expense be caused by negligence or otherwise and/or any

termination, avoidance or disclaimer of this Agreement at common law or in accordance with the Insolvency Act 1986 by any insolvency practitioner acting in relation to the Operator; provided always that the Operator shall not be liable to indemnify the Corporation for any injury, loss, damage, cost and expense caused solely by the negligence of the Corporation, its employees, agents or contractors is shown to have contributed to the said injury, loss, damage, cost and/or expense.

16.2 Without prejudice to its liability to indemnify the Corporation under clause 16.1 the Operator shall, at its own expense, arrange and maintain throughout the duration of this Agreement the following insurances (the Insurances):

16.2.1 public liability in the sum of not less than £10,000,000 (ten million pounds) per incident;

16.2.2 employers' liability in the sum of not less than £5,000,000 (five million pounds) per incident or such other sum as may be required from time to time under the provisions of the Employers Liability (Compulsory Insurance) Act 1969;

16.2.3 motor liability (as required under the Road Traffic Act 1988 or any subsequent legislation or statutory requirements) and in the sum appropriate to reflect their use as public carriage vehicle transporting passengers; and

16.2.4 professional indemnity insurance in an amount not less than £1,000,000 (one million pounds) per incident,

with an insurer (or insurers) authorised to underwrite such risks in the United Kingdom and if required by the Corporation on terms approved by the Corporation.

16.3 The Operator shall ensure that the Insurances cover the Operator's legal liability (including liability assumed under this Agreement) which may arise out of or in the course of or by reason of the performance or non-performance of this Agreement and extend to indemnify the Corporation as principal.

16.4 At any time during the continuance of this Agreement the Operator shall on being requested to do so by the Corporation provide proof to the reasonable satisfaction of the Corporation that the Insurances have been effected and are in force.

16.5 The Operator shall with all due diligence comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including without limitation, in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Operator shall bear the cost of all exclusions, limitations and excesses under the policies of insurance. The Operator shall ensure that all vehicles used to perform this Agreement are registered on the Motor Insurance Database.

16.6 In relation to all the Insurances except that required under clause 16.2.2 the Operator agrees that the Corporation shall have the right to control and to

supervise all dealings with the press and any other media in relation to any incident, event, claim or action.]

17. ADVERTISING THE SERVICE

17.1 Subject to Clause 17.2, the Parties shall work together to advertise and communicate the Service and provide passenger information including any notices and any such items of publicity as it considered reasonably required to advertise any short term changes to the Service such as changes to stopping arrangements or other changes to the Service.

17.2 The Operator shall not advertise or communicate the Service or use any TfL Group or GLA Branding or Intellectual Property Rights without the prior written approval of the Corporation and must at all times comply with the TfL and GLA Design Standards with particular references to the use of logos, typefaces, colours, legibility and other elements that are required and the bespoke brand guidelines which will be developed for the trial.

DRAFTING NOTE: Bespoke brand guidelines will be developed by the Parties, as referenced in the Statement of Requirements

17.3 The Operator shall make available to the TfL Call Centre (and/or such other parts of the Corporation and/or the TfL Group notified by the Corporation to the Operator from time to time) all information relating to the Public Schedule, and Service Area to which the Service is to operate and such other information relating to the Service in such a form as the Corporation may reasonably require.

17.4 The Operator shall give the TfL Call Centre (and/or such other parts of the Corporation and/or the TfL Group notified by the Corporation to the Operator from time to time) as a minimum twenty four (24) hours prior written notice of any amendments to the above information pursuant to changes to this Agreement save where this is not possible by reason of the Operator being given shorter notice of such amendments by the Corporation.

17.5 Subject to Clause 17.6, the Operator hereby authorises the Corporation and/or the TfL Group to provide details of any information supplied by the Operator under this clause 17 relating to the Public Service and Service Area to which the Service is to operate, or any other key customer information, to the general public and to the media, (including for the avoidance of doubt radio, television, newspapers, internet and the like) in print, by electronic means of communication or in any other form which the Corporation and/or the TfL Group considers appropriate.

17.6 The Corporation may by prior written agreement authorise the Operator to provide such information on the Service to the general public and to the media, (including for the avoidance of doubt, radio, television, newspapers, internet and the like) in print, by electronic means of communication or in any form which the Corporation and/or the TfL Group considers appropriate.

18. COMMERCIAL ADVERTISING

- 18.1 Where the Statement of Requirements indicates that the Operator is permitted to accept third party advertising, the Operator will be free subject to the provisions of this clause 18 to accept advertising used on the Service and to retain any revenues received from such advertising. The Operator shall not otherwise be permitted to accept advertising used on the Service.
- 18.2 The Corporation will not be subject to any costs relating to the fitting and maintenance of advertisements of any such third party advertising.
- 18.3 Advertisements shall only be permitted in accordance with prior written agreement of TfL.
- 18.4 Advertisements affixed to the interior of the vehicle will only be permitted on those areas of the vehicle above the windows and excluding the vehicle ceiling.
- 18.5 The Operator's right to advertise is subject to any modification the Corporation may require to meet the Corporation's requirements for the display of any service or other information and compliance with TfL's Advertising Policy (as described in the Statement of Requirements).
- 18.6 Advertisements will not be acceptable if in the opinion of the Corporation's Operations Director and/or Customer Director each from time to time in post and/or such other person that the Corporation may from time to time specify they:
- 18.6.1 do not comply with the Corporation's Advertising Policy as published from time to time on its website and as referred to in Schedule 1, do not comply with the law or incite anyone to break the law; and/or
 - 18.6.2 conflict with the British Code of Advertising, Sales Promotion and Direct Marketing and the UK Code of non broadcast advertising and direct and promotional marketing (CAP code) regulated by the Advertising Standards Authority.
- 18.7 If in the opinion of the Corporation's Operations Director and/or Customer Director (from time to time in post and/or such other person as the Corporation may from time to time specify) any advertisement does not comply with this clause 18, such advertisement shall on the written request of the Operations Director and/or Customer Director each (from time to time in post and/or such other person that the Corporation may from time to time specify) be removed immediately at the cost of the Operator.
- 18.8 The Operator shall indemnify and keep indemnified the Corporation against all claims, demands, proceedings, costs, charges and/or expenses arising out of advertising used on the Service.

19. LOST PROPERTY

The Operator shall comply with the arrangements for dealing with lost property as set out in the Statement of Requirements as varied from time to time in writing by the Corporation in accordance with Clause 22.

20. ASSIGNMENT, NOVATIONS, DISPOSALS, SUB-CONTRACTING AND CHANGE OF CONTROL

20.1 This Agreement is personal to the Operator who shall not without the prior written consent of the Corporation assign, novate or otherwise dispose in whole or in part of its rights hereunder nor assign sub-contract or otherwise delegate in whole or in part any of its obligations hereunder (except in cases of temporary emergency where the Corporation shall be informed as soon as is practical in the circumstances) which may be refused or granted subject to conditions as the Corporation sees fit.

20.2 For the avoidance of doubt a disposal shall be deemed to include but not be limited to any re-organisation of the Operator which materially would affect the Operator's ability to perform its obligations under this Agreement including without limitation any re-organisation which affects the resources, technical competence and/or financial standing (or the technical and/or financial resources available) to enable the Operator to perform its obligations.

20.3 Approval by the Corporation of any subcontract shall not relieve the Operator of any of its obligations hereunder and where the Operator subcontracts all or any part of the Service the Operator shall:

20.3.1 ensure that such person is obliged to comply with all of the obligations and duties of the Operator under this Agreement insofar as they relate to the Service or part of them (as the case may be) which that subcontractor is required to provide;

20.3.2 be responsible for payments to that person;

20.3.3 remain solely responsible and liable to the Corporation for any breach of the Agreement or any performance, non-performance, part-performance or delay in performance of any of the Service by any subcontractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Operator;

20.3.4 without prejudice to the provisions of Clause 7, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;

20.3.5 include a term in each sub-contract (of any tier);

20.3.5.1 requiring payment to be made by the Operator, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a

specified period not exceeding thirty (30) days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;

20.3.5.2 requiring that any invoices for payment submitted by the sub-contractor are considered and verified by the Operator, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;

20.3.5.3 entitling the Operator or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate the sub-contract if the relevant sub-contract fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour laws; and

20.3.5.4 a requirement that the sub-contractor includes a provisions having the same effect as Clause 20.3.5.3 above in any sub-contract it awards.

20.4 Any purported assignment or novation which is not made in accordance with this clause 20 shall be invalid, and without prejudice to clause 16 the Operator shall indemnify the Corporation in respect of any claims, liabilities, costs, losses and/or expenses incurred by the Corporation in connection with or in consequence of such invalid assignment or novation.

20.5 Without prejudice to clause 20.6, the Operator shall immediately inform the Corporation of any event that may give rise to a Change of Ownership or a future Change of Ownership and provide such information as the Corporation reasonably requires in relation to such a Change of Ownership.

20.6 The Operator shall obtain the Corporation's written approval prior to any Change of Control of the Operator during the duration of the Agreement and such approval may at the Corporation's discretion be:

20.6.1 given with or without any conditions being attached; or

20.6.2 denied on any grounds including without limitation where such Change of Control would in the opinion of the Corporation have a material adverse effect on the ability of the Operator to continue to perform its obligations under the Agreement.

20.7 The Operator shall notify the Corporation as soon as it becomes aware of a proposed Change of Control and shall provide the Corporation with all information (within its possession) relating to the proposed transferee.

20.8 For the avoidance of doubt if the Corporation gives its approval under clause 20.6.1 subject to conditions being attached and any condition is not satisfied in

full the Corporation shall be entitled to withdraw its approval and approval shall be deemed to have been denied.

21. CONFIDENTIALITY

DRAFTING NOTE: we anticipate that IPR will be discussed during the bidding process, and depending on the outcome of those discussions there may be an impact on clause 21.

- 21.1 Subject to clauses 21.2, and 41 each Party hereby undertakes with the other that it shall keep confidential (and will ensure that its officers, employees, agents and professional and other advisers keep confidential) any information which is supplied, received or obtained pursuant to this Agreement in relation to the passengers, business, assets or affairs of any Party or which the disclosing Party indicates is confidential, and shall not disclose to any third party any such information without the consent of the Party concerned (such consent not to be unreasonably withheld or delayed).
- 21.2 The obligation of confidentiality under this clause 21 shall not apply to the disclosure of information to the extent that such disclosure is:
- 21.2.1 of publicly available information or information which becomes publicly available otherwise than as a result of a breach of this clause 21;
 - 21.2.2 of information which is lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
 - 21.2.3 of information which is received in good faith by the receiving Party from a third party and is not knowingly used or disclosed in breach of this clause 21;
 - 21.2.4 required by any law (including without limitation any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or other regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto);
 - 21.2.5 required to ensure compliance by the Corporation or any member of the TfL Group with any of its statutory functions under the GLA Act or other relevant legislation;
 - 21.2.6 by the Corporation to the Secretary of State for Transport (or the government department responsible for public transport in London for the time being) or any person or body who has statutory responsibilities in relation to transport in London or any other government department with an interest in the Service or the method of provision of the Service other than the persons or bodies specifically referred to in clause 21.2.7 below;
 - 22.2.7 to any local authority, commissioner of police, the London Transport

Users Committee (and any successor body) or any other person or body that is consulted by the Corporation pursuant to the Transport Act 1985 or the GLA Act or other relevant legislation, provided that it shall obtain the written consent of the Operator, such consent not to be unreasonably withheld, before any financial information in relation to the Operator is disclosed pursuant to this clause 21.2.7;

21.2.8 of such information as the Corporation may reasonably require to publish at or around the termination of the Agreement in order to secure continuity of the provision of the Service;

21.2.9 required of the Operator or the Corporation by an auditor pursuant to clause 13 or the Statement of Requirements;

21.2.11 to any local authority in relation to the Operator's performance under this Agreement and/or the level of customer patronage of the Service;

21.2.12 by the Corporation to any member of the TfL Group, to the Greater London Authority (including the Mayor of London), to a Minister of the Crown or any department of H.M. Government of the United Kingdom;

21.2.13 to the relevant Traffic Commissioner in respect of any apparent breaches of drivers hours; and

21.2.14 of information and data obtained from the monitoring undertaken to assess the Operator's overall performance of the Service which the Corporation may use in such manner as the Corporation deems appropriate.

21.3 The provisions of this Clause 21 will survive any termination of this Agreement for a period of 5 years from termination

22. VARIATIONS

22.1 This Agreement may only be varied or amended with the written agreement of both Parties. The details of any such variations or amendments shall be set out in such form as the Corporation may dictate and which may be substantially in the form set out in Schedule 6 and shall not be binding upon the Parties unless completed in accordance with such form of Variation.

22.2 Where the Parties fail to reach agreement as to all the terms of the variation this Agreement shall (subject to the provisions in this Agreement) continue to have full force and effect until the variation has been agreed in all respects.

22.3 A variation shall take effect from the date agreed between the Parties.

23. TERMINATION

- 23.1 The Corporation shall have the right to terminate this Agreement upon written notice at any time if:
- 23.1.1 the Operator commits any persistent or material breach of any provisions of this Agreement (which shall include but not be limited to any breach of clauses 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16.2, 27, 29 or 31) and in the case of such a breach which is capable of remedy fails to remedy the same within fourteen (14) calendar days of notification of the breach by the Corporation (and in which the Corporation expresses its intention to exercise its rights under this sub-clause);
 - 23.1.2 the Operator fails to comply with clause 6;
 - 23.1.3 in the reasonable opinion of the Corporation, the Operator's overall performance in respect of its obligations under this Agreement is not to the standards required by the Corporation, as set out in this Agreement;
 - 23.1.4 an order is made by a court of competent jurisdiction, or a resolution is passed, for the dissolution or administration of the Operator or its Holding Company (otherwise than in the course of a reorganisation or restructuring previously approved in writing by the Corporation);
 - 23.1.5 any step is taken to appoint a manager, receiver, administrator, trustee or other similar officer in respect of any assets of the Operator or its Holding Company;
 - 23.1.6 the Operator or its Holding Company convenes a meeting of its creditors or makes or proposes any arrangement or composition with, or any assignment for the benefit of, its creditors;
 - 23.1.7 the Operator or its Holding Company ceases or threatens to cease to carry on trading or any part of its operation;
 - 23.1.8 any similar event to those set out at clauses 23.1.3 to 23.1.7 above occurring in relation to the Operator and/or its Holding Company under the law of any applicable jurisdiction for those purposes;
 - 23.1.9 the Operator commits any of the money laundering related offences listed in the Public Contracts Regulations 2015;
 - 23.1.10 the Operator or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
 - 23.1.11 the Operator fails to obtain the Corporation's prior written approval to a Change of Control, assignment, novation or any other disposal in accordance with clause 20;
 - 23.1.12 the Operator fails to comply with clause 5; or
 - 23.1.13 the Operator fails to meet the Service Levels in accordance with Clause 45.

- 23.2 Without prejudice to the Corporation's right to terminate the Agreement under Clause 23.1 the Corporation at its sole discretion may terminate the Agreement at any time without cause subject to giving the Operator one (1) months prior written notice.
- 23.3 For the purposes of clause 23.1.3, (but without limiting the generality of that clause), in considering whether or not the Operator's overall performance in respect of its obligations under this Agreement is to the standards required by the Corporation as set out in this Agreement, the Corporation shall have regard (inter alia) to the matters specified in the Statement of Requirements. For the avoidance of doubt, the Corporation may terminate this Agreement under any sub-clause of clause 23.1 above notwithstanding that the circumstances in the Statement of Requirements have not arisen.
- 23.4 The termination of this Agreement under clause 23.1 above shall be with such notice as the Corporation considers appropriate in the circumstances and during such notice period the Operator shall continue to perform all of its obligations set out in this Agreement and shall co-operate with the Corporation to avoid or minimise any disruption to the Service.
- 23.5 The termination of this Agreement under this clause 23 shall be without prejudice to any rights of either Party in respect of any antecedent breach of contract by the other Party.
- 23.6 The Operator shall have the right to terminate this Agreement upon prior written notice at any time if the Corporation commits any persistent or material breach of this Agreement and in the case of such breach which is capable of remedy fails to remedy the same within fourteen (14) calendar days of notification of the breach by the Operator.

Consequences of Termination or Expiry

- 23.7 Without prejudice and in addition to its other obligations under this Agreement upon expiry or termination of this Agreement (howsoever caused) the Operator shall:
- 23.7.1 provide all reasonable assistance to the Corporation or such third parties as the Corporation may request, to the extent necessary to effect the efficient transfer of Service to any replacement operator;
 - 23.7.2 provide the Corporation with copies of all information requested in this regard;
 - 23.7.3 at the request of the Corporation return to the Corporation and/or provide to any replacement operator specified by the Corporation with all Corporation property and/or materials in the Operator's possession or control;
 - 23.7.4 remove the branding from the Vehicles by a mutually agreed date;

- 23.7.5 disable and remove all electronically held data including all information relating to the Service from the relevant part of the website and app by a mutually agreed date;
- 23.7.6 provide to the Corporation all the outstanding requested Foreground IPR; and
- 23.7.7 implement the Exit Plan.
- 23.8 The Corporation shall (subject to Clause 30 and the provision of any security for due performance supplied by the Operator) pay the Operator any of the Agreement Price remaining due in relation to any Service properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with the rules set out in this Agreement or otherwise reasonably determined by the Corporation.
- 23.9 On termination of this Agreement, the Corporation shall not be liable to the Operator for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with such termination.
24. FORCE MAJEURE
- 24.1 Neither Party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to acts of God, insurrection or civil disorder, war or military operations, national or local emergency, fire, lightning, explosion, flood, subsidence or unusually adverse weather conditions provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of any Party and any non performance shall not for so long as such event continues constitute a default in relation to the affected obligation under this Agreement or subject to clause 24.2 entitle the other Party to terminate this Agreement by virtue of any non performance arising from such event PROVIDED THAT:
- 24.1.1 the Party shall have taken all reasonable steps to have overcome avoided or minimised the effects of any such occurrence; and
- 24.1.2 the Party shall have notified the other Party as soon as is reasonably practicable.
- 24.2 If an event referred to in clause 24.1 shall continue for a period of one (1) calendar month the other Party may thereafter terminate this Agreement upon giving twenty-one (21) calendar days written notice.
- 24.3 The Parties shall negotiate in good faith with a view to agreeing a variation (if appropriate) to mitigate the effects of any interruption to the Service arising from an event referred to in clause 24.1.
25. ARBITRATION

- 25.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement.
- 25.2 If any claim, question, dispute or difference whatsoever shall arise between the Parties out of or in relation to or in connection with this Agreement either Party shall as soon as reasonably practicable give notice to the other in writing of the existence of such claim, question, dispute or difference specifying its nature and the point at issue and if the same shall not be resolved within a period of thirty (30) calendar days from the date of the notice it may be referred in writing by either Party to be determined by a sole arbitrator (the "Arbitrator") who shall be appointed by mutual agreement or failing agreement by the President of The Chartered Institute of Arbitrators of England and Wales on the application of either Party.
- 25.3 This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or amendment thereof and the award of the Arbitrator shall be final and binding on the Parties. The law governing this arbitration agreement, the curial law and every reference to arbitration hereunder shall be English Law. For the purposes of limitation of action the arbitral proceedings shall be deemed to have commenced on the service of the written reference to arbitration referred to in this clause 25.

26. INTELLECTUAL PROPERTY

DRAFTING NOTE: we anticipate that the IPR obligations will be settled during the bidding process.

- 26.1 All Background IPR is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from who its right to use the Background IPR has derived). No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.
- 26.2 Where any third party (such as a student or contractor) is involved in the Service, the Operator engaging that third party will ensure that that third party has assigned to the Operator (including making a prospective assignment where appropriate) all rights which that third party has in the Background IPR or Foreground IPR in order to be able to give effect to the provisions of this clause 26.
- 26.3 The Operator shall grant to the Corporation a royalty free, non exclusive licence of its applicable Background IPR for the duration of the Project.
- 26.4 The Corporation shall own the Foreground IPR generated by the Operator during the Term. The Corporation shall grant to the Operator a royalty-free, non-exclusive, [non-sub-licensable, non-transferable] right to use, modify and adapt the Foreground IPR for any lawful purpose.
- 26.5 Notwithstanding Clause 26.3, the Operator shall have no right (save where expressly permitted under the Agreement or with the Corporation's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Corporation.

- 26.6 The Corporation shall have no right (save where expressly permitted under this Agreement or with the Operator's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Operator.
- 26.6 The Operator shall use its best endeavours to assist the Corporation and/or any other member of the TfL Group in protecting all other Intellectual Property Rights (which shall include any patent application know how registered and unregistered trade marks or service marks trade name logo get-up design right registered design copyright or similar industrial or commercial right) owned by any member of the TfL Group and shall not knowingly do or cause or permit anything to be done which may endanger the intellectual property rights or the like thereto of any member of the TfL Group.

Infringement of Intellectual Property Rights

- 26.7 The Operator shall:

- 26.7.1 promptly notify the Corporation upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Rights which affects or may affect the provision or receipt of the Service or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and
- 26.7.2 indemnify, keep indemnified and hold harmless the Corporation from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Corporation by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Corporation or anything arising from the provision of the Service and against all costs and damages of any kind which the Corporation may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.
- 26.8 The Corporation shall, at the request of the Operator, give the Corporation all reasonable assistance for the purpose of the Operator contesting any such claim, demand, or action referred to in Clause 26 and the Operator shall:
- 26.2.1 reimburse the Corporation for all costs and expenses (including legal costs) incurred in doing so;
- 26.2.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and
- 26.2.3 consult with the Corporation in respect of the conduct of any claim, demand or action and keep the Corporation regularly and fully informed as to the progress of such claim, demand or action.

DRAFTING NOTE: To be further discussed with the Bidders during the negotiation meetings

27. SUFFICIENCY OF TENDER AND CONFLICT OF INTEREST

27.1 Without prejudice and in addition to the Operator's obligations under this Agreement, the Operator:

27.1.1 acknowledges that it has sufficient information about the Corporation and the content of this Agreement and that it has made all appropriate and necessary enquiries to enable it to provide the Service in accordance with this Agreement; and

27.1.2 shall not be excused from any obligation or liability under this Agreement and shall make no claim against the Corporation in respect of any misunderstanding affecting the basis of the Operator's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained provided that nothing in this clause shall exclude any liability of either Party for fraudulent misrepresentation.

27.2 The Corporation warrants that it does not and will not have any interest in any manner where there is or is reasonably likely to be a conflict of interest with the Service or any member of the TfL Group, save to the extent fully disclosed and approved by the Corporation.

28. TUPE

28.1 The Operator acknowledges and agrees that prior to expiry or termination of this Agreement it shall use all reasonable endeavours to identify and comply with any obligations which may arise out of a transfer to another operator under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time ("TUPE") and it shall comply with the requirements of Regulation 13 of TUPE (if applicable) prior to such expiry or, if the period of any notice permits, termination.

28.2 At any time during this Agreement the Corporation may require the Operator to provide to the Corporation (or to any replacement operator notified by the Corporation) such information as is reasonably required by the Corporation or such other replacement operator relevant to the potential liabilities of any replacement operator arising under TUPE (if applicable) including but not limited to information on the following:

28.2.1 the names of employees operating the Service, their salaries and other conditions of employment, ages and length of service;

28.2.2 the method of organisation of the employees operating the Service and documentary evidence relating to such organisation;

28.2.3 the proposals for consultation with affected employees; and

28.2.4 details of collective agreements and union recognition agreements

and shall in addition provide copies to the Corporation upon request of any communication with any potential or intended replacement operator or the

Operator's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

- 28.3 The Operator shall provide the Corporation with the name and address of a person within its organisation to whom all queries and requests for information under this clause 29 shall be addressed in the first instance.

29. SUMS RECOVERABLE FROM OR PAYABLE BY THE OPERATOR

- 29.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Corporation arising out of or attributable to this Agreement or any other contract between the Corporation and the Operator may be deducted by the Corporation from monies due or which may become due to the Operator under this Agreement or under any other Agreement or contract with the Corporation as a debt.

- 29.2 Exercise by the Corporation of its rights under this clause 29 shall be without prejudice to any other rights or remedies available to the Corporation under this Agreement or at common law.

30. CONTRACTUAL MANAGEMENT AND CHANGES IN PERSONNEL

- 30.1 The Corporation authorises the DRT Trial Manager to act as the Corporation's representative for all purposes of this Agreement and the Operator shall deal with the Trial Contract Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise.

- 30.2 The Operator Manager shall act as the Operator's representative for all purposes of this Agreement. The Operator Manager shall procure that they:

- 30.1.1 diligently supervise the performance of the Service;
- 30.1.2 attend all contract meetings with the Corporation; and
- 30.1.3 be available to the Corporation to resolve any issues arising in connection with this Agreement.

- 30.3 The Parties shall arrange review meetings during the Term to discuss and review the Operator's performance of the Service as further set out in the Statement of Requirements.

- 30.3 The Operator may only make any changes to the Operator's Manager with the prior consent of the Corporation (which shall not be unreasonably withheld).

- 30.4 No act or omission by or approval from either the Corporation or the Trial Contract Manager in performing any their respective duties under or in connection with this Agreement shall in any way operate to relieve the Operator of any of its duties, responsibilities, obligations or liabilities under this Agreement.

- 30.5 The Operator shall notify the DRT Trial Manager within fourteen (14) calendar days of any changes to the Operator's senior management or senior personnel

involved in the Services, including without limitation changes to any of the directors and key personnel engaged in the performance of the Service.

31. WAIVER

- 31.1 No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude or in any way restrict the further exercise of such right or remedy as the case may be.
- 31.2 No waiver by either Party of a failure or failures by the other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a like or different character.

32. JURISDICTION

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to clause 26, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Agreement provided that the Corporation has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Operator is incorporated or in which any assets of the Operator may be situated. The Parties agree irrevocably to submit to that jurisdiction.

33. ENTIRE AGREEMENT

33.1 Subject to Clause 33.2:

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

33.1.2 without prejudice to the Operator's obligations under the Agreement, the Operator is responsible for and shall make no claim against the Corporation in respect of any misunderstanding affecting the basis of the Operator's tender in respect of the Agreement or any incorrect or incomplete information howsoever obtained.

- 33.2 Nothing in this clause 33 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

34. VALIDITY, LEGALITY, ENFORCEABILITY

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such

provision shall be severed from the Agreement and the remaining provisions shall continue in full force and effect as if the Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Corporation's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Corporation and the Operator shall immediately commence good faith negotiations to remedy such invalidity.

35. NOTICES

- 35.1 Any notice or other communication affecting this Agreement or which is required to be given under the Agreement shall be addressed to the recipient at the address stated in Schedule 1.
- 35.2 Any notice or other communication to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand or by pre-paid first class post or by facsimile (or by electronic mail where expressly provided for in this Agreement) to a Party at the address set out in Schedule 1 for such Party.
- 35.3 In the event of any postal or other strike or industrial action affecting post or communications in the United Kingdom, notices shall be given personally or by facsimile (or by electronic mail where expressly provided for in this Agreement).
- 35.4 Any notices or other communications shall be deemed to have been received by the addressee two Working Days following the date of dispatch if the notice or other document is sent by pre-paid first class post, or the next Working Day after delivery if sent by hand or facsimile (or the next Working Day after being opened by the addressee if sent by electronic mail).
- 35.5 Notices or communications not governed by this clause 35 may be given in such manner as the Parties may from time to time agree.

36. SURVIVAL

- 36.1 Termination or expiry of this Agreement shall be without prejudice to any rights accruing to the Parties under this Agreement. In particular, but without prejudice to the generality of the foregoing: -
- 36.1.1 the provisions of clauses 1, 9, 12, 13, 16, 20, 21, 22, 23, 26, 30, 33, 34, 35, 36, 37, 38, 39, 41, and 45 shall survive the termination or expiry of this Agreement and continue in full force and effect, along with any Schedules and/or other documents and/or other provisions referred to in such clauses;
- 36.1.2 any sums owing to either Party in accordance with this Agreement shall remain payable notwithstanding the termination or expiry of this Agreement; and
- 36.1.3 any other provision which is intended, expressly or impliedly, to survive the termination or expiry of this Agreement, including those provisions

necessary to give effect to clauses surviving under clause 37.1.1, shall survive the termination or expiry of this Agreement.

37. CHANGE OF LAW

- 37.1 For the avoidance of doubt the Operator shall bear all costs in relation to any training of its employees arising out of any change in the law or acceptance of any new currency in the United Kingdom.

38. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 38.1 Subject to clause 38.2, any third party who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Third Party Act") to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of such third party which exists or is available apart from the Third Party Act.

- 38.2 The Third Party Act applies to the Agreement to the effect that:

38.2.1 any member of the TfL Group shall have the right to enforce any provision contained in the Agreement against the Operator to the extent that such provision confers a benefit or purports to confer a benefit on that member of the TfL Group (including without limitation benefits conferred under clauses 16,17,18,19, 21 and 27); and

38.2.2 any member of the TfL Group shall be treated as a party to clause 26 of the Agreement in respect of any claim, question, dispute or difference whatsoever which shall arise between that member of the TfL Group and the Operator relating to the matters in respect of which it has a right of enforcement under clause 38.2.1.

- 38.3 Notwithstanding clause 38.2, the Parties to the Agreement shall be entitled to:

38.3.1 rescind the Agreement (if applicable), or

38.3.2 vary any term of the Agreement in accordance with clause 22 without the consent of any member of the TfL Group.

39. DISCRIMINATION ACTS

- 39.1 The Operator shall not throughout the duration of the Agreement unlawfully discriminate within the meaning and the scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment (together the "Discrimination Acts") or any statutory modifications or re-enactments thereof relating to discrimination and employment.

- 39.2 The Operator shall take all reasonable steps to ensure the observance of the provisions of clause 39 by all officers, employees, agents and consultants of the Operator and all sub-contractors.

- 39.3 The Operator agrees where possible to enable the Corporation to satisfy its duty to assist and co-operate with the Corporation where possible with the Corporation's compliance with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections, promote (and shall encourage its officers, employees, agents and consultants and sub-contractors to promote) the principle of equal treatment at all times and shall co-operate fully with the Corporation to exchange experiences and good practices.
- 39.4 The Operator shall put in place and maintain adequate practices and procedures throughout the duration of the Agreement to ensure compliance with clause 39. The Operator shall upon request submit to the Corporation evidence of its compliance with clause 39 such information as the Corporation may reasonably require from time to time including without limitation information relating to staff management, promotion opportunities, grievance and disciplinary issues, training, general employment practices and the composition of the workforce.
- 39.5 If in the reasonable opinion of the Corporation the Operator fails to comply with any of the Discrimination Acts and such non-compliance adversely affects (or is likely to adversely affect) the performance of the Agreement the Operator shall co-operate fully with the Corporation to remedy such non-compliance provided that the Corporation reserves the right to report any non-compliance that it considers serious to the relevant commission established under such legislation.
- 39.6 In the event of a finding of any unlawful discrimination being made against the Operator by any court or industrial tribunal, or an adverse finding following any formal investigation by any commission established under any of the Discrimination Acts the Operator shall take all appropriate remedial steps to eliminate such unlawful discrimination in the future (including complying with any recommendations issued by the relevant commission). The Operator shall on request provide the Corporation with details of such recommendations and any remedial steps taken.
- 39.7 The Corporation shall (subject to any legal limitations) be entitled at any time to audit and/or inspect any information in the custody, control or possession of the Operator for the purposes of ensuring compliance with this clause 39. The Operator shall provide all reasonable co-operation in relation to such audit and/or inspection including granting access to any premises containing such information or where such premises are not the Operator's own using reasonable endeavours to procure such access.
- 39.8 Without limiting any of the foregoing provisions, the Operator shall implement, maintain and promote policies in relation to Harassment, Bullying and Discrimination and Equal Opportunities in Employment, consistent with the Corporation's policies as set out in the Statement of Requirements, or as developed by the Operator and approved by the Corporation. The Operator shall take all reasonable steps to monitor and ensure compliance with such policies by its employees, agents and sub-contractors.

40. DATA PROTECTION AND DATA SECURITY

For the purposes of this Clause 40, unless the context indicates otherwise, the following expressions shall have the following meanings:

“Corporation Personal Data”	Personal Data and/or Sensitive Personal Data Processed by the Operator or any sub-contractor on behalf of the Corporation pursuant to or in connection with this Agreement;
“Data Controller”	has the meaning given to it in Data Protection Legislation;
“Data Processor”	has the meaning given to it in Data Protection Legislation;
“Data Protection Impact Assessment”	a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data;
“Data Protection Legislation”	<p>means:</p> <p>(a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;</p> <p>(b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the "General Data Protection Regulation");</p> <p>(c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and</p> <p>(d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation;</p>
“Data Subject”	has the meaning given to it in Data

	Protection Legislation;
“Personal Data”	has the meaning given to it in Data Protection Legislation;
“Processing”	has the meaning given to it in Data Protection Legislation and “Process” and “Processed” will be construed accordingly;
“Restricted Countries”	any country outside the European Economic Area;
“Sensitive Personal Data”	sensitive or special categories of Personal Data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this Contract; and
“Subject Access Request”	a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

- 40.1 The Operator shall comply with all of its obligations under the Data Protection Legislation and all regulations made under the Data Protection Legislation. With respect to the Parties' rights and obligations under the Agreement, the Parties acknowledge that the Corporation is a Data Controller solely responsible for determining the purposes and manner in which Corporation Personal Data is to be Processed, and that the Operator is a Data Processor.
- 40.2 Details of the Corporation Personal Data to be Processed by the Operator and the purposes of such Processing are as follows:
- 40.2.1 The Corporation's Personal Data to be Processed by the Operator (if any) concerns the following categories of Data Subject:
- Customers and members of the Public
- 40.2.2 The Corporation Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:
- name, email address, telephone numbers freedom pass number and images.
- 40.2.3 The Corporation Personal Data is to be Processed for the following purpose(s):
- In order to allow members of the public to use the trial service.
- [40.2.4 The Corporation Personal Data is to be Processed in the following Restricted Countries: the data should be processed within the EEA. **DRAFTING NOTE: The Operator to notify the Corporation during the process if any data processed outside the EEA]**

40.3 The Operator shall:

- 40.3.1 process the Corporation Personal Data only in accordance with instructions from the Corporation to perform its obligations under the Agreement;
- 40.3.2 use its reasonable endeavours to assist the Corporation in complying with any obligations under Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Corporation to breach any of its obligations under Data Protection Legislation to the extent the Operator is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- 40.3.3 notify the Corporation without undue delay if it determines or is notified that an instruction to Process Personal Data issued to it by the Corporation is incompatible with any obligations under Data Protection Legislation to the extent the Operator is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- 40.3.4 maintain, and make available to the Corporation on its request, documentation which describes the Processing operations for which it is responsible under this Agreement including:
 - 40.3.4.1 the purposes for which Corporation Personal Data is Processed;
 - 40.3.4.2 the types of Personal Data and categories of Data Subject involved;
 - 40.3.4.3 the source(s) of the Personal Data;
 - 40.3.4.4 any recipients of the Personal Data;
 - 40.3.4.5 the location(s) of any overseas Processing of Corporation Personal Data;
 - 40.3.4.6 retention periods for different types of Corporation Personal Data; and
 - 40.3.4.7 where possible a general description of the security measures in place to protect Corporation Personal Data.
- 40.3.5 where requested to do so by the Corporation, or where Processing Corporation Personal Data presents a specific risk to privacy, carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data

Protection Legislation) and make the results of such an assessment available to the Corporation;

- 40.3.6 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Agreement, take appropriate technical and organisational security measures that are satisfactory to the Corporation from time to time, against unauthorised or unlawful Processing of Corporation Personal Data and against accidental loss, destruction of, or damage to such Corporation Personal Data;
- 40.3.7 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Agreement, provide the Corporation with such information as the Corporation may from time to time require to satisfy itself of compliance by the Operator (and/or any authorised sub-contractor) with Clauses 40.3.6 and 40.3.8, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Operator itself or the Corporation;
- 40.3.8 notify the Corporation without undue delay and in any event within 24) hours by written notice with all relevant details reasonably available of any actual or suspected breach of this Clause 40, including the unauthorised or unlawful Processing of Corporation Personal Data, or its accidental loss, destruction or damage;
- 40.3.9 having notified the Corporation of a breach in accordance with Clause 40.3.8, keep the Corporation properly and regularly informed in writing until the breach has been resolved to the satisfaction of the Corporation;
- 40.3.10 fully cooperate as the Corporation requires with any investigation or audit in relation to Corporation Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Agreement, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the Corporation (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the Agreement and after its termination or expiry (for so long as the Party concerned retains and/or Processes Corporation Personal Data);
- 40.3.11 notify the Corporation within two (2) Working Days if it, or any sub-contractor, receives:
- 40.3.11.1 from a Data Subject (or third party on their behalf):

- 40.3.11.1.1 a Subject Access Request (or purported Subject Access Request);
- 40.3.11.1.2 a request to rectify, block or erase any Corporation Personal Data; or
- 40.3.11.1.3 any other request, complaint or communication relating to the Corporation's obligations under Data Protection Legislation.
- 40.3.11.2 any communication from the Information Commissioner or any other regulatory authority in connection with Corporation Personal Data; or
- 40.3.11.3 a request from any third party for disclosure of Corporation Personal Data where compliance with such request is required or purported to be required by law;
- 40.3.12 provide the Corporation with full cooperation and assistance (within the timescales reasonably required by the Corporation) in relation to any complaint, communication or request made as referred to in Clause 40.3.11, including by promptly providing:
- 40.3.12.1 the Corporation with full details and copies of the complaint, communication or request;
- 40.3.12.2 where applicable, such assistance as is reasonably requested by the Corporation to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
- 40.3.12.3 where applicable, such assistance as is reasonably required by the Corporation to enable it to comply with a request from a Data Subject to rectify, block or erase any Corporation Personal Data.
- 40.3.13 when notified in writing by the Corporation, supply a copy of, or information about, any Corporation Personal Data. The Operator shall supply such information or data to the Corporation within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) Working Days from the date of the request;
- 40.3.14 when notified in writing by the Corporation, comply with any agreement between the Corporation 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 Corporation Personal Data; and

- 40.3.15 if required to do so by Data Protection Legislation, appoint a designated Data Protection Officer.
- 40.4 The Operator shall not share Corporation Personal Data with any sub-contractor without prior written consent from the Corporation and only where there is a written contract in place between the Operator and the sub-contractor which requires the sub-contractor to:
- 40.4.1 only Process Corporation Personal Data in accordance with the Corporations's instructions to the Operator; and
- 40.4.2 comply with the same obligations which the Operator is required to comply with under this Clause 40 (and in particular Clauses 13.1, 16.1, and 21).
- 40.5 The Operator shall, and shall procure that any sub-contractor shall:
- 40.5.1 only Process Corporation Personal Data in accordance with the Authority's instructions to the Operator and as reasonably necessary to perform the Agreement in accordance with its terms;
- 40.5.2 not Process Corporation Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the Corporation;
- 40.5.3 not Process Corporation Personal Data in such a way as to:
- 40.5.3.1 place the Corporation in breach of Data Protection Legislation;
- 40.5.3.2 expose the Corporation to the risk of actual or potential liability to the Information Commissioner or Data Subjects;
- 40.5.3.3 expose the Corporation to reputational damage including adverse publicity;
- 40.5.4 not allow Operator's Personnel to access Corporation Personal Data unless such access is necessary in connection with the provision of the Service;
- 40.5.5 take all reasonable steps to ensure the reliability and integrity of all Operator's Personnel who can access Corporation's Personal Data;
- 40.5.6 ensure that all Operator's Personnel who can access Corporations' Personal Data:
- 40.5.6.1 are informed of its confidential nature;

- 40.5.6.2 are made subject to an explicit duty of confidence;
 - 40.5.6.3 understand and comply with any relevant obligations created by either this Agreement or Data Protection Legislation; and
 - 40.5.6.4 receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis.
- 40.5.7 not disclose or transfer Corporation Personal Data to any third party without the Operator having obtained the prior written consent of the Corporation (save where such disclosure or transfer is specifically authorised under this Agreement);
- 40.5.8 without prejudice to Clause 40.3.6, wherever the Operator uses any mobile or portable device for the transmission or storage of Corporation Personal Data, ensure that each such device encrypts Corporation Personal Data; and
- 40.5.9 comply during the course of the Agreement with any written retention and/or deletion policy or schedule provided by the Corporation to the Operator from time to time.
- 40.6 The Operator shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Corporation Personal Data in or to any Restricted Countries without prior written consent from the Corporation (which consent may be subject to additional conditions imposed by the Corporation).
- 40.7 If, after the Service Commencement Date, the Operator or any sub-contractor wishes to Process and/or transfer any Corporation Personal Data in or to any Restricted Countries, the following provisions shall apply:
 - 40.7.1 the Operator shall submit a written request to the Corporation setting out details of the following:
 - 40.7.1.1 the Corporation Personal Data which will be transferred to and/or Processed in any Restricted Countries;
 - 40.7.1.2 the Restricted Countries which the Corporation Personal Data will be transferred to and/or Processed in;
 - 40.7.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Corporation Personal Data in Restricted Countries;
 - 40.7.1.4 how the Operator shall ensure an adequate level of protection and adequate safeguards in respect of the Corporation Personal Data that will be Processed in

and/or transferred to Restricted Countries so as to ensure the Corporation's compliance with Data Protection Legislation;

40.7.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;

40.7.3 the Operator shall comply with any instructions and shall carry out such actions as the Corporation may notify in writing when providing its consent to such Processing or transfers, including:

40.7.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Agreement or a separate data processing agreement between the Parties; and

40.7.3.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Corporation's Personal Data in any Restricted Countries enters into a data processing agreement with the Operator on terms which are equivalent to those agreed between the Corporation and the Operator in connection with the Processing of Corporation's Personal Data in (and/or transfer of Corporation Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in 40.7.3.1.

40.8 The Operator and any sub-contractor (if any), acknowledge:

40.8.1 the importance to Data Subjects and the Corporation of safeguarding Corporation Personal Data and Processing it only in accordance with the Corporation's instructions and the Agreement;

40.8.2 the loss and damage the Corporation is likely to suffer in the event of a breach of the Agreement or negligence in relation to Corporation Personal Data;

40.8.3 any breach of any obligation in relation to Corporation Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of Agreement;

40.8.4 notwithstanding Clause 23.1.1, if the Operator has committed a material breach under Clause 40.8.3 on two or more separate occasions, the Corporation may at its option:

- 40.8.4.1 not used;
 - 40.8.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
 - 40.8.4.2 terminate the Agreement in whole or part with immediate written notice to the Operator.
- 40.9 Notwithstanding any other provision of this Agreement, in delivering the Service, the Operator shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.
- 40.10 Compliance by the Operator with this Clause 40 shall be without additional charge to the Corporation.
- 40.1 Following termination or expiry of this Agreement, howsoever arising, the Operator:
 - 40.1.1 may Process the Corporation Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with Clause 40.11.2);
 - 40.11.2 subject to Clause 40.11.1, shall:
 - 40.11.2.1 on written instructions from the Corporation either securely destroy or securely and promptly return to the Corporation or a recipient nominated by the Corporation (in such usable format as and to the extent the Corporation may reasonably require) the Corporation Personal Data; or
 - 40.11.2.2 in the absence of instructions from the Corporation after twelve (12) months from the expiry or termination of the Agreement securely destroy the Corporation Personal Data.
- 40.12 Corporation Personal Data may not be Processed following termination or expiry of the Agreement save as permitted by Clause 40.11.
- 40.13 For the avoidance of doubt, and without prejudice to Clause 40.11, the obligations in this Clause 40 shall apply following termination or expiry of the Agreement to the extent the Party concerned retains or Processes Corporation Personal Data.
- 40.14 The indemnity in Clause 16 shall apply to any breach of Clause 40 and shall survive termination or expiry of the Agreement.
- 40.15 The Parties' liability in respect of any breach of this Clause 40 insofar as they relate to fines, court awards, settlements and legal costs shall be unlimited.

41. FREEDOM OF INFORMATION AND TRANSPARENCY

41.1 For the purposes of this clause 41:

41.1.1 **“FOI Legislation”** means the Freedom of Information Act 2000 (“FOI Act”), any subordinate legislation made under the FOI Act, the Environmental Information Regulations 1992, regulations under section 74 of the FOI Act, and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

41.1.2 **“Information”** means information recorded in any form held by the Corporation or held by the Operator on behalf of the Corporation; and

41.1.3 **“Information Request”** means a request for Information under the FOI Legislation.

41.2 The Operator acknowledges that the Corporation:

41.2.1 is subject to the FOI Legislation and agrees to assist and cooperate with the Corporation to enable the Corporation to comply with its obligations under the FOI Legislation; and

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

41.3 Without prejudice to the generality of clause 41.2, the Operator shall and shall procure that its sub-contractors shall:

41.3.1 transfer to the Corporation each Information Request relevant to the Agreement, Service or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and

41.3.2 in relation to Information held by the Operator on behalf of the Corporation, provide the Corporation with details about or a copy of all such Information that the Corporation requests and such Information shall be provided within five (5) Working Days of a request from the Corporation (or such other period as the Corporation may reasonably specify), and in such form as the Corporation may reasonably specify.

41.4 The Corporation shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Operator shall not respond directly to an Information Request unless expressly authorised to do so by the Corporation.

41.5 The Operator acknowledges that the Corporation is subject to the Transparency Commitment. Accordingly, notwithstanding clause 21.1 and 41 the Operator hereby gives its consent for the Corporation to publish the Agreement Information to the general public.

- 41.6 The Corporation may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the Corporation may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in clause 41.1 above). The Corporation may in its absolute discretion consult with the Operator regarding any redactions to the Corporation Information to be published pursuant to clause 41.5. The Corporation shall make the final decision regarding publication and/or redaction of the Corporation Information.
- 41.7 For the avoidance of doubt, nothing in this clause 41 shall prevent the Operator from providing the Service under this Agreement or providing information directly to the public in response to a request that is not a request under the FOI Legislation.

42. CORRUPT GIFTS AND PAYMENT OF COMMISSION

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

43. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

- 43.1 For the purposes of this Clause 43, unless the context indicates otherwise, the following expressions shall have the following meanings:

"PCI DSS" has the meaning given to it in Clause 43.2;

"QSA" has the meaning given to it in Clause 43.2.1.

- 43.2 If the Operator Processes payment card data under the Agreement, it shall ensure that it is and that its internal processes and procedures, information technology systems and any equipment that it provides or is provided on its behalf pursuant to this Agreement are compliant with the Payment Card Industry Data Security Standard as updated from time to time ("**PCI DSS**"). In addition the Operator shall:

43.2.1 appoint a PCI DSS Qualified Security Assessor ("**QSA**") to validate that the Operator is compliant with (including as set out above) PCI DSS when providing the Service;

43.2.2 without prejudice to any other audit and inspection rights that the Operator has under this Agreement provide the Corporation with copies of any reports and other documents provided by or to the QSA in respect of each such validation; and

- 43.2.3 where the QSA recommends that certain steps should be taken by the Operator, promptly take those steps and demonstrate to the Corporation that those steps have been taken without charge to the Corporation.

44. IT SYSTEMS

44.1 The Operator shall ensure that:

- 44.1.1 any software, electronic or magnetic media, hardware or computer system owned, used or supplied by the Operator in connection with the Agreement ("**IT Systems**") shall:

44.1.1.1 be the responsibility of the Operator to provide as part of this Service which shall be fit for purpose and comply with all Applicable Laws;

44.1.1.2 not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;

44.1.1.3 not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the either or both of the Corporation or any other member of the TfL Group, on which it is used or with which it interfaces or comes into contact;

44.1.1.4 comply with the Government's open standards principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles#open-standards-principles>; and

any variations, enhancements or actions undertaken by the Operator in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Operator's compliance with this Clause 44.

- 44.2 The Operator must ensure the IT Systems which are used by the Service (including, without limitation, the IT Systems used by Customers) are available [98%] during the Term following the Service Commencement Date. The Operator must provide the Corporation with prior written notice of any planned downtime when the IT Systems will be unavailable to Customers and the Corporation to undertake planned maintenance. The Operator must notify the Corporation as soon as possible in the event emergency maintenance is required to the IT Systems.

- 44.3 The Operator will notify TfL immediately if there are any issues or faults with the IT Systems which causes the IT Systems to be unavailable to customers for a period of longer than one [1] hour and the Operators planned steps to rectify such issues including communications to the Customers.

DRAFTING NOTE: to be further updated prior to or after EoI/ discussions with the Bidders depending on proposals.

45. SERVICE MONITORING

DRAFTING NOTE: Service Levels will be negotiated and agreed jointly with the appointed operator, on the basis of their proposals, within 2 months of contract award. These will form part of a periodical report (i.e. every 4 weeks in line with TfL's periods) along with other core data, research insight and evaluation requirements as set out in the SOR.

- 45.1 The Operator shall provide the Service in accordance with the Service Levels.
- 45.2 The Operator shall provide the Corporation with a report, on a monthly basis and in a form to be agreed with the Corporation within 2 months of the Agreement Commencement Date, setting out the Operator's performance against the Service Levels in the immediately preceding month.
- 45.3 If the Operator fails to perform the Services in accordance with the Service Levels, the Operator shall, without prejudice to the Corporation's other rights and remedies:

45.3.1 arrange all additional resources necessary to perform the Services in accordance with the Service Levels as soon as possible and at no additional charge to the Corporation; and

45.3.2 the Corporation shall be entitled to terminate this Agreement in accordance with Clause 23 , if the Operator fails to meet the Service Levels within [3] month period.

The **Agreement** has been signed for and on behalf of the Parties the day and year written above

Signed by)		
for and on behalf of)		
The Corporation)	signature	print name and position
			Date:

Signed by)		
For and on behalf of)		
The Operator)	signature	print name and position
			Date:

SCHEDULE 1 - KEY AGREEMENT INFORMATION

1. **Agreement Reference Number:**
2. **Name of Operator:**
3. **Commencement:**
 - (a) **Agreement Commencement Date:**
 - (b) **Service Commencement Date:**
4. **Term/Expiry Date:**
5. **Payment (see Clause 9):**
6. **Address where invoices shall be sent:**

[Corporation]
Accounts Payable
[PO Box]
London
[Postcode]

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

7. Details of the Corporations DRT Trial Manager

Name: [name of relevant contact]
Address: [relevant Corporation address]
Tel: 020 7XXX XXXX
Fax: 020 7XXX XXXX
Email:

Email:

8. Details of the Operators Manager:

Name: [name of relevant technical contact]
Address: [relevant address]
Tel: 020 7XXX XXXX
Fax: 020 7XXX XXXX
Email:

9. Address for service of notices and other documents in accordance with Clause 36:

For the Corporation: London Bus Services Limited, Palestra, 10th Floor,
197 Blackfriars Road, London, SE1 8NJ

Facsimile number: [TBC]

For the attention of: Director of Buses Operations

For the Operator: [to be provided]

10. Advertising Policy:

The Corporation's Advertising Policy may be update from time to time; the version applicable at the date of execution of this Agreement is at:
<http://content.tfl.gov.uk/tfl-advertising-policy.pdf>

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SCHEDULE 4- SERVICE AREA

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SCHEDULE 5- PAYMENTS

DRAFTING NOTE: This schedule will be settled during the bidding process; please see section 4.3 of the ITT.

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SCHEDULE 6 - FORM FOR VARIATION

Parties: [*to be inserted*]

Agreement Number: [*to be inserted*]

Variation Number: [*to be inserted*]

Corporation Contact Telephone: [*to be inserted*]

Date: [*to be inserted*]

AUTHORITY FOR VARIATION TO THE AGREEMENT

Pursuant to Clause 23 of the Agreement, authority is given for the variation to the Service and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Operator and returned to the DRT Trial Manager as an acceptance by the Operator of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
TOTAL	

.....
For the Corporation (signed)

.....
(print name)

ACCEPTANCE BY THE OPERATOR	
Date	Signed