



Contract Reference Number: PR01674

SAP Outline Agreement Number: 4600002216

Date: 1 September 2009

**Contract for the Design, Development, Supply and
Installation of a Real Time Passenger Information
System and the provision of related Services**

between

London Bus Services Limited

and

Telent Technology Services Limited

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(known as the "Sign Supplier" or "SS" lot) namely the development, supply, installation, support and maintenance of the Signs meeting the requirements of a sign specification that incorporates the Sign Interface Specification ("**Lot 2**").

- F. The Contractor has considerable experience in, and holds itself out as an expert, in the design, development, supply, and installation; and in the management, support and maintenance of systems similar to the System.
- G. LBSL advertised the project in the Official Journal of the European Union on 5 February 2007.
- H. On 5 July 2007, LBSL issued an Invitation to Tender and invited potential contractors to submit tenders, in respect of Lot 1 and Lot 2. On 22 October 2007 the Contractor submitted its tender in respect of Lot 1. LBSL subsequently made a revision to the requirements specification within the Invitation to Tender and issued next step instructions to the potential contractors on 4 March 2008 and the Contractor resubmitted its tender on 2 May 2008.
- I. The Contractor submitted a best and final offer in relation to Lot 1 on 26 January 2009, and on the basis of such offer, LBSL wishes to select the Contractor to act as its prime contractor in relation to Lot 1, subject to the terms and conditions contained herein.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

In the Contract (including the Background section above):

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

"Acceptance" the passing by the System of the relevant Acceptance Tests for each Contractual Milestone in accordance with the process set out in clause 4.8 and "**System Acceptance**", "**First Signs Acceptance**", "**Final Acceptance**", "**Accept**" and "**Accepted**" shall be construed accordingly;

"Acceptance Procedures" the procedures set out in Schedule 9;

“Acceptance Tests”	the tests set out in Schedule 9 and/or tests that are identified following the process set out in Schedule 9;
“Affiliate”	any person which is, in relation to a company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control either directly or indirectly. “Parent undertaking” and “subsidiary undertaking” will have the meanings attributed to them in section 1162 of the Companies Act 2006;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“CCN”	the change control note that the parties will complete and sign, following the format set out at Schedule 17 to document changes to this Contract, in accordance with the change control procedure described in clause 9;
“Charges”	has the definition given to it in clause 12.1;
“Communication Specification”	means the document set out in Appendix 3 of Schedule 2, which specifies, in full, the communications network required in order for the System to operate;
“Confidential Information”	all information (whether written or verbal) that by its nature is confidential (whether commercial, financial, technical or otherwise) including, but not limited to, information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know how or personnel of the Contractor or any member of the TfL Group and any other information which may be reasonably regarded as confidential by either Party; or any member of the TfL Group (and

each of the Functional Specification, the Sign Interface Specification and the progress of the development, supply, installation and support of the System shall for these purposes be the Confidential Information of LBSL);

“Contract” this agreement including the Schedules and all other documents referred to in this agreement;

“Contract Commencement Date” 1 September 2009;

“Contractual Milestone” shall have the definition given to it in clause 4.2;

“Contractor Personnel” all such employees, officers, sub-contractors and agents of the Contractor engaged in the performance of any of the obligations of the Contractor under this Contract from time to time, and any agents, officers and employees from time to time of such sub-contractors who are so engaged;

“Contract Reference Number” the LBSL reference number for the Contract as set out in Schedule 1 and on the front page of this Contract;

“Countdown Service” the provision of a passenger information service as a result of the operation of the System, in respect of the LBSL bus network, and if LBSL so requires, the TfL Croydon tram service, the TfL river service and other transport modes from time to time. The passenger information service shall initially (and without limiting other future methods of delivering information to passengers which LBSL requires) be provided at Passenger Stops, via Web Services and the SMS Services;

“Current Service Provider” means any provider(s) to LBSL of services the same as or substantially similar to the Services immediately before the Services Commencement

Date;

“Data Centre”

means Firstserv Limited, 11 Hanbury Street, London E1 6QR, or such other location as the parties agree from time to time in accordance with clause 6.5;

“Employment Costs”

means all salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs;

“Equipment”

any item of hardware or other physical asset or material forming part of the System, which is to be supplied by the Contractor;

“Exit Plan”

the document set out at Schedule 13;

“Force Majeure Event”

any of the following: riot, civil unrest, war, act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event to perform its obligations in accordance with the terms of the Contract, but excluding any such event insofar as it arises from, or is attributable to, the wilful act, omission or negligence of the Party relying on the Force Majeure Event, or the failure on the part of the Party relying on the Force Majeure Event to take reasonable precautions to prevent such Force Majeure Event, or its impact;

“Functional Specification”

the document set out in Schedule 2, which includes the Sign Interface Specification and the Communication Specification;

“Further Transfer Date”

means the date on which the Services (or any part

of them) cease to be provided by the Contractor and are performed by LBSL or any Replacement Contractor;

“Good Industry Practice”

in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

“Guarantor”

means Telent Limited, a company incorporated in England and Wales (under company registration number 67307), whose registered office is at Point 3, Haywood Road, Warwick, CV34 5AH;

“Holding Company”

any company which from time to time directly or indirectly controls the Contractor where “control” is as defined by section 995 of the Income Tax Act 2007;

“Index”

means the United Kingdom average earnings index (AEI) for private sector services (excluding bonuses) (which has the code JQEO), as published monthly by the Office for National Statistics;

“Insolvency Event”

any one or more of the following:

- (a) the Contractor and/or any Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Contractor and/or any Holding Company;
- (c) the Contractor and/or any Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-

up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency which is made with LBSL's prior written consent);

- (d) the Contractor and/or any Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986; and/or
- (e) any similar event to those in (a) to (e) above occurring in relation to the Contractor and/or any Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights” rights in inventions, patents, utility models, trade marks, designs, and trade names and business names, copyrights, database rights, rights to prevent passing off and semiconductor topography rights (whether or not, in each case, the right is registered and including applications for, and any right to apply for, such registrations) and all rights or forms of protection of a similar nature or having similar or equivalent effect to any of these which may subsist anywhere in the world, together with all renewals and extensions to such rights;

“Interfacing Systems” the following equipment, software, systems and technology to be used in conjunction with the System by the TfL Group and/or its third party contractors: (i) iBus; (ii) the LBSL internal web and public external web; (iii) Customer Services System; (iv) Remedy; (v) TfL journey planner; (vi) NOC Status Web Service; and (vii) Hyperion;

“IVU” IVU Traffic Technologies AG, a company registered in Germany with Berlin court registration number HRB69310, and whose registered office is at Bundesallee 88, 12161, Berlin, Germany;

“IVU Escrow Agreement”	the form of escrow agreement set out at Part A of Schedule 4;
“IVU Software”	all Software, other than the Telent Software, the Kizoom Software and the Third Party Software;
“IVU/Telent Subcontract”	the agreement between IVU and the Contractor setting out the terms under which IVU is appointed as a sub-contractor of the Contractor in respect of the obligations of the Contractor identified in Schedule 14, with a copy of that agreement (with the financials redacted) to be provided in accordance with clause 17.5;
“IVU Undertaking”	the undertaking from IVU that is set out in Schedule 20;
“Key Employees”	the Contractor’s key personnel as listed in Schedule 1, and amended in accordance with the process set out in clauses 15.9 to 15.11 (inclusive);
“Key Permitted Sub-Contractor Agreements”	shall have the definition given to it in clause 17.4;
“Kizoom”	Kizoom Limited a company registered in England and Wales with company registration number 03169833 and whose registered address is Buchanan House, 3rd floor, 24-30 Holborn, London EC1N 2HS;
“Kizoom Escrow Agreement”	the form of escrow agreement set out at Part B of Schedule 4;
“Kizoom Subcontract”	the contract (a copy of which is to be provided in accordance with clause 17.5) to be entered into between the Contractor and Kizoom setting out the terms under which Kizoom is appointed as a sub-contractor of the Contractor in respect of the development and supply of the Kizoom Software;

“Kizoom Software”	the application software relating to the SMS Services and the Web Services, as detailed in section 4.2.8.3.2 of the Functional Specification;
“Kizoom Software Ltd”	Kizoom Software Limited, a company registered in England and Wales with company registration number 03745127 and whose registered address is Buchanan House, 3rd floor, 24-30 Holborn, London EC1N 2HS;
“Kizoom Undertaking”	the undertaking from Kizoom Software Ltd that is set out in Schedule 20;
“LBSL Materials”	shall have the definition given to it in clause 29.2;
“LBSL Obligations”	the responsibilities of LBSL in respect of the Contract which are fully and exhaustively identified and described in Schedule 15;
“LD Sum”	(i) in respect of System Acceptance and in respect of First Signs Acceptance, a sum of two thousand and seven hundred pounds sterling (£2,700) per day; and (ii) in respect of Final Acceptance, a sum of one thousand pounds sterling (£1,000) per day;
“Liquidated Damages”	the compensation payments due to LBSL in the event of failure or delay by the Contractor in the performance of the Contractor’s obligations in this Contract to achieve Acceptance by the Target Acceptance Date, the particulars of which (and the method of calculation) are set out in clause 4.9;
“London Area”	is the area inside of the M25 motorway, plus the area within a boundary of 11 kilometres outside of the M25 motorway, which encompasses all LBSL bus routes;
“Losses”	shall have the definition given to it in clause 26.2 (and “ Loss ” shall be interpreted accordingly);
“NCC”	NCC Group Plc, of Manchester Technology Centre,

Oxford Road, Manchester M1 7EF, England (or such other escrow provider which provides escrow services in the UK at the time, that LBSL nominates from time to time);

“Network”

the communications network to be procured by LBSL, in accordance with the Communication Specification and the terms of Schedule 15;

“Parties”

LBSL and the Contractor (including their successors and permitted assignees) and **“Party”** shall mean either of them as the case may be;

“Passenger Stop”

means any location within the London Area which LBSL, at its discretion, requires to be connected to the System from time to time. This shall mainly be locations where passengers, from time to time, board and/or generally alight from a bus, a tram and/or a river boat, though may also include other locations within the London Area where LBSL requires the Countdown Service to be available from time to time, such as railway terminus, tram stations, airports, piers, coach depots, visitor attractions, sports venues and/or underground stations;

“Permitted Sub-contractors”

those entities named and listed in Schedule 14, and any others added to the list by prior written agreement of the Parties;

“Project Manager”

the person named as such in Schedule 1 in respect of each Party, as may be replaced from time to time in accordance with clause 15.3;

“Project Plan”

the document set out in Schedule 3 (as amended from time to time by written agreement between both the Parties) which sets out when the System shall be developed including in particular dates by which the Contractor is responsible for ensuring the Contractual Milestones must occur;

“Proposed Change Paper”	shall have the definition given to it in clause 9.4;
“Rates”	the rates set out in Schedule 10;
“Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced);
“Replacement Contractor”	any replacement supplier(s) or provider(s) to LBSL (or any member of the TfL Group) of (a) the Services, the Training Services (or any part of the Services, and/or Training Services); and/or (b) services similar to and provided in place of the Services, and/or the Training Services (and/or any part of the Services, and/or the Training Services); and/or (c) the design, development, supply, and/or installation of the System or any part of the System and/or a system similar to the System or any part of the System (it being acknowledged, for the avoidance of any doubt, that a Replacement Contractor could be a member of the TfL Group);
“Re-Transferring Personnel”	means any Contractor Personnel who will transfer to the employment of either LBSL or the Replacement Contractor pursuant to the Regulations upon the expiration or termination (in whole or in part) of this Contract;
“Service Charges”	the charges payable by LBSL as specified in or as calculated in accordance with Schedule 7, in consideration of the Contractor properly performing its obligations to provide the Services pursuant to this Contract;
“Service Credits”	the compensation payments due to LBSL in the event of a failure by the Contractor in the performance of the Contractor’s obligations in this Contract in accordance with the System KPIs and the Service Levels, particulars of which compensation payments (and the method of calculation) are set out in clause 7.5 and Schedule

6;

“Service Levels” or

“Service KPIs”

the performance standards to which certain of the Services are to be provided by the Contractor at all times, as set out in Schedule 6;

“Services”

all or any part of the hosting, maintenance and support services to be provided to, or activities to be undertaken and completed for, LBSL by the Contractor under the Contract, as detailed in Schedule 5;

“Services Commencement Date”

the date on which First Signs Acceptance takes place;

“SI”

shall have the same meaning as Contractor;

“Signs”

the hardware, or software and other assets or materials that are intended to be installed by the Sign Supplier at certain Passenger Stops from time to time;

“Sign Interface Specification”

the document set out in Appendix 4 of Schedule 2, which each Sign Supplier will be required to comply with, when developing, supplying and installing Signs under the Sign Supplier Agreement(s);

“Sign Supplier Agreement”

each agreement that LBSL (or another member of the TfL Group) enters into with a Sign Supplier from time to time in respect of the Countdown Service;

“Sign Supplier” or “SSIM”

the company or companies selected by LBSL to provide the Signs and whose identity is notified by LBSL to the Contractor or such other replacement and/or additional supplier as LBSL may appoint from time to time (which could be LBSL or any member of the TfL Group) in respect of the Countdown Service;

“SMS”	short messaging service (commonly known as text messaging);
“SMS Aggregator”	means mBlox Limited, or such other SMS aggregator as the parties agree from time to time;
“SMS Aggregation Services”	the services described further in Schedule 22;
“SMS Aggregation Services Contract”	means the contract to be entered into by the Contractor (or a Permitted Sub-contractor) with the SMS Aggregator to enable the provision of the SMS Aggregation Services by the Contractor to LBSL;
“SMS Payments”	the sums payable by the Contractor to LBSL as a consequence of the provision of the SMS Aggregation Services, as specified and calculated in accordance with Schedule 7;
“SMS Services”	the provision of the Countdown Service to mobile phone users, via SMS, as a result of the functionality of the System described at part 5.6 of the Functional Specification (other than, and at all times excluding the services that constitute the SMS Aggregation Services);
“Software”	any and all computer programs, code (whether Source Code, object or machine code and irrespective of the form in which it is stored) to be supplied under this Contract by the Contractor, including operating software, application software and any software provided which is integral to any Equipment; and including also any enhancement, modification, patch or new release of such software which is provided by the Contractor under the terms of this Contract (including as a result of the provision of the Services) from time to time;
“Source Code”	software in eye readable form and in such form that it can be compiled or interpreted into equivalent

object code together with all operating manuals and other technical information and documentation necessary to enable a programmer to use, reproduce, modify, develop and exploit the software;

“System”

a real time passenger information system which has all of the attributes described in the Functional Specification (including all items of Equipment and Software stipulated therein);

“System Charges”

the price payable by LBSL, as specified in and calculated in accordance with Schedule 7, in consideration of the Contractor performing its obligations to supply, deliver, install, commission, integrate, test and bring into service the System;

“System KPIs”

means the key performance indicators that the Contractor is responsible for ensuring that the System meets at all times during the life of this Contract following First Signs Acceptance, as set out in Schedule 6;

“Target Acceptance Date”

the date specified in Appendix G of the Project Plan on or before which the Contractor is obliged, in respect of the relevant Contractual Milestone, to achieve Acceptance;

“Telent Software”

means the following Software to be developed by the Contractor: (i) SNMP Mapper; (ii) the BON.tip to HP Openview interface; (iii) the Remedy interface; (iv) the Crystal report templates; (v) the CMDB export interface; and (vi) the Software that forms part of the CSI-Sign simulator, as each is identified in chapter 12 of the Functional Specification, other than the CSI-Sign simulator which is as described in Schedule 9;

“Term”

the period during which the Contract continues in force, as described in clause 2;

“TfL”	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
“TfL Group”	TfL and all its subsidiaries (as defined in sections 1159(1) and (2) Companies Act 2006) from time to time and reference to any “member of the TfL Group” shall refer to TfL and any such subsidiary;
“TfL Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group;
“Third Party Software”	the software listed in Schedule 11;
“Training Charges”	the price payable by LBSL, as specified in and calculated in accordance with Schedule 7, in consideration for the Contractor providing the Training Services pursuant to this Contract;
“Training Services”	the training and advice in respect of the SMS Services, the Web Services and the use and operation of the System that is to be provided by the Contractor, as detailed in Schedule 16;
“Transfer of Provision”	means the transfer of activities from the Current Service Provider to the provision by the Contractor;
“VAT”	value added tax, as provided for in the Value Added Tax Act 1994, and any tax replacing it or of a similar nature;
“VCRM”	means the document set out in Schedule 23;
“Virus”	any “back door”, “trojan horse”, “worm”, “drop dead device”, “virus”, “time bomb” or other software routine intended or designed to impair the operability of (or enable unauthorised access rights to) hardware or software, or intended or designed to delete or corrupt data; and
“Web Services”	the provision of the Countdown Service to web

users, via the internet, as a result of the functionality of the System described at part 4.2.7.3 of the Functional Specification.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract;
- 1.4 any obligation on the Contractor to comply with any standards, policies, or other procedures of the TfL Group shall, subject to clause 21.1, be an obligation on the Contractor to comply with the same as they shall be amended from time to time by the TfL Group and communicated to the Contractor;
- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the clauses, the Schedules and any other document referred to or incorporated into this Contract, the order of priority for the purpose of construction is:
 - 1.7.1 the clauses; which shall take precedence over
 - 1.7.2 Schedule 2; which shall take precedence over
 - 1.7.3 the remaining Schedules (save where the conflicting part of the Schedule is explicitly expressed to take precedence over a clause); which shall take precedence over
 - 1.7.4 any other document referred to or incorporated into the Contract.

- 1.8 the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2. Commencement, Duration and Security

- 2.1 This Contract shall, subject to clause 2.2, commence on the Contract Commencement Date and will (subject to any extension under clause 35.3, and to any early termination under clause 4.10 or clause 34) terminate automatically, without notice, at midnight at the end of the day which is the twelfth (12th) anniversary of the Contract Commencement Date.
- 2.2 As a condition precedent to the Contract, the Contractor shall (to the extent that it has not already done so) provide, at its own expense, an original copy of the IVU Undertaking signed by IVU, an original copy of the Kizoom Undertaking signed by Kizoom Software Ltd and a parent company guarantee from the Guarantor in the form set out in Schedule 12. Where, at any time following the date of this Contract, the financial standing of the Guarantor reduces to a level that LBSL, acting reasonably, believes does not offer sufficient protection in the event that the Contractor cannot perform under this Contract, then the Contractor shall (if requested by LBSL in writing) promptly provide, at its own expense, a company guarantee from an Affiliate of the Contractor whose financial standing is equivalent or better than that of the Guarantor as at the date of this Contract, such guarantee to be in the form set out in Schedule 12.
- 2.3 LBSL shall not be obliged to make any payment to the Contractor under the Contract whether for the Charges or otherwise unless and until the parent company guarantee has been provided in compliance with clause 2.2.
- 2.4 The Contractor shall be regarded as being in material breach of the Contract, which is incapable of remedy, in the event that the duly executed parent company guarantee is, or becomes, invalid or otherwise unenforceable.

3. **Development, Supply, Installation and Commissioning of the System**

3.1 Subject to clause 3.3 and clause 3.5, immediately following the Contract Commencement Date, the Contractor will, subject to the terms and conditions of this Contract, proceed to develop, supply, install, commission and bring into service the System:

3.1.1 promptly and diligently and fully in accordance with the Functional Specification and the Project Plan;

3.1.2 in a sound and workmanlike manner, and following Good Industry Practice;

3.1.3 using only suitably qualified and trained Contractor Personnel;

3.1.4 without infringing the Intellectual Property Rights of any third party;

3.1.5 so that the System operates in accordance with the System KPIs for the remainder of the Term following First Signs Acceptance;

3.1.6 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and

3.1.7 using a Key Employee, to the extent that the area of responsibility of a Key Employee (as specified in Schedule 1) includes developing, supplying, installing, commissioning the System and/or bringing the System into service; and

3.1.8 in all respects, fully in accordance with this Contract.

3.2 The Contractor warrants, represents and undertakes that the Sign Interface Specification identifies the interface requirements in accordance with which the Signs must be developed to interface with the System and the Network so that the System will meet the requirements of the Functional Specification and the Signs will interface with the System as set out in the Functional Specification. The Contractor shall at all times remain responsible for the design of the System as a whole and shall not be relieved of any obligations that the Contractor has under this Contract as a result of any error, omission, mistake, or fault in respect of the Sign Interface Specification.

3.3 Subject to the obligations of the Contractor in respect of the Sign Interface

Specification in clause 3.2, the Parties agree that it is the Sign Supplier(s) and not the Contractor that shall supply, deliver, and physically install Signs that comply, in all material respects, with the Sign Interface Specification.

3.4 The Contractor warrants, represents and undertakes that the Communication Specification describes:

3.4.1 the manner in which the Network must operate to meet the requirements identified in Section 6 of the Functional Specification; and

3.4.2 a communications network that is commercially available in the market-place.

3.5 Subject to the obligations of the Contractor in respect of the Communication Specification in clause 3.4, the Parties agree that it is LBSL, and not the Contractor, that is responsible for procuring the Network and for ensuring that the Network operates, in all material respects, in compliance with the Communication Specification.

3.6 The Contractor agrees and acknowledges that:

3.6.1 prior to the Contract Commencement Date it carried out with the co-operation of the TfL Group, a full and comprehensive investigative due diligence in relation to the Interfacing System and had a full opportunity to ask questions of LBSL and consider responses from LBSL on matters relating to the Interfacing Systems;

3.6.2 it undertook, and remains fully responsible for, the design of the System and the Network as described in the Functional Specification (including the Sign Interface Specification and the Communication Specification), and is satisfied that: (a) the System, the Signs and the Network will interface with each other in accordance with the Functional Specification; and (b) the System will operate with no adverse effect on the Interfacing Systems; in each and every case to the extent that:

3.6.2.1 the Signs comply, in all material respects, with the Sign Interface Specification;

3.6.2.2 the Interfacing Systems comply, in all material

respects, with the relevant interface requirements identified within Section 7 of the Functional Specification; and

3.6.2.3 the Network operates, in all material respects, in compliance with the Communication Specification.

3.7 The parties agree that, notwithstanding any other provision in this Contract, any obligations on the Contractor in this Contract in respect of the development, supply, installation, commissioning, bringing into service and ongoing support and maintenance of the System shall be interpreted in accordance with the division of responsibility in respect of the System that is described in this clause 3 and particularly the responsibility of LBSL to provide the Interfacing Systems in accordance with clause 3.6.2.2, the Network in accordance with clause 3.5, and to provide the Signs in accordance with clause 3.3.

4. **Acceptance Process and Key Stages in System Development, Supply, Installation and Commissioning**

4.1 Subject to LBSL changing the Target Acceptance Date under clause 4.6, the Contractor shall carry out its obligations in clause 3.1 in accordance with the timetable set out in the Project Plan and by following the Acceptance Procedures.

4.2 The following are the key milestones (each a "**Contractual Milestone**") in respect of the design, development, supply and installation of the System, each of which are explained in further detail in the Project Plan and Schedule 9:

4.2.1 System Acceptance;

4.2.2 First Signs Acceptance; and

4.2.3 Final Acceptance

4.3 The parties acknowledge that there are additional milestones included in the Project Plan and referred to in the Acceptance Procedures. The Contractor shall be required to meet these additional milestones within the timescales specified in the Project Plan, though the detailed acceptance mechanism below shall not apply in respect of those milestones.

- 4.4 The Contractor shall achieve Acceptance in respect of the System Acceptance and First Signs Acceptance Contractual Milestone, on or before the Target Acceptance Date for those Contractual Milestones.
- 4.5 In respect of the Final Acceptance Contractual Milestone, the Contractor shall achieve Acceptance on the earlier of: (a) the Target Acceptance Date (when Final Acceptance shall be performed against the number of Signs installed at Passenger Stops, as at that date); and (b) the date that is sixty (60) days after the date that (and LBSL has notified the Contractor in writing that this is the case) two thousand and five hundred (2,500) Signs have been installed at Passenger Stops.
- 4.6 LBSL shall be entitled, at no additional cost, to:
- 4.6.1 delay the Target Acceptance Date for the First Signs Acceptance Contractual Milestone and again for the Final Acceptance Contractual Milestone (in each case on one occasion only), each time by a period of up to ninety (90) days, so long as notice of such a delay is delivered to the Contractor at least thirty (30) days prior to the then applicable Target Acceptance Date for the relevant Contractual Milestone. The deadline for LBSL meeting any LBSL Obligations on which achieving a Contractual Milestone is dependant shall be delayed by the same period of time as the Target Acceptance Date has been delayed for that Contractual Milestone; and/or
- 4.6.2 bring the Target Acceptance Date for the Final Acceptance Contractual Milestone forward by providing at least thirty (30) days notice of the new Target Acceptance Date for the Final Acceptance Contractual Milestone. The deadline for LBSL meeting any LBSL Obligations on which achieving a Contractual Milestone is dependant shall be brought forward by the same period of time as the Target Acceptance Date has been brought forward for that Contractual Milestone.
- 4.7 The Contractor shall promptly inform LBSL in writing of any likelihood of delay, in accordance with the Project Plan, in achieving any Target Acceptance Date, and the reasons for such a delay. When notifying LBSL of a possible delay, the Contractor shall demonstrate, to the reasonable satisfaction of LBSL, the processes that it is putting in place and the

additional resources that it is deploying to this project in order to continue to meet the Target Acceptance Date and all future Target Acceptance Dates (or to keep any delay to a minimum and prevent future delays if a Target Acceptance Date has not been achieved) (together the “**Remedy Plan**”). The Contractor shall in particular provide evidence of how it is taking steps to comply with clause 3.1.5. The Contractor shall ensure that the Remedy Plan includes whatever processes and additional resource that LBSL (acting reasonably) believes should be put in place, or deployed. The Contractor shall, at its own cost, comply with the Remedy Plan and otherwise shall keep LBSL regularly updated in respect of progress to achieve Acceptance and shall meet with LBSL as and when required by LBSL to discuss progress.

4.8 The following acceptance process shall apply in relation to the System for each of the Contractual Milestones, in each case to ensure that, to the extent applicable to a particular Contractual Milestone, the System meets the Functional Specification, the requirements of LBSL as are described in the VCRM (and are specifically designated as the responsibility of the Contractor in the VCRM) and the System KPIs:

4.8.1 prior to submitting the System for testing, the Contractor shall by no later than the date specified in the Project Plan for each Contractual Milestone, firstly certify to LBSL that thorough testing (inclusive of component and architectural testing) of the relevant part or parts of the System and, where appropriate, the System as a whole have been successfully completed and that all errors and faults discovered in that process have been corrected, with the exception only of any errors and faults that are both minor and immaterial and which the Contractor shall correct within five (5) Business Days of certification under this clause 4.8.1;

4.8.2 following certification under clause 4.8.1 and in any event by no later than the date specified in the Project Plan for each Contractual Milestone, the Contractor shall notify LBSL that the Acceptance Tests for the relevant Contractual Milestone can be run. Following this notification, the Contractor shall run the relevant Acceptance Tests in order to undertake technical, functional, volume and performance testing of the System. If LBSL has any concerns that the changes that have been made to the System to enable Acceptance to take place for a particular Contractual Milestone have impacted on the ability of the System to pass the

Acceptance Tests that were successfully passed at previous Contractual Milestones, then LBSL, acting reasonably, can require past Acceptance Tests to be re-run (to the extent they are still applicable) and the Contractor must demonstrate that the System is still capable of passing all re-run Acceptance Tests in order to achieve Acceptance;

- 4.8.3 if any part of the System fails the Acceptance Tests, then the Contractor will, at its own cost, expeditiously implement any alterations that are required to ensure that the System and each of its parts, passes the Acceptance Tests as soon as possible (and in any event by the date specified in the Project Plan for the relevant Contractual Milestone);
- 4.8.4 the process set out in clause 4.8.1 to 4.8.3 shall be repeated until the System (or relevant part or parts), passes the Acceptance Tests (with the time period for completing each stage when repeating the process being no longer than those in the Project Plan for the Contractual Milestone) at which point LBSL shall sign the acceptance certificate in the form set out in the Acceptance Procedures and Acceptance shall have taken place. The Contractor shall indemnify the TfL Group from and against any Losses that LBSL, acting reasonably, incurs in respect of faults or errors that are discovered by either Party during the acceptance process, and that should have been fixed prior to certification by the Contractor under clause 4.8.1 (and LBSL shall take all reasonable steps to mitigate the level of such Losses);
- 4.8.5 it shall be the responsibility of the Contractor to demonstrate to the reasonable satisfaction of LBSL that the Acceptance Tests have all been passed in respect of each Contractual Milestone;
- 4.8.6 the Contractor shall provide LBSL with at least ten (10) days notice that it is to run any Acceptance Tests (including under clause 4.8.2 or clause 4.8.4), with such notice specifying the date, time and location for the Acceptance Tests. LBSL and/or any third party that LBSL nominates shall be entitled to attend and witness the running of any Acceptance Tests;
- 4.8.7 the Contractor shall provide (and shall procure that any relevant

Permitted Sub-contractors provide) LBSL with any assistance and advice in the conduct of the Acceptance Tests that LBSL may reasonably require, in each case at no additional cost to LBSL; and

4.8.8 any Acceptance, other than Final Acceptance, shall not prejudice the rights and/or remedies that LBSL otherwise has under the Contract.

4.9 The Contractor acknowledges that it is critical and material to LBSL's strategic plans, commercial and financial interests and passengers (and particularly to ensure that LBSL provides a bus service and Countdown Service in Greater London that is attractive to passengers) that the Contractor achieves Acceptance for each Contractual Milestone on or before the Target Acceptance Date. Subject to the provisions of clause 11, if Acceptance has not taken place by the Target Acceptance Date in respect of a Contractual Milestone, then the Contractor shall pay LBSL the LD Sum for every day (or part day) (the "**Liquidated Damages**") which elapses between the Target Acceptance Date and the date on which Acceptance takes place, up to a maximum period of ninety (90) days from the relevant Target Acceptance Date (the "**Long Stop Date**"). Further, it is agreed that:

4.9.1 all sums payable by the Contractor to LBSL pursuant to this clause 4.9 shall be paid as liquidated damages for delay and not as a penalty, and the Parties acknowledge that such amounts are a genuine attempt to estimate the loss that shall be suffered by LBSL in the event of any failure in achieving Acceptance by the relevant Target Acceptance Date;

4.9.2 LBSL may:

4.9.2.1 deduct and retain the amount of any Liquidated Damages becoming due under the provisions of this clause 4.9 from any sums due or which become due to the Contractor; or

4.9.2.2 require the Contractor to pay such amounts to LBSL, in which event the Contractor shall pay such amounts within 30 days of receipt of a written notice requiring payment;

4.9.3 payment of Liquidated Damages in accordance with this clause 4.9

shall not relieve the Contractor from its obligations to meet each Target Acceptance Date, but shall be the sole remedy for LBSL for any delay by the Contractor in meeting a Target Acceptance Date for the period from the Target Acceptance Date to the Long Stop Date.

4.10 Subject to the provisions of clause 11, if Acceptance has not taken place by the Long Stop Date in respect of a Contractual Milestone, then LBSL shall be entitled to terminate this Contract without liability to LBSL on not less than fifteen (15) days prior written notice (without prejudice to LBSL's other rights and remedies in respect of such a breach), such notice to be delivered at any time after the Long Stop Date. If LBSL terminates the Contract under this clause 4.10 then LBSL shall, at its absolute discretion (and within 28 days of termination) either:

4.10.1 without prejudice to LBSL's rights to sue for any loss, including in respect of the poor quality of the Equipment or the Software or the diminution in its value resulting from the System not having been supplied, purchase such of the Equipment and/or Software that the Contractor has installed up to the date of termination in respect of the System and which LBSL wishes to purchase, with the sum payable by LBSL for any Equipment and/or Software being the sum payable under this Contract for any such Equipment and/or Software; and/or

4.10.2 in respect of all Equipment and/or Software that the Contractor has installed and that LBSL does not elect to purchase under clause 4.10.1, the Contractor shall promptly remove all such Equipment and/or Software from the TfL Premises, at its own cost

in each case by notifying the Contractor accordingly.

4.11 The Contractor shall, for the term of this Contract, at all times keep LBSL fully up to date with: (i) product development plans; and (ii) the product life cycle, in each case for all software products of the Contractor, Kizoom, Kizoom Software Ltd and/or of IVU that that are relevant to the System and/or the Countdown Service. The Contractor shall, in particular, ensure that LBSL is fully informed of all new releases and new versions of such software and/or products (and all plans for such new versions and new releases) and be offered the opportunity to upgrade the System to benefit

from any such new versions and new releases.

- 4.12 The Contractor shall promptly, at any time following a written request by LBSL, provide LBSL with a machine-readable copy of all Software (other than the Third Party Software) on CD Rom, or such other medium as the parties may, acting reasonably, agree.

5. **Contractor as a Sign Supplier**

- 5.1 Subject to clause 5.2, where the Contractor and/or any Affiliate of the Contractor is a Sign Supplier (each a "**Contractor Sign Supplier**") then, notwithstanding any other provisions in this Contract, it is agreed that any failure of the Contractor Sign Supplier (or its agents or subcontractors) to meet its obligations under the relevant Sign Supplier Agreement shall, under no circumstances:

5.1.1 result in an LBSL Obligation being considered breached, to the extent that the LBSL Obligation is dependent upon the Contractor Sign Supplier's obligations under the relevant Sign Supplier Agreement which have not been met;

5.1.2 excuse any poor performance, or non-performance, by the Contractor under this Contract;

5.1.3 be construed as a Force Majeure Event; and/or

5.1.4 entitle the Contractor to receive any additional payment from LBSL under this Contract.

- 5.2 The Contractor shall still be entitled to an extension of time to perform its obligations under this Contract, at all times only to the extent permitted in clause 11, where LBSL has failed to meet an LBSL Obligation, irrespective of the fact that LBSL has failed to meet that LBSL Obligation because of a failure of the Contractor Sign Supplier (or its agents or subcontractors) to meet its obligations under the relevant Sign Supplier Agreement.

6. **Risk and Title in Equipment**

- 6.1 Title in all Equipment supplied under this Contract will pass from the Contractor to LBSL upon the date of System Acceptance, other than:

6.1.1 subject to clause 6.1.2, in respect of any Equipment that is not

being installed in the Data Centre, when title shall pass on delivery of such Equipment to the TfL Premises; and

- 6.1.2 in respect of only the Equipment that constitutes the test and integration platform that is to be replicated at the Contractor site, when title shall pass on delivery of such Equipment to that Contractor site.
- 6.2 The Contractor undertakes to deliver to LBSL good title, with full title guarantee, to all Equipment comprised in the System free from any claims and/or encumbrances whatsoever and LBSL shall be entitled to quiet possession of each and every item of Equipment.
- 6.3 Risk in all Equipment that is installed in the Data Centre or at any premises of the Contractor shall remain with the Contractor for the term of this Contract and the Contractor shall ensure that all such Equipment is insured for a sum that is at least equal to the replacement value of the Equipment (being the value of new equipment) in accordance with clause 27. Risk in any Equipment that is not installed in the Data Centre or at any premises of the Contractor shall pass following the delivery and successful installation of such Equipment at the TfL Premises at which the Contractor is required to deliver such Equipment.
- 6.4 Any equipment supplied by LBSL (if any) for use or integration with the System or the Network will remain the property of LBSL and the Contractor will not acquire any legal or beneficial interest (or any other rights) in such equipment.
- 6.5 The Contractor shall not be entitled to change the location of the Data Centre without the prior written consent of LBSL, which shall not be unreasonably withheld. It shall, without limitation, be reasonable for LBSL to withhold its consent if the change in the location of the Data Centre would result in, or would be reasonably likely to result in, any cost to LBSL, any disruption to the Countdown Service, and/or if LBSL has not been provided with sufficient notice of the change in location of the Data Centre.

7. The Services and the Training Services

- 7.1 From the Services Commencement Date and for the remainder of the Term, the Contractor shall provide the Services to LBSL in respect of the parts of the System that are then installed.

- 7.2 The Contractor shall provide the Training Services to LBSL in accordance with the timescales in the Project Plan and Schedule 16.
- 7.3 The Contractor warrants, represents and undertakes that it shall provide the Services and, where applicable, the Training Services:
- 7.3.1 in a sound and workmanlike manner,
 - 7.3.2 following Good Industry Practice;
 - 7.3.3 using only suitably qualified and trained Contractor Personnel;
 - 7.3.4 without infringing the Intellectual Property Rights of any third party;
 - 7.3.5 in accordance with the Service Levels;
 - 7.3.6 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
 - 7.3.7 in all respects, fully in accordance with this Contract.
- 7.4 If at any time during the Term the Contractor fails to achieve any or all of the Service Levels and/or the System KPIs, then the Contractor will, without cost to LBSL and immediately upon becoming aware of such failure:
- 7.4.1 notify LBSL in writing of (and if required by LBSL discuss with LBSL as soon as is reasonably possible) the reason for the failure to achieve the Service Levels and/or the System KPIs, and the Contractor's proposals to remedy the failure and avoid a reoccurrence of that failure;
 - 7.4.2 without prejudice to LBSL's other rights under this Contract or otherwise, take the steps specified by the Contractor in compliance with clause 7.4.1 and such other steps as LBSL reasonably requires to remedy such failure (provided the failure in question is remediable) to the reasonable satisfaction of TfL; and
 - 7.4.3 use all its reasonable endeavours to ensure that such a failure to achieve the Service Levels and/or the System KPIs is not repeated during the continuance in force of this Contract.
- 7.5 The Contractor acknowledges that it is critical and material to LBSL's

strategic, commercial and financial interests (and particularly to ensure that LBSL provides a bus service and Countdown Service in Greater London that is attractive to passengers) that the Contractor meets the Service Levels and the System KPIs when providing the Services. Subject to the provisions of clause 10, if the Contractor does not meet the Service Levels and/or the System KPIs then LBSL may be entitled Service Credits, in accordance with the provisions of Schedule 6. Further, it is agreed that:

7.5.1 all sums payable by the Contractor to LBSL as Service Credits are a genuine estimate of the loss that shall be suffered by LBSL in the event of any failure to meet the Service Levels and are not a penalty;

7.5.2 LBSL may:

7.5.2.1 deduct and retain the amount of any Service Credits becoming due under the provisions of this clause 7.5 and Schedule 6 from any sums due or which become due to the Contractor; or

7.5.2.2 require the Contractor to pay such amounts to LBSL, in which event the Contractor shall pay such amounts within 30 days of receipt of a written notice requiring payment.

7.5.3 payment of Service Credits in accordance with this clause 7.5 and Schedule 6 shall not relieve the Contractor from its obligations to meet the Service Levels and the System KPIs, or from any other liability or obligation under this Contract. The provisions of this clause 7.5 do not prevent LBSL from exercising any of its other rights under this Contract (including any right to terminate this Contract), or to claim general damages at law. If LBSL is entitled to payment of any sum (including damages) by the Contractor, in respect of an act or omission which gave rise to a payment of Service Credits, then the Service Credits previously levied in respect of that act or omission will be deemed part discharge of that sum.

8. SMS Services and Web Services

8.1 The Contractor shall procure the provisioning, availability and supply of the

Web Services and the SMS Services from the dates specified in the Project Plan so that the Countdown Service is available: (i) via SMS and in conjunction with the SMS Aggregation Services, to mobile phone users; and (ii) via the internet, to web users, in each case in respect of any Passenger Stop until the earlier of:

8.1.1 any date that the Passenger Stop is taken out of the scope of the Countdown Service by LBSL; and

8.1.2 the end of the Term

and for the avoidance of any doubt, LBSL acknowledges that the SMS Services are fully dependent on the provision of the SMS Aggregation Services.

8.2 The Contractor shall commence provision of the SMS Aggregation Services on the date specified in the Project Plan (the "**SMS Aggregation Services Commencement Date**"). The Contractor shall:

8.2.1 obtain the prior written consent of LBSL (such consent not to be unreasonably withheld or delayed) to the terms of the SMS Aggregation Services Contract before the SMS Aggregation Services Contract is entered into and thereafter shall procure that no material changes are made to the terms of any SMS Aggregation Services Contract without the prior written consent of LBSL (such consent not to be unreasonably withheld or delayed);

8.2.2 promptly notify LBSL if the SMS Aggregator and/or any other party to the SMS Aggregation Services Contract gives notice or makes any request to change any terms of any SMS Aggregation Services Contract;

8.2.3 not (and shall procure that none of its Permitted Sub-contractors shall) receive a share of any net revenue from the SMS Services. Therefore, there shall here shall be no payment due from LBSL to the Contractor in respect of the SMS Aggregation Services, other than where the SMS charging model that LBSL operates with recipients of the SMS Services is one where the revenue obtained as a result of the provision of the SMS Services is less than the costs of the SMS Aggregator set out in the SMS Aggregation Services Contract, in which case LBSL shall pay the Contractor the

difference between the two.

- 8.3 The Contractor shall continue to provide the SMS Aggregation Services until the provision of the SMS Aggregation Services is terminated by LBSL, by giving to the Contractor not less than ninety (90) days written notice to that effect, such notice to expire at midnight on any anniversary of the SMS Aggregation Services Commencement Date.
- 8.4 The Contractor will actively manage the SMS Aggregation Services Contract. In particular it will:
- 8.4.1 provide LBSL with an up to date copy of the SMS Aggregation Services Contract (and any contract that it has with a Permitted Sub-contractor in relation to the SMS Aggregation Services) promptly following a written request by LBSL from time to time;
 - 8.4.2 ensure that the SMS Aggregation Services Contract (and any contract that the Contractor has with a Permitted Sub-contractor in relation to the SMS Aggregation Services) at all times enables the recipient of the SMS Aggregation Services to recover Losses that the TfL Group may suffer as a result of any failure, or other breach or default, in respect of the provision of the SMS Aggregation Services from time to time (but only to the extent that such Losses would be recoverable by a recipient of the SMS Aggregation Services under the provisions of the SMS Aggregation Services Contract if the SMS Aggregation Services were being provided for the benefit of that recipient);
 - 8.4.3 actively manage and monitor the standard of the SMS Aggregation Services (including any related support services) actually supplied against the service levels or performance indicators included in the SMS Aggregation Services Contract, and will take all reasonable and practical steps to ensure satisfactory performance (as measured by reference to those service levels or performance indicators). The Contractor shall only be required to initiate legal proceedings against the SMS Aggregator to enforce the provisions of the SMS Aggregation Services Contract where the Contractor and LBSL agree that such a step should be taken; and
 - 8.4.4 ensure compliance with the "Code of Practice for Service Delivery of Common Mobile Shortcodes in the UK for all Communications

Media” (or such other replacement code of practice relevant to the provision of mobile short codes) managed and supported by the UK mobile network operators.

8.5 Subject to the Contractor complying with clause 8.4, the Contractor shall only be liable to LBSL where there is a failure in the delivery of the SMS Aggregation Services, to the extent that the SMS Aggregator is liable under the terms of the SMS Aggregation Services Contract. To the extent that the Contractor is obliged to pay a sum of money to LBSL under this Contract and that sum of money is a pass through of a payment from the SMS Aggregator, then the Contractor shall only be obliged to pay that sum of money to LBSL if it has received payment from the SMS Aggregator (or via a Permitted Sub-contractor).

8.6 LBSL shall notify the Contractor which SMS short code it shall use to deliver the Countdown Service to passengers via SMS (the “**Countdown Shortcode**”) and the Contractor shall (and shall procure that the SMS Aggregator shall) only use the Countdown Shortcode, and no other SMS shortcode, to deliver the SMS Services. The Countdown Shortcode shall be registered in the name of LBSL (or another member of the TfL Group chosen by LBSL). The Contractor shall (and shall procure that the SMS Aggregator, and any Permitted Sub-contractor involved in the provision of the SMS Aggregation Services, shall):

8.6.1 at all times provide all reasonable assistance to LBSL to ensure that LBSL at all times retains the right to use the Countdown Shortcode to deliver the Countdown Service (irrespective of what SMS aggregator is used); and

8.6.2 help facilitate the transfer of the Countdown Shortcode to any future provider(s) of the SMS Aggregation Services that replaces the SMS Aggregator from time to time and shall not present any obstacle to such a transfer.

8.7 In respect of the Web Services:

8.7.1 LBSL may, from time to time, supply the Contractor with a set of the user terms and conditions that should apply to any user of the Web Services and the Contractor shall develop the Web Services in such a manner that the latest version of those user terms and conditions is accepted by the user, prior to that user accessing or

otherwise using the Web Services;

- 8.7.2 LBSL may from time to time, supply the Contractor with a set of the user terms and conditions for users of the SMS Services and the Contractor shall, if requested by LBSL, make such user terms and conditions available alongside the user terms and conditions referred to at clause 8.7.1;
- 8.7.3 LBSL shall retain ownership of any and all domain names that users of the Web Services access in order to benefit from the Web Services;
- 8.7.4 the Supplier warrants that the Web Services shall be compliant with the Disability Discrimination Act 2005, and shall, as a minimum, achieve a double-A (AA) level of accessibility, by reference to the Web Content Accessibility Guidelines (WCAG) 2.0 guidelines published by the World Wide Web Consortium (also known as W3C); and
- 8.7.5 the Contractor shall deliver the Web Services in accordance with any TfL web style guidelines provided by LBSL from time to time. Where a change is required to the Web Services following the date of this Contract to reflect a new TfL web style guideline, or a change to an existing TfL web style guideline then, other than where such a change can be made by configuring the System as is permitted by the functionality of the System described in the Functional Specification, the process described in clause 9 shall apply to that change.

9. **Change Control**

- 9.1 Any work undertaken in connection with any proposed change to this Contract by the Contractor, its Permitted Sub-contractors or agents shall be undertaken at the expense and liability of the Contractor.
- 9.2 Any discussions, negotiations or other communications which may take place between LBSL and the Contractor in connection with any proposed change to this Contract, including the submission of any written communications, prior to the signing by both Parties of the relevant CCN, shall be without prejudice to the rights of either Party.

9.3 LBSL may at any time require, and the Contractor may at any time recommend, a change in accordance with the process described in the remainder of this clause 9.

9.4 Should LBSL require, or the Contractor wish to recommend, a change then that Party's Project Manager shall submit a brief written paper following the format of the template proposed change paper included in Schedule 17 (the "**Proposed Change Paper**") to the other Party addressing, as a minimum, the following points:

9.4.1 the title of the proposed change and a unique reference number;

9.4.2 the originator and date of the proposal for the proposed change;

9.4.3 the reason for the proposed change;

9.4.4 full details of the proposed change;

9.4.5 subject to clause 9.11, the reasonable price, if any, of the proposed change based on the Rates (in the case of changes raised by the Contractor);

9.4.6 a reasonable timetable for implementation, together with any proposals for acceptance of the change; and

9.4.7 in the case of changes raised by the Contractor, details of the likely impact, if any, of any reasonable changes required to any other aspects of the Contract, including:

9.4.7.1 the term of the Contract;

9.4.7.2 any sub-contracts;

9.4.7.3 LBSL Obligations;

9.4.7.4 the Contractor Personnel to be provided;

9.4.7.5 the Charges;

9.4.7.6 the payment profile; and/or

9.4.7.7 the Service Levels.

9.5 Within ten (10) Business Days of the submission of a Proposed Change

Paper (or such other period as may be agreed between the Parties) the receiving Party's Project Manager or his nominee shall, acting reasonably, respond to the Proposed Change Paper in writing and, if appropriate, the Parties' Project Managers or their nominees shall meet to discuss the Proposed Change Paper. Where a change is required by LBSL, the Contractor's Project Manager shall, when responding to the Proposed Change Paper submitted by LBSL, acting reasonably, update the Proposed Change Paper so it includes the information identified at clause 9.4.5 and 9.4.7 (to the extent relevant).

- 9.6 Upon receipt of the Proposed Change Paper, LBSL may elect to:
- 9.6.1 accept the variation as detailed in the Proposed Change Paper, in which case the Parties shall record the variation by way of a CCN and the Contract will be deemed varied accordingly; or
 - 9.6.2 negotiate and agree upon a revised variation with the Contractor in which case the Parties shall record the variation by way of a CCN and the Contract will be deemed varied accordingly; or
 - 9.6.3 reject Proposed Change Paper, in which case the Contract will continue in force unchanged.
- 9.7 Each CCN shall be uniquely identified by a sequential number (referred to as a variation number).
- 9.8 Two copies of each CCN shall be signed by the Contractor and submitted to LBSL in accordance with the provisions of clause 41 (Notices) not less than ten (10) Business Days (or such other period as may be agreed between the Parties) prior to the effective date of the CCN.
- 9.9 Subject to LBSL continuing to accept the variation, LBSL shall sign both copies of the CCN within 5 Business Days (or such other period as may be agreed between the Parties) of receipt by LBSL. Following signature by LBSL, one copy of the signed CCN shall be returned to the Contractor by LBSL.
- 9.10 A CCN signed by a duly authorised representative of each Party shall constitute a variation to this Contract.
- 9.11 The section of Schedule 7 headed "Additional Costed Options" (section 7) sets out the cost of certain changes that the Parties have agreed. Where

LBSL requires a change described in that section of Schedule 7, under this clause 9, the Parties shall apply the costs identified in that section of Schedule 7.

10. Warranties Obligations and Co-operation with other Contractors

10.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Contractor warrants, represents and undertakes to LBSL that:

10.1.1 the Contractor has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company as defined in sections 1159(1) and (2) Companies Act 2006) to enter into and to perform the Contract;

10.1.2 the Contractor is aware of the purposes for which the System, the Services, the Network and the Training Services are required and acknowledges that LBSL is reliant upon the Contractor's expertise and knowledge in the provision of the Services, the Training Services and the development of the System;

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

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

10.1.5 the System will meet the requirements of the Functional Specification (in terms of functionality and performance) regardless of the number of Passenger Stops connected to it, subject to a maximum of twenty thousand (20,000) Passenger Stops;

10.1.6 the possession and use by the Contractor, LBSL, any member of the TfL Group or any Replacement Contractor of any documents, drawings, Equipment, Software and any other work prepared or developed by the Contractor or supplied to LBSL under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person;

10.1.7 the Contractor owns and shall maintain all necessary licences or

rights required of the Contractor in performing its obligations under this Contract, and that it is entitled to grant to or procure for LBSL all necessary licences or rights required to enable LBSL any member of the TfL Group and any Replacement Contractor to use the System (both during and after the Term);

10.1.8 the System will, at the date of delivery, be free from all Viruses, and that the Contractor shall not introduce any Virus at any time, and the Contractor shall, for so long as it provides the Services, continue to perform such Virus checks as may be required to ensure that the System remains free from Viruses at all times;

10.1.9 any Software, electronic or magnetic media, hardware or computer system used or supplied by the Contractor in connection with the Contract shall:

10.1.9.1 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; nor

10.1.9.2 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 LBSL and/or any other member of the TfL Group, on which it is used or with which it interfaces or comes into contact.

10.1.10 the Contractor shall, by fulfilling its obligations under this Contract, meet the requirements of LBSL, as are described in the VCRM and are specifically designated as the responsibility of the Contractor.

10.2 Each warranty and obligation in this clause 10 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of the Contract.

10.3 Notwithstanding anything to the contrary in the Contract, LBSL's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained

or affected by any provision of the Contract.

10.4 In this clause 10.4, "**Fellow Contractor**" means any third party who has contracted from time to time to provide goods and/or services to any member of the TfL Group and includes the Sign Supplier(s) and any provider of the Network; and "**External Services**" means any service performed for, and/or provided to, or for, any member of the TfL Group by a Fellow Contractor from time to time. The parties agree that:

10.4.1 the Contractor will, where required by LBSL and/or otherwise necessary, reasonably co-operate with and co-ordinate its obligations under the Contract with the performance of any External Services by Fellow Contractors;

10.4.2 the Contractor will supply such information about the Services, the Network, the Training Services and the System as is necessary to allow each Fellow Contractor to provide the relevant External Services and provide such access to the Contractor's systems and the System as may reasonably be required by Fellow Contractors to enable such Fellow Contractors to provide External Services, subject only (in each case) to the Contractor first seeking LBSL's written notification of what may and may not be supplied to the relevant Fellow Contractor and, if the Contractor so requires, LBSL procuring that the Fellow Contractor enters into a confidentiality agreement containing the restrictions contained in clause 31 with the Contractor;

10.4.3 if it comes to the attention of the Contractor that any Fellow Contractor directly connected to the provision of the System, the Network or the Signs has failed to provide, is failing to provide or is proposing not to provide, any External Services either fully or at all, the Contractor will immediately notify LBSL in writing with as full particulars as is reasonably possible in the circumstances; and

10.4.4 any obligation imposed on LBSL pursuant to the provisions of this Contract will be deemed to have been fulfilled by LBSL to the extent that such obligations have been fulfilled by one or more Fellow Contractors.

11. LBSL Obligations

11.1 Subject to clause 5, LBSL shall comply with the LBSL Obligations in accordance with any timescales that are set out or referred to in Schedule 15. The Parties agree that the LBSL Obligations are an exhaustive list of the tasks, actions and other responsibilities of LBSL in respect of this Contract which if not performed by LBSL will result in the Contractor being: (a) relieved from any obligation that the Contractor has in this Contract in respect of the development, supply, installation, commissioning and bringing into service of the System up to the point of Final Acceptance (including achieving a date in the Project Plan) in accordance with the remainder of this clause 11; and/or (b) being entitled to charge any additional sums in respect of the development, supply, installation, commissioning and bringing into service of the System up to the point of Final Acceptance in accordance with the remainder of this clause 11.

11.2 The Contractor shall, subject to clause 5, be relieved from any obligation that it has in the Contract (including any obligation to achieve a date in the Project Plan) to the extent that it is unable to comply with that obligation directly and unavoidably as a result of the failure or delay by LBSL to comply with one or more of the LBSL Obligations (an "**LBSL Failure**"), but only from such time, and in respect of such obligations, as:

11.2.1 the Contractor has notified LBSL in writing:

11.2.1.1 that LBSL is not complying with an LBSL Obligation;

11.2.1.2 that the failure by LBSL to comply with an LBSL Obligation is demonstrably causing the Contractor to be unable to fulfil certain obligations under this Contract;

11.2.1.3 which obligations of the Contractor are impacted by the failure by LBSL to meet the LBSL Obligation; and

11.2.1.4 what steps LBSL should take (in the Contractor's opinion) in order for the Contractor to not be prevented from meeting its obligations; and so long as

11.2.2 the Contractor, unless LBSL notifies the Contractor otherwise, continues to use all its reasonable endeavours to continue to meet

all of its obligations under the Contract and can demonstrate to LBSL's reasonable satisfaction that the Contractor has been using all such reasonable endeavours at all relevant times.

- 11.3 Subject to clause 5 and the remainder of this clause 11, the Contractor shall, so long as it is complying with clauses 11.2.1 and 11.2.2, be entitled to recover its wasted time costs (to be calculated by reference solely to the Rates) where Contractor Personnel that are deployed or were due to be deployed on the development, supply and installation of the System in accordance with the resourcing model described in the Project Plan cannot be so deployed as a direct result of the LBSL Failure.
- 11.4 Whenever there is an LBSL Failure, the Contractor shall mitigate the impact of an LBSL Failure so as to minimise the costs that the Contractor is entitled to recover under clause 11.3. The Contractor shall:
- 11.4.1 continually consult with LBSL to ascertain the extent of the delay and any possible work around solutions and to ensure that where an LBSL Failure has been rectified, that the Contractor is ready to continue to deliver the project in accordance with the Project Plan (and the Project Plan shall be updated to reflect the delay resulting from the LBSL failure);
 - 11.4.2 as a priority, re-allocate tasks in the Project Plan in order to use resources, productively within the project, that would otherwise be idle as a result of the LBSL Failure, with the aim of also minimising overall delay to the critical path of the Project Plan;
 - 11.4.3 to the extent it cannot mitigate in accordance with clause 11.4.2, as soon as possible temporarily redeploy those resources that cannot be used productively within the project to other projects within the Contractor's organisation, so that the same resource can be available as and when the LBSL Failure has been resolved or shortly thereafter (and where this cannot be achieved for all resource, concentrate on doing so for the resource that is key to successful delivery);
 - 11.4.4 to the extent it cannot mitigate in accordance with clauses 11.4.2 and/or 11.4.3, as soon as possible redeploy those resources that cannot be used productively within the project to other projects within the Contractor's organisation, and arrange for alternative and

equally or better skilled resource to be available as soon as reasonably possible after the LBSL Failure has been resolved. The Contractor shall, within its organisation, prioritise making resource available to LBSL following resolution of the LBSL Failure and shall, for so long as the LBSL Failure is continuing and this mitigation step is applicable, keep LBSL updated as to what resource is available and when; and

- 11.4.5 to the extent it is not possible to mitigate in accordance with clauses 11.4.2, 11.4.3 and/or 11.4.4, stand-down the relevant resources until the LBSL Failure has been resolved, or until one of the steps described in clauses 11.4.2, 11.4.3 and/or 11.4.4 can be taken.
- 11.5 The Contractor shall, as soon as reasonably possible after an LBSL Failure, submit a proposal to LBSL which:
- 11.5.1 sets out the likely delay to the Project Plan that will result from the LBSL Failure and what it is doing to meet clause 11.2.2; and
- 11.5.2 by applying the mitigation principles described in clause 11.4 (and the order of priority that is also described in clause 11.4), sets out the steps it proposes to take to minimise the cost impact to LBSL and as a result of taking those steps, what the estimated cost impact will be to LBSL under clause 11.3. The Contractor shall provide such information or other details as may reasonably be required by LBSL in order for LBSL to be sure that the Contractor has thoroughly applied the principles described in clause 11.4.
- 11.6 The Contractor shall implement the proposal prepared under clause 11.5, or shall otherwise taking such steps as are required by LBSL as an alternative to what is recommended in that Contractor proposal (which LBSL shall notify to the Contractor as soon as is reasonably possible following receipt of the proposal prepared under clause 11.5).
- 11.7 The total amount that may be claimed by the Contractor from LBSL, as a result of a failure by LBSL to fulfill any and all LBSL Obligations shall, subject to clause 26.1, not exceed [REDACTED] sterling (£ [REDACTED]) (as such a figure may be increased in accordance with clause 11.8) (the **“LBSL Obligations Cap”**).

- 11.8 Where LBSL requires the Contractor to take steps that are outside of the proposal delivered under clause 11.5, then the LBSL Obligations Cap (as then applicable) shall automatically increase by a sum equal to the total costs that the Contractor is entitled to recover (notwithstanding the LBSL Obligations Cap) under clause 11.3 as a result of taking the steps required by LBSL to the extent they differ to the steps outlined in the proposal delivered by the Contractor under clause 11.5. The parties shall agree such a sum via the change control procedure described in clause 9.
- 11.9 In the event that the amount payable to the Contractor as a result of a failure by LBSL to fulfil the LBSL Obligations reaches the LBSL Obligations Cap then, when the cause of the delay has ceased, the Parties shall, acting reasonably and in good faith, agree a revised Project Plan to reflect the full extent of the delay and any re-mobilisation of resources to be carried out by the Contractor (but there shall, for the avoidance of any doubt, be no increase in the LBSL Obligations Cap as a result of any such a revision to the Project Plan).
- 11.10 The Contractor shall be entitled to submit invoices to LBSL at the end of each calendar month for any additional costs incurred by it during the calendar month that has just ended, and which it is entitled to recover under this clause 11.
- 11.11 In the event that a failure by LBSL to fulfil an LBSL Obligation (ignoring any days of delay caused by the Contractor not meeting its obligations) exceeds four (4) weeks and the Contractor is delayed in achieving the next milestone that triggers a payment of part of the System Charges, as such milestones are described within section 5 of Schedule 7 (each a "**System Payment Milestone**"), then the Contractor shall be entitled, after that four (4) week period has expired, to invoice LBSL a progress payment (a "**Progress Payment**") against the System Payment Milestone that the Contractor has been delayed in achieving. The Progress Payment shall only be payable if the Contractor can demonstrate that, as at the date the Progress Payment is due, it has completed the tasks that it is required to have completed under the Project Plan at that date (ignoring any tasks it has been unable to complete as a result of the LBSL Failure). The Progress Payment shall be a part payment of the System Charge instalment that is otherwise payable at the System Payment Milestone that the Contractor has been delayed in achieving. The Progress Payment shall be calculated by multiplying the total

System Charge instalment payable at the next System Payment Milestone that the Contractor has been delayed in achieving by X/Y, where:

X = the total number of days between the date that the last instalment of the System Charge was paid (or the Commencement Date if there is no such date) and the date that LBSL should have achieved the relevant LBSL Obligation (ignoring any days of delay caused by the Contractor not meeting its obligations); and

Y = the total number of days between the date that the last instalment of the System Charge was paid (or the Commencement Date if there is no such date) and the date, in the Project Plan, of the System Payment Milestone that the Contractor has been delayed in achieving.

For the avoidance of any doubt, the Contractor shall, as and when a System Payment Milestone is achieved, deduct any part payments that have already been paid in advance in respect of that System Payment Milestone, from the sum that the Contractor would otherwise be entitled to invoice in accordance with Schedule 7.

11.12 Subject to clause 26.1, this clause 11 sets out the aggregate and sole liability of LBSL to the Contractor for any failure by LBSL to meet any or all of the LBSL Obligations.

12. **Charges**

12.1 In consideration of, and subject to the due performance of its obligations in this Contract by the Contractor, LBSL shall pay the Contractor the following amounts, which are an exhaustive list of the fees that LBSL is required to pay the Contractor under the Contract:

12.1.1 the System Charges;

12.1.2 the Service Charges;

12.1.3 the Training Charges;

12.1.4 any expenses agreed in accordance with clause 12.3; and

12.1.5 any other sums expressly payable by LBSL under the terms of this Contract

(together the "**Charges**").

- 12.2 Except as stated otherwise in the Contract or otherwise expressly agreed between the parties in writing, the Charges constitute LBSL's entire payment liability to the Contractor for fulfilling its obligations under the Contract and will be deemed to include payment for all the costs and expenses of the Contractor however incurred including the cost of all labour, vehicles, equipment and materials, travelling expenses, parking costs, congestion charges, fuel, licence fees or other similar expenses in respect of the making, use or exercise by the Contractor of any rights necessary for the purpose of the performance of its obligations under the Contract.
- 12.3 The Contractor is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 7 or have been incurred with the prior written consent of LBSL (such consent to be given or withheld at LBSL's absolute discretion), in which case the Contractor shall supply appropriate evidence of expenditure in a form acceptable to LBSL.
- 12.4 LBSL shall also be entitled to receive the SMS Payments from the Contractor, as are further described in section 6 of Schedule 7.
- 12.5 All Charges and the SMS Payments exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.
- 12.6 The Services Charges, the Training Charges, the "Additional Costed Options" identified in section 7 of Schedule 7 and the Rates shall increase or decrease on the date on which First Signs Acceptance take place, and each anniversary of that date, in the same proportion as the annual percentage increase or decrease in the Index in the latest calendar month for which the change in the Index has been published. To the extent that the Contractor is not expressly entitled to increase or decrease any portion of the Charges as described in this clause 12.6, then the Charges set out in Schedule 7 are fixed.

13. Payment Procedures and Approvals

- 13.1 The Contractor shall invoice LBSL in respect of the Charges, and LBSL shall invoice the Contractor in respect of the SMS Payments at the frequency and other manner set out in Schedule 7.
- 13.2 The Contractor shall submit invoices to the address set out in Schedule 1,

each such invoice shall contain all information reasonably required by LBSL from time to time, including the Contract Reference Number, SAP order number, the Contractor's name and address, a separate calculation of VAT and a detailed description of what the charge relates to.

13.3 In the event of a variation to the Services, the Training Services, and/or the System in accordance with the Contract that involves the payment of additional charges to the Contractor, the Contractor shall identify these separately on the relevant invoices.

13.4 If LBSL considers that the Charges claimed by the Contractor in any invoice have:

13.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as LBSL may choose from time to time within 30 days of receipt of such invoice; or

13.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, LBSL shall notify the Contractor what the error, inadequacy or incorrect calculation is and pay any undisputed sum in accordance with clause 13.4.1. The Parties shall work together to resolve the error, inadequacy or incorrect calculation. Upon resolution, the Contractor shall submit a revised invoice to LBSL for any sum that remains payable.

13.5 No payment made by LBSL (including any final payment) or act or omission or approval by LBSL or the LBSL Project Manager (whether related to payment or otherwise) shall:

13.5.1 indicate or be taken to indicate LBSL's acceptance or approval of the Services, the System and/or the Training Services (or any part of any of them) or any other act or omission of the Contractor, or otherwise prejudice any rights, powers or remedies which LBSL may have against the Contractor, or absolve the Contractor from any obligation or liability imposed on the Contractor under or by virtue of the Contract; or

13.5.2 prevent LBSL from recovering any amount overpaid or wrongfully paid including payments made to the Contractor by mistake of law

or fact. LBSL shall be entitled to withhold such amount from any sums due or which may become due to the Contractor or LBSL may recover such amount as a debt.

- 13.6 If any sum payable under this Contract is not paid when due then, without prejudice to a Party's other rights under this Contract, that sum will bear interest from the due date until payment is made in full both before and after any judgment, at three per cent (3%) per annum over the HSBC Bank plc base rate from time to time. The Parties agree that this clause 13.6 is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 13.7 LBSL shall submit invoices in respect of the SMS Payments to the address for the Contractor set out in the definition of the Contractor at the start of this contract.
- 13.8 If the Contractor considers that the SMS Payments claimed by LBSL in any invoice have:
- 13.8.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)); or
 - 13.8.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Contractor shall notify LBSL what the error, inadequacy or incorrect calculation is and pay any undisputed sum in accordance with clause 13.8.1. The Parties shall work together to resolve the error, inadequacy or incorrect calculation. Upon resolution, LBSL shall submit a revised invoice to the Contractor for any sum that remains payable.
- 13.9 Unless otherwise agreed, all payments due under this Contract shall be in Pounds Sterling.

14. **Governance and Contract Management**

- 14.1 The Parties shall comply with the terms of Schedule 8.
- 14.2 Each Party will appoint a Project Manager (and for periods when such Project Manager is sick or on holiday, a deputy). The Project Manager will be the single point of contact for each Party for the overall management of

this Contract. Each Party shall direct all notices and commercial communications under this Contract to the other Party's Project Manager unless otherwise agreed.

14.3 The Project Managers will have the authority and be given the responsibility to:

14.3.1 represent the appointing Party in relation to this Contract;

14.3.2 monitor the appointing Party's compliance with its obligations under this Contract;

14.3.3 where applicable, co-ordinate any technical aspects arising in respect of a Party's obligations and liaise on the management of such obligations;

14.3.4 give and receive notices under this Contract;

14.3.5 exercise rights and give approvals under this Contract; and

14.3.6 appoint a deputy who may perform their respective obligations temporarily, not exceeding a continuous period of more than 15 Business Days.

14.4 The Contractor Project Manager shall be named as one of the Key Personnel for the purposes of this Contract.

14.5 The Contractor shall promptly inform LBSL's Project Manager in writing of any acts or omissions on the part of LBSL which prevents or hinders, or may prevent or hinder, the Contractor from meeting any of its obligations under this Contract.

14.6 Minutes of the meetings described in Schedule 8 shall be taken by the Contractor and sent to LBSL within five (5) Business Days of the meeting for LBSL's approval, which shall not be unreasonably withheld. Only minutes so approved shall be treated by the Parties as evidence of proceedings at such meetings. The minutes shall clearly set out any actions to be taken, the Party responsible for undertaking such action and the date by which any action must be undertaken.

14.7 The Parties acknowledge that this Contract may only be changed in accordance with the change control procedure set out in clause 9 and any

decisions or items within the minutes of meetings attended by the Project Managers that may be stated or implied to be variations to the Contract will not vary the Contract unless made in accordance with the change control procedure in clause 9.

- 14.8 The Contractor shall, throughout the term of this Contract, comply with the asset management obligations set out in Schedule 19 in order to ensure the effective and efficient lifecycle administration (receipt, transfers, swap out and disposal) of the Equipment. As part of this obligation, the Contractor shall provide LBSL with a written report relating to the delivery of any Equipment (and any other deliverables to be delivered or provided by the Contractor under this Contract) within five (5) Business Days of the date of delivery of the same.
- 14.9 In addition to the obligations set out in clause 14.8, the Contractor will (in accordance with the terms of Schedule 19) maintain a detailed asset register for all technology equipment (including both software and hardware) supplied in connection with this Contract, together with details of all licences, consents or approvals which are required by the Contractor to perform the Services and/or the Training Services or by LBSL to use the System. Such licences, consents, approvals and equipment will be catalogued by type, model, version number and location. The Contractor will provide reports to LBSL in a format which is compatible with and can be incorporated into LBSL's asset tracking database. As new Equipment is installed, or existing Equipment redeployed to a different location, or existing Equipment is removed, replaced and/or disposed of, the Contractor shall provide updated information to LBSL as described in Schedule 19.

15. **Contractor's Personnel**

- 15.1 The Contractor shall provide the Contractor Personnel as necessary for the proper and timely performance and management of the Contractor's obligations under this Contract.
- 15.2 The Contractor shall be solely responsible for the management of all Contractor Personnel and for the acts and omissions of the Contractor Personnel.
- 15.3 If any Contractor Personnel are replaced, the Contractor will ensure that a full and effective knowledge transfer process is in place and fully adhered to for the transfer of any knowledge relevant to the System or the Contract from

the replaced Contractor Personnel to the replacement Contractor Personnel.

15.4 The Contractor will vet each member of the Contractor Personnel before the individual commences or undertakes any work in relation to this Contract and will individually assess them regularly to ensure that such persons are:

15.4.1 diligent, careful, honest, skilled, qualified, competent and experienced in the work which they are to perform in connection with this Contract and at all times remain so;

15.4.2 properly and sufficiently trained, skilled and informed about:

15.4.2.1 the duty or duties which that person has to perform in relation to this Contract;

15.4.2.2 any aspect of the Functional Specification, Service Levels, System KPIs or other term of the Contract which are or may be relevant to the duties to be performed by him or her;

15.4.2.3 all relevant rules, procedures and statutory and regulatory requirements concerning health and safety and safety at work; and

15.4.2.4 the need to observe the highest standards of integrity, courtesy and consideration in the performance of their duties.

15.5 The Contractor will verify and, in the case of clause 15.4.2, ensure, that before any member of the Contractor Personnel commences or undertakes any work under this Contract, that such person has:

15.5.1 no criminal record (excluding minor motoring offences) except where such criminal record has been disclosed to LBSL and LBSL has given its prior written consent to such person(s) commencing work under this Contract;

15.5.2 provided proof of his or her right to work to the Contractor (including provision of a work permit if necessary).

15.6 On the written request of LBSL the Contractor will immediately remove from any involvement in this Contract any Contractor Personnel who, in the

reasonable opinion of LBSL:

- 15.6.1 does not fulfil the requirements set out in this clause 15;
 - 15.6.2 is not performing his or her or its role in respect of this Contract properly, efficiently or effectively; and/or
 - 15.6.3 is, for any other reason, reasonably considered by LBSL to be unacceptable or inappropriate.
- 15.7 The Contractor will implement such training for the Contractor Personnel (including in respect of the use of and maintenance of information technology and communication systems) as is necessary from time to time to ensure that they meet the requirements of this Contract, at no additional cost to LBSL.
- 15.8 The Contractor will deploy a sufficient number of supervisory staff in order to ensure that the Contractor Personnel and all Permitted Sub-contractors are at all times:
- 15.8.1 adequately supervised;
 - 15.8.2 properly performing their duties in accordance with the requirements of this Contract;
- 15.9 The Contractor will ensure that:
- 15.9.1 each of the Key Employees devotes his or her full time and attention to this Contract, unless otherwise agreed in advance in writing with LBSL;
 - 15.9.2 each of the Key Employees is available to LBSL to resolve any issues arising in connection with the Contract;
 - 15.9.3 there is at all times at least one other member of the Contractor Personnel who understands and is capable of performing to the level required by this Contract each Key Employee's role and duties in relation to this Contract in the absence (whether temporary or permanent and for any reason whatsoever) of that Key Employee; and
 - 15.9.4 the Contractor does not remove any Key Employee from fulltime involvement in, or allow any Key Employees to be absent from

working on this Contract for more than 20 consecutive days without the prior written consent of LBSL, except where such Key Employee is absent on sick leave or other statutory leave (such as maternity, parental or adoption leave) or has left the Contractor's employment.

15.10 If at any time during the continuance in force of the Contract any Key Employee role is vacant:

15.10.1 the Contractor will use its best endeavours to procure that:

15.10.1.1 it finds and appoints a suitable candidate to fill the vacant Key Employee role as soon as practicable and in any event that the role of any Key Employee is not vacant for longer than 20 days from the date upon which it first became vacant for any reason whatsoever; and

15.10.1.2 any replacement Key Employee will have the relevant experience and be fully competent and suitable to carry out the tasks and duties assigned to the Key Employee to be replaced;

15.10.2 the Contractor will provide details of the qualifications, experience and suitability of any potential candidate which it finds to fill the vacant Key Employee role to TfL as soon as practicable upon TfL's request; and

15.10.3 the Contractor shall not be entitled to appoint any person to fill any vacant Key Employee role without TfL's prior written approval of such appointment (such approval not to be unreasonably withheld).

15.11 Any person appointed to fill a vacant Key Employee role pursuant to clause 15.10 will be considered a Key Employee for the purposes of the Contract from the date of such appointment.

16. TUPE

16.1 The Parties believe that the Regulations do not apply to the Transfer of Provision and the Parties do not contemplate or intend that any employees or other individuals shall transfer to the Contractor pursuant to the Regulations or otherwise by reason of the matters contemplated by the

Contract.

16.2 If, notwithstanding the belief of the Parties that the Regulations do not apply, any past or present employee of the Current Service Provider ("**Current Service Provider Employee**") shall become or otherwise be deemed to be or shall claim to have become an employee of the Contractor, the Contractor will keep LBSL indemnified from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, losses, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which LBSL incurs or suffers arising directly or indirectly out of or in connection with:

16.2.1 any act, omission or default by or on behalf of the Contractor in respect of any Current Service Provider Employee;

16.2.2 the employment or termination of employment by the Contractor of any Current Service Provider Employee;

16.2.3 the failure of the Contractor to comply with its obligations under the Regulations; and/or

16.2.4 any claim brought or other action taken by or on behalf of a Current Service Provider Employee which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to any of them before the Services Commencement Date by, on behalf of and/or at the instruction of the Contractor.

16.3 In respect of any Current Service Provider Employees that become or are otherwise deemed to be an employee of the Contractor by virtue of the Regulations, the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

16.3.1 up to and including the date that the Current Service Provider Employees become or otherwise be deemed to be an employee of the Contractor (the "**Transfer Date**"), LBSL (as between the Parties) will be responsible for the Employment Costs;

16.3.2 after the Transfer Date the Contractor will be responsible for the Employment Costs

except that there will be no apportionment in respect of the Current Service Provider Employee's holiday entitlements.

16.3.3 LBSL will indemnify, keep indemnified and hold harmless the Contractor from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Contractor (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

16.3.3.1 any act or omission by or on behalf of the Current Service Provider and/or LBSL in respect of any Current Service Provider Employees insofar as and to the extent that any such act or omission occurred on or before the Transfer Date;

16.3.3.2 the employment or termination of employment by the Current Service Provider, or any of the Current Service Provider Employees up to and including the Transfer Date;

16.3.3.3 the Current Service Provider's failure to inform or consult appropriate representatives as required under Regulation 13 of the Regulations (except to the extent that any such action or claim or part of any such action or claim arises from any failure by the Contractor to give LBSL and/or the Current Service Provider the information required from it or them to enable LBSL and/or the Current Service Provider to comply with their obligations under the Regulations); and/or

16.3.3.4 any claim or demand or other action taken against the Contractor by any person employed or engaged by any Current Service Provider who claims (whether correctly or not) that the Contractor has inherited any liability from the Current Service Provider or LBSL in respect of them by virtue of the Regulations.

16.4 Promptly when requested by LBSL at any time (but not more than twice in any year) and not more than 7 days after the date of any notice to terminate this Contract given by either party for any reason whatsoever, provide and use its best endeavours to procure that any relevant subcontractor provides

the following information to LBSL:

- 16.4.1 a list of current Contractor Personnel and subcontractors (each identified as such in the list) (the "**Staff List**");
- 16.4.2 all material terms and conditions relating to the employment or engagement of the persons listed on the Staff List;
- 16.4.3 written job descriptions of the persons listed on the Staff List;
- 16.4.4 all other information which the Contractor or subcontractors knows or ought to know about its or their rights, powers, duties and liabilities under or in connection with the contracts of employment of the persons listed on the Staff List including without limitation their job titles, grades or seniority, dates of commencement of continuous employment, remuneration (salary and benefits) and pension rights; and
- 16.4.5 in the situation where notice to terminate this Contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Contract, whom the Contractor considers will not transfer under the Regulations for any reason whatsoever together with details of their role and a full explanation of why the Contractor thinks such persons will not transfer,

such information together being the "**Staffing Information**".

- 16.5 The Contractor will notify LBSL in as much detail as possible as soon as practicable and in any event within 5 days of the Contractor becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 16.6 The Contractor warrants to LBSL that any Staffing Information which the Contractor supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- 16.7 Subject to clause 16.8, the Contractor will provide LBSL with a final Staff List ("the **Final Staff List**") not less than 14 days before the date of expiry or earlier termination of the Contract.
- 16.8 If the Contract is terminated by either party in accordance with clause 34.4 or

by LBSL in accordance with clause 4.10 or clause 34.1, then the Final Staff List will be provided by the Contractor to LBSL within 14 days of the date of termination of the Contract.

16.9 The Contractor warrants that as at the date of expiry or earlier termination of the Contract:

16.9.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

16.9.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and

16.9.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to LBSL.

16.10 From the earlier of:

16.10.1 the date falling 3 calendar months before the date of expiry of the Contract; or

16.10.2 if the Contract is terminated by either party in accordance with clause 34 or by LBSL in accordance with clause 4.10, the date of the relevant termination notice;

the Contractor will not and will procure that its subcontractors do not without the prior written consent of LBSL (such consent not to be unreasonably withheld or delayed):

16.10.3 terminate or give notice to terminate the employment or engagement, or replace the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;

16.10.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;

16.10.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;

16.10.6 increase to any significant degree the proportion of working time spent on the Services by any of the Contractor Personnel; or

- 16.10.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.
- 16.11 The Contractor will promptly notify LBSL of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in clause 16.10 regardless of when such notice takes effect.
- 16.12 For the avoidance of doubt, the Contractor confirms that LBSL will be permitted to disclose any information provided to it under this clause 16 in summary form to any person who has been invited to tender for the provision of the Services (or similar services) and to any Replacement Contractor.

Transfer of Employees on Expiry or Termination

- 16.13 If the Regulations apply on the expiration or termination of the Contract and/or the appointment of a Replacement Contractor the following will apply:
- 16.13.1 the contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005) from the Further Transfer Date as if originally made between the Re-Transferring Personnel and LBSL or Replacement Contractor (as appropriate).
- 16.13.2 During the period commencing on the earlier of:
- 16.13.2.1 the date falling 6 calendar months before the Further Transfer Date; or
- 16.13.2.2 if the Contract is terminated by either party in accordance with clause 34 or by LBSL in accordance with clause 4.10, the date of the relevant termination notice

and ending on the Further Transfer Date the Contractor will:

- (a) provide LBSL with access to such employment records as LBSL may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to LBSL or Replacement Contractor (as appropriate);
- (b) allow LBSL to have copies of any of the documents referred to in clauses 16.13.2(a) and (c); and
- (c) provide all original employment records relating to the Re-Transferring Personnel to LBSL or Replacement Contractor (as appropriate).

If the Re-Transferring Personnel are employed or engaged by subcontractors, the Contractor will procure such subcontractors provide LBSL or Replacement Contractor (as appropriate) with the same level of access and information.

16.13.2.3 The Contractor warrants to each of LBSL and the Replacement Contractor (as applicable) that as at the Further Transfer Date no Re-Transferring Personnel (except where the Contractor has notified LBSL and the Replacement Contractor (if appointed) in writing to the contrary) to the Contractor's knowledge:

- (a) is under notice of termination;
- (b) is on long-term sick leave;
- (c) is on maternity, parental or adoption leave;
- (d) has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- (e) is entitled or subject to any additional terms and conditions of employment other than those disclosed to LBSL or Replacement Contractor (as appropriate);
- (f) is or has been within the previous two years the subject of formal disciplinary proceedings;

- (g) has received a written warning (other than a warning that has lapsed);
- (h) has taken or been the subject of a grievance procedure within the previous two years; or
- (i) has objected, or has indicated an intention to object, in accordance with the Regulations to his or her employment transferring to LBSL or Replacement Contractor (as appropriate) under the Regulations.

16.13.2.4 The Contractor undertakes to each of LBSL and any Replacement Contractor (as appropriate):

- (a) that it will continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Personnel up to the Further Transfer Date;
- (b) to pay to the Re-Transferring Personnel all sums to which they are entitled from the Contractor and/or any sub-contractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and
- (c) to comply in all respects with its information and consultation obligations under the Regulations and to provide to LBSL or Replacement Contractor (as appropriate) such information as LBSL or Replacement Contractor may request in order to verify such compliance.

16.13.3 In respect of the Re-Transferring Personnel the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

16.13.3.1 up to and including the Further Transfer Date the Contractor will be responsible for the Employment Costs;

16.13.3.2 after the Further Transfer Date LBSL and/or Replacement Contractor (as appropriate) will be responsible for the Employment Costs

except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

16.13.3.3 The Contractor will indemnify, keep indemnified and hold harmless each of LBSL and any Replacement Contractor from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which LBSL and/or the Replacement Contractor (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

- (a) any failure by the Contractor to comply with its obligations under clause 16.13.2.4;
- (b) any act or omission by or on behalf of the Contractor in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the Contractor's indemnity will only apply in respect of such employees insofar as and to the extent that any such act or omission occurred on or before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the Contractor; and/or
- (c) any claim or demand or other action taken against LBSL and/or Replacement Contractor by any person employed or engaged by the Contractor (other than Re-Transferring Personnel) who claims (whether correctly or not) that LBSL or Replacement Contractor has inherited any liability from the Contractor in respect of them by virtue of the Regulations;

- (d) the employment or termination of employment by the Contractor or any subcontractor of any of the Re-Transferring Employees up to and including the Further Transfer Date;
- (e) the Contractor's failure to inform or consult appropriate representatives as required under Regulation 13 of the Regulations (except to the extent that any such action or claim or part of any such action or claim arises from any failure by LBSL or the Replacement Contractor to give the Contractor the information required from it or them to enable the Contractor to comply with its obligations under the Regulations);
- (f) any failure or delay by the Contractor to provide Employee Liability Information to LBSL or the Replacement Contractor concerning the Re-Transferring Employees in accordance with Regulation 11 of the Regulations;
- (g) any claim brought or other action taken by or on behalf of any of the Re-Transferring Employees which arises from or in connection with (directly or indirectly) any act or omission and/or communication made to any of them before the Further Transfer Date by, on behalf of and/or at the instruction of the Contractor including without limitation any claim under Regulations 4(9), 4(11) or 7(1) of the Regulations.

16.14 The Contractor will procure that whenever LBSL so requires on reasonable notice at any time during the continuance in force of this Contract and for one (1) year following the date of expiry or earlier termination of the Contract, LBSL will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

16.14.1 is still an employee or subcontractor of the Contractor or any of the Contractor's associated companies; and

16.14.2 was at any time employed or engaged by the Contractor in order to provide the Services to LBSL under this Contract,

in relation to the application and/or the possible application of the Regulations to that person, consultant or employee. Such access and consultation will be provided free of charge during the term of this Contract and thereafter will be charged at reasonable rates for the time spent by the Contractor and/or its employees or subcontractors on such consultation. The Contractor will further procure that all such persons co-operate with LBSL's requests.

17. **Sub-Contracting and Permitted Sub-Contractors**

17.1 The Contractor shall not assign or sub-contract all or any part of its obligations under this Contract without the prior written consent of LBSL identifying the relevant sub-contractor which may, subject to clause 17.2, be refused or granted subject to such conditions as LBSL sees fit. The Contractor shall, when requesting the consent of LBSL to use a new sub-contractor: (i) identify, and provide in writing to LBSL, a list of all new risks that it has identified as resulting from using the new sub-contractor in respect of this project, a proposal for how each risk can be mitigated and managed, and a mechanism for how that mitigation and management will take place in practice if LBSL consents to that new sub-contractor being used (together the "**Risk Mitigation Plan**"); (ii) state clearly which obligations it wants to sub-contract to the new-subcontractor; (iii) identify why it wants to use the new sub-contractor; and (iv) provide detailed references supporting its request to use the new sub-contractor. If LBSL grants its consent to the Contractor, authorising the Contractor to use the new sub-contractor, then (without prejudice to clause 17.3) the Contractor shall comply with the terms of the Risk Mitigation Plan prepared for that new sub-contractor and shall, if requested by LBSL, demonstrate to the reasonable satisfaction of LBSL how it is complying with the terms of that Risk Mitigation Plan in respect of that new sub-contractor.

17.2 The Contractor shall, at all times subject to clause 17.3, be entitled to appoint the Permitted Sub-contractors, but only to carry out the specific roles allocated to each Permitted Sub-contractor in Schedule 14.

17.3 Where the Contractor sub-contracts all or any part of its obligations under this Contract to any person, the Contractor shall:

17.3.1 ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under the Contract insofar as they relate to the obligations or part of them (as the case may

- be) which that sub-contractor is required to provide;
- 17.3.2 be responsible for payments to that person; and
- 17.3.3 remain solely responsible and liable to LBSL for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Contractor's obligations by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor.
- 17.4 The Contractor shall procure that its contract(s) with all Permitted Sub-contractors that are material to the System and/or the provision of the Services (which shall include the Kizoom Subcontract and any contract that the Contractor has: (i) with IVU in respect of the System and/or the provision of the Services (including the IVU/Telent Subcontract); and/or (ii) in respect of hosting the System at the Data Centre) (together the "**Key Permitted Sub-contractor Agreements**") are (and remain at all times) capable of being assigned or novated forthwith on LBSL's request from time to time to a member of the TfL Group or a nominee of LBSL (including the Replacement Contractor) on the termination of the Contract under clause 34.1 or clause 4.10, without any requirement for the consent of the Contractor or Permitted Sub-contractor and free of charge.
- 17.5 The Contractor shall provide LBSL with a copy of the final signed version of the IVU/Telent Subcontract and the Kizoom Subcontract (in each case with the financials redacted) by that the date that is fourteen (14 days) after the date of this Contract.
- 17.6 The Contractor shall obtain the prior written consent of LBSL (such consent not to be unreasonably withheld or delayed) before making any material changes (other than changes required in order to reflect changes to this Contract) to the following provisions of the IVU/Telent Subcontract:
- 17.6.1 Commencement and Duration;
- 17.6.2 Development and Supply of Software;
- 17.6.3 Warranties;
- 17.6.4 Sub-Contracting and Permitted Subcontractors;

- 17.6.5 Escrow / License Terms;
 - 17.6.6 Compliance with Policies and Law;
 - 17.6.7 Corrupt Gifts and payment of Commission;
 - 17.6.8 Records Audit and Inspection;
 - 17.6.9 Intellectual property Rights and London 2012;
 - 17.6.10 Freedom of Information;
 - 17.6.11 Project Plan/timetable for delivery of the software;
 - 17.6.12 Change Control;
 - 17.6.13 Termination; and
 - 17.6.14 Confidentiality.
- 17.7 The Contractor shall obtain the prior written consent of LBSL (such consent not to be unreasonably withheld or delayed) before making any material changes (other than changes required in order to reflect changes to this Contract) to the following provisions of the Kizoom Subcontract:
- 17.7.1 Commencement and Duration;
 - 17.7.2 Development and Supply of Software;
 - 17.7.3 Warranties;
 - 17.7.4 Sub-Contracting and Permitted Subcontractors;
 - 17.7.5 Escrow / License Terms;
 - 17.7.6 Compliance with Policies and Law;
 - 17.7.7 Corrupt Gifts and payment of Commission;
 - 17.7.8 Records Audit and Inspection;
 - 17.7.9 Intellectual property Rights and London 2012;
 - 17.7.10 Freedom of Information;
 - 17.7.11 SMS Services and Web Services;

17.7.12 Termination;

17.7.13 Confidentiality; and

17.7.14 Service Levels.

18. Conflict of Interest

18.1 The Contractor warrants that it does not and will not have during the Term any interest in any matter where there is or is reasonably likely to be a conflict of interest with LBSL or any member of the TfL Group in connection with the Services, the Network and/or the development of the System, or otherwise, save to the extent fully disclosed to and approved in writing by LBSL.

18.2 The Contractor shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six (6) months and shall notify LBSL in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services, the Network, and/or the development of the System, or any member of the TfL Group and shall work with LBSL to do whatever is necessary (including the separation of staff working on, and data relating to, the Services, the Network and/or the System (as applicable) from the matter in question) to manage such conflict to LBSL's reasonable satisfaction, provided that, where LBSL is not so satisfied, LBSL may after giving not less than 30 days notice in writing to the Contractor, terminate the Contract in accordance with clause 34.1.3.

19. Access to Premises

19.1 Subject to clause 19.3, any access to any TfL Premises made available to the Contractor in connection with the proper performance of the Contract shall be free of charge and shall be used by the Contractor solely for the purpose of performing its obligations during the Term in accordance with the Contract. The Contractor shall:

19.1.1 have the use of such TfL Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL Premises;

19.1.2 move to different TfL Premises, or a different part of the TfL Premises, promptly when requested by TfL from time to time;

- 19.1.3 vacate such TfL Premises upon the termination or expiry of the Contract or at such earlier date as LBSL may determine;
 - 19.1.4 not exercise or purport to exercise any rights in respect of any TfL Premises in excess of those granted under this clause 19.1;
 - 19.1.5 ensure that the Contractor's Personnel carry any identity passes issued to them by LBSL at all relevant times and comply with LBSL's security procedures as may be notified by LBSL from time to time; and
 - 19.1.6 not damage the TfL Premises or any assets on the TfL Premises.
- 19.2 Nothing in this clause 19 shall create or be deemed to create the relationship of landlord and tenant in respect of any TfL Premises between the Contractor and any member of the TfL Group.
- 19.3 LBSL shall be under no obligation to provide the Contractor with access to TfL Premises (including to office or other accommodation, facilities or services (including telephony and IT services)) unless such access is an LBSL Obligation.
- 19.4 The parties acknowledge that throughout the Schedules to this Contract, there are various references to the test and reference instance of the System being located at the TfL Premises at Trinity Park. LBSL shall be entitled to change the location of where the test and reference instance of the System should be located, without incurring any additional cost or other liability, so long as LBSL notifies the Contractor of the new location at any time prior to the date specified in the Project Plan by when the location of the test and reference instance of the System has to be identified, and so long as the new location is a TfL Premises located in the London Area. Following any such notice, each reference in this Contract to the TfL Premises at Trinity Park in respect of the test and reference instance of the System, shall be deemed to be a reference to the new location of the test and reference instance of the System as has been notified to the Contractor under this clause 19.4.

20. Escrow

IVU Software

20.1 Following the date that First Signs Acceptance takes place, the Contractor

shall procure that when any IVU Software is implemented as part of the System, and in any event within 30 days of Acceptance (other than System Acceptance) of the relevant Software, the Source Code for such Software is deposited with the NCC and that IVU enters into the IVU Escrow Agreement with the NCC and LBSL governing the escrow arrangements (and any failure by IVU to do so shall be deemed to be (including for the purposes of clause 34.1.1) a material breach of this Contract by the Contractor). This obligation shall apply to all upgrades and new releases of the IVU Software utilised in connection with this Contract from time to time and the Contractor shall procure that IVU deposits the Source Code in respect of any such upgrades and new releases with the NCC under the terms of the IVU Escrow Agreement promptly following such upgrades and/or new releases being utilised. The Contractor shall notify LBSL in writing whenever the Source Code (including in respect of upgrades) has been deposited with the NCC under this clause 20.1.

- 20.2 Subject to clause 10.3 of the IVU Escrow Agreement the charges payable to the NCC as a result of compliance with clauses 20.1 and 20.2 shall, as between the parties, be borne by the Contractor. The Contractor shall provide evidence that the charges payable to the NCC under clauses 20.1 and 20.2 have been paid, if requested by LBSL.
- 20.3 Without prejudice to any obligations to deposit the Source Code under clause 20.1, the Contractor shall also ensure that at any point in time during the term of this Contract, IVU has within the previous twelve (12) calendar months delivered to the NCC a replacement copy of, or updates to, such Source Code to ensure that the Source Code deposited with the NCC is capable of generating the latest version of the IVU Software incorporated into the System at that time (including all patches and bug fixes).

Kizoom Software

- 20A.1 Following the date that First Signs Acceptance takes place, the Contractor shall procure that when any Kizoom Software is implemented as part of the System, and in any event within 30 days of Acceptance (other than System Acceptance) of the relevant Software, the Source Code for such Software is deposited with the NCC and that Kizoom Software Ltd enters into the Kizoom Escrow Agreement with the NCC and LBSL governing the escrow arrangements (and any failure by Kizoom Software Ltd to do so shall be deemed to be (including for the purposes of clause 34.1.1) a material breach

of this Contract by the Contractor). This obligation shall apply to all upgrades and new releases of the Kizoom Software utilised in connection with this Contract from time to time and the Contractor shall procure that Kizoom Software Ltd deposits the Source Code in respect of any such upgrades and new releases with the NCC under the terms of the Kizoom Escrow Agreement promptly following such upgrades and/or new releases being utilised. The Contractor shall notify LBSL in writing whenever the Source Code (including in respect of upgrades) has been deposited with the NCC under this clause 20A.1.

20A.2 Subject to clause 10.3 of the Kizoom Escrow Agreement the charges payable to the NCC as a result of compliance with clauses 20A.1 and 20A.2 shall, as between the parties, be borne by the Contractor. The Contractor shall provide evidence that the charges payable to the NCC under clauses 20A.1 and 20A.2 have been paid, if requested by LBSL.

20A.3 Without prejudice to any obligations to deposit the Source Code under clause 20A.1, the Contractor shall also ensure that at any point in time during the term of this Contract, Kizoom Software Ltd has within the previous twelve (12) calendar months delivered to the NCC a replacement copy of, or updates to, such Source Code to ensure that the Source Code deposited with the NCC is capable of generating the latest version of the Kizoom Software incorporated into the System at that time (including all patches and bug fixes).

Telent Software

20.4 Following the date that First Signs Acceptance takes place, the Contractor shall, when any Telent Software is implemented as part of the System or the Services, and in any event within 30 days of Acceptance (other than System Acceptance) of any Telent Software, promptly (at no additional cost to LBSL) deliver a copy (on CD Rom or other suitable media) of the Source Code for such Telent Software to LBSL. This obligation shall apply to all upgrades and new releases of the Telent Software utilised in connection with this Contract from time to time and the Contractor shall deliver a copy of the Source Code for such Telent Software in respect of any such upgrades and new releases promptly following such upgrades and/or new releases being utilised.

20.5 Without prejudice to any obligations to deliver Source Code in respect of the

Telent Software under clause 20.4, the Contractor shall also ensure that at all points in time during the term of this Contract, it has within the previous twelve (12) calendar months delivered (on CD Rom, or other suitable media) to LBSL a replacement copy of, or updates to, such Source Code to ensure that the Source Code held by LBSL is capable of generating the latest version of the Telent Software incorporated into the System at that time (including all patches and bug fixes).

License Terms

20.6 With effect,

20.6.1 from the date at which Source Code for any Software (other than the Telent Software or any Third Party Software) is made available to LBSL either by the Contractor or under the terms of the Kizoom Escrow Agreement or the IVU Escrow Agreement (as appropriate); or

20.6.2 in the case of Telent Software, from the date of termination of this Contract pursuant to clause 4.10 or 34.1, or from the date at which Source Code for the IVU Software and/or the Kizoom Software is made available to LBSL under the terms of the Kizoom Escrow Agreement or the IVU Escrow Agreement (as appropriate),

the Contractor (without prejudice to any other rights of the TfL Group under this Contract and/or the Kizoom Escrow Agreement and/or the IVU Escrow Agreement) now hereby grants LBSL, each member of the TfL Group and each Replacement Contractor an irrevocable, perpetual, royalty-free, non-transferable, world-wide and non-exclusive licence:

20.6.3 to (and to permit third parties to) change, modify, enhance, update, translate, adapt and port any and all such Software, in order to maintain and develop the System in order to provide the Countdown Service (and otherwise make passenger information available) both during and after the term of the Contract; and

20.6.4 to (and to permit third parties to) compile, decompile, reverse engineer, copy or disassemble any and all such Software, in order to maintain and develop the System the Countdown Service (and otherwise make passenger information available) both during and after the term of the Contract.

21. Compliance with Policies and Law

- 21.1 The Contractor undertakes to procure that all the Contractor Personnel comply with all of LBSL's policies and standards that are relevant to the performance of the Services, the Training Services and the development of the System, including the provisions set out in Schedule 18 and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by LBSL for personnel working at TfL Premises or accessing LBSL's computer systems. LBSL shall provide the Contractor with copies of such policies and standards at the Contract Commencement Date and whenever they are updated. Where there is a change to an LBSL policy and/or standard after the Contract Commencement Date, then without prejudice to the Contractor's obligation to continue to comply with that updated policy and/or standard, the Contractor shall be entitled to an equitable adjustment to the Charges and where appropriate other terms of this Contract. The Contractor shall raise a change request via the process described in clause 9 and the Parties shall agree such changes as are reasonable that result from such a change in the LBSL policy and/or standard.
- 21.2 Subject to clause 21.3, the Contractor shall carry out its obligations under this Contract in compliance with all requirements of all Acts of Parliament (including the Communications Act 2003), statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Contractor's business and/or the business of the TfL Group, from time to time in force which are or may become applicable (together "**Laws**"). The Contractor shall promptly notify LBSL if the Contractor is required to make any change to the Services or the System for the purposes of complying with its obligations under this clause 21.2.
- 21.3 In all cases, other than a Bus Industry Change of Law, the costs of compliance with clause 21.2 shall be borne by the Contractor. In respect of a Bus Industry Change of Law, the Contractor shall be entitled to an equitable adjustment to the Charges and where appropriate other terms of this Contract. The Contractor shall raise a change request via the process described in clause 9 and the Parties shall agree such changes as are reasonable from the Bus Industry Change of Law though this shall not relieve the Contractor of its obligation to comply with clause 21.2. A "**Bus Industry Change of Law**" is any change to the Laws which applies only to

the bus industry or to the provision of services to the bus industry and not to other transport modes or to industries other than the bus industry and excludes:

21.3.1 any changes in taxation; and

21.3.2 any changes to the Laws (whether or not in respect of the bus industry) which are foreseeable at the date of this Contract (and for this purpose, any change to the Laws which had been published on the date of this Contract shall be regarded as foreseeable).

21.4 Without prejudice to clause 21.3, the Contractor:

21.4.1 shall comply with all requirements of local and public authorities;

21.4.2 shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

21.4.3 acknowledges that LBSL is under a duty under section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In carrying out its obligations under the Contract, the Contractor shall assist and cooperate with the TfL Group where possible in satisfying this duty;

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

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

21.4.4.2 eliminate unlawful discrimination; and

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

and in carrying out its obligations under this Contract, the Contractor shall assist and co-operate with LBSL where possible to enable the TfL Group to satisfy its duty; and

21.4.5 shall promptly notify the Contractor's Personnel and LBSL of any health and safety hazards that exist or may arise in connection with the performance of the Contractor's obligations under the Contract.

In all cases, the costs of compliance with this clause 21.4 shall be borne by the Contractor.

21.5 Without prejudice to clause 21.1, the Contractor shall comply with the TfL Group's workplace harassment policy as updated from time to time (copies of which are available on request from LBSL) and with the TfL Group's Code of Conduct (which is available on the TfL Group's website, www.tfl.gov.uk) and with the TfL responsible procurement guidelines, which are attached at Schedule 24.

21.6 In performing the Contractor's obligations under the Contract, the Contractor shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:

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

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

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

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

22. **Corrupt Gifts and Payment of Commission**

The Contractor shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of LBSL or any member of the TfL Group nor

favour any employee, officer or agent of LBSL or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of LBSL or any member of the TfL Group other than as a representative of LBSL, without LBSL's prior written approval or the written approval of a member of the TfL Group.

23. **Quality and Best Value**

The Contractor acknowledges that LBSL is a best value authority for the purposes of the Local Government Act 1999 and as such LBSL is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. As such, the Contractor shall, where reasonably requested by LBSL, participate in any relevant best value review.

24. **Records, Audit and Inspection**

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

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

24.1.2 retain all Records during the Term and for a period of not less than six (6) years (or such longer period as may be required by law) following termination or expiry of the Contract ("**Retention Period**").

24.2 LBSL and any person nominated by LBSL has the right to audit any and all Records (other than financial records of the Contractor) at any time during the Retention Period on giving to the Contractor what LBSL considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Contractor's performance of its obligations under the Contract and the Contractor shall, at no additional cost to LBSL, give all reasonable assistance to LBSL or its nominee in conducting such inspection, including making available documents and staff for interview.

25. **Set-Off**

LBSL shall be entitled but not obliged at any time or times to set off any liability of the Contractor to LBSL against any liability of LBSL to the Contractor (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to LBSL into any other currency or currencies in which the obligations of the Contractor are payable under the Contract. LBSL's rights under this clause 25 are without prejudice to any other rights or remedies available to LBSL under the Contract or otherwise.

26. **Liability**

26.1 Neither party excludes or limits liability to the other party for:

26.1.1 death or personal injury caused by that party's negligence; or

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

26.1.3 for fraud (including fraudulent misrepresentation); or

26.1.4 wilful default; or

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

26.2 The Contractor is responsible for and shall indemnify LBSL and every other member of the TfL Group, from and against any claims, actions, damage, loss, liability, costs, proceedings and expenses of any kind (including reasonable legal fees) (together "**Losses**") in respect of:

26.2.1 death of or injury to any person; and

26.2.2 loss of or damage to any property (including the Equipment and other property belonging to the TfL Group, its agents or sub-contractors, or for which LBSL is responsible); and

26.2.3 reasonable and documented costs of internal and external staff and third parties (including associated expenses reasonably incurred by such staff) necessitated as a result of the Contractor's default. This

shall include the costs of any Signs or other hardware (and all connected installation and de-installation costs) that are developed, supplied and/or installed, provided that prior to First Signs Acceptance, LBSL shall minimise any expenditure and contractual commitments for the procurement of Signs to that which is reasonably necessary to achieve First Signs Acceptance

in each case which may arise out of or in the course of or by reason of any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation, misstatement, act, omission or default of the Contractor, its personnel and/or its sub-contractors, in the performance, non-performance or part-performance of this Contract (and in the case of clause 26.2.1 that also may arise generally as a result of the Contractor fulfilling any of its obligations under this Contract).

26.3 Subject to clause 26.1, neither party shall have liability to the other party (whether under contract, tort (including negligence), statutory duty or otherwise), for any consequential or indirect losses.

26.4 Subject to clause 26.1, each party's aggregate liability under this Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any Losses (with the exception of any liability of the Contractor to LBSL under clause 26.2.1) shall be limited to:

26.4.1 in respect of any Loss to the TfL Group's tangible property, [REDACTED] million pounds sterling (£ [REDACTED]);

26.4.2 in respect of any Loss to any third party tangible property [REDACTED] million pounds sterling (£ [REDACTED]); and

26.4.3 in respect of any Loss not covered by clause 26.4.1 or clause 26.4.2:

26.4.3.1 for claims arising during the period from the date of this Contract, to the date of Final Acceptance, a sum of Pounds Sterling [REDACTED] (£ [REDACTED] and

26.4.3.2 in respect of any claims arising following the date of Final Acceptance, a sum of Pounds Sterling [REDACTED]

£ [REDACTED] (the "Post FA Cap") The Post FA Cap shall automatically increase on each anniversary of the date of Final Acceptance, by the same proportion as the annual percentage increase (if any) in the Index during the twelve (12) months prior to the relevant anniversary of the date of Final Acceptance.

27. Insurance

27.1 The Contractor shall, at its sole cost, arrange and throughout the duration of the Contract (or any other period stated):

27.1.1 employer's liability insurance in the sum of not less than £5 million;

27.1.2 public liability insurance in the sum of not less than £10 million per occurrence with financial loss extension;

27.1.3 professional indemnity insurance in a sum normal and customary for a service provider in the business in which the Contractor is in, but not less than £5 million in the aggregate per annum for the term of this Agreement and for a period of six (6) years following the termination or expiry of this Contract (for any reason); and

27.1.4 property insurance, in a sum that is at least equal to the replacement value of the Equipment and the TfL Group shall be co-insured, or the terms of the insurance shall indemnify the TfL Group as if the TfL Group was named in the policy in respect of any Equipment that is covered by the Contractor's property insurance policies

with an insurer or insurers authorised to underwrite such risks in the United Kingdom (the "Insurances") and on terms approved by LBSL.

27.2 Where the Insurances contain a care, custody or control exclusion, the relevant policy must be endorsed so as to delete the exclusion in respect of any premises (including contents) owned or occupied by LBSL (or any other member of the TfL Group) where the Contractor is performing its obligations under this Contract.

27.3 The Contractor must ensure that the Insurances cover the Contractor's legal liability (including liability assumed under the Contract) which may arise out of or in the course of or by reason of the Contractor's performance, non-

performance or part-performance of the Contract and extend to indemnify the TfL Group as principal.

- 27.4 The Contractor must provide evidence satisfactory to LBSL prior to the commencement of the Contract and at each anniversary that the Insurances have been effected and are in force.
- 27.5 The Contractor must comply with the terms of the Insurances at all times, including in relation to the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Contractor must bear the cost of all exclusions and limitations under the Insurances.
- 27.6 In relation to all the Insurances except that required under clause 27.1.1, the Contractor agrees that LBSL has 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 arising in connection with this Contract.
- 27.7 All monies received under the insurance required under clause 27.1.4 must be applied by the Contractor in or towards the replacement and repair of any Equipment that is lost, damaged or destroyed without prejudice to any other liability of the Contractor under this Contract.

28. LBSL's Data

- 28.1 The Contractor acknowledges the TfL Group's ownership of Intellectual Property Rights which may subsist in the TfL Group's data, including all data running across the System. The Contractor shall not delete or remove any copyright notices contained within or relating to the TfL Group's data. The Contractor shall only use the TfL Group's data to the extent necessary for performing the Services and the Training Services and designing, developing, supplying and installing the System.
- 28.2 The Contractor and LBSL shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the TfL Group's data and to prevent any corruption or loss of the TfL Group's data.

29. Intellectual Property Rights and London 2012

- 29.1 LBSL grants to the Contractor for the term of the Contract, a non-exclusive, non-transferable, royalty-free licence to use any Intellectual Property Rights comprised in any materials, flow-charts manuals, registers and other

documents that TfL provides to the Contractor from time to time for use in discharging the Contractor's obligations under this Contract, solely to the extent necessary for performing the Services, the Training Services and designing, developing, supplying and installing the System. This licence shall include a right to sub-license such Intellectual Property Rights to Permitted Sub-contractors on the terms of this clause 29.1 in respect of the tasks that the Permitted Sub-contractors are to perform on behalf of the Contractor (but excluding the right for such Permitted Sub-contractors to grant sub-licences).

- 29.2 The Parties agree that all Intellectual Property Rights in the Project Plan, all reports generated by the Contractor (or by any subcontractors of the Contractor) and all other documentation, scripts, configurations, methods, spreadsheets, manuals, plans, standards, flowcharts and minutes of whatever variety provided and/or created under this Contract by the Contractor (or by any subcontractors of the Contractor), including the Functional Specification and any web pages (or part of web pages) that are written or otherwise developed in order to deliver the Web Services from time to time (together the "**LBSL Materials**") shall vest in LBSL absolutely. The Contractor hereby assigns with full title guarantee and without charge to LBSL all Intellectual Property Rights in the LBSL Materials (whether existing or arising in the future). The Contractor agrees that it will, at its own expense, do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be required including on, or subsequent to, the termination or expiry of the Contract to vest ownership of all Intellectual Property Rights in the LBSL Materials in LBSL or to assist LBSL in the registration of such Intellectual Property Rights. The Contractor shall procure that the Contractor Personnel waive all moral rights that the any member of Contractor Personnel has in the LBSL Materials.
- 29.3 In respect of any Software (other than the Third Party Software), the Contractor shall, without prejudice to the licence granted under clause 20.6 where Source Code is released from escrow, grant LBSL and each member of the TfL Group and any Replacement Contractor (or procure that LBSL and each member of the TfL Group and any Replacement Contractor is granted) a perpetual, irrevocable, non-exclusive, royalty-free, transferable and world-wide licence (together with a right to sub-license third parties on the same basis) to use, update, configure, distribute, and copy the Software (or any part of the Software) in order to provide the Countdown Service (and

otherwise make passenger information available), both during and after the term of the Contract.

29.4 The Contractor warrants that:

29.4.1 Kizoom Software Ltd owns all Intellectual Property Rights in the Kizoom Software;

29.4.2 IVU owns all Intellectual Property Rights in the IVU Software; and

29.4.3 the Contractor owns all Intellectual Property Rights in the Telent Software

and the Contractor shall procure that (a) IVU signs a copy of the IVU Undertaking and (b) Kizoom Software Ltd signs a copy of the Kizoom Undertaking. The Contractor shall deliver the original signed copy of the IVU Undertaking and the original signed copy of Kizoom Undertaking to LBSL on the date of this Contract.

29.5 The Contractor shall ensure that all licences to use the Third Party Software are acquired in the name of LBSL (or any other member of the TfL Group that LBSL nominates), in the form of the licences set out in Schedule 11 or otherwise in the form of the standard software licence of the relevant third party. The Contractor shall procure that each such licence in respect of the Third Party Software permits a third party to host, use and operate the Third Party Software for and on behalf of LBSL. For the avoidance of doubt, the parties agree that any and all Software provided by IVU, Kizoom and Kizoom Software Ltd shall not be Third Party Software for the purpose of this Contract.

29.6 The Contractor shall have no right (save where expressly permitted under the Contract or with the LBSL's prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the TfL Group.

29.7 For the purposes of this clause 29.7, unless the context indicates otherwise, the following expressions shall have the following meanings:

"Ambush Marketing" means any activity, commercial or non-commercial, undertaken by any person or entity, whether public or private, that creates, implies or refers to a direct or indirect association of any kind (including an association in the minds of members of the public) with any Games Body or

the Games (including by reference to the city of London and the year 2012), which has not been authorised by LOCOG or any other Games Body;

"Games" means the Games of the thirtieth Olympiad and the Paralympic Games that are to take place in 2012 in London;

"Games Body" means each of the International Olympic Committee, the International Paralympic Committee, the British Olympic Association, the British Paralympic Association, LOCOG or any other organising committee of an Olympic and/or Paralympic Games;

"Games Event" means an event (whether a sporting event or not, and whether held in London or not) held as part of the Games;

"Games Venue" means a venue (including any public area) at, in or through which a Games Event is to be held or takes place and any official training venue of the Games, and includes any construction sites at which such venues are being constructed;

"LOCOG" means The London Organising Committee of the Olympic Games Limited of 1 Churchill Place, Canary Wharf, London E14 5LN with Company Number 05267819;

"ODA" means the Olympic Delivery Authority; and

"Protected Marks" means any trade marks, trade names, logos or other intellectual property rights of any Games Body, including marks and designs relating to the Games, any Olympic or Paralympic teams, the Olympic Symbol (i.e. the five interlocking rings of the International Olympic Committee), the Paralympic Symbol (i.e. the three agitos of the International Paralympic Committee), the words "Olympic", "Olympian", "Olympiad", "Paralympic", "Paralympian", "Paralympiad" (and their plurals) and/or any other word(s), motto, symbol or representation protected by the Olympic Symbol etc. (Protection) Act 1995, the London Olympic Games and Paralympic Games Act 2006 (whether as now in force or as amended in the future) or by any other legislation enacted in relation to the Games.

29.7.1 For the avoidance of doubt, LBSL has no right to grant any rights in respect of the Protected Marks or any trade marks, trade names, logos or other Intellectual Property Rights of the ODA (including for the avoidance of doubt the name, "the Olympic Delivery Authority"),

and the Contractor hereby acknowledges that it shall not, by this agreement, acquire any right, title or interest in the Protected Marks or any right to associate itself with the Games Bodies, the ODA or the Games (whether prior to, during or after the Games take place).

29.7.2 The Contractor shall not:

29.7.2.1 undertake any form of Ambush Marketing;

29.7.2.2 use any trade marks, trade names or logos so resembling the Protected Marks as to be likely to cause confusion with the Protected Marks; or

29.7.2.3 cause or permit anything to be done which might damage or endanger the validity or distinctiveness of, or the goodwill in, the Protected Marks or other intellectual property rights of any Games Body.

29.7.3 The Contractor shall not, and shall draw to the attention of its employees that it shall not, without the prior written approval of LOCOG in each case:

29.7.3.1 represent, directly or indirectly, that any product or service provided has been endorsed or approved by or in any way associated with the Games or any Games Body; or

29.7.3.2 use in advertising, publicity or any other communication, whether written, electronic or any other means any Protected Mark, the name of any Games Body, or of any of its directors or employees; or

29.7.3.3 publish or issue any statement (factual or otherwise) about the Contractor's provision of products or services in relation to the Games (except as may be required by law).

29.7.4 In relation to any of the Contractor's own suppliers, contractors or agents who provide goods or services in relation to this Contract (each an "**Associated Party**") the Contractor shall take the following steps to prevent each Associated Party from carrying out

any of the activities described in clauses 29.7.1 to 29.7.4 (the "Prohibited Activities"):

- 29.7.4.1 draw the Prohibited Activities to the attention of each Associated Party;
- 29.7.4.2 diligently monitor the marketing and other activities of each Associated Party and immediately notify LOCOG, providing full written particulars, as soon as it becomes aware that an Associated Party is carrying out, has carried out or plans to carry out any of the Prohibited Activities;
- 29.7.4.3 if requested by the Authority procure that the Associated Party signs a deed in favour of LOCOG in a form to be provided by the Authority; and
- 29.7.4.4 subject to clause 29.7.5, provide such assistance as is reasonably required by LOCOG to help it prevent or stop an Associated Party from carrying out a Prohibited Activity.

29.7.5 Unless expressly instructed to do so under clause 29.7.4.4:

- 29.7.5.1 the Contractor shall not bring any claim, proceedings or other action against an Associated Party in relation to the Prohibited Activities;
- 29.7.5.2 LOCOG will have the conduct of all claims related to the Prohibited Activities; and
- 29.7.5.3 LOCOG will be entitled to retain any damages, expenses or other amounts awarded in respect of any such claim;

provided that the parties agree that in no circumstances will LOCOG be obliged to bring or defend any such claim and LOCOG in its sole discretion may decide what action (if any) to take regarding any such claim.

29.7.6 The Contractor hereby acknowledges that all Games Venues must be clean of all advertising, marketing and other branded materials,

other than such materials approved by LOCOG, and, to the extent that it is relevant to this Contract, the Contractor shall follow the reasonable instructions of LOCOG in this regard.

29.7.7 LOCOG (and after its dissolution, an appropriate Games Body) shall have the right to enforce the terms of clauses 29.7.1 to 29.7.6 above and the Contractor acknowledges the provisions therein are of such importance to LOCOG that damages may not be an adequate remedy for breach of clauses 29.7.1 to 29.7.6 by the Contractor and that injunctive relief may be a more appropriate remedy.

29.7.8 This clause 29.7 shall continue to apply after termination of the Contract without limit of time (except in the case of clause 29.7.6 which shall only apply until the end of the Games).

30. Protection of Personal Data

The Contractor shall comply with all of its obligations under the Data Protection Act 1998 (the “DPA”) and, if Processing Personal Data (as such terms are defined in section 1(1) of the DPA) on behalf of the TfL Group, shall only carry out such Processing for the purposes of providing the Services in accordance with the Contract and shall act in accordance with instructions from LBSL.

31. Confidentiality and Announcements

31.1 Subject to clause 32 and clause 35.1, each Party will keep confidential:

31.1.1 the terms of the Contract; and

31.1.2 any and all Confidential Information that it may acquire in relation to the other Party.

31.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform (or have performed) its obligations under the Contract. Each Party will ensure that its officers and employees comply with the provisions of clause 31.1.

31.3 The obligations on a Party set out in clause 31.1 will not apply to any Confidential Information which:

- 31.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this clause 31); or
- 31.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 31.4 Notwithstanding the other provisions of this clause 31, LBSL shall be entitled to pass Confidential Information of the Contractor to members of the TfL Group and officers of the Greater London Authority, so long as the recipient in each case agrees to keep confidential any Contractor Confidential Information that it receives as result of this clause 31.4 in a manner consistent with clause 31.1.
- 31.5 The provisions of this clause 31 shall survive any termination or expiry of the Contract.
- 31.6 No announcement, circular, advertisement or other publicity in connection with the Contract, its subject matter or any ancillary matter will be made or issued by or on behalf of either or both of the Parties without the prior written consent of both Parties (such consent not to be unreasonably withheld or delayed). This restriction shall not: (a) prevent LBSL (or another member of the TfL Group) from explaining to the public why the roll-out of the Countdown System is delayed; or (b) prevent LBSL (or another member of the TfL Group) from meeting its obligations as a public body; or (c) generally apply in the case of public releases required by law or regulation, including the regulations of any regulatory authority or stock exchange

32. **Freedom of Information**

32.1 For the purposes of this clause 32:

32.1.1 **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

32.1.2 **“Information”** means information recorded in any form held by the TfL Group or by the Contractor on behalf of the TfL Group; and

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

32.2 The Contractor acknowledges that the TfL Group:

32.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the TfL Group to enable the TfL Group to comply with its obligations under the FOI Legislation; and

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

32.3 Without prejudice to the generality of clause 32.2, the Contractor shall and shall procure that its sub-contractors (if any) shall:

32.3.1 transfer to the LBSL Project Manager (or such other person as may be notified by LBSL to the Contractor) each Information Request relevant to the Contract, the Services, the System 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 2 Business Days of receiving such Information Request; and

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

32.4 LBSL 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 Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so (in writing) by LBSL.

33. **Dispute Resolution**

33.1 LBSL and the Contractor shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract (**“Dispute”**) before resorting to litigation.

- 33.2 If the Dispute is not settled through discussion between the Project Managers within a period of seven (7) Business Days from the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 33.3 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may require by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 33.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 33.5 Where a dispute is referred to mediation under clause 33.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 33.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 33.7 If either Party refuses at any time to participate in the mediation or negotiation procedure and in any event if the Parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the notice either Party may commence proceedings in accordance with clause 46.
- 33.8 For the avoidance of doubt, both parties shall continue to comply with their obligations under the Contract and without delay or disruption while the Dispute is being resolved pursuant to this clause 33.
- 33.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief, or issuing notice to cure a breach, or notice of termination as a result of the provisions of this clause 33 shall not apply in respect of any circumstances where such remedies are sought.

34. Breach and Termination of Contract

34.1 Without prejudice to LBSL's right to terminate at common law or elsewhere in this Contract, LBSL may terminate this Contract in accordance with clause 4.10 and also, upon giving not less than five (5) days written notice to the Contractor, if:

34.1.1 the Contractor has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 15 Business Days from the date of written notice to the Contractor giving details of the breach and requiring it to be remedied; and/or

34.1.2 the Contractor is subject to an Insolvency Event; and/or

34.1.3 LBSL is not satisfied on the issue of any conflict of interest and the notice issued in accordance with clause 18.2 has expired; and/or

34.1.4 the Contractor commits any of the money laundering related offences listed in the Public Contract Regulations 2006; and/or

34.1.5 the amount due to LBSL as Service Credits during the twelve (12) month period following the date on which FSA Acceptance takes place or during the twelve (12) month period following any anniversary of the date on which FSA Acceptance takes place, equals or exceeds fifty percent (50%) of the Service Charges payable in the same twelve (12) month period; and/or

34.1.6 the Contractor is subject to a change of Control (with "Control" as defined by section 416 of the Income and Corporation Taxes Act 1988). The Contractor shall give LBSL notice of any change of Control of the Contractor as soon as practicable, and in any event within a period of thirty (30) days after the change of Control. LBSL's right to terminate under this clause 34.1.6 will expire, in relation to a given change of Control of the Contractor, sixty (60) days after notice is given. LBSL shall not unreasonably exercise its right to terminate under this clause 34.1.6.

34.2 LBSL shall, from the Early Termination Date, be entitled to terminate this Contract for convenience upon provision of at least three (3) months' prior notice (such notice to expire on or after the Early Termination Date). For the

purposes of this clause 34.2 only, the “**Early Termination Date**” is the date that is twelve (12) months after the date by which the Contractor is required to achieve Final Acceptance (as stated in the Project Plan as at the Contract Commencement Date). In consideration for terminating under this clause 34.2 only, LBSL shall, in full and final settlement, pay the sum set out in the second column in the table below, which is dependent on when the termination takes effect:

The date that termination is effective	The early termination fee
Between the Early Termination Date and the 4th anniversary of the Early Termination Date	£ [REDACTED]
More than 4 years but less than 5 years from the Early Termination Date	£ [REDACTED]
More than 5 years but less than 6 years from the Early Termination Date	£ [REDACTED]
More than 6 years but less than 7 years from the Early Termination Date	£ [REDACTED]
More than 7 years from the Early Termination Date	£ [REDACTED]

34.3 The Contractor shall notify the LBSL Project Manager in writing (the “**Late Payment Notice**”) if any sum due to the Contractor under clause 12 is outstanding sixty (60) days from the due date. Subject to the Late Payment Notice having been properly served on the LBSL Project Manager by the Contractor, the Contractor shall be entitled to terminate this Contract on twenty (20) days notice if LBSL has not paid any sum due to the Contractor under clause 12 within ninety (90) days of the due date, unless there is a bona fide dispute in respect of the sum due.

34.4 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has

continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("**the Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this clause 34.4 then, without prejudice to any rights and liabilities which accrued prior to termination, the Affected Party shall not be liable to the Innocent Party by reason of such termination. The Contractor shall use all reasonable endeavours to meet its obligations under this Contract following, or during, an act of terrorism.

35. **Consequences of Termination or Expiry**

35.1 Notwithstanding the provisions of clause 31, wherever LBSL chooses to put out to tender for a replacement contractor for some or all of the Services, the Training Services or the development of the System, the Contractor shall disclose to LBSL (so LBSL may disclose to tenderers) such information concerning the Services, the Network, the Training Services, the Functional Specification, the Sign Specification and/or the System as LBSL may require for the purposes of such tender and that the Contractor is obliged to provide under this Contract. The Contractor may impose upon any recipient of such information obligations of confidentiality that are no more stringent than the confidentiality requirements imposed on the Contractor in clause 31.

35.2 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

35.3 LBSL shall, on one occasion only, and at any time prior the day which is six (6) months after the eleventh (11th) anniversary of the Contract Commencement Date, be entitled to require the Supplier to continue to provide the Services, or a part of the Services identified by LBSL (the "**Extended Services**"), for an additional period of time of up to two (2) years from the date that this Contract would otherwise have expired (the "**Extended Term**"). The parties agree that:

35.3.1 the cost payable by LBSL during any part of the Extended Term, in consideration for the Extended Services, shall be no more than twenty-five percent (25%) higher than the sum that LBSL is paying

on average during the twelve (12) month period immediately prior to the start of the Extended Term in respect of the same services; and

35.3.2 otherwise, the terms of this Contract shall continue to apply during the Extended Term.

35.4 Upon the giving of notice by either Party to terminate this Contract, or in the case of this Contract expiring, from the date six (6) months prior to the date of expiry, the Contractor shall promptly implement the Exit Plan, in accordance with its terms. LBSL shall comply with its obligations in the Exit Plan.

35.5 Upon expiry or termination of the Contract (howsoever caused):

35.5.1 the Contractor shall, at no further cost to LBSL:

35.5.1.1 take all such steps as shall be necessary to achieve an orderly handover the provision of the Services, the Training Services and any part of the design, development, supply and installation of the System that is still to be completed, to LBSL (or its nominee), such that the obligations on the Contractor under the Contract can be carried on with the minimum of interruption and inconvenience to LBSL;

35.5.1.2 if this contract terminates under clause 4.10 or clause 34.1, and if requested by LBSL during the implementation of the Exit Plan, novate to a member of the TfL Group that is identified by LBSL, such of the Key Permitted Sub-contractor Agreements as LBSL shall nominate, on such terms as LBSL shall reasonably propose (with such novation to take effect from the date this Contract terminates or expires);

35.5.2 LBSL shall pay the Contractor any Charges remaining due up to the date of termination or expiry calculated so far as is possible in accordance with clause 12.

35.6 For the avoidance of any doubt, the termination of this Contract on any grounds or the expiry of this Contract shall not result in the termination of

any license that LBSL is granted under clause 20.6 or clause 29.3.

36. **Survival**

The provisions of clauses 1, 6, 10, 11, 12, 13 and 15 - 46 (inclusive) and any other clauses or Schedules that are necessary to give effect to those clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

37. **Rights of Third Parties**

37.1 Save that:

37.1.1 any member of the TfL Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"); and

37.1.2 a Games Body may enforce the terms of clause 29.7 in accordance with the Third Party Act; and

37.1.3 a Replacement Contractor may enforce the terms of clause 16.13 in accordance with the Third Party Act

the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

37.2 Notwithstanding clause 37.1, the Parties are entitled to vary or rescind the Contract without the consent of any or all members of the TfL Group and/or any Games Body and/or any Replacement Contractor.

38. **Novation**

38.1 LBSL may novate or otherwise transfer or assign the Contract to a member of the TfL Group (or any successor body to TfL). Where LBSL wishes to novate, assign or otherwise transfer the Contract to any third party other than a member of the TfL Group (or any successor body to TfL), then it shall only do so with the prior written consent of the Contractor, which shall not be unreasonably withheld or delayed.

38.2 Within 10 Business Days of a written request from LBSL, the Contractor shall, at its expense, execute such agreement as LBSL may reasonably require to give effect to any novation, assignment or transfer of all of its

rights and obligations under the Contract permitted under clause 38.1.

- 38.3 The Contract is personal to the Contractor who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer, hold on trust, or otherwise allow any agent to perform any right or obligation under the Contract without the prior written consent of LBSL which shall not be unreasonably withheld or delayed.

39. **Non-Waiver of Rights**

No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 41. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

40. **Illegality and Severability**

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

41. **Notices**

Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- 41.1 if delivered by hand, at the time of delivery; or
- 41.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 days (excluding Saturdays, Sundays and public holidays) after being posted;

or

41.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

42. **Entire Agreement**

42.1 Subject to clause 42.2:

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

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

42.2 Nothing in this clause 42 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

43. **Relationship of the Parties**

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

44. **Further Assurance**

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

45. **Counterparts**

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

46. **Governing Law**

The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to clause 33, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the TfL Group has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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

Signed by)
for and on behalf of)
London Bus Services Limited)

Signature:

Name and position: David Brown - MD Surface Transport

Date: 1 September 2009

Signed by)
for and on behalf of)
Telent Technology Services Limited)

Signature:

Name and position: [REDACTED] - Senior Commercial Manager

Date: 1 September 2009

