



**REDACTED VERSION**

# **London Road User Charging Agreement**

**Congestion Charging**  
**Transport for London**  
8th Floor, Windsor House  
42-50 Victoria Street  
London SW1H 0TL

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DATED: 14 December 2007

**London Road User Charging Agreement**  
**between**  
**TRANSPORT FOR LONDON**  
**and**  
**IBM UNITED KINGDOM LIMITED**  
**relating to**  
**provision of services for Road User Charging**

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## **SCHEDULES**

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**THIS AGREEMENT** is dated 14 December 2007 and made

**BETWEEN:**

- (1) **TRANSPORT FOR LONDON**, (“**TfL**”) (which expression shall include any firm, corporation or other contracting authority succeeding to the functions of TfL in relation to the Services to be provided under this Agreement), of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and
- (2) **IBM UNITED KINGDOM LIMITED**, (the “**Service Provider**”), a company registered in England & Wales with company number 741598 and having its registered office at P.O. Box 41, North Harbour, Portsmouth, Hants, P06 3AU.

**Background:**

- (A) TfL has implemented a fully functioning congestion charging scheme within a prescribed area within London pursuant to the Congestion Charging Scheme Order.
- (B) TfL is planning to implement a low emissions zone in the Greater London area pursuant to the LEZ Scheme Order.
- (C) TfL requires the Service Provider to design, build, test, operate and maintain a system and processes for the provision of services in relation to these schemes and, at its option, a broader range of road user charging services.
- (D) The parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**PART 1: PROVISIONS RELATING TO THIS AGREEMENT**

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement where the context admits the definitions set out in schedule 1 (Definitions) will apply.

1.2 **Construction of certain references**

In this Agreement where the context admits:

- (A) words and phrases the definitions of which are contained or referred to in Part XXVI Companies Act 1985 will be construed as having the meanings so attributed to them;
- (B) references to any statute or statutory provisions include reference to those provisions as amended or re-enacted or as their application is modified by

- other provisions from time to time and any reference to a statutory provision will include any subordinate legislation made from time to time under that provision;
- (C) references to “**this Agreement**” or to any other agreement or document referred to in this agreement mean this agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time;
- (D) references to clauses, annexes, appendices and schedules are references to clauses and annexes and appendices and schedules of and to this Agreement, and references to paragraphs are, unless otherwise stated, references to paragraphs of the schedule in which the reference appears;
- (E) references to a “**person**” include any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, supranational body, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists) and a reference to any of them shall include a reference to the others;
- (F) references to TfL include its successors and permitted assigns which will include any person who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to TfL’s rights under this Agreement or any interest in those rights, or who, as an insolvency practitioner or otherwise, is entitled to exercise those rights (and, in the case of a novation or similar event, references in this Agreement to TfL’s rights will include the novated rights to which another person is entitled as a result of that event);
- (G) any reference to “**writing**” will include typewriting, printing, lithography, photography, telex, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
- (H) where a general obligation in this Agreement is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

### 1.3 **Headings**

The headings and sub-headings are inserted for convenience only and will not affect the construction of this Agreement.

### 1.4 **Schedules**

The schedules form part of this Agreement and will have full force and effect as if expressly set out in the body of this Agreement.

## 1.5 **Gross-up**

If any amount paid or due to TfL from the Service Provider under this Agreement, (but excluding any Liquidated Damages or any amount which might become payable under clause 67.13 (Assets), clause 74.2 (Consequences of Termination, Partial Termination or Expiry) or schedule 23 (Gainsharing)) is a taxable receipt of TfL then the amount so paid or due (the “**Net Amount**”) shall be increased to an amount which, after subtraction of the amount of any tax on such increased amount which arises, or would arise but for the availability of any relief from tax on TfL, shall equal the Net Amount provided that if any payment is initially made on the basis that the amount due is not taxable in the hands of TfL and it is subsequently determined that it is, or vice versa, appropriate adjustments shall be made between TfL and the Service Provider.

## 1.6 **Precedence**

In the event of any conflict or inconsistency between any provision contained in the clauses of this Agreement and any of the schedules and annexes or any other documents incorporated herein by reference, the following order of precedence will apply, but only in so far as is necessary to resolve that conflict or inconsistency:

- (A) the clauses;
- (B) schedule 1 (Definitions);
- (C) the other schedules to this Agreement, except for schedule 28 (Service Provider’s Solution);
- (D) an annex or appendix to a schedule except for an annex or appendix to schedule 28 (Service Provider’s Solution);
- (E) schedule 28 (Service Provider’s Solution);
- (F) an annex or appendix to schedule 28 (Service Provider’s Solution); and
- (G) any other documents incorporated into this Agreement by reference.

## 1.7 **Obligation on TfL to act reasonably**

Any reference to TfL being required to act reasonably or to exercise its discretion acting reasonably shall be construed as if the terms “reasonably” and “reasonable” were an objective test of the reasonableness of TfL, but subject always to the following exception, namely that TfL shall be entitled to take into account, and to give such weight as it shall in good faith consider proper as to the requirement (which shall be regarded as paramount) to discharge its statutory functions and deliver safe, integrated, reliable, efficient and economic transport facilities and services to, from and within Greater London, provided that such exception shall not be used by TfL to unreasonably impose on the Service Provider any additional obligations which are not set out in this Agreement.

## 1.8 Reference to Milestones

Any reference to a particular Milestone ("**Milestone X**") shall, where Milestone X comprises Milestone X(A) and Milestone X(B), include a reference to both Milestone X(A) and Milestone X(B), unless expressly provided to the contrary.

## 1.9 Service Provider's Design Statements

The Service Provider's Design Statements reflect key factors taken into consideration by the Service Provider in calculating the Service Charges; they are provided for information only and shall not have any legal effect whatsoever. During the development of the Detailed Design, each of the Service Provider's Design Statements shall be reviewed by the Parties and the Parties shall agree, in respect of each of the Service Provider's Design Statements whether the Service Provider's Design Statement should:

- (A) continue to be classed as one of the Service Provider's Design Statements (in which case it shall have no legal effect); or
- (B) be removed from schedule 28 (Service Provider's Solution); or
- (C) no longer be classed as one of the Service Provider's Design Statements, in which case it shall be incorporated into the Statement of Requirements as a legally binding provision of this Agreement,

and the Agreement shall be amended accordingly. Subject to clause 1.10, the Parties shall complete their review of the Service Provider's Design Statements and agree on the relevant amendments to be made to the Agreement as a result of their review no later than the Milestone Date for Milestone 4.

1.10 In the event that the Parties have not completed their review of and reached agreement on relevant amendments to be made to the Agreement (if any) in respect of all of the Service Provider's Design Statements by the Milestone Date for Milestone 4, then:

- (A) the Agreement shall, where necessary, be updated in respect of each Service Provider's Design Statement upon which the parties have reached agreement; and
- (B) in respect of the Services Provider's Design Statements upon which the Parties have not reached agreement, each such Service Provider's Design Statement will either:
  - (1) continue to be classed as one of Service Provider's Design Statements (in which case it shall have no legal effect);
  - (2) or be removed from schedule 28;

as TfL may, in it's absolute descretion, direct.

## **PART 2: DURATION AND SERVICE PROVISION**

### **2. Duration**

- 2.1 This Agreement will come into force on the Effective Date and shall, subject to extension pursuant to clause 2.2 or termination in accordance with clause 72 (Termination), continue until midnight on the date five (5) years following the Planned Operational Commencement Date (the “**Initial Term**”).
- 2.2 TfL shall be entitled, at its option, by giving notice to the Service Provider of at least twelve (12) months prior to the expiry of the Initial Term, to extend this Agreement in respect of one or more Service Elements (as specified in the notice), for such period, of up to five (5) years following the date of expiry of the Initial Term, as TfL may specify in such notice and thereafter, on one or more occasions, to further extend the term of this Agreement in respect of one or more Service Elements (as specified in the notice) by giving further notice of at least twelve (12) months prior to expiry, provided that the total period of extension shall not exceed five (5) years from the date of expiry of the Initial Term (such period being the “**Extended Term**”). For the avoidance of doubt, TfL may elect pursuant to this clause 2.2 to extend this Agreement for different periods in respect of different Service Elements.

### **3. Value for Money Review**

TfL shall be entitled, at its option, to require the Service Provider to undertake a value for money review in accordance with schedule 36 (Value for Money Review Process), by giving notice to the Service Provider on or before the third anniversary of the Planned Operational Commencement Date. In the event that TfL serves such notice, both Parties shall comply with their obligations set out in schedule 36 (Value for Money Review Process).

### **4. Scope of Services**

- 4.1 The Service Provider shall provide the Services to TfL as follows:
- (A) subject to clause 5 (Release 2 condition), from the Effective Date, the Service Provider shall provide the Design Services and the Build Services in accordance with the Statement of Requirements. Without prejudice to the generality of the foregoing, the Design Services and the Build Services shall ensure that the Service Systems are, and do, operate at the Scenario 1 Volumes specified in the Financial Model and manage the capacities specified in schedule 4;
  - (B) subject to clause 5 (Release 2 condition), from the Operational Commencement Date, the Service Provider shall provide the Operational Services in accordance with the Statement of Requirements;
  - (C) Additional Services from time to time in accordance with clause 28 (Additional Services) and schedules 3 (Milestones and Deliverables), 4 (Testing Regime) and 33 (Additional Services);
  - (D) further Services as may be agreed from time to time through the Change Control Request Procedure; and

- (E) in the event of a Business Continuity Event at any time after the Operational Commencement Date, the Business Continuity Services as part of the Operational Services.

4.2 The Service Provider warrants and represents that, as at the Effective Date, and the Service Provider shall ensure on an ongoing basis thereafter (and shall ensure that all Documentation shows) that, all development work, all development of Documentation, and any other item or thing done by the Service Provider or any Sub-Contractor in connection with the TDS, the Design Services, the Build Services, the Operational Services (including without limitation the Business Continuity Services) and any Additional Services:

- (A) has been or is (as applicable) carried out or conducted only at the Premises and not at any other site, premises, facility, location or jurisdiction; and
- (B) except as expressly provided to the contrary in schedule 28 (Service Provider's Solution), has been or is (as applicable) carried out or performed by the Service Provider or a Key Sub-Contractor, or by a Sub-Contractor registered in the United Kingdom (or an employee of such a Sub-Contractor),

including without limitation in respect of all design, build, laboratory certification, application development or coding, testing, acceptance, support, maintenance or other Services. The Service Provider agrees that any breach of this clause 4.2 shall be deemed to be a material breach of this Agreement.

## 5. **Release 2 condition**

5.1 The Service Provider shall not commence provision of Release 2 Configuration Services unless and until TfL has expressly served a notice in writing that the Service Provider should do so (the "**Release 2 Configuration Design and Build Notice**").

5.2 TfL shall have no liability to the Service Provider for, or in respect of, a failure to provide, or delay in providing, the Release 2 Configuration Design and Build Notice.

5.3 The Service Provider shall not commence provision of Release 2 Operational Services until the Release 2 Commencement Date.

5.4 In the event that TfL serves the Release 2 Configuration Design and Build Commencement Notice:

- (A) on or before the Milestone Date of Milestone 18 (Release 1 Ready for Service Testing complete), there shall be no change to any Milestone Dates specified in schedule 3 (Milestones and Deliverables);
- (B) later than the Milestone Date of Milestone 18 (Release 1 Ready for Service Testing complete):
  - (1) the Parties shall in good faith seek to agree whether Milestones 20, 21, 22 and 23 may be achieved by their respective Milestone Dates and the appropriate steps and actions to be taken to ensure their achievement;

- (2) if, within five (5) Working Days of the date of service of the Release 2 Configuration Design and Build Commencement Notice, the Parties fail to agree appropriate steps and actions to ensure that Milestones 20, 21, 22 and 23 may be achieved by their respective Milestone Dates, each such Milestone Date and the Planned Release 2 Commencement Date shall be adjusted from the relevant date specified in this Agreement to such later date as TfL shall determine, acting reasonably; and
- (3) for the avoidance of doubt, there shall be no change to any Milestone Dates specified in schedule 3 (Milestones and Deliverables) in respect of Milestones relating to Release 1 or to the Planned Operational Commencement Date.

5.5 In the event that a Release 2 Configuration Design and Build Commencement Notice has not been served on or before the Planned Release 2 Commencement Date then:

- (A) the Service Provider shall be under no further obligation to provide the Release 2 Configuration Services;
- (B) for the purposes of clause **Error! Reference source not found.** (Indemnities and Limitations of Liability) only, the Release 2 Commencement Date shall be deemed to be the Planned Release 2 Commencement Date;
- (C) Milestones 20, 21, 22 and 23 shall lapse and not be capable of achievement; and
- (D) no payments shall be due from TfL to the Service Provider in respect of any Release 2 Services.

## 6. **Standard of Services**

6.1 The Service Provider shall provide the Services including all related Tests:

- (A) in accordance with the Specification and the Design Documents and the other terms and conditions of this Agreement;
- (B) such that all Design Services and Build Services are supplied in accordance with the Implementation Plan;
- (C) in accordance with any specific performance standards or obligations contained in this Agreement;
- (D) in the absence of any specific performance standards or obligations, in a timely, economic, efficient and reliable manner and in accordance with Good Industry Practice;
- (E) in accordance with all applicable Laws and, furthermore, in such a way that does not hinder or prevent TfL's compliance with all applicable Laws;
- (F) in accordance with the British Standards Institute's BS ISO / IEC 20000:2005 "IT Services Management Standards" as updated, amended or replaced from time to time;

- (G) in accordance with the Information Technology Infrastructure Library (“ITIL”) published by the United Kingdom Office of Government Commerce as updated, amended or replaced from time to time (and the Service Provider shall ensure that certification of the Service Provider and each Sub-Contractor under ITIL is achieved and maintained in connection with the Services, and the Service Provider shall perform each Change in accordance with, and shall ensure that the Change Control Request Procedure it undertakes is consistent and complies with, ITIL);
  - (H) without prejudice to clauses 6.1(A) and 6.1(C) so as to ensure that:
    - (1) the Milestones are achieved;
    - (2) the provision of Operational Services commences on the Planned Operational Commencement Date; and
    - (3) the provision of Release 2 Operational Services commences on the Planned Release 2 Commencement Date;
  - (I) in a manner that is not, or is not likely to be, injurious to health or to cause damage to property; and
  - (J) so as to achieve no less than the Acceptable Service Levels, where such Services are or become subject to the performance regime in accordance with schedule 5 (Service Level Agreement).
- 6.2 The Service Provider shall provide the Design Services and Build Services and conduct all related Tests in order to meet all Milestones in accordance with the timetable set out in paragraph 2 of schedule 3 (Milestones and Deliverables). If the Service Provider fails to achieve a Milestone on the relevant Milestone Date, clause 17 (Consequences of Delay in Achieving Milestones) and paragraphs 29 and 30 of schedule 3 (Milestones and Deliverables) shall apply.
- 6.3 In the event that TfL requires the Service Provider to provide any Additional Services and/or further Services (in accordance with the Change Control Request Procedure), the Service Provider shall provide the Design Services and Build Services (or any required part(s) thereof as dictated by the scope of the Additional Services or such further Services requested by TfL) and conduct all related Tests in order to meet all Milestones as specified as a result of the Change Control Request Procedure. If the Service Provider fails to achieve a Milestone on the relevant Milestone Date, clause 17 (Consequences of delay in achieving Milestones) and paragraphs 29 and 30 of schedule 3 (Milestones and Deliverables) shall apply.
- 6.4 If Service Levels are not met, Service Failure Deductions shall accrue in accordance with schedule 5 (Service Level Agreement) and shall be deducted from the Service Charges in accordance with schedule 7 (Charging). The Parties agree that the Service Failure Deductions shall be an abatement of the Service Charges. Before applying Service Failure Deductions the Parties shall discuss in good faith what steps, if any, the Service Provider took to avoid the accrual of Service Failure Points in accordance with the Business Continuity Plan.
- 6.5 The Parties agree that the purpose of the Service Failure Deductions is to give the Service Provider an incentive to perform and that they are not intended as a penalty



for non-performance or to quantify the full extent of TfL's losses in relation to a failure by the Service Provider to meet or exceed the Service Levels.

- 6.6 If any of the Service Levels are not met, whether resulting from greater demand for service or greater volumes of transactions than the Service Provider has anticipated or otherwise, notwithstanding any other provision in this Agreement, the Service Provider shall promptly arrange and/or provide all such additional resources as are necessary and shall take all necessary remedial actions promptly to correct such failure to meet any of the Service Levels at no additional charge to TfL.
- 6.7 The Service Provider shall, subject to the terms of this Agreement, undertake all necessary actions and shall provide all incidental and ancillary services so as to ensure the Operational Services are, and remain, fully operational at all times in accordance with the Agreement, in order to ensure that none of the Schemes is compromised.
- 6.8 The Service Provider shall be deemed to have full knowledge of the extent and nature of the Services as at the date of this Agreement and to have allowed for all items of work shown upon, described by, or referred to in, this Agreement or which are otherwise necessary to provide such Services and to have gained adequate detail and insight into all such items of work prior to the Effective Date.

## 7. **Suspension**

- 7.1 TfL shall be entitled from time to time during the Operational Phase, by serving written notice on the Service Provider, to require the Service Provider to suspend some or all Charge Payments under any Scheme or Schemes and/or other Services. Such suspension shall be effected as a Mandatory Change in accordance with the Change Control Request Procedure.

## **PART 3: DESIGN MATTERS**

### 8. **TDS, Service Provider's Solution and responsibility for designs**

- 8.1 Subject to clause 8.2, with effect from the Effective Date the provisions of the agreement entered into between TfL and the Service Provider dated 13 October 2006 relating to the technical design study of proposed technology to be supplied as part of the Service Systems (the "**TDS Agreement**") shall terminate and be of no further legal effect. TfL and the Service Provider shall have no further liability to each other thereunder except for rights and liabilities accrued under the TDS Agreement prior to the Effective Date.
- 8.2 The report produced, and the designs, solutions and proposals developed, by the Service Provider in accordance with the TDS Agreement and as further developed form part of this Agreement and are attached hereto as schedule 28 (Service Provider's Solution) (the "**Service Provider's Solution**").
- 8.3 The Service Provider acknowledges and agrees that, notwithstanding that TfL supplies the TfL Design and Statement of Requirements:

- (A) the Service Provider has full knowledge and understanding of the Statement of Requirements and TfL Design and warrants that the Statement of Requirements and TfL Design (as may be varied pursuant to the Change Control Request Procedure from time to time) are Fit for Purpose for the provision of the Services required under the Agreement;
- (B) the Functional Requirements, Service Provider High Level Design, Detailed Design, Service Provider’s Solution and any other ideas, methods, concepts or theories (including without limitation any “proof of concept” synopsis, milestone or feasibility demonstration in connection with the Services) will be verifiable, verified, demonstrable, demonstrated and capable of use and used for the purposes of this Agreement;
- (C) the Hardware, Software and Systems (including without limitation any relevant Assets) provided or used in connection with the COps or Core IT Systems (and all Documentation shows that such Hardware, Software and Systems) will be completely separate and distinct from any Hardware, Software and Systems provided or used in connection with the BOps, Business Operations Systems, EOps or Enforcement Operations Systems, save for the Service Systems Interfaces between COps, or Core IT Systems, on the one hand, and BOps, Business Operations Systems, EOps, or Enforcement Operations Systems, on the other hand;
- (D) the Functional Requirements, Service Provider High Level Design and Detailed Design (and all Documentation) conforms with the Solution Architecture; and
- (E) no fault, error or defect in the Statement of Requirements and TfL Design shall absolve the Service Provider from its obligation to provide the Services in accordance with the provisions of this Agreement.

## **PART 4: IMPLEMENTATION**

### **9. Implementation Plan and Migration**

9.1 Without prejudice to clause 6.1(B) or 6.2 (Standard of Services), the Service Provider shall:

- (A) submit a draft Implementation Plan to TfL for Approval by the relevant Milestone Date; and
- (B) comply with the provisions of the Implementation Plan once it is Approved.

9.2 The Service Provider shall ensure that the Service Systems are provisioned by the relevant Milestone Dates including without limitation:

- (A) performing Testing of Service Systems and Data processing in accordance with clause 12.1 (Testing);

- (B) carrying out Data checking, verification, cleansing, review, quality analysis and assurance, integrity testing and migration in accordance with the Statement of Requirements and the Migration Documents and so as to ensure that:
  - (1) Data or Data extracts from any Other Service Provider or Third Party are Tested by the Service Provider or relevant Sub-Contractors by the relevant Milestone Date or as otherwise agreed in writing by the Parties using the Change Control Request Procedure;
  - (2) all Data the subject of Data Migration remains available to and useable by TfL, Other Service Providers and Third Parties during Data Migration;
  - (3) Data Migration does not result in Data loss, corruption or impairment;
  - (4) all Data have been migrated and are accurate (insofar as it is possible for the Service Provider to verify such accuracy, including without limitation by meeting, as a minimum, the requirements of the Statement of Requirements and the Service Provider's Solution in this regard), up to date and complete as a result of Data Migration, including without limitation as agreed in writing by the Parties using the Change Control Request Procedure;
  - (5) all Data the subject of Data Migration are imported into the Core IT Systems and (if applicable, from the Core IT Systems) into the Business Operations Systems and the Enforcement Operations Systems in accordance with the Migration Documents or as otherwise agreed in writing by the Parties using the Change Control Request Procedure;
  - (6) all Data the subject of Data Migration are subject to referential integrity checks to ensure that links between coupled tables in a database are consistent, correct and not broken once Data are migrated in respect of the Service Systems and between each part of the Service Systems; and
  - (7) all Data are Fit for Purpose for their use and processing in connection with the Services and by Other Service Providers or Third Parties;
- (C) all development work in respect of the COps and the Service Systems Interfaces is carried out and complete, including without limitation all design, build, laboratory certification, application development, delivery, installation, Testing and acceptance by or on behalf of the Service Provider and Approval by TfL, by the relevant Milestone Dates; and
- (D) ensuring that the cut-over, phase-in, transfer, migration or transition from the Other Service Provider Systems to the Service Systems envisaged under the Statement of Requirements is performed in accordance with the Cutover Plan, on the relevant Milestone Dates and without any interruption, disruption, non-availability, outage or Incident in connection with the operation of the Schemes.

9.3 Without prejudice to clause 6.2 (Standard of Services), the Service Provider shall:

- (A) submit the Migration Documents to TfL for Approval by the relevant Milestone Dates; and
- (B) comply with the provisions of the Migration Documents once they are Approved.

10. **Progress Monitoring of Design and Build**

10.1 In relation to the Design Services and Build Services, the Service Provider shall, on a weekly basis (or such other time agreed between the Parties in writing):

- (A) submit a report to TfL (in such format as may be specified by TfL from time to time, including in electronic format), specifying:
  - (1) the tasks performed by the Service Provider in that week;
  - (2) any proposed variations to the Specification or the Implementation Plan which the Service Provider believes are essential;
  - (3) such details as are required in accordance with paragraph 9 of schedule 10 (Contract Management and Reporting); and
  - (4) such other details as TfL may reasonably require from time to time; and
- (B) if the weekly report raises any issues of concern to TfL, it may request the Service Provider to:
  - (1) supply more information;
  - (2) provide information on a more regular basis; and/or
  - (3) meet with TfL to discuss the issues of concern,

and the Service Provider shall promptly comply with any such request.

10.2 For the avoidance of doubt, once Approved by TfL, no changes shall be made to the Specification or the Implementation Plan without TfL's express written consent.

10.3 Reports submitted under this clause 10 and meetings to discuss issues arising shall be submitted or held, as appropriate, in accordance with schedule 10 (Contract Management and Reporting) for consideration at the then next Project Review Meeting or Strategic Review.

10.4 TfL shall be entitled at all times to monitor and review the Service Provider's performance of the Design Services and Build Services and its progress against the Implementation Plan in accordance with clause 48 (TfL Monitoring Staff).

**PART 5: DOCUMENT APPROVAL, TESTING,  
ACHIEVEMENT OF MILESTONES AND DELAY**

**11. Documentation**

- 11.1 Each Party shall have the relevant rights and obligations in Part C of schedule 3 (Milestones and Deliverables) in relation to the preparation, submission and Approval of documents.
- 11.2 Where in this Agreement there is any reference to any Documentation, the Service Provider shall at all times (subject to any specific requirements under this Agreement in respect of the periodic updating of specific Documentation) ensure that each such document is accurate, up to date and complete and that all changes to Documentation are submitted to TfL for Approval.
- 11.3 The Service Provider shall comply with the terms of all Documentation once it has been Approved.

**12. Testing**

- 12.1 The Service Provider shall, in accordance with the applicable Milestone Dates, the relevant Testing Documents, the Change Control Request Procedure and schedule 4 (Testing Regime) and so as to achieve all relevant Milestones, perform the Testing so as to ensure that the relevant parts of the Services and Service Systems perform the features and functions and meet the performance criteria in the Specification.
- 12.2 In respect of Testing, each Party shall have the relevant rights and obligations in schedule 4 (Testing Regime).

**13. Responsibility for achievement of Milestones and service delivery**

- 13.1 The Service Provider agrees that:
- (A) all Testing shall be the responsibility of, and carried out at the cost and expense of, the Service Provider;
  - (B) without limiting clause 76.4 (Waiver and Approvals):
    - (1) there shall be no transfer of risk by the Service Provider to TfL in connection with the Service Systems, the delivery of the Services, or any parts thereof, arising from Functional Requirements, Service Provider High Level Design, Detailed Design or any Testing, Test Witnessing or issue by TfL of a notice that TfL Approves a document and/or issue of a Milestone Notice and all risk in the Service Systems and the delivery of the Services shall remain with the Service Provider at all times;
    - (2) the issue of a notice that TfL Approves a document and/or the issue of a Milestone Notice shall not affect TfL's right to later reject any part of the Service Systems or the Services which is the subject of such notice,

to later withdraw any such notice (in circumstances where TfL subsequently becomes aware of facts or circumstances that would have entitled it to withhold the relevant Approval or Milestone Notice) or to reject any other part of the Service Systems or the Services, whether or not any notice has been issued in respect of, or is otherwise in connection with, such other part of the Service Systems and/or the Services, in which case:

- (a) any resulting Change shall not result in any increase in the Service Charges whether pursuant to the Change Control Request Procedure or otherwise; and
  - (b) a proportion (as determined by TfL, in its absolute discretion, by reference to the reasons for and impact of TfL withdrawing an Approval or Milestone Notice and any representations of the Service Provider) of any sums paid by TfL as a result of such notice that TfL Approves a document and/or as a result of such Milestone Notice shall be recovered by TfL as an abatement from the next payment due from TfL and each subsequent payment until the amount is fully recovered by TfL (provided that where TfL subsequently reissues such Approval or Milestone Notice, sums recovered by TfL under this clause 13.1(B)(2)(b) in respect of the reissued Approval or Milestone Notice shall again become payable by TfL to the Service Provider);
- (C) Milestones must be achieved in sequence unless expressly provided to the contrary in schedule 3 (Milestones and Deliverables) or otherwise agreed pursuant to the Change Control Request Procedure and, for the avoidance of doubt, where Milestone X comprises Milestone X(A) and Milestone X(B), both Milestone X(A) and Milestone X(B) shall be achieved prior to the achievement of Milestone Y; and
- (D) any termination by TfL pursuant to Part B of schedule 3 (Milestones and Deliverables) shall be deemed to be for a material breach of this Agreement by the Service Provider.

14. **Achievement of Milestones**

Each Party shall have the relevant rights, and shall comply with the provisions, set out in schedule 3 (Milestones and Deliverables) in relation to the achievement of Milestones.

15. **Delay of the Planned Operational Commencement Date and/or the Planned Release 2 Commencement Date**

15.1 TfL shall be entitled, in its absolute discretion, by notice to the Service Provider, to delay either or both of:

- (A) the Planned Operational Commencement Date; and/or
- (B) the Planned Release 2 Commencement Date,

on one or more occasions, by up to twelve (12) months in aggregate from the dates specified in this Agreement. Such delay shall be at no additional cost to TfL and TfL shall have no liability to the Service Provider for, or in respect of, such delay.

- 15.2 If TfL delays the Planned Operational Commencement Date and/or Planned Release 2 Commencement Date for more than one (1) Month, the Service Provider shall comply with the provisions of clause 16 (Delay) in relation to such delay.
- 15.3 The Service Provider shall take all practicable steps to mitigate its and TfL's losses, expenditure and costs arising due to any delay of the Planned Operational Commencement Date and/or Planned Release 2 Commencement Date.
- 15.4 Subject to clause 15.5 and the Service Provider's compliance with clauses 15.2 and 15.3 and any Delay Plan Approved in accordance with clause 16 (Delay), as appropriate, TfL shall bear the properly and reasonably incurred unavoidable costs of the Service Provider arising directly from the delay notified by TfL to the Service Provider in accordance with clause 15.1.
- 15.5 In the event that:
- (A) TfL has given the Service Provider at least ninety (90) calendar days' notice of a delay to the Planned Operational Commencement Date, the Service Provider shall bear the costs arising due to such delay, up to a maximum period of thirty (30) calendar days of delay; or
  - (B) TfL has given the Service Provider at least thirty (30) calendar days' notice of a delay to the Planned Release 2 Commencement Date, the Service Provider shall bear the costs arising due to such delay, up to a maximum period of twelve (12) Months of delay.
- 15.6 Without prejudice to clause 16 (Delay), if TfL wishes to delay the Planned Operational Commencement Date or the Planned Release 2 Commencement Date by more than twelve (12) months the delay shall be subject to the Change Control Request Procedure.

## 16. **Delay**

- 16.1 Notwithstanding that the provisions of clauses 68 (Compensation Events), 68A (TfL Events), 69 (Relief Events) and/or 70 (Force Majeure) may apply, the Service Provider shall comply with its obligations under this clause 16.
- 16.2 In the event of any actual, likely or unavoidable delay in the Milestones being achieved by the relevant Milestone Dates or in meeting the Planned Operational Commencement Date or Planned Release 2 Commencement Date, the Service Provider shall:
- (A) notify TfL as soon as practicable of such circumstances; and
  - (B) take all practicable steps to mitigate its and TfL's losses, expenditure and costs, pending development and Approval of a Delay Plan in accordance with the following provisions of this clause 16.

- 16.3 Subject to clause 16.8, if a delay arises in respect of achievement of one or more Milestones or the Planned Operational Commencement Date or Planned Release 2 Commencement Date then the Service Provider shall promptly provide a delay plan (“**Delay Plan**”) to TfL and at the latest within ten (10) Working Days of receipt of notice from TfL stating that such a delay has occurred or will occur or from when the Service Provider first became aware of the delay, whichever is the earlier. The Delay Plan shall set out:
- (A) the cause of such delay;
  - (B) the steps that the Service Provider has taken and intends to take to mitigate its and TfL’s losses (including without limitation, in the case of TfL, any losses or likely losses notified by TfL to the Service Provider), expenditure and costs; and
  - (C) how the delay is to be remedied (if applicable) and in what timescale so that the relevant Milestone can be achieved and all following Milestones can be achieved by their respective Milestone Dates.
- 16.4 TfL shall have the right to Approve, and (acting reasonably) require changes to, the Delay Plan including changes that are aimed at preserving the Milestone Dates, the Planned Operational Commencement Date or Planned Release 2 Commencement Date in preference to minimising cost to the Service Provider, which changes the Service Provider shall adopt. Such changes shall be incorporated in the Delay Plan by the Service Provider within five (5) Working Days (or such other period as may be expressly agreed in writing between the Parties) of TfL notifying such changes to the Service Provider.
- 16.5 Unless otherwise expressly agreed in writing by TfL, the cost of preparing and implementing the Delay Plan shall be borne as follows:
- (A) where the delay was directly caused by a Compensation Event or a TfL Event and the Service Provider has fully complied with clause 68 (Compensation Events) or clause 68A (TfL Events), as applicable, by TfL; and
  - (B) in all other circumstances, in full by the Service Provider.
- 16.6 The Service Provider shall carry out its obligations in the Delay Plan promptly if and once it is Approved by TfL (and including such changes as TfL may require in accordance with clause 16.4) and shall commence such work within one (1) Working Day of such Approval by TfL unless otherwise set out in the Delay Plan. The Service Provider shall keep a record, supported by relevant documentation, of the steps it has taken to mitigate its and TfL’s losses pursuant to the Delay Plan and such records and documentation shall be supplied to TfL promptly upon demand.
- 16.7 Except as provided for in clauses 68 (Compensation Events), 68A (TfL Events), 69 (Relief Events) and 70 (Force Majeure), TfL shall be under no obligation to give any extension of time in respect of any delay which affects the Services, one or more Milestone Dates or any of the Service Provider’s other obligations.



16.8 Any delays caused due to the Service Provider's failure to achieve a Milestone in accordance with schedule 3 (Milestones and Deliverables) shall be dealt with in accordance with and subject to the provisions of that schedule.

17. **Consequences of Delay in achieving Milestones**

17.1 In the event that the Service Provider fails to achieve a Milestone by the relevant Milestone Date, the Service Provider shall pay to TfL liquidated damages in accordance with paragraph 4 of schedule 7 (Charging) ("**Liquidated Damages**") in respect of that Milestone, for each calendar day or part calendar day on which the achievement of that Milestone is delayed beyond the relevant Milestone Date, from and including the relevant Milestone Date to but excluding the date on which TfL issues a Milestone Notice in respect of the Milestone, up to a maximum period of thirty (30) calendar days (the "**LD Period**").

17.2 Without prejudice to TfL's rights to terminate and/or step-in as set out in this Agreement, the Parties acknowledge that:

- (A) the Liquidated Damages are a genuine pre-estimate of the loss that TfL is likely to suffer during the LD Period in the event of delay to the relevant Milestone; and
- (B) in the event that delay to achievement of a Milestone continues beyond the expiry of the LD Period, TfL shall be entitled to exercise any or all of its rights, whether under this contract, at law or otherwise, provided that in respect of the LD Period only, Liquidated Damages shall be TfL's sole financial remedy.

17A **Failure to achieve operational Milestones**

17A.1 The Service Provider shall, as one of the Milestone Achievement Criteria of Milestone 18 (Release 1 Ready for Service Testing complete), procure the provision to TfL of a standby letter of credit in the form set out in schedule 31 (Agreed Form of Standby Letter of Credit) with a financial institution of appropriate financial standing and integrity acceptable to TfL, acting reasonably, in the amount of [**Information Redacted**] (the "**Letter of Credit**").

17A.2 If the Service Provider fails to have achieved Notice of Approval from TfL in relation to operational Milestone 19 and/or operational Milestone 23 on or before the relevant Milestone Date of that Milestone, then, without prejudice to TfL's other rights and remedies:

- (A) TfL shall be entitled to demand payment under the Letter of Credit of such sum or sums (up to an aggregate maximum specified in the Letter of Credit) as TfL in its absolute discretion deems fit (such sum being the "**Retained Amount**") and subject to the following:

Operational Milestone	Maximum Retained Amount in respect of that operational Milestone (£)
19 (Release 1 Initial Operations Review)	<i>[Information Redacted]</i>
23 (Release 2 Initial Operations Review)	<i>[Information Redacted]</i> (the “Milestone 23 Amount”)

(B) upon achievement of Notice of Approval from TfL in relation to that Milestone, TfL shall repay the relevant Retained Amount to the Service Provider.

17.A.3 Within thirty (30) calendar days of the Service Provider having achieved Notice of Approval from TfL in relation to Milestone 19, if TfL has not on or before the date of achievement of that Milestone demanded payment under the Letter of Credit, TfL shall notify the provider of the Letter of Credit in writing that the aggregate maximum specified in the Letter of Credit may be reduced to the Milestone 23 Amount. The Parties agree and acknowledge that such notification shall be without prejudice to, and shall not constitute a waiver of, TfL’s rights and remedies under this Agreement.

17.A.4 Within thirty (30) calendar days of the Service Provider having achieved Notice of Approval from TfL in relation to Milestone 23, TfL shall return the Letter of Credit to the Service Provider.

**PART 6: CO-OPERATION**

**18. Co-operation with TfL and Others**

18.1 The Service Provider shall (and shall procure that all Sub-Contractors shall) co-operate fully and promptly with TfL and TfL’s employees, agents and representatives and, where requested by TfL, Other Service Providers and Third Parties in relation to all activities relating to the Schemes and any points of integration, interoperability or interface between: (i) the Service Systems and/or the Services; and (ii) the services to be provided by or to the Other Service Providers and Third Parties, in each case including, but not limited to:

- (A) the development of the Documentation;
- (B) in connection with Data Migration and the Cutover Plan;
- (C) the design, build, operation and maintenance of any Service Systems Interfaces with any Other Service Provider or Third Party;
- (D) Testing or any other testing by an Other Service Provider or Third Party;
- (E) Service Failures or other errors, issues, faults, support or maintenance;
- (F) performance measuring and monitoring;

- (G) delivery and testing of the Business Continuity Plan and any other business continuity or disaster recovery services and business continuity or disaster recovery plans of any Other Service Provider or Third Party; and
  - (H) claims or actions brought by Third Parties.
- 18.2 The co-operation referred to in clause 18.1 shall include, but not be limited to, promptly providing TfL and TfL's employees, agents and representatives and, where applicable, Other Service Providers or Third Parties with:
- (A) Information requested by them;
  - (B) access to operational and technical staff to answer questions;
  - (C) participation in any joint testing initiatives; and
  - (D) input in relation to its end of any Service Systems Interface.
- 18.3 The Service Provider shall (and shall procure that all Sub-Contractors shall) fully and promptly co-operate with all requests of TfL and TfL's employees, agents and representatives and, where requested by TfL, Other Service Providers and Third Parties in relation to:
- (A) the Testing of any Interfaces, interactions and Data flows between the Services provided by the Service Provider and the services to be provided by one or more Other Service Providers or Third Parties (including without limitation in relation to each Service Systems Interface); and
  - (B) all services provided by or for any Other Service Providers or Third Parties, as appropriate, which interface with or are directly impacted by the Services, including without prejudice to the generality of the foregoing, promptly and accurately providing all Data and Information required by the Other Service Providers or Third Parties, as appropriate, for Other Service Providers or Third Parties to comply with any obligations to TfL or for TfL to comply with any obligations to Other Service Providers or Third Parties (in each case to the extent that provision of such Data and Information is within the Service Provider's control or possession).
- 18.4 The Service Provider shall (and shall procure that all Sub-Contractors shall) co-operate fully and promptly with TfL and TfL's employees, agents and representatives and, where requested by TfL, Other Service Providers and Third Parties in relation to compliance by the TfL Group, Other Service Providers and Third Parties with all applicable Laws, standards, codes of practice, guidance, policies and procedures from time to time.
- 18.5 In performing the Services, the Service Provider shall (and shall procure that all Sub-Contractors shall ) take all necessary steps to avoid prejudicing TfL's relationship with any Other Service Provider or Third Party.
- 18.6 Without limiting the Service Provider's obligations to provide the Services, TfL shall, and shall use reasonable endeavours to procure that Other Service Providers or Third Parties shall, co-operate with the Service Provider to the extent necessary for the Service Provider to provide the Services.

## **PART 7: OPERATIONAL PHASE: OPERATION, SUPPORT AND MAINTENANCE**

### **19. TfL or Other Service Provider Equipment and Hardware**

- 19.1 The Service Provider may, subject to notice from TfL of its requirement, at any time during the Term be required to allow TfL Systems or Other Service Provider Systems to be sited or situated on the Premises for the purpose of interconnecting the Service Systems to the TfL Systems or Other Service Provider Systems.
- 19.2 In relation to any TfL Systems or Other Service Provider Systems, the Service Provider shall:
- (A) provide TfL or the Other Service Providers with reasonable physical access to the Premises from time to time on reasonable notice in order to enable TfL or the Other Service Providers to install, support, maintain and remove the TfL Systems or Other Service Provider Systems at the Premises;
  - (B) at its own cost, provide a suitable operating environment (including without limitation air temperature and humidity, heat extraction, electricity and other features, functions and facilities) for the TfL Systems and Other Service Provider Systems at the Premises save to the extent TfL is expressly required to do so in this Agreement;
  - (C) ensure at all times that it does not do, omit to do, or permit any Third Party to do or omit to do, anything which:
    - (1) prevents TfL or the Other Service Providers from logically accessing (by way of connectivity) the TfL Systems or Other Service Provider Systems (including without limitation by electronic remote management); or
    - (2) otherwise terminates or disrupts the connectivity of the TfL Systems or Other Service Provider Systems with the Schemes Systems; and
  - (D) at its own cost and expense, ensure that it has in place insurance adequate to cover:
    - (1) loss or damage to the relevant TfL Systems or Other Service Provider Systems while on the Premises, to the extent that the Service Provider has control over, or possession of, them; and
    - (2) business losses incurred by the Service Provider arising out of the circumstances described at clause 19.2(D)(1).
- 19.3 The Service Provider shall provide all aspects of the Service Systems, including but not limited to the Hardware, Software or Systems for use in the Service Systems.

20. **As-Built Physical Architecture and Capacity Planning**

20.1 The Service Provider shall prepare, maintain and keep up to date from time to time (and in any event within ten (10) Working Days of any change) a document detailing the physical architecture of each technical environment used for each Service Element (the “**As-Built Physical Architecture**”). The As-Built Physical Architecture shall include the following:

- (A) where every TfL Asset is physically deployed;
- (B) where every Service Provider Asset used exclusively in the provision of the Services is physically deployed; and
- (C) what function each Asset supports,

and shall identify Assets by reference to the Asset Register.

20.2 The Service Provider shall on and at all times following the Operational Commencement Date:

- (A) ensure that the Service Systems have at all times sufficient Capacity and process and deal with all Data and other requirements provided to or required of the Service Provider in providing the Services to enable the Services to be supplied in accordance with the Service Levels; and
- (B) carry out Capacity Planning to identify potential gaps between the Capacity available and the Capacity required with a view to ensuring that the Service Systems will have Capacity (including but not limited to sufficient processing power, Data storage capacity and network bandwidth) to cope with all foreseeable contingencies and with all anticipated or planned expansion of the Services, including without limitation in connection with the implementation of Release 2 and any Additional Services and further Services agreed through the Change Control Request Procedure.

20.3 The Service Provider shall during the Operational Phase prepare and keep updated on an ongoing basis during the Term draft Capacity plans supported by spreadsheets (“**Draft Capacity Plans**”) and shall submit a current version of such plans, together with current versions of the Asset Register and As-Built Physical Architecture, to TfL:

- (A) every six (6) months; and/or
- (B) with greater regularity if TfL requests it or if the Service Provider wishes to raise a Capacity Planning issue of concern with TfL; and
- (C) as part of the Change Control Request Procedure and promptly following the issue of a Change Authorisation where such Change requires an amendment to the Draft Capacity Plan(s); and
- (D) no later than nine (9) Months prior to the expiry of the Agreement or (if earlier) promptly following the issue of a notice of termination or a Partial Termination Notice.

- 20.4 The Draft Capacity Plans shall be prepared by the Service Provider in respect of each Asset or logical group of Assets as specified in the As-Built Physical Architecture, and shall include the following:
- (A) actual utilisation of the Asset;
  - (B) 1, 2, 3, 4 and 5 year Capacity predictions based on observable trends, foreseeable contingencies and anticipated or planned expansion of the Services (including without limitation in connection with the implementation of Release 2 and any Additional Services and further Services agreed through the Change Control Request Procedure); and
  - (C) required or recommended changes to each Asset to enable the Service Provider to achieve the Service Levels.

20.5 TfL:

- (A) shall, subject to clause 20.10, inform the Service Provider of any likely significant increases in the demand for Capacity of which it is aware during the Operational Phase; and
- (B) may consult with the Service Provider regarding the Draft Capacity Plans and shall have the right, by notice to the Service Provider, to Approve the Draft Capacity Plans (“**Agreed Capacity Plans**”) or to require the Service Provider to make amendments to the Draft Capacity Plans (“**Requested Amendments**”). Requested Amendments that would, when implemented, result in materially increased costs to the Service Provider which the Service Provider is able to demonstrate to the reasonable satisfaction of TfL, or that would constitute a Change to the Services shall be made pursuant to the Change Control Request Procedure save that the Service Provider shall not be entitled to any increase in the Service Charges or any other additional sum in respect of Requested Amendments or Changes in connection with the Capacity of the As-Built Physical Architecture. In all other circumstances, clause 20.6 shall apply.

20.6 If, in accordance with clause 20.5, the Requested Amendments have not been requested through the Change Control Request Procedure, on receipt of the Requested Amendments the Service Provider shall promptly (and in any event within ten (10) Working Days of having received them, or such other timeframe as may be agreed between the Parties in writing) amend the Draft Capacity Plans to include the Requested Amendments and re-submit the Draft Capacity Plans to TfL for review. The procedure for Approving the Draft Capacity Plans set out in clause 20.5 shall apply to the re-submitted Draft Capacity Plans.

20.7 Where clause 20.6 applies:

- (A) subject to clause 20.7(B), if the Agreed Capacity Plans are not in place within thirty (30) Working Days of the Draft Capacity Plans having been submitted to TfL, TfL may by notice to the Service Provider require the Service Provider to comply with the Requested Amendments and/or the Draft Capacity Plans; and

- (B) clause 20.7(A) shall not apply to amendments to Draft Capacity Plans requested through the Change Control Request Procedure in accordance with clause 20.5, which shall be made pursuant to the Change Control Request Procedure,

(in each case, again “**Agreed Capacity Plans**”).

20.8 The Service Provider shall comply with the Agreed Capacity Plans in providing the Operational Services, any Additional Services and/or any further Services agreed through the Change Control Request Procedure.

20.9 The Parties shall meet to discuss Capacity Planning:

- (A) on a six-monthly basis; or
- (B) with greater regularity on the request of TfL or Service Provider if that Party wishes to raise a Capacity Planning issue of concern with the other Party.

20.10 The Agreed Capacity Plans are intended as a means of communicating expected Capacity but are non-binding and should not be relied upon by the Service Provider in complying with its obligations under clause 20.2. Accordingly, the Service Provider agrees that:

- (A) nothing in this Agreement or any Agreed Capacity Plans shall represent on the part of TfL that, or oblige TfL to ensure that, those Agreed Capacity Plans are or will be accurate, complete or up to date in relation to the actual level or volumes of Data and other requirements provided to or required of the Service Provider in providing the Services (“**Actual Volumes**”); and
- (B) TfL shall, to the extent permitted by applicable Law, not be liable for any such inaccuracy, incompleteness or failure by the Service Provider to keep the Agreed Capacity Plans up to date or any consequences or effects of any such inaccuracy, incompleteness or failure by the Service Provider to keep the Agreed Capacity Plans up to date.

20.11 Some Service Levels and/or the Specification and/or the Agreed Capacity Plans may set out Data volume peaks (“**Volume Peaks**”) in relation to Data processing volumes. The Service Provider shall not by virtue of Volume Peaks having been exceeded, or Actual Volumes being different to the Agreed Capacity Plans, be:

- (A) exonerated from its obligations under this Agreement; nor
- (B) (other than as specified in paragraph 6 of schedule 7 (Charging) and schedule 8 (Operational Pricing)), entitled to an increase in the Service Charges or basis upon which it is remunerated under this Agreement or to any additional amounts from TfL.

## 21. **Technology Compatibility and Flexibility**

21.1 The following provisions shall apply in relation to technology (including without limitation Hardware, Software and Systems) in or comprising any part of the Service Systems:

- (A) the Service Provider shall consult with TfL (including where applicable its agents and representatives) and (where agreed by TfL in writing) with the Other Service Providers and Third Parties, on an ongoing basis during the Term (and as a minimum once every six (6) months following the Effective Date) on all questions of technology strategy and policy affecting TfL or the Other Service Providers and Third Parties in relation to the Services and Schemes Systems;
- (B) the Service Provider shall liaise with the Other Service Providers, Third Parties and TfL (including where applicable its agents and representatives) on an ongoing basis throughout the Term and (without limiting any other provision of this Agreement) will negotiate in good faith to agree upon the technology standards required in relation to the Implementation Phase and the Operational Phase and in relation to Additional Services and further Services agreed through the Change Control Request Procedure with TfL (subject to clause 22 (Changes to Technology));
- (C) the Service Provider shall conduct joint meetings and establish and manage joint boards (including without limitation as reasonably required by TfL) together with Other Service Providers, Third Parties and TfL (as reasonably required by TfL) at regular intervals (and as a minimum at least once every six (6) months following the Effective Date) in connection with the Service Provider's obligations under this clause 21 in each case at locations specified by TfL, and the Service Provider shall:
  - (1) give TfL, Other Service Providers and Third Parties reasonable advanced notice of such meetings or boards;
  - (2) circulate an agenda for such meetings or boards to TfL, Other Service Providers and Third Parties in advance of such meetings and boards, including without limitation any agenda items requested by TfL; and
  - (3) take detailed minutes of such meetings and boards and promptly following such meetings or boards submit those minutes to TfL;
- (D) the Service Provider shall ensure that the Service Systems are compatible for use with, work in combination with, and integrate, interoperate and interface with the Other Service Provider Systems, Systems provided by or on behalf of Third Parties and any Systems used by TfL or Third Parties (to the extent that such Systems are referred to in the Statement of Requirements, the TfL Design, the Design Documents or otherwise under this Agreement) (together "**Compatibility**" and "**Compatible**" shall have a corresponding meaning);
- (E) the Service Provider shall, as soon as possible, notify TfL in writing if the Service Systems are not, or are anticipated not to be, at any time fully Compatible and/or are not, or are anticipated not to be, Fit for Purpose of providing the Services efficiently and effectively;
- (F) the Service Provider shall not make any Change affecting Compatibility or the Services or Schemes without TfL's prior written consent including without limitation using the Change Control Request Procedure; and



- (G) the Service Provider shall provide TfL at its request with Information regarding the operating environment, Hardware, Software or System constraints and other operating parameters applicable to the Service Systems and any Other Service Provider Systems, TfL Systems, or Systems provided by or on behalf of any Third Party on the Premises of the Service Provider from time to time.

21.2 The Service Provider shall ensure that the Service Systems are at all times (including without limitation as part of the Design Services, Build Services and Operational Services):

- (A) Parameterised;
- (B) capable of meeting the requirements for the Release 2 Operational Services; and
- (C) capable, subject to scaling, of meeting the requirements for the Additional Services,

in each case without any additional Service Charges or other costs or expenses for TfL and any Other Service Provider or Third Party (other than a Sub-Contractor), other than as expressly set out in schedule 7 (Charging) and/or schedule 8 (Operational Pricing). For the avoidance of doubt, implementation (and payment for implementation) of Additional Services shall be undertaken in accordance with, and subject to, the provisions of schedule 33 (Additional Services) and schedule 9 (Change Control Request Procedure).

## 22. Changes to Technology

22.1 The Service Provider shall at all times adhere to the technology architecture principles as stated in the Statement of Requirements and the Solution Architecture, and shall not depart from such technology standards and such technology architecture principles (such departure being a “**Technology Change**”), except as envisaged under clause 22.2.

22.2 All IT Changes, Technology Changes or other Changes to the Service Systems shall be subject to the express written agreement of TfL, including without limitation through the Change Control Request Procedure, provided that the Service Provider shall only be entitled to any additional Service Charges or other sums as expressly set out in schedule 7 (Charging) or schedule 8 (Operational Pricing) or, if no such additional Service Charges or other sums are specified in such schedules, subject to clause 22.3, to any unavoidable additional direct costs and expenses of the Service Provider to the extent not recovered under the Service Charges priced in accordance with Annex G to schedule 9 (Change Control Request Procedure). The Service Provider shall not be entitled to increase the Service Charges, or request any such increase, as a result of any IT Change, Technology Change or other Change to the Service Systems (including without limitation one arising as a result of an Additional Service) other than as permitted under this clause 22.

22.3 The Service Provider shall make the following IT Changes, Technology Changes or other Changes to the Service Systems following approval pursuant to clause 22.2 at the cost and expense of the Service Provider (and the Service Provider shall not be entitled to require an increase in Service Charges or payment of other sums

whether under the Change Control Request Procedure initiated by it or otherwise to finance those Changes), or deduct any time associated with the following from the Change Resource Allocation):

- (A) all instances of Parameterisation;
- (B) all such Changes in connection with the Release 2 Operational Services;
- (C) all such Changes in connection with or resulting from Additional Services;
- (D) all such Changes envisaged under clause 26.1 (Continuous Improvements) which do not constitute a material change in outputs of the Services;
- (E) all such Changes in connection with TfL exercising its Step-in Rights or as a result of any Audit or TfL exercising any other rights expressly set out in this Agreement;
- (F) where such Changes are made in respect of the Core IT Systems, then all resulting IT Changes, Technology Changes or other Changes in respect of the Business Operations Systems and Enforcement Operations Systems (or any Service Systems Interfaces or other parts of the Service Systems), regardless of the reason for such Changes in respect of the Core IT Systems; and
- (G) all Changes in order to achieve Compatibility (as defined in clause 21.1 (Technology Compatibility and Flexibility)).

22.4 If the Service Provider makes IT Changes, Technology Changes or other Changes to the Service Systems (except where such IT Changes, Technology Changes or other Changes to the Service Systems have been proposed by TfL pursuant to schedule 9 (Change Control Request Procedure) for the purposes of obtaining new functionality from the Service Systems, other than in connection with the enforcement of the Service Provider's obligations under this Agreement) or provides Additional Services in any of the circumstances envisaged under clause 22.3 resulting in TfL or any Other Service Provider or Third Party having to make changes to their own Systems (including Systems for Management Information, in the case of TfL) or requiring additional equipment or services in order to achieve Compatibility between the Service Systems and the Other Service Provider Systems and/or the Systems used by TfL or any Third Party, the Service Provider shall reimburse the costs and expenses incurred by the Other Service Providers and/or TfL or Third Parties (as appropriate) in achieving Compatibility.

22.5 It shall be for the Service Provider to determine what Hardware, Software and Systems to use based on the Specification in order to comply with the Specification in the delivery of the Services, and the Service Provider shall not be entitled to require an increase in Service Charges or payment of other sums, or deduct any time associated with the following from the Change Resource Allocation (whether under the Change Control Request Procedure or otherwise) to finance Changes it wishes to make (regardless of the reason for the Change):

- (A) to the Service Systems or the Service Provider's Solution, the Functional Requirements, the Service Provider High Level Design or the Detailed

Design in order to ensure that the Service Systems and other parts of the Services comply with the Specification; or

- (B) to “hard coded” Systems if, contrary to the requirements of the Specification or any other provision of this Agreement, the Service Provider makes codes, status or other Parameters “hard coded” within applications used in the Service Systems.

22.6 The Service Provider and TfL acknowledge that it is in the interests of both parties to take advantage of potential improvements in technology which will improve the quality, timeliness and reliability of the Services or reduce the cost of providing the Services and for both the Service Provider and TfL to share in such improvements or cost reduction (including without limitation to reflect the level of risk or additional risk as against any reward). Accordingly, the Service Provider shall, subject to clause 22.2, suggest changes or improvements in the technology (including without limitation Hardware, Software and Systems) used to provide the Services in accordance with clause 26 (Continuous Improvements).

22.7 If TfL agrees to any IT Changes, Technology Change or other Change to the Service Systems in accordance with clause 22.2, the Service Provider shall:

- (A) proceed with or implement such IT Change, Technology Change or other Change to the Service Systems in accordance with schedule 9 (Change Control Request Procedure), amended as necessary to apply to that IT Change, Technology Change or other Change to the Service Systems;
- (B) carry out Testing in accordance with clause 12 (Testing) amended as necessary to apply to that IT Change, Technology Change or other Change to the Service Systems;
- (C) implement and commence provision of any other services, functions and responsibilities that are necessary for or incidental to the implementation by the Service Provider of any IT Changes, Technology Change or other Change to the Service Systems;
- (D) ensure that there are no adverse effects on the Services in any way resulting from any IT Change, Technology Change or other Change to the Service Systems; and
- (E) liaise with TfL regarding the most appropriate time to carry out any tasks in relation to any IT Change, Technology Change or other Change to the Service Systems and comply with TfL’s requirements in this regard.

22.8 Without prejudice to clause 67 (Assets), the Service Provider shall ensure that each IT Change, Technology Change or other Change to the Service Systems is at all times reflected in the Asset Register.

## 23. **Systems, Support and Maintenance**

23.1 The Service Provider shall:

- (A) ensure that all Service Systems (in the case of the Service Provider) and Interfaces, Systems, Hardware and Software (in the case of a Sub-Contractor) used by it or a Sub-Contractor in the provision of the Services:
- (1) adequately perform and fulfil their respective requirements and functionality and interface, integrate and interoperate appropriately and are compatible with each other, in each case in accordance with the Specification (or as agreed from time to time in accordance with the Change Control Request Procedure);
  - (2) are of satisfactory quality;
  - (3) are Fit for Purpose;
  - (4) are installed, used and maintained in accordance with the relevant manufacturers', authors' or suppliers' technical specifications;
  - (5) are free from material defects in materials, workmanship and installation; and
  - (6) without limiting clause 62 (Health and Safety), comply (and the Service Provider shall ensure that the Service Provider and each Sub-Contractor and relevant Third Party complies) with the Restriction of the use of certain Hazardous Substances Directive 2002/95/EC and the Waste Electrical and Electronic Equipment Directive 2002/96/EC as implemented under applicable Law (including without limitation the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Regulations 2005 in the United Kingdom),

and the Service Provider shall devote such additional resource at its own cost to ensure any non-compliance with this clause 23.1(A) is promptly remedied;

- (B) ensure that all Service Systems (in the case of the Service Provider) and Interfaces, Systems, Hardware and Software (in the case of a Sub-Contractor) used by it or a Sub-Contractor as part of the Schemes Systems are maintained and supported by the Service Provider from time to time including without limitation as envisaged under the Statement of Requirements;
- (C) without limiting clause 23.1(A) or 23.1(B), provide Full Support. Full Support shall apply, but not be limited to local and wide area network infrastructure, desk-tops, servers, storage, databases, access and storage media, voice infrastructure, and all other items comprising the Service Systems. As part of providing such Full Support, the Service Provider shall (and shall ensure Sub-Contractors will) at its own cost and expense:
- (1) ensure that if it chooses a System, Hardware or Software to use as part of the Service Systems it shall throughout the Term use models of that System or Hardware and versions of that Software then currently supported by the licensor or supplier of the System, Hardware or Software (and promptly upgrade at its own cost to a supported model or

- version where the model or version it uses ceases to be supported by the licensor or supplier);
- (2) if it wishes to change a System, Hardware or Software included in the Service Systems because it is no longer supported by the licensor or supplier of the System, Hardware or Software (other than where it wishes to upgrade to a supported model or version as envisaged in clause 23.1(C)(1)) it shall do so in accordance with clause 22 (Changes to Technology);
  - (3) support all Service Systems (in the case of the Service Provider) and Interfaces, Systems, Hardware and Software (in the case of a Sub-Contractor) used by it or a Sub-Contractor as part of the Schemes Systems to the level set by Good Industry Practice, including, without limitation, preventative maintenance or support, System, Hardware or Software monitoring, management, administration and Incident resolution or reactive maintenance or support; and
  - (4) manage and support the live release of the MIS (and any related databases) and any subsequent releases in accordance with a release schedule approved in advance by TfL, and provide TfL with appropriate user and technical Documentation (to be approved in advance by TfL for each MIS release and to include the requirements specified in the Statement of Requirements);
- (D) without limiting clause 23.1(C), the Service Provider shall ensure that:
- (1) during the Term and upon termination or expiry of this Agreement or Partial Termination, support for Software which is COTS (including without limitation Excluded COTS Software and any other Service Provider Software which is COTS or Third Party Software which is COTS) is publicly available from a Third Party (other than an Affiliate of the Service Provider) on commercially reasonable terms which are substantially similar to the terms available in the market to Third Parties; and
  - (2) no modification, adaptation or enhancement is made, or development undertaken in any way, by or on behalf of the Service Provider in respect of Software (or part of Software) which is COTS without the prior written consent of TfL in each case (other than where such modification, adaptation, enhancement or development is undertaken by the licensor of the COTS Software in relation to the publicly available version of such Software, in respect of which TfL's consent shall not be required), and in any event provided that:
    - (a) prior to any such consent being granted, the Service Provider shall inform TfL in writing of the effects of any such modification, adaptation, enhancement or development on the classification of Software (or part of Software) as COTS and on the availability (or otherwise) of support for that Software including without limitation as envisaged under clause 23.1(D)(1); and

- (b) unpublished, undocumented or publicly unavailable features, tools, kits, debugging aids, application programming interfaces, drivers, hardware, sample code, technical notes or documentation or other development methods, environments or utilities are in no way used in connection with any Software which is COTS;
  - (E) liaise with the Other Service Providers and Third Parties with whom the Service Systems interface, integrate or interoperate in order to:
    - (1) resolve any interfacing, integration or interoperability problems where such problems arise in the Service Systems; and
    - (2) support the resolution of any interfacing, integration or interoperability problems by such Other Service Providers and Third Parties where such problems arise in their Systems; and
  - (F) without limiting clause 67 (Assets), ensure that the Asset Register includes details of any work carried out on any Asset in accordance with this clause 23 and details of the lifespan of each Asset.
- 23.2 The Service Provider shall ensure that no scheduled maintenance of Service Systems is carried out without TfL's prior written consent and that in any event that all scheduled maintenance of Service Systems shall be carried out by the Service Provider (or Sub-Contractors) only between 00.30 and 06.00 hours.
- 23.3 The Service Provider shall during the Operational Phase prepare and keep updated draft System maintenance plans on an ongoing basis detailing the steps to be taken by the Service Provider to comply with this clause 23 in each six (6) month period of the Term following the Operational Commencement Date ("**Draft Maintenance Plans**") and shall submit a current version of such plans to TfL:
- (A) every month; or
  - (B) with greater regularity if TfL requests it or if the Service Provider wishes to raise a maintenance issue of concern with TfL.
- 23.4 TfL may consult with the Service Provider regarding the Draft Maintenance Plans and shall have the right, by notice to the Service Provider, to approve the Draft Maintenance Plans ("**Approved Maintenance Plans**") or to require the Service Provider to make amendments to the Draft Maintenance Plans ("**Requested Amendments**"). Requested Amendments that would result in materially increased costs, when implemented, to the Service Provider which the Service Provider is able to demonstrate to the reasonable satisfaction of TfL, or that would constitute a Change to the Services, shall be made pursuant to the Change Control Request Procedure. In all other circumstances clause 23.5 shall apply.
- 23.5 If, in accordance with clause 23.4, the Requested Amendments have not been requested through the Change Control Request Procedure, on receipt of the Requested Amendments the Service Provider shall promptly (and in any event within ten (10) Working Days of having received them, or such other timeframe as may be agreed between the Parties in writing) amend the Draft Maintenance Plans to include the Requested Amendments and re-submit the Draft Maintenance Plans

to TfL for review. The procedure for approving the Draft Maintenance Plans set out in clause 23.4 shall apply to the re-submitted Draft Maintenance Plans.

23.6 Where clause 23.5 applies:

- (A) if the Approved Maintenance Plans are not in place within thirty (30) days of the Draft Maintenance Plans having been submitted to TfL, TfL may by notice to the Service Provider require the Service Provider to comply with the Requested Amendments and/or the Draft Maintenance Plans; and
- (B) clause 23.6(A) shall not apply to amendments to Draft Maintenance Plans requested through the Change Control Request Procedure in accordance with clause 23.4, which shall be made pursuant to the Change Control Request Procedure,

(in each case, again “**Approved Maintenance Plans**”).

23.7 The Service Provider shall comply with the Approved Maintenance Plans in providing the Services.

23.8 The Parties shall meet to discuss maintenance of all Service Systems (in the case of the Service Provider) and Interfaces, Systems, Hardware and Software (in the case of a Sub-Contractor) used by it or a Sub-Contractor as part of the Schemes Systems:

- (A) monthly; or
- (B) with greater regularity at either Party’s request if that Party wishes to raise a maintenance issue of concern with the other Party.

23.9 Without limiting clause 49 (Audit and Inspection), the Service Provider shall provide unrestricted access for TfL’s Personnel to inspect from time to time on two (2) Working Days’ notice or such shorter period of notice as TfL requires, acting reasonably:

- (A) Documentation held by the Service Provider relating to the Service Systems;
- (B) Data processed on the Service Systems; and
- (C) component Hardware, Software and Systems of the Service Systems.

## 24. **Interfaces**

24.1 The Service Provider shall at all times maintain the Interface Catalogue in an up-to-date form from time to time, so as to include:

- (A) the TfL Interface;
- (B) the Customer Interfaces;
- (C) Interfaces between the Services Databases and any other part of the Services Systems;

- (D) Interfaces between each of the Service Elements including without limitation COps, on the one hand, and BOps and EOps, on the other hand;
- (E) Interfaces between the Service Systems (including without limitation the Services Databases) and Other Service Provider Systems;
- (F) Interfaces between the Service Systems (including without limitation the Services Databases) and Third Party Systems;
- (G) any other Interfaces specified in the Interface Catalogue as at the Effective Date; and
- (H) such other Interfaces agreed between the Parties in writing from time to time (including without limitation using the Change Control Request Procedure) or implemented pursuant to clause 22 (Changes to Technology),

collectively referred to as the “**Service Systems Interfaces**”.

24.2 The Service Provider shall build, maintain and operate (including without limitation pursuant to clause 24.3) the Service Systems Interfaces (as set out in the Interface Catalogue from time to time).

24.3 The Service Provider shall ensure that each Interface at all times (including without limitation during design, development, installation, Testing and acceptance or Approval) complies with (and all Documentation shows that each Interface complies with) the terms and conditions of this Agreement, the relevant Interface Specification and any Third Party Specifications.

24.4 The Parties hereby agree that clause 54 (Source Code) shall apply to Interfaces other than Service Systems Interfaces.

## 25. **System Failure**

25.1 The Service Provider shall notify TfL without delay on it becoming aware of any event of or the likely event of a System Failure, whether or not it constitutes a failure to meet the Service Levels.

25.2 In the event of a System Failure, the Service Provider shall:

- (A) immediately comply with the provisions of the Service Provider’s escalation procedure produced in accordance with the Statement of Requirements;
- (B) if such System Failure causes, or is likely to cause, the Service Provider to fail to meet the Service Levels on any calendar day on which such Service Levels apply in accordance with schedule 5 (Service Level Agreement), invoke the Business Continuity Plan and provide Business Continuity Services to minimise disruption to the Services;
- (C) immediately conduct a comprehensive examination of the Service Systems or part of the Schemes Systems on the Premises (as appropriate) for the purposes of locating the cause of the System Failure; and



- (D) devote such additional time and resources at its own cost to end the System Failure as soon as possible and to avoid its recurrence.

25.3 The Service Provider shall provide to TfL promptly on TfL's request:

- (A) all relevant Information in connection with the Service Systems including, but not limited to, Source Codes, object codes, failure reports, test data, System, Hardware and Software performance reports and such other information as may be required by TfL; and
- (B) all volumetric information and operational reports (both historical and current) as may be required by TfL,

to facilitate its understanding of the best way to resolve such System Failure or prevent such failure recurring.

25.4 Where the relevant System Failure was caused by an Other Service Provider or Third Party, the Service Provider shall give TfL all necessary co-operation in resolving the relevant System Failure by co-operating fully and expeditiously with the relevant Other Service Provider or Third Party, as appropriate, to resolve the System Failure.

25.5 A material failure by the Service Provider to provide the information requested by TfL in accordance with this clause 25 within five (5) Working Days (or such other period as the Parties may expressly in writing agree) will give rise to a right for TfL to exercise its Step-In rights (in accordance with, and subject to, the provisions of clause 71 (Rights of TfL to Step-In) and/or its rights under clause 49 (Audit and Inspection) in each case amended as necessary to account for this clause 25.5 and/or terminate this Agreement or Partially Terminate by notice to the Service Provider.

## 26. **Continuous Improvements**

26.1 The Service Provider shall have an ongoing obligation throughout the term of the Agreement to:

- (A) identify improvements to the Services to reflect the requirements of then current Good Industry Practice and continuous improvements of the Services, Service Levels and Service Charges ("**GIP Improvements**"). As part of this obligation the Service Provider shall quarterly in the first twelve (12) Months from the Operational Commencement Date and half yearly for the remaining period of this Agreement identify and advise TfL on, inter alia, new or potential improvements to the Services including the quality, responsiveness, procedures, likely performance mechanisms and cost reduction; and
- (B) introduce the GIP Improvements to provide continuous improvement of the Services to TfL subject to clause 22 (Changes to Technology).

26.2 As part of identifying GIP Improvements referred to in clause 26.1, the Service Provider shall inform TfL of other technology that could be used for delivering the Services, emerging standards and evolving technology and of potential new Services which would in each case improve the operational efficiency of the Services if implemented.

26.3 The Service Provider shall:

- (A) keep a record of changes (for example, Solution Architecture changes and changes of types and versions of Systems used) made to the Service Systems during the Operational Phase (“**Solution Architecture Change Record**”). TfL shall be entitled to access to such Solution Architecture Change Record in accordance with clause 49 (Audit and Inspection) (amended mutatis mutandis);
- (B) maintain and regularly update IT strategy plans relating to the Services (“**IT Strategy Plans**”) reflecting the then current requirements of Good Industry Practice. The Service Provider shall ensure that the IT Strategy Plans include measures planned to be taken by the Service Provider in accordance with clause 26.1(B) to ensure that the Service Systems and its maintenance and operation comply with Good Industry Practice; and
- (C) make its IT Strategy Plans available to TfL at the Effective Date (and thereafter promptly on request from TfL), and promptly provide TfL with a copy of any changes made to such plans from time to time. TfL shall have the right to request changes to the IT Strategy Plans in accordance with clause 22.1 (Changes to Technology).

27. **Training**

27.1 The Service Provider shall, at the request of TfL and without charge, as charges for training are included in the Service Charges or the relevant Change, provide:

- (A) introductory and ongoing training on a regular basis to TfL’s Personnel in relation to the use of the Service Systems, as set out in the Statement of Requirements;
- (B) if TfL has, by the Change Control Request Procedure (or otherwise), requested an upgrade or replacement to any Hardware or Software used in the Service Systems, introductory and ongoing training for the Service Provider’s own Personnel and those Personnel of TfL nominated by TfL in relation to such Hardware or Software; and
- (C) ongoing appropriate training for each of the Service Provider’s Personnel including, but not limited to, ensuring that all Personnel are trained in the security policies and procedures applicable to their roles and that all Service Provider Personnel are provided with training on Data Protection Law and FOI Legislation issues, obligations and procedures and any other dealing with Data in accordance with the provisions of clause 61 (Information Compliance).

27.2 Without prejudice to clause 27.1(A), the Service Provider, in fulfilling its obligations under this clause 27, shall ensure that it does so in each case in accordance with the requirements and frequency specified in the Statement of Requirements.

27.3 All training shall be provided during business hours, at a time and location to be approved by TfL.

- 27.4 The Service Provider shall provide suitably qualified and trained Personnel to deliver such training.
- 27.5 The Service Provider shall ensure that all of its Personnel are appropriately trained to provide the Services in accordance with the Statement of Requirements.

## **PART 8: ADDITIONAL SERVICES**

### **28. Additional Services**

- 28.1 TfL shall have the right to require the Service Provider to provide Additional Services in accordance with schedule 33 (Additional Services).
- 28.2 The Additional Services shall be provided on and subject to the terms and conditions of this Agreement.

## **PART 9: FINANCIAL MATTERS**

### **29. Service Charges, Milestone Payments and Payment**

- 29.1 In consideration of the provision of the Services by the Service Provider in accordance with this Agreement, TfL will pay the Milestone Payments, Service Charges, Incentive Payments and Pass-Through Costs, as appropriate, to the Service Provider as provided for in, and subject to, the provisions of schedule 7 (Charging) and schedule 8 (Operational Pricing).
- 29.2 The Service Provider shall invoice for payment of the Milestone Payments in accordance with the provisions of schedule 7 (Charging) and after successful achievement of the relevant Milestone.
- 29.3 The Parties agree:
- (A) all sums payable under or pursuant to this Agreement are exclusive of VAT (if any). Accordingly, where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to another, the recipient of that supply shall, in addition to any payment due for that supply, pay to the supplier such VAT as is chargeable in respect of the supply at the same time as payment is made or in any other case when demanded by the supplier. The payee shall provide the payer with a valid VAT invoice in respect of any payment of VAT;
  - (B) if any payment in respect of VAT is made under this Agreement in circumstances where VAT was not properly chargeable, then, where the supplier has accounted for such VAT to HM Revenue & Customs, the supplier's obligation to repay any amount to the payer shall be limited to such amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue & Customs in respect of the VAT wrongly paid.

- 29.4 The Service Provider shall invoice for payment of the Service Charges, Pass Through Costs and Incentive Payments on a Monthly basis in accordance with the provisions of schedule 7 (Charging) within five (5) Working Days of the last Working Day in the relevant Month.
- 29.5 Subject to the following, TfL shall pay the amount set out in a correct and complete Invoice within thirty (30) calendar days of receipt of the Invoice:
- (A) if any part of an Invoice is disputed by TfL, TfL shall only pay the amount which is not in dispute; and
  - (B) if any supporting information which was or should have been submitted with an Invoice is missing or incomplete, including but not limited to performance reporting information, TfL shall notify the Service Provider. If the required information has not been received within ten (10) Working Days from the date of the notice served by TfL, TfL shall be entitled to suspend payment of the relevant amounts until it has received all of the required information from the Service Provider. Once the required information has been provided, unless TfL disputes the amount of the Invoice, in which case the provisions of clause 29.5(A) shall apply, TfL shall pay to the Service Provider the amount set out in the Invoice within thirty (30) calendar days of receipt of the required information.
- 29.6 If any dispute arises in relation to an Invoice, a Milestone Payment, the Service Charges, Pass Through Costs and Incentive Payments and/or any other amount due the Parties shall use their best endeavours to resolve the dispute. If, notwithstanding the Parties seeking to resolve the dispute, it remains unresolved thirty (30) calendar days after it first arose either one of the relevant parties shall be entitled to refer the dispute to the Dispute Resolution Procedure. If it is determined that all or part of the disputed amount is payable TfL shall pay such amount within thirty (30) calendar days of such determination provided that for the purposes of clause 32 (Interest), interest on such amount shall be calculated from the date that the relevant invoice originally fell due and payable.
- 29.7 The Service Charges shall only be varied in accordance with schedule 7 (Charging), schedule 8 (Operational Pricing) or schedule 9 (Change Control Request Procedure).
- 29.8 For any payments payable by the Service Provider TfL shall have, at its discretion, the option to receive such payments in either pounds Sterling or Euro, provided that TfL can only receive such payments in a currency that is legal tender in the UK (or any part thereof) at the time of payment.
30. **Gainsharing**
- 30.1 The provisions of schedule 23 (Gainsharing) shall apply to the calculation, sharing and payment of Excess Profits.
31. **Commercial Exploitation**
- 31.1 The Service Provider shall use its reasonable endeavours to identify opportunities for commercial exploitation of Intellectual Property owned by, or assigned to, TfL under this Agreement and the Service Provider shall discuss with TfL an

appropriate strategy for pursuing such opportunities. The Service Provider shall not enter into any agreements in relation to, or otherwise exploit, any such opportunities (including but not limited to in relation to the TfL Materials) unless and until it shall have agreed in writing with TfL the basis on which such opportunities shall be exploited and TfL's rights in relation thereto.

32. **Interest**

32.1 Interest shall accrue at the Interest Rate on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgment). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty-five (365) day year and compounded at monthly intervals.

33. **Revenue**

33.1 In relation to Revenue, the Service Provider shall comply with the provisions of schedule 32 (Revenue Collection and Payment) and the Statement of Requirements.

33.2 The Service Provider agrees that all Revenue belongs to TfL.

## **PART 10: SERVICE PROVIDER EMPLOYEES AND SUB-CONTRACTORS**

34. **Service Provider's Personnel**

34.1 The Service Provider will use sufficient, suitable, appropriately qualified and competent Personnel in the provision of the Services and will use all reasonable efforts to ensure continuity of its Personnel.

34.2 The Service Provider shall ensure that all Personnel having access to Personal Data, in respect of which TfL is the data controller, are fully aware of the measures to be taken in accordance with this Agreement when Processing Personal Data on behalf of TfL.

34.3 If TfL, acting reasonably, considers that any member of the Service Provider's Personnel is not performing properly, efficiently or effectively or is in any way disruptive to TfL's activities then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of the Service Provider's Personnel. If within twenty (20) Working Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice to the Service Provider, to require the removal of such member of the Service Provider's Personnel with immediate effect. The exercise of this right will not relieve the Service Provider of its obligations under this Agreement.

34.4 If the Service Provider replaces any Personnel for whatever reason, the cost of effecting such replacement shall be borne by the Service Provider (including, for the avoidance of doubt, any costs of training, induction or other efforts involved in bringing the replacement Personnel up to the same level of knowledge as his or her predecessor with regard to the provision of the Services).

- 34.5 For the term of this Agreement and twelve (12) months thereafter neither Party shall, without the prior written consent of the other, solicit or employ any employee of the other directly involved in performance of the other's obligations under this Agreement. This provision shall not apply if an employee is employed as a result of a response by the employee to a public advertisement or as a result of the operation of the TUPE Regulations.
- 34.6 Notwithstanding the foregoing, the Service Provider shall ensure that there are sufficient Service Provider Personnel available with an appropriate level of knowledge and who have been involved in the Design Services and the Build Services during the period from the Effective Date to four (4) weeks after the Release 2 Commencement Date, to resolve any problems arising from the provision of the Services and the operability of the Service Systems in relation thereto.
- 34.7 Nothing contained in this Agreement shall be construed or have effect as constituting any relationship of employer and employee between TfL and any member of Service Provider Personnel.
35. **Key Personnel**
- 35.1 The Service Provider shall make available for the provision of the Services the services of the Key Personnel. The Service Provider acknowledges that the Key Personnel are essential to the provision of the Services and shall ensure that all Key Personnel have appropriate relevant work experience.
- 35.2 The Service Provider shall provide job descriptions ("**Job Descriptions**") for the Key Personnel positions to TfL promptly on request which shall include as a minimum:
- (A) key accountabilities;
  - (B) key competencies;
  - (C) the scope of each role; and
  - (D) the minimum qualifications and experience required to fulfil the role.
- 35.3 The Job Descriptions shall be subject to approval by TfL.
- 35.4 The Service Provider will ensure that each of the Key Personnel devotes their time and effort exclusively to the performance of the Services save to the extent set out in schedule 11 (Key Personnel). The Service Provider will take all reasonable steps to ensure it retains the Key Personnel, save to the extent set out in schedule 11 (Key Personnel), and will not remove or change Key Personnel without TfL's prior written agreement, except that such consent is not required in respect of any removal of Key Personnel where due to dismissal, resignation, illness or other significant personal circumstances.
- 35.5 The Service Provider shall promptly notify TfL if a member of Key Personnel leaves the employment of the Service Provider (including, for the avoidance of doubt, where such member is a secondee to the Service Provider whose secondment ends) and shall include in such notice the reason for their leaving unless prevented by law or a binding obligation of confidentiality.

- 35.6 The Service Provider will ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement will be fully competent to carry out the tasks assigned to the Key Personnel which he or she has replaced within ten (10) Working Days of his/her commencing work on the Services. For the avoidance of doubt, nothing in this clause shall prevent the Service Provider from using temporary staff in the role of Key Personnel while it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of this clause 35 in respect of such temporary staff.
- 35.7 Before assigning replacement Key Personnel, the Service Provider will provide TfL with a curriculum vitae and any other information about the individual as requested by TfL.
- 35.8 If TfL, acting reasonably, considers any Key Personnel unsatisfactory in any respect then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of Key Personnel. If within twenty (20) Working Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice to the Service Provider, to require the removal of such member of Key Personnel with immediate effect, and the terms of clause 35.6 shall apply in respect of replacement of that member of Key Personnel. The exercise of this right will not relieve the Service Provider of its obligations under this Agreement.
- 35.9 TfL shall from time to time notify the Service Provider of the key points of contact for the Services within TfL.

36. **Service Provider Personnel – Information**

- 36.1 The Service Provider shall update and provide to TfL, no later than two (2) weeks following the Effective Date and thereafter within two (2) Working Days of any changes, a manual in such form as is appropriate which shall set out:
- (A) the organisational structure of the Service Provider in relation to the Services;
  - (B) details of the roles and responsibilities of all Key Personnel within the organisation;
  - (C) a curriculum vitae for each member of Key Personnel within the organisation; and
  - (D) each individual's lines of reporting.
- 36.2 The Service Provider shall (subject to restrictions imposed by any relevant Data Protection Laws) within twenty (20) Working Days following a request by TfL during the continuance of this Agreement deliver up, or procure the delivery up of, to TfL full and accurate information in respect of the Service Provider Personnel concerning their number, function, remuneration and benefits, terms of employment or engagement, age, length of service or engagement and the proportion of working time each individual has been concerned with the Services during the preceding twelve (12) Months and such copies of any personnel records as may be required by TfL, such data to be provided in the form set out at schedule 35 (Personnel Information Template) until twelve (12) Months prior to termination or Partial Termination of this Agreement and thereafter such data is to be provided to TfL in

full.

- 36.3 In the event that information provided pursuant to clause 36.2 of this Agreement during the Relevant Period changes in any material respect at any time prior to the expiry or termination of this Agreement or Partial Termination (in respect of those Service Provider Personnel affected by the Partial Termination), the Service Provider will notify TfL promptly, and in any event by or at the next Project Review Meeting. The Service Provider shall upon written request by TfL (such requests to be made at intervals of no less than 20 Working Days except on reasonable grounds) provide updated information within 5 Working Days of such request. Further, the Service Provider shall clarify any matter in relation to the information provided for which TfL makes a request. In supplying such information to TfL the Service Provider thereby consents to the disclosure of such information to any actual or prospective New Service Provider and to TfL's professional advisers and warrants to TfL the accuracy of the information.
- 36.4 No later than ten (10) Working Days following the expiry or termination of this Agreement or Partial Termination, the Service Provider shall provide or procure the provision to TfL or any New Service Provider (as appropriate) updated payroll information following the final payroll run and P45 details in respect of the Assigned Employees (if any) and:
- (A) agrees to pay or provide to the Assigned Employees (if any) all emoluments due or accrued in the period up to but excluding the Termination Date, Partial Termination Date or Expiry Date (whichever is applicable) and shall pay to the appropriate Party an apportioned sum in respect of accrued but untaken holiday pay (less any holiday pay for holiday taken but not yet accrued) in respect of the Assigned Employees as at the Termination Date, Partial Termination Date or Expiry Date (whichever is applicable); and
  - (B) shall provide personnel records relevant to any Assigned Employees (if any) requested by TfL.

37. **No Changes During a Relevant Period**

- 37.1 During any Relevant Period, the Service Provider shall not, and shall procure that none of its Sub-Contractors shall, without the written permission of TfL:
- (A) amend the rate of remuneration (including, without limitation, eligibility to receive payment pursuant to the expiry or termination of this Agreement or Partial Termination) or any other terms of employment or engagement of the Service Provider Personnel (or, in the event only of a Partial Termination, such Service Provider Personnel as are affected by the Partial Termination) (including without limitation the terms of any pension entitlement) and TfL's consent shall not be unreasonably withheld or delayed where such amendments do not exceed the mean amendments made to the relevant grades across the whole of the Service Provider's business for that year, as certified by the human resources director of the Service Provider acting in good faith;
  - (B) redeploy or terminate the employment or engagement of any of the Service Provider Personnel (or, in the event only of a Partial Termination, such Service Provider Personnel as are affected by the Partial Termination);



- (C) recruit any person for employment or engagement in connection with, or assign any additional Service Provider Personnel to, all or any of the Services provided under this Agreement (or, in the event only of a Partial Termination, such Services as are to be Partially Terminated) and TfL's consent shall not be unreasonably withheld where the Service Provider is replacing its Personnel on a one-for-one basis with appropriately skilled employees on substantially similar remuneration to the member(s) of Service Provider Personnel being replaced; or
- (D) amend any existing, compulsory or voluntary Collective Obligation or enter into any new Collective Obligations.

37.2 The Service Provider shall co-operate and procure co-operation from any other employer (save for TfL or any actual or prospective New Service Provider) in the orderly management of issues relating to the Service Provider Personnel (including without limitation any Assigned Employees) in connection with the expiry or termination of this Agreement or Partial Termination. The Service Provider will comply promptly and will procure timely compliance from any other employer (save for TfL or any actual or prospective New Service Provider) with all instructions from TfL with regard to arrangements connected with the expiry or termination of this Agreement or Partial Termination. Insofar as it is within the Service Provider's control and without prejudice to the Service Provider's obligations to comply with its obligations under this Agreement (including but not limited to compliance with Law and the Exit Plan), the Service Provider will take all commercially reasonable steps to reduce the circumstances under which TfL or any New Service Provider may incur cost as a result of the expiry or termination of this Agreement or Partial Termination in connection with the Service Provider Personnel.

### 38. **Pensions**

38.1 The Service Provider shall make available an arrangement (the "**Service Provider Pension Plan**") for the provision of relevant benefits to the Service Provider Personnel in accordance with applicable Laws. The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available to TfL on request. "Relevant benefits" has the meaning given to it in section 612, Income and Corporation Taxes Act 1988.

### 39. **Service Provider Personnel – Obligations on Commencement, Expiry, Termination or Partial Termination**

39.1 The Service Provider shall comply with its obligations, if any, to inform and/or consult in relation to the Transferring Employees in connection with the commencement of the provision of the Services and shall indemnify TfL against any losses, costs, expenses (including taxes, management time and legal fees), liabilities and damages incurred by TfL as a result of the Service Provider's failure to do so.

39.2 TfL shall comply with its obligations, if any, to inform and/or consult in relation to the Transferring Employees in connection with the commencement of the provision of the Services and shall use its reasonable endeavours to procure that the Incumbent Service Provider does so.

- 39.3 The Service Provider agrees to satisfy and will procure that any Sub-Contractor will satisfy all of its obligations up to expiry or termination of this Agreement or Partial Termination (as applicable) with respect to all outgoings and accrued liabilities in respect of the Service Provider Personnel involved in performing the Service Provider's obligations under this Agreement.
- 39.4 The Service Provider shall comply with its obligations, if any, to inform and/or consult in relation to the Service Provider Personnel in connection with expiry or termination of this Agreement or Partial Termination and shall indemnify TfL and/or any New Service Provider against any losses, costs, expenses (including taxes, management time and legal fees), liabilities and damages incurred by them as a result of the Service Provider's failure to do so.
- 39.5 Notwithstanding clause 36 (Service Provider Personnel - Information), the Service Provider shall (subject to any applicable Laws including those relating to data protection) no later than six (6) weeks before expiry or termination of this Agreement or Partial Termination provide to TfL the following relevant information in respect of the Service Provider Personnel:
- (A) their full name and date of birth;
  - (B) their general terms and conditions of employment including (but not limited to) date of commencement of employment/engagement, remuneration details, holiday entitlement, hours of work, pension entitlement and all other benefits;
  - (C) taxation details including PAYE, national insurance contributions and other social security contributions;
  - (D) the date continuous employment began;
  - (E) details of any collective agreements;
  - (F) any outstanding claims arising from their employment; and
  - (G) any other information which, pursuant to the TUPE Regulations, the Service Provider is required to provide in respect of the Service Provider Personnel,
- to enable it to comply with its obligations in respect of the Service Provider Personnel under the TUPE Regulations.
- 39.6 The Service Provider shall:
- (A) co-operate in the orderly management of issues relating to the Service Provider Personnel in connection with expiry or termination of this Agreement or Partial Termination;
  - (B) enable and assist TfL and/or any New Service Provider (as appropriate), if requested, to inform and consult or communicate with and meet any relevant Service Provider Personnel or their trade union or other representatives; and
  - (C) promptly comply with all reasonable instructions from TfL with regard to arrangements in relation to relevant Service Provider Personnel connected with expiry or termination of this Agreement or Partial Termination.

39.7 It is the intention of both of TfL and the Service Provider to follow the Cabinet Office Statement of Practice in relation to staff transfers in the public sector issued in January 2000, where applicable.

40. **Indemnities Relating to Employees**

**Service Provider indemnity on transition**

40.1 The Service Provider shall indemnify TfL and hold TfL harmless against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding by or from or on behalf of a Transferring Employee (including legal fees and expenses on an indemnity basis save where the Service Provider has taken conduct or defence of the claim) which arises or is alleged to arise or is made against TfL:

- (A) by virtue of any actual or alleged act, omission, obligation or liability of the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-Contractor transfers such employee) in relation to a Transferring Employee on or after the date on which the Transferring Employee's employment or engagement transfers to the Service Provider or a Sub-Contractor;
- (B) by virtue of any changes made or proposed by the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-Contractor transfers such employee) in the working conditions or terms of employment of all or any of the Transferring Employees that taken individually or collectively are to the detriment of all or any of the Transferring Employees; or
- (C) by virtue of any rights, obligations or entitlements arising from the TUPE Regulations in relation to a breach by the Service Provider of the TUPE Regulations.

40.2 TfL shall have no liability for any Transferring Employees and the Service Provider shall indemnify TfL against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding (including legal fees and expenses on an indemnity basis) suffered or incurred by TfL as a result of any claim or demand made or brought against TfL by or on behalf of any Transferring Employees relating to matters arising after the date on which the Transferring Employees' employment or engagement transfers to the Service Provider or a Sub-Contractor.

**TfL indemnity on transition**

40.3 TfL shall indemnify the Service Provider and hold the Service Provider harmless against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding (including legal fees and expenses on an indemnity basis) which arises or is alleged to arise or is made against the Service Provider by virtue of the operation of the TUPE Regulations in connection with the Commencement of the Services by virtue of any actual or alleged act, omission, obligation or liability of TfL or any other employer (other than the Service Provider) in relation to a Transferring

Employee prior to the date on which the Transferring Employees' employment or engagement transfers to the Service Provider or a Sub-Contractor

**Service Provider indemnity on exit**

40.4 The Service Provider shall indemnify TfL and any New Service Provider and hold TfL and any New Service Provider harmless against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding (including legal fees and expenses on an indemnity basis) which arises or is alleged to arise or is made against or incurred by TfL or any New Service Provider by virtue of the operation of the TUPE Regulations or otherwise in connection with the performance of the Services and/or expiry or termination of this Agreement or Partial Termination and that is made or brought by:

- (A) one or more of the Service Provider Personnel or former Service Provider Personnel (other than an Assigned Employee) and relates to facts or events occurring at any time prior to the expiry and/or termination of this Agreement or Partial Termination and, in respect of any Transferring Employee, after the date on which their employment or engagement transfers to the Service Provider or a Sub-Contractor, in connection with such person's employment or engagement in respect of the provision of the Services provided under this Agreement or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by the Service Provider, a Sub-Contractor or otherwise);
- (B) an Assigned Employee and relates to facts or events occurring at any time prior to the date on which such Assigned Employee commences Active Employment with TfL or any New Service Provider (as the case may be) and, in respect of any Transferring Employee, after the date on which their employment or engagement transfers to the Service Provider or a Sub-Contractor; or
- (C) a trade union and/or appropriate representatives in connection with all or any of the Service Provider Personnel or former Service Provider Personnel and which relates to facts or events occurring at any time prior to the expiry and/or termination of this Agreement or Partial Termination and, in respect of any Transferring Employee, after the date on which their employment or engagement transfers to the Service Provider or a Sub-Contractor (including without limitation in relation to obligations to inform and consult or any rights, entitlements or liabilities under any Collective Obligations).

40.5 If on the expiry or termination of this Agreement or Partial Termination the TUPE Regulations do not apply then the Service Provider shall indemnify TfL, and any New Service Provider and hold TfL and any New Service Provider harmless, against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding (including legal fees and expenses on an indemnity basis) which arises or is alleged to arise or is made against TfL or any New Service Provider and is made or brought by:

- (A) one or more of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring at any time prior to the

expiry and/or termination of this Agreement or Partial Termination and, in respect of any Transferring Employee, after the date on which their employment transfers to the Service Provider or a Sub-Contractor, in connection with such person's employment or engagement in respect of the provision of the Services provided under this Agreement or the termination of such employment or engagement (including without limitation any dismissal or alleged dismissal of such person by the Service Provider or a Sub-Contractor) or otherwise;

- (B) a trade union and/or appropriate representatives in connection with all or any of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring at any time prior to the expiry and/or termination of this Agreement or Partial Termination and, in respect of any Transferring Employee, after the date on which their employment or engagement transfers to the Service Provider or a Sub-Contractor, (including without limitation in relation to obligations to inform and consult on any rights, entitlements or liabilities under any Collective Obligations).

### **TfL indemnity on exit**

40.6 TfL shall indemnify the Service Provider and hold the Service Provider harmless (or shall procure that the New Service Provider indemnifies the Service Provider and holds the Service Provider harmless) against all and any costs, expenses (including taxes and management time), liabilities, damages and losses arising out of any demand, claim, action or proceeding (including legal fees and expenses on an indemnity basis) which arises or is alleged to arise or is made against the Service Provider and that is made or brought by:

- (A) one or more Assigned Employees; or
- (B) a trade union and/or appropriate representatives in connection with all or any of the Assigned Employees,

and which in either case relates to facts or events occurring at any time after the expiry, termination or Partial Termination of this Agreement in connection with the Assigned Employee's employment or engagement by TfL or the New Service Provider (as applicable) in respect of the provision of replacement services equivalent to the Services or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by TfL or the New Service Provider).

### **41. Assistance with Employment Claims**

41.1 In the event that any of the Service Provider Personnel or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services, makes a claim against TfL or a New Service Provider arising out of or in connection with the provision of the Services, TfL and the Service Provider shall notify the other Party that such claim has been made and shall give to the other as soon as practicable after any request all co-operation, assistance and information which may be reasonably required by the other in relation to the claim.

## 42. **Compliance with Policies**

42.1 The Service Provider, at no additional cost to TfL:

- (A) shall, and shall procure that all the Service Provider's Personnel shall, comply with:
- (1) all of TfL's policies and standards that are relevant to the performance of the Services, including but not limited to the provisions set out in schedule 34 (TfL Policies) and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by TfL for personnel working at TfL's premises or accessing TfL's computer systems from time to time in place; and
  - (2) the provisions of schedule 24 (Equality and Diversity);
- (B) without limiting the generality of clause 42.1(A), shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- (C) acknowledges that TfL 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 providing the Services, the Service Provider shall assist and cooperate with TfL where possible in satisfying this duty;
- (D) acknowledges that TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
- (1) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - (2) eliminate unlawful discrimination; and
  - (3) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,
- and in providing the Services, the Service Provider shall assist and cooperate with TfL where possible to enable TfL to satisfy its duty;
- (E) in all cases, the costs of compliance with this clause 42.1 shall be borne by the Service Provider.

42.2 TfL shall provide the Service Provider with copies of the policies and standards referred to in clause 42.1(A) on request.

42.3 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:

- (A) preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- (B) enhance the environment and have regard to the desirability of achieving sustainable development;
- (C) conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- (D) sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

43. **Sub-Contractors and Key Sub-Contractors**

- 43.1 The initial list of Key Sub-Contractors is set out in schedule 26 (Key Sub-Contractors). TfL shall be entitled from time to time to add to the list of Key Sub-Contractors through the Change Control Request Procedure provided that if the person to be added as a Key Sub-Contractor was a Sub-Contractor as at the Effective Date but is either: (i) not referred to in schedule 28 (Service Provider's Solution); or (ii) the scope of their role is not set out in sufficient detail in that schedule for TfL, acting reasonably, to determine whether they should be a Key Sub-Contractor, then all cost of adding them as a Key Sub-Contractor shall be borne by the Service Provider. The Service Provider shall promptly thereafter comply with this clause 43 in respect of such Key Sub-Contractor.
- 43.2 TfL shall have the right to approve the material terms of any Key Sub-Contract before the Service Provider enters into any legally binding contracts with the Key Sub-Contractors, and to approve the terms of any material amendments to Key Sub-Contracts. For the purposes of this clause, "material terms" and "material amendments" shall include without limitation the following: financial terms; terms relating to liability of either Party; and terms which are expressly required pursuant to this Agreement to be included in such Key Sub-Contract.
- 43.3 The Service Provider undertakes to TfL that it will ensure that any Key Sub-Contract (excluding any contract of employment or any contract in respect of TfL's property) entered into by the Service Provider:
- (A) will be accompanied by a collateral deed by the Party or parties contracting with the Service Provider directly enforceable by TfL (or its nominee) and in the form of schedule 22 (Collateral Deed); and
  - (B) will not contain any terms which would have the effect of depriving TfL (or its nominee) of all or a substantial part of the benefit of the collateral deed referred to in clause 43.3(A) above.
- 43.4 The following has been agreed concerning the placement of Sub-Contracts:
- (A) the Service Provider shall carry out and be responsible for the placing of Sub-Contracts to meet the requirements of the Statement of Requirements and to provide the Services; and

- (B) the Service Provider shall create and maintain an accurate and up-to-date log of all Sub-Contracts which it shall make available to TfL on request from time to time.

43.5 The Service Provider shall ensure that all contracts entered into by the Service Provider with Sub-Contractors provide that payment by the Service Provider to the Sub-Contractor shall be made no later than thirty (30) calendar days from receipt of an invoice.

43.6 The Service Provider shall ensure that TfL is protected from any Sub-Contractor defaulting under its relevant Sub-Contract or causing the Service Provider to default under this Agreement, including by introducing appropriate measures and where appropriate but without limitation to the generality of the foregoing, obtaining parent company guarantees.

43.7 Such measures will be monitored by the Service Provider and reported to TfL on a Monthly basis and discussed as part of the Strategic Reviews.

## **PART 11: ADDITIONAL OBLIGATIONS**

### **44. Additional Service Provider Obligations**

44.1 Without limitation and in addition to the Service Provider's other obligations set out in this Agreement, the Service Provider shall:

- (A) in performing its obligations under this Agreement, not do or omit to do or permit or suffer to be done anything which might be or become a danger to any persons or cause damage to any property;
- (B) provide to TfL such co-operation, information, advice and assistance in connection with the Schemes, the Services and in carrying out its obligations under this Agreement as TfL may require;
- (C) at all times act with good faith in its dealings with TfL, Customers, its Sub-Contractors or agents and Other Service Providers and shall ensure that its Personnel shall act in such a way that the name and good reputation of TfL is not brought into disrepute or otherwise becomes adversely affected; and
- (D) shall ensure that at all times throughout the duration of this Agreement, all Sub-Contracts, equipment rental or lease agreements, licences of Intellectual Property Rights (subject to clause 51 (Licensing of Intellectual Property Rights)), and all other non-employment contracts which are necessary for the performance of the Services, are assignable to TfL (without any transfer charge) upon the occurrence of any of the events described in clause 72 (Termination).

### **45. TfL Obligations**

45.1 TfL shall:



- (A) use its reasonable endeavours to respond within a commercially reasonable timescale to all reasonable requests by the Service Provider for information and/or access to TfL's Personnel as specifically required in this Agreement but only insofar as required for the Service Provider to perform its obligations under this Agreement; and
- (B) use its reasonable endeavours to facilitate communications between the Service Provider and Other Service Providers relevant to this Agreement where such communications are necessary in order for the Service Provider to be able to perform its obligations under this Agreement.

## **PART 12: CHANGES AND CHANGE MANAGEMENT**

### **46. Change Control Request Procedure**

- 46.1 Each Party shall have the relevant rights and obligations in schedule 9 (Change Control Request Procedure).
- 46.2 The Service Provider acknowledges that TfL may at its sole discretion at any time (but, unless otherwise expressly provided in this Agreement, subject to any changes to the Agreement arising as a result being effected through the Change Control Request Procedure) amend the details of the Schemes including without limitation the amounts and nature of Congestion Charge Payments and LEZ Charge Payments, discount and exemption structures, Scheme boundaries and the times and days of operation of the Schemes.
- 46.3 The Service Provider shall, subject to the Change Control Request Procedure, be obliged to change the scope and extent of the Services in the event of a change to a Scheme or the Schemes, including without limitation changes in the geographical extent of a Scheme or the Schemes.

## **PART 13: CONTRACT MANAGEMENT, MONITORING AND AUDIT**

### **47. Contract Management and Incident Management**

- 47.1 The Parties shall comply with the provisions of schedule 10 (Contract Management and Reporting).

### **48. TfL Monitoring Staff**

- 48.1 Without prejudice to the provisions of the Statement of Requirements and clause 10 (Progress Monitoring of Design and Build), TfL shall have the right to locate, at any time and for such period as TfL may require from time to time, up to five (5) (or such other number as the Parties may agree from time to time) TfL employees or representatives (“**TfL Monitors**”) over and above the PMAs, at the Premises and/or any Sub-Contractor’s premises in order to monitor and review the Service

Provider's performance of its obligations and provision of the Services under this Agreement.

48.2 The Service Provider shall provide, at no additional cost to TfL, such office accommodation, facilities, information and access to each PMA and TfL Monitor as they may reasonably require from time to time, including but not limited to:

- (A) a desk and chair, with working telephone and personal computer (in the case of TfL Monitors such may be provided by means of 'hotdesks');
- (B) utilities and public conveniences; and
- (C) parking space.

48.3 The Service Provider shall:

- (A) invite such of the TfL Monitors and PMAs to internal Service Provider meetings as TfL may require from time to time and shall permit such TfL Monitors to attend such meetings;
- (B) permit such of the TfL Monitors and PMAs as TfL may require from time to time to attend Test Witnessing; and
- (C) ensure that its Key Sub-Contractors comply with the provisions of this clause 48 as if they were a Party hereto.

48.4 The Service Provider acknowledges that:

- (A) the presence of TfL Monitors at the Premises from time to time shall in no way diminish or limit the Service Provider's responsibility for providing the Services in accordance with this Agreement; and
- (B) the actions of the TfL Monitors shall not in any circumstances be taken to be, or indicate, the Approval or acceptance of TfL.

#### 49. **Audit and Inspection**

49.1 The Service Provider shall, and shall procure that its Sub-Contractors shall:

- (A) maintain a complete, current and accurate set of records pertaining to all activities relating to the provision of the Services and all transactions entered into by the Service Provider for the purposes of this Agreement (or, in the case of a Sub-Contractor, all transactions entered into by the Sub-Contractor for the purposes of the relevant Sub-Contract); and
- (B) retain all such records for a period of not less than six (6) years (or such period, if different, as may be prescribed by Law) following termination or expiry of this Agreement and at the end of such period TfL may require that a subset of documents relevant to its then existing requirements be delivered by the Service Provider to TfL.

49.2 Subject to clause 81 (Confidentiality), the records will be held by the Service Provider on its own behalf for the purposes of provision of the Services and TfL's

rights of access shall be solely as required for and in accordance with this clause 49 or as otherwise set out in this Agreement.

49.3 The records referred to in clause 49.1 shall include but are not limited to the following, insofar as they relate to the Services or this Agreement:

- (A) records of all Service Provider Personnel involved in the provision of the Services including names, training records and National Insurance numbers;
- (B) all sub-contracts (including proposals of successful and unsuccessful bidders, bids and rebids), commitments, leases, manufacturer's specifications and details, purchase orders and data relating to procurement of the Services or any part of the Services;
- (C) management accounts, information from management information systems and any other management records;
- (D) accounting records (in hard copy as well as computer readable data);
- (E) original estimates;
- (F) estimating worksheets;
- (G) correspondence;
- (H) variation, claims and compensation events files (including documentation covering negotiated settlements);
- (I) general ledger entries detailing cash and trade discounts and rebates;
- (J) detailed inspection records;
- (K) information relating to each and all System Failures, prepared in accordance with clause 25; and
- (L) any other information specified in this Agreement.

49.4 The Service Provider shall procure that each Sub-Contract into which it enters shall contain:

(A) equivalent rights of audit, inspection and access in favour of TfL (and any Third Party to whom rights of audit, inspection and access are granted pursuant to this clause 49); and

(B) equivalent obligations on the relevant Sub-Contractor,

to those set out in this clause 49.

49.5 TfL and its authorised representatives on its behalf may at any time during the Term and during the period of not less than six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement, and with five (5) Working Days' prior notice or such shorter notice as is reasonable in the circumstances, undertake any inspection of the Service Systems and the Services

and any audit or check of any matter relating to the Service Provider's performance under this Agreement including, without limitation:

- (A) the recording and calculation of the Service Charges, Incentive Payments, Service Failure Deduction Points and Service Failure Deductions;
- (B) the Gainsharing provisions in schedule 23 (Gainsharing);
- (C) the implementation of the Security Policy and compliance with schedule 14 (Security Policy);
- (D) the method of report production and Data transformations including conditions used for extraction of Data from source Systems and reconciliation of source to target Data;
- (E) the Solution Architecture and operation of MIS;
- (F) compliance with the data protection provisions in clause 61 (Information Compliance) and schedule 15 (Information Compliance);
- (G) testing conduct, methodology and procedures; and
- (H) the evaluation of claims, compensation events or variations.

49.6 The Service Provider shall grant identical inspection, audit and/or checking rights to those described in clause 49.5 where the same shall have been requested by the District Auditor or any other national or local Government body or department whether currently in existence or coming into existence during the continuance of this Agreement or at any time during the period of six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement.

49.7 The Service Provider shall, at no additional cost to TfL, promptly co-operate in relation to any inspection, audit or check including (without limitation) to the extent relevant to the particular inspection, audit or check:

- (A) granting or procuring the grant of access to any premises used in the Service Provider's performance of this Agreement, whether the Premises, a Sub-Contractor's premises or otherwise;
- (B) granting or procuring the grant of access to any equipment (including all Hardware, Software and Service Databases) used (whether exclusively or non-exclusively, although in the latter case subject to any reasonable requirements of the Service Provider relating to health and safety, third party confidentiality and non-disruption to the Service Provider's business) in the performance of the Service Provider's obligations under this Agreement, wherever situated and whether the Service Provider's own equipment, a Sub-Contractor's equipment or otherwise;
- (C) granting access to any data dictionary and the fields and records within it to enable Data (including standing data and transaction data processed by the Service Systems and security settings) to be downloaded from any computer Systems operated by the Service Provider or a Sub-Contractor;

- (D) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to, Data during the audit. The Service Provider shall, in addition, maintain records of all and any fraudulent access attempts which may compromise the security of the Services or the Service Systems;
- (E) making the Documentation and any logs, documents and records required to be maintained under this Agreement (whether exclusively or non-exclusively) available for inspection;
- (F) providing a reasonable number of copies of any documents or records and/or granting copying facilities for the purposes of making such copies;
- (G) maintaining Service Systems journal records for a minimum period of twelve (12) Months irrespective of the occurrence of any fraudulent act, suspected fraudulent act or security breach;
- (H) complying with TfL's requests for access to Personnel engaged in the Service Provider's performance of the Agreement;
- (I) procuring that all Personnel fully co-operate with TfL in relation to any audit or inspection conducted pursuant to this clause 49; and
- (J) providing all requested support at its own facilities to TfL or its representatives in the discharge of their functions and allowing them use of suitable office accommodation if necessary.

49.8 Without limitation to the generality of the foregoing provisions of this clause 49, the audit methodology of the Service Provider used in providing Management Information and reports to TfL will be subject to audit by TfL from time to time, as required by TfL. The Service Provider shall:

- (A) ensure that the audit methodology identifies omissions in the relevant process being audited and that all features, functions and facilities ascribed as part of the Services (or any part of the Services or between any part of those features, functions and facilities) which are not provided or managed by the Service Provider in accordance with this Agreement are identified and addressed;
- (B) provide details of its audit methodology which shall be at least equivalent to Good Industry Practice and to TfL's satisfaction;
- (C) without prejudice to the foregoing provisions of this clause 49, if TfL considers that the Service Provider's audit methodology is not at least equivalent to Good Industry Practice, TfL shall be entitled to require the Service Provider to:
  - (1) adopt a more rigorous methodology in line with Good Industry Practice. Such methodology shall be adopted by the Service Provider within twenty-five (25) Working Days of TfL serving notice on the Service Provider requiring it to do so; and/or

- (2) implement any other recommendations made by TfL in relation to the Service Provider's audit methodology from time to time at no additional cost to TfL; and

(D) implement the audit methodology.

49.9 Without prejudice to clause 49.8 if TfL, as a result of audit or inspection whether or not undertaken in accordance with this clause 49, identifies any failures by the Service Provider in complying with the requirements of this Agreement, TfL may notify the Service Provider to this effect. Promptly following receipt of such notice, and in any event no later than twenty (20) Working Days from the date of such notice, the Service Provider shall rectify such failures to the satisfaction of TfL, at no cost to TfL.

49.10 In the event that an inspection, audit or check reveals that information previously supplied to TfL pursuant to this clause 49, or otherwise, was inaccurate and:

(A) such information was inaccurate in any material respect; and/or

(B) any inaccuracy results in or creates any adverse impact on TfL, its business or any of the Schemes,

the cost incurred by TfL and the Service Provider in respect of any such inspection, audit or check shall be borne by the Service Provider.

49.11 In the event of dispute over the existence of an inaccuracy under clause 49.10, or a dispute as to whether fraudulent activity on the part of the Service Provider, its agents, employees or Sub-Contractors has taken place and/or the extent of such fraudulent activity, the Dispute Resolution Procedure shall apply.

49.12 In respect of any accounting information supplied by the Service Provider to TfL such statement shall, at the request of TfL, be accompanied by a separate audit certificate from the appointed auditor of TfL or an independent auditor nominated by TfL and at TfL's request, subject to clause 49.10, the reasonable cost of such audit certificate to be borne by TfL.

49.13 The Service Provider acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. Without prejudice to the provisions of clause 3 (Value for Money Review), the Service Provider shall assist TfL to discharge its duty wherever possible, and in doing so, it shall inter alia carry out any reviews of the Services requested by TfL from time to time. The Service Provider agrees to negotiate in good faith (acting reasonably) any changes to the Agreement in order for TfL to achieve best value.

#### **49A. Open Book**

49A.1 The Service Provider shall provide to TfL information on a Monthly basis (or more frequently as the Parties may expressly in writing agree) in accordance with the template set out in schedule 30 (Open Book Template) together with such supporting information as TfL may reasonably require.

- 49A.2 The Service Provider shall ensure that the proportion of central overhead allocated to the provision of the Services shall be certified by the Service Provider's chief financial officer to the effect that it is equivalent to other allocations of such overhead in respect of comparable business units (in terms of size and nature of business) within the Service Provider.
- 49A.3 The Service Provider shall prepare and provide the Project Accounts in accordance with the provisions of clauses 49A.1 and 49A.2.

## **PART 14: INTELLECTUAL PROPERTY**

### **50. Ownership and Assignment of Intellectual Property Rights**

- 50.1 Subject to clause 50.7, TfL shall own the Intellectual Property Rights subsisting or residing in the TfL Materials and the TfL IPR and the Service Provider shall not acquire any rights in those Intellectual Property Rights or in any other Intellectual Property Rights owned by TfL, whether pre-existing or created during the Term of this Agreement.
- 50.2 As between the Parties, the Service Provider shall own the Intellectual Property Rights subsisting or residing in the Licensed Materials.
- 50.3 Without limiting clause 54.8 (Source Code), the Service Provider shall, as it develops the Detailed Design and other Services Materials and thereafter pursuant to the Change Control Request Procedure, inform TfL of the nature of all of the programs and code which it or any Affiliate of the Service Provider and/or any Sub-Contractor proposes to create pursuant to this Agreement, together with its view (with supporting evidence) as to whether or not such programs and code constitutes TfL Materials. Any dispute about whether any Services Materials constitute TfL Materials shall be referred to the Dispute Resolution Procedure.
- 50.4 In consideration of the sum of one pound (£1) (receipt of which is hereby acknowledged by the Service Provider), and subject to clause 50.7, the Service Provider agrees that TfL shall own upon their creation (and otherwise assigns to TfL) ownership of present and future Intellectual Property Rights subsisting or residing in (or in connection with) the TfL Materials. The Service Provider undertakes, at TfL's request and expense, to do all such acts and execute all deeds and other documents which may reasonably be required to confirm and perfect TfL's ownership of the Intellectual Property Rights assigned under this clause, whether in connection with registration, title or otherwise.
- 50.5 Any assignment of Intellectual Property Rights pursuant to this clause 50 shall be with full title guarantee, free from encumbrances and shall include the right to take action for any past, present and future damages and other remedies in respect of any infringement.
- 50.6 The Service Provider shall provide to TfL (or any person nominated by TfL in writing) a copy of the Source Code for all Software and copies of all Documentation the Intellectual Property Rights in which are assigned to TfL pursuant to clauses 50.4 and 50.5 (including without limitation any update or upgrade of that Software) and

shall do so at the same time as providing any associated Deliverable to TfL during the Implementation Phase or in connection with a Change or, in all other circumstances, on no less than a monthly basis.

50.7 The provisions of clauses 50.1 and 50.4 shall not apply to the Service Provider's (or its licensors') pre-existing patents that subsist or reside in (or in connection with) the TfL Materials (the Intellectual Property Rights excluded from the scope of clauses 50.1 and 50.4, by virtue of this clause 50.7, are "**Background IPR**" and not TfL Materials). For the avoidance of doubt such Background IPR is Licensed Materials.

## 51. Licensing of Intellectual Property Rights

*[Information Redacted]*

## 52. General Provisions Relating to Intellectual Property Rights

52.1 The Service Provider shall, in accordance with clause 50.6 (Ownership and Assignment of Intellectual Property Rights) (in the case of TfL Materials) and/or promptly following a written request by TfL and in any event upon expiry or termination of this Agreement or Partial Termination for any reason whatsoever, ensure that all originals and copies of TfL Materials (including without limitation all physical embodiments and all Source Code and object code) and one copy of all other Intellectual Property Rights (in object code form in relation to Software) licensed to TfL under clause 51 (Licensing of Intellectual Property Rights) are delivered-up to TfL (or TfL's nominee).

52.2 Without prejudice to TfL's rights and the Service Provider's obligations under this Agreement in respect of TfL Materials or Licensed Materials, the Service Provider agrees to maintain at all times an up-to-date register of all TfL Materials and Licensed Materials as part of the Asset Register. Such register shall specify where any listed item is Excluded COTS Software, Other Excluded Software, a Generic Modification, Use Only Software and/or Term Only Software. The Service Provider may from time to time notify TfL in writing of the Service Provider's wish to amend such register to reflect the Service Provider's inadvertent and mistaken omission of any Software from the then current list of Excluded COTS Software or Other Excluded Software. At the same time as notifying TfL of a proposed amendment, the Service Provider shall provide evidence supporting the proposed amendment and that the Software is:

- (A) COTS and should be listed as Excluded COTS Software; or
- (B) was not developed in the course of providing the Services, in anticipation of entry into this Agreement or otherwise for the purposes of this Agreement or the Schemes and should be listed as Other Excluded Software.

Subject to the foregoing and to any conditions imposed by TfL (which conditions may include without limitation a requirement to substitute the Software within a specified timeframe), TfL shall not unreasonably withhold its consent to the Service Provider's requested inclusion of Software in the list of Excluded COTS Software or Other Excluded Software.



- 52.3 The Service Provider acknowledges that all licensing charges relating to the use of the Licensed Materials, during the Term of this Agreement and (subject to clause **Error! Reference source not found.**) thereafter, shall be included in the Service Charges payable by TfL to the Service Provider under this Agreement (including without limitation any Source Code to which TfL is entitled access pursuant to clauses 50 (Ownership and Assignment of Intellectual Property Rights) and 54 (Source Code)).
- 52.4 To the extent permitted by applicable Law, the Service Provider hereby waives and confirms it has obtained all necessary waivers in relation to all Moral Rights comprised in any rights assigned to TfL pursuant to clause 50 (Ownership and Assignment of Intellectual Property Rights).
- 52.5 No Intellectual Property Rights in the trade marks or brands of TfL shall be used by the Service Provider without TfL's prior written consent.
- 52.6 The Service Provider or TfL may use know how gained in the performance of this Agreement in the furtherance of either of their normal businesses to the extent that such use does not involve in the case of the Service Provider or TfL and their respective Affiliates, use of any Intellectual Property Rights of the other Party or the other Party's licensor(s) other than as permitted under the terms of this Agreement.

53. **Intellectual Property Rights Indemnity**

53.1 Subject to clause 53.2, the Service Provider warrants that:

- (A) the provision and receipt of the Services;
- (B) the operation of the Service Systems (including without limitation use of Software); and
- (C) the use by TfL, the TfL Group, Other Service Providers, Third Parties, any New Service Provider or any other nominee of TfL or permitted sublicensee of the Software, Hardware, Systems, Documentation, Data, Information, and other Intellectual Property Rights, in each case assigned or licensed to it (or sublicensed to its sublicensee) in accordance with clauses 50 (Ownership and Assignment of Intellectual Property Rights) and 51 (Licensing of Intellectual Property Rights),

shall not infringe the Intellectual Property Rights of any Third Party.

53.2 The Parties agree that the warranties in clause 53.1 shall not apply if and to the extent that any infringement arises in respect of:

- (A) TfL's and/or its permitted sublicensees' use of the TfL Materials or Licensed Materials in combination with specific Hardware or Software (not provided or recommended by the Service Provider (including as part of the Services Materials)), provided that the Service Provider shall expressly notify TfL in writing where the Service Provider is aware that the combination of relevant TfL Materials or Licensed Materials with specific Hardware or Software would lead to an infringement or an alleged infringement; and/or

- (B) use of the Licensed Materials in contravention of the terms of the licence granted under clause **Error! Reference source not found.** (Licensing of Intellectual Property Rights).
- 53.3 The Service Provider shall fully indemnify TfL and keep TfL indemnified against each and every action, proceeding, demand, liability, cost, claim, loss, expense (including without limitation reasonable legal fees and disbursements on an indemnity basis under clause 53.5 or 53.6) and demand arising from or incurred by TfL, the TfL Group, Other Service Providers, Third Parties, any New Service Provider or any other nominee of TfL or permitted sublicensee by reason of any infringement or alleged infringement of any Intellectual Property Rights in connection with the circumstances referred to in clause 53.1(A), 53.1(B) or 53.1(C) (a “**Claim**” or together, “**Claims**”).
- 53.4 The Service Provider shall forthwith notify TfL if any Claim is made or brought against the Service Provider. At the same time as notifying TfL of any such Claim or on receipt of notice of any other Claim from TfL, the Service Provider shall provide TfL with relevant Information in respect of such Claim and the Service Provider’s initial assessment of the potential impact of the Claim on the Services and the operation of this Agreement (“**Initial Claim Assessment**”). The Service Provider shall regularly (and in any event no less than once per week following the date of the Initial Claim Assessment) report in writing to TfL in respect of developments in respect of each Claim. Such report shall include without limitation any Information in respect of the Claim not previously provided to TfL by the Service Provider and the Service Provider’s update to the Initial Claim Assessment.
- 53.5 The Service Provider shall at its own expense conduct any litigation arising from any infringement or alleged infringement of a Third Party’s Intellectual Property Rights and all negotiations in connection therewith in such a way as to minimise damage to the reputation of TfL. TfL hereby agrees to grant to the Service Provider the exclusive control of any such litigation and such negotiations save that the Service Provider shall consult with TfL (and take due account of matters raised by TfL) at all times in respect of the Service Provider’s conduct of any such litigation and save that in the event that the Service Provider refuses or has delayed in any way to solve or participate fully in any Claim or failed to consult with TfL in respect of the Service Provider’s conduct of any such litigation (and take due account of matters raised by TfL) or failed to minimise damage to TfL’s reputation resulting from a Claim (as required above), TfL may take over the conduct of the Claim by giving written notice to the Service Provider (at the cost and expense of the Service Provider including without limitation in respect of the amount of any settlement or judgment and reasonable legal fees and disbursements on a solicitor and own client basis).
- 53.6 At the request of the Party that has control of the Claim, the other Party shall afford to it all reasonable assistance for the purpose of contesting any Claim and (in the case of such assistance by TfL) the Service Provider shall repay TfL all costs and expenses incurred by TfL in so doing including, without limitation, full legal costs and disbursements on a solicitor and own client basis.
- 53.7 Unless permitted by the Service Provider and subject to TfL rights to take over and conduct any Claim under clause 53.5, TfL shall not make any admissions which may be prejudicial to the defence or settlement of any Claim for infringement or alleged infringement of any Intellectual Property Rights by TfL.

- 53.8 Without limiting the indemnity in clause 53.3, if a Claim is made or in the opinion of TfL or the Service Provider is likely to be made, the Service Provider shall at the Service Provider's sole option (provided that the Service Provider shall consult with TfL (and take due account of matters raised by TfL) at all times in respect of the Service Provider's exercise of such option, including without limitation so as to ensure minimal disruption to the provision of the Services and minimal damage to the reputation of TfL), and the Service Provider's own expense:
- (A) modify any part or all of the Software, Hardware, Systems, Services, Documentation, Data, Information or other Intellectual Property Rights without reducing the performance and functionality of the same, or substitute alternative items or services of equivalent performance and functionality so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified items or services;
  - (B) procure a licence for TfL to use the item(s) or Services on the same terms as clause **Error! Reference source not found.** (Licence from Service Provider); or
  - (C) take such other action as the Service Provider may propose and TfL may agree to avoid or settle such Claim.
- 53.9 If the Service Provider has modified or supplied substitute item(s) or services under clause 53.8(A) or procured a licence in accordance with clause 53.8(B) and this has not avoided any Claim for infringement or alleged infringement, and if the Service Provider has otherwise failed to avoid or settle the Claim for infringement or alleged infringement in accordance with clause 53.8(C), then (without limiting the indemnity in clause 53.3), TfL may terminate this Agreement by written notice with immediate effect and the Service Provider shall be liable for all reasonable and unavoidable costs of such modifications and substitution, including without limitation any costs associated with the implementation and maintenance of such modifications and substitution.
- 53.10 Without limiting the indemnity in clause 53.3, if a modification or substitution in accordance with clause 53.8(A) above is not possible so as to avoid the infringement or alleged infringement or the Service Provider has been unable to procure a licence in accordance with clause 53.8(B) or if the Service Provider has otherwise been unable to avoid or settle the infringement or alleged infringement in accordance with clause 53.8(C) (and TfL has not terminated this Agreement pursuant to clause 53.9) the Service Provider shall be liable for all unavoidable costs of substitute items or services pursuant to the terms of this Agreement.
- 53.11 Subject to the provisions of clause 53.12, TfL will defend and indemnify the Service Provider against any claim that TfL IPR and TfL Materials (where the Intellectual Property Rights in those TfL Materials were created by or on behalf of TfL (other than by or on behalf of the Service Provider) and those TfL Materials have been provided by TfL to the Service Provider) used by the Service Provider as permitted by the terms of this Agreement ("**TfL Furnished Material**") infringes a Third Party's Intellectual Property Rights, except for any item or thing the subject of the indemnity in clause 53.3 and provided that:
- (A) the Service Provider notifies TfL in writing within twenty (20) Working Days of the claim;

- (B) TfL has sole control of the defence and all related settlement negotiations; and
- (C) the Service Provider provides TfL with the assistance, Information and authority necessary to perform the above. Reasonable out-of-pocket expenses incurred by the Service Provider in providing such assistance will be reimbursed by TfL, including, without limitation, full legal costs and disbursements on a solicitor and client basis.

This clause 53.11 does not apply to Deliverables created by the Service Provider, or Services provided by the Service Provider, arising out of TfL Furnished Material, as it is at the Service Provider's discretion to choose the manner in which it creates such Deliverables or provides such Services.

53.12 If some or all of TfL Furnished Material is held or is believed by TfL to infringe a Third Party's Intellectual Property Rights, TfL shall have the option, at its expense:

- (A) to modify the material to be non-infringing or supply substitute non-infringing material to the Service Provider;
- (B) to obtain for the Service Provider the right to continue using TfL Furnished Material; or
- (C) to require return of the infringing material from the Service Provider and terminate all rights thereto. If such return materially affects either Party's ability to meet its obligations under this Agreement, and TfL is unable to obtain a reasonable substitute for such material and the Service Provider is unable to assist TfL in obtaining a reasonable substitute for such material, then the Parties shall enter good faith discussions using the Change Control Request Procedure to make such amendments to this Agreement, the Services or the Service Systems as may be necessary to maintain the provision of the Services with the minimum of disruption.

## **PART 15: PROVISIONS OF GENERAL APPLICATION**

### **54. Source Code**

54.1 The Service Provider shall, unless notified otherwise by TfL in writing:

- (A) promptly upon TfL's Approval of any Escrow Software during the Implementation Phase;
- (B) at the commencement of the Systems Integration Testing, as described in schedule 4 (Testing Regime);
- (C) no later than one (1) Month prior to the Planned Operational Commencement Date;

- (D) during the Operational Phase, within ten (10) Working Days of any major modifications having been made to Escrow Software included in the Service Systems;
- (E) no later than fifteen (15) Working Days prior to each other Milestone Date;
- (F) promptly following TfL's approval of any Escrow Software in connection with Release 2 or any Additional Services; and
- (G) in any event every two (2) weeks from the Effective Date in respect of the Service Systems Software,

place the Source Code and object code of the relevant part of the Escrow Software together with the associated Documentation in escrow with the National Computing Centre, Manchester, subject to clause 54.4, on:

- (1) the terms of the National Computing Centre's standard tripartite Agreement, and including without limitation the terms referred to in clause 54.6; or
- (2) such other terms as the Service Provider and TfL shall from time to time agree.

54.2 The Service Provider shall thereafter keep current (in relation to the executable code of Escrow Software used to provide the Services) the Source Code and object code of major modifications to all Escrow Software and the associated Documentation by depositing the latest copy of the Source Code and object code and Documentation with the National Computing Centre within the timeframe specified in clause 54.1(D).

54.3 All escrow costs shall be borne by the Service Provider during the Term.

54.4 This clause 54 shall not apply to Websphere, any other COTS Software owned by the Service Provider Group and forming part of the Excluded COTS Software or the Term Only Software and any Third Party Software to the extent and during such period as such Third Party Software is:

- (A) part of the TfL Materials, or not available from the Third Party proprietor(s) thereof in Source Code format to the Service Provider provided that Third Party Software is at all times commercially available to TfL on substantially the same terms and conditions as under this Agreement; or
- (B) deposited with a Third Party escrow agent on the basis of a source code deposit agreement and only available in Source Code format to the Service Provider on the occurrence of an event or on the exercise of a right specified in that source code deposit agreement, in which case the Service Provider shall, and (where appropriate) shall procure that its Sub-Contractors, procure that TfL is entitled to the benefit of the source code deposit agreement and to receive a copy of the Source Code and object code for the deposited Third Party Software directly from the Third Party escrow agent on substantially the same basis as the Service Provider or any Sub-Contractor (as the case may be). Details of all arrangements made by the Service Provider pursuant to this clause shall be provided to TfL as part of the Asset Register and shall be kept current to within one (1) month.

54.5 The Source Code and object code and associated Documentation placed in escrow pursuant to clause 54.1 and 54.2 shall provide adequate Information and instruction to enable TfL or a New Service Provider to make full and proper use of the Software to the extent provided in the licences granted in clause 51 (Licensing of Intellectual Property Rights).

54.6 The Service Provider shall ensure that the National Computing Centre's standard tripartite Agreement they use shall include (in addition to the standard release events provided for by such agreement) the following as release events for the Source Code and Documentation:

- (A) if this Agreement expires (other than in the case of Term Only Software) or notice of termination or a Partial Termination Notice is served by either Party hereto for any reason whatsoever or TfL exercises its Step-in Rights (and for the purposes of exercising such Step-In Rights requires access to relevant Source Code and Documentation);
- (B) if the Service Provider or a Guarantor is subject to, or if TfL reasonably believes that the Service Provider or a Guarantor may become subject to, an Insolvency Event;
- (C) if the Service Provider or any Sub-Contractor assigns its Intellectual Property Rights in the Escrow Software and the Service Provider fails to procure from the assignee within forty (40) Working Days of such assignment substantially similar protection for TfL to that provided by this Agreement without significantly increasing the cost to TfL; or
- (D) if the Service Provider has breached clause 23 (Systems, Support and Maintenance) (including but not limited to, an unreasonable delay in providing Full Support) in relation to Software to which the Source Code and Documentation relates and has failed to remedy the breach within ten (10) Working Days of its receipt of a notice from TfL requiring it to do so,

and in such circumstances (and in any event when any other release event occurs under the National Computing Centre's standard tripartite agreement) the Service Provider will upon written request from TfL forthwith release to TfL a copy of the relevant Source Code and object code for the Escrow Software licensed under clause 51 (Licensing of Intellectual Property Rights).

54.7 The Service Provider grants a presently usable licence, on release of the Source Code, object code and Documentation from escrow, in respect of the Source Code, object code and Documentation:

- (A) of the same type as is specified in clause 51 (Licensing of Intellectual Property Rights); and
- (B) without limiting clause 54.7(A), to TfL to use the Source Code, object code and Documentation (including a licence to sublicense use to TfL's contractor or a New Service Provider) to adapt and modify the Source Code in order to maintain, adapt and modify the Software so that TfL or the New Service Provider can receive full benefit of the licence of that Software under clause 51 (Licensing of Intellectual Property Rights),

provided that in the case of release of Source Code and Documentation under clause 54.6(A) in connection with the operation of Step-In Rights or under clause 54.6(D), such licence shall last for so long as TfL requires for the purposes of exercising rights under those provisions.

- 54.8 The Service Provider shall provide to TfL, prior to any development, provision or use of Software and in accordance with the requirements of Milestones by the relevant Milestone Date, a list of that Software with technical details of the Software and whether it will be part of the Licensed Materials. If any Software is to be part of the Licensed Materials TfL may (at TfL's absolute discretion) designate in writing to the Service Provider that the Software is to be Escrow Software. The Service Provider shall at all times thereafter keep that list accurate, complete and up to date (including without limitation for any updates or upgrades to the Escrow Software or as otherwise envisaged under clauses 54.1 and 54.2) and make a copy of that list available to TfL promptly upon request by TfL.
- 54.9 The Service Provider shall promptly update the Asset Register each time it places Software in escrow in accordance with clauses 54.1 and/or 54.2 indicating that the relevant Software is Escrow Software.

## 55. **Novation or Management of Supply Contracts**

- 55.1 TfL shall be entitled from time to time, by notice to the Service Provider, to require the Service Provider to:
- (A) propose the terms on which it would be prepared to accept the novation to it of one or more of the Supply Contracts (each relevant Supply Contract referred to in such notice being a "**Notified Supply Contract**"), such novation to have effect from the effective date of the relevant Notified Supply Contract or from such other date as TfL may specify (as appropriate, the "**Novation Date**");
  - (B) propose the terms on which it would be prepared to manage each Notified Supply Contract from the Novation Date until the date of agreement of appropriate novation arrangements (subject to clause 55.2(D)) in the event that such novation arrangements are not agreed on or before the Novation Date, including by providing the Services described in schedule 20 (Management Services) and/or such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Notified Supply Contract(s) (the "**Interim Management Services**"); and/or
  - (C) propose the terms on which it would be prepared to manage one or more of the Supply Contracts (each relevant Supply Contract referred to in such notice being a "**Managed Contract**") from such date as TfL may specify (the "**Management Effective Date**"), including by providing the Services described in schedule 20 (Management Services) and/or such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Managed Contract(s) (the "**Management Services**"),

as if such notice were a Change Control Request in respect of a Mandatory Change. For the avoidance of doubt, TfL may require that the Service Provider provides an Initial Response and/or Impact Assessment pursuant to paragraph 11 of schedule 9 (Change Control Request Procedure) in respect of one, some or each of the

scenarios described above (and in respect of one or more different Novation Dates and/or Management Effective Dates) for any particular Supply Contract(s). TfL may, if it deems it appropriate in its absolute discretion, require the Service Provider to accept novation or manage each relevant Supply Contract by raising a Mandatory Change on the basis of the relevant terms produced by the Service Provider in accordance with this clause.

- 55.2 In the event that the Service Provider is required to accept novation in respect of any Notified Supply Contract pursuant to clause 55.1 above, and unless otherwise agreed pursuant to the Change Control Request Procedure:
- (A) the Parties shall promptly enter into a deed of novation in substantially the form set out in schedule 27 (Deed of Novation) (each a “**Deed of Novation**”) in respect of each Notified Supply Contract;
  - (B) TfL shall use its best endeavours to procure that each relevant Other Service Provider executes the Deed of Novation promptly. Where the Other Service Provider refuses to execute the Deed of Novation the Service Provider shall participate in any necessary negotiations with the Other Service Provider and TfL in good faith to reach agreement;
  - (C) during the period, if any, between the Novation Date and the date of execution of the Novation Deed (the “**Interim Period**”) the Service Provider shall provide the Interim Management Services;
  - (D) if the Interim Period continues for longer than ninety (90) calendar days, or such other period as the Parties may, in writing, agree, either Party may serve notice on the other requiring the proposed novation to be revoked. Promptly following service of such notice, TfL shall notify the Service Provider as to whether:
    - (1) the Service Provider is required to provide Management Services in relation to the Notified Supply Contract, whereupon it shall be deemed a Managed Contract, the date of such notice shall be deemed the Management Effective Date and the provisions of clause 55.3 shall apply; or
    - (2) the Service Provider should cease to provide Interim Management Services in respect of the Notified Supply Contract;
  - (E) with effect from the date of execution of the Deed of Novation the relevant Other Service Provider shall become a Key Sub-Contractor hereunder and shall cease to be an Other Service Provider; and
  - (F) the Service Provider shall not be entitled to any additional amounts due to the novation of, or otherwise in relation to, each Notified Supply Contract over and above those agreed through the Change Control Request Procedure in accordance with this clause 55.
- 55.3 In the event that the Service Provider is required to manage any Managed Contract pursuant to clause 55.1 or clause 55.2(D)(1) above, then, unless otherwise agreed pursuant to the Change Control Request Procedure:



- (A) the Service Provider shall from the Management Effective Date:
- (1) provide the Management Services;
  - (2) promptly advise TfL in the event that there is or may be any conflict of interest between the provision of the Management Services and its other obligations under this Agreement;
  - (3) promptly send to TfL a copy of all notices and other communications between the Service Provider and the Managed Contractors which may or will affect TfL's rights and obligations under the Managed Contract, whether the same are sent or received by it;
  - (4) promptly advise TfL of any issues or actions required in relation to the Managed Contracts which do not fall within its responsibilities under this clause 55 or schedule 20 (Management Services);
  - (5) comply with all reasonable instructions of TfL in relation to its management of the Managed Contracts;
- (B) in no event shall the Service Provider have authority to do, or seek or purport to do, any of the following:
- (1) amend or vary any provisions of the Managed Contracts, whether orally or in writing or otherwise;
  - (2) terminate the Managed Contracts; and/or
  - (3) waive any of TfL's rights under, or any of the Managed Contractors' obligations under, the Managed Contracts; and
- (C) the Service Provider shall:
- (1) have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised, to bind TfL in any way, and shall not do any act which might reasonably create the impression that the Service Provider is so authorised;
  - (2) not enter into any contract, exercise any rights or remedies, assume any obligation or risk, or incur any liability, on behalf (nor affect in any way any right, remedy, obligation, risk or liability) of TfL, nor pledge the credit of TfL;
  - (3) have no authority to and shall not take part in any dispute or institute or defend any proceedings, or settle or attempt to settle or make any admission concerning any dispute, proceedings or other claim relating to the Managed Contracts, or any contract in connection with the Managed Contracts or relating to the affairs of TfL in relation to the Managed Contracts or any of those other contracts; and
  - (4) immediately inform TfL if any of the foregoing occurs or is suspected to have occurred or is likely to occur.

55.4 The Service Provider agrees that, notwithstanding anything to the contrary under this clause 55, the provisions of clause 83 (Relationship) shall (without limiting those provisions) apply in respect of the Management Services.

56. **Business Continuity**

56.1 The Service Provider will throughout the Term comply with the provisions of schedule 25 (Business Continuity) including, without limitation, creating, maintaining and updating the Business Continuity Plan which will:

- (A) be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the Services in any circumstances where the ability of the Service Provider to provide the Services would otherwise be impaired;
- (B) make provision for action to be taken by the Service Provider in the event of non-availability of the Premises; and
- (C) include a communications plan for relevant Service Provider Personnel and TfL, in respect of which the Service Provider will consult with TfL and incorporate TfL's requirements.

56.2 Throughout the Term, the Service Provider will:

- (A) develop enhancements to and upgrades of the Business Continuity Plan to ensure that the Business Continuity Plan is at all times commensurate with the total volume of business managed and administered by the Service Provider. Such updates shall be provided on such dates as the Parties may agree from time to time in writing and as TfL may request from time to time; and
- (B) produce all enhancements and upgrades required under clause 56.2(A) in advance of any agreed or anticipated volume increases in, or Changes to, the Services.

57. **Security**

57.1 The Service Provider shall:

- (A) provide the Services in accordance with, and shall ensure that its Personnel comply with, the provisions of this clause 57 and schedule 14 (Security Policy); and
- (B) furthermore, and without prejudice to clause 57.1(A), comply with the provisions of schedule 14 (Security Policy) to ensure that the Services and Service Systems perform the features, functions and facilities and meet the performance and other criteria set out in the Specification.

57.2 The Service Provider shall, at its own cost and in accordance with the Specification and schedule 14 (Security Policy) promptly prepare:

- (A) a written review of the Security Policy (as the same may be amended from time to time pursuant to the Change Control Request Procedure) upon request from TfL from time to time and in any event at least once in each

twelve (12) month period following the date of achievement of Milestone 18 (Release 1 Ready for Service Testing complete); and

- (B) an updated version of the Security Policy within ten (10) Working Days, or such other period as may be expressly agreed in writing by the Parties, following the implementation of a Change so as to incorporate the effects of that Change in the Security Policy,

in each case to reflect the Specification, and the Service Provider shall submit a copy of those documents (as applicable) to TfL for Approval.

57.3 TfL shall use commercially reasonable endeavours to supply the Service Provider on reasonable notice with Information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under clause 57.2.

57.4 The Service Provider:

- (A) shall at all times provide such access, facilities, information, data, documentation and assistance reasonably required by TfL and any Third Party nominated by TfL in connection with the preparation and implementation of the Security Policy and any other security requirements envisaged under this Agreement;
- (B) agrees that TfL may, notwithstanding anything to the contrary in this Agreement, share the Security Policy in form or substance with any Third Party for the purposes of the Services, the Schemes and/or this Agreement; and
- (C) shall as soon as possible, and in any event before the end of the relevant calendar day, update the Incident Log in respect of each Security Incident in connection with the performance or otherwise of the Service Provider's obligations under this clause 57 and ensure that the Incident Log is always available to TfL and is accurate, up to date and complete.

57.5 In the event of a Security Incident:

- (A) the Service Provider shall as soon as possible (and except where due to a Compensation Event (subject to the Service Provider's compliance with clause 68 (Compensation Events)) or a TfL Event (subject to the Service Provider's compliance with clause 68A (TfL Events)), at the Service Provider's cost) correct, make good, reinstate, replace and fix all deficiencies, loss and/or damage to the Service Systems and/or Services in connection with a Security Incident, and/or perform or re-perform Tests or alternative tests relating to the security of the Service Systems and/or Services, as appropriate, including within timeframes specified by TfL from time to time, to demonstrate to TfL's satisfaction that the relevant parts of the Service Systems and Services provide the features, functions, and facilities and meet the performance criteria specified in the Specification and this Agreement including in connection with the Service Provider implementing any Security Rectification Plan pursuant to clause 57.5(B);

- (B) the Service Provider shall immediately and at the Service Provider's cost prepare a Security Rectification Plan including full details of the steps to be taken by the Service Provider to perform its obligations under clause 57.5(A) and shall, without limiting clause 57.5(A), submit a copy of that Security Rectification Plan to TfL for its Approval and, subject to such Approval, the Service Provider shall fully carry out that Security Rectification Plan;
- (C) the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as TfL may require; and/or
- (D) TfL may exercise its Step-in Rights.

57.6 The Service Provider agrees that:

- (A) a breach by the Service Provider (or a Sub-Contractor) of the respective obligations under this clause 57 shall be deemed to be a material breach of this Agreement by the Service Provider to which the provisions of clauses 72.3 and 72.4 (Termination) shall apply. For the purposes of clauses 72.3 and 72.4 (Termination), if the Service Provider shall have failed to comply with the Security Rectification Plan Approved in accordance with clause 57.5, such failure shall be deemed to be a breach which is not capable of remedy; and
- (B) notwithstanding clause 57.6(A), a breach or failure of security in connection with the Services and/or the Service Systems, except for such breaches or failures directly arising from a Compensation Event or TfL Event (and subject to the Service Provider's compliance with clause 68 (Compensation Events) or clause 68A (TfL Events) as appropriate), shall be at the sole risk of, and sole cost to, the Service Provider.

57.7 Either Party may request changes to any document envisaged under this clause 57 by the Change Control Request Procedure.

57.8 If any Data is inaccurate, corrupted, lost or sufficiently degraded as to be unusable as a result of the Service Provider's failure to comply with the provisions of this clause 57 or any other act or omission of the Service Provider, the Service Provider shall at its own cost carry out (or procure the carrying out of) such remedial action as is necessary to restore such data or information.

58. **Testing of the Business Continuity Plan and Security Plan during the Operational Phase**

58.1 The Service Provider shall, in relation to the Business Continuity Plan, the Business Continuity Services, the Business Continuity Infrastructure and the Security Plan, at no additional cost to TfL:

- (A) conduct system level Tests no less frequently than every six (6) months. These shall comprise a test of each element of the Business Continuity Infrastructure and the Service Systems in respect of the capability and procedures undertaken by the Service Provider's technical and operational staff to ensure that:

- (1) the Business Continuity Infrastructure meets the requirements of schedule 25 (Business Continuity); and
- (2) the Service Provider is complying with the Security Policy;
- (B) conduct total service Tests no less frequently than annually. These shall comprise a test of:
  - (1) the Business Continuity Plan as a whole to ensure it meets the requirements of schedule 25 (Business Continuity);
  - (2) the Service Systems and Services as a whole to ensure the Service Provider is complying with the Security Policy; and
  - (3) the Scheme Systems provided by Other Service Providers, to be tested in conjunction with such Other Service Providers; and
- (C) produce Test Plans and Test Specifications for each test referred to in clause 58.1(A) and (B) above and shall make copies of the same available to TfL upon request.

58.2 The Tests referred to in clause 58.1 shall demonstrate:

- (A) the capability of the Service Provider to execute the Business Continuity Plan and provide the Business Continuity Services; and
- (B) whether the Service Provider is complying with the Security Policy.

Where the Tests require downtime of the whole or any part of the Service Systems, the date and timing of the Tests shall be subject to prior agreement with TfL. Downtime approved by TfL in writing in advance which results from such Tests will be excluded from any measurement of Service Levels for the purposes of schedule 5 (Service Level Agreement) in respect of the relevant Performance Indicators affected by such Tests.

58.3 The Tests referred to in clause 58.1 may be conducted more frequently than is specified in that clause if the Service Provider, acting in accordance with Good Industry Practice, deems it necessary subject to TfL's prior written consent.

58.4 If any aspect of the Tests referred to in clause 58.1 fails to meet the criteria in the Business Continuity Plan and/or the Security Policy the Service Provider shall take such action, at its own expense, as is necessary, and repeat such tests until all the relevant criteria are met.

58.5 The first Test required under clause 58.1 will be undertaken not later than four (4) months following the Operational Commencement Date. TfL may witness such tests at its discretion.

58.6 The Service Provider will provide TfL with ten (10) Working Days' notice of its intention to carry out the Tests required by clause 58.1 and will provide TfL with a copy of the results of any such Tests within a reasonable period after the carrying out of any such Tests if TfL so requires. If TfL so requires, TfL may attend testing of the Business Continuity Plan, the Security Plan or any part of either of them.

58.7 Any participation by TfL in relation to the testing of the Business Continuity Plan and/or the Security Plan will be without prejudice to and will not be deemed in any way to restrict the steps required to be taken by the Service Provider pursuant to this clause or its obligations under clause 70 (Force Majeure). Nor shall such participation be deemed to be acceptance by TfL that the Business Continuity Plan and/or the Security Plan is adequate or appropriate.

59. **Indemnities and Limitations of Liability**

***[Information Redacted]***

60. **Insurance**

60.1 Without prejudice to its liability to indemnify TfL under clause 59 (Indemnities and Limitations of Liability) or any other provision of this Agreement, the Service Provider shall, throughout the Term of this Agreement (and any other period stated in this clause 60), arrange and maintain with a reputable insurer or insurers authorised to underwrite such risks in the United Kingdom, policies of insurance of the following types and levels of indemnity (“**Insurances**”):

- (A) public liability insurance in respect of the Service Provider’s liability for loss or damage to property (including property of TfL), breach of any Intellectual Property Rights and against liability in respect of death, injury or occupational disease up to a limit of at least twenty-five million pounds (£25,000,000) for each event or series of connected events, with financial loss extension;
- (B) employer’s liability insurance in respect of the Service Provider’s liability for death, personal injury or occupational disease of any person in the Service Provider’s employment up to a limit of at least ten million pounds (£10,000,000) for each event or series of connected events;
- (C) product liability insurance of at least ten million pounds (£10,000,000) in aggregate per annum for each event or series of connected events;
- (D) material damage insurance on an all risks basis, including terrorism cover, in respect of the Assets for their full replacement value from time to time, together with business interruption cover in the amount of at least ten million pounds (£10,000,000);
- (E) professional indemnity insurance up to a limit of at least twenty-five million pounds (£25,000,000) for each claim for the period of the Term and six years thereafter; and
- (F) commercial crime insurance in the sum of at least ten million pounds (£10,000,000), covering the loss of money and tangible property belonging to TfL resulting directly from a fraudulent or dishonest act by an employee of the Service Provider, while performing professional services for TfL.

60.2 In relation to each of the Insurances, the Service Provider shall prior to the execution of this Agreement and thereafter within five (5) Working Days of each due renewal date of the policies or at such other times as TfL may require, provide to TfL copies (or other evidence satisfactory to TfL) of all such Insurances together

with receipts or other evidence of payment of premiums in respect of such Insurances.

60.3 The Service Provider shall ensure that the Insurances:

- (A) cover the Service Provider's legal liability (including liability assumed under this Agreement) which may arise out of or in the course of or by reason of the Service Provider's or its Sub-Contractors' performance, non-performance or part-performance under or in connection with this Agreement; and
- (B) in respect of Insurances in relation to which both TfL and the Service Provider are named parties, provide that a vitiating act committed by one insured Party shall not prejudice the right to claim of any other insured Party who has an insured interest and who has not committed a vitiating act.

60.4 The public liability insurance policy referred to in clause 60.1(A) shall extend to indemnify TfL as principal and shall be endorsed to provide that no act or omission on the part of the Service Provider or its Sub-Contractors shall prejudice TfL's rights under such policy as principal.

60.5 The material damage insurance policy referred to in clause 60.1(D) shall be endorsed to note the interest of TfL and a waiver of the insurer's rights of subrogation against TfL.

60.6 Where the Insurances contain a care, custody or control exclusion, the relevant policy shall be endorsed so as to delete the exclusion in respect of any premises of TfL (including contents) that are occupied by the Service Provider for the purpose of performing the Services.

60.7 The Service Provider shall promptly and diligently deal with all claims under the Insurances and shall comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Service Provider shall bear the cost of all exclusions and limitations under such insurances and shall pay for any excess or deductible.

60.8 The Service Provider shall not take nor fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

60.9 In relation to all the Insurances (except employer's liability insurance), the Service Provider agrees that TfL 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 Agreement.

60.10 The Service Provider shall give TfL not less than thirty (30) Working Days' prior written notice of any proposed cancellation or a material change in the terms of any of the Insurances.

60.11 The Service Provider shall notify TfL as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any of

the Insurances lapsing or being terminated or the cover under them being reduced or modified.

60.12 The Service Provider shall inform TfL in writing immediately of:

- (A) any matter likely to affect the decision of the insurers to grant or to continue any of the Insurances; and
- (B) any event which might materially affect any such Insurances.

60.13 In the event of a claim being made under any of the Insurances, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.

60.14 If the Service Provider is in breach of its obligation to arrange and maintain the Insurances, as required under clause 60.1, TfL may at its absolute discretion:

- (A) pay any premiums required to keep such Insurances in force or may procure such Insurances and in either case recover from the Service Provider all costs, expenses or other amounts as TfL may incur; or
- (B) terminate this Agreement immediately upon written notice.

## 61. **Information Compliance**

61.1 The Service Provider warrants and undertakes that it will in relation to the Services comply with all data protection laws and data protection principles worldwide (the “**DP Requirements**”), including, without limitation, in the United Kingdom, the Data Protection Act 1984, the Data Protection Act 1998, the Computers Misuse Act 1990 and the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003. In complying with all relevant data protection laws, the Service Provider will, including without limitation:

- (A) comply with any applicable notification requirements under such data protection laws;
- (B) ensure that any Personal Data to be supplied by the Service Provider to TfL, Sub-Contractors and/or any Other Service Provider or processed by the Service Provider and/or its Sub-Contractors on behalf of TfL pursuant to this Agreement will be processed in accordance with the requirements of such data protection laws; and
- (C) comply with the further obligations in relation to data protection set out in schedule 15 (Information Compliance).

61.2 The Service Provider shall and shall procure that the Sub-Contractors shall in relation to each Scheme:

- (A) comply with all requests made by TfL;
- (B) provide all such assistance as may be required by TfL;



- (C) comply with BS7799 as amended from time to time or such other standards as may from time to time replace, amend or augment such standard; and
- (D) comply with the further obligations set out in schedule 15 (Information Compliance),

so as to enable TfL to comply with its obligations under the FOI Legislation.

## 62. **Health and Safety**

62.1 The Service Provider shall at all times comply with:

- (A) all applicable Health and Safety Legislation; and
- (B) all decisions, requirements, regulations, orders, instructions, directions or rules relating to health and safety applicable to the provision of the Services.

62.2 The Service Provider shall be responsible for the observance by itself, its staff and Sub-Contractors of all current and relevant health and safety precautions necessary for the protection of itself, its staff, Sub-Contractors and other persons invited onto or visiting the Premises including all precautions required to be taken by or under any Health and Safety Legislation.

62.3 The Service Provider undertakes to carry out formal risk assessments from time to time of all aspects of the Services in accordance with the requirements of all applicable Health and Safety Legislation and to carry out all testing, examination and other work necessary to minimise and, so far as reasonably practicable, eliminate all risk to health or safety resulting from the performance of the Services or the use of any equipment or materials or other things in connection with the Services.

62.4 The Service Provider will ensure that there will be present at the Premises at all times during business hours at least one individual (or such greater number required by law) suitably qualified in first aid and that all necessary first aid supplies are provided by the Service Provider and are adequate for first aid purposes and meet relevant health and safety standards.

62.5 The Service Provider will strictly comply with and will procure that the Service Provider's Personnel strictly comply with such induction training procedures, safety training procedures and site procedures as are required by Health and Safety Legislation and as TfL may require from time to time.

62.6 In the event that a health or safety risk has arisen or is likely to arise in any part of the sites at or from which the Service Provider provides Services or in the provision of the Services, the Service Provider will notify TfL promptly in writing and will provide TfL with adequate information relating to such risk including any steps and safeguards which the Service Provider proposes to take and observe in order to ensure that the Services are performed safely. The Service Provider shall promptly take such steps and adopt such safeguards.

**63. Representations and Warranties**

63.1 Without prejudice to any other warranties or representations expressed elsewhere in this Agreement or implied by Law, the Service Provider hereby warrants, represents (in relation to factual statements as at the Effective Date) and undertakes to TfL that:

- (A) it has full capacity and authority and all authorisations, consents, approvals and permits necessary (including without limitation all necessary shareholder and board approvals) for it to enter into and discharge its obligations under this Agreement and that this Agreement has been executed by a duly authorised representative of the Service Provider and, without limitation to the generality of the foregoing, the Service Provider has the full capacity and authority and all licences and consents necessary to enable it to grant the licences in clause 51 (Licensing of Intellectual Property Rights) and clause 54 (Source Code);
- (B) it is entering into this Agreement as principal and not as agent for any person and it will act as an independent contractor in carrying out its obligations under this Agreement;
- (C) the Service Provider shall discharge its obligations under this Agreement with all due skill, care and diligence including but not limited to Good Industry Practice and in accordance with any standards set out in this Agreement (including without limitation the Statement of Requirements);
- (D) the Services shall be supplied and rendered by appropriately experienced, trained and qualified personnel with all due skill, care and diligence;
- (E) the Service Provider is aware of the purpose for which the Services are required and acknowledges that TfL is relying upon the Service Provider's expertise and knowledge in the provision of the Services;
- (F) the Services shall be performed in accordance with all applicable Laws;
- (G) the Service Provider has title, free of all liens and encumbrances, to the Assets that are transferred to TfL pursuant to clause 67.1 or 67.11 (Assets) (as appropriate);
- (H) the Assets and (without limitation to the generality of the foregoing) all elements of the Service Systems and the Services shall:
  - (1) be free from material defects, shall be Fit for Purpose for which they are intended and of satisfactory quality; and
  - (2) conform strictly to the Specification, all statements and other requirements in this Agreement and shall comply in all respects with any Law which may be in force at the time of delivery;
- (I) the Deliverables shall:
  - (1) be free from material defects, shall be Fit for Purpose for which they are intended and of satisfactory quality;

- (2) conform strictly to the Specification, all statements and other requirements in this Agreement; and
  - (3) not hinder or prevent TfL's compliance with applicable Laws;
- (J) the Service Systems and the Services:
  - (1) in the case of the Service Systems, are capable of running in combination and interface appropriately with all relevant TfL Systems, Other Service Provider Systems, Systems used by Third Parties and all Schemes Systems;
  - (2) in the case of Service Systems Interfaces, permit interfacing between:
    - (a) the Services Databases and any other part of the Service Systems;
    - (b) each of the Service Elements including without limitation COps, on the one hand, and BOps and EOps, on the other hand; (c) the Service Systems (including without limitation the Services Databases) and Other Service Provider Systems; (d) the Service Systems (including without limitation the Services Databases) and Third Party Systems;
  - (3) will be Date Compliant and Euro Compliant; and
  - (4) do not include any Software licensed under an Open Source Licence unless stated as such in schedule 28 (Service Provider's Solution) or agreed in writing by TfL via the Change Control Request Procedure;
- (K) the Service Provider has used and shall at all times use the latest commercially available state of the art Virus protection Software, in accordance with Good Industry Practice, on all Service Systems and parts of the Service Systems;
- (L) the Documentation provided by the Service Provider will be, and the Service Provider's Solution is, complete and accurate and suitable and sufficient to enable TfL to enjoy the full benefit of the Services;
- (M) any and all information supplied in writing after the date of the OJEU Notice (Ref: 2006/S 135-145357 /EN) by or on behalf of the Service Provider to TfL or to any of its advisers, including but not limited to all responses to the clarification process of the procurement, in connection with the award of contract to the Service Provider and in response to the Invitation to Participate for the provision of Services made by the Service Provider was, at the time it was provided, and, except where superseded by subsequent information supplied to TfL, at the date hereof to the best of the Service Provider's knowledge, information and belief, true and accurate and it shall advise TfL of any fact, matter or circumstance of which it may or has become aware which would render any material statement or representation to be false or misleading;
- (N) it has not, prior to or on the date of execution of this Agreement, committed any of the acts referred to in clauses 64.1(A) (Corrupt Gifts or Payment) or 64.1(B) (Fraud);

- (O) the provisions of the Agreement do not put the Service Provider in breach of any other agreements to which it is a Party to the extent that it would make this Agreement or the Guarantees invalid;
- (P) the execution of this Agreement does not contravene the terms of any licence, regulation or other restrictions applicable to the Service Provider; and
- (Q) the Financial Model is in all material respects accurate and complete.

63.2 If the Service Provider is not the manufacturer of any element of the Service Systems, the Service Provider shall, where practicable and relevant, obtain the same warranties as specified in clauses 63.1(G), 63.1(H), 63.1(J)(3) and 63.1(J)(4) from the manufacturer and the Service Provider shall make the benefit of such warranties as it obtains available to TfL as if they had been given to TfL directly. The Service Provider shall at its own cost assist and cooperate with TfL in making claims under such warranties.

63.3 The warranties specified in clauses 63.1(G), 63.1(H), 63.1(J) and 63.2 shall survive any inspection, acceptance and payment in respect thereof by TfL and shall inure to the benefit of TfL, its agents, successors in interest and assigns.

63.4 If at any time the Service Provider becomes aware, or TfL or an Other Service Provider notifies the Service Provider, of a failure of all or any part of the Services to comply with the warranties (a “**Failure**”), without prejudice to any other rights or remedies available to TfL, the Service Provider shall at its own cost promptly and in accordance with any timings set out in the Statement of Requirements:

- (A) prepare and submit a draft remedial action plan to end the Failure to TfL for comment;
- (B) take into account any comments or requested amendments received from TfL in preparing a final remedial action plan; and
- (C) implement the final remedial action plan with the object of ending any Failures,

save to the extent provided for under clause 25 (System Failure).

63.5 For the purposes of construing the warranties and representations in this clause 63, references to the Services shall include any part of the Services.

63.6 The warranties set out in this clause 63 shall be deemed repeated as at:

- (A) Operational Commencement Date;
- (B) Release 2 Commencement Date; and
- (C) successful implementation of a Change.

63.7 Each warranty and representation shall be construed as a separate warranty or representation and, subject to clauses 59, 68 (Compensation Events), 68A (TfL Events), 69 (Relief Events) and 70 (Force Majeure), shall not be limited or restricted by any other term of this Agreement.

**64. Corrupt Gifts or Payment and Fraud**

**64.1 Corrupt Gifts or Payment**

- (A) The Service Provider shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Services or the Agreement or any other agreement with any member of the TfL Group.
- (B) The Service Provider shall not conspire with any person to do any of the acts mentioned in clause 64.1(A).
- (C) Any:
  - (1) breach by the Service Provider of the foregoing provision of this clause 64; or
  - (2) commission of any offence by the Service Provider under the Prevention of Corruption Acts 1889-1916 in relation to this Agreement or any contract with any member of TfL Group, The Greater London Authority and/or other associated bodies,shall entitle TfL to terminate this Agreement in accordance with clause 72 (Termination) and recover from the Service Provider the amount of value of any such gift, consideration or commission and any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, the breach of this clause.
- (D) The decision of TfL in relation to the foregoing provisions of this clause 64 shall be final and conclusive provided always that it shall have acted proportionately having regard to the nature of the breach by the Service Provider of this clause 64.

**64.2 Fraud**

- (A) If any fraudulent activity comes to the attention of the Service Provider in relation to a Scheme, the Schemes or the Services, the Service Provider shall notify TfL by the most expeditious means available. The Service Provider shall then co-operate in the investigation of such fraudulent activity and shall implement any necessary changes to the procedures or working practices employed in the provision of the Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.
- (B) In the event of any fraudulent activity on the part of the Service Provider, its agents, employees or Sub-Contractors, TfL shall have the right to terminate this Agreement in accordance with clause 72 (Termination) and to recover from the Service Provider any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, such fraudulent activity provided that, in the case of fraudulent activity on the part of employees or Sub-Contractors such termination right shall only be

exercisable in the event that either: (i) the Service Provider has not taken action which TfL, acting reasonably, considers appropriate, in relation to the relevant employee or relevant Sub-Contractor; or (ii) such cost, loss, liability or damage arose due to or was contributed to by, the negligence or default of the Service Provider or a Sub-Contractor.

65. **Marketing**

65.1 The Service Provider shall provide such assistance and co-operation to TfL in relation to the marketing of the Schemes as TfL may expressly in writing require from time to time.

## **PART 16: PREMISES AND ASSETS**

66. **Premises**

66.1 The Parties shall comply with the provisions of schedule 18 (Premises).

67. **Assets**

67.1 Subject to clause 67.6:

- (A) the Service Provider shall ensure that, upon achievement of Milestone 18 (Release 1 Ready for Service Testing complete) (or in the case of TfL Assets procured by the Service Provider in relation to a Change, on the date specified in the relevant Change Control Request), title in the TfL Assets shall immediately transfer to TfL, at no cost to TfL; and
- (B) with effect from the date of transfer of title to the TfL Assets to TfL, TfL shall grant to the Service Provider a licence to use the TfL Assets for the purposes of providing the Services.

67.2 The Service Provider shall maintain the Asset Register in accordance with the provisions of schedule 12 (Asset Management) and shall comply with its other obligations set out in that schedule.

67.3 In addition to complying with clause 67.2, the Service Provider shall maintain a record of all capital expenditure incurred by it in achieving the Milestones. Such record shall include, without limitation, as a separate line for each item of expenditure:

- (A) the price properly paid for the relevant Hardware, Software or other Asset;
- (B) any discount obtained by, or reduction or special deal made available to, the Service Provider as against the supplier's advertised retail price;
- (C) the amount of VAT or sales tax (if any) properly paid by the Service Provider; and

- (D) any additional sums incurred in relation to the relevant item, including but not limited to any warranty payments.

67.4 Risk in and liability in respect of each TfL Asset shall remain with the Service Provider until such time as TfL takes possession of such TfL Asset pursuant to clause 73.2 (Exit Management).

67.5 Subject to clause 67.6, at no time shall the Service Provider:

- (A) employ any of the TfL Assets for any use other than for the provision of the Services and under no circumstances shall they be subject to any form of shared use or use by the Service Provider for any other activities not related to the Services;
- (B) sell or offer for sale, transfer or assign, mortgage, pledge, underlet, lend or otherwise deal with the TfL Assets or any interest in them;
- (C) allow the creation of any charge or lien over the TfL Assets;
- (D) attach the TfL Assets to any land or premises so as to cause them to become a permanent or immovable fixture on such land or premises;
- (E) allow, perform or consent to any act or omission to act which would or might cause the TfL Assets to be forfeited under any applicable law or which might jeopardise the TfL Assets; or
- (F) agree to create any floating charge unless the Service Provider has prior to such event obtained waivers satisfactory to TfL excluding the TfL Assets from its effect or unless any such act does not affect the TfL Assets in any way and is subject to the right of TfL to repossess the TfL Assets at any time on termination of this Agreement or Partial Termination (whether or not they or any part of them have become affixed to land or building) and for that purpose to enter upon such land or building and sever the TfL Assets if affixed to it,

without the express prior written consent of TfL.

67.6 In respect of Software only, the provisions of clauses 67.1 and 67.5 shall be subject to clauses 50 (Ownership and Assignment of Intellectual Property Rights) and 51 (Licensing of Intellectual Property Rights).

67.7 The Service Provider shall:

- (A) provide a full management service in respect of the TfL Assets in accordance with the terms of this Agreement and Good Industry Practice;
- (B) ensure that all TfL Assets are (without limiting clause 23 (Systems, Support and Maintenance)):
  - (1) at all times housed, maintained and operated in accordance with Good Industry Practice and, without limiting the generality thereof, the relevant manufacturer's recommendations;

- (2) each labelled appropriately with a unique identifying reference corresponding with the relevant entry in the Asset Register; and
  - (3) at all times kept and returned to TfL in good order, repair and condition;
- (C) provide to TfL (or its authorised representatives and agents) such access to the Assets as TfL may reasonably require;
- (D) ensure that all Assets that the Service Provider and its Sub-Contractors acquire or use are subject to appropriate written legally binding contracts (including but not limited to any relevant guarantees, warranties, licences, equipment rental or lease agreements) (“**Asset Agreements**”), which:
  - (1) permit the Service Provider to use such Assets for the purposes set out in this Agreement; and
  - (2) provide all necessary maintenance and support in respect of the Assets to permit the Service Provider to comply with its obligations under this Agreement;
- (E) use all reasonable endeavours to procure that:
  - (1) except in relation to Licensed Materials (which shall be subject to the provisions of clause 51 (Licensing of Intellectual Property Rights)) the Asset Agreements relating to Service Provider Assets are assignable or transferable to TfL; and
  - (2) the Asset Agreements relating to TfL Assets are in TfL’s name, at no additional cost to TfL;
- (F) ensure that it takes all steps reasonably necessary to ensure that the Asset Agreements are not breached or terminated; and
- (G) if, notwithstanding the Service Provider’s compliance with clause 67.7(F), any Asset Agreement is terminated, enter into or procure a suitable replacement for such Asset Agreement on similar terms in accordance with this Agreement to ensure that the Service Provider continues to receive no less a standard of maintenance and support as the Service Provider enjoyed under such Asset Agreement.

67.8 In no event shall the Service Provider be entitled to claim relief from its obligations under this Agreement due to defective or unsatisfactory performance of the Assets, except where such defective or unsatisfactory performance is directly due to the occurrence of a Compensation Event, TfL Event or Force Majeure Event and the Service Provider has complied with the provisions of clause 68 (Compensation Events), clause 68A (TfL Events) or clause 70 (Force Majeure), as appropriate, in respect of such Compensation Event, TfL Event or Force Majeure Event.

67.9 The Service Provider shall be responsible for the procurement of all necessary spare parts and replacements for the TfL Assets (together “**Spare Parts**”) as part of the Services. The cost of all such Spare Parts shall be included in the Service Charges and no additional payment shall be due in respect of the Spare Parts



except as TfL may, in its absolute discretion, from time to time in writing expressly approve.

67.10 Spare Parts shall only be used in accordance with the Approved Maintenance Plans or, with TfL's express prior consent, in an emergency.

67.11 All Spare Parts held by the Service Provider shall remain the property of the Service Provider unless and until they are used in accordance with this Agreement, whereupon title shall transfer to TfL and they shall be deemed to be TfL Assets for the purposes of this Agreement.

67.12 Upon replacement of any TfL Assets or parts due to maintenance, repair or replacement, the Service Provider shall comply with TfL's instructions in dealing with such replaced TfL Assets or parts, to either:

(A) return such items to TfL; or

(B) dispose of such items.

67.13 On TfL's express written notice the Service Provider shall promptly dispose of TfL Assets specified in such notice and shall account to TfL for the proceeds.

67.14 The Service Provider shall comply with relevant Laws and the Security Plan when disposing of Assets and parts of Assets which it has replaced as part of the Services.

67.15 The Service Provider shall keep and maintain a record of configurations of equipment, routers, servers and similar Hardware and Systems used by it in the Service Systems ("**Configuration Records**"). The Service Provider shall promptly update and provide TfL with a copy of such Configuration Records:

(A) on request; and

(B) on termination or expiry of this Agreement or Partial Termination during the Hand Back Period.

67.16 The Configuration Records shall be maintained as part of the Asset Register.

67.17 The Service Provider shall maintain a Specially Written Software change log which will be provided as part of the Asset Register and shall be current to within one (1) Month of any changes.

## **PART 17: SUPERVENING EVENTS**

### **68. Compensation Events**

Subject to clause 68B (Relationship of Compensation Events and TfL Events):

68.1 If, and to the extent that, as a direct result of the occurrence of a Compensation Event:

- (A) the Service Provider is unable to achieve Operational Commencement on the Planned Operational Commencement Date or Release 2 Commencement on the Planned Release 2 Commencement Date; and/or
- (B) the Service Provider is unable to comply with its obligations under this Agreement,

then the Service Provider is entitled to apply for relief from its obligations and/or claim compensation under this clause 68;

68.2 Subject to clause 68.4 below, in order to obtain relief and/or claim compensation the Service Provider must:

- (A) promptly after becoming aware that the Compensation Event has caused or is likely to cause delay and/or breach of an obligation under this Agreement, notify TfL of its claim for: (i) an extension of time for achieving Operational Commencement or Release 2 Commencement (as appropriate); (ii) payment of compensation; and/or (iii) relief from its obligations under this Agreement (as appropriate);
- (B) within five (5) Working Days, or such other period as the Parties may expressly in writing agree, of receipt by TfL of the notice referred to in clause 68.2(A), give full details of the Compensation Event and the extension of time, any amount and/or other relief claimed in accordance with this clause 68; and
- (C) demonstrate to the reasonable satisfaction of TfL:
  - (1) the extent to which the Compensation Event was the direct cause of the amounts claimed and/or any delay in the achievement of the Planned Operational Commencement Date or Planned Release 2 Commencement Date (as appropriate) and/or breach of the Service Provider's obligations under this Agreement;
  - (2) neither it nor any of its Personnel could reasonably have foreseen the occurrence or consequences of the Compensation Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;
  - (3) the Compensation Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
  - (4) despite the occurrence of the Compensation Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement, including but not limited to complying with the Business Continuity Plan; and
  - (5) the amounts claimed, time lost, and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice;

- 68.3 In the event that the Service Provider has complied with its obligations under clause 68.2 above, then (as appropriate):
- (A) the Planned Operational Commencement Date or Planned Release 2 Commencement Date (as appropriate) shall be postponed by such time as TfL may at its sole discretion direct, following consideration of the period proposed by the Service Provider in accordance with clause 68.2;
  - (B) in the case of an additional cost being incurred by the Service Provider, TfL shall compensate the Service Provider for the actual costs properly and reasonably incurred, to the extent directly caused by the Compensation Event and to the extent such costs could not reasonably have been mitigated, within thirty (30) Working Days of its receipt of a written demand by the Service Provider supported by all relevant information; and
  - (C) TfL shall give the Service Provider such relief from its obligations under the Agreement, as TfL may (acting reasonably) direct, following consideration of the relief proposed by the Service Provider in accordance with clause 68.2;
- 68.4 In the event that information is provided after the dates referred to in clause 68.2, then the Service Provider shall not be entitled to any extension of time, compensation, or relief from its obligations under the Agreement in respect of the period for which the information is delayed; and
- 68.5 If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Service Provider's obligations under the Agreement, or TfL disagrees that a Compensation Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this clause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## **68A TfL Events**

- 68A.1 If, and to the extent that, as a direct result of the occurrence of a TfL Event:
- (A) the Service Provider is unable to achieve Operational Commencement on the Planned Operational Commencement Date or Release 2 Commencement on the Planned Release 2 Commencement Date; and/or
  - (B) the Service Provider is unable to comply with its obligations under this Agreement,
- then the Service Provider is entitled to apply for relief from its obligations under this clause 68A.
- 68A.2 Subject to clause 68A.4 below, in order to obtain relief the Service Provider must:
- (A) promptly after becoming aware that the TfL Event has caused or is likely to cause delay and/or breach of an obligation under this Agreement, notify TfL of its claim for: (i) an extension of time for achieving Operational Commencement or Release 2 Commencement (as appropriate); and/or (ii) relief from its other obligations under this Agreement (as appropriate);

- (B) within five (5) Working Days, or such other period as the Parties may expressly in writing agree, of receipt by TfL of the notice referred to in clause 68A.2(A), give full details of the TfL Event and the extension of time and/or other relief claimed in accordance with this clause 68A; and
- (C) demonstrate to the reasonable satisfaction of TfL:
  - (1) the extent to which the TfL Event was the direct cause of any delay in the achievement of the Planned Operational Commencement Date or Planned Release 2 Commencement Date (as appropriate) and/or breach of the Service Provider's obligations under this Agreement;
  - (2) neither it nor any of its Personnel could reasonably have foreseen the occurrence or consequences of the TfL Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;
  - (3) the TfL Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
  - (4) despite the occurrence of the TfL Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement, including but not limited to complying with the Business Continuity Plan; and
  - (5) the time lost and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice.

68A.3 In the event that the Service Provider has complied with its obligations under clause 68A.2 above, then (as appropriate):

- (A) subject to clause 68A.3(B) below, the Planned Operational Commencement Date or Planned Release 2 Commencement Date (as appropriate) shall be postponed by such time as TfL may at its sole discretion direct, following consideration of the period proposed by the Service Provider in accordance with clause 68A.2; and
- (B) TfL shall give the Service Provider such relief from its obligations under the Agreement, as TfL may (acting reasonably) direct (including but not limited to where the Planned Operational Commencement Date or Planned Release 2 Commencement Date may have been moved to such date as TfL may direct), following consideration of the relief proposed by the Service Provider in accordance with clause 68A.2.

68A.4 In the event that information is provided after the dates referred to in clause 68A.2, then the Service Provider shall not be entitled to any extension of time or relief from its obligations under the Agreement in respect of the period for which the information is delayed.

68A.5 If the Parties cannot agree the extent of any delay incurred or relief from the Service Provider's obligations under the Agreement, or TfL disagrees that a TfL Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this clause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

68B. **Relationship of Compensation Events and TfL Events**

68B.1 If TfL is obliged under the terms of this Agreement or an Approved Key Document to procure (whether through using reasonable endeavours or otherwise) provision by an Other Service Provider of access, Data, information or services to the Service Provider, if such Other Service Provider fails to provide such access, Data, information or services to the Service Provider, such failure shall constitute a TfL Event and failure by TfL to comply with such obligation shall not constitute a Compensation Event, except where TfL has failed to use its reasonable endeavours to procure provision of such access, Data, information or services.

69. **Relief Events**

69.1 If and to the extent that a Relief Event:

- (A) is the direct cause of a delay to Operational Commencement or Release 2 Commencement; and/or
- (B) adversely affects the ability of the Service Provider to perform any of its obligations under this Agreement,

then the Service Provider is entitled to apply for relief from any rights of TfL arising under clause 72 (Termination), subject to the provisions of clause 72.2(F).

69.2 To obtain relief, the Service Provider must:

- (A) promptly, and in any event within fourteen (14) days after becoming aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its other obligations notify TfL of its claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- (B) within five (5) Working Days of receipt by TfL of the notice referred to in clause 69.2(A), give full details of the relief claimed; and
- (C) demonstrate to the reasonable satisfaction of TfL that:
  - (1) the Service Provider and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
  - (2) neither it nor any of its Personnel could reasonably have foreseen the occurrence or consequences of the Relief Event and could not have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;

- (3) the Relief Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
- (4) despite the occurrence of the Relief Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement;
- (5) the relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice;
- (6) the Relief Event directly caused the delay to the Planned Commencement Date or Planned Release 2 Commencement Date;
- (7) the time lost could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice, without incurring material expenditure; and
- (8) the Service Provider is using reasonable endeavours to perform its obligations under the Agreement, including but not limited to complying with the Business Continuity Plan.

69.3 In the event that the Service Provider has complied with its obligations under clause 69.2, then TfL shall not be entitled to exercise its rights to terminate the Contract under clause 72 (Termination), subject to the provisions of clause 72.2(F).

69.4 Nothing in clause 69.3 above shall affect:

- (A) any entitlement to make deductions or any deductions made as a result of schedule 5 (Service Level Agreement) during the period in which the Relief Event is subsisting; nor
- (B) the rights of TfL to step-in in accordance with clause 71 (Rights of TfL to Step-in).

69.5 In the event that information required by clause 69.2 is provided after the dates referred to in that clause, then the Service Provider shall not be entitled to any relief during the period for which the information is delayed.

69.6 The Service Provider shall notify TfL if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

69.7 If the Parties cannot agree the extent of the relief required, or TfL disagrees that a Relief Event has occurred or that the Service Provider is entitled to any extension of the Planned Operational Commencement Date or the Planned Release 2 Commencement Date, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

**70. Force Majeure**

70.1 Subject to clause 70.3, neither Party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Agreement if and to the extent that such delay or failure is due to the occurrence of a Force Majeure Event.

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

70.3 The Service Provider shall not be entitled to rely upon clause 70.1 if and to the extent that the Service Provider has failed to comply with the Business Continuity Plan, unless the Service Provider is prevented from complying with the Business Continuity Plan as a direct result of a Force Majeure Event.

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

- (A) shall forthwith notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event. As soon as possible following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Agreement;
- (B) shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Agreement including:
  - (1) compliance with the Business Continuity Plan (in the case of the Service Provider); and
  - (2) the making of any alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense; and
- (C) shall forthwith after the cessation of the Force Majeure Event, notify the other Party thereof and resume full performance of its obligations under this Agreement.

70.5 In the event that the Force Majeure Event occurs before Operational Commencement (or Release 2 Commencement, where the Force Majeure Event affects the implementation of Release 2) and if the Service Provider has complied with its foregoing obligations under this clause 70, then subject to clause 70.6, the Planned Operational Commencement Date or Planned Release 2 Commencement Date shall be postponed by such time as shall be reasonable for such a Force Majeure Event, taking into account the likely effect of delay.

70.6 If, on the expiry of ten (10) Working Days after occurrence of a Force Majeure Event where the Service Provider is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on the Service Provider's performance

of all or substantially all of the Services then, for as long as such Force Majeure Event continues and has that effect, TfL may terminate this Agreement in its entirety or may Partially Terminate in accordance with clause 72 (Termination).

- 70.7 If, on the expiry of twelve (12) Months after occurrence of a Force Majeure Event where TfL is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on TfL's compliance with all or substantially all of its obligations hereunder then, for as long as such Force Majeure Event continues and has that effect, the Service Provider may terminate this Agreement in its entirety.

## **PART 18: STEP IN AND TERMINATION**

### **71. Rights of TfL to Step-In**

- 71.1 Without prejudice to any other right or remedy of TfL under this Agreement including, for the avoidance of doubt, TfL's right to terminate or to Partially Terminate the Agreement under clause 72 (Termination), TfL shall have the right to exercise Step-In Rights by providing all or part of the Services, either by itself or through its agents or sub-contractors, in accordance with the following provisions of this clause 71 where TfL believes that one or more of the following circumstances has arisen, subject to clause 71.2:

- (A) there is a Material Service Level Failure or Continuous Service Breach;
- (B) a serious risk exists to the health or safety of persons;
- (C) at any time upon or after the occurrence of an Insolvency Event;
- (D) the Service Provider commits a material breach or Persistent Breach of this Agreement;
- (E) the Service Provider has failed to comply with the terms of (as the case may be) the Exit Plan or the Service Transfer Plan;
- (F) TfL is expressly so entitled pursuant to:
  - (1) clause 25.5 (System Failure); or
  - (2) clause 57.5(D) (Security);
- (G) a System Failure has occurred and has continued, or in TfL's opinion is likely to continue, for a period of more than five (5) Working Days and the Service Provider has either not implemented the Business Continuity Plan or has implemented such plan (in whole or in part) but the standard of Services provided as a result is not to TfL's satisfaction;
- (H) a Milestone is delayed by more than thirty (30) calendar days, due to an act or omission of the Service Provider;



- (I) TfL needs to do so in order to discharge any part of its statutory duties or if there is a Force Majeure Event which is preventing the Service Provider from performing some or all of its obligations under the Agreement; and/or
- (J) there is a Change in Law which renders performance of a material part of the Service Provider's obligations under this Agreement illegal.

71.2 If TfL believes that any of the circumstances set out in clause 71.1 have arisen, TfL may, following such consultation as TfL, acting reasonably, deems appropriate in the circumstances, serve notice in writing on the Service Provider (a “**Step-In Notice**”) specifying:

- (A) which of the circumstances specified in clause 71.1 is or are applicable;
- (B) the action TfL intends to take and the reason for such action;
- (C) the date on which TfL intends to commence such action which, for the avoidance of doubt, may be the date that the Step-In Notice is served; and
- (D) the time period which it believes will be reasonably necessary for such action.

71.3 At any time after TfL has issued a Step-In Notice, TfL may, for such period as TfL deems necessary, subject to clause 71.11, itself take such action, or appoint one or more Third Parties to take such action (and any consequential additional action as it believes necessary) as TfL considers appropriate. Without limitation to the generality of the foregoing, such action may include all or any of the following:

- (A) taking over any or all or any part of the Services as specified in the Step-In Notice. If and to the extent that TfL expressly in the Step-In Notice confirms that it is taking over such Services, the obligation of the Service Provider to provide such Services shall be suspended as specified in the Step-In Notice. The Service Provider shall continue to provide the Services which are not the subject of the Step-In Action in accordance with the provisions of the Agreement;
- (B) entering upon the Premises from which the Services or any part of them are being provided (and the Service Provider shall procure that TfL and any Third Party engaged by TfL is able to enter upon the Premises at no cost to TfL or to such Third Party);
- (C) having access to, and the right to use, any of the Systems and all records, documents (including but not limited to Documentation) and Data relevant to the provision of the Services;
- (D) using and accessing any Assets owned or controlled by the Service Provider or its Sub-Contractors, or for which the Service Provider or its Sub-Contractors are able to grant rights in respect of such Assets (including, without limitation, Third Party Software in accordance with clause 51 (Licensing of Intellectual Property Rights)), and any premises, plant, equipment and facilities used by the Service Provider in connection with this Agreement and to use, test, operate and do all such things as may be required by TfL in respect of those Assets (to the extent, in relation to Intellectual Property, permitted by clause 51 (Licensing of Intellectual

Property Rights)), premises, plant, equipment and facilities. The Service Provider hereby grants to TfL and any Third Party engaged by TfL (and shall procure that its Sub-Contractors shall grant) such rights as are necessary for TfL or any Third Party to exercise its rights under this clause 71.3(D);

- (E) requiring the Service Provider to enter into legally binding agreements with Third Parties (“**Arrangements**”) for the purpose of remedying or mitigating the circumstances which gave rise to the Step-In Action, provided that TfL shall only be entitled to do so by requesting a Mandatory Change pursuant to the Change Control Request Procedure in relation to the same, and, unless and until a Step-Out Notice is served on the Service Provider by TfL, the Service Provider shall not do, permit to be done, omit to do or permit not to be done, any thing which will or may terminate or breach the terms of such Arrangements. The costs of all such Arrangements shall be borne:
  - (1) if and to the extent that the activities that TfL requires to be carried out through the Arrangements are not referred to, or implicit in, the Statement of Requirements or schedule 28 (Service Provider’s Solution), by TfL; and
  - (2) in all other cases, by the Service Provider; and
- (F) doing all other things that TfL deems necessary for the purposes of taking such Step-In Action.

71.4 In the event that TfL wishes to engage the services of any Third Party to assist it in the performance of the Step-in Action, TfL shall notify the Service Provider of such Third Party and, in circumstances in which such Third Party is to be granted access to any Service Provider Confidential Information:

- (A) TfL shall procure that the Third Party enters into a confidentiality agreement in favour of the Service Provider on terms substantially similar to those set out in schedule 19 (Deed of Confidentiality) prior to being engaged in any Step-in Action; and
- (B) TfL shall comply, and shall procure that the Third Party complies, with all reasonable requirements of the Service Provider in respect of use of premises to which they are given access.

71.5 A Step-In Notice may be served and Step-In Action taken by TfL at any time, whether before, during or after the service of a notice of termination or a Partial Termination Notice pursuant to this Agreement.

71.6 The Service Provider shall co-operate fully with TfL throughout any period of Step-In, and shall provide all assistance required by TfL on request for the purposes of or relating to the Step-In Action including, without limitation to the generality of the foregoing:

- (A) providing access to or copies of Data and such other financial, operational, management or other information as may be required by TfL which is relevant to the provision of the Services; and

- (B) procuring the prompt assistance and availability of all relevant Personnel of the Service Provider.

71.7 Where Step-In Action is taken:

- (A) pursuant to clauses 71.1(A), 71.1(C), 71.1(D), 71.1(E), 71.1(F)(1), 71.1(F)(2) (where due to the act or omission of the Service Provider), 71.1(G) (where due to the act or omission of the Service Provider) or 71.1(H) (each a “**Fault Trigger**”) then, for so long as and to the extent that the Step-In Action is taken, the Service Provider shall compensate TfL on demand for all costs and expenses incurred by TfL in respect of such Step-In Action (including but not limited to reasonably allocated overheads and other internal costs and all advisers and legal fees) that are incurred by TfL or any other party appointed by it in:

- (1) preparing for and issuing the Step-In Notice; and
- (2) undertaking the Step-In Action,

provided that TfL consults with the Service Provider in advance of committing to such costs and continues to take reasonable steps to mitigate such costs. Where reimbursement of TfL’s costs and expenses includes the costs and expenses of any Third Party appointed, such Third Party costs and expenses may include a reasonable profit element; or

- (B) pursuant to any of the circumstances set out in clause 71.1 which are not Fault Triggers (the “**No Fault Triggers**”) then, for so long as and to the extent that the Step-In Action is taken, TfL shall meet its own costs of taking the Step-In Action and TfL shall reimburse the Service Provider for all reasonable costs incurred by the Service Provider in assisting TfL provided that the Service Provider has provided and continues to provide TfL with its full co-operation and assistance pursuant to clause 71.6. Such reimbursement amounts shall be included in the Service Provider’s monthly Invoice, with each item requiring reimbursement separately identified.

71.8 For so long as the Step-in Action is taken and the Service Provider complies with clause 71.6, the Service Provider shall continue to be paid the Service Charges (and/or Milestone Payments, as appropriate), plus any amounts due in accordance with clause 71.7(B) (if applicable), against which the following shall be set-off and deducted:

- (A) where Step-In Action is taken:
  - (1) pursuant to the Fault Triggers, an amount corresponding to any Service Failure Deductions due in accordance with this Agreement based on the level of Services actually received by TfL in the Month prior to the Month in which Step-In Action is taken, applied on a pro-rata basis in respect of the Services which are the subject of the Step-In Action; or
  - (2) pursuant to the No Fault Triggers, an amount corresponding to the mean level of Service Failure Deductions over the three Months prior to the Month in which Step-In Action is taken, applied on a pro-rata basis in respect of the Services which are the subject of the Step-In Action,

and in either case such deductions shall be subject to the Service Failure Deduction Cap;

(B) all other deductions which TfL is entitled to make from such sums under this Agreement; and

(C) all costs and expenses due in accordance with clause 71.7(A) (if applicable).

71.9 If and to the extent that the aggregate deductions referred to in clauses 71.8(A), 71.8(B) and 71.8(C) exceed the aggregate amount of Service Charges and any sums payable under clause 71.7(B) which are due, the Service Provider shall promptly upon demand pay to TfL a sum equal to the difference.

71.10 Neither TfL nor any Third Party engaged by TfL in accordance with this clause 71 shall have any liability to the Service Provider for any damage which has occurred prior to the date specified in TfL's Step-In Notice for commencement of Step-In Action, or which results from a breach by the Service Provider of its obligations under this Agreement.

71.11 Without prejudice to TfL's right to exercise its Step-In Rights and/or its continuing right to remain stepped-in once Step-In Action has been taken:

(A) the Service Provider may and shall, if requested to do so in the Step-In Notice or as notified to the Service Provider by TfL from time to time during the period of Step-In Action, promptly develop and put forward to TfL proposals demonstrating that the Service Provider is and will continue to be capable of providing the Services in respect of which Step-In Action has been, or may be, taken together with what steps, if any, the Service Provider proposes taking, including but not limited to a plan for the resumption of delivery of the Services (the "**Resumption Plan**") which shall set out in detail any relief from Service Levels for an interim period that the Service Provider in good faith believes to be necessary for the smooth resumption of delivery of the Services and confirmation of any changes made to the Services during the period of Step-In;

(B) upon receipt of the Service Provider's proposals, TfL shall, unless TfL reasonably considers it to not be appropriate or considers that the Service Provider's proposals will not result in the Services being resumed promptly and maintained to the required Service Levels, subject to such conditions and amendments in the Resumption Plan as TfL may reasonably deem appropriate and in any event without prejudice to TfL's rights under this clause 71 (where the circumstances referred to in that clause are continuing or recur), permit the Service Provider to continue to perform or recommence, as appropriate, performance of all or part of the Services in respect of which the Step-In Action has been taken in accordance with the Resumption Plan;

(C) any permission given under clause 71.11(B) shall be set out in a notice to the Service Provider (a "**Step-Out Notice**") informing the Service Provider that from the date specified in such Step-Out Notice (which shall be the date set out in the Resumption Plan or such other date as TfL may reasonably require), the Service Provider shall continue to perform or recommence performance, as appropriate, of all or part of the Services in respect of which the Step-In Rights were exercised and TfL will withdraw its own personnel

(and any personnel of Third Parties appointed by TfL as referred to in clause 71.3) from such parts of the Services as the Service Provider is to recommence performance. The Service Provider shall resume full performance of and responsibility for the provision of such parts of the Services from the date specified in the Step-Out Notice;

- (D) notwithstanding the foregoing, TfL may, at its sole discretion, decide at any time that it is inappropriate for TfL to continue with its Step-In Action or that the grounds for the exercise of its rights under clause 71.3 no longer exist in respect of all or any part of the suspended Services and may serve a Step-Out Notice specifying:
- (1) the parts of the Services in respect of which the Service Provider is to resume full performance; and
  - (2) the date on which the Service Provider's provision of and responsibility for such Services is to resume, provided that the period of notice is reasonable.

The Service Provider shall comply fully with the terms of any such Step-Out Notice. Nothing in this clause 71.11 shall prevent TfL from issuing more than one Step-Out Notice in relation to Services affected by a single Step-In Notice and TfL may, subject to clauses 71.11(C) and 71.11(D)(2), require the Service Provider to recommence the provision of suspended Services in their entirety, partially or gradually.

71.12 Without prejudice to any other rights TfL may have to terminate this Agreement, TfL shall, subject to TfL's compliance with clause 71.11(B), be entitled in its sole discretion to terminate this Agreement:

- (A) in the event that TfL exercises its Step-In Rights for a continuous period of three (3) Months or more as a result of one or more Fault Triggers; and/or
- (B) once the total of all periods during which TfL exercises its Step-In Rights equals or exceeds twelve (12) Months in aggregate.

71.13 References (however worded) in this clause 71 to any steps or action being taken by TfL under this clause 71 are references to such steps or action being taken either by TfL itself or by persons engaged by TfL for that purpose.

71.14 The issuing of a Step-In Notice and taking of Step-In Action by TfL:

- (A) shall not give the Service Provider the right to terminate this Agreement; and
- (B) shall be without prejudice to TfL's right to terminate this Agreement or to Partially Terminate in accordance with clause 72 (Termination), whether the event permitting TfL to do so arose before, on or after the date of the Step-In Notice.

71.15 In taking any Step-In Action, TfL shall, and shall procure that any Third Parties engaged by it for such purposes shall perform the affected Services with all reasonable care and skill. Notwithstanding the foregoing, TfL shall not be liable for any cost, loss, damage or claim suffered or incurred by the Service Provider or any

Sub-Contractor arising from any fair wear and tear in any elements of the Assets or any deterioration of the Services operated by it whilst taking the Step-in Action.

71.16 TfL shall, where practicable, not disturb or adversely affect the provision of the Services more than is required for the purposes of the Step-in Action.

## 72. **Termination**

### 72.1 **Termination by the Service Provider**

- (A) Without prejudice to the other rights or remedies it may have, the Service Provider may serve a notice in writing on TfL to terminate this Agreement with effect from thirty (30) Working Days of receipt by TfL of such notice if TfL fails to comply with any of its payment obligations hereunder relating to any undisputed sum in excess of three million pounds (£3,000,000) where payment has fallen due and payable and fails to remedy such breach within ninety (90) calendar days after receipt of formal written notice from the Service Provider demanding payment.
- (B) The Service Provider may only terminate this Agreement in accordance with the provisions of this clause 72.1 and must fully specify in any notice of termination the details of the event which has occurred entitling the Service Provider to terminate.

### 72.2 **Termination by TfL of the Agreement**

Without prejudice to any other rights or remedies it may have, TfL may terminate this Agreement in accordance with the following provisions of this clause 72 upon the occurrence of any of the following events or circumstances:

- (A) a Change of Control of the Service Provider and/or Guarantor and/or Shareholder (other than as a result of a consolidation, amalgamation, merger or solvent reconstruction of the Service Provider's Group) provided that TfL serves the notice of termination within sixty (60) calendar days of the date of receipt of notice from the Service Provider of the relevant Change of Control;
- (B) the Service Provider commits one or more material breaches or Persistent Breaches of this Agreement or any other agreement that it has entered into with TfL pursuant to or in connection with this Agreement;
- (C) a Guarantor commits one or more material breaches or Persistent Breaches of a Guarantee or any other agreement that it has entered into with TfL pursuant to or in connection with this Agreement or (without limitation to the foregoing) any other event giving rise to a right for TfL to terminate a Guarantee has occurred;
- (D) if any of the representations or warranties set out in clause 63 (Representations and Warranties) of this Agreement or set out in a Guarantee prove to have been inaccurate or incorrect when made or at the date hereof or of the relevant Guarantee (as appropriate), which materially adversely affect the provision of the Services or the operation of the Scheme;

- (E) the Service Provider commits any material breach of clause 33 (Revenue) or of the provisions of schedule 32 (Revenue Collection and Payment) which results in TfL incurring financial loss;
- (F) in circumstances in which a Key Milestone is delayed by more than twenty (20) Working Days;
- (G) any falsification of Data or Personal Data, any non-compliance with clause 61 (Information Compliance), or failure to comply with a provision of this Agreement that causes Data to be corrupted, in each case by the Service Provider, its Sub-Contractors or their respective agents or employees where such falsification, non-compliance or failure by an agent or employee:
  - (1) is not dealt with to TfL's reasonable satisfaction;
  - (2) arose due to or was contributed to by, the negligence or default of the Service Provider or a Sub-Contractor; or
  - (3) adversely impacts the operation or integrity of one or more Schemes;
- (H) there is a Material Service Level Failure or Continuous Service Breach;
- (I) an Insolvency Event affecting the Service Provider or a Guarantor occurs unless, in the case of an Insolvency Event affecting a Guarantor, the Service Provider has provided to TfL such security in place of such Guarantor's guarantee as TfL in its sole discretion deems acceptable to it;
- (J) there is a Change in Law, other than a change in TfL policy, which renders operation of a Scheme or the Schemes wholly or partly illegal or if a Scheme or the Schemes are cancelled or terminated by an authority (including but not limited to the Mayor) other than TfL;
- (K) a System Failure has occurred and has continued, or in TfL's opinion is likely to continue, for a period of more than twelve (12) hours and the Service Provider has either not implemented the Business Continuity Plan (if required under this Agreement) or has failed to implement such plan (in whole or in part) such that the standard of Services provided does not comply with the standards to which the Services were provided immediately prior to the System Failure occurring);
- (L) there has been a Diversity Infraction which is not dealt with to TfL's reasonable satisfaction (including but not limited to the Service Provider taking such steps as may be required by Law and appropriate disciplinary or other steps);
- (M) as expressly provided for in the following provisions:
  - (1) paragraph 29 of schedule 3 (Milestones and Deliverables);
  - (2) clause 25.5 (System Failure);
  - (3) clause 53.9 (Intellectual Property Rights Indemnity);

- (4) clause 57.5 (Security);
- (5) clause 60.14 (Insurance);
- (6) clause 64.1(C) (Corrupt Gifts or Payment);
- (7) clause 64.2(B) (Fraud);
- (8) clause 70.6 (Force Majeure);
- (9) clause 71.12 (Right of TfL to Step-In);
- (10) clause 82.2 (Assignment);
- (11) clause 88.3 (Conflict of Interest); and/or
- (12) clause 89.2 (Change of Control and Change of Ownership);

- (N) without prejudice to the Parties' other rights and remedies under this Agreement, TfL may in its sole discretion (without any obligation to provide any reasons therefore) terminate this Agreement at any time by giving not less than six (6) Months' written notice to the Service Provider; and/or
- (O) breach by the Service Provider of clause 93 (London Living Wage) or clause 94 (Adjustment to Service Charges to reflect changes in the London Living Wage).

72.3 Without prejudice to the rights of TfL under clause 72.4 and subject to any shorter periods set out elsewhere in this Agreement, upon the occurrence of a breach of this Agreement or other circumstances giving rise to a right of TfL to terminate under clause 72.2, TfL shall be entitled, if the relevant circumstance is capable of remedy, to serve a notice of default on the Service Provider requiring the Service Provider at the Service Provider's option (and the Service Provider shall notify TfL which of (A) or (B) below applies within five (5) Working Days of TfL's notice):

- (A) to remedy or procure the remedy of the breach or breaches or other circumstances constituting the breach of the Agreement as soon as practicable and, in any event no longer than within twenty (20) Working Days of such notice (or such longer period as may be agreed by TfL in its absolute discretion); or
- (B) to put forward within ten (10) Working Days of such notice (or such longer period as may be determined by TfL in its absolute discretion) a programme for the remedying of the breach or breaches or other circumstances, the programme to specify in detail the manner in which such breach, breaches or circumstances is or are proposed to be remedied and the latest date by which it is proposed that the breach, breaches or circumstances shall be remedied, and in this event the provisions of clause 72.5 shall apply.

72.4 Where the breach is not capable of remedy TfL shall be entitled to terminate this Agreement immediately or upon such notice as TfL may, by notice, specify. For the avoidance of doubt, the Parties agree that the following shall clauses not be



capable of remedy, clauses 72.2(A), 72.2(F), 72.2(H), 72.2(I), 72.2(J), 72.2(M)(1), 72.2(M)(2), 72.2(M)(8), 72.2(M)(9), 72.2(M)(10) and 72.2(M)(12).

- 72.5 Where the Service Provider puts forward a programme in accordance with clause 72.3(B), TfL shall endeavour to respond as soon as practicable and shall have ten (10) Working Days within which to notify the Service Provider in writing that it does not accept the programme, failing which TfL shall be deemed to have accepted the programme. Where TfL notifies the Service Provider that it does not accept the programme, TfL and the Service Provider shall endeavour within the following five (5) Working Days to agree any necessary amendments to the proposed programme. Failing such agreement, TfL may reject the Service Provider's proposed programme if TfL determines that the programme is not capable of remedying the relevant breach or circumstance within a reasonable period.
- 72.6 TfL may terminate this Agreement by notice having effect either immediately or on such date as TfL shall specify in such notice if:
- (A) where the Service Provider puts forward a programme pursuant to clause 72.3(B) and:
    - (1) the programme has been accepted by TfL and the Service Provider fails to implement or comply with the programme; or
    - (2) the programme as is put forward by the Service Provider pursuant to clause 72.3(B) is rejected by TfL in accordance with clause 72.5; or
  - (B) in all other cases to which clause 72.3 applies, the breach, breaches or other circumstances specified in a notice of default served under clause 72.3 is or are not remedied before the expiry of the period referred to in clause 72.3(A) (or such other period as may have been agreed by TfL).
- 72.7 Except in relation to failures to meet the Service Levels in relation to which TfL exercises its rights under clause 6 (Standard of Services) and/or schedule 5 (Service Level Agreement), the Service Provider commits the same breach of this Agreement, or a Guarantor commits the same breach of a Guarantee, more than twice in any period of twelve (12) Months, then TfL may, without prejudice to any of its rights or remedies under this Agreement, or at common law, serve a notice on the Service Provider or the relevant Guarantor (as appropriate):
- (A) specifying that it is a formal warning notice;
  - (B) specifying the breach; and
  - (C) stating that if such breach continues beyond twenty (20) Working Days, or such other period as the Parties may expressly in writing agree, after the date of service of the notice or recurs three (3) or more times during the Month after the date of service of the notice, TfL may terminate or Partially Terminate this Agreement, or may exercise its Step-In Rights pursuant to clause 71 (Rights of TfL to Step-In).

## 72.8 **Partial termination by TfL**

A Partial Termination Event will occur when any of the circumstances described in clauses 72.2(B) to 72.2(H) (inclusive), 72.2(J), 72.2(M)(1), 72.2(M)(2), 72.2(M)(3), 72.2(M)(4), 72.2(M)(8) or 72.2(M)(9) arise in relation to:

- (A) one or more Service Elements; and/or
- (B) the Services in relation to a particular Scheme or Schemes.

72.9 On the occurrence of a Partial Termination Event the provisions of clauses 72.3 to 72.6 (inclusive) shall apply *mutatis mutandis* to the relevant Service Element(s) and/or the Services in relation to a particular Scheme or Schemes provided that, in addition to TfL's rights to terminate such Service Elements and/or Services, where the relevant Service Element(s) or the Services in relation to a relevant Scheme or Schemes are being provided by a Sub-Contractor or Sub-Contractors, TfL shall have the right to require by notice the Service Provider to replace the relevant Sub-Contractor or Sub-Contractors.

72.10 If the Service Provider fails to replace any relevant Sub-Contractor in accordance with the provisions of clause 72.9 within a reasonable time not to exceed three (3) Months (or such longer time as TfL may in its sole discretion agree) of TfL issuing notice under clause 72.9, TfL shall be entitled at its option to terminate the right and obligation of the Service Provider to continue to provide the relevant Service Element(s) or Services relating to the relevant Scheme or Schemes provided by the Sub-Contractor in question by notice having effect either immediately or on such date as TfL shall specify in such notice.

72.11 Notwithstanding that the provisions of this Agreement, including but not limited to clauses 72.3 and 72.9, may permit TfL to require the Service Provider to attempt to remedy a particular breach or other circumstance, TfL shall be entitled to exercise its rights under clause 71 (Rights of TfL to Step-In) at any time if the circumstances in clause 71.1 apply.

72.12 The Service Provider shall, promptly upon becoming aware that one or more of the events or circumstances set out in clause 72.2 and/or clause 72.8 has, have or is or are likely to arise, notify TfL of this occurrence or likely occurrence with full details.

## 73. **Exit Management**

73.1 In addition to, and without limitation to, the generality of the following provisions of this clause 73, the Parties shall comply with their obligations set out in schedule 16 (Exit Plan).

73.2 The Service Provider acknowledges that, upon the termination, Partial Termination or expiry of this Agreement, TfL may require part or all of the Services to be performed by TfL itself or by a New Service Provider. The Service Provider further acknowledges that, in order that the hand-over of the provision of part or all of the Services may be properly managed, the New Service Provider or TfL will need to obtain a detailed knowledge of the operation and management of the Premises, the Service Systems and the provision of the Services before taking over the performance of part or all of the Services, or services similar to part or all of the

Services (the “**New Services**”). Accordingly, the Service Provider will be required to co-operate on the hand-over procedure to a New Service Provider or to TfL.

73.3 In addition, the Service Provider acknowledges that TfL may require information to be provided by the Service Provider concerning the relevant Premises, the Service Systems and/or the provision of the Services in order to provide such information to Third Parties whom TfL has invited to tender for the provision of the New Services whether or not an agreement with TfL to provide the New Services has been entered into. The Service Provider shall provide all such information at TfL’s request provided that TfL has obtained a written confidentiality undertaking from any Third Party to whom it proposes providing the information in respect of any information which is deemed to be confidential.

73.4 Without prejudice to the terms of schedule 16 (Exit Plan) or the terms of the Exit Plan:

- (A) in the event of termination or Partial Termination by TfL, TfL may provide in the notice of termination or Partial Termination Notice for a period, up to a maximum of three (3) Months; or
- (B) in the event of termination by the Service Provider, TfL may by notice require a period, up to a maximum of thirty (30) Working Days,

as TfL deems necessary to ensure a smooth hand-over of part or all of the Services (the “**Hand Back Period**”). Such Hand Back Period shall commence upon such date as TfL may specify in such notice and shall cease on the Termination Date or Partial Termination Date, as appropriate.

73.5 In order that the transfer of the right and obligation to provide part or all of the Services may be properly managed:

- (A) the Service Provider shall throughout the Hand Back Period or the nine (9) Month period prior to the Expiry Date (as appropriate) provide such assistance to and co-operate with TfL and/or any Other Service Provider and/or any New Service Provider as set out in the Exit Plan and/or the Service Transfer Plan;
- (B) the Service Provider shall be required to co-operate and assist, to the extent set out in the Exit Plan and/or the Service Transfer Plan, both TfL and, at the direction of TfL, a New Service Provider in any transition procedure for the New Services for a period of up to twelve (12) Months following the Termination Date, Partial Termination Date or the Expiry Date (as appropriate). The Service Provider shall comply with this provision notwithstanding that termination or Partial Termination by TfL may have been immediate; and
- (C) the Service Provider shall, if required by TfL and subject to the Change Control Request Procedure, provide support and maintenance services in relation to the Systems, Hardware, Software, Interfaces to be used in relation to the New Services for such period after the Termination Date, Partial Termination Date or Expiry Date (as appropriate) as TfL may require, in accordance with the provisions of schedule 16 (Exit Plan) and the Service Transfer Plan.

73.6 In the event of a Partial Termination, any variations that are required to this Agreement as a result of such Partial Termination shall be agreed by the Parties pursuant to the Change Control Request Procedure as soon as practicable following the service of the Partial Termination Notice. Any such variations shall be deemed to be a Mandatory Change for the purposes of schedule 9 (Change Control Request Procedure).

**74. Consequences of Termination, Partial Termination or Expiry**

74.1 Upon termination or Partial Termination of this Agreement, TfL shall, subject to clause 85 (Recovery of Sums Due and Set-Off):

- (A) pay the Service Provider the relevant Service Charges due and payable to the Service Provider under this Agreement up to the Termination Date or Partial Termination Date; and
- (B) in the circumstances set out in schedule 6 (Termination Compensation), pay Termination Compensation to the Service Provider.

74.2 On termination, Partial Termination or expiry of this Agreement for any reason, without prejudice to the provisions of clause 51 (Licensing of Intellectual Property Rights):

- (A) in respect of TfL Assets (or, in the case of Partial Termination, such TfL Assets as are required for the provision of the Service Element or the Services which has or have been Partially Terminated, as identified in the Asset Register in the case of Partial Termination of a Service Element):
  - (1) in the event that termination has occurred in accordance with clauses 72.2(B), 72.2(D), 72.2(F), 72.2(H) or 72.2(K) due to performance, or failure to perform, of the TfL Assets, then the Service Provider shall promptly pay to TfL an amount equivalent to the amount as has been, or should have been, entered into the Asset Register in relation to such TfL Asset pursuant to schedule 12 (Asset Management), whereupon title in such TfL Asset shall transfer to the Service Provider (if title to such TfL Asset is not already held by the Service Provider) and they shall be deemed Service Provider Assets; and
  - (2) in all other circumstances of termination, then TfL shall, if title to such TfL Asset is not already held by TfL, make payment on the termination of this Agreement or Partial Termination (as appropriate) of an amount equivalent to the Net Book Value of each such TfL Asset as at the date of expiry or termination or Partial Termination Date less any amount as has been, or should have been, entered into the Asset Register in relation to such TfL Asset pursuant to schedule 12 (Asset Management), whereupon title to such TfL Assets shall immediately transfer to TfL;
- (B) TfL shall have the option to purchase any Service Provider Assets used in the provision of the Services at their then Net Book Value;
- (C) subject to TfL's compliance with clause 74.2(A)(2), to the extent that any TfL Assets have not already been handed over to TfL in accordance with the Service Transfer Plan, the Service Provider shall deliver or hand over the TfL

Assets (or, in the case of Partial Termination, such TfL Assets as are required for the provision of the Service Element or the Services which has or have been Partially Terminated, as identified in the Asset Register in the case of Partial Termination of a Service Element) to TfL, in accordance with TfL's reasonable instructions;

- (D) in the event that the Service Provider (or a relevant Sub-Contractor) owns, as at the Termination Date or Partial Termination Date, any unused spare or replacement parts for the TfL Assets (if owned or acquired specifically in relation to this Agreement), TfL shall have the right, but not the obligation, to require the Service Provider to transfer title in, and deliver to TfL's premises, any such spare or replacement parts upon payment by TfL to the Service Provider of the Net Book Value of such spare or replacement parts (less such amount as has been paid for such spares under this Agreement as at such date);
- (E) TfL may require the Service Provider to sell (as agent for TfL) any TfL Assets, in which event the Service Provider shall use all reasonable endeavours to obtain the fair market price for such TfL Assets, and shall promptly account to TfL for any sale proceeds, net of the Service Provider's reasonable costs of sale, which it receives in respect of such TfL Assets. In the event that the Service Provider is unable to sell any such TfL Assets it shall, subject to TfL's express written approval, dispose of them in accordance with clause 67.14;
- (F) to the extent that they have not already been removed in accordance with the Service Transfer Plan, the Service Provider shall promptly remove all Service Provider Assets (or, in the event of Partial Termination, those Service Provider Assets which are no longer required for the provision of the Services after Partial Termination) which are situated on TfL's premises or such other premises as shall fall under TfL's control as part of the Service Transfer Plan or Exit Plan (as appropriate), except as otherwise required under this Agreement or expressly agreed in writing by the Parties. If the Service Provider fails to comply within twenty (20) Working Days, TfL may take any action which is necessary or desirable to remove any such Service Provider Assets and other items from TfL's premises. Subject to TfL taking reasonable care and giving the Service Provider prior notice of the actions TfL proposes to take, TfL shall not be liable for any losses or liabilities incurred by the Service Provider or any Third Party as a result, directly or indirectly, of any removal of property from TfL's premises or of any action taken by TfL pursuant to this clause 74.2 and the Service Provider shall indemnify TfL against any cost, expense, loss, damage or liability which TfL may suffer or incur as a result of any such removal or action and against any claim, action, proceeding or demand for damages by any Third Party (including legal fees and expenses on an indemnity basis) in respect of any cost expense, loss, damage or liability which that Third Party may suffer or incur and which results from, or arises out of or in any way is connected with any such removal or action; and
- (G) if TfL Assets are to be re-located following termination or Partial Termination, the Service Provider shall provide such reasonable assistance to TfL as TfL may require to facilitate such re-location and TfL shall reimburse the Service Provider's reasonably and properly incurred costs in providing such assistance.

- 74.3 With effect from the Termination Date or the Expiry Date as appropriate, and subject to clause 75 (Survival of Clauses), the rights and obligations of the Parties shall terminate and be of no future effect. This clause 74.3 is without prejudice to either parties' rights and remedies which may have accrued prior to the Termination Date or Expiry Date. Subject to clause 74.4, termination, Partial Termination or expiry shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the circumstances which gave rise to the termination or Partial Termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the Termination Date, Partial Termination Date or Expiry Date subject always to clause 59 (Indemnities and Limitations of Liability) and clause 74.4.
- 74.4 The Service Provider shall have no claim against TfL in relation to the termination, Partial Termination or expiry of this Agreement or the events directly giving rise to termination or Partial Termination, where relevant, other than amounts due but unpaid by TfL or as expressly provided in this clause 74 and schedule 6 (Termination Compensation).
- 74.5 Following termination, Partial Termination or expiry of this Agreement, each of the Parties shall use all reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination, Partial Termination or expiry for which they are to be compensated by the other Party. Where compliance with this clause will mean that the Service Provider will incur material expenditure, the Service Provider shall not incur such material expenditure without the express written approval of TfL.
- 74.6 Where TfL has served a notice to terminate this Agreement in accordance with clause 72.2, or a Partial Termination Notice, TfL shall, at any time before the expiry of the notice, be entitled to exercise, as soon as may be practicable within that period, such of the following powers as it considers expedient:
- (A) direct the Service Provider, where Services have not been provided, to refrain from providing such Services;
  - (B) direct the Service Provider to complete in accordance with this Agreement the performance of all or any of the Services, or any part or component thereof which are ongoing at the expiry of the notice and to deliver the same at such time or times as may be mutually agreed on, and all Services provided by the Service Provider in accordance with such directions and accepted shall be paid for through and as part of the Service Charges at no additional cost to TfL; and/or
  - (C) direct that the Service Provider shall, as soon as may be practicable after the receipt of such notice:
    - (1) take such steps as will ensure that the Services (or relevant part of the Services, in the event of Partial Termination) being provided by the Service Provider are reduced as rapidly as possible;
    - (2) as far as possible, and in a manner consistent with clause 74.6(C)(1), concentrate work on the completion of Services (or relevant part of the Services, in the event of Partial Termination) partly provided; and/or

- (3) determine on the best terms reasonably achievable such Sub-Contracts and orders for Services as have not been completed, observing in this connection any direction given under clauses 74.6(B), 74.6(C)(1) and 74.6(C)(2) as far as may be possible.

74.7 All activities carried out by the Service Provider pursuant to clauses 73.5(A) and 73.5(B) (Exit Management) shall be paid for through and as part of the Service Charges save to the extent that the Service Provider demonstrates to the reasonable satisfaction of TfL that its reasonably and properly incurred costs in carrying out such activities exceed its costs of providing the Services that are covered by the Service Charges as shown in the Financial Model. Where its reasonably and properly incurred costs do so exceed the costs covered by the Service Charges, TfL shall reimburse the Service Provider for such reasonably and properly incurred excess costs calculated in accordance with Annex G of schedule 9 (Change Control Request Procedure) on receipt of a valid invoice in respect of the same together with such timesheets and/or other records as TfL may reasonably require to verify the accuracy of such invoice.

## 75. **Survival of Clauses**

- 75.1 Termination or expiry of this Agreement shall not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination, including but not limited to the following:
- (A) clauses 1.6, 30, 31, 33.2, 49, 50, 51, 52, 53, 59, 60, 74.3, 75, 80, 81, 84, 91 and 92; and
  - (B) schedules 13 (Service Provider Confidential Information), 15 (Information Compliance) and 21 (CEDR Model Expert Determination Agreement).

## **PART 19: MISCELLANEOUS**

### 76. **Waiver and Approvals**

- 76.1 The rights, powers, privileges and remedies provided in any provision of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by any other provision of this Agreement, by law or otherwise.
- 76.2 No failure to exercise nor any delay in exercising by any Party to this Agreement of any right, power, privilege or remedy under this Agreement shall impair or operate as a waiver thereof in whole or in part. Without prejudice to the generality of the foregoing the Service Provider acknowledges that exercise by TfL of its Step-in Rights shall not impair or constitute a waiver of any right, power, privilege or remedy of TfL under this Agreement.
- 76.3 No single or partial exercise of any right, power privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

76.4 No consent, comment, acceptance or approval (including without limitation any Approval) of TfL under this Agreement shall in any way relieve the Service Provider of its obligations under this Agreement.

77. **Entire Agreement**

77.1 This Agreement, together with all documents referred to in it (including but not limited to the documents referred to in clause 63.1(M) (Representations and Warranties)), constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

77.2 The Service Provider acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having understood and freely entered into this Agreement, it agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud. The Service Provider acknowledges that its legal advisers have explained to it the effect of this clause 77.2.

77.3 Subject to clause 46 (Change Control Request Procedure) no variation to this Agreement shall be effective unless made in writing and duly executed on behalf of the Parties.

78. **Severability**

If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

79. **Notices**

79.1 Any notice (which term shall in this clause include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.

79.2 Any such notice shall be addressed as provided in clause 79.4 and may be:

- (A) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 17.00 hours on a Working Day, or, if it is delivered later than 17.00 hours on a Working Day or at any time on a day which is not a Working Day, at 08.00 hours on the next Working Day;
- (B) if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two (2) Working Days after the date of posting;
- (C) if from or to any place outside the United Kingdom, sent by pre-paid airmail, or by air courier in which case it shall be deemed to have been given seven



(7) Working Days after the date of posting in the case of airmail or two Working Days after delivery to the courier, in the case of air courier;

- (D) sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile after 17.00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08.00 on the next Working Day; or
- (E) subject to clause 79.3, sent by electronic mail, in which case, it shall be deemed to be given when actually received but subject to the same provisions regarding receipt after 17.00 hours as apply to notices sent by facsimile.

79.3 The following provisions shall apply in respect of any notice sent by electronic mail:

- (A) The following notices, must, if sent by electronic mail, also be served simultaneously by one of the other methods referred to in clause 79.2:
  - (1) Notices of step-in or step-out under clause 71 (Rights of TfL to step-in);
  - (2) Notices of termination and Partial Termination Notices under clause 72 (Termination); and
  - (3) any Notice of Approval, Notice of Authority to Proceed, Agreement to Release Payment, Notice of Agreement to Operate and Notice of Business Acceptance.
- (B) Notices sent by electronic mail shall:
  - (1) be in a form and context calculated to come to the recipient's immediate attention, including by being classified as "urgent";
  - (2) be set up such that the sender is able to check whether they have been received and opened by the recipient;
  - (3) be in immediately intelligible form and saveable to the relevant information systems; and
  - (4) comply with any other requirements specified in writing by TfL from time to time.
- (C) If any notice is received in an unintelligible or unrecognisable form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender shall re-send the notice and simultaneously serve a copy of the notice by one or other of the methods referred to in clause 79.2.

79.4 The addresses and other details of the Parties referred to in clause 79.2 are, subject to clause 79.5:

***[Information Redacted]***

79.5 Either Party to this Agreement may notify the other Party of any change to the address or any of the other details specified in clause 79.4, provided that such notification shall only be effective on the date specified in such notice or five (5) Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

## 80. **Publicity**

80.1 Subject to clause 80.3 and whether or not any restriction contained in clause 81 (Confidentiality) applies, the Service Provider shall not, and shall procure that its Personnel and Sub-Contractors do not, make any announcement (including, without limitation, any communication to the public, to any clients or suppliers of either Party or to all or any of the employees of either Party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about TfL (including, without limitation Confidential Information) without the prior written approval of TfL.

80.2 TfL shall have the absolute discretion in deciding whether to give its consent as referred to in this clause 80.

80.3 Clause 80.1 shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over either Party (including but, not limited to, the Financial Services Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such announcement will be made only after consultation with the other Party.

80.4 The obligations and restrictions contained in this clause 80 will survive termination of the Agreement and continue without limit of time.

## 81. **Confidentiality**

81.1 The Service Provider acknowledges that during the Term it may receive, obtain, prepare or create TfL Confidential Information. The Service Provider undertakes, subject to clause 81.2, that:

- (A) it shall receive and/or maintain the TfL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the TfL Confidential Information for any purposes whatsoever (and in particular shall not use the TfL Confidential Information to the detriment of TfL) other than for the purpose of the performance of the Services or compliance with its obligations under this Agreement;
- (C) it shall not disclose the TfL Confidential Information to any Third Party without the prior written consent of TfL except that it is entitled to the extent strictly necessary to disclose the TfL Confidential Information:
  - (1) to such of the Service Provider's Personnel and advisers who need to know the TfL Confidential Information for the performance of the Services provided that the Service Provider shall be responsible for any

breach of its obligations occasioned by any act or omission of such Personnel and shall, before disclosing TfL Confidential Information to members of Key Personnel either: (i) require such Key Personnel to enter into a written confidentiality undertaking in the form set out in schedule 19 (Deed of Confidentiality); or (ii) have obtained prior written notice from TfL confirming that the obligations of confidentiality imposed on such members of Key Personnel by the Service Provider are sufficient and that no such written undertaking is required; or

- (2) to the Service Provider's auditors and any other person or body having a legal right or duty to know the TfL Confidential Information in connection with the Service Provider's business provided that prior to such disclosure the Service Provider consults with TfL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TfL Confidential Information is disclosed;
- (D) it shall inform each of the persons referred to in clauses 81.1(C)(1) and 81.1(C)(2) to whom TfL Confidential Information is disclosed of the restrictions as to use and disclosure of the TfL Confidential Information;
- (E) it shall, at TfL's request, deliver to TfL or destroy all or any documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the TfL Confidential Information and if instructed by TfL in writing, remove all electronically held TfL Confidential Information, including (without limitation) the purging of all disk-based TfL Confidential Information and the reformatting of all disks; and
- (F) it shall not, except where provided in clause 81.1(C), or without the prior written consent of TfL, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the TfL Confidential Information.

81.2 The obligations set out in clause 81.1 do not apply to any TfL Confidential Information which:

- (A) the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Service Provider by TfL;
- (B) is lawfully disclosed to the Service Provider otherwise than in breach of an obligation of confidentiality to TfL;
- (C) is or has come into the public domain through no fault of the Service Provider or its Personnel, agents or Sub-Contractors; or
- (D) is required by law or by order of a court of competent jurisdiction to be disclosed.

81.3 The Service Provider acknowledges that damages may not be an adequate remedy for any breach of clause 81.1 and that (without prejudice to all other remedies which TfL may be entitled to as a matter of law) TfL shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the

provisions of this clause and no proof of special damages shall be necessary for the enforcement of the provisions of this clause.

81.4 The TfL Confidential Information shall be and shall remain the property of TfL.

81.5 TfL acknowledges that during the Term it may receive Service Provider Confidential Information. TfL undertakes, subject to clause 81.6, that:

- (A) it shall receive and/or maintain the Service Provider Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the Service Provider Confidential Information for any purposes whatsoever (and in particular shall not use the Service Provider Confidential Information to the detriment of TfL) other than for the purpose of the receipt of the Services, compliance with its obligations under this Agreement or exercise of its rights under this Agreement;
- (C) it shall not disclose the Service Provider Confidential Information to any Third Party without the prior written consent of the Service Provider except that it is entitled to the extent strictly necessary to disclose the Service Provider Confidential Information:
  - (1) to such of its employees, officers, agents and advisers who need to know the Service Provider Confidential Information provided that TfL shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or
  - (2) to TfL's auditors, any other person or body having a legal right or duty to know the Service Provider Confidential Information in connection with TfL's business and any other person to whom Service Provider Confidential Information may be disclosed under this Agreement, provided that prior to such disclosure TfL consults with the Service Provider as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before Service Provider Confidential Information is disclosed;
- (D) it shall inform each of the persons referred to in clauses 81.5(C)(1) and 81.5(C)(2) to whom Service Provider Confidential Information is disclosed of the restrictions as to use and disclosure of the Service Provider Confidential Information;
- (E) it shall, at the Service Provider's request, deliver to the Service Provider or destroy all or any documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Service Provider Confidential Information and if instructed by the Service Provider in writing, remove all electronically held Service Provider Confidential Information, including (without limitation) the purging of all disk-based Service Provider Confidential Information and the reformatting of all disks provided that TfL shall be entitled to retain such number of copies as are necessary for its internal and/or audit purposes; and

- (F) it shall not, except where provided in clause 81.5(C), or without the prior written consent of the Service Provider, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the Service Provider Confidential Information.

81.6 The obligations set out in clause 81.5 do not apply to any Service Provider Confidential Information which:

- (A) TfL can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to TfL by the Service Provider;
- (B) is lawfully disclosed to TfL otherwise than in breach of an obligation of confidentiality to the Service Provider;
- (C) is or has come into the public domain through no fault of TfL or its employees, officers, agents or advisers;
- (D) TfL determines should be disclosed in accordance with FOI Legislation;
- (E) is required to be disclosed to the National Audit Office or the District Auditor;  
or
- (F) is required by law or by order of a court of competent jurisdiction to be disclosed.

81.7 TfL acknowledges that damages may not be an adequate remedy for any breach of clause 81.5 and that (without prejudice to all other remedies which the Service Provider may be entitled to as a matter of law) the Service Provider shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages shall be necessary for the enforcement of the provisions of this clause.

81.8 The Service Provider Confidential Information shall be and shall remain the property of the Service Provider.

81.9 The obligations of confidentiality set out in this clause shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this clause.

## 82. **Assignment**

82.1 The Service Provider shall not assign, transfer, charge, novate, encumber, hold on trust or deal in any other similar manner whether in whole or in part with this Agreement or its rights under this Agreement or any other agreement entered into pursuant to this Agreement or in relation to a Scheme or the Schemes.

82.2 In the event of breach of clause 82.1 by the Service Provider, TfL shall be entitled to terminate this Agreement immediately.

## 83. **Relationship**

83.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided to the contrary in this

Agreement, shall it constitute or be deemed to constitute any Party the agent of any other Party for any purpose.

83.2 Except as expressly provided to the contrary in this Agreement, the Service Provider shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of TfL or bind TfL in any way.

84. **Contracts (Rights of Third Parties) Act**

84.1 Subject to the provisions of clause 40 (Indemnities Relating to Employees) and to the provisions of paragraph 8 of schedule 16 (Exit Plan), no person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

84.2 The consent of Third Parties shall not be required for the variation or termination of this Agreement, even if that variation or termination affects or rescinds the benefit conferred on a Third Party.

85. **Recovery of Sums Due and Set-Off**

85.1 All damages, costs, charges, expenses, debts, sums or other amounts owing: (i) to or incurred by TfL arising out of or attributable to this Agreement; or (ii) to any member of the TfL Group under any other contract between any member of the TfL Group and the Service Provider, may be deducted by TfL from monies due or which may become due to the Service Provider under this Agreement or under any other contract with any member of the TfL Group or TfL may recover such amount as a debt.

85.2 All sums payable by the Service Provider under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims whatsoever.

86. **Mutual Assistance**

Each Party shall at its own expense execute all documents and do all acts and things reasonably required by the other to give effect to the terms of this Agreement. In addition, the Parties shall execute all such further deeds and documents as may reasonably be required, or to the extent necessary for the provision of the Services, to document, secure, register, acknowledge and perfect the vesting, assignments and licences in relation to any Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

87. **Parent Company Guarantee**

The Service Provider shall, contemporaneously with the execution of this Agreement, deliver to TfL a parent company guarantee in the form set out in schedule 17 (Agreed Form of Guarantee), executed as a deed for and on behalf of the Guarantor by duly authorised representatives (the “**Guarantee**”).

**88. Conflict of Interest**

- 88.1 The Service Provider acknowledges and agrees that it does not have an interest in any matter where there is or is likely to be a conflict of interest with its providing the Services to TfL or with any member of the TfL Group and that (except as provided below) it shall not act for any person, organisation or company where there is or is likely to be a conflict of interest with it providing the Services or with any member of the TfL Group. This clause shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is, as at the Effective Date, providing services provided that the Service Provider shall:
- (A) not act for any such client in respect of any transactions between any member of TfL Group and such client;
  - (B) ensure that the Personnel acting in any capacity for any such client are different from the Personnel involved in providing the Services or in any other work which the Service Provider carries out in relation to any member of TfL Group;
  - (C) ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of TfL Group; and
  - (D) inform TfL of all such existing clients and the steps that it is taking to ensure compliance with clauses 88.1(A) to 88.1(C) inclusive.
- 88.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify TfL in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and shall work with TfL to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to TfL's satisfaction.
- 88.3 Breach of clause 88.1 or clause 88.2 shall entitle TfL to terminate this Agreement under clause 72.2(B) (Termination) for material breach.

**89. Change of Control and Change of Ownership**

- 89.1 The Service Provider shall promptly and in any event within five (5) Working Days notify TfL of the public announcement of:
- (A) any event that may give rise to a Change of Ownership or a Change of Control affecting it and/or a future Change of Ownership or Change of Control and provide such information as TfL requires in relation to such a Change of Ownership; and
  - (B) the sale or proposed sale of all or substantially all of the business of the Service Provider or the Guarantor.
- 89.2 In the event of the sale of all or substantially all of the business of the Service Provider or the Guarantor, TfL shall have the right to terminate this Agreement within sixty (60) days of receipt of notice from the Service Provider in accordance with clause 89.1 unless, in the case of a sale affecting the Guarantor, the Service

Provider has within such period provided a guarantee from a replacement guarantor acceptable to TfL in terms identical to the Guarantee.

90. **Counterparts**

90.1 This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement. Either Party may enter into this Agreement by signing any such counterpart.

**PART 20: DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION**

91. **Dispute Resolution**

91.1 Within one (1) month following the signing of this Agreement, the Parties shall appoint an expert to determine all disputes arising under this Agreement (the “**Expert**”). The Expert shall:

- (A) be a Queen’s Counsel or such other suitably qualified person as the Parties may expressly in writing agree; and
- (B) be independent of the Parties.

91.2 In the event that:

- (A) the proposed Expert refuses to be appointed or to continue to act as the Expert under this Agreement; or
- (B) the proposed Expert is incapable, or becomes incapable, of acting as Expert for any reason,

then either of the Parties may request the Chief Executive of the Centre for Effective Dispute Resolution (CEDR) to appoint an Expert as soon as reasonably practicable (notwithstanding the provisions of clause 91.1). Any such request shall include a request that before appointing an Expert the Chief Executive of CEDR shall first solicit comments from both parties regarding the appropriate skills the Expert will require in order to determine disputes under this Agreement. The Chief Executive of CEDR shall be entitled to proceed to appoint an Expert if in his opinion such comments have not been received from one or other Party within a reasonable period.

91.3 For the avoidance of doubt, the Expert shall sit as an expert not as an arbitrator.

91.4 Upon the proposed Expert consenting to his appointment as the Expert or upon the Chief Executive of CEDR notifying the Parties of his choice of Expert (as applicable), the Parties shall within ten (10) Working Days complete and sign the CEDR Model Expert Determination Agreement (2001 version) in the amended form set out in schedule 21 (CEDR Model Expert Determination Agreement) of this Agreement. The Parties shall each use their best endeavours to procure that the Expert signs such agreement promptly thereafter. If, notwithstanding their respective best efforts



to procure his signature, the proposed Expert refuses to sign, the Parties shall promptly appoint a different individual as Expert in accordance with this clause 91.

- 91.5 Notwithstanding the appointment of the Expert, TfL and the Service Provider shall each use their best endeavours to resolve as soon as possible any dispute which arises between them out of or in relation to this Agreement. In respect of each such dispute:
- (A) either Party may serve upon the other a written notice (the “**Dispute Notice**”) stating the nature of the dispute; and
  - (B) the Parties shall then promptly attempt to settle the dispute by means of commercial negotiation between the Service Provider’s Executive Board Director responsible for the relationship between it and TfL, and TfL’s Director of Congestion Charging.
- 91.6 If the Parties fail to agree a mutually satisfactory resolution to their dispute within ten (10) Working Days following service of the Dispute Notice, any Party to the dispute may refer the dispute to the Expert for determination.
- 91.7 When seeking to agree the procedural directions which will govern the conduct of the Expert Determination, each of the Parties shall request the Expert to include directions whereby either Party may request the Expert to issue declaratory relief, or to issue an interim determination which (if issued by the Expert) shall be binding on the Parties until the Expert issues his final determination (which he shall be requested to do as soon as reasonably practicable).
- 91.8 In respect of any dispute and particularly (but without limitation to the generality of the foregoing) in respect of a dispute which is in any way concerned with the exercise of Step-In Rights, termination or Partial Termination of this Agreement, or the implementation of the Exit Plan or otherwise relating to a New Service Provider being appointed for the supply of Services, when considering whether to issue declaratory relief or to make an interim determination the Expert shall be requested by the Parties to take into account the fact that each of the Schemes is a service provided to the public and as such they should continue to operate, and in a timely, economic, efficient and reliable manner and such that the Service Provider shall not cease to provide the Services.
- 91.9 The Parties agree that in respect of any dispute arising under this Agreement:
- (A) either Party may make an application to the Expert requesting that any Other Service Provider(s) (including in each case their heirs, successors and assignees) (“**Third Party Service Provider(s)**”) be joined to proceedings before the Expert under this Agreement;
  - (B) the Expert shall, on an application by any Party, be entitled to join Third Party Service Provider(s) to proceedings between the Parties under this Agreement in the event that he considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Provider(s) consent to be joined to such proceedings;
  - (C) they shall amend the CEDR Model Expert Determination Agreement (set out in schedule 21 (CEDR Model Expert Determination Agreement)) to take

account of a decision by the Expert to join Third Party Service Provider(s) to proceedings before the Expert under this Agreement, in respect of the relevant dispute only; and

- (D) without prejudice to the foregoing provisions of this clause, Third Party Service Provider(s) may be joined to proceedings before the Expert under this Agreement by mutual consent of the Parties which shall be communicated in writing to the Expert and which shall enclose a document signed for and on behalf of such Third Party Service Provider(s) confirming its/their consent to be joined to such proceedings. In the event that the Parties agree to join Third Party Service Provider(s) to proceedings before the Expert under this Agreement they shall amend the CEDR Model Expert Determination Agreement (set out in schedule 21 (CEDR Model Expert Determination Agreement) to this Agreement) accordingly and shall use their best endeavours to procure the agreement of the Expert to such amendment.

91.10 Except as provided by this clause the Expert's final determination shall be final and binding on the Parties save in the case of fraud or manifest error. Where the Expert's final determination relates to:

- (A) a dispute with a value in excess of five million pounds (£5,000,000) (as certified by the Expert in his final determination);
- (B) a dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of this Agreement by either of the Parties;
- (C) where the determination relates principally to the grant of relief of a non-financial nature made in relation to ownership or use of Intellectual Property Rights; or
- (D) where the determination expressly prevents one of the Parties from conducting business other than in relation to the Schemes,

the Parties reserve their rights to reject the final determination and to apply instead to the courts of England and Wales in order to resolve the dispute. In the event that a Party wishes to exercise its right under this clause to reject the final determination, such Party shall so inform the Expert and the other Party or parties by notice in writing (the "**Rejection Notice**") and shall issue proceedings regarding the dispute before the court no later than thirty (30) Working Days following service of the final determination. If a Party does not serve the Rejection Notice and issue proceedings within the time limit referred to in this clause, the final determination shall be final and binding on the Parties save in the case of fraud or manifest error.

91.11 For the avoidance of doubt, the Parties shall abide by any interim determination or declaratory relief issued by the Expert pending his final determination. In the event that a Party exercises its right to reject the Expert's final determination under clause 91.10, the Parties shall nevertheless abide by the Expert's final determination pending the court's decision in the matter, unless and until the court orders otherwise.

91.12 The Expert shall be entitled to appoint experts or other professional advisers to assist him in reaching his determination. The fees of such experts or professional

advisers shall be treated as part of the fees and expenses of the Expert Determination.

92. **Governing Law and Jurisdiction**

92.1 This Agreement shall be governed by and construed in accordance with English law.

92.2 Subject to clause 91 (Dispute Resolution), the Parties shall submit to the exclusive jurisdiction of the English courts.

93. **London Living Wage**

93.1 Without prejudice to any other provision of this Agreement, the Service Provider shall:

- (A) ensure that none of the London Living Wage Employees is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (B) ensure that none of the London Living Wage Employees is paid less than the amount to which they are entitled in accordance with their respective contracts of employment;
- (C) provide to TfL such information concerning the London Living Wage as TfL may reasonably require from time to time;
- (D) disseminate on behalf of TfL to the London Living Wage Employees such perception questionnaires as TfL may reasonably require from time to time and promptly collate and return to TfL responses to such questionnaires; and
- (E) co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

94. **Adjustment to Service Charges to reflect changes in the London Living Wage**

94.1 The Service Provider acknowledges that the London Living Wage may be increased from time to time and that TfL shall have the right, as a Mandatory Change, from time to time to require the Service Provider to comply with its obligations under this Agreement in relation to such increased London Living Wage.

94.2 If the London Living Wage is increased so that it exceeds the basic hourly wage of £7.20 (before tax, other deductions and any increase for overtime), the Service Provider may recover a proportion of its additional costs in complying with clause 93 (London Living Wage) calculated as follows:

$$I = NLLW - X - Y$$

Where:

I = the amount (in pounds sterling and pence) by which the relevant Service Charges shall be increased.

NLLW = the amount of the London Living Wage;

- X = the greater of: (a) £7.20; and (b) the then current mean hourly rate payable in London to the appropriate category of employees, as reasonably determined by TfL; and
- Y = the aggregate amount of any previous increases calculated in accordance with this clause 94.2.

AS WITNESS the hands of the duly authorised representatives of the Parties on the date first before written

SIGNED for and on behalf of **TRANSPORT FOR LONDON**

By: ***[Information Redacted]***

SIGNED for and on behalf of **IBM UNITED KINGDOM LIMITED**

By: ***[Information Redacted]***