



[SUBJECT TO AGREEMENT]

Agreement Reference Number: TFL91640

Date:

**Framework Agreement
for the Provision of Services**

between

Transport for London

and

Charles Novacroft Direct Limited
for

Contact Centre Services

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THIS AGREEMENT is made the day of March 2016

BETWEEN:

- (1) Transport for London (“**the Contracting Authority**”); and
- (2) Charles Novacraft Direct Limited , a company registered in England and Wales (Company Registration Number 3601214) whose registered office is at Seebeck House, 1 Seebeck Place, Knowlhill, Milton Keynes, MK5 8FR (“**the Service Provider**”).

RECITALS:

- A. The Parties wish to enter into a framework agreement which will enable an Authority, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Services of the type described in Schedule 3.
- B. The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under any Call-Off Contract.
- C. This framework agreement can be utilised by the Contracting Authority or any other member of the Authority Group for the purposes of entering into a Call-Off Contract.

THE PARTIES AGREE THAT:

In consideration of the payment by the Contracting Authority to the Service Provider of £5.00 (the receipt and sufficiency of which is acknowledged by the Service Provider) and the mutual promises and covenants set out in this Agreement, the Parties agree as follows:

1. Definitions and Interpretations

In the Agreement (including the Recitals):

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

“Agreement”	this framework agreement, including the Schedules and all other documents referred to in this Agreement;
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“Agreement Commencement Date”	the date for commencement of this Agreement specified in Schedule 1;
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“Agreement Reference Number”	the reference number for this Agreement
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	as set out in Schedule 1;
“Authority”	the Contracting Authority and/or any Authority Group member utilising this Agreement;
“Authority Group”	TfL or TTL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any “member of the Authority Group” shall refer to TfL or any such subsidiary;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“Call-Off Contract”	a call-off contract in the form set out in Schedule 6 that has been executed by the Service Provider and an Authority, which includes any attachments and any documents expressly referred to in that Call-Off Contract;
“Call-Off Contract Number”	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
“Call-Off Term”	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
“Cessation Plan”	a plan agreed between the Parties or determined by the Contracting Authority pursuant to Clause 34.3 in the event a Declaration of Ineffectiveness is sought or Clause 34.9 to give effect to a Public Procurement Termination;
“Charges”	the charges payable by the Authority, in consideration of the due and proper performance of the Services in accordance with a Call-Off Contract, as specified in or calculated in accordance with that Call-Off Contract;
“Confidential Information”	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Contracting Authority or any other member of the Authority Group (whether

commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Contracting Authority or any member of the Authority Group;

“Contract Information”

(a) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and

(b) data extracted from the invoices submitted under any Call-Off Contract which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

“Contract Manager”

the person named as such in the Call-Off Contract or such other person as notified to the Service Provider by relevant Authority from time to time;

“Declaration of Ineffectiveness”

a declaration made by a court under regulation 45J which has any of the consequences described in regulation 45M of the Utilities Contracts Regulations 2006 SI 2006/6 (the “**UCR**”) as amended from time to time or which is made under an equivalent provision in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland and which has consequences which are similar to any of the consequences described in regulation 45M of the UCR;

“Holding Company”

any company which from time to time directly or indirectly controls the Service Provider as set out by section 1159 of the Companies Act 2006;

“Initial Term”

shall have the meaning given in Clause 4;

“Insolvency Event”

any of the following:

- (a) either or both of the Service Provider and/or a Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Service Provider and/or a Holding Company;
- (c) being a company, either or both of the Service Provider or a the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both of the Service Provider or a Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying;
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider and/or a Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or

unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel”

the Service Provider Contract Manager and such other Service Provider Personnel who the Parties may agree to designate as Key Personnel from time to time as detailed in Schedule 1 or any relevant Call-Off Contract;

“Losses”

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct losses (including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Mini-Competition”

a competitive process which an Authority may from time to time utilise to select a service provider to carry out Services from time to time;

“Parties”

the Authority and the Service Provider (including their successors and permitted assignees) and **“Party”** shall mean either of them as the case may be provided that for the avoidance of doubt the Parties to this Agreement are the Contracting Authority and the Service Provider;

“Process Document(s)”

has the meaning given in Schedule 3 (Services);

“Procurement Manager”

the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Contracting Authority;

“Procurement Regulations”

a reference to the Procurement Regulations in clause 34 shall be interpreted in a manner which is consistent with a decision of a court that the Utilities Contracts Regulations 2006

SI 2006/6 (as amended from time to time), or the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time), apply to this Agreement;

“Proposal”

the Service Provider’s offer to provide Services in response to a Request Form. A Proposal must include a draft Call-Off Contract signed by the Service Provider;

“Public Procurement Termination Event”

the Contracting Authority exercises its right to terminate this Agreement in one or more of the circumstances described in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time) and which has circumstances similar to any of the circumstances described in Article 90 of the Directive 2014/25/EU;

“Rating Agency”

means Standard & Poor’s Rating Services, a division of the McGraw-Hill Companies Inc., and its successors (“**S&P**”) or Fitch Ratings Limited and its successors (“**Fitch**”) or Moody’s Investors Services Limited, and its successors (“**Moody’s**”)

“Request Form”

a document produced by the Authority pursuant to Clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 5A or Schedule 5B or in such other form as may be notified to the Service Provider by the Authority from time to time;

“Service Provider Confidential Information”

shall have the meaning set out in Clause 18.8;

“Service Provider Contract Manager”

the person who is identified as the Service Provider Contract Manager in Schedule 1, and shall be such person who is identified as the Service Provider in each Call-Off Contract from time to time;

“Service Provider’s Personnel”	all such employees, officers, suppliers, sub-contractors and agents of the Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;
“Services”	<p>(a) all or any part of the services and activities of the type described in Schedule 3 to be provided to, or to be undertaken and completed for, the Authority by the Service Provider under a Call-Off Contract as detailed in such Call-Off Contract including any variations to such services and/or activities pursuant to Clause 25; and</p> <p>(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract;</p>
“Specification”	the specification and other requirements set out in the Call-Off Contract;
“Term”	the period during which this Agreement continues in force as set out in Clause 4;
“TfL”	Transport for London, a statutory corporation established under the Greater London Authority Act 1999 (including its successors);
“Transparency Commitment”	means the Contracting Authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Contracting Authority’s own published transparency commitments; and
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement (except that, save as otherwise expressly provided, references to this Agreement or to any Schedule or appendix or annex to it, are references to those documents as they may be amended from time to time in accordance with the terms of this Agreement);
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
 - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
 - 1.7.2 the conflict is with a provision in Attachment 3 (Special Conditions of Call-Off), in which case the provisions in Attachment 3 shall prevail;
- 1.8 the provisions of any Call-Off Contract are additional to those of this Agreement and unless expressly provided in any Call-Off Contract nothing in this Agreement shall limit the rights and obligations of the parties under a Call-Off Contract. Except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
 - 1.8.1 each Call-Off Contract;
 - 1.8.2 these Clauses;
 - 1.8.3 the Schedules;

- 1.8.4 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.9 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.10 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.11 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. Framework Agreement

- 2.1 The purpose of this Agreement is to:
 - 2.1.1 provide a mechanism whereby the Parties may enter into Call-Off Contracts;
 - 2.1.2 provide the framework to administer each Call-Off Contract; and
 - 2.1.3 set out obligations of the Parties.
- 2.2 The Services that may be requested by an Authority and provided by the Service Provider are of the type described in Schedule 3 or as more particularly described in each Call-Off Contract. The Authority’s requirements may vary and this Agreement shall not place any Authority under any obligation to procure the Services from the Service Provider at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent any Authority from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3 Clause 3 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract shall be a binding agreement on the Parties.
- 2.4 The Service Provider shall commence provision of the relevant Services in accordance with the Call-Off Contract. The Service Provider must not commence any Services without an agreed Call-Off Contract.
- 2.5 All Charges in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the rates set out in Schedule 4.

3. Call-Off Procedure

- 3.1 At any time during the duration of this Agreement, an Authority may identify Services which at its sole discretion it wishes to let under the terms of this Agreement in which case the procurement process set out below will be followed, which the Contracting Authority reserves the right,

at its discretion to amend from time to time to reflect best practice and applicable law.

3.2 Where an Authority, having considered applicable law including the relevant Procurement Regulations, elects to appoint the Service Provider direct without the need for a Mini-Competition, it will issue to the Service Provider a Request Form substantially in the form set out in Schedule 5A, specifying the Services to be provided, in which event:

3.2.1 the Service Provider shall promptly confirm receipt of such Request Form;

3.2.2 the Service Provider shall respond to the Request Form by completing a Proposal as an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Contract Manager. A Proposal must remain valid for at least 90 Business Days (or such longer period as may be specified in the Request Form) from the date it is submitted to the Authority;

3.2.3 subject to paragraph 3.10, after receipt of an acceptable Proposal which it proposes to accept, the Authority will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return same to the Authority within 10 Business Days of receipt. The Contract Manager will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Service Provider.

3.3 Where an Authority opts to undertake a Mini-Competition it will issue to those Service Providers on the framework that are the subject of this Agreement, a Request Form as set out in Schedule 5B, specifying the Services to be provided.

3.4 An Authority may (but is not obliged to) issue a request to express an interest, and/or a pre-qualification questionnaire to Service Providers on the framework under this Agreement with a specified deadline for a response before determining appropriate Service Providers to be included in the Mini-Competition.

3.5 In the event that the Service Provider receives such a Mini-Competition Request Form:

3.5.1 the Service Provider shall immediately confirm receipt of such Request Form;

3.5.2 the Service Provider shall respond to a Request Form by completing a Proposal as an offer capable of acceptance or by

notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Contract Manager . A Proposal must remain valid for at least 90 Business Days (or such longer period as may be specified in the Request Form) from the date it is submitted to the Authority;

- 3.5.3 subject to paragraph 3.10, the Authority will evaluate tendered Proposals to determine which is the most economically advantageous with reference to the assessment criteria set out in the relevant Request Form as they relate to the Service(s) in question.
- 3.5.4 each of the service providers to whom the Mini-Competition Request Form was sent will be notified as to whether or not it has been successful.
- 3.5.5 in respect of a Service Provider Proposal which it proposes to accept, the Authority will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return same to the Authority within 10 Business Days of receipt. The Contract Manager will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Service Provider.

3.6 Whether an Authority elects to appoint direct or to undertake a Mini-Competition:-

- 3.6.1 the contents of the Request Form and its schedules are confidential and must be used only for the purpose of submitting a Proposal. The Service Provider must not make any communication or enter into any collusive arrangement with any third party save for the purpose of permitted sub-contracting.
- 3.6.2 any contact relating to the Services or the Proposal with any Authority Personnel other than as identified in the Request Form may invalidate the Service Provider's Proposal submission.
- 3.6.3 save as may otherwise be provided in the Request Form:-
 - 3.6.3.1 the commencement dates identified by the Authority should be deemed material to the Call-Off Contract;
 - 3.6.3.2 if the Service Provider is unable to meet the dates specified in the Request Form, the Service Provider should query within the clarification process whether it is entitled to propose alternative dates.

- 3.6.4 save as may otherwise be provided in the Request Form In the Proposal submission the commercial Proposal must be separated from the technical Proposal. Prices must not be included in the technical Proposal. The documents must be clearly titled 'Commercial Proposal' and 'Technical Proposal'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents.
- 3.6.5 during the course of the Authority's evaluation of Proposal submissions, the Service Provider may be asked to answer questions about his submission and other matters related to the Services. The Service Provider must respond to such questions as quickly as possible but, in any event, within 2 (two) working days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the Authority rejecting the Proposal submission. Any amendments to the Proposal submission arising from these inter-actions with the Service Provider will be taken into account in the final evaluation.
- 3.6.6 to enable evaluation and/or moderation of the Proposal evaluation process, the Authority may request a meeting with all, some or one of the Service Providers. Failure to attend may result in the Authority rejecting the Proposal submission.
- 3.6.7 subject to the terms of the Request Form, Proposals that contain rates for Charges at above the rates described in Schedule 4 will be deemed non-compliant. If a Service Provider wishes the Authority to consider any other rates or charges, this must be requested within the clarification process prior to submission of the Service Provider's Proposal.
- 3.6.8 failure to disclose all material information (being facts that the Authority regards as likely to affect the evaluation process), or disclosure of false information at any stage of the process may result in ineligibility for award. The Service Provider must provide all information requested and not assume that the Authority has prior knowledge of any of the Service Provider's information.
- 3.6.9 limitations of liability (if different from the form of the draft Call-Off Contract) will be detailed within the Request Form and failure to accept the specified limitations of liability may lead to the Service Providers Proposal being rejected. Any proposed amendments relating to limitation of liabilities and/or insurance must be submitted within the clarification process and shall be agreed at the Authority's sole discretion.
- 3.7 Each Call-Off Contract shall be a binding on the relevant Authority and the Service Provider with whom it is made and form a separate agreement between those parties.

- 3.8 A Request Form and anything prepared or discussed by an Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. No Authority shall be obliged to consider or accept any Proposal submitted by a Service Provider.
- 3.9 A draft Call-Off Contract shall only become a Call-Off Contract and binding on the parties to it upon execution of the draft Call-Off Contract by the Authority.
- 3.10 An Authority is not obliged to approve or sign any Call-Off Contract.
- 3.11 The Service Provider is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3 and no Authority shall be liable for any costs, charges or expenses borne by or on behalf of a Service Provider whether or not the Service Provider is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.
- 3.12 Nothing in this Clause 3 shall prevent an Authority, having considered its entitlement to do so taking into account applicable law including the relevant Procurement Regulations, determining to secure additional Services by electing to vary an existing Call-Off Contract already entered into pursuant to this Agreement.
- 3.13 The Authority may in its discretion, taking into account the circumstances of any particular Call-Off Contract and the financial circumstances of the Service Provider require as a condition of the award of a Call-Off Contract that the Service Provider delivers to the Authority at the time stated by the Authority such of the following as the Authority may specify:-
- 3.13.1 a duly executed parent company guarantee from such Holding Company or other person, in each case as the Authority approves in writing and if requested by the Authority, a legal opinion as to its enforceability; and/or
- 3.13.1 a performance bond complying with the provisions of Clause 3.14 and, if requested by the Authority, a legal opinion as to its enforceability,
- each in the form set out in Schedule 8 to this Agreement.
- 3.14 The performance bond procured in accordance with Clause 3.13 must have a bond amount at the date of issue in the amount determined by the Authority and be issued by a financial institution which is acceptable to the Authority (acting in its absolute discretion) and which either:
- 3.14.1 has a long-term credit rating of no less than “A+” or better from each of the Rating Agencies which rate the performance bond provider; or

3.14.2 at the Authority's absolute discretion, has a long-term credit rating of less than "A+" from one or more of the Rating Agencies which rate the performance bond provider.

3.15 Without limiting Clause 3.1 or the first paragraph of Clause 3.2, as at the date of this Agreement, the Authority's expectation is that:-

3.15.1 the service provider scoring highest overall in the Tender Process will be the service provider with whom any direct appointment of the kind described in Clause 3.2 will be made. However, this is subject to the Authority being satisfied that such person is able to provide the required services within the Authority's required timescales and otherwise meet the Authority's requirements for the particular Call-Off Contract; and

3.15.2 if the Authority is not so satisfied, then the Authority will approach the service provider scoring next highest overall, subject to the Authority being satisfied in respect of that service provider as described in Clause 3.15.1 and so on until the Authority is satisfied with a service provider who is able to meet its requirements

and for the purposes of this Clause 3.15, "the Tender Process" means the tender process pursuant to which this Agreement is entered into and references to a service provider include any service provider with whom the Contracting Authority has entered into a framework agreement pursuant to the Tender Process.

3.16 The Authority shall reimburse the Service Provider for its properly incurred actual costs of procuring a parent company guarantee and/or performance bond in accordance with Clause 3.13, provided that (i) the Service Provider evidences the actual costs incurred to the Authority's satisfaction and (ii) the actual costs do not apply a mark-up.

4. Term of Agreement and Call-Off Contracts

4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and subject to Clause 4.2, continues in force until 30th April 2020 ("**the Initial Term**") unless terminated earlier, either in whole or in part, in accordance with this Agreement.

4.2 The Contracting Authority has an option, exercisable at its sole discretion, to extend the duration of the Agreement for a further period or periods of up to a total of 2 years (the "**Extension Years**"). The Contracting Authority shall serve such notice in writing to the Service Provider at least three months prior to the expiry of the Initial Term of the Contract or the expiry of any previous extension, if later.

4.3 Each Call-Off Term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the

termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.

- 4.4 A Call-Off Contract may expire in accordance with its terms but such expiry (as distinct from termination) shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

5. The Services

- 5.1 The Service Provider shall provide the Services specified in a Call-Off Contract to the Authority in accordance with this Agreement and the terms of the relevant Call-Off Contract;
- 5.2 Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.

6. Charges

- 6.1 The Service Provider shall invoice the Authority in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.
- 6.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.
- 6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.
- 6.4 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or the Procurement Manager or Contract Manager (whether related to payment or otherwise) shall:
 - 6.4.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or
 - 6.4.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 19, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service

Provider or the Authority may recover such amount as a debt under this Agreement or a Call-Off Contract.

7. Warranties and Obligations

7.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Service Provider warrants, represents and undertakes that:

7.1.1 the Service Provider:

7.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company to enter into and to perform the Agreement and any relevant Call-Off Contract; and

7.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and

7.1.1.3 is entering into this Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any Call-Off Contract;

7.1.2 the Agreement is and any Call-Off Contract will be executed by a duly authorised representative of the Service Provider;

7.2 Each warranty and obligation in this Clause 7 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

8. Contractual Management

8.1 The Contracting Authority authorises the Procurement Manager to act as the Authority's representative for all purposes of this Agreement and the Service Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Authority will appoint a Contract Manager in respect of each Call-Off Contract in relation to matters arising under a Call-Off Contract, unless otherwise notified by the Authority.

8.2 The Service Provider Contract Manager shall act as the Service Provider's representative for all purposes of this Agreement. The Service Provider shall provide the Key Personnel and shall procure that they:

- 8.2.1 diligently supervise the performance of the Services;
 - 8.2.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and
 - 8.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement or Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.
- 8.3 The Service Provider may only make any changes to the Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Contracting Authority (which shall not be unreasonably withheld).
- 8.4 No act of or omission by or approval from either an Authority, the Procurement Manager, or any Contract Manager in performing any of their respective duties under or in connection with this Agreement or relevant Call-Off Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Contract.

9. Service Provider's Personnel

- 9.1 Nothing in this Agreement or any Call-Off Contract will render the Service Provider's Personnel, an employee, agent or partner of the Contracting Authority or of any member of the Authority Group by virtue of the provision of the Services by the Service Provider under this Agreement or Call-Off Contract and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.
- 9.2 The Service Provider shall pay to the Service Provider's Personnel not less than the amounts declared to the Contracting Authority (if any) as part of the tender process for this Agreement and the relevant Call-Off Contract and not less than the amounts to which the Service Provider's Personnel are contractually entitled.

10. Sub-Contracting and Change of Ownership

- 10.1 The Service Provider shall not assign or sub-contract all or any part of its rights and obligations under this Agreement and/or in respect of the Services without the prior written consent of the Contracting Authority which may be refused or granted subject to such conditions as the Contracting Authority sees fit and the terms of any applicable Call-Off Contract.
- 10.2 Except in the case a consolidation, amalgamation, merger or solvent reconstruction within the Service Provider's Group, the Service Provider

shall give notice to the Contracting Authority within 10 Business Days where:

- 10.2.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
 - 10.2.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of a Holding Company; and
 - 10.2.3 (in the case of an unincorporated Service Provider) give notice to the Contracting Authority if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Contracting Authority, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.
- 10.3 Upon the occurrence of any of the events referred to at Clause 10.2 above, the Contracting Authority shall have the right to terminate this Agreement

11. Conflict of Interest

- 11.1 The Service Provider warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the Authority Group, save to the extent fully disclosed to and approved by the Authority.
- 11.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Contracting Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the Authority Group and shall work with the Contracting Authority 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 the Contracting Authority's satisfaction (the Contracting Authority acting reasonably), provided that, where the Contracting Authority is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 21.1.4.

12. Corrupt Gifts and Payment of Commission

The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Contracting Authority or any member of the Authority Group nor favour any employee, officer or agent of the Contracting Authority or any member of the Authority Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees,

officers or agents of the Contracting Authority or any member of the Authority Group other than as a representative of the Authority, without the Authority's prior written approval.

13. Quality and Best Value

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, and as such, the Service Provider shall, where reasonably requested by the Contracting Authority in connection with this Agreement, participate in any relevant best value review.

14. Records, Audit and Inspection

14.1 In addition to its obligations under the Call-Off Contract in respect of records pertaining to the performance of the Services and the Service Provider's obligations under any Call-Off Contract, the Service Provider shall, and shall procure that its sub-contractors shall:

14.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service Provider's obligations under this Agreement and all transactions entered into by the Service Provider for the purposes of this Agreement ("**Records**");

14.1.2 retain all Records during the Term and for a period of not less than 7 years (or such longer period as may be required by law) except Records containing Personal Data (as defined in section 1(1) of the Data Protection Act 1998) which shall only be retained for as long as necessary following termination or expiry of this Agreement or relevant Call-Off Contract ("**Retention Period**").

14.2 The Contracting Authority and any person nominated by the Contracting Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Contracting Authority considers to be reasonable notice (whether in writing or verbally).

15. Set-Off

The Contracting Authority will be entitled but not obliged at any time or times to set off any liability of the Service Provider to the Contracting Authority against any liability of the Contracting Authority to the Service Provider.

16. Indemnity

- 16.1 Subject to Clause 16.2 and 16.3, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the Contracting Authority and the other members of the Authority Group (including their respective employees, sub-contractors and agents) (“**the Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct breach or any negligent performance of this Agreement by the Service Provider (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement by the Service Provider or any of its employees, agents or sub-contractors) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees, agents or sub-contractors).
- 16.2 The Service Provider is not responsible for and shall not indemnify the Contracting Authority and the other members of the Authority Group for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or Call-Off Contract by the Contracting Authority and/or any other member of the Authority Group including by any of their respective employees, subcontractors or agents.
- 16.3 Nothing in this Agreement will operate to exclude or restrict the Service Provider’s liability (if any) to the Contracting Authority and the other members of the Authority Group (including their respective employees, sub-contractors and agents) for:
- 16.3.1 death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;
 - 16.3.2 its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 16.3.3 breach of its obligations arising under section 2 Supply of Goods and Services Act 1982; or
 - 16.3.4 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 16.4 The Authority shall take reasonable steps to mitigate any Losses to which the indemnity at this Clause 16 applies.

17. The Authority’s Data

- 17.1 The Service Provider acknowledges each Authority's ownership of Intellectual Property Rights which may subsist in the Authority’s data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Authority’s data.

- 17.2 The Service Provider and the relevant Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.
- 18. Confidentiality, Announcements and Transparency**
- 18.1 Subject to Clause 19.5, the Service Provider will keep confidential:
- 18.1.1 the terms of this Agreement; and
 - 18.1.2 any and all Confidential Information that it may acquire in relation to an Authority .
- 18.2 The Service Provider will not use an Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 18.1.
- 18.3 The obligations on the Service Provider set out in Clause 18.1 will not apply to any Confidential Information which:
- 18.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 18); or
 - 18.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - 18.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Road and Rail, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agent and subcontractors.
- 18.4 The Service Provider shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.
- 18.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or any Call-Off Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the Contracting Authority. The Contracting Authority shall have the right to approve any announcement before it is made.
- 18.6 The Service Provider shall:

- 18.6.1 at the Contracting Authority's request and in any event upon the termination or expiry of the Agreement promptly deliver to the Contracting Authority or destroy as the Contracting Authority may direct all documents and other materials in the possession, custody or control of the Service Provider (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the Contracting Authority in writing, remove all electronically held Confidential Information, including the purging of all disk-based Confidential Information and the reformatting of all disks; and
 - 18.6.2 not, except where provided in this Clause 18 or with the prior written consent of the Contracting Authority, disclose to any person the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.
- 18.7 The Service Provider acknowledges that damages would not be an adequate remedy for any breach by it of this Clause and that (without prejudice to all its other rights, powers and remedies which an Authority may be entitled to as a matter of law) the Authority shall be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 18 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 18.
- 18.8 Notwithstanding Clause 18, the Contracting Authority shall have the same obligations as those imposed on the Service Provider under this Clause 18 in respect of those categories of confidential information set out in Schedule 7 ("Service Provider Confidential Information"), except that an Authority may:
 - 18.8.1 disclose the Service Provider Confidential Information where the Authority considers that it is obliged to do so under any of the legislation referred to in Clause 19;
 - 18.8.2 use the Service Provider Confidential Information to the extent necessary to obtain the benefit of the Service Provider's performance under this Agreement;
 - 18.8.3 disclose the Service Provider Confidential Information to any member of the Authority Group; and
 - 18.8.4 disclose such Service Provider Confidential Information as may be required to be published in the Official Journal of the European Union and any associated tender documentation.
- 18.9 The provisions of this Clause 18 will survive any termination of this Agreement or Call-Off Contract for a period of 6 years from termination.

19. Freedom of Information and Transparency

19.1 For the purposes of this Clause 19:

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

19.1.2 **“Information” means** information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and

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

19.2 The Service Provider acknowledges that the Authority:

19.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

19.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

19.3 Without prejudice to the generality of Clause 19.2, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

19.3.1 transfer to the Procurement Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Access Request relevant to this Agreement, the Services or any member of the Authority Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and

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

19.4 The Authority shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access

Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

- 19.5 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 18.1 and this Clause 19, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 19.6 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 19.7 The Contracting Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 19.6. The Contracting Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

20. Dispute Resolution

- 20.1 The Contracting Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement (“**Dispute**”) before resorting to litigation.
- 20.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“**Senior Personnel**”) of each of the Parties for resolution.
- 20.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party (“**Notice**”) that a structured mediation or negotiation be entered into with the assistance of a mediator. Either Party may give notice to the other Party (“**Notice**”) to commence such process and the notice shall identify one or more proposed mediators.
- 20.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 20.5 Where a dispute is referred to mediation under Clause 20.3, the Parties will attempt to settle such Dispute by mediation in accordance with the

model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

- 20.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 20.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 29.
- 20.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with any Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 20.
- 20.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 20 and Clause 20 shall not apply in respect of any circumstances where such remedies are sought.

21. Breach and Termination of Agreement

- 21.1 Without prejudice to the Authority's right to terminate at common law, the Contracting Authority may terminate this Agreement upon giving notice to the Service Provider if:
 - 21.1.1 except as provided in and without prejudice to Clauses 21.1.3, the Service Provider has committed any material or persistent breach of this Agreement or Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Contracting Authority In the case of this Agreement or the Authority in the case of the Call-Off Contract) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or
 - 21.1.2 the Service Provider is subject to an Insolvency Event; or
 - 21.1.3 in the event that there is a change of ownership referred to in Clause 10.2; or
 - 21.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 11; or
 - 21.1.5 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or

- 21.1.6 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010.

22. Consequences of Termination or Expiry

- 22.1 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

23. Survival

The provisions of Clauses 1, 6, 7, 14-20 (inclusive), 22- 25 (inclusive), 29-32 (inclusive), 27-35 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Contract shall do so.

24. Rights of Third Parties

- 24.1 Save that any member of the Authority Group has the right to enforce the terms of this Agreement or any relevant Call-Off Contract in accordance with this Agreements (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Agreement or any relevant Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 24.2 Notwithstanding Clause 24.1, the Parties are entitled to vary or rescind this Agreement without the consent of any or all members of the Authority Group.

25. Contract Variation

Save as expressly provided, this Agreement or Call-Off Contract may only be varied or amended with the written agreement of the respective parties to them. The details of any variations or amendments to this Agreement shall be set out in such form as the Contracting Authority may dictate and shall not be binding upon the Parties unless completed in accordance with such form of variation.

26. Novation

- 26.1 The Contracting Authority may novate or otherwise transfer this Agreement (in whole or in part).
- 26.2 Within 10 Business Days of a written request from the Contracting Authority, the Service Provider shall at its expense execute such agreement as the Contracting Authority may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Agreement to one or more persons nominated by the Contracting Authority.

- 26.3 Subject to Clause 10, this Agreement is personal to the Service Provider who shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement without the prior written consent of the Contracting Authority.

27. Non-Waiver of Rights

No waiver of any of the provisions of this Agreement is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 29. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

28. Illegality and Severability

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

29. Notices

Subject to Clause 29.2, any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, by pre-paid recorded (or other form of signed for) postal delivery or by e-mail, addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent provided that any notice to be served pursuant to Clause 20 (Dispute Resolution) or Clause 21 (Breach or Termination of Agreement) shall not be capable of being served by e-mail. The notice, demand or communication will be deemed to have been duly served:

- 29.1 if delivered by hand, at the time of delivery;
- 29.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or
- 29.3 if e-mail is permitted for such notice, if sent by e-mail to that Party's e-mail address, at the time of sending (or, if sending is not on a Business Day or is after 5pm (at the location of the recipient) on a Business Day, at 9am on the next following Business Day), provided that a confirming copy is delivered by hand or sent by first class post to the other Party within 24 hours after sending the e-mail.

30. Entire Agreement

30.1 Subject to Clause 30.2:

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

30.1.2 and without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against an Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

30.2 Nothing in this Clause 30 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

31. Relationship of the Parties

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

32. Further Assurance

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

33. Counterparts

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

34. Declaration of ineffectiveness and Public Procurement Termination Event

34.1 In the event that a court makes a Declaration of Ineffectiveness, the Contracting Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 22 (consequences of termination) and Clauses 34.1, 34.2, 34.4 to 34.6 and clause 34.12 shall apply as from the time when the Declaration of Ineffectiveness is made.

34.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness.

34.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Contracting Authority may require the Service Provider to prepare a Cessation Plan in accordance with this clause 34.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Contracting Authority, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

34.3.1 an orderly and efficient cessation of the Services or (at the Contracting Authority's request) a transition of the Services to the Contracting Authority or such other entity as the Contracting Authority may specify; and

34.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of Clauses 34.2 to 34.6 and which the parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

34.4 Where there is any conflict or discrepancy between the provisions of clauses 22 and clauses 34.2 to 34.6 or the Cessation Plan, the provisions of these clauses 34.2 to 34.6 and the Cessation Plan will prevail.

34.5 The parties shall comply with their respective obligations under the Cessation Plan (as agreed by the parties or, where agreement cannot be reached, as reasonably determined by the Contracting Authority) in the event that a Declaration of Ineffectiveness is made.

34.6 The Contracting Authority shall pay the Services Provider's reasonable costs in assisting the Contracting Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Contracting Authority. Provided that no Authority shall be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or

consequential loss) as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.

34.7 Consistent with the Authority's rights of termination implied into this Contract by the Procurement Regulations, in the event of a Public Procurement Termination Event, the Authority shall promptly notify the Service Provider that the provisions of Clause 22 and these Clauses 34.7 to 34.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause 22 and these Clauses 34.7 to 34.12 (inclusive) or the Cessation Plan, the provisions of these Clauses 34.7 to 34.12 (inclusive) and the Cessation Plan shall prevail.

34.8 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.

34.9 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Contracting Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

34.9.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and

34.9.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities

in accordance with the provisions of these Clauses 34.7 to 34.12 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

34.10 Upon agreement, or determination by the Contracting Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

34.11 The Contracting Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Contracting Authority, provided that no Authority shall be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Agreement as a result of a Public Procurement Termination Event.

34.12 For the avoidance of doubt, the provisions of this clause 34 (and applicable definitions) shall survive any termination of the Agreement following a Declaration of Ineffectiveness or a Public Procurement Termination Event.

35. Governing law

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 20, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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

Signed by
for and on behalf of
The Contracting Authority

)
)
)

Signature

Print name and position

Date:

Signed by
for and on behalf of
the **Service Provider**

)
)
)

Signature

Print name and position

Date:

SCHEDULE 1 - KEY AGREEMENT INFORMATION

1. **Framework Agreement Reference Number:** TFL91640
2. **Name of Service Provider:** Charles Novacraft Direct Limited
3. **Framework Agreement Commencement Date:** 1st May 2016
4. **Term:**

Initial Term: 4 years from the Agreement Commencement Date

Extension Options: up to 2 years (see Clause 4.2)

5. **Details of the Procurement Manager for the Framework Agreement**

Name: [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

6. **Service Provider's Key Personnel for the Framework Agreement:**

Name & Position	Contact Details	Area Of Responsibility
[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]om	

7. **Address for service of notices and other documents in accordance with Clause 29:**

For the Authority:

Transport for London, Windsor House, 42-52 Victoria Street, LONDON,
 SW1H 0TL

[REDACTED]

For the Service Provider:

Novacroft Group

Lakeside House, 9 The Lakes, Bedford Road, Northampton, NN4 7HD

[REDACTED]

SCHEDULE 2 - NOT USED

SCHEDULE 3 - SERVICES

1. The scope of this Agreement shall cover requirements relating to the provision and management of contact centre services, which include but are not limited to; contact handling (defined as an interaction between a customer and a contract centre), card fulfilment (defined as the process to produce a personalised and encoded smartcard, up to and including the despatch of the card to the specified address) and despatch of any items relating to the nature of the service which a customer is contacting the Authority about. These may include but are not limited to; correspondence, tickets, cards, tokens and marketing material.
2. The scope of each Call-Off Contract may encompass:-
 - 2.1. the provision and management of the entire end to end solution of an element of the contact centre services provided by or on behalf of a member of the Authority Group (including any services provided at the relevant time by any contractor or agent of a member of the Authority Group) or part thereof; and
 - 2.2. services similar to those described in the paragraph above which may be required by the Authority or a member of the Authority Group from time to time.
3. The specific requirements of the Services of each Call-Off Contract shall be detailed in that Contract.
4. The Authority's Contract requirements are subject to change. The need for a change may include but is not limited to those arising from changes in:
 - 4.1. Customer Contact handling demand;
 - 4.2. Card Fulfilment demand;
 - 4.3. Reporting requirements; and
 - 4.4. Systems that the Authority provide (Authority Assets).

SCHEDULE 4 – RATES

Defined Terms

In this Schedule, unless the context indicates otherwise the following expressions shall have the following meanings:

“ppm”	Shall have the meaning given in paragraph 2.2.1.1;
“SLNT”	Shall have the meaning given in paragraph 2.1.1;
“Talk Time”	means the time an Agent spends with the caller during the telephone call including any time the caller is put on hold; and
“Wrap Time”	the time required by an Agent after a conversation is ended, to complete work that is directly associated with the calls just completed. Does not include time for any other activities such as meetings, breaks, correspondence, etc.

1. Introduction

- 1.1. This Schedule outlines the rates of the applicable Charges payable by the Authority to the Service Provider for the provision of the Services.
- 1.2. The actual Charges applicable to any Call-Off Contract shall be as stated in the Call-Off Contract but shall not exceed the rates specified in this Schedule.

2. Charges

2.1. Fixed Charges- Strategic Labour Needs and Training

- 2.1.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 2.1.2. The fee shall include all costs associated with SLNT as detailed in Schedule 17 (Strategic Labour Needs and Training Terms and Conditions) of the Call-Off Contract.
- 2.1.3. Where the Contract is terminated in accordance with Clause 34 (Breach and Termination of the Contract) of a Call-off Contract or ceases in accordance with Clause 36 (Handback of Service) of a Call-Off Contract, the SLNT Charges shall be calculated on pro-rata basis based on 28 calendar days

2.2. Variable Charges

2.2.1. Call handling

2.2.1.1. Call handling shall be charged on a pence per minute (“ppm”) basis.

2.2.1.2. Call handling includes any inbound, outbound and transfer calls.

2.2.1.3. The call handling Charges shall not include and the Service Provider shall not be entitled to charge for time an Agent is in Wrap Time or not engaged in a call, and only includes Talk Time.

2.2.1.4. The call handling Charges shall be inclusive of all costs associated with the provision of the Services of the Call-Off Contract, except where expressly provided in the Call-Off Contract.

2.2.1.5. The call handling minutes shall be invoiced in accordance with the Call-Off Contract.

Table 1: Call handling

2.3. Service Provider Personnel

2.3.1. Service Provider Personnel daily rates shall be used to cost Variations, where applicable.

2.3.2. In accordance with paragraphs 3.2 of Schedule 9 (Form of Variation) of a Call-Off Contract, the Service Provider Personnel day/hourly rate shall not exceed the rates detailed in Table 2 (Service Provider Personnel Charges).

Table 2: Service Provider Personnel

Role Title	Daily Rate (£)

SCHEDULE 5

Schedule 5A - Request Form (Identified Service Provider)

Framework Number:

Request Form Number:

To:

Address:

From:

Date:

This is a Request Form for the provision of Services in accordance with this Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Authority; however such acceptance will not occur unless and until the form of Call-Off Contract required by the Authority has been executed by both Parties or such other time as the Authority may notify you.

Attachment 1 of this Request Form sets out the Services required by the Authority and other relevant information.

In your Proposal, you must respond to the information requested in Attachment 1 by completing Attachment 2.

Attached to this Request Form is a draft Call-Off Contract. The Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

You must complete and return your Proposal by []. Please e-mail your Proposal, and send a paper copy to:

Name:

e- mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Request Form should be directed to the above. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Signed:

for and on behalf of the Authority

Attachments: Attachment 1: Services to be provided and other relevant information

Attachment 2: Service Provider's Proposal

Attachment 3: Special Conditions for Call-Off

Draft Call-Off Contract

Framework Number:
Request Form Number:

From:
Date:

Attachment 1 of this Request Form sets out the Services required by the Authority, the commercial model to be used and other relevant information.

In your Proposal, you must respond to the information requested in Attachment 1 by completing Attachment 2.

Attached to this Request Form is a draft Call-Off Contract. The Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

Your Proposal will be assessed against those submitted by other service providers as part of a Mini-Competition process. The Authority will award the relevant Call-Off Contract to the Service Provider with the Proposal that is the most economically advantageous with reference to the assessment criteria set out in Attachment 1.

You must complete and return your Proposal by []. Please e-mail your Proposal, and send a paper copy to:

Name:
e- mail address:

Postal address:

Telephone:
Fax:

Any queries regarding this Request Form should be directed to the above. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Signed: _____
for and on behalf of the Authority

Attachments: Attachment 1: Services to be provided and other relevant information

Attachment 2: Service Provider's Proposal

Attachment 3: Special Conditions for Call-Off

Draft Call-Off Contract

Attachment 1

[To be completed by the Authority]

1. Services to be provided and associated information

[Note: The following notes are indicative of the approach which the Authority will take in populating the Request Form, but the Authority may vary the contents as it reasonably considers appropriate in the context of any individual Call-Off.]

Authority to detail here all (a) Services and (b) deliverables with full descriptions of what is required.

Include a Project Plan that clearly identifies the project milestones against which payments are to be made. This should include the earliest possible service commencement date (including for the first phase of the transferring services, if they are being transferred in phases) and the last permitted date for the transfer of the [last of the] services to occur]. If no plan is available, or if the milestones cannot be specified at this stage, you must request the Service Provider to include a proposed plan and milestones in their response.

Authority should also define other requirements you wish the Service Provider to respond to such as those below (and amend the draft Call-Off Contract accordingly):

- *details of any technical and/or functional specifications and/or any service levels (as applicable) of any Services required by the Authority to be delivered or achieved by the Service Provider;*
- *details of any training to be provided (by the Authority to the Service Provider, the Service Provider to the Authority or otherwise);*
- *Working Hours;*
- *CVs of the personnel to be working on the project and the Authority's requirements for Key Personnel posts in addition to Service Provider Contract Manager and Service Provider Incident Manager;*
- *estimated time-lines for each of the milestones and for the overall project;*
- *the Service Provider's best price offer based on Charges (subject to Schedule 4);*
- *the Service Provider's proposal for staged payments or whether pro-rata periodic payments will apply;*

- *any materials, equipment or goods required to provide the Services, including Service Provider IPR deliverables and Third Party IPR deliverables (as well as Service Provider equipment and Proprietary Tools which will be used but not transfer to the Authority);*
- *any material assumptions or facts relied upon by the Authority in compiling it and any other material information which relates to the Services required to be provided and/or performed;*
- *Service Levels, and measurement thereof, plus any applicable credit and/ or bonus mechanism for those aspects of the Services which can only be specified when the Services for the particular Call-Off Contract are specified, including for any areas which the template Call-Off Contract indicates may be completed at the time of Call-Off;*
- *Service Dependencies (if any) to be listed in the draft Call-Off Contract*
- *Authority Assets to be made available to the Service Provider and to be listed in the draft Call-Off Contract (where applicable) plus any other Authority Services and/or Authority accommodation to be made available*
- *Existing Contract Handback Plan/Existing Contract Handback Programme; (where applicable/available);*
- *Documents to be produced by the Service Provider in the course of the Contract which the Authority will obtain ownership of and whether IPR in those items is to be owned by TfL (where applicable);*
- *details of the Authority Personal Data to be Processed by the Service Provider*
- *terms applicable in relation to the transfer of employees/TUPE*
- *any additional warranties and/or representations required from the Service Provider. **[YOU MUST INDICATE IF A PARENT COMPANY GUARANTEE AND/OR BOND AND/OR SUPPORTING LEGAL OPINION IS REQUIRED]***

2. Acceptance Criteria

[If the Authority requires any deliverable (whether in isolation or in combination with other deliverables (e.g. as a solution, package, or system)) and/or any Service to be subject to acceptance and/or service validation tests (as applicable), define the acceptance criteria which the Service Provider must ensure]

3. Timetable

Service Commencement Date [indicate whether this is expected to be different from the Call-Off Contract Commencement Date, any phasing of introduction of

Services and – where applicable – earliest and latest commencement date for the [first and last phases] of the Services]

Call-Off Term:

Extension Option:

4. The Authority account details

Relevant account code and cost centre:

5. The Authority's Contract Manager

Name:

Address:

Phone:

Fax:

Email:

6. Additional insurance (if any) to be held by Service Provider:

[Delete as appropriate]

- a) Employer's liability insurance to be increased to £[X] million per incident;
- b) Public liability insurance to be increased to £[X] million per occurrence with financial loss extension;
- c) Professional indemnity insurance to be increased to £[X] million in the aggregate per annum for the duration of the Call-Off Contract/ Agreement and for 6 years after expiry or termination of the Call-Off Contract/Agreement; and
- d) Product liability insurance to be increased to £[X] million in the aggregate per annum with financial loss extension.

Attachment 2

Proposal

[To be completed by the Service Provider]

[Note: The following notes are indicative of the approach which the Authority will take in populating this form, but the Authority may vary the contents as it reasonably considers appropriate in the context of any individual Call-Off.]

1. Proposed Solution

The Service Provider should detail how it proposes to deliver the Services set out in Attachment 1, including (where requested) a Project Plan (this may be as simple as a plan that contains dates for acceptance testing and completion depending on the particular project), details of any equipment and materials required and service levels.

2. Charges

The Service Provider should set out the Charges for the Services required, their provision and the contract model as set out in Attachment 1, taking into account that the rates used to calculate the Charges shall not exceed the Rates set out in Schedule 4 of the Framework Agreement.

3. Service Team and Personnel

Details of the Service Provider Contract Manager, Incident Manager and other Service Provider Key Personnel, including grades and areas of responsibility. Please attach copies of CVs.

4. Experience

An outline of relevant past work or projects including references;

5. Proposed sub-contractors (if any)

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work:

6. Proposed service commencement date(s)

[To confirm date(s) required by the Authority in Attachment 1 or to provide the Service Provider's own date(s) – in each case as required by Attachment 1]

7. Service Provider Equipment and Proprietary Tools

Description of any Service Provider Equipment and Proprietary Tools (as defined in the Call-Off Contract) which the Service Provider proposes to use but which will not transfer to the Authority

8. Insurance

The Service Provider should confirm that additional insurance cover has/will be arranged according to the requirements (if any) set out in Attachment 1.

9. Information which the Service Provider proposes for consideration for inclusion in the Contract as Service Provider Confidential Information

10. Other Information

Where the Request form requires a parent company guarantee or bond, the Service Provider must confirm the availability of the guarantee/bond in accordance with the Authority's requirements

Attachment 3

Special Conditions for Call-Off

Schedule 6 - Call-Off Contract Template

Please refer to separate document titled “Schedule 6 - Call-Off Contract template”

SCHEDULE 7 - SERVICE PROVIDER CONFIDENTIAL INFORMATION

- Non-public information relating to costing, pricing structures or financial models (including, but not limited to, profit margins, benchmarks, discounts, financial performance or management accounts);
- Information relating to Novacraft's business model, specific methods, techniques, knowledge, knowhow or systems setting out how the Services will be delivered by Novacraft under the Call-Off Contract;
- Detailed technical information about Novacraft's services, expertise and skill sets;
- Information in relation to Novacraft's arrangements with suppliers or customers (especially pricing information); and
- Information relating to any and all financing arrangements.

SCHEDULE 8 – FORMS OF GUARANTEE, BOND AND OPINION

Appendix A – Form of Parent Company Guarantee

Appendix B – Form of Legal Opinion for use with Guarantee

Appendix C – Form of Performance Bond

Appendix A - Form of Parent Company Guarantee
(Letterhead of Parent Company)

To: [insert name and address of the Authority]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that you have agreed to enter into Contract No [insert contract number] ("**the Contract**") with [insert name of Service Provider] ("**the Service Provider**") in respect of [briefly describe nature of contract] on the condition that the obligations of the Service Provider under the Contract be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Service Provider], and we warrant to you that this description of our relationship with/to the Service Provider is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee on demand:
 - (i) the proper, complete and punctual performance by the Service Provider of any and all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Service Provider; and
 - (ii) the due and punctual payment by the Service Provider of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Service Providerwhen and as the same shall become due for performance or payment (as the case may be).
- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Service Provider in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Service Provider were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Service Provider under or arising out of the Contract have been duly and completely

performed and observed and the Service Provider shall have ceased to be under any actual or contingent liability to you thereunder.

- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Service Provider of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Service Provider or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Service Provider or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Service Provider in the Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider (including, without limitation, any increase in the Service Provider's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider; or

- (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (g) any legal limitation, disability or incapacity relating to the Service Provider or discharge by operation of law or any change in the constitution, name or style of the Service Provider or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Service Provider or any other person;
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Service Provider in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Service Provider in competition with you for any sums or liabilities owing or incurred to us by the Service Provider in respect of any such payment by or recovery from us or take or hold any security from the Service Provider in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
 4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
 5. This Guarantee is irrevocable.
 6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
[Parent Company]) Director
acting by a Director and the) _____
Secretary or by two Directors) _____
	Director/Secretary

OR

The common seal of) _____
[Parent Company]) Director
was affixed in the presence of:) _____
) _____
	Director/Secretary

Appendix B - Form of Legal Opinion for use with Guarantee

To: [insert name and address of the Authority]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "Guarantee") dated made between..... (the "Guarantor") and [insert name of Authority] ("the Authority"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of..... I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with

the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) The Authority will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;

- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
 - (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
 - (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
 - (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.
3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed

Appendix C - Form of Performance Bond

(Letterhead of Bank)

To: [insert name and address of the Authority]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into Contract No [] ("**the Contract**") with [insert name of Service Provider] ("**the Service Provider**") in respect of [insert brief description of scope of contract] we [insert name of Bank] ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter ("**this Bond**").

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.
2. Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3. Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Service Provider by first class recorded post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.

* Delete as appropriate

* **(Option 1 - No reduction in amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[] [e.g. the total Charges under the Contract or a percentage thereof] and we shall have no liability under this Bond in respect of any demand dated after the expiry date of the Contract.

* **(Option 2 - Reducing amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited as follows:-
 - (a) in respect of a demand or demands dated before the date of [e.g. on the completion of a Milestone] under the Contract, our liability shall not exceed in aggregate the sum of _____ [e.g. 20% of the total Charges];

- (b) in respect of a demand or demands dated after the date of [e.g. *completion of a Milestone*] under the Contract but before the expiry date of the Contract, our liability shall not exceed an amount equal to the aggregate sum of _____ [e.g. *10% of the total Charges*] less the aggregate of sums already paid by us in respect of demands made pursuant to paragraph 4(a) above; and
 - (c) we shall have no liability under this Bond in respect of any demand dated after the expiry date of the Contract.
5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
- (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider including, without limitation, any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract or any novation of the Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding, set off or other deduction available to the Service Provider under the Contract or otherwise; or
 - (c) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider whether express or by conduct or any other thing done, omitted or neglected to be done under the Contract; or
 - (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 5(d) above; or
 - (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider;
 - (g) the termination of the Contract for any reason; or
 - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Service Provider or any other person relating to the Service Provider (whether or not known to you); or

- (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider.
6. Any payment under this Bond shall be made by us in pounds sterling [or in any currency which may from time to time replace pounds sterling].
7. This Bond is irrevocable.
8. Terms defined in the Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.
9. This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.
12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
[Bank]) Director
acting by a Director and the) _____
Secretary or by two Directors) _____
Director/Secretary

The common seal of [Bank]
was affixed to this Deed in
the presence of

) _____
) Director
) _____
) Director/Secretary

Annex 1

Form of Demand from the Authority to [the bank]

Dear Sirs

Contract No [] in respect of services for []

We refer to the Bond given by you to us dated []. We enclose a copy of a letter from us to [*insert name of Service Provider*] ("**the Service Provider**") which was sent to the Service Provider by first class recorded post on [] which is more than 14 days before the date of this demand.

The Service Provider has not taken steps which we consider adequate to remedy the breaches.

* Delete as appropriate

* **(Option 1** - No reduction in amounts payable under the bond.)

The expiry date under the Contract has not been reached.

* **(Option 2** - Reducing amounts payable under the bond.)

[*e.g. a Milestone*] has/has not been achieved and the expiry date under the Contract has not been reached.

We hereby demand from you the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to [*insert name of Authority*].

Yours faithfully

On behalf of [insert name of Authority]

Annex 2

Form of letter from the Authority to the Service Provider

To be sent by first class Recorded Delivery post

Dear Sirs

Contract No [] in respect of services for []

As explained in [previous letters to you/our letter dated to you] you are in breach of your obligations under Contract No. [], and you have neither remedied nor implemented sufficient steps to remedy, those breaches.

This letter therefore notifies you that unless within 14 days from the date of this letter you take steps which we consider adequate to remedy the breaches we shall be entitled without further notice to you to call for payment under the Bond given on your behalf by [*name of bank*] dated [DATE].

Yours faithfully

On behalf of [insert name of Authority]

Annex 3

Alternative form of demand from the Authority to [the bank]

Dear Sirs

Contract No [] in respect of services for []

We refer to the Bond given by you to us dated [].

* Delete as appropriate

* **(Option 1** - No reduction in amounts payable under the Bond.)

An event has occurred of a type described in Clause 26.1 of the Contract which entitles us (inter alia) to terminate the Contract in accordance with that Clause.

The expiry date under the Contract has not been reached.

* **(Option 2** - Reducing amounts payable under the Bond.)

An event has occurred of the type described in Clause 26.1 of the Contract which entitles us (inter alia) to terminate the Contract in accordance with that clause.

[e.g. a Milestone] has/has not been achieved and the expiry date under the Contract has not been reached.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to *[insert name of Authority]*.

Yours faithfully

On behalf of [insert name of Authority]