



Contract Reference Number: tfl_scp_0001041

Supply, Installation and Maintenance Contract

between

Transport Trading Limited

and

Redspeed International Limited

**Digital Safety Camera Maintenance &
Associated Lighting Upgrades for A13**

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APPENDIX D. tfl_scp_001041_A13_site_design_instruction_Appendix_D_ **REDACTED**

THIS CONTRACT is made the day of 2015

BETWEEN:

- (1) **Transport Trading Limited** a company registered in England and Wales (Company Registration Number 03914810) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Authority**”); and
- (2) **Redspeed International Limited** a company registered in England and Wales (Company Registration Number **05152563**) whose registered office is at Unit 21 Birchen Coppice Trading, Estate Stourport Road, Kidderminster, Worcestershire, DY11 7QY, United Kingdom (the “**Contractor**”).

RECITALS:

- (A) The Authority is responsible for the replacement programme of wet film safety camera systems with new digital camera safety systems on roads in the Greater London area.
- (B) The Authority now wishes to appoint a contractor to maintain the existing digital safety camera system (and associated lighting upgrades) on the A13.
- (C) The Contractor holds itself out as an expert in the works and services to be provided under this Contract and the Authority appoints, and the Contractor hereby accepts its appointment to perform the works and services in accordance with the terms of this Contract.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

In this Contract:

- 1.1 the following expressions have the following meanings unless the context otherwise requires:

“Abatement”	means the abatements set out in Schedule 5 and the availability abatement set out in Schedule 4;
“Acceptance Tests”	means the local acceptance tests to be carried out by the Contractor on completion of Installation in accordance with paragraph 25 of Part 4 of the Specification;
“ANPR System”	means an automatic number plate recognition system;
“Applicable Law”	means any: <ul style="list-style-type: none">(a) statute, statutory instrument, by law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);

(b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or

(c) industry code of conduct or guideline,

which relates to this Contract and/or the Services or the activities which are comprised in all or some of the Services and/or the Authority's business or the business of any other recipient of the Services;

“Authority Data”

means all data that is:

(a) provided to the Contractor and the Contractor Personnel;

(b) generated in the course of undertaking the Services;

(c) generated by the Equipment;

(d) input into SFM pursuant to Clause 11.3; and

(e) all other outputs from SFM;

“Authority Premises”

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

**“Available” and
“Availability”**

have the meanings set out in paragraph 8 of Part 3 of Schedule 4;

“Availability Category”

means the sub-categories for which Availability is measured for the Equipment as set out in Part 3 of Schedule 4;

“Availability Targets”

means the overall percentage targets for uptime of the Equipment and individual Safety Cameras as set out in Part 2 of Schedule 4 which the Contractor is required to achieve and which is used to calculate whether Bonus Payments are payable to the Contractor or Availability Abatements are due to the Authority;

**“Average Speed
System”**

means a device designed or adapted for recording a measurement of the speed of vehicles by capturing by means of unattended camera images the vehicle at each of two pre-determined positions on the road, digitally recording each image and the time it is captured and calculating the average speed of the vehicle over the distance between the two positions;

“Bonus Payment”

means the additional payment due in a Reporting Period when the Financial Incentive has a

	positive value as set out in Schedule 4;
“Business Continuity Plan” or “BCP”	means the business continuity and disaster recovery plan approved by the Authority and to be maintained and implemented by the Contractor in accordance with Clause 33;
“Camera pairs”	means any pair of entry and exit cameras within an Average Speed System and within the same speed limit;
“Capture Rate”	means the measure of the number of vehicles identified by the entry and exit Average Speed System (with the camera threshold set to zero mph) that causes a usable complete pair of evidential records to be generated, expressed as a percentage of the total number of vehicles which actually pass the exit Out-Station;
“Centre” or “FCC”	means the Authority’s ‘Fault Control Centre’ and collation office for the reporting, reception and clearance of Faults;
“Cessation Plan”	means a plan agreed between the Parties or determined by the Authority pursuant to Clause 30 to give effect to a Declaration of Ineffectiveness;
“Change Control Procedure”	means the change control and contract variation procedure set out in Schedule 6;
“Change Control Request” or “CCR”	means a written request, raised by the Authority or the Contractor in accordance with Schedule 6 (Change Control Procedure), in relation to a proposed change to this Contract (including the Equipment and Services);
“Clear”	means an entry into SFM detailing actions taken to resolve a Fault;
“Commission”	means the procedure to be undertaken following completion of the Works and Acceptance Tests to confirm that the Site complies with the Authority’s requirements, as described in section 4 of the Specification and “Commissioning” and “Commissioned” will be construed accordingly;
“Confidential Information”	means: <ul style="list-style-type: none"> (a) in respect of the Authority and the TfL Group and the MPS, all information (whether written or verbal) that by its nature may reasonably be regarded as confidential (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 Authority or any member of the TfL Group or the MPS, and

(b) in respect of the Contractor, all information listed in Schedule 8;

“Contract” means this Contract, Schedules, Appendices, and all other documents expressly referred to herein and incorporating any valid and binding amendment or variation made from time to time;

“Contract Availability Result” means the final value of Availability after the end of a Reporting Period as defined in paragraph 4.1.1 of Part 2 Schedule 4;

“Contract Availability Target” means the overall percentage targets for uptime of the Equipment as set out in paragraph 4 of Part 2 of Schedule 4 which the Contractor is required to achieve and which is used to calculate whether Bonus Payments are payable to the Contractor or Availability Abatements are due to the Authority;

“Contract Commencement Date” has the meaning set out in Schedule 1;

“Contract Information” means:

- (a) this Contract in its entirety (including from time to time changes to this Contract in accordance with its terms); and
- (b) data extracted from the invoices submitted pursuant to Clause 13 which will consist of the Contractor’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

“Contractor Personnel” means the personnel employed or otherwise engaged by the Contractor in connection with the provision of the Services, including its employees, agents and Sub-Contractors;

“Contractor’s Health and Safety Assessment Scheme” or “CHAS” means an assessment of a supplier’s health and safety competence;

“Contractor Solution” means the Contractor’s solution as set out in Schedule 2;

“Contract Price” means the payments due to the Contractor pursuant to this Contract as set out in Schedule

	4;
“Contract Year”	means each successive period of twelve (12) months starting on the Contract Commencement Date;
“Correct Read Rate” or “CRR”	means the measure, expressed as a percentage, of the number of Correct Reads of the evidential records that were collected within the Capture Rate;
“Correct Reads”	means VRMs that the Average Speed System has read 100% correctly;
“Data Processor”	will have the meaning given to it in the DPA;
“Data Protection Legislation”	means the DPA and any other Applicable Laws relating to the processing of Personal Data under this Contract including the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all related regulations and codes of practice;
“Data Transmission Provider”	means a telecommunications supplier;
“Declaration of Ineffectiveness”	means a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J of the Utilities Contracts Regulations 2006;
“Default”	means any breach of the obligations of either Party (including a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other;
“Detection Equipment”	means the part of the Equipment (either radar or inductive loops or piezo detectors or similar) that detects the presence of a vehicle on the carriageway for the purposes of assessing whether a traffic offence has been committed;
“Disaster”	means any unplanned interruption or event which significantly impairs the ability of the Contractor to supply the Equipment and/or perform the Services (in whole or in part) in accordance with the terms of this Contract;
“Dispute Resolution Process”	means the process for resolving disputes in relation to this Contract as set out in Clause 61;
“DPA”	means the Data Protection Act 1998;
“Early Termination	means the applicable fee as set out in paragraph

Fee”	11 of Part 4 of Schedule 4, less any charges or fees already paid and any reductions made in accordance with Clauses 28.9.1 and/or 28.9.2;
“Electricity Transmission Provider”	means an electricity supplier;
“EMC Unit Price”	means the Contractor’s price for each Equipment Maintenance Category as set out in Annex 2 to Part 2 of Schedule 4;
“Emergency Fault”	means a Fault where there is immediate or imminent danger to person or property (including the Authority’s and a Third Party’s);
“Engineer”	means that person appointed by the Authority to act as Engineer for the purposes of this Contract and set out in Schedule 1 or such other person appointed by the Authority from time to time and notified to the Contractor. The Engineer may from time to time appoint one or more assistants to assist him in the administration and operation of this Contract;
“Equipment”	means the In-Station and the Out-Station and all interfaces between the two and all replacement parts incorporated therein;
“Equipment Installation Programme”	means the milestone plan of Installations of Out-Stations as set out in section 6 of the Specification, as may be updated by the Authority from time to time;
“Equipment Maintenance Category” or “EMC”	means the categories of Equipment set out in the EMC Unit Price List in Annex 2 of Schedule 4;
“Exception”	has the meaning set out in paragraph 9.6 of Part 3 of Schedule 4;
“ERCU”	means the Evidence Retrieval Control Unit;
“Event”	means an act, event, omission, incident or circumstance;
“Excusing Cause”	means: <ul style="list-style-type: none"> (a) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services subject to the Contractor using all reasonable endeavours to resolve the failure; (b) inability to access road network space under the Traffic Management Act 2004; (c) demonstrations;

- (d) planned sporting events;
- (e) closure of public highway;
- (f) inability to secure access to the Site as a result of any Third Party rights and/or wayleaves where the Contractor has made all reasonable endeavours to obtain the necessary consents;
- (g) where the Authority proposes to undertake or procure the undertaking of any works within or about the public highway and has not provided notice to the Contractor at least 5 (five) Working Days before the agreed commencement date for the works and, in the Authority's view (acting reasonably), the works are likely to cause a direct material interference or obstruction with the Contractor's obligations to perform the Services under this Contract;
- (h) inability to carry out the Services where this is due to a requirement for civil engineering works to first be undertaken on the Site (save where such works are the responsibility of the Contractor under this Contract);
- (i) faults in the Authority's network. Where Equipment uses the Authority's connections between the Authority's buildings, the Contractor will not be responsible for the Authority's internal network. The Contractor will be responsible for providing the Services to the interface point of the IT network;
- (j) any failure of or disruption to power occurring to the electricity distribution system belonging to a distribution network operator excluding the low voltage cable directly connected to the Equipment, provided the Contractor uses all reasonable endeavours to resolve the failure;
- (k) any failure or shortage of power, fuel or transport;
- (l) inability to carry out the Services where the Authority has not provided the necessary Free Issue Equipment. The Contractor is required to maintain a level of Free Issue Equipment that enables the Availability Targets to be achieved and an Excusing

Cause will only be allowed in respect of Equipment that is currently infrequently used or which cannot be obtained by the Authority using reasonable endeavours. For the purposes of this sub-paragraph (l), “infrequently used” means that the item of Equipment has not been required more than 5 (five) times in the 12 (twelve) months immediately preceding receipt of the Contractor’s requisition order by the Authority. To qualify for such an Excusing Cause the Contractor must have submitted the relevant Equipment requisition in a timely manner;

(m) exceptionally adverse weather conditions;

(n) any mechanical or electrical failure of SFM which results in the inability of the Authority to manage operational and maintenance data; and

(o) physical conditions at a Site which are not weather conditions and which prevent the Contractor carrying out the Services which an experienced Contractor would have judged at the Contract Commencement Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them;

unless any of the events listed in paragraphs (a) to (l) inclusive arises (directly or indirectly) as a result of any default, negligence or act or omission of the Contractor or any of the Contractor Personnel and provided that the Contractor has complied with its obligations in Clause 32.2 in relation to such Excusing Causes;

“Exit Plan”

means the plan to be prepared pursuant to Clause 29 setting out the obligations of the Authority and the Contractor to facilitate the orderly transfer of the Services (or any part thereof) to the Authority or to a Replacement Contractor on expiry or termination of this Contract;

“Fault”

means a fault with any Equipment (which includes a failure to meet the relevant Specification for such Equipment as listed in Annex 6 to Schedule 4) as notified by the Authority to the Contractor;

“Financial Period Calendar”	means the period or periods set out in Annex 5 to Schedule 4;
“Financial Incentives”	means a Bonus Payment or an Abatements arising from the Contract Availability Result, as applicable;
“Fixed Operational Charge”	means all fixed costs associated with maintaining the Equipment, excluding the Out-Stations;
“FOI Legislation”	means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
“Force Majeure Event”	means the occurrence of: <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions or breach of the Contractor or the Contractor Personnel; or (c) pressure waves caused by devices travelling at supersonic speeds;
“Free Issue Equipment”	means any equipment that the Authority provides to the Contractor free of charge for the purpose of undertaking the Services;
“Good Industry Practice”	means in relation to any undertaking and any circumstances, the exercise of the high degree of skill, care, planning, supervision, control, diligence, prudence, foresight and practice, that would reasonably and ordinarily be expected from a highly skilled and experienced service provider providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
“Graffiti”	has the meaning set out in section 5 of the Specification;
“Groundtruthing”	means the process of determining the accuracy and completeness of VRM capture and interpretation for an Out-Station by comparing outputs from the ANPR System(s) at the Out-Station with a record of VRMs, usually on video,

of the actual traffic traversing the section of road monitored by the Out-Station;

“Highlight Report”

means a report to be prepared by the Contractor and submitted to the Authority within two (2) Working Days of the start of each Reporting Period that outlines the progress of the Installation and Commissioning for the previous Reporting Period and the planned Installation and Commissioning for the current and next Reporting Period, together with details of the Contractor’s progress against the Milestones and any key risks and issues that may have arisen;

“Highway Authority”

means, for the TLRN (Transport for London Road Network) roads the Authority (which may appoint agents to carry out part of its duties) and for all other roads means the London Borough in which the Site is situated or the Royal Parks Agency if the Site is situated in one of the Royal Parks;

“Holding Company”

has the meaning set out in section 1159 Companies Act 2006, and for the purposes of section 1159(1) a company (the ‘first company’) will be treated as a member of another company if:

- (a) any of its subsidiaries is a member of that other company;
- (b) any shares in that other company are held by a person acting on behalf of the first company or any of its subsidiaries; or
- (c) any shares in that other company are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares by the first company);

“HOTA”

means the Home Office Type Approval, which is granted to a contractor by the Home Office via a certificate signed by the Secretary of State which authorises the use of the camera system as the prescribed device for the automated detection of speeding offences;

“Indemnified Parties”

means the Authority, its employees, agents and sub-contractors and any member of the TfL Group and the MPS;

“Information”

means information recorded in any form held by the Authority or by the Contractor on behalf of the Authority;

“Information Request”	means a request for any Information under the FOI Legislation;
“Initial Term”	means the period of ten (10) years commencing on and from the Contract Commencement Date;
“Insolvency Event”	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) the Contractor and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order; (b) a receiver, administrative receiver or manager being appointed over all or part of the business of the Contractor and/or the Holding Company; (c) being a company, the Contractor and/or 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) the Contractor and/or the 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 Contractor becoming bankrupt or dying; <p>any similar event to those in (a) to (e) above occurring in relation to the Contractor and/or the Holding Company under the law of any applicable jurisdiction for those purposes;</p>
“Installation”	means the installation of all equipment at a Site, as more particularly described in section 4 of the Specification;
“In-Station”	means all equipment which is not located on the road network, including the ERCU;
“Intellectual Property Rights”	means any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case 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;
“Interim Certificate”	means the document issued by the Authority detailing the partial Commissioning of Equipment with minor items outstanding in accordance with section 4 of the Specification;
“Losses”	means all costs (including legal costs (on a full indemnity basis) and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, fines, penalties, proceedings and judgments;
“Maintenance”	means Preventative Maintenance, Reactive Maintenance and Supplementary Works as more particularly described in section 5 of the Specification;
“Major Civil Engineering Works”	means the civil engineering works which may be required to be carried out by the Contractor as set out in section 5 of the Specification and which are not Minor Civil Engineering Works;
“Major Traffic Management”	means activities which are required by Chapter 8 of the Traffic Sign Manual and/or the NRSWA and which are not Minor Traffic Management;
“Material Default”	means any Default or any persistent Default by the Contractor which has or, in the case of a persistent Default cumulatively has, a material adverse effect on the provision of all or any part of the Services or on the use, operation or functionality of the Equipment;
“Method Statements”	means the model method statement provided by the Authority from time to time;
“Milestones”	means each milestone set out in Schedule 3;
“Minor Civil Engineering Works”	means the minor civil engineering works which may be required to be carried out by the Contractor as set out in section 5 of the Specification;
“Minor Traffic Management”	means activities which are required by Chapter 8 of the Traffic Sign Manual and/or the NRSWA and that can be performed using equipment carried by a field operative;
“Mobilisation Deliverable”	means those deliverables identified in the Mobilisation Plan as Mobilisation Deliverables;

“Mobilisation Period”	means the period starting on the Contract Commencement Date and ending on the Services Commencement Date or, if earlier, the Termination Date;
“Mobilisation Plan”	<p>means the plan provided by the Contractor and approved by the Authority as set out in Schedule 9 detailing the Contractor’s approach to the preparatory works required to be carried out by the Contractor during the Mobilisation Period to enable the Contractor to commence the Services in full on the Services Commencement Date, which will include as a minimum:</p> <ul style="list-style-type: none"> (a) high-level readiness; (b) mobilisation of any staff and suppliers, including training requirements; (c) logistical considerations; (d) Site visits and surveys; (e) the obtaining of all necessary consents, permissions and approvals; (f) ability to meet the Equipment Installation Programme; (g) ability to meet Authority’s Commissioning Plan; (h) preparedness for the start of Services; (i) development of a risk register for all elements of the Contract, to be jointly developed with the Authority during the Mobilisation Period, and which may be subject to amendment throughout the life of the Contract;
“Modification”	means a change to or replacement of existing Equipment at a Site or the installation of new facilities;
“MPS”	means the Metropolitan Police Service;
“NRSWA”	means the New Roads and Street Works Act 1991;
“Out-Station”	means all equipment for the camera system installed on the street, including the Safety Cameras, Detection Equipment, Secondary Check Marks, ducting, any associated street furniture and foundations;
“Parties”	means the Authority and the Contractor (including their successors and permitted assignees, which

	in the case of the Authority will include any statutory successor) and “Party” will mean either of them as the case may be;
“Payment Claim”	means a claim for payment in the required form to be submitted by the Contractor to the Authority in accordance with Clause 13;
“Performance Measures”	has the meaning set out in paragraph 1.2 of Schedule 5;
“Periodic Inspection”	means a planned and regular visit to the Equipment to undertake the activities as outlined in section 5.4 of the Specification;
“Personal Data”	means personal data and sensitive personal data as defined by sections 1(1) and 2 of the DPA;
“Planned Event”	means Supplementary Works for which the start and/or end time may be defined and will be directed by the Authority;
“Preventative Maintenance”	means the proactive upkeep of Equipment including undertaking Periodic Inspections;
“Principal Contractor”	has the meaning set out in The Construction (Design and Management) Regulations 20015;
“Processing”	has the meaning given to it by section 1(1) of the DPA and “Process” will be construed accordingly;
“Reactive Maintenance”	means the rectification of Faults arising from day-to-day operations;
“Rectification Plan”	means a rectification plan to be prepared by the Contractor under Clause 12.3;
“Red Light Camera with Speed on Green Functionality”	means red light cameras with a capability to enforce speeding on the green Automated Traffic Signal ATS phase at a junction;
“Regular Maintenance”	means Preventative Maintenance, Corrective Maintenance and other Maintenance works as detailed in section 5 of the Specification, but excluding Supplementary Works;
“Regular Maintenance Payment”	means a payment for Regular Maintenance calculated in accordance with paragraph 3.1 of Part 2 of Schedule 4;
“Relief Event”	means: <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil

	<p>commotion;</p> <p>(b) any accidental loss or damage to any roads servicing the Site;</p> <p>(c) any blockade or embargo which does not constitute a Force Majeure Event;</p> <p>(d) refusal of a notice under the NRSWA by either the Contractor or the Authority; and</p> <p>(e) any:</p> <ul style="list-style-type: none"> (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute, <p>generally affecting the traffic control and monitoring system maintenance and installation industry or a significant sector of it,</p> <p>unless any of the events listed in paragraphs (a) to (e) inclusive arises (directly or indirectly) as a result of any default, negligence or act or omission of the Contractor or any of the Contractor Personnel and provided that the Contractor has complied with its obligations in Clause 32.2 in relation to such Relief Events;</p>
“Replacement Contractor”	<p>means any replacement supplier or provider to the Authority of the Services and/or Equipment under this Contract (or any part of them), including any replacement thereto;</p>
“Reporting Period”	<p>means a period of 28 (twenty-eight) calendar days, provided that:</p> <ul style="list-style-type: none"> (a) each such period will match the reporting periods set out in the Financial Period Calendar; (b) each such period will start on the day following the last day of the preceding such period; (c) the first such period will exclude any calendar days up to but excluding the Contract Commencement Date; and (d) the last such period will be the period that ends on the date of expiry or termination of the Contract;
“Required Time for	<p>means the required periods during which Periodic Inspections must be carried out, as set out in</p>

Periodic Inspections”	section 5.4.1 of the Specification;
“Response Times for Emergency Faults”	means the required response times for Emergency Faults set out in section 5 of the Specification;
“Safety Cameras”	means either: <ul style="list-style-type: none"> (a) Spot Speed Safety Camera; or (b) Red Light Camera with Speed on Green Functionality; or (c) Average Speed System, as more particularly defined in the Specification;
“Schedule of Rates”	means the Contractor’s rates for undertaking the Services as set out in Annex 1 to Part 1 of Schedule 4;
“Secondary Check”	means the second method of checking the speed of an offending vehicle which uses a methodology that is independent to the Detection Equipment;
“Service Failure Points”	has the meaning set out in paragraph 1.1 of Part 1 of Schedule 5;
“Service Levels”	means the minimum standards of performance to which the Services are to be performed at all times and to which the Equipment will operate following Commissioning, as set out in Schedule 5 and including the Performance Measures;
“Service Level Indicators”	means the service level indicators set out in Annex A to Schedule 5 being the performance standards to which the Services must be provided continuously whilst this Contract remains in force;
“Services”	means: <ul style="list-style-type: none"> (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Contractor under this Contract as detailed in the Specification, including Maintenance and Works; (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 this Contract;
“Services Commencement Date”	has the meaning set out in Schedule 1;
“SFM”	means the Authority’s Site and Fault Management database, a computer system for management of

	operational and maintenance data as may be modified, upgraded or replaced from time to time;
“Site”	means each location where a Safety Camera is to be installed as notified by the Authority to the Contractor from time to time. On the Contract Commencement Date, the Sites are as listed in Appendix 1 of the Specification;
“Snagging”	means minor outstanding works which are the responsibility of the Contractor remaining to be completed on Site which have not prevented the Site from being brought into use;
“Special Requirements”	means requirements specified by statutory undertakers from time to time;
“Specification”	means the specification for the Services set out in Schedule 3;
“Spot Speed Safety Camera”	means a safety camera that is able to enforce speeding by assessing a vehicle’s speed at single defined location. The location is defined by where the detection equipment monitors the vehicle;
“Sub-Contractors”	means any contractors engaged by the Contractor in connection with this Contract in accordance with Clause 20.1;
“Supplementary Works”	means the maintenance to be undertaken by the Contractor on an ad hoc basis in relation to Periodic Inspections or Regular Maintenance attendance or such other works, each as directed by the Authority from time to time;
“Supplementary Works Payment”	has the meaning set out in Part 2 of Schedule 4;
“Take-Over”	means when Installation is completed and the Equipment is Commissioned and brought into use;
“Take-Over Certificates”	means the Authority's certificate issued when Installation is completed and the Equipment is Commissioned and brought into operational use;
“Term”	means the Initial Term, together with any extensions thereto in accordance with Clause 3.2, subject to any earlier termination in accordance with the terms of this Contract;
“TfL Group”	means Transport for London and all of its subsidiaries (as defined in section 1159 of the Companies Act 2006, including the Authority) from time to time together and reference to any “member of the TfL Group” will refer to Transport for London and/or any such subsidiary;

“Third Party”	any person who is not a Party to this Contract;
“Third Party Damage”	means Faults in relation to the Equipment only arising due to unperceived events outside of day-to-day operational wear and tear including road traffic accidents but excluding Graffiti;
“Third Party Fault”	means Faults that are caused by or arise from services provided to the Authority by Third Party Suppliers for whom the Contractor is not responsible under this Contract;
“Third Party Supplier”	means a supplier of services to the Authority other than the Contractor;
“TLRN”	means the Transport for London Road Network;
“Transparency Commitment”	means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Authority is committed to publishing its contracts, tender documents and data from invoices received;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Vehicle Count Rate”	means the measure of the number of vehicles that each camera in an Average Speed System identifies at point of entry in each specific lane, compared to the actual number of vehicles passing the Average Speed System entry Out-Station in each specific lane;
“VCRM”	means the Verification Cross Reference Matrix that confirms Contractor’s Solution fully meets the Specification as set out in Schedule 2;
“VRM”	means a vehicle registration mark;
“Working Day”	means any day excluding Saturdays, Sundays or public or bank holidays in England;
“Working Hours”	means the period from 08.00.00 to 17.59.59 on a Working Day;
“Works”	means any: <ul style="list-style-type: none"> (a) Installations; (b) Minor Civil Engineering Works; (c) Snagging; and (d) Supplementary Works, required and undertaken in accordance with the Specification;

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument will 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 will include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of this Contract;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise will be construed as a reference to the document as at the date of execution of this Contract;
- 1.5 headings are included in this Contract for ease of reference only and do not affect the interpretation or construction of this Contract;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, this Contract and any reference to a paragraph in any Schedule will, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 the Schedules form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract;
- 1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.9 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.
- 1.10 in the event, and only to the extent, of any conflict between the Clauses, the Schedules, the Annexes, the Appendices and any other document referred to in or incorporated into this Contract, the order of priority for the purposes of construction is:
 - 1.10.1 the Clauses;
 - 1.10.2 the Specification;
 - 1.10.3 the remaining Schedules (save where the conflicting part of the Schedule is explicitly expressed to take precedence over a Clause);
 - 1.10.4 the Annexes; and
 - 1.10.5 the Appendices; and
 - 1.10.6 any other document referred to or incorporated into this Contract; and

- 1.11 any obligation on the Contractor to comply with standards, policies, procedures or the like will be an obligation on the Contractor to comply with the same as they will be amended from time to time and communicated to the Contractor.

2. SCOPE OF CONTRACT

- 2.1 The Contractor will on and from the Services Commencement Date provide the Services to all Sites. The Authority may add Sites or remove them in accordance with the Change Control Procedure.
- 2.2 The Contractor will in return for the Contract Price undertake the Services in accordance with this Contract to the satisfaction of the Engineer.

3. COMMENCEMENT AND DURATION

- 3.1 This Contract will start on and from the Contract Commencement Date and continue in full force and effect for the Initial Term, subject to earlier termination in accordance with Clause 27. This Contract will automatically terminate at the end of the Initial Term unless extended in writing by the Authority pursuant to Clause 3.2.
- 3.2 The Authority has the option, exercisable at its sole discretion, to extend the duration of this Contract for a further period or periods up to a total of ten (10) years by giving notice in writing to the Contractor, provided that such notice is served at least three (3) months prior to expiry of the Initial Term or the expiry of the current extension, if later.
- 3.3 Without prejudice to Clause 3.1 and 3.2, on or before the 10 year anniversary of the Commencement Date, the Authority, in conjunction with the Contractor, shall review the expected life of the Equipment. Following such review, (at the Authority's sole discretion acting reasonably), the Authority shall determine whether there shall be any variation to the Availability Targets and method of working in any subsequent years of this Agreement. Any agreed variation to this Agreement shall be in writing in accordance with the Change Control Procedure (Schedule 6).

4. MOBILISATION

- 4.1 The Contractor will at its cost and expense implement the Mobilisation Plan no later than the Contract Commencement Date and will complete all Mobilisation Deliverables in accordance with the timetable set out in the Mobilisation Plan and will ensure that the timetable set out in the Mobilisation Plan for the successful completion of each Mobilisation Deliverable is met.
- 4.2 The Contractor will implement the Mobilisation Plan in full co-operation with the Authority and all relevant Third Parties to ensure that the Contractor is able to commence the Services in full on the Services Commencement Date.

- 4.3 The Contractor will apply the same level of skill, care and diligence in the performance of its tasks and obligations under the Mobilisation Plan as it is required to apply in the provision of the Services.
- 4.4 If the Contractor becomes aware that it is or may be unable to meet or is unlikely to be able to perform any Mobilisation Deliverable in accordance with any timetable set out in the Mobilisation Plan then, without prejudice to any other rights or remedies of the Authority, the Contractor will promptly notify the Authority in writing of the same, the reason for the delay and provide an estimate of when that Mobilisation Deliverable will be completed.
- 4.5 If the Contractor fails to complete any Mobilisation Deliverable by the date specified in the Mobilisation Plan for completion of it, then (without prejudice to the Authority's rights and remedies) the Contractor will at its own cost, arrange such additional resources as are necessary to fulfil its obligations under the Mobilisation Plan as soon as possible after the relevant date contained in the timetable set out in the Mobilisation Plan.
- 4.6 The Authority may, at any time undertake an audit pursuant to Clause 41 in order to inspect and view the state and progress of mobilisation. The Authority's inspection of mobilisation will not be deemed acceptance by the Authority of any aspect of mobilisation and/or the Services and other obligations performed by the Contractor in relation to it.
- 4.7 The Contractor will regularly review the Mobilisation Plan and whenever appropriate propose changes to the Mobilisation Plan, at the Contractor's expense, to ensure that the Services are capable of being provided on the Services Commencement Date in accordance with the terms of this Contract. All changes proposed by the Contractor will be subject to the prior written approval of the Engineer.
- 4.8 If at any time during the Mobilisation Period the Engineer decides that the progress or the works under the Mobilisation Plan are not sufficient or appropriate to ensure that the Services are capable of being provided on the Services Commencement Date in accordance with the terms of this Contract, the Engineer may instruct the Contractor to revise the Mobilisation Plan and the Contractor will, at its expense, promptly prepare and implement the requisite modifications.

5. CONTRACTOR SOLUTION

- 5.1 Notwithstanding that the Contractor may successfully achieve Commissioning, this does not confer upon the Contractor any acknowledgement or acceptance by the Authority that the Contractor Solution for delivery of the Services and the Equipment will be sufficient to deliver the Services and the Equipment in accordance with the Service Levels and the other requirements of this Contract. The Contractor remains solely responsible for the risk that the Contractor Solution may not actually fulfil the requirements of this Contract.

- 5.2 The Contractor acknowledges and accepts that, notwithstanding that the Authority has provided the Specification:
- 5.2.1 the Contractor Solution and any other ideas, methods, concepts or theories (including any “proof of concept” synopsis, Milestone or feasibility demonstration in connection with the Services and/or the Equipment):
 - 5.2.1.1 will be verifiable, verified, demonstrable, demonstrated and capable of use and used for the purposes of this Contract; and
 - 5.2.1.2 satisfy the Authority’s requirements as set out in the Specification; and
 - 5.2.2 the Equipment provided under this Contract will be fit for purpose for the provision of the Services and for all other administration, enforcement and compliance activities undertaken by the MPS and the Authority, as applicable.
- 5.3 Subject to Clause 5.4, the Contractor acknowledges and accepts that, notwithstanding that the Authority has provided the Specification:
- 5.3.1 the Contractor has full knowledge and understanding of the Specification and warrants that the Specification is fit for purpose for the provision of the:
 - 5.3.1.1 successful design, build and operation of the Equipment; and
 - 5.3.1.2 Services required under this Contract; and
 - 5.3.2 no fault, error or defect in the Specification will absolve the Contractor from its obligations to provide the Services and Equipment in accordance with the provisions of this Contract.
- 5.4 The Contractor will not have any liability under Clause 5.3 to the extent that the Contractor:
- 5.4.1 could not reasonably be expected to have identified defects in the Specification; and/or
 - 5.4.2 has notified the Authority of defects in writing before the Contract Commencement Date; and/or
 - 5.4.3 has notified the Authority of any defects in writing in relation to a proposed change before any change requested by the Authority is implemented.
- 5.5 In the event, and only to the extent, of any conflict between the provisions of the Specification and the provisions of the Contractor Solution, the Parties agree that the Specification will take precedence.

6. THE SERVICES

6.1 The Contractor:

- 6.1.1 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Contract; and
- 6.1.2 will neither be entitled to any additional payment nor excused from any obligation or liability under this Contract due to any misinterpretation or misunderstanding by the Contractor of any fact relating to the Specification or otherwise to this Contract.

6.2 The Contractor will (and will procure that the Contractor Personnel) provide the Services in accordance with:

- 6.2.1 the terms and conditions of this Contract;
- 6.2.2 the Specification in all respects and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
- 6.2.3 all Applicable Laws;
- 6.2.4 the Service Levels;
- 6.2.5 the Method Statements;
- 6.2.6 all reasonable directions which the Authority may give to the Contractor from time to time and which relate (whether directly or indirectly) to the provision of the Services. For the avoidance of doubt, any consequential Changes arising from such directions will be dealt with in accordance with the Change Control Request Procedure;
- 6.2.7 all relevant approvals, consents, permissions (including any from Third Parties) and within the lawful requirements of local and public authorities. and
- 6.2.8 Good Industry Practice.

6.3 Without prejudice to Clause 6.2, the Contractor will (and will procure that the Contractor Personnel) provide the Services:

- 6.3.1 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
- 6.3.2 so that they are properly managed and monitored and will immediately inform the Authority if any aspect of this Contract is not being or is unable to be performed.

- 6.4 Upon request from the Authority, the Contractor will provide such Supplementary Works as are requested by the Authority from time to time and in accordance with any requirements of the Authority and the Specification.
- 6.5 Throughout the term of this Contract the Contractor will when required give to the Authority such written or oral advice or information regarding or otherwise in connection with any of the Services as the Authority may reasonably require.
- 6.6 To the extent that there may be any conflict between the requirements set out in Clause 6.2, each such requirement will take priority over the other requirements in the order set out therein.
- 6.7 In addition to the Services, the Contractor will provide at no additional cost to the Authority any services, functions and responsibilities (including any incidental service, function or responsibility) not specifically set out in the Specification but which:
- 6.7.1 are within the scope of the Services as set out in the Specification; and
 - 6.7.2 are consistent with the allocation of responsibilities between the Authority and the Contractor under the terms of this Contract; and
 - 6.7.3 are services, functions or responsibilities which are inherent to the proper performance and delivery of the Services.
- For the avoidance of doubt, any changes to the scope of the Services will be dealt with in accordance with the Change Control Request Procedure.
- 6.8 Notwithstanding anything to the contrary in this Contract, the Authority's discretion in carrying out its statutory duties will not be fettered or otherwise constrained or affected by any provision of this Contract.
- 6.9 The Contractor will put in place, maintain and update for the Term a quality assurance system that complies with or is equivalent to BS EN ISO9000/14001 and this system must be registered with an approved certification authority. The Contractor will, at its own cost, provide the Authority with such information and documents relating to the quality assurance system as the Authority may reasonably request.
- 6.10 The Contractor will, at its own cost, as part of the Services submit a written report to the Authority within ten (10) Working Days of each anniversary of the Contract Commencement Date, which will identify:
- 6.10.1 the emergence of any relevant new and evolving technologies and/or processes which could improve the Equipment or Services;
 - 6.10.2 new or potential improvements to the Equipment or Services including the quality and responsiveness of the Equipment or Services or the procedures used to perform the Services;

- 6.10.3 any developments that may reduce the cost of providing the Services;
- 6.10.4 an analysis of the impact of any technologies, processes, improvements and/or developments that are proposed in relation to the Equipment or Services, including analyses of the costs of and timescale for, effecting such changes and the impact on the availability of the Equipment and the provision of the Services; and
- 6.10.5 details of the new performance mechanisms (including Service Levels) that should be implemented if any technologies, processes, improvements and/or developments are implemented in relation to the Equipment or Services.

Such report will also contain any further information that is required in order for the Authority to properly evaluate the proposed technologies, processes, improvements and/or developments, including any changes required to the Contractor's HOTA for the Equipment. If the Authority wishes to implement any aspect of the report, it will request to do so using the Change Control Procedure. Nothing in this Contract will oblige the Authority to implement or agree to the implementation of any new technology, process, improvement and/or development. The Contractor will ensure that all proposals in the report will be HOTA compliant.

- 6.11 Notwithstanding Clause 6.10 above, the Contractor will at its cost, implement any HOTA approved improvements, enhancements or upgrades to the Equipment to the extent that such improvements, enhancements or upgrades will improve the Availability or functionality of the Equipment. The Contractor will ensure that the implementation of such improvements, enhancements or upgrades does not interrupt the operation of the Equipment or its Availability or the enforceability of any data generated by the Equipment.
- 6.12 Where reasonably requested to do so by the Greater London Authority (GLA) or any of its other functional bodies (currently, the London Development Agency, the Metropolitan Police, the London Fire and Emergency Planning Authority), the Contractor will contract with the GLA or such other functional body of the GLA on the terms of this Contract with only the necessary changes of Parties' details being made.

7. CO-OPERATION AND PROVISION OF INFORMATION

- 7.1 The Contractor will (and will procure that the Contractor Personnel will) at all times (and at no extra cost to the Authority) provide such information relating to the Services and/or this Contract to the Third Party Suppliers as the Authority reasonably requests from time to time.
- 7.2 The Contractor will (and will procure that the Contractor Personnel will) co-operate with and co-ordinate its performance or provision of the Services and other obligations hereunder with the performance or provision of works or services provided by Third Party Suppliers and, in particular with all relevant public authorities, local authorities, the MPS, statutory undertakers and the

relevant Highway Authority. The co-operation referred in this Clause 7.2, includes:

- 7.2.1 liaising and meeting with Third Party Suppliers;
- 7.2.2 co-ordinating the successful and efficient integration of the Services with any services and/or products of any Third Party Supplier and the implementation by the Contractor or any Third Party Supplier of new processes and systems from time to time;
- 7.2.3 responding to requests for suggestions and/or responses should acquisitions, disposals, organisational or management changes be proposed in respect of any of the Third Party Suppliers

7.3 The Contractor will maintain a contacts register detailing its contacts with Third Party Suppliers which it will make available to the Authority on request.

8. EQUIPMENT

8.1 The Contractor will ensure that all Equipment supplied pursuant to this Contract will:

- 8.1.1 conform with the Specification and any additional requirements agreed with the Authority;
- 8.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended)), including any purpose held out by the Contractor or made known to the Contractor by the Authority;
- 8.1.3 be free from defects in design, materials and workmanship;
- 8.1.4 be so formulated, designed, constructed and finished as to be safe and without risk to health; and
- 8.1.5 comply with HOTA and all applicable statutory and regulatory requirements and all codes of conduct, practice and guidance relating to the Equipment.

8.2 The Contractor will obtain and maintain during the Term all approvals, permissions, registrations, licences and consents that are necessary or consequential to the supply, installation, operation and maintenance of the Equipment.

8.3 The Contractor will deliver the Equipment in accordance with its obligations under Appendix 1 of Schedule 3 (Specification).

8.4 The Contractor will comply with the requirements in respect of Acceptance Tests and Commissioning as set out in the Specification.

8.5 Risk and title in the Equipment (and each individual Safety Camera) will pass to the Authority once the Commissioning in respect of such Equipment (and

each individual Safety Camera) has been completed in accordance with the Specification.

- 8.6 The Authority will use the Equipment correctly and in accordance with the manufacturer's guidance issued with the Equipment and provided to the Authority by the Contractor.
- 8.7 The Authority will not allow any persons other than the Contractor to have access to the internal of the Safety Cameras or to maintain or repair the Safety Cameras during the Term, provided that the Authority and its authorised agents reserve the right at all times to undertake the following and immediately update SFM accordingly:
 - 8.7.1 carry out such non-intrusive inspections and tests, including tests of electrical cables on the Safety Cameras as it considers necessary and notify the Contractor of the visit and the action taken; and
 - 8.7.2 carry out works in order to remove Graffiti from the Out-Station or resolve a Cosmetic fault on Safety Cameras maintained by the Contractor.
- 8.8 All goods, materials, and workmanship used by the Contractor in carrying out its obligations under this Contract will be in accordance with the Specification and comply with HOTA and all Applicable Laws.
- 8.9 With the exception of items subject to type approval, any requirement of this Contract that any material or article will comply with any specified standard, whether a British Standard, other named standard or otherwise, will be satisfied by compliance with any relevant national or governmental standard of any member state of the European Communities, or any relevant international standard recognised in such a member state provided that in either case the standard in question offers guarantees of safety, suitability and fitness for purpose equivalent to those offered by the standard which is specified in this Contract. Any requirement of this Contract to use material or an article which is defined by reference to a named supplier or manufacturer or a specified Quality Assurance scheme or Contract Certificate, or which is registered with or has otherwise received the approval of the Authority will be satisfied using material or an article which has received equivalent approval in another member state of the European Communities provided that the material or article in question is as safe, suitable and fit for the relevant purpose as material or an article complying with the requirement as set out in this Contract.
- 8.10 All replacement items will be like with like, that is functionally identical, unless agreed with the Engineer and where appropriate will be fully type approved. Replacement by compatible or similar items of equipment will not normally be permitted.
- 8.11 Where the Authority provides Free Issue Equipment to the Contractor for use in the Services the Contractor will carry out a visual inspection of such equipment to check that it is in good condition and suitable for use prior to

incorporating or using such equipment in the Services. If the Contractor considers such Free Issue Equipment is not fit for purpose the Contractor will notify the Authority.

9. ACCESS AND FAULT REPAIR/REPORTING

- 9.1 Subject to making appropriate arrangements with relevant Third Parties, the Contractor's representatives will be given access to the Sites and the Equipment.
- 9.2 The Contractor will maintain a fault centre and inform the Authority of the address and contact details (including telephone (including mobile telephone) and fax numbers and an email address) of the same and any changes thereto. Without prejudice to Clause 11, the Contractor will provide all necessary communications equipment to support communication between the Contractor's fault centre, the Centre, and the Contractor's representatives on the street.
- 9.3 The Authority will maintain the Centre at no cost to the Contractor.
- 9.4 The Authority will inform the Contractor that a Fault exists in accordance with the provisions set out in the Specification, including the location of the Fault, a description of the Fault, the time of notification and the time the Fault was first observed. The Contractor will determine the appropriate action to take in response to the Fault report in order to comply with the relevant Service Level Indicators and the Availability Targets.
- 9.5 The Contractor will attend all reported Faults, undertake the appropriate action and inform the Authority accordingly.
- 9.6 If the Contractor is required by the Authority to carry out a special investigation this will be deemed to be included in the EMC Unit Price. The Authority may reimburse the Contractor's costs on the same basis as Supplementary Works Payment for any equipment used that lies outside the scope of this Contract.

10. CONTRACTOR FACILITIES

- 10.1 The Contractor will establish and maintain appropriate facilities for performing the Services and carrying out its obligations under this Contract. Such facilities will be maintained and upgraded during the Term to meet the Contractor's obligations and the requirement to improve the level of service provided under this Contract. The Contractor's facilities will be so located as to allow the Contractor to meet the required response times set out in this Contract.
- 10.2 The Contractor's facilities will have adequate facilities for receiving the Authority's reports of Faults, hosting the In-Station and for the storage of equipment required in respect of all Services to be undertaken by the Contractor under this Contract in accordance with the requirements set out in the Specification. In respect of the In-Station, the Contractor shall:

- 10.2.1 hold the In-Station on a fiduciary basis as the Authority's contractual bailee;
 - 10.2.2 host the In-Station separately from all other equipment of the Contractor or any third party in such a way that it remains readily identifiable as the Authority's property;
 - 10.2.3 maintain the In-Station in satisfactory condition insured on the Authority's behalf for its full price against all risks to the reasonable satisfaction of the Authority; and
 - 10.2.4 make the In-Station available for inspection by the Authority or its agents at any reasonable time.
- 10.3 Without limitation to Clause 10.2, the Contractor's facilities will have secure storage space adequate for the volume of Free Issue Equipment issued by the Authority for the Services and for test equipment including a secure area to which only the Contractor's engineer and the Authority will have access. Risk in the Free Issue Equipment will pass to the Contractor on delivery. While the Free Issue Equipment is in the possession of the Contractor and until it is installed on Site and Taken Over by the Authority, the Contractor will:
- 10.3.1 hold the Free Issue Equipment on a fiduciary basis as the Authority's bailee;
 - 10.3.2 store the Free Issue Equipment (at no cost to the Authority) separately from all other equipment of the Contractor or any third party in such a way that it remains readily identifiable as the Authority's property;
 - 10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Free Issue Equipment;
 - 10.3.4 maintain the Free Issue Equipment in satisfactory condition insured on the Authority's behalf for its full price against all risks to the reasonable satisfaction of the Authority; and
 - 10.3.5 make the Free Issue Equipment available for inspection at any reasonable time.
- 10.4 All costs in establishing, maintaining and upgrading the Contractor's facilities pursuant to this Clause 10 will be borne by the Contractor.
11. **SFM**
- 11.1 The Authority hereby grants to the Contractor and the Contractor Personnel (where necessary) a non-exclusive, non-transferable, royalty free licence to use the SFM as reasonably required by the Contractor for the purposes of this Contract and the performance of the Services. This licence is granted for

the Term and solely to enable the Contractor to comply with its obligations under this Contract. The Contractor will not obtain any right, title or interest in the SFM or in any Intellectual Property Rights in the SFM.

11.2 SFM, as the Authority's primary tool for managing and monitoring the Equipment under this Contract, will be used for the purposes of this Contract:

11.2.1 for notifications (including instructions) both to and from the Contractor and to Third Parties, including:

11.2.1.1 notification of Faults and the progress and completion status for Maintenance;

11.2.1.2 notification by the Contractor to the Authority of a requirement for emergency civil engineering work required to make a Site safe following Third Party Damage;

11.2.1.3 notification by the Contractor to the Authority within 1 (one) calendar day of completion of Maintenance of loop and loop feeder and link cables; and

11.2.1.4 automatic notification to relevant Third Parties of Faults and Works;

11.2.2 as an asset database to contain details of all Equipment installed or to be installed under this Contract and asset management data and statistics, including:

11.2.2.1 all Site configuration data including Safety Cameras control specification configurations and all dates and times of changes;

11.2.2.2 Take-Over Certificates;

11.2.2.3 Fault logs (including Fault details, delays in repair, engineer attendance times and all rectification activities);

11.2.2.4 Periodic Inspection schedules, attendance activities and records;

11.2.2.5 Contract details; and

11.2.2.6 details of Planned Events;

11.2.3 to generate reports, including:

Overall reports

11.2.3.1 annual and quarterly management reports;

- 11.2.3.2 periodic performance reports; and
- 11.2.3.3 all aspects of reports for the purposes of the Contractor's management, any daily or monthly Fault logs and all reports containing Availability data;

Periodic service reports

- 11.2.3.4 electricity procurement reports;
- 11.2.3.5 asset rollout reports including deployment by type;
- 11.2.3.6 (management reports (general overview of reports on the Contractor's performance);
- 11.2.3.7 Fault rates across Safety Cameras types during a specified period at a specified interval;
- 11.2.3.8 the number of Faults per Fault Definition during a specified period at a specified interval;
- 11.2.3.9 the number of Clears per Repair Definition during a specified period at a specified interval; and
- 11.2.3.10 Availability during a specified period at a specified interval (trend) with the ability to aggregate Availability by Borough, TLRN, Equipment, Site type or specified status flag;

Asset management reports

- 11.2.3.11 Fault trend analysis reports (used to highlight Fault trends to the Authority to deliver improved Maintenance and procurement practices);
- 11.2.3.12 lifetime management reports (used to plan technology procurement, remedial and replacement requirements, Maintenance management regimes and whole life cost management);
- 11.2.3.13 obsolescence reports (used to plan technology spares, remedial and replacement requirements).

The Contractor will use the information available through SFM to generate its Annual Report, in which proposals will be made for improved Equipment infrastructure and asset management practices; and

- 11.2.4 to calculate performance levels used to derive Financial Incentives and compliance with certain Service Level Indicators and Performance Measures.

11.3 The Authority will throughout the Term:

- 11.3.1 use reasonable endeavours to provide and maintain and, if it thinks it appropriate, develop SFM, including both the Equipment software and hardware within the Authority's firewall;
- 11.3.2 provide and maintain an internet gateway to support use of SFM by the Contractor and will provide, maintain and, if it thinks it appropriate, update a website in connection with such gateway. The Authority gives no warranty regarding the availability of the gateway or website or that access to SFM will be uninterrupted;
- 11.3.3 enter all Site configuration data into SFM and control changes to SFM configuration data;
- 11.3.4 enter into SFM information relating to traffic control and monitoring equipment not covered by this Contract;
- 11.3.5 enter Faults into SFM and will not pass Faults to the Contractor by any other means unless SFM becomes unavailable;
- 11.3.6 maintain the security of SFM such that SFM is protected against malicious or criminal intervention;
- 11.3.7 distribute and control client software and documentation;
- 11.3.8 monitor SFM usage;
- 11.3.9 provide a change control process for any changes to the SFM system;
- 11.3.10 provide training as provided for under Clause 11.5 below;
- 11.3.11 manage daily system back-ups;
- 11.3.12 carry out data archiving;
- 11.3.13 provide 24 hour emergency support for SFM;
- 11.3.14 provide disaster recovery to re-establish SFM in the event of a total loss of service; and
- 11.3.15 control access to SFM (including via the website) by the allocation and maintenance of user names and user passwords.

11.4 The Contractor will throughout the Term:

- 11.4.1 provide and maintain its own systems and interfaces with SFM to specifications no less than those notified by the Authority from time to time to enable access to SFM on Site and at the Contractor's facilities including the provision of hardware to enable the Contractor's representatives on-Site to access SFM;

- 11.4.2 provide a high specification internet access (in terms of security and speed) with access for an appropriate number of users for use of SFM in accordance with this Contract;
 - 11.4.3 verify the accuracy of data in SFM relating to the Equipment and notify the Authority of any inaccuracies. The Contractor's personnel should verify data through and in conjunction with the Authority's data management team;
 - 11.4.4 provide accurate data relating to the Services and to enter all Faults and times of repairs into SFM in a timely fashion;
 - 11.4.5 maintain appropriate firewalls and security controls to maintain the integrity of SFM and prevent unauthorised access. The Contractor will not issue or disclose any data from SFM to any Third Party without the Authority's prior written consent;
 - 11.4.6 ensure that only nominated users who have been notified to the Authority and receive a user name and user password and receive training on the use of SFM have access to SFM;
 - 11.4.7 supply contact details (first name, surname, company, email address, telephone number and mobile phone number) for all engineers and operatives undertaking the Services. The Contractor will comply with the requirements of the DPA in providing such information; and
 - 11.4.8 co-operate with the Authority and assist constructively to the development of SFM.
- 11.5 Training on SFM will be provided to the Contractor's employees as follows:
- 11.5.1 during the mobilisation period, the Authority will prepare a training plan having regard to any reasonable requests from the Contractor;
 - 11.5.2 the Authority will provide initial training to the Contractor's employees in accordance with the plan prepared pursuant to Clause 11.7.1 using competent trainers and hands-on training techniques;
 - 11.5.3 the Authority will provide initial training to new staff of the Contractor at the Contractor's request;
 - 11.5.4 the Authority will provide training to the Contractor's management requiring access to SFM at the Contractor's request; and
 - 11.5.5 the Authority will provide training on new functionality when this is introduced into SFM and will also provide continuity training and follow-up training to the Contractor's employees as required. The Contractor will pay for any additional training in excess of the provision by the Authority of 2 workshops during each Contract Year.

- 11.6 The training set out in Clause 11.5 will be provided at the Authority's cost and the Contractor will be responsible for all costs in connection with its employees' attendance at such training including, without limitation, all travel and subsistence costs. Any training which the Contractor requires in excess of that set out in Clause 11.5 will be at the Contractor's cost.
- 11.7 The Contractor will ensure that:
- 11.7.1 each of its field operatives attends at least one half day training in the use of SFM; and
 - 11.7.2 each of its Fault operators attends at least two full days training in the use of SFM,
- during each Contract Year.
- 11.8 If the Authority requires to conduct routine maintenance of SFM and this results in users not being able to access SFM, this will take place between the hours of 22:00 and 05:00, other than for emergency maintenance.
- 11.9 The Authority will communicate and document SFM software maintenance and upgrade releases to the Contractor using a version release note.
- 11.10 The Authority will use its reasonable endeavours to rectify faults in SFM within four hours of the SFM fault being reported to the Authority or coming to its attention.
- 11.11 In the event of a Failure of SFM, the following provisions will apply:
- 11.11.1 during the first twenty-four hours of a Failure:
 - 11.11.1.1 the Centre may, at its discretion, only send out urgent Faults during this time;
 - 11.11.1.2 the Contractor will report any Fault updates (on Form_Contractors_Fax_Fault_Sheet.doc), by fax, email or, in extreme conditions, by telephone to the Centre; and
 - 11.11.1.3 the Contractor will enter Clears onto SFM retrospectively when SFM next becomes available, with the date and time of the actual Clear amended to reflect the actual date/time the repair was carried out. The Contractor will enter on the Clear, the status of SFM at the time, to enable Availability to be measured. The Clear confirm date, entered by the Centre, cannot be altered, and defaults to the Equipment date and time. Therefore, when confirming the Clear, the Centre will verify that SFM was unavailable at the time the Clear was entered. All Clears must be recorded on the Authority's proforma, SFM_Clear_Form.doc. Once all Clears have been entered into SFM the Contractor

must provide copies of all completed Clear forms to the Authority;

11.11.2 if the Failure exceeds twenty-four hours:

11.11.2.1 the Authority will make available one workstation at the Centre to allow the Contractor to carry out their normal operations from the Centre during the Centre's operating hours;

11.11.2.2 Faults reported to the Centre by fax, email or phone will be communicated to the Contractor as described for short term communication failure under Clause 11.11.1 and Clears will be processed in the same manner; and

11.11.2.3 the Centre operators will process the Faults in the normal manner on reinstatement of SFM and the Contractor will enter Clears as described in Clause 11.11.1.3.

11.11.3 Following a Failure, the Contractor will support the Authority in the preparation and delivery of reports on such Failure to users including attendance at meetings and presentations.

11.11.4 For the purposes of this Clause 11.11, a Failure is defined as when, in a controlled test, a PC complete with a connection of bandwidth 56Kb or minimum market standard available (whichever is the greater), connected to an unprotected conventional link and ISP, is unable to connect to SFM via the Internet

11.12 A breach of Clauses 11.1 and 11.4.1 to 11.4.6 (inclusive) will be considered a material breach for the purposes of Clause 27.1 and if the Contractor knowingly or negligently inputs inaccurate information into SFM or provides such information to the Authority this will be considered a material breach giving the Authority the right to terminate this Contract immediately.

12. PERFORMANCE MANAGEMENT

12.1 The Contractor will ensure that the Services are performed so as to meet or exceed all Service Levels.

12.2 If at any time the Contractor is in Default (including a failure to meet the Service Levels) or becomes aware that a Default is likely to occur then notwithstanding any other provision in this Contract, the Contractor will, at no additional cost to the Authority and without prejudice to the Authority's other rights and remedies take all remedial action that is necessary to remedy the relevant Default (provided the failure in question is remediable) as soon as reasonably practicable and to prevent the Default in question from recurring.

12.3 If at any time the Contractor is in Material Default or becomes aware that a Material Default is likely to occur then notwithstanding any other provision in

this Contract, the Contractor will, at no additional cost to the Authority and without prejudice to the Authority's other rights and remedies:

- 12.3.1 immediately notify the Authority in writing of the nature and extent of the Material Default, the anticipated impact of the Material Default on the Services, the root cause of the Material Default and the Contractor's proposed Rectification Plan in respect of that Material Default. All Rectification Plans will require the Contractor to deploy all additional resources and take all remedial action that is necessary to rectify the Material Default (provided the failure in question is remediable) and to prevent the Material Default in question from recurring;
- 12.3.2 amend any proposed Rectification Plan to reflect the Authority's comments, the Authority's required timescale for rectification and any additional steps that the Authority may require the Contractor to take and then implement the amended Rectification Plan as soon as possible and, in any event, within the timescales set out in the Rectification Plan;
- 12.3.3 if the Authority so requests, procure that the member of the Contractor Personnel who is responsible for rectifying the Material Default is available to discuss the matter with the Authority;
- 12.3.4 if the Authority so requests, permit the Authority (or its Contract Manager) to attend operational meetings to the extent that they relate to the planning and implementation of the Rectification Plan;
- 12.3.5 report to the Authority on a regular basis and, in any event no less than weekly, on the Contractor's progress against the Rectification Plan; and
- 12.3.6 promptly notify the Authority in writing of any non-trivial changes required to the Rectification Plan from time to time and the reasons for those changes, all such changes to be subject to the Authority's prior written consent.

This Clause 12.5 is without prejudice to the Authority's right to terminate for a material breach in accordance with Clause 27.1.

12.4 If the Contractor:

- 12.4.1 fails to fully, effectively and promptly implement a Rectification Plan in all material respects in accordance with its terms;
- 12.4.2 fails to promptly produce a Rectification Plan in relation to a breach of Applicable Laws when it is required to do so; and/or
- 12.4.3 any cause of a Rectification Plan recurs more than two (2) times,

then the Authority may terminate this Contract pursuant to Clause 27.1.7.

13. CHARGES AND PAYMENT

- 13.1 In consideration of the proper provision of the Services by the Contractor in accordance with the terms of this Contract, the Authority will pay the Contractor the Contract Price as set out and calculated in accordance with Schedule 4 and in accordance with the following provisions of this Clause 13.
- 13.2 The Contract Price will be inclusive of all costs of staff, facilities, equipment (including the Equipment), materials, mobilisation and other expenses whatsoever incurred by the Contractor in discharging its obligations under this Contract.
- 13.3 The Contractor will issue its invoices for:
- 13.3.1 Equipment Installation; and
 - 13.3.2 Equipment Maintenance,
- at such dates, milestones or at the end of such periods as may be specified in Schedule 4.
- 13.4 The Contractor will submit its invoices to the address set out in Schedule 1. Each such invoice will contain all information required by the Authority as specified in this Clause 13 together with this Contract's Reference Number, SAP purchase order number, the Contractor's name and address and a separate calculation of VAT. The Contractor will not make any separate charge for submitting such invoices. If an invoice does not contain the required information or is not in the specified format, the Authority will notify the Contractor and the Contractor will issue a revised invoice. The period for payment set out in this Clause 13 will not begin until the Authority has received an invoice containing the required information and in the specified format.
- 13.5 Invoicing for Installations
- 13.5.1 The Contractor's invoice will specify the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated, whether or not that sum is zero.
 - 13.5.2 The due date for payment of each payment in respect of the Contract Price will be the date on which a proper and correct invoice (complying with the requirements of Clause 13.4), including any revised invoice submitted pursuant to Clause 13.4 is received by the Authority. Invoices submitted prematurely or which do not comply with the requirements of Clause 13.4, will not be valid and will be resubmitted in the proper form at the proper time.
 - 13.5.3 The final date for payment of each payment in respect of the Contract Price will be thirty (30) days after the due date for each such payment (or ten (10) days after the due date for each such payment if the Contractor is an SME (as defined in Schedule 13)) or such other time period as may be specified in Schedule 4.

- 13.5.4 Subject to Clause 13.8 and unless the Authority has served a notice under Clause 13.5.5, the Authority will pay the Contractor the sum referred to in the Contractor's properly submitted invoice (the "**Notified Sum**") on or before the final date for payment of each payment.
- 13.5.5 The Authority may give the Contractor a notice in writing specifying the Authority's intention to pay less than the Notified Sum (the "**Pay Less Notice**"). The Pay Less Notice will specify:
- 13.5.5.1 the sum that the Authority considers to be due on the date the notice is served, whether or not that sum is zero; and
- 13.5.5.2 the basis on which that sum is calculated,
- and that sum will become the amount payable. The Pay Less Notice must be given not later than 1 day before the final date for payment of the Notified Sum (the "**Prescribed Period**").

13.6 Invoicing for Regular Maintenance

- 13.6.1 The Authority will notify the Contractor within 5 (five) Working Days of the end of such Reporting Period of the Contract Availability Result, the Total Payment for Regular Maintenance (as calculated in accordance with Part 2 of Schedule 4) due and detailing any Bonus Payments payable or Abatements due for the Reporting Period just ended including its calculations.
- 13.6.2 The Contractor will review the Total Payment for Regular Maintenance, Bonus Payments or Abatements calculated by the Authority within 2 (two) Working Days of receiving such calculations and will notify the Authority whether it accepts (an "**Acceptance**") or disputes (an "**Objection**") the Authority's calculations, stating clearly why it reasonably believes such calculations are incorrect and providing evidence in support of such assertion. If the Contractor fails to provide clear explanations or satisfactory supporting evidence, the Authority may request the Contractor to provide this.
- 13.6.3 If the Contractor notifies the Authority of an Acceptance it will submit an invoice to the Authority for the agreed amount in the required format and in accordance with Clause 13.4. The Contractor's invoice will specify the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated, whether or not that sum is zero.
- 13.6.4 The due date for payment of each payment in respect of the invoice will be the date on which a proper and correct invoice (complying with the requirements of Clause 13.6.3) is received by the Authority. Invoices submitted prematurely or which do not comply with the

requirements of Clause 13.6.3, will not be valid and will be resubmitted in the proper form at the proper time.

- 13.6.5 The final date for payment of each payment in respect of the invoice will be thirty (30) days after the due date for each such payment or ten (10) days after the due date for each such payment if the Contractor is an SME (as defined in Schedule 13)) or such other time period as may be specified in Schedule 4.
- 13.6.6 If the Contractor submits an Objection to the Authority, the Authority will, within 5 (five) Working Days of receiving such Objection or within 5 (five) Working Days of receiving a clear explanation or satisfactory supporting evidence notify the Contractor whether:
- 13.6.6.1 it agrees with the Objection; or
- 13.6.6.2 it disagrees with the Objection.
- 13.6.7 On receipt of a notification by the Authority pursuant to Clause 13.6.6, the Contractor will submit an invoice to the Authority in the required format and in accordance with Clause 13.4. The Contractor's invoice will specify the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated, whether or not that sum is zero.
- 13.6.8 The due date for payment of each payment in respect of the invoice will be the date on which a proper and correct invoice (complying with the requirements of Clause 13.6.7) is received by the Authority.
- 13.6.9 The final date for payment of each payment in respect of the invoice will be thirty (30) days after the due date for each such payment or ten (10) days after the due date for each such payment if the Contractor is an SME (as defined in Schedule 13)) or such other time period as may be specified in Schedule 4.
- 13.6.10 Subject to Clause 13.8 and unless the Authority has served a notice under Clause 13.6.11, the Authority will pay the Contractor the Notified Sum on or before the final date for payment of each payment.
- 13.6.11 The Authority may give the Contractor a Pay Less Notice specifying the Authority's intention to pay less than the Notified Sum. The Pay Less Notice will specify:
- 13.6.11.1 the sum that the Authority considers to be due on the date the notice is served, whether or not that sum is zero; and
- 13.6.11.2 the basis on which that sum is calculated,
- and that sum will become the amount payable. The Pay Less Notice must be given within the Prescribed Period.

13.7 Invoicing for Supplementary Works

- 13.7.1 On completion of any Supplementary Works, the Contractor will submit to the Authority a Payment Claim for such Supplementary Works. The Payment Claim will identify:
- 13.7.1.1 the relevant Site;
 - 13.7.1.2 the Supplementary Work performed detailing the resources used by the Contractor and the time spent; and
 - 13.7.1.3 the amount claimed.
- 13.7.2 Within 10 (ten) Working Days of receipt of the Payment Claim, the Authority will notify the Contractor and confirm whether:
- 13.7.2.1 it approves the full amount of the Payment Claim in which case the Contractor will be instructed to issue an invoice for the full amount of the Payment Claim;
 - 13.7.2.2 it approves part of the amount of the Payment Claim in which case Clauses 13.7.4 to 13.7.7 will apply; or
 - 13.7.2.3 it rejects the Payment Claim, giving reasons for such rejection, in which case Clause 13.7.8 will apply.
- 13.7.3 If the Payment Claim is approved in full the amount of such Payment Claim will be aggregated with the amounts of all other Payment Claims for Supplementary Works approved during that Reporting Period and the Contractor will issue an invoice for the sum of all such agreed Payment Claims at the end of the Reporting Period in the required format and in accordance with Clause 13.4.
- 13.7.4 The invoice will specify the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated, whether or not that sum is zero.
- 13.7.5 The due date for payment of each payment in respect of the invoice will be the date on which a proper and correct invoice is received by the Authority. Invoices submitted prematurely or which do not comply with the requirements of Clause 13.7.3, will not be valid and will be resubmitted in the proper form at the proper time.
- 13.7.6 The final date for payment of each payment in respect of the invoice will be thirty (30) days after the due date for each such payment or ten (10) days after the due date for each such payment if the Contractor is an SME (as defined in Schedule 13)) or such other time period as may be specified in Schedule 4.
- 13.7.7 Subject to Clause 13.8 and unless the Authority has served a notice under Clause 13.7.8, the Authority will pay the Contractor the

Notified Sum on or before the final date for payment of each payment.

13.7.8 The Authority may give the Contractor a Pay Less Notice specifying the Authority's intention to pay less than the Notified Sum. The Pay Less Notice will specify:

13.7.8.1 the sum that the Authority considers to be due on the date the notice is served, whether or not that sum is zero; and

13.7.8.2 the basis on which that sum is calculated,

and that sum will become the amount payable. The Pay Less Notice must be given within the Prescribed Period.

13.8 Notwithstanding Clauses 13.5.4, 13.5.5, 13.6.10, 13.6.11, 13.7.7 and 13.7.8 if the Contractor becomes insolvent after the Prescribed Period, the Authority will not be required to pay the Contractor the Notified Sum on or before the final date for payment.

13.9 If any sum payable under this Contract is not paid by the final date for payment then the Contractor will be entitled to serve on the Authority a notice in writing specifying the Contractor's intention to suspend performance of any or all of its obligations under this Contract stating the ground(s) on which the Contractor intends to suspend performance ("**Notice of Intention to Suspend**"). If the Authority has failed to pay any sum properly due to the Contractor for a minimum period of seven days following the date on which the Notice of Intention to Suspend was served on the Authority, the Contractor will be entitled to:

13.9.1 suspend any or all of its obligations under this Contract; and

13.9.2 reimbursement by the Authority of a reasonable sum to cover costs and expenses reasonably incurred by the Contractor as a result of exercising its right to suspend in accordance with this Clause 13.9,

provided that such right to suspend will cease immediately upon payment in full by the Authority of the sum due to the Contractor.

13.10 Payments will be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time.

13.11 If the Authority considers that the sum claimed by the Contractor in any invoice has not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority will notify the Contractor and the Parties will work together to resolve the error or inadequacy. Upon resolution or determination, the Contractor will submit a revised invoice to the Authority in accordance with Clause 13.4.

- 13.12 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or the Engineer (whether related to payment or otherwise) will:
- 13.12.1 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 Contractor, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Contractor, or absolve the Contractor from any obligation or liability imposed on the Contractor under or by virtue of this Contract; or
 - 13.12.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Contractor by mistake of law or fact. Without prejudice to Clause 44, the Authority will be entitled to withhold such amount from any sums due or which may become due to the Contractor or the Authority may recover such amount as a debt.
- 13.13 All amounts 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. The Contractor will, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable on the goods and services supplied in accordance with this Contract and payable by the Authority to the Contractor in addition to the charges shown in the Schedule of Rates. Any overpayment by the Authority to the Contractor will be a sum of money recoverable from the Contractor.
- 13.14 When the Contractor enters into any sub-contract in accordance with Clause 20, it will incorporate into such contract a term which requires payment to be made to the Sub-Contractor within not more than 30 (thirty) days of receipt of the Sub-Contractor's invoice (or ten (10) days of receipt of invoice if the Sub-Contractor is an SME (as defined in Schedule 13)).
- 13.15 If any sum due to the Contractor under the terms of this Contract will be improperly delayed by the Authority an additional charge for interest, calculated on a daily basis at 2% above HSBC Bank plc's base rate from time to time in force during the period of delay, on the payment for the period of the delay will be payable to the Contractor by the Authority. The Parties agree that this Clause 13.15 is a substantial remedy for late payment of any sum payable under this Contract in accordance with s.8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.16 The Authority will have the right to audit the Contractor's compliance with the provisions of Schedule 4 at any time in accordance with Clause 41 of this Contract.

14. RECOVERY OF SUMS FROM THE CONTRACTOR

Without prejudice to any other rights or remedies of the Authority:

- 14.1 If the Engineer discovers any defect in the Services performed or failure on the part of the Contractor to execute the same in accordance with this Contract or any defect in any replacement parts supplied he may call upon the Contractor to return to the relevant Site to remedy such defect or malfeasance or replace such defective parts and such remedial works will be carried out at no further cost to the Authority.
- 14.2 If the Contractor fails to complete any part of the Installation programme in accordance with, or fails to achieve any of the Milestones set out in, the Equipment Installation Programme, then (without prejudice to the Authority's rights and remedies) the Contractor will at its own cost, arrange such additional resources as are necessary to fulfil its obligations under the Equipment Installation Programme as soon as possible after the relevant date contained in the timetable set out in the Equipment Installation Programme.

15. **WARRANTIES**

- 15.1 Without prejudice to any other warranties expressed elsewhere in this Contract or implied by law, the Contractor warrants, represents and undertakes to the Authority that:
- 15.1.1 the Contractor has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Contract; and
 - 15.1.2 the Contractor is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Contractor's expertise and knowledge in the provision of the Services; and
 - 15.1.3 the Contractor is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;
 - 15.1.4 this Contract is executed by a duly authorised representative of the Contractor;
 - 15.1.5 all materials, equipment and goods used or supplied by the Contractor in connection with this Contract (other than Free Issue Equipment) will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification;
 - 15.1.6 all documents, drawings, computer software and any other work prepared or developed by the Contractor or supplied to the Authority under this Contract will not infringe any Intellectual Property Rights or any other legal or equitable right of any person; and
 - 15.1.7 the Contractor will authorise or obtain authorisation for the Authority (or a Replacement Contractor nominated by the Authority or

otherwise agreed with the Contractor) to perform the Services and to transfer the HOTA certification for the Equipment to the Authority (or a Replacement Contractor) in accordance with Clauses 28.2 or 28.3.1.

15.2 Each warranty and obligation in this Clause 15 will be construed as a separate warranty or obligation (as the case may be) and will 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 Contract.

15.3 Additional Warranties:

15.3.1 The Contractor will be responsible for making good at its own cost and with all possible speed any defect in or damage to the Equipment (including any part thereof) which may develop or be notified to the Contractor during a period of twelve (12) calendar months ("**Warranty Period**") from the date upon which the relevant Take-Over Certificate has been issued and which arises either from:

15.3.1.1 defective materials, workmanship or design; or

15.3.1.2 non-compliance with the Specification or the requirement to be fit for purpose; or

15.3.1.3 any act, omission or failure of the Contractor during such Warranty Period.

15.3.2 If the Contractor replaces or renews the Equipment (including any part thereof) pursuant to Clause 15.3, the provisions of this Clause 15.3 will apply to the Equipment (including any part thereof) so replaced or renewed, for a period of twelve (12) calendar months from the date of replacement or renewal by the Contractor, or the balance of the unexpired extended Warranty Period, whichever is the longer.

15.3.3 If any such defect or damage is not remedied within a reasonable time (and in any event within one (1) month of the damage or defect arising), the Authority may proceed to execute remedial works at the Contractor's risk and expense, and deduct the cost thereof from any monies due to the Contractor or recover the same as a debt due, provided that the Authority gives the Contractor seven (7) days written notice prior to executing such works, of its intention to do.

15.4 The provisions of this Clause 15 will continue notwithstanding termination of this Contract.

16. **LIABILITY**

16.1 Neither Party excludes or limits liability to the other Party for:

16.1.1 death or personal injury caused by that Party's negligence; or

- 16.1.2 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or section 2(3) of the Consumer Protection Act 1987; or
 - 16.1.3 for fraud (including fraudulent misrepresentation); or
 - 16.1.4 wilful default or deliberate breach; or
 - 16.1.5 any other matter in respect of which, as a matter of law, liability cannot be excluded or limited.
- 16.2 The Contractor does not exclude, or limit its liability in any way, in respect of liability arising out of or in connection with Clause 22 (Transfer of Employment), Clause 27.5 (Termination), Clauses 28.2 and 28.3 (Consequences of Termination), Clause 35 (Confidentiality and Transparency), Clause 39 (Intellectual Property Rights) or Clause 40 (Data) or for death or personal injury arising from or in connection with the Equipment, the Services or any act or omission of the Contractor and/or the Contractor Personnel.
- 16.3 The Contractor is responsible for and will indemnify, keep indemnified and hold harmless the Indemnified Parties from and against any direct or indirect breach or any negligent performance of this Contract by the Contractor and/or the Contractor Personnel or any act or omission of the Contractor and/or the Contractor Personnel, including all Losses in respect of:
 - 16.3.1 death or personal injury to any person; and
 - 16.3.2 any breach of statutory duty by the Contractor and/or the Contractor Personnel, which causes any breach by the Indemnified Parties of any of their duties under the Data Protection Legislation or the FOI Legislation, but only to the extent that the Contractor is acting outside the instructions of the Authority; and
 - 16.3.3 any loss of or damage to any real or tangible property, including property belonging to the Indemnified Parties, any Third Party or property for which the Authority (or a member of the TfL Group) is responsible.
- 16.4 Exclusion of consequential losses
 - 16.4.1 Subject to, and without prejudice to, any indemnities contained within this Contract and Clauses 16.1 and 16.2, neither Party will be liable for any indirect or consequential losses (including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss and, for the avoidance of doubt, such losses will for the purposes of this Contract be regarded as indirect or consequential loss and not direct losses) howsoever caused arising under this Contract.
 - 16.4.2 Notwithstanding the provisions of Clause 16.4.1, the Parties acknowledge that the following types of losses will be regarded as

direct (and not consequential or indirect) losses for the purposes of this Contract:

- 16.4.2.1 the Authority's reasonable costs of internal and external staff (including associated expenses reasonably incurred by such staff) necessitated as a result of the Contractor's default (including the costs of such staff performing or re-performing the Services which the Contractor, if properly performing its obligations in accordance with this Contract, should have performed);
 - 16.4.2.2 any costs incurred by the Authority in connection with the termination of this Contract by the Authority under Clauses 27.1 or 27.2, including those costs set out in Clauses 28.2 and 28.3;
 - 16.4.2.3 the costs of reconstituting and/or recovering any Authority Data that is destroyed, corrupted, degraded and/or lost as a result of an act or omission of the Contractor and/or the Contractor Personnel (including the costs of employing a third party to reconstitute and/or recover such data); and
 - 16.4.2.4 any loss or liability (including payment of service credits)) that the Authority suffers/ becomes liable for under any agreement with any Third Party as a result of any act or omission of the Contractor.
- 16.5 Subject to the provisions of Clauses 16.1, 16.2 and 16.4, the Contractor's aggregate liability and limit of indemnity to the Indemnified Parties under this Contract (whether in contract, tort, breach of statutory duty, restitution or otherwise) will be limited:
- 16.5.1 in respect of loss of and/or damage to the Authority's or an Indemnified Party's tangible property, to £10,000,000 (ten million pounds sterling) per Event;
 - 16.5.2 in respect of loss of and/or damage to any Third Party tangible property, to £10,000,000 (ten million pounds sterling) per Event;
 - 16.5.3 in respect of loss and/or damage caused by the Equipment, to £10,000,000 (ten million pounds sterling) per Event and £20,000,000 (twenty million pounds sterling) in the aggregate per annum; and
 - 16.5.4 where the loss does not fall within the limitations in Clauses 16.5.1, 16.5.2 or 16.5.3, to 150% of the Contract Price paid or payable (but for any act or omission of the Contractor) to the date of the claim or £5,000,000 (five million pounds sterling) per Event, whichever is the higher.

Any liability of the Contractor which falls within Clauses 16.1 or 16.2, will not be taken into account in assessing whether the financial limits in this Clause 16.5 have been reached.

- 16.6 Subject to the provisions of Clauses 16.1 and 16.4, the Authority's maximum aggregate liability to the Contractor arising out of or in connection with this Contract (whether in contract, tort, negligence, breach of statutory duty, misrepresentation, restitution or otherwise) will be limited to £5,000,000 (five million pounds sterling) per annum.
- 16.7 This Clause 16 will not affect any entitlement to injunctive relief and/or specific performance.

17. INSURANCE

- 17.1 The Contractor will at its own cost and to the approval of the Authority effect and maintain:
- 17.1.1 insurance for an amount equal to the full replacement cost of the Equipment arising from damage caused by act, omission or default by the Contractor or the Contractor Personnel;
 - 17.1.2 insurance for the sum of not less than £10,000,000 (ten million pounds sterling) per incident to cover the liability of the Contractor or as the case may be of the Sub-Contractor under Clause 16.3 of this Contract other than as provided for under Clause 17.1.4 of this Contract;
 - 17.1.3 employer's liability and motor insurance cover as required by law and will cause any Sub-Contractor to effect and maintain such insurance;
 - 17.1.4 product liability insurance for the sum of not less than £10,000,000 (ten million pounds sterling) per incident and not less than £20,000,000 (twenty million pounds sterling) in the aggregate per annum; and
 - 17.1.5 insurance for the Services undertaken by the Contractor under this Contract to a level sufficient to cover the Contractor's liabilities arising under or in connection with this Contract.
- 17.2 The policy or policies of insurance effected will not be subject to the condition of average and the sum insured will not be apportioned as between the several risks comprised in the policy or policies but will apply in full to each and every risk.
- 17.3 Prior to the Contract Commencement Date and whenever so required by the Authority, the Contractor will produce to the Authority evidence of the insurance policies required under this Contract and payment of all premiums due on each policy. A letter addressed to the Authority signed by an insurer or insurance broker of the Contractor which is directly regulated by the UK Financial Services Authority confirming that the Contractor has in

place insurance coverage as required under this Contract and setting out the principal terms and exclusions under such cover, all due premiums under such insurance have been paid and that such insurance is in full force and effect will be deemed sufficient evidence with the Authority's prior approval.

- 17.4 The Contractor will procure that its Sub-Contractors maintain insurance cover sufficient and appropriate to the Services sub-contracted to them. The Contractor will also be responsible for ensuring that all Sub-Contractors employed by it for the purposes of this Contract are fully insured against all claims in respect of personal injury or death in respect of their employees.
- 17.5 The stipulations contained in this Clause will not be deemed to and will not in any way limit or affect the general liability or responsibility of the Contractor under the provisions of this Contract.
- 17.6 If the Contractor fails to effect and keep in force the insurances referred to in Clause 17.1 or any other insurance which it may be required to effect under the terms of this Contract then and in any such case the Authority may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Authority as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 17.7 The Contractor warrants that nothing has or will be done or be omitted to be done which may result in the insurance policies set out in Clause 17.1 being or becoming void, voidable or unenforceable.

18. COMPLIANCE WITH POLICIES AND LAW

- 18.1 The Contractor, at no additional cost to the Authority:

- 18.1.1 undertakes to, and to procure that all of the Contractor Personnel, comply with all of the Authority's policies and standards that are relevant to the performance of the Services, (including the Authority's workplace harassment policy as updated from time to time and with the Authority's Code of Conduct (which is available at www.tfl.gov.uk)) including the provisions set out in Schedule 15 (Authority Policies) and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at the Authority Premises or accessing the Authority's computer systems. The Authority will provide the Contractor with copies of such policies and standards on request;
- 18.1.2 will provide the Services in compliance with all requirements of all Applicable Laws relevant to the Contractor's business and/or the Authority's business, from time to time in force which are or may become applicable to the Services. The Contractor will promptly notify the Authority if the Contractor is required to make any change

to the Services for the purposes of complying with its obligations under this Clause 18.1.2;

18.1.3 without limiting the generality of Clause 18.1.2, will comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

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

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

18.1.4.2 eliminate unlawful discrimination; and

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

and in providing the Services, the Contractor will assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty;

18.1.5 will assist and co-operate with the Authority in relation to the Authority's compliance with its duties under section 1 and section 149 of the Equality Act 2010, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections. For the avoidance of doubt, where the provisions of section 149 of the Equality Act 2010 apply to the Contractor, the Contractor will comply with such provisions;

18.1.6 will inform the Authority forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Employment Equality (Age) Regulations 2006 or the Equality Act 2010; and

18.1.7 without prejudice to any other provision of this Clause 18.1 or the Schedules, will comply with any provisions set out in the Schedules that relate to traffic management and will comply with the reasonable instructions of a Traffic Manager as may be made available to the Contractor from time to time. For the purposes of this Clause 18.1.7, "Traffic Manager" means any traffic manager appointed by a Highway Authority in accordance with section 17 of the Traffic Management Act 2004.

In all cases, the costs of compliance with this Clause 18.1 will be borne by the Contractor.

- 18.2 In providing the Services, the Contractor will (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:
- 18.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 18.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 18.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 18.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 18.3 The Contractor will comply with the Authority's requirements in respect of equality and diversity as set out in Schedule 13.
- 18.4 The Contractor acknowledges that the Authority is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998:
- 18.4.1 to have due regard to the impact of crime, disorder and community safety in the exercise of the Authority's duties;
 - 18.4.2 where appropriate, to identify actions to reduce levels of crime and disorder; and
 - 18.4.3 without prejudice to any other obligation imposed the Authority, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

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

19. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

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

- 19.2 The Authority will have the right to audit any and all such records necessary to confirm compliance with Clause 19.1 at any time during performance of this Contract and during the three-year period following expiry or termination of this Contract. Breach of Clause 19.1 will entitle the Authority to terminate this Contract and any other contracts between the Contractor and the Authority forthwith.

20. SUB-CONTRACTING AND CHANGE OF OWNERSHIP

- 20.1 The Contractor will not assign or sub-contract all or any part of the Services without the prior written consent of the Authority which may be refused or granted consent subject to such conditions as the Authority sees fit. In applying for the Authority's prior written consent, the Contractor will provide the Authority with details of the relevant assignee or Sub-Contractor and that part of the Services to be assigned or sub-contracted, as applicable, together with such other information as the Authority may require.
- 20.2 Where the Contractor sub-contracts all or any part of the Services to any person, the Contractor will:
- 20.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under this Contract insofar as they relate to the Services or part of them (as the case may be) which that Sub-Contractor is required to provide;
 - 20.2.2 be responsible for payments to that person; and
 - 20.2.3 remain solely responsible and liable to the Authority for any act or omission, breach of this Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any Sub-Contractor to the same extent as if such act, omission, breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor.
- 20.3 Where the Contractor sub-contracts all or any part of the Services to any person, the Contractor will, if so required by the Authority, procure that a permitted sub-contractor enters into a warranty agreement with the Authority substantially in the form specified in Schedule 18 or in such other form as has been previously approved in writing by the Authority.
- 20.4 The Contractor will give notice to the Authority within ten (10) Working Days where:
- 20.4.1 there is any change in the ownership or control of the Contractor where such change relates to 50% or more of the issued share capital of the Contractor;
 - 20.4.2 there is any change in the ownership or control of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; and

- 20.4.3 (in the case of an unincorporated Contractor) give notice to the Authority if there is any change in the management personnel of the Contractor, which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of 50% or more of the management personnel of the Contractor.
- 20.5 Upon the occurrence of any of the events referred to at Clause 20.4, the Authority will have the right to terminate this Contract by written notice to the Contractor to be served within sixty (60) Working Days of receipt of the Contractor's notice to the Authority under Clause 20.4, save that the Authority will not be entitled to exercise this right to terminate if it has given its prior written consent to such change.

21. CONTRACTOR PERSONNEL

21.1 General

The Contractor will:

- 21.1.1 provide all Contractor Personnel necessary for the proper performance of the Services in accordance with the terms of this Contract;
- 21.1.2 ensure that all Contractor Personnel are suitably skilled, qualified and experienced (and that they will be available at such times as are necessary) to perform the Services in accordance with the Service Levels, the terms of this Contract and all Applicable Laws;
- 21.1.3 ensure that all continuing checks are made and documents obtained and/or verified as required by law or the United Kingdom Border Agency to demonstrate the continuing right of Contractor Personnel to work in the United Kingdom;
- 21.1.4 ensure that all Contractor Personnel will at all times uphold the good name and reputation of the Authority and the MPS and their respective services and act in a manner that is appropriate given that good name and reputation;
- 21.1.5 individually assess all Contractor Personnel to ensure that such persons are:
 - 21.1.5.1 diligent, careful, honest, skilled, competent and experienced in the work which they are to perform in connection with the Services and at all times remain so;
 - 21.1.5.2 properly supervised and sufficiently trained, and informed about:
 - (a) the Services to be provided;

- (b) the duty or duties which that person has to perform in relation to those Services;
- (c) any aspect of the Service Levels or other terms of this Contract which are or may be relevant to the duties to be performed by the Contractor Personnel;
- (d) all relevant rules, procedures and statutory and regulatory requirements concerning health and safety and safety at work; and
- (e) the need to observe the highest standards of integrity, courtesy and consideration in the performance of their duties; and

21.1.6 ensure that all Contractor Personnel who undertake the Services are where appropriate accredited under the Highway Electrical Works sector scheme administered by the Association of Street Lighting and Electrical Contractors or such replacement scheme from time to time;

21.1.7 ensure that all Contractor Personnel are equipped with sufficient communications and other equipment and spares so that they can carry out the Services in a proficient and safe manner;

21.1.8 give the Authority, if so requested, full particulars of all persons who are or may be at any time employed or otherwise engaged on this Contract; and

21.1.9 pay to the Contractor Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for this Contract and not less than the amounts to which the Contractor Personnel are contractually entitled.

21.2 For the avoidance of doubt, it is not the intention of the Parties that any member of the TfL Group will be the employer of any of the Contractor Personnel by virtue of the provision of the Services and the Contractor will be responsible for making, or procuring the making of, appropriate deductions for tax and national insurance contributions from the remuneration paid to the Contractor Personnel.

21.3 Training

21.3.1 The Contractor will at its expense provide or procure the provision of training for the Contractor Personnel in respect of all aspects of its performance of this Contract and will ensure that the Contractor Personnel continue to receive adequate future development training to keep up to date with all relevant technical developments and innovations in the field of Safety Cameras and Detection Equipment.

- 21.3.2 Without prejudice to the Contractor's other obligations under this Contract, where training of any or all of the Contractor Personnel is required for the purposes of performance of this Contract, the Contractor will not assign any of the Contractor Personnel to the performance of this Contract unless and until the Contractor Personnel have satisfactorily completed such training.

21.4 Removal and Replacement of Contractor Personnel

- 21.4.1 Following written notice from the Authority, the Contractor will (and will procure that its Sub-Contractors will) immediately remove from any involvement in or responsibility for the provision of the Services any Contractor Personnel who, in the reasonable opinion of the Authority:

21.4.1.1 does not fulfil any of the conditions set out in Clause 21.1;

21.4.1.2 is persistently not performing his or her role in respect of the provision of the Services properly, efficiently or effectively; and/or

21.4.1.3 is, for any other reason, unacceptable or inappropriate for the provision of the Services or association with the Authority.

- 21.4.2 The Contractor will (and will procure that each its Sub-Contractors will):

21.4.2.1 following the removal of any of the Contractor Personnel, ensure such person is replaced promptly with another person with the necessary training, experience and skills to perform the Services in accordance with this Contract;

21.4.2.2 if any Contractor Personnel are replaced ensure that a full and effective knowledge transfer process is in place and fully adhered to for the transfer of any relevant knowledge from the replaced Contractor Personnel to the replacement Contractor Personnel;

21.4.2.3 ensure that all Contractor Personnel who cease to be engaged in the performance of the Services (for any reason) return all Confidential Information held by them to the Contractor or the Authority (as appropriate); and

21.4.2.4 bear all costs associated with effecting the replacement of any Contractor Personnel (including any required to be removed by the Authority under Clause 21.4.1).

21.5 Restrictions on Solicitation

For the purposes of this Clause 21.5:

- 21.5.1 “**associated**” includes, but is not limited to, meaning being involved in the negotiation, management or supervision of this Contract or being employed by a Party for the purposes of performing such Party’s obligations under this Contract;
- 21.5.2 “**Relevant Employee**” means any employee of the TfL Group or the Contractor who is or becomes associated with this Contract; and
- 21.5.3 “**Non-Solicitation Period**” means the period commencing on the date on which any Relevant Employee begins to be associated with this Contract to the date three (3) months after such employee ceases to be associated with this Contract (whether or not still employed or engaged by the Party by whom that member was originally employed or engaged).

Each Party agrees that during the Non-Solicitation Period it will not, and in the case of the Contractor its contractors will not, directly or indirectly solicit or offer employment or engagement to any Relevant Employee of the other, unless the other Party has consented in advance in writing to such Party doing so.

22. **TRANSFER OF EMPLOYMENT**

Both Parties will comply with the provisions of Schedule 20 (Transfer of Employment) in respect of TUPE.

23. **OPERATIONAL MANAGEMENT**

- 23.1 The Authority authorises the Engineer to act as the Authority’s representative for all purposes of this Contract and the Contractor will deal with the Engineer (or his or her nominated representative or assistant) in respect of all matters arising under this Contract unless notified otherwise.
- 23.2 The Contractor will appoint a manager who will be responsible for the day to day supervision of this Contract (“**Contract Manager**”). The appointee will have extensive relevant experience, a significant part of which will be in the maintenance of the Equipment of a practical nature. The Contract Manager will be available during each Working Day to oversee Services and problems as they may arise. A deputy with similar working knowledge will be available to deputise when the Contract Manager is absent or otherwise unavailable.
- 23.3 During the Term, the Contractor will submit to the Authority for approval the curriculum vitae of any new manager or deputy manager the Contractor wishes to employ as the Contractor’s Contract Manager or his deputy. The Authority’s approval of such individuals proposed will not be unreasonably withheld.
- 23.4 The Contractor will comply with the provisions in relation contract management as set out in Schedule 17 (Contract Management), including the requirements for meetings, reporting and documentation.

- 23.5 The Contractor will promptly provide to the Authority such reports as the Authority may request in relation to the provision of the Services and in such format as reasonably required by the Authority, including the Highlight Report.

24. ACCESS TO PREMISES

- 24.1 The Contractor will provide a list of the names and addresses of all Contractor Personnel who may, in the performance of this Contract, require access to any premises operated by or on behalf of the Authority or by or on behalf of the MPS, specifying the capacity in which they are acting and giving such other particulars as the Authority or the MPS may reasonably require. The Contractor acknowledges that security clearance will be required for any Contract Personnel to enter on the MPS' premises and that such clearance will take a period of time to obtain and undertakes to have procedures in place to ensure that it has sufficient staff having the necessary security clearances to perform any Services and comply with its obligations under this Contract at all times and prior to any required implementation dates and to ensure that such staff carry any identity passes issued to them by the MPS and comply with such health and safety and security policies as may be notified to the Contractor from time to time.
- 24.2 Any access to any Authority Premises made available to the Contractor in connection with the proper performance of this Contract will be free of charge and will be used by the Contractor solely for the purpose of performing the Services during the Term in accordance with this Contract provided, for the avoidance of doubt, that the Contractor will be responsible for its own costs or travel including any congestion charging and/or low emission zone charging.
- 24.3 While on the Authority Premises and the MPS' premises, the Contractor will:
- 24.3.1 comply with all of the Authority's or the MPS' (as applicable) policies, including those relating to safety, security, business ethics, work place harassment, drugs and alcohol and any other on site regulations specified by the Authority or the MPS (as applicable) for personnel working at such premises and will procure that all of the Contractor Personnel will likewise comply with such requirements; and
 - 24.3.2 have the use of the Authority Premises or the MPS' premises (as applicable) as licensee and will not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of the Authority Premises or the MPS' premises (as applicable); and
 - 24.3.3 ensure that the Contractor Personnel carry any identity passes issued to them by the Authority or the MPS (as applicable) at all relevant times; and
 - 24.3.4 not damage the Authority Premises or the MPS' premises (as applicable) or any assets on such premises; and

- 24.3.5 vacate the Authority Premises or the MPS' premises (as applicable) upon the termination or expiry of this Contract or at such earlier date as the Authority or the MPS (as applicable) may determine.
- 24.4 The Contractor hereby agrees to indemnify the Authority and the MPS and hold them harmless from and against all Losses suffered or incurred by the Authority (or any member of the TfL Group) or the MPS, as applicable, as a result of the Contractor's presence on the Authority Premises or the MPS' premises (as applicable) or breach of Clause 24.3.
- 24.5 Upon request, the Authority will provide the Contractor with copies of any rules and procedures referred to in Clause 24.3.1 that relate to the Authority Premises and will afford the Contractor with an opportunity to inspect the Authority's physical security arrangements.
- 24.6 The Authority reserves the right under this Contract to refuse to admit to the Authority Premises any of the Contractor Personnel, whose admission would be, in the opinion of the Authority, undesirable.
- 24.7 All Contractor equipment and materials which are on the Authority Premises or the MPS' premises (as applicable) and which are provided by or on behalf of the Contractor will stand at the risk and be in the sole charge of the Contractor.
- 24.8 The Authority will be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Contractor except as may be specified in this Contract.
- 24.9 Nothing in this Clause 24 will create or be deemed to create the relationship of landlord and tenant in respect of any Authority Premises or the MPS premises (as applicable) between the Contractor and the Authority (or any member of the TfL Group) or the MPS (as applicable).

25. SUSPENSION OF THE SERVICES

- 25.1 Without prejudice to any other rights or remedies which the Authority may possess under this Contract or otherwise, but subject to Clause 32, if the Contractor is in default in one or more of the following respects:
- 25.1.1 it fails to proceed regularly and diligently with the Services; or
- 25.1.2 it is unable to comply with the requirements of the Specification; or
- 25.1.3 it is unable to respond to any emergency call out in the time and manner stipulated in this Contract,

then the Engineer may give it notice in writing (or in an emergency oral notice) specifying the default and a time period for remedying the default and if the Contractor fails to remedy the default within the specified time, the Authority may suspend any part or the whole of the Services until such time as it considers the Contractor is once again in a position to execute the same and may employ a third party to carry out and complete the Services for that

purpose and the Authority or such third party may attempt to repair and use all spares, plant, tools, equipment, goods and materials intended for, delivered to and placed on the Site in connection with the Services.

- 25.2 The Contractor will allow or pay the Authority the amount of any Loss caused to the Authority under Clause 25.1 and may inspect the third party's work, witness any test and make recommendations accordingly.

26. **STEP-IN**

- 26.1 If the Authority reasonably believes that it needs to take action in connection with the Services:

26.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

26.1.2 to discharge a statutory duty,

then the following provisions will apply.

- 26.2 The Authority will provide notice to the Contractor in writing of the following:

26.2.1 the action it wishes to take;

26.2.2 the reason for such action;

26.2.3 the date it wishes to commence such action;

26.2.4 the time period which it believes will be necessary for such action; and

26.2.5 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period such action is being taken.

- 26.3 Following service of the notice required in Clause 26.2, the Authority or a third party appointed by the Authority for the purpose will take such action as is notified under these provisions and any consequential additional action as the Authority reasonably believes is necessary (the "**Required Action**") and the Contractor will give all reasonable assistance to the Authority or such third party while it is taking such Required Action (such assistance to be at the expense of the Authority).

- 26.4 For so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services, the Contractor will be relieved from its obligations to provide such part of the Services and the Authority will not be liable to pay the Contract Price for such part of the Services (except to the extent that the Authority will pay the Contractor for the assistance it provides in accordance with Clause 26.3).

27. **TERMINATION**

27.1 Without prejudice to the Authority's right to terminate at common law or any other rights arising under this Contract, the Authority may terminate this Contract in whole or in part immediately upon giving written notice to the Contractor if the Contractor:

- 27.1.1 commits any irremediable material breach of this Contract; or
- 27.1.2 commits any material or persistent breach of this Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Working Days (or such other timeframe as specified in writing by the Authority) from the date of a written notice to the Contractor giving details of the breach and requiring it to be remedied; or
- 27.1.3 commits any of the money laundering related offences listed in the Public Contract Regulations 2006; or
- 27.1.4 or its Holding Company is subject to an Insolvency Event; or
- 27.1.5 undergoes a change of ownership or control without the Authority's prior written consent in accordance with Clause 20.5; or
- 27.1.6 has breached or triggered Threshold Three or the Threshold Three measures are invoked in accordance with paragraph 7.1 of Part 3 of Schedule 5; or
- 27.1.7 fails to implement or produce a Rectification Plan in accordance with Clause 12.3; or
- 27.1.8 has reached or exceeded the maximum aggregate liability of the Contractor provided for in Clause 16.5; or
- 27.1.9 is in breach of Clause 18 (Compliance with Policies and Laws); or
- 27.1.10 is in breach of Clause 19 (Corrupt Gifts and Payment of Commission); or
- 27.1.11 is served a step-in notice under Clause 26.2 and the Authority's exercise of its step-in rights continues for a period of three (3) months or more;
- 27.1.12 is in breach of Clause 40 (Data); or
- 27.1.13 has a conflict of interest in accordance with Clause 45; or
- 27.1.14 has committed a Diversity Infraction in accordance with the Equality and Diversity Requirements stated in Schedule 13; or

- 27.1.15 is unable to provide the Services in full on and from the Services Commencement Date in accordance with the terms of this Contract; or
- 27.1.16 fails to meet three (3) Installation Milestones in accordance with Schedule 3.
- 27.2 If the Contractor will refuse or neglect to execute the Services or any part thereof or will refuse or neglect within a reasonable time to comply with any instructions given to it by the Engineer or if at any time provision of the Services will appear to the Engineer to be unnecessarily delayed by any cause within the reasonable control of the Contractor and such delay and the cause thereof will not be remedied within the shortest practicable time having regard to the nature or severity of the breach or delay, the Authority will be entitled to terminate this Contract forthwith by notice in writing to the Contractor.
- 27.3 Without prejudice to the Authority's right to terminate this Contract under Clause 27 or to terminate at common law, the Authority may terminate this Contract at any time:
- 27.3.1 without cause subject to giving the Contractor no less than three (3) months' prior written notice; or
- 27.3.2 following a Declaration of Ineffectiveness in accordance with the provisions of Clause 30.
- 27.4 To the extent that the Authority has a right to terminate this Contract under this Clause 27 then, as an alternative to termination, the Authority may by giving notice to the Contractor require the Contractor to provide part only of the Services with effect from the date specified in the Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" will be construed accordingly. The Contract Price applicable with effect from the Change Date will be adjusted proportionately or if in the Authority's reasonable opinion a proportionate adjustment would not be reasonable in such manner as the Authority may determine after consideration of any representations made by the Contractor.
- 27.5 The Contractor will ensure that the Authority (and any Replacement Contractor nominated by the Authority or otherwise agreed with the Contractor) is pre-approved as an authorised agent of the Contractor (or the manufacturer, as applicable) and fully and properly authorised to perform the Services if the Contractor or its Holding Company is subject to an Insolvency Event and/or the Authority terminates this Contract in accordance with Clause 27.1.4 or otherwise as set out in Clause 28.3.1. The Contractor will obtain all necessary consents, approvals, permissions and licences to ensure that the Authority (or a Replacement Contractor, as applicable) can perform the Services in such circumstances without interruption or cost.

28. CONSEQUENCES OF TERMINATION

- 28.1 Notwithstanding the provisions of Clause 35, wherever the Authority chooses to put out to tender for a Replacement Contractor some or all of the Services, the Contractor will disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Contractor may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 28.2 If the Contractor or its Holding Company is subject to an Insolvency Event and/or if the Authority terminates this Contract in accordance with Clause 27.1.4, the Contractor will immediately transfer (or will procure the immediate transfer of) the Services (including the HOTA certification for the Equipment) to the Authority or a Replacement Contractor (as authorised agents of the Contractor or the manufacturer, as applicable, pursuant to Clause 27.5) without interruption or cost to the Authority or the Replacement Contractor. The Contractor will be liable for all additional expenditure reasonably incurred by the Authority or the Replacement Contractor in connection with the transfer of the Services.
- 28.3 On termination of this Contract (in whole or part) under Clauses 27.1 (excluding Clause 27.1.4), 27.2 or 27.4 (to the extent arising under Clause 27.1 (excluding Clause 27.1.4) and 27.2), the Contractor will either (at its option):
- 28.3.1 immediately transfer (or will procure the immediate transfer of) the Services (including the HOTA certification for the Equipment) to the Authority (or a Replacement Contractor nominated by the Authority or otherwise agreed with the Contractor) and will authorise (or obtain authorisation for) the Authority or the Replacement Contractor, as applicable, to undertake the Services as authorised agents of the Contractor or the manufacturer, as applicable, without interruption or cost to the Authority or the Replacement Contractor. The Contractor will be liable for all additional expenditure reasonably incurred by the Authority or the Replacement Contractor in connection with the transfer of the Services; or
 - 28.3.2 be liable for all additional expenditure reasonably incurred by the Authority in consequence of such termination, including:
 - 28.3.2.1 the costs and expenses incurred by the Authority in re-procuring and/or implementing alternative or replacement services and equipment, including the costs of undertaking a procurement process, additional cost of management time, personnel costs and the costs of replacement equipment, materials, systems and software; and
 - 28.3.2.2 the Authority's costs of selecting and negotiating with a contractor or contractors to provide replacement equipment and services, including any additional charges which the Authority contracts to pay a new contractor to

provide equipment and services which are materially similar to the Equipment and Services.

The Authority may deduct such costs from the Contract Price or otherwise recover such costs from the Contractor as a debt.

28.4 [Not Used].

28.5 Upon expiry or termination of this Contract (howsoever caused), the Contractor will, at no further cost to the Authority:

28.5.1 comply with the Exit Plan or any Service and Equipment Transfer/Cessation Plan approved by the Authority in accordance with Schedule 12;

28.5.2 save as required under Clauses 28.2 or 28.3.1, take immediate steps to bring the Services (or any part) to an end in an orderly manner but with all reasonable speed and economy;

28.5.3 provide all such co-operation and information to the Authority (or its nominee) in order to effect a seamless, orderly and timely handover of the Services as the Authority may reasonably request in accordance with Clauses 28.2 or 28.3.1;

28.5.4 return to the Authority all equipment provided by the Authority and certify that no copies of any data or software provided by the Authority have been retained;

28.5.5 effect an orderly withdrawal from all or some of the Authority or MPS Premises, as applicable, and make good any damage caused to a Site or any other property or premises to the Authority's or the MPS' satisfaction, as applicable;

28.5.6 upon the Authority's request, promptly remove all Equipment in accordance with any timescales indicated by the Authority and make good any damage caused to a Site or any other property or premises to the Authority's satisfaction;

28.5.7 deliver to the Authority or, if the Authority requests, destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Authority Confidential Information;

28.5.8 supply to the Authority all relevant materials, documentation, data and information on appropriate media (as may be specified by the Authority);

28.5.9 ensure that all information the Contractor is required to input into SFM in accordance with Clause 11.4 has been so input and is accurate and complete. The Contractor will promptly report any inaccuracies to the Authority's 'Data Management Team'. The Authority will have the right to carry out an inspection of a

representative set of Sites to determine whether the information recorded on SFM by the Contractor is accurate and complete. If any differential is found the Contractor will bear the costs of any rectification works required and the correction of the data on SFM together with the Authority's costs in carrying out such inspection. If the information in respect of more than 40% of the Sites selected is found to be incorrect, the Authority will have the right to select a further representative set of Sites for inspection and the provisions of this Clause will apply to such further inspection mutatis mutandis;

- 28.5.10 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information contained on any Contractor equipment, system or network by a mutually agreed date, including (without limitation) the purging of all disk-based information and the reformatting of all disks;
 - 28.5.11 ensure that the licence granted pursuant to Clause 39.2 continues in full force and effect (or to the extent deemed not to be granted in full at the Termination Date, immediately grant such licence pursuant to Clause 39.2) to enable the continuation of the Services after the Termination Date; and
 - 28.5.12 to the extent outstanding, immediately assign to the Authority (and/or its nominee) pursuant to Clause 40.1 all existing and future Intellectual Property Rights which may subsist in the Authority Data and, if applicable, arrange on an ongoing basis to execute such documentation as may be necessary for the assignment of all Intellectual Property Rights to the Authority (and/or its nominee) in any Authority Data arising after the Termination Date.
- 28.6 The Contractor will, as and when required in writing by the Engineer, remove from any Site or premises of the Authority any plant, tools, equipment, goods, or materials belonging to or hired by it. The Contractor must ensure that, prior to it removing any hardware or other equipment owned by the Contractor or leased to it, all data including any Authority Personal Data and the Authority Confidential Information is permanently deleted from such hardware or equipment. If within a reasonable time after any such requirement has been made the Contractor has not complied with such requirement, then the Authority may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.
- 28.7 If the Contractor fails to remove the Equipment in accordance with Clause 28.5.6:
- 28.7.1 the Authority may remove the Equipment and/or store or arrange for storage of the Equipment until it is collected or until it is disposed of in accordance with Clause 28.7.2 and charge the Contractor for all related costs and expenses (including, storage and insurance);

- 28.7.2 the Authority may following written notice to the Contractor, dispose of the Equipment. Where such disposal involves the sale of the Equipment, the Authority will sell such property at the best price reasonably obtainable in the circumstances;
 - 28.7.3 the Contractor will indemnify the Authority against any liability of the Authority to any third party whose property is sold in the mistaken belief held in good faith that the property belonged to the Contractor.
- 28.8 Upon expiry or termination of this Contract (howsoever caused), the Authority may retain and continue to use any and all Contractor Confidential Information as the Authority requires to continue using the Equipment in accordance with Clauses 28.2 or 28.3.1.
- 28.9 If the Authority terminates this Contract in whole under Clause 27.3.1 during the Initial Term, the Authority will pay to the Contractor the Early Termination Fee, provided that:
- 28.9.1 the Contractor has taken all reasonable steps to mitigate the Early Termination Fee including by:
 - 28.9.1.1 appropriating employees, assets and resources for other purposes. For the avoidance of doubt, to the extent that employees, assets and/or resources are appropriated for other purposes the Early Termination Fee will be reduced by an equitable amount; and
 - 28.9.1.2 exercising its rights of cancellation or termination (in whole or part) under applicable third party contracts or, if so required by the Authority, using all reasonable endeavours to assign or novate any such third party contracts to the Authority or its nominee; and
 - 28.9.2 such sum will be reduced to the extent that any payments or other monies paid or payable to the Contractor under this Contract already reflect any element of the Early Termination Fee to ensure that there is no double recovery by the Contractor.

The Authority will within thirty (30) days of receipt of an agreed invoice therefor in accordance with, and subject to the provisions of, Clause 13 reimburse the Contractor for the Early Termination Fee as demonstrated by the Contractor to the reasonable satisfaction of the Authority. The Contractor will provide to the Authority all information and documentation reasonably requested to verify the Early Termination Fee. For the avoidance of doubt, the Early Termination Fee will not become due or payable in relation to any other event of termination howsoever arising, or on the expiry, of this Contract.

- 28.10 For the avoidance of doubt, save as set out in Clause 28.9, the Contractor will not be entitled to any compensation or damages on the expiry or

termination of this Contract howsoever arising for the loss of its rights hereunder.

- 28.11 The termination or expiry of this Contract (howsoever caused) will not prejudice or affect any right, power or remedy which has accrued or will accrue to either Party prior to or after such termination or expiry.

29. EXIT PLANNING

- 29.1 The Contractor will during the Mobilisation Period prepare the Exit Plan and deliver it to the Authority for its Approval in accordance with paragraph 3 of Schedule 12 (Exit Plan).
- 29.2 The Exit Plan will set out the respective obligations of the Authority and the Contractor to facilitate an orderly transfer of the Services to the Authority or a Replacement Contractor and will, without limitation, include those matters set out in Schedule 12 (Exit Plan).
- 29.3 Once the Authority Approves the Exit Plan it will be adopted as the Exit Plan and will be held under the control of the Authority's Engineer.
- 29.4 The Exit Plan will be reviewed and amended from time to time in accordance with paragraphs 3.3 and 3.4 of Schedule 12 (Exit Plan).

30. DECLARATION OF INEFFECTIVENESS

- 30.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority will promptly notify the Contractor. The Parties agree that the provisions of Clause 28 and this Clause 30 will apply as from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 28 and this Clause 30 or the Cessation Plan, the provisions of this Clause 30 and the Cessation Plan will prevail.
- 30.2 The Declaration of Ineffectiveness will not prejudice or affect any right, liability or remedy which has accrued or will accrue to either Party prior to or after such Declaration of Ineffectiveness.
- 30.3 As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) will agree or, in the absence of such agreement, the Authority will reasonably determine an appropriate Cessation Plan with the object of achieving:
- 30.3.1 an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and
 - 30.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of this Clause 30 and to give effect to the terms of the Declaration of Ineffectiveness.

- 30.4 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 30.5 The Authority will pay the Contractor's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs will be based on any comparable costs or the Contract Price agreed as part of this Contract or as otherwise reasonably determined by the Authority. Provided that the Authority will not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this Clause 30.

31. FORCE MAJEURE

- 31.1 Neither Party will be in breach of this Contract or otherwise liable to the other Party in any manner whatsoever to the extent that a Force Majeure Event directly causes it to be unable to comply with all or a material part of its obligations under this Contract for the continuance of such Force Majeure Event. The Contractor will however continue to be liable for Abatements during such period.
- 31.2 If the Force Majeure Event continues for more than 3 (three) calendar months and the Parties have not been able to agree how to recommence provision of the Services, the Party not subject to the Force Majeure Event may give written notice to the other to terminate this Contract. The termination notice must specify the termination date which must be not less than 30 (thirty) calendar days after the date the notice is given, and once such notice has been validly given, this Contract will terminate on that termination date.

32. RELIEF EVENTS AND EXCUSING CAUSES

General

- 32.1 If and to the extent that a Relief Event or Excusing Cause adversely affects the ability of the Contractor to perform any of its obligations under this Contract then the Contractor is entitled to apply for relief from any rights of the Authority arising under Clause 25 (Suspension of the Services) or Clauses 27.1.1, 27.1.2, 27.1.6, 27.1.15, 27.1.16 or 27.2 (Termination) and the right to issue Service Failure Points under Schedule 5.
- 32.2 To obtain relief under Clause 32.1, the Contractor must:
 - 32.2.1 as soon as practicable, and in any event within 2 (two) calendar days after it becomes aware that the Relief Event or Excusing Cause (as applicable) has caused or is likely to cause delay and/or to adversely affect the ability of the Contractor to perform its other obligations, provide the Authority with a written notice of its claim for relief from the affected obligations under the Contract (to the extent it is prevented from performing such obligations), including full

- details of the nature of the Relief Event or Excusing Cause (as applicable), the date of occurrence and its likely duration;
- 32.2.2 within 7 (seven) calendar days of receipt by the Authority of the notice referred to in Clause 32.2.1, give full details of the relief claimed; and
- 32.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- 32.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- 32.2.3.2 the Relief Event or Excusing Cause (as applicable) directly caused the need for relief from the Contractor's obligations under this Contract;
- 32.2.3.3 the time lost and/or relief from the obligations under the Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 32.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.
- 32.3 In the event that the Contractor has complied with its obligations under Clause 32.2, then the Authority will not be entitled to exercise its rights to suspend the Services under Clause 25 (Suspension of the Services) or Clauses 27.1.1, 27.1.2, 27.1.6, 27.1.15, 27.1.16 or 27.2 (Termination) or to issue Service Failure Points under Schedule 5 and, subject to Clause 32.4, will consider such other relief as has been reasonably requested by the Contractor and confirm (in its absolute discretion and subject to any conditions it may require and without prejudice to any other remedies available to it) whether such additional relief will be granted.
- 32.4 Abatements will not be applied during the continuance of an Excusing Cause and the Contractor's Availability will cease to be affected, subject to the Contractor's compliance with Clause 32.2 and Clauses 32.9 to 32.12 (where applicable).
- 32.5 In the event that the information required by Clause 32.2 is provided after the dates referred to in that Clause, then the Contractor will not be entitled to any relief during the period for which the information is delayed.
- 32.6 The Contractor will notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event or Excusing Cause (as applicable), giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

- 32.7 If the Authority disagrees that a Relief Event or Excusing Cause (as applicable) has occurred or that the Contractor is entitled to any relief from its obligations under this Contract, the Parties will resolve the matter in accordance with Clause 61 (Dispute Resolution).
- 32.8 If the Authority agrees that a Relief Event or Excusing Cause has arisen, the Authority will confirm to the Contractor any extension to the timescales for the Installation and Commissioning of the Equipment (and any updates to the Equipment Installation Programme), as applicable, as the Authority may decide (taking into consideration any representations that the Contractor has made to the Authority in respect of such timescales) once the Relief Event or the Excusing Cause has ceased/been resolved. The Contractor will promptly resume the affected Services upon resolution of such Relief Event or Excusing Cause.

Exception Rules for Third Party Suppliers

- 32.9 If the Contractor follows the rules in Clauses 32.10 to 32.12 (inclusive) in respect of the relevant Third Party Supplier, it will be deemed that the Contractor has made reasonable endeavours to resolve the Third Party Fault. Accordingly, the Contractor can raise an Exception through SFM and, provided that this is accepted by the Authority, Availability will be unaffected.

Electricity Transmission Providers

- 32.10 In order for the Contractor to be able to claim an Excusing Cause as set out in paragraph (a) of that definition in relation to Electricity Transmission Providers, the Contractor will, as a minimum:

- 32.10.1 raise relevant Faults to the appropriate Electricity Transmission Provider and enter Time/Date/Contact/Reference Number onto the Contractor's Fault in SFM within 30 minutes of diagnosis of the Fault; and
- 32.10.2 pro-actively monitor and progress chase the appropriate Electricity Transmission Provider. This should be on a daily basis but may be more frequently at strategic Sites or as instructed by the Authority or less frequently if this is agreed by the Authority.

All such contacts will be recorded onto the Contractor's Fault in SFM, detailing Time/Date/Contact.

Excusing Causes Related to Roadspace

- 32.11 Where the Contractor cannot gain access to the highway for one of the reasons set out in the definition of 'Excusing Causes', an Excusing Cause will apply if this prevents the Contractor from working on the Equipment. The Contractor will as a minimum provide daily updates of attempts to arrange the Services/progress with all concerned giving time/date/contact, recording all such contacts on the Contractor's Fault in SFM. When a firm date has been arranged for meeting/Services commencement in future, that date will be entered into the Contractor's Fault in SFM.

Civil Engineering Works

- 32.12 An Excusing Cause will apply where the need for civil engineering works prevent the Contractor from working on the Equipment or from completing the necessary maintenance provided that such engineering works are not covered within Regular Maintenance under this Contract. The Contractor will, as a minimum, within two hours provide notification on SFM of the civil engineering works required and will provide a drawing of the works required within 1 (one) day.

33. BUSINESS CONTINUITY

- 33.1 The Contractor will, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover, including any Disaster or Force Majeure Event. The Business Continuity Plan will be created and maintained in accordance with Good Industry Practice.
- 33.2 The Contractor will update the Business Continuity Plan at least once during each rolling period of twelve (12) months during the Term. The Contractor will also update the Business Continuity Plan if at any time an amendment to it is reasonably required in order to reflect any change to this Contract, the Services, Equipment or any other matters that have occurred since agreement of the last Business Continuity Plan. Not more than ten (10) days after each such update the Contractor will submit the revised Business Continuity Plan to the Authority for approval. The Contractor will amend the revised Business Continuity Plan so as to incorporate all of the Authority's comments. The amended Business Continuity Plan will be promptly re submitted to the Authority for approval and the process contained in this Clause 33.2 will be repeated until the Authority approves the draft Business Continuity Plan. The Contractor will retain business continuity readiness in accordance with the last approved version of the Business Continuity Plan (insofar as this still applies).
- 33.3 The Contractor will comprehensively test the Business Continuity Plan once in every rolling twelve (12) month period during the Term and will upon request provide the Authority with a written report detailing the results of that test and any actions it proposes to take to address those results. The Contractor will promptly update the Business Continuity Plan in accordance with Clause 33.2 following such tests and will be bound to promptly implement the same.
- 33.4 The Contractor will implement the Business Continuity Plan in the event that the Equipment and/or Services are impaired or unavailable (or appear likely to be impaired or unavailable) as a result of any occurrence envisaged in the Business Continuity Plan. The Contractor will notify the Authority in writing each time the Business Continuity Plan is, or should be, implemented.

- 33.5 The Contractor will procure that its Sub-Contractors will at all times, maintain adequate and up to date business continuity and disaster recovery plans in respect of the Services performed by them and the people and facilities used to provide them and ensure that such plans operate properly together.

34. HEALTH AND SAFETY

- 34.1 The Contractor will ensure that the Services are carried out by the Contractor Personnel:

- 34.1.1 using safe and adequate working procedures and practices;
- 34.1.2 in a good and workmanlike manner;
- 34.1.3 as a minimum to British Standards or other enforceable or relevant EU codes of practice relating to health and safety and workmanship in force at the time the Services are carried out;
- 34.1.4 in compliance with any health and safety code of practice issued by the Authority as may, for the time being, be in force (which code may be amended at the Authority's sole discretion);
- 34.1.5 in compliance with the safety policy statement submitted by the Contractor to the Authority; and
- 34.1.6 in compliance with any health and safety requirements under all applicable law including without limitation the requirements of the Electricity at Work Regulations 1989.

- 34.2 The Contractor will promptly notify the Contractor's personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of this Contract.

- 34.3 The Contractor in carrying out the Services will maintain the integrity of all mains services and in the event of being obliged to cut off electricity, gas, water, telephone or any other service will inform the Engineer immediately whether such shut down or discontinuance of supply is on the grounds of safety or otherwise.

- 34.4 In order to demonstrate commitment to Health & Safety in the workplace and in the completion of duties under this Contract, the Contractor will be registered under the Contractors Health and Safety Assessment Scheme (CHAS) or equivalent, such as Safety Schemes in Procurement (SSIP).

- 34.5 The Contractor will be required to submit copies of annual external CHAS audit reports demonstrating compliance. The Contractor will submit evidence of completion of audit actions arising to the auditor's satisfaction to demonstrate retained registration for class 1 and class 2 actions (i.e. short and medium term), which are expected to have been resolved within 3 months of the audit report issue date.

35. **CONFIDENTIALITY AND TRANSPARENCY**

- 35.1 The Contractor acknowledges that during the Term it may acquire or receive Confidential Information of the Authority, a member of the TfL Group or the MPS ("**Authority Confidential Information**"). The Contractor undertakes that it will:
- 35.1.1 receive and/or maintain the Authority Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
 - 35.1.2 not use the Authority Confidential Information for any purposes whatsoever other than for the proper performance of its obligations under this Contract;
 - 35.1.3 not disclose the Authority Confidential Information to any Third Party without the prior written consent of the Authority, except that the Contractor is entitled to disclose the Authority Confidential Information to the extent strictly necessary to such of the Contractor Personnel who need to know the Authority Confidential Information for the performance of the Contractor's obligations under this Contract, provided that the Contractor will be responsible for any breach of its obligations occasioned by any act or omission of any Contractor Personnel.
- 35.2 The Contractor will ensure that any Contractor Personnel to whom the Authority Confidential Information is disclosed complies with the provisions of this Clause 35.
- 35.3 The Contractor acknowledges that damages would not be an adequate remedy for any breach of Clause 35.1 and that (without prejudice to all other remedies which the Authority may be entitled to as a matter of law) the Authority will be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of Clause 35.1 and no proof of special damages will be necessary for the enforcement of the provisions of this Clause.
- 35.4 The Authority will maintain the confidence of the Confidential Information disclosed by the Contractor to the Authority, as set out in Schedule 8 (the "**Contractor Confidential Information**"), except that the Authority may:
- 35.4.1 use the Contractor Confidential Information to the extent necessary to obtain the benefit of the Contractor's performance under this Contract;
 - 35.4.2 disclose the Contractor's Confidential Information to any member of the TfL Group or the MPS; and
 - 35.4.3 disclose the Contractor Confidential Information pursuant to Clauses 35.6 and 37.

- 35.5 The obligations on a Party set out in this Clause 35 will not apply to any Confidential Information:
- 35.5.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 35);
 - 35.5.2 which 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
 - 35.5.3 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 Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 35.6 The Contractor acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 35.4 and Clause 37, the Contractor hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 35.7 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication – any redaction requested by the Contractor will be undertaken at the Contractor's cost. 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. The Authority may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 35.6. The Authority will make the final decision regarding publication and/or redaction of the Contract Information.
- 35.8 The obligations with respect to Confidential Information disclosed under this Contract will survive termination of this Contract and continue for as long as the information remains confidential.

36. ANNOUNCEMENTS

- 36.1 The Contractor will not communicate or permit any communications with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from this Contract unless specifically granted permission to do so in writing by the Authority. The Authority will have the right to approve any announcement before it is made.
- 36.2 The Contractor will not take or permit any photographs of the Services to be taken for use in any publicity or advertising without the prior written consent of the Authority and where consent is given will obtain approval of such photographs prior to their issue.

36.3 The Contractor will procure compliance with the terms of this Clause 36 by all Contractor Personnel.

36.4 Any breach of this Clause 36 will be deemed a material breach incapable of remedy, giving the Authority the right to terminate this Contract in accordance with Clause 27.1.

37. **FREEDOM OF INFORMATION**

37.1 The Contractor acknowledges that the Authority:

37.1.1 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

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

37.2 Without prejudice to the generality of Clause 37.1, the Contractor will and will procure that its Sub-Contractors (if any) will:

37.2.1 transfer to the Engineer (or such other person as may be notified by the Authority to the Contractor) each Information Request relevant to this Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and

37.2.2 in relation to Information held by the Contractor 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 will be provided within five (5) Working 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.

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

38. **PROTECTION OF PERSONAL DATA**

38.1 In respect of any Personal Data processed by the Contractor pursuant to this Contract for and on behalf of the Authority or any other Third Party (as appropriate) (the “**Authority Personal Data**”), the Contractor warrants and undertakes that it will and will procure that each of the Contractor Personnel will:

38.1.1 comply at all times with the Data Protection Legislation;

- 38.1.2 only process the Authority Personal Data:
 - 38.1.2.1 to the extent necessary to provide the Services and then only in accordance with this Contract; and
 - 38.1.2.2 on instructions received from the Authority from time to time;
- 38.1.3 promptly comply with any change of instructions from the Authority relating to the Authority Personal Data and/or the Contractor's role as Data Processor;
- 38.1.4 not by any act or omission place the Authority or any TfL Group member or any Third Party in breach of the Data Protection Legislation;
- 38.1.5 put in place:
 - 38.1.5.1 appropriate technical and organisational security measures that prevent or are designed to prevent the accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access to the Authority Personal Data and which comply with Good Industry Practice from time to time; and
 - 38.1.5.2 a level of security measures which ensures that only authorised personnel have access to the Authority Personal Data and processing equipment to be used to Process such Authority Personal Data and that any such persons whom the Contractor authorises to have access to such Authority Personal Data will comply with like obligations as are contained in this Clause 38.1.5 and will respect and maintain all due confidentiality; and
- 38.1.6 ensure that Authority Personal Data is only accessed by authorised Contractor Personnel;
- 38.1.7 ensure the reliability of the Contractor Personnel having access to Authority Personal Data and will ensure that such Contractor Personnel are fully aware of the measures to be taken when Processing Authority Personal Data;
- 38.1.8 promptly give written notice to the Authority of any actual or suspected incident of unauthorised or accidental disclosure of or access to the Authority Personal Data or other breach of Clause 38 made by any of the Contractor Personnel or any other identified or unidentified third party (a "**Security Breach**");
- 38.1.9 promptly provide the Authority with all information in the Contractor's or the Contractor Personnel's possession concerning any Security Breach and not make any announcement or publish or otherwise authorise any broadcast or any notice or information about a Security Breach;

- 38.1.10 ensure that the Authority Personal Data is kept separate from Contractor Personal Data and from Personal Data belonging to other customers of the Contractor and that the Authority Personal Data is readily identifiable;
 - 38.1.11 not make any copies of the Authority Personal Data (whether in electronic or paper form) unless strictly necessary for the Services;
 - 38.1.12 not modify, amend or alter the contents of the Authority Personal Data or disclose or permit the disclosure of any of the Authority Personal Data to any Third Party unless expressly required to do so as part of the Services or specifically authorised in writing to do so by the Authority;
 - 38.1.13 provide the Authority with such co-operation, assistance and information as is required by the Authority to comply with its obligations under the Data Protection Legislation;
 - 38.1.14 without prejudice to Clause 38.1.12, comply with all instructions from the Authority in relation to a subject access request for the disclosure of Authority Personal Data and provide the Authority with all assistance required in respect thereof;
 - 38.1.15 at any time at the Authority's request, submit to the Authority all required materials and/or technical documentation to demonstrate its compliance with this Clause 38; and
 - 38.1.16 not cause or permit the Authority Personal Data to be transferred outside of the European Economic Area, without the Authority's prior written consent.
- 38.2 When the Contractor receives a written request from the Authority for information about, or a copy of, Authority Personal Data, the Contractor will supply such information or data to the Authority within such time and in such form as specified in the request or if no period of time is specified in the request, then within 10 (ten) Working Days from the date of the request.
- 38.3 The Authority remains solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed. The Contractor will not share any Authority Personal Data with any Sub-Contractor unless there is a written contract in place which requires the Sub-Contractor to:
- 38.3.1 only process Authority Personal Data in accordance with the Authority's instructions to the Contractor; and
 - 38.3.2 comply with the same data protection requirements that the Contractor is required to comply with under this Contract.
- 38.4 If the Contractor receives any complaint about the Processing of the Authority Personal Data from Third Parties then it will promptly notify the Authority of the same and provide the Authority with all assistance required in respect thereof.

39. INTELLECTUAL PROPERTY RIGHTS

- 39.1 Subject to Clause 39.2, all Intellectual Property Rights in the Equipment and any developments, enhancements, updates or upgrades made thereto pursuant to this Contract will, unless otherwise agreed in writing by the Parties, vest in and remain the property of the Contractor or its applicable Third Party licensor(s).
- 39.2 The Contractor hereby grants (and will procure that each relevant Third Party will grant) to the Authority a perpetual, irrevocable, non-exclusive, royalty-free and transferable licence to access and use the Equipment and all existing and future Intellectual Property Rights contained in them to perform the Services in accordance with this Contract (to continue in effect after termination of this Contract irrespective of whether or not the Contractor is involved in the provision of the Services); such right includes the right for the Authority to grant perpetual, irrevocable, non-exclusive, royalty-free and transferable sub-licences to the TfL Group, the MPS, their authorised agents and any Replacement Contractors.
- 39.3 The Contractor will promptly notify the Authority upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Rights which affects or may affect the provision or receipt of the Services or any Equipment, or if any claim or demand is made or action brought for infringement or alleged infringement of any such Intellectual Property Rights.
- 39.4 The Contractor will defend, indemnify and hold harmless the Indemnified Parties against all Losses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of a third party in respect of the Services and/or the Equipment, third party Confidential Information or other similar proprietary rights, and against all Losses of any kind which the Indemnified Parties may incur as a result of such infringement or alleged infringement.
- 39.5 The Authority will, at the request of the Contractor, give the Contractor all reasonable assistance for the purpose of contesting any such claim, demand, or action. The Contractor will reimburse the Authority for all costs and expenses (including legal costs) incurred in doing so and/or the Contractor will at its own expense conduct any litigation and all negotiations arising from such claim, demand or action, provided that the Authority may participate in such defence or negotiations to protect its interests or those of the Indemnified Parties.
- 39.6 In addition to the Contractor's obligation to indemnify the Indemnified Parties and any other rights which the Authority may have, if a claim or demand is made or action brought to which Clause 39.3 applies or in the reasonable opinion of the Contractor is likely to be made or brought, or which causes the use of the Services or the Equipment or any part thereof to be disrupted or impaired, the Contractor will after consultation with the Authority, at its own expense, promptly:

- 39.6.1 use its best efforts to secure the right for the alleged infringing item to continue to be used on terms which are acceptable to the Authority; or
 - 39.6.2 if the right provided under Clause 39.6.1 is not available, the Contractor having used its best efforts to secure such right, then the Contractor will (if appropriate) modify the infringing or alleged infringing item so as to avoid the infringement, provided such modification does not reduce the performance, functionality or quality of the said item and provided that the terms of this Contract will apply mutatis mutandis to such modified item and such item is accepted by the Authority; or
 - 39.6.3 if such solution cannot be accomplished by the Contractor taking all such steps as are appropriate to achieve such outcome, then the Contractor will replace such item and substitute an alternative of at least equal performance, functionality and quality.
- 39.7 If the Contractor does not determine within ten (10) Working Days of a claim being presented to assume the defence of an indemnified claim within the required notice period, or ceases to defend the indemnified claim, the Authority will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Contractor, including payment of any judgement or award and the costs of settlement or compromise of the claim. In such instance, the Contractor will promptly reimburse and hold harmless the Authority for all such costs and expenses, (including legal costs).

40. **DATA**

- 40.1 The Contractor acknowledges the Authority's (acting on behalf of itself and the MPS, as applicable) ownership of and right to own and reserve all Intellectual Property Rights which may subsist in the Authority Data and hereby assigns upon creation any and all such existing and future Intellectual Property Rights in the Authority Data to the Authority (and/or its nominee) to use without further payment or restriction of any kind.
- 40.2 The Contractor will not:
- 40.2.1 delete or remove any copyright notices contained within or relating to the Authority Data; or
 - 40.2.2 store, copy or disclose the Authority Data except as strictly necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised by the Authority.
- 40.3 The Contractor and the Authority will each take reasonable precautions (having regard to the nature of their other respective obligations under this Contract) to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

- 40.4 To the extent that the Authority Data is held and/or processed by the Contractor, the Contractor will promptly supply the Authority Data to the Authority as requested by, and in a format specified by, the Authority.
- 40.5 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by Contractor of any Authority Data, the Contractor will take all necessary precautions to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 40.6 In the event that the Authority Data is corrupted or lost or sufficiently degraded as a result of the Contractor's or the Contractor Personnel's negligence or Default so as to be unusable after its receipt or creation by the Contractor or during any collection, processing, storage or transmission by the Contractor or the Contractor Personnel of the Authority Data then in addition to any other remedies that may be available to the Authority under this Contract or otherwise, the Authority will have the option to elect either of the following remedies:
- 40.6.1 the Authority may require the Contractor at its own expense to restore or procure the restoration of the Authority Data and the Contractor will use its best endeavours to do so as soon as possible; or
- 40.6.2 the Authority may itself restore or procure the restoration of the Authority Data, and will be repaid by the Contractor any reasonable expenses so incurred.
- 40.7 If at any time the Contractor suspects or has reason to believe that the Authority Data has or may become corrupted in any way for any cause then the Contractor will immediately notify the Authority of such and inform the Authority what remedial action it proposes to take.
- 40.8 In respect of any enforcement data generated by the Equipment, the Contractor will:
- 40.8.1 not, and will procure that the Contractor Personnel do not, decrypt or attempt to decrypt any Authority Data which is in a decrypted format;
- 40.8.2 ensure that such data is delivered securely and safely to the MPS and that no unauthorised persons have access to such data at any time.

41. RECORDS, AUDIT AND INSPECTION

- 41.1 The Contractor will, and will procure that its Sub-Contractors will:
- 41.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Contractor's obligations under this Contract and all transactions entered into by the Contractor for the purposes of this Contract

(including time-sheets for the Contractor's personnel where such records are material to the calculation of the Contract Price) ("**Records**"); and

- 41.1.2 retain all Records during the Term and for a period of not less than 6 (six) years (or such longer period as may be required by Applicable Law) following termination or expiry of this Contract ("**Retention Period**").
- 41.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Contractor what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Contractor's performance of the Services (including the Contractor's technical and organisational security measures as required by Clause 38.8.1.5) and (if applicable) to test the Services to ascertain the conformance of the Services with this Contract.
- 41.3 For the purposes of exercising its rights under Clause 41.2, the Contractor will provide the Authority and/or any person nominated by the Authority with all reasonable co-operation including:
 - 41.3.1 granting access to any premises, equipment, plant, machinery or systems used in the Contractor's performance of this Contract and, where such premises, equipment, plant, machinery or systems are not the Contractor's own, using all reasonable endeavours to procure such access;
 - 41.3.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;
 - 41.3.3 making all Records available for inspection and providing copies of any Records if requested; and
 - 41.3.4 making the Contractor's personnel available for discussion with the Authority.
- 41.4 Any audit, inspection and/or testing by the Authority pursuant to Clause 41.2 will not relieve the Contractor (or any of its Sub-Contractors) from any obligation under this Contract or prejudice any of the Authority's rights, powers or remedies against the Contractor.
- 41.5 If as a result of any audit, inspection and/or testing pursuant to Clause 41.2 the Authority is not satisfied that the Services are conforming or will conform in all respects with this Contract and the Authority so informs the Contractor, the Contractor will take all steps necessary to ensure conformance. The Contractor will reimburse the Authority's costs in undertaking any further audits to check the Contractor's compliance.

42. QUALITY AND BEST VALUE

The Contractor acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority 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 Contractor will, where reasonably requested by the Authority, participate in any relevant best value review.

43. SECURITY FOR DUE PERFORMANCE

43.1 The Contractor will provide at the Authority's discretion, at the Contractor's expense, a parent company guarantee (from such Holding Company as the Authority may require unless otherwise agreed with the Authority) in the form contained in Schedule 10 and, if requested by the Authority, a legal opinion as to its enforceability in the form contained in Schedule 11.

43.2 The Authority will not be obliged to make any payment to the Contractor under this Contract whether for the Contract Price or otherwise unless and until the Contractor has complied with Clause 43.1.

43.3 The Contractor will be regarded as being in material breach of this Contract which is incapable of remedy in the event that any parent company guarantee is or becomes invalid or otherwise unenforceable.

44. SET OFF

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority arising out of or attributable to this Contract or any other contract between the Authority and the Contractor may be deducted by the Authority from monies due or which may become due to the Contractor under this Contract or under any other contract with any member of the TfL Group or the Authority may recover such amount as a debt.

45. CONFLICT OF INTEREST

45.1 The Contractor warrants that it does not and will not have at the Contract Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or the Authority or any member of the TfL Group, save to the extent fully disclosed to and approved by the Authority.

45.2 The Contractor will check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and will notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or the Authority or any member of the TfL Group and will work with the 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

Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Contract in accordance with Clause 27.1.12.

46. COPYRIGHT IN CONTRACT

Copyright in the documents comprising this Contract, the Schedules and Appendices will vest in the Authority but the Contractor may obtain or make at its own expense any further copies required for use in the performance of the Services.

47. VARIATIONS TO THE CONTRACT

47.1 Save as otherwise expressly provided in this Contract, this Contract may only be varied or amended with the written agreement of both Parties in accordance with the Change Control Procedure (Schedule 6).

47.2 Save as set out in Clause 47.1, a variation will not be binding and the Authority will have no obligation to pay for any work undertaken or goods or services provided by the Contractor in connection with any variation unless such variation has been made in accordance with the Change Control Procedure.

48. NOVATION

The Authority may assign, novate or otherwise transfer this Contract (in whole or in part). Within ten (10) Working Days of a written request from the Authority, the Contractor will at its expense execute one or more agreements substantially in the form specified in Schedule 7 with such amendments as the Authority may require by which the Authority will transfer all or part of its rights and obligations under this Contract to one or more persons nominated by the Authority.

49. NOTICES

49.1 Subject to Clauses 49.5 and 49.6, any notice or demand required to be given in accordance with this Contract will be in writing, in the English language and:

49.1.1 delivered by hand; or

49.1.2 sent by pre-paid first class post or recorded delivery post;

to the relevant Party using the appropriate contact information detailed in Schedule 1 (or such other contact information as may be notified by the relevant Party to the other Party from time to time in accordance with this Clause 49).

49.2 Any notice or demand given in accordance with Clause 49.1 will be deemed to have been served:

49.2.1 if delivered by hand, at the time of delivery;

49.2.2 if sent by pre-paid first class post or recorded delivery post at 9.00 am two (2) Working Days after the date of posting;

provided that if a notice or demand is served before 9.00 am on a Working Day it will be deemed to be served at 9.00 am on that Working Day and if it is served on a day which is not a Working Day or after 5.00 pm on a Working Day it will be deemed to be served at 9.00 am on the immediately following Working Day.

49.3 To prove service of a notice or a demand it will be sufficient to prove that the provisions of Clause 49 were complied with.

49.4 Any communications of an operational nature may (with the consent of the Engineer) be given not only in accordance with Clause 49.1 but also via the SFM system or any other system of a like nature that the Engineer may reasonably require the Contractor to input or operate.

49.5 Any notice or communication required to be given by the Authority to the Contractor pursuant to Clause 13 may also be delivered by email or in person (including at any meetings between the Parties) and will be deemed to have been served at the time and date when sent by email or handed to the Contractor's representative in person.

49.6 This Clause 49 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

50. WAIVER

50.1 No failure or delay by any Party hereto in exercising any right, power or privilege under this Contract will impair such right, power or privilege or be construed as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

50.2 No waiver of any of the provisions of this Contract will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

50.3 The rights and remedies of the Authority herein provided are cumulative and in addition to and not exclusive of any rights and remedies provided by law.

51. INVALIDITY AND SEVERABILITY

51.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if this Contract had been executed with the invalid, illegal, or unenforceable provision eliminated.

51.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Authority and the

Contractor will immediately commence good faith negotiations to remedy such invalidity.

52. RELATIONSHIP OF THE PARTIES

52.1 Nothing in this Contract will constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, will either Party be deemed to be the agent of the other.

52.2 Subject to any express provisions to the contrary in this Contract, the Contractor will have no right or authority to and will not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Authority or bind the Authority in any way.

53. SURVIVAL

The provisions of Clauses 1, 6.1.2, 15.1.6, 15.1.7, 15.3, 16, 20.2.2, 20.2.3, 21.5, 22, 24.3, 24.4, 28, 29, 30, 35-41 (inclusive), 44, 46, 53, 54, 58, 60-62 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses will survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract will do so.

54. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

54.1 Subject to Clauses 54.2 and 54.3, the Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**Third Party Act**”) by any person not a Party to it.

54.2 Any member of the TfL Group has the right to enforce the terms of this Contract in accordance with the Third Party Act.

54.3 Without limitation to Clause 54.2, the Indemnified Parties have the right to bring a claim direct against the Contractor pursuant to Clause 16 (Liability) and Clause 39 (Intellectual Property Rights), together with the right to enforce any other provision of this Contract that confers a right or benefit on them, including Clause 24 (Access to Premises), Clause 35 (Confidentiality and Transparency) and Clause 40 (Data) in accordance with the provisions of the Third Party Act.

54.4 The Parties reserve the right to rescind, novate or vary this Contract or vary any terms, or part of it, without the consent of the Indemnified Parties or any member of the TfL Group (other than the Authority).

55. ENTIRE AGREEMENT

55.1 Subject to Clause 55.2:

55.1.1 this Contract and all documents referred to in this Contract, contains all of the terms which the Parties have agreed relating to the subject matter of this Contract and such documents and

supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Contract by a statement which this Contract does not contain; and

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

55.2 Nothing in this Clause 55 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

56. SUCCESSORS

This Contract will be binding upon and benefit each Party to this Contract and their successors and permitted assigns.

57. COSTS AND EXPENSES

Each Party will be responsible for all its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Contract and all matters contemplated by this Contract.

58. 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 Contract.

59. COUNTERPARTS

This Contract may be executed in any number of counterparts and by the Parties on different counterparts and each such counterpart will constitute an original of this Contract but all the counterparts will together constitute one and the same instrument.

60. EQUITABLE REMEDIES

For the avoidance of doubt, no provision of this Contract will have the effect of removing or reducing any equitable remedies available to the Authority including, but not limited to, the Authority's rights to seek an order for specific performance by the Contractor.

61. DISPUTE RESOLUTION

61.1 In order to overcome differences and avoid disputes and where this cannot be achieved to facilitate their clear definition and early resolution (whether by agreement or otherwise) the Parties will first follow the procedure set out in

Clause 61.3 in respect of all disputes in relation to this Contract (save that either Party will have the right to refer a dispute to adjudication at any time in accordance with Clause 61.5). The Parties may then follow the procedures set out in Clauses 61.4 or 61.5 or proceed to litigation in accordance with Clause 62.

61.2 The Contractor will continue to provide the Services in accordance with this Contract and without delay or disruption whilst a Dispute is being resolved.

61.3 **Escalation**

61.3.1 As soon as either Party becomes aware of any matter which if not resolved might become a dispute it will so advise the other Party in writing.

61.3.2 The Authority and the Contractor will use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Contract ("**Dispute**").

61.3.3 If the Dispute is not settled through discussion between the Engineer and the Contractor's Contract Manager within a period of seven (7) Working 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.

61.4 **Mediation**

61.4.1 If the Dispute is not resolved within fourteen (14) Working 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.

61.4.2 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Working 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 will be divided equally between the Parties or as the Parties may otherwise agree in writing.

61.4.3 Where a Dispute is referred to mediation under Clause 61.4, the Parties:

61.4.3.1 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;

61.4.3.2 agree to co-operate fully with such a mediator and to provide such assistance as is necessary to enable the mediator to discharge its duties.

All negotiations connected with respect to the Dispute will be conducted in confidence and without prejudice to the rights of the Parties in any future court proceedings.

- 61.4.4 If the Parties reach agreement on the resolution of the Dispute, such agreement will be recorded in writing and once signed by the Parties' authorised representatives, it will be final and binding on the Parties.
- 61.4.5 If the Parties fail to reach agreement within forty (40) Working Days of the appointment of the mediator, such failure will be without prejudice to the right of either Party to refer the Dispute to the English courts. In addition, failing agreement, either of the Parties may invite the mediator to provide a non-binding opinion in writing as to the merits of the Dispute and the rights and obligations of the Parties. Such opinion will be provided on a without prejudice basis and will be subject to the confidentiality provisions of this Contract.

61.5 **Adjudication**

- 61.5.1 Either Party has the right to refer any Dispute for adjudication at any time and either Party may give notice in writing (the "**Adjudication Notice**") to the other of the intention to do so. The adjudication will be conducted in accordance with the rules prescribed by The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 (as amended from time to time) (the "**Rules**"). The nominating body will be the Chartered Institute of Arbitrators or any successor organisation.
- 61.5.2 The Party referring the Dispute to adjudication will follow the Rules to secure the appointment of an adjudicator, endeavouring to secure such appointment within seven (7) calendar days of the Adjudication Notice.
- 61.5.3 Each Party will:
 - 61.5.3.1 comply with the Rules and the directions the adjudicator makes in accordance with the Rules;
 - 61.5.3.2 facilitate the resolution of the Dispute as quickly and economically as possible; and
 - 61.5.3.3 continue to act in accordance with this Contract throughout the adjudication.
- 61.5.4 The adjudicator will decide on the Dispute in accordance with the Rules and will notify the Parties of the decision within the period permitted by the Rules. A decision made by the adjudicator in accordance with the Rules is binding on the Parties until finally determined by the courts or by agreement.

61.5.5 The Parties will implement an adjudicator's decision without delay. The Parties are entitled summarily to enforce the reliefs and remedies set out in an adjudicator's decision. Neither Party is entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.

61.5.6 None of the following are liable for anything done or omitted in the discharge or purported discharge of his/her functions in any adjudication, unless the act or omission is in bad faith:

61.5.6.1 the adjudicator; or

61.5.6.2 any employee, agent or advisor of the adjudicator.

62. LAW AND JURISDICTION

This Contract (and all non-contractual rights and obligations arising out of or in connection with it) will be governed by and construed in accordance with the laws of England. Without prejudice to Clause 61, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract 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 Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

IN WITNESS whereof this contract has been executed and delivered on the day and year first above written.

Signed
for and on behalf of
RedSpeed International

Signature

REDACTED

Print name and position

Date:

Signed
for and on behalf of
Transport for London

Signature

REDACTED

Print name and position

Date:

SCHEDULE 1

Key Contract Information

1. **Contract Reference Number:** tfl_scp_001041
2. **Name of Contractor:** Redspeed International Limited
3. **i) Contract Commencement Date:** 01/05/2015
ii) Services Commencement Date: 01/05/2015
4. **Duration:** seven years
5. **Address where invoices will be sent:** REDACTED
6. **The Authority's Account Details (to be quoted on all invoices).**
SAP Outline Agreement Number:
Account Code: ST-PJ360C
Cost Centre: 30070
7. **Details of the Authority's Engineer**
Name: REDACTED
Address: Floor 2, Palestra,
197 Blackfriars Road,
London, SE1 8NJ
Tel: REDACTED
Email: REDACTED
8. **Details of the Authority's Procurement Manager**
Name: REDACTED
Address: Zone 1G1 1st Floor,
Palestra,
197 Blackfriars Road,
London, SE1 8NJ
Tel: REDACTED
Email: REDACTED
9. **Details of the Contractor's Contract Manager**
Name: REDACTED

Address: Unit 21, Birchen Coppice Trading Estate, Stourport Road,
Kidderminster, Worcs. DY11 7QY

Tel: REDACTED

Fax: REDACTED

Email: REDACTED

10. Contractor's Key Personnel

Name and Job Title	Contact Details	Area of Responsibility
REDACTED		
REDACTED		
REDACTED		
REDACTED		

11. Contractor's Subcontractors

As approved by the Authority in accordance with Clause 20.1.

Company Name and Company Registration Number	Address	Area of Responsibility
REDACTED	REDACTED	REDACTED

EQUIPMENT REQUIREMENTS - VCRM

[illegible]

APPENDIX A: tfl_scp_0001041_VCRM_redspeed_lot 3 and A13 Appendix A dm

SCHEDULE 3

Specification

APPENDIX B: tfl_SCP_001041_Contract_Specification_for_A13_Appendix_B_nss_dm

1. DEFINITE ITEMS

- A. Maintenance of existing digital speed cameras (average speed) on the A13 between Dagenham and Canning Town.
- B. Maintenance of lighting associated with the average speed cameras related to Item A
- C. RedSpeed International will carry out the transfer of infrastructure and the reconfiguring of the communications systems including the supply of infrastructure requirements at the Watford Data Centre free of charge.
- D. With the above requirements in place RedSpeed would provide the maintenance service in line with the terms set out in the specification including the existing penalty clauses based on availability.

2. PROVISIONAL ITEMS

A13 Average Speed Corridor – Tranche 2 Works Proposal

APPENDIX C: tfl_scp_001041_A13_installation_and_modification_works_Appendix_C_nss_dm

APPENDIX D: tfl_scp_001041_A13_site_design_instruction_Appendix_D_nss_dm

SCHEDULE 4

Charges and Payment

Part 1 – Payment for Equipment Installation

1. Equipment Installation Payment

Out-Stations

- 1.1 The Contractor will submit invoices every two weeks detailing all Out-Station Sites successfully commissioned since the last submitted invoice. The invoice should state the full cost (100%) to the Authority of each Out-Station Site installed, the amount to be retained by the Authority (15%) and the amount to be paid (subject to the terms of Clause 13).
- 1.2 The Authority will pay the Contractor 85% of the agreed Out-Station Site installation price upon successful commissioning of the Out-Station Site. An Out-Station Site will be deemed successfully Commissioned upon sign off of the Commissioning sheet, as stated in Appendix 2 of the Specification, and, for the avoidance of doubt, including sign-off by the MPS.
- 1.3 The Authority will retain 10% of the agreed Out-Station Site installation price, which will become payable as a milestone payment at the completion of the complete phase within which the Out-Station Site is included, certificate of such completion to be issued by the Authority to the Contractor.
- 1.4 On receipt of a certificate issued under paragraph 1.3 of Part 1 of this Schedule 4, the Contractor will issue an invoice to the Authority in respect of the 10% milestone payment.
- 1.5 If the Contractor fails to install all Out-Station Sites within a phase, the 10% milestone payment will continue to be retained by the Authority until the Contractor has installed the outstanding Out-Station Site(s) and the outstanding Out-Station Site(s) have been successfully Commissioned.
- 1.6 If the Contractor moves on to the next phase and successfully installs and has Commissioned all Out-Station Sites within it, but has failed to install and have successfully Commissioned the incomplete Out-Station Site(s) from the previous phase / phases then the 10% milestone payment for the current and the previous phase(s) will be retained. The 10% will continue to be retained for each phase, until all incomplete Out-Station Sites have been installed and successfully Commissioned in line with the Equipment Installation Programme.
- 1.7 Without prejudice to the Authority's rights and remedies, if an Out-Station Site is unable to be installed because of a Relief Event or an Excusing Cause, the Contractor will comply with the process set out in Clause 32 of the Contract and will also confirm for discussion at the weekly progress meeting, as stated in Part A of Schedule 17.

- 1.8 The Authority will consider the issues preventing installation on a case by case basis and in accordance with Clause 32.3 of the Contract. If the Authority agrees that a Relief Event or an Excusing Cause has arisen and prevented the installation of an Out-Station Site, then the Authority may agree to allow an:
- 1.8.1 exception for specific Out-Station Sites when considering whether all installations have been completed and Commissioned to enable the 10% milestone payment; and/or
 - 1.8.2 extension to the timescales for installation and the Authority will notify the Contractor of any extension to the timescales.
- 1.9 Where the Authority considers that a Relief Event or an Excusing Cause has not arisen and/or prevented the installation of an Out-Station Site, then the Contractor will be expected to install and have successfully Commissioned the Out-Station Site as per the Equipment Installation Programme.
- 1.10 The Authority will retain 5% of the agreed installation price. On the first year anniversary of when the 10% milestone payment was made for successful Commissioning of the phase, the Contractor will submit an invoice to the Authority in respect of the remaining retention in respect of each installation of that phase.

In-Station

- 1.11 The Authority will pay the Contractor 95% of the agreed In-Station installation price upon successful Commissioning of the first associated Out-Station.
- 1.12 The Authority will retain 5% of the agreed In-Station installation price, which will become payable on the first anniversary of when the 95% payment was made for successful completion of the first Out-Station.

ANNEX 1 INSTALLATION – SCHEDULE OF RATES

REDACTED

Part 2 - Payment for Equipment Maintenance

2. Total Maintenance Payment

- 2.1 For each Reporting Period, the Authority will pay the Contractor for all Maintenance Services carried out in that Reporting Period the sum of the following amounts:

$$\begin{array}{ccccccc} \text{Regular} & & & & \text{Periodic} & & \text{Supplementary} \\ \text{Maintenance} & + & \text{Financial} & - & \text{Service} & + & \text{Works} \\ \text{Payment} & & \text{Incentive} & & \text{Abatement} & & \text{Payment} \\ & & & & & & + \text{ Adjustment} \end{array}$$

where:

- 2.1.1 the 'Regular Maintenance Payment' is calculated in accordance with paragraph 3 of this Part 2 of Schedule 4;
- 2.1.2 the 'Financial Incentive' is calculated in accordance with paragraph 4 of this Part 2 of Schedule 4 - this can be a Bonus or an Abatement;
- 2.1.3 'Periodic Service Abatement' means the Abatement for failure to meet the required performance (if any) incurred by the Contractor in such Reporting Period calculated in accordance with paragraph 3 of Part 2 of Schedule 5. For the avoidance of doubt this excludes Financial Incentive Abatements identified in paragraph 2.1.2 of Part 2 of this Schedule 4;
- 2.1.4 'Supplementary Works Payment' is calculated in accordance with paragraph 5 of this Part 2 of Schedule 4 for such Reporting Period; and
- 2.1.5 'Adjustment' means a sum to correct discrepancies in respect of payments made in previous Reporting Periods or in the calculation of payments due for the current Reporting Period which, for the avoidance of doubt, may be positive or negative.

3. Calculation of Regular Maintenance Payment (RMP)

- 3.1 For each Reporting Period the Regular Maintenance Payment, over all EMCs, will be calculated as follows:

$$\sum_{\text{All EMCs}} \left\{ \begin{array}{c} \text{Maintenance Payment} \\ \text{for each EMC} \\ \text{for Reporting Period} \end{array} \right\}$$

where:

the Maintenance Payment for each
EMC for the Reporting Period =

$$\frac{\left(\begin{array}{c} \text{EMC Count} \\ \text{at Reporting} \\ \text{Period Start} \end{array} + \begin{array}{c} \text{EMC Count} \\ \text{at Reporting} \\ \text{Period End} \end{array} \right)}{2} \times \begin{array}{c} \text{Annual} \\ \text{EMC} \\ \text{Unit} \\ \text{Price} \end{array} \times \frac{\text{Number of Calendar} \\ \text{Days in Reporting} \\ \text{Period}}{365}$$

and where:

- 3.1.1 'EMC' = Equipment Maintenance Category;
 - 3.1.2 'All EMCs' means the EMCs in the Equipment Maintenance Category Unit Prices List given in Annex 2 of this Part 2 of Schedule 4. For the avoidance of doubt this includes the fixed Contract Price;
 - 3.1.3 'EMC Count at Reporting Period Start' is: the sum of the quantities of Equipment with the relevant EMC code that is recorded in SFM as being maintained under this Contract at 00:00 hours on the date of the start of the Reporting Period;
 - 3.1.4 'EMC Count at Reporting Period End' is: the sum of the quantities of Equipment with the relevant EMC code that is recorded in SFM as being maintained under this Contract at 00:00 hours on the date of the start of the next Reporting Period; and
 - 3.1.5 'Annual EMC Unit Price' is the Unit Price for the relevant EMC taken from the Equipment Maintenance Category Unit Prices List given in Annex 2 of this Part 2 of Schedule 4 and indexed in accordance with paragraph 7 of this Part 2 of Schedule 4.
- 3.2 The EMC Unit Prices will be deemed to cover all of the Regular Maintenance duties of the Contractor under this Contract. This will include all Equipment and labour used for preventative maintenance, Periodic Inspections, corrective maintenance, minor civil engineering works, minor traffic management, management of Third Party Faults and special access equipment, all allowances for overtime, night, or weekend working and all other costs, charges, materials and expenses whatsoever including, without limitation, Congestion Charge and Low Emission Zone payments and all taxes (other than VAT). The Contractor expressly acknowledges that it will not be entitled to any additional payments if the areas covered by the Congestion Charge or the Low Emission Zone are extended during the term of the Contract.

4. **Calculation of Financial Incentive Payment**

- 4.1 The Financial Incentive payable in respect of a Reporting Period can be an Availability Bonus or Abatement as determined from the Availability performance and is equal to:

$$\frac{\left(\begin{array}{c} \text{Contract} \\ \text{Availability Result} \\ \text{(Reporting Period)} \end{array} - \begin{array}{c} \text{Contract} \\ \text{Availability} \\ \text{Target} \end{array} \right)}{\text{Contract Availability Target}} \times \begin{array}{c} \text{Regular Maintenance} \\ \text{Payment} \\ \text{(Reporting Period)} \end{array} \times \text{Multiplying Factor}$$

where:

- 4.1.1 'Contract Availability Result' is the Availability calculated automatically by SFM at the end of the Reporting Period in accordance with paragraph 8 of Part 3 of this Schedule 4;
- 4.1.2 the 'Regular Maintenance Payment (RMP)' is calculated in accordance with paragraph 3 of this Part 2 of this Schedule 4;
- 4.1.3 the 'Multiplying Factor' for bonuses will apply if the Contract Availability Result for the Reporting Period is equal to, or greater than, the Contract Availability Target. Otherwise the Multiplying Factor for Abatements will apply;
- 4.1.4 the 'Contract Availability Result' for this calculation will be capped as set out in the tables below in this paragraph 4.
- 4.2 The Availability Abatement in any Reporting Period will not exceed 30% (thirty percent) of the RMP for the Reporting Period.
- 4.3 The Contract Availability Target and Multiplying Factors applicable for the primary pricing of EMCs for Maintenance in Annex 2 of this Part 2 of Schedule 4 are as set out in the table below.

The multiplying factors in the above table are set such that the 30% maximum Financial Incentive Abatement occurs when the Contract Availability Result falls to 10% below the Contract Availability Target.

- 4.4 The Contract Availability Target and Multiplying Factors applicable for the alternative pricing of Maintenance in Annex 2 of this Part 2 of Schedule 4 are as set out in the table below.

Contract Availability Target	80.00%
Contract Availability Result Cap	Contract Availability Target + 5%
Multiplying Factor for bonuses	0.540
Multiplying Factor for Abatements	2.7

The multiplying factors in the above table are set such that the 30% maximum Financial Incentive Abatement occurs when the Contract Availability Result falls to 20% below the Contract Availability Target.

- 4.5 For each of the first three Reporting Periods after Commissioning of the first Site, the Contract Availability Result for each Reporting Period will be deemed to be the higher of the calculated Contract Availability Result and the Contract Availability Target.

5. **Calculation of Supplementary Works Payment**

- 5.1 The Supplementary Works Payment due to the Contractor for a Reporting Period is calculated as the total of the amounts due for Supplementary Works authorised for payment by the Authority and invoiced by the Contractor during such Reporting Period.
- 5.2 The Supplementary Works Payment will include, but is not limited to, labour and Materiel used for the repair of Third Party Damage and for Major Traffic Management.
- 5.3 Supplementary Works Payments will be calculated using the prices set out in the Supplementary Works, Labour and Materiel Prices Table Annex 3 of Part 2 of this Schedule 4 and Indexed in accordance with paragraph 7 of Part 2 of this Schedule 4.
- 5.4 For Major Traffic Management not included in the Supplementary Works, Labour and Materiel Prices Table Annex 3 of Part 2 of this Schedule 4 payment will be based on the cost of the Major Traffic Management plus the mark-up set out in the following table:

Payment for Major Traffic Management		
Mark up	25 %	

5.5 Payment for any Materiel not covered by Supplementary Works prices will be charged on the basis of the price book.

6. **Price Book**

6.1 Annex 4 of Part 2 of this Schedule 4 is the price book and shows a breakdown of all component parts of the Equipment and a unit price for each component ("**Price Book**").

6.2 From time to time the Authority may need to purchase component parts or a full system to satisfy the needs of the Authority.

6.3 The Contractor will provide the Authority each year on the anniversary of the Services Commencement Date an up to date Price Book. These should be at a more favourable rate than the Contractor's published prices. The Price Book will include a discount for number of units purchased and the Contractor will show the profit margin that the Contractor will make on each Equipment component.

6.4 The Authority will either agree the Price Book or if necessary will query costs with the Contractor to agree upon the annual Price Book.

6.5 Over the term of the Contract the Authority acknowledges the possibility that the Price Book may need to be updated to take account of changes in technology and new working practices. From time to time the Authority and the Contractor may mutually agree to amend the price book without the need to comply with the formal variation process set out in Clause 47 and Schedule 6 other than that the variation should be in writing and the Price Book will be amended accordingly.

7. **Indexation**

7.1 Where under this Schedule 4 a price or payment amount is to be reviewed for changes using the the Consumer Price Index (CPI). The Indexation calculation for review will be calculated as follows:

$$\text{Indexation Adjustment} = \left(\frac{\text{Current Year Consumer Price Index}}{\text{Previous Year Consumer Price Index}} - 1 \right) \times 100$$

where:

- Transport for London will consider a price adjustment on an annual basis up to a maximum of the CPI as detailed in the example.
- the Previous Year Consumer Price Index is the value of the CPI published or determined with respect to the month of February in the year prior to the current Indexation year;

- the Current Year Consumer Prices Index is the value of the CPI published or determined with respect to the month of February which most recently precedes the Indexation Date (as defined in paragraph 7.3 below);
- the CPI all items table CHZQ will be used for all indexation.

7.2 For this Contract, Indexation will be considered and applied to:

- all Equipment Maintenance Category Unit Prices and the fixed Contract Price included in Annex 2 of this Part 2 of Schedule 4;
- Supplementary Works Prices, Labour Prices and Materiel Prices included in Annex 3 to this Part 2 of Schedule 4;
- the Service Failure Abatement value as set out in the table in paragraph 3.2.5 of Part 2 of Schedule 5;
- the Emergency Fault Abatement value as set out in the table in paragraph 3.3.2 of Part 2 of Schedule 5; and
- the Periodic Inspection Abatement value as set out in the table in paragraph 3.4.3 of Part 2 of Schedule 5.

7.3 The first Indexation will be considered by TfL to apply on the 1st of the month, twelve months after the date the final Out-Station Site has been Commissioned and Indexation will be considered on an annual basis thereafter on each anniversary of such date (the “**Indexation Date**”).

7.4 Example indexation dates:

- Current Year Consumer price Index – February 2016
- Base Consumer Price Index – February 2015
- Indexation Date – May 2016 (this is an example as the Indexation Date will be as stated in paragraph 7.3 above).

7.5 For purposes of the first indexation the final Out-Station Site commissioning, as stated at paragraph 7.3, will mean all Out-Station Sites excluding any that have been deferred in agreement with the Authority. The Authority’s agreement to defer any Out-Station Sites must be evidenced in writing.

ANNEX 2 EQUIPMENT MAINTENANCE CATEGORY UNIT PRICES

Equipment Maintenance Category Unit Prices

Table 1(i), Table 1(ii) and Table 1(iii) below provide unit cost per annum for maintenance for one way sites, two way sites and the Fixed Operational Charge for year one, year two and subsequent years of the contract.

The Fixed Operational Charge is set as if the In-Station location is as in 3.14.2 of the Specification.

Table 1(i) – Out-Station Equipment Maintenance Category Unit Prices

Equipment Maintenance Category (EMC)	Unit £ per annum at primary availability Target of 95%	Total £ per annum at alternative availability target of 85%
REDACTED	REDACTED	REDACTED

Table 1(ii) – Fixed Equipment Maintenance Category Unit Prices

Equipment Maintenance Category (EMC)		Unit £ per annum at primary availability Target of 85%
Fixed Operational Charge – Year 1	Back Office Equipment is located in Watford	REDACTED
Fixed Operational Charge – Year 2	Back Office Equipment is located in Watford	REDACTED
Fixed Operational Charge – Year 3 & onwards	Back Office Equipment is located in Watford	REDACTED

A breakdown of the costs that make up the prices stated in Table 1(i) and Table 1(ii) above in Table 1(iii) is below:

Table 1(iii) – Equipment Maintenance Category Unit Prices Breakdown

Description	Total £ per annum
Administration	REDACTED

Labour	REDACTED
Equipment	REDACTED
Project Management	REDACTED
Other Costs	REDACTED
Risk	REDACTED
Gross Profit	REDACTED

Note: Pricing as per letter communication from Redspeed International Ltd of 15 October 2014

ANNEX 3 SUPPLEMENTARY WORKS, LABOUR AND MATERIAL COSTS

Table 2 – Supplementary Works, Labour and Material Costs

SPECIAL MAINTENANCE	Unit Rate (£)
SLOT CUTTING:	REDACTED
Labour Daily Rate	REDACTED
Labour 1/2 Day Rate	
Abortive attempt to undertake slot cutting , e.g. due to parked cars, refusal by highway authority or police to allow work, etc	REDACTED
Note: 1 day= 8 hrs, 1/2 day= 4 hrs	

NB: For avoidance of doubt slot-cutting is defined as: "The provision of a two person team equipped to carry out sub-surface Detection Equipment repairs and connections to the Out-Station Site , including slot cutting and necessary civil engineering work together with temporary re-instatement and all temporary signing and traffic control measures, including the special signing required for High Speed Roads. The team shall be equipped to provide signing which complies with the code of practice, Safety at Street Works and Road Works. The provision of traffic management for up to 4 lane dual carriageway approach, including the supply, setting out, taking in, maintenance and lane changing throughout the day. The hours of work shall not include time during the peak traffic periods specified in Section 5.4.2.1 of the Specification when work shall not be permitted. The rate should include for all backfill, vehicle costs and supervision of the team."

SUPPLEMENTARY FEE CONSUMABLES:	Unit Rate (£)
This section details the consumable items that will be required to complete repairs and for maintenance activities such as re-painting secondary check marks that are not included in the Equipment Maintenance Category Unit Prices. Some rows below offer examples, but the final contents will depend on the technology applied under the proposed system.	
Cable/Detection Equipment	
Feeder Cable (2 pair) (per metre)	REDACTED
Feeder Cable (1 Pair) (per metre)	REDACTED
Loop Cable (per metre)	REDACTED
Other (Please Specify)	
Other (Please Specify)	
Armoured 3-core 6mm ² Mains Cable (per metre)	REDACTED
Armoured 3-core 10mm ² Mains Cable (per metre)	REDACTED
Other (Please Specify)	
Other (Please Specify)	
Joints	
Joint Kits (Small Re-usable loop to feeder)	REDACTED
Joint Kits (Large Re-usable loop to feeder)	REDACTED
Other (Please Specify)	
Other (Please Specify)	
Miscellaneous Activities	

Safety Camera Secondary Check Marks (including Traffic Management for roads with a speed limit of 30mph or less)	REDACTED
Safety Camera Secondary Check Marks (including Traffic Management for roads with a speed limit of above 30mph)	REDACTED
Other (Please Specify)	
Other (Please Specify)	
LABOUR RATES OUTSIDE OF FIXED UNIT RATE (including 3rd Party Damage Labour):	Unit Rate (£)
Senior Engineer (per hour)	REDACTED
Engineer (per hour)	REDACTED
Technician (per hour)	REDACTED
Other (Please Specify)	
Out of hours premium for the above (%)	REDACTED
Hiab (operator and vehicle) - Daily Rate	REDACTED
Hiab (operator and vehicle) - 1/2 Day Rate	REDACTED
Mobile Elevating Work Platform (Operator & Vehicle) Daily Rate	REDACTED
Mobile Elevating Work Platform (Operator & Vehicle) 1/2 Day Rate	REDACTED
Impact Protection Vehicle ("Crash Cushion" - Operator & Vehicle) Daily Rate	REDACTED
Impact Protection Vehicle ("Crash Cushion" - Operator & Vehicle) 1/2 Day Rate	REDACTED

Major Traffic Management

Any Major Traffic Management payment will be based on the cost of the Major Traffic Management plus a fixed percentage mark-up.

Table 3 – Major Traffic Management

Payment for Major Traffic Management		
Mark up	REDACTED	

ANNEX 4 PRICE BOOK

The price book tables below list out all individual components of the proposed Equipment and assign a unit price to each component. The profit margin built in to the unit price for each component is also displayed. From time to time the Authority may need to purchase additional component parts or a full system to satisfy the needs of the Authority.

A unit price for decommissioning / removal of an Out-Station and for additional software licences is confirmed below.

Table 4b – Price Book

REDACTED

ANNEX 5 FINANCIAL PERIOD CALENDARS

Financial Year	Start of Period 1	Start of Period 2	Start of Period 3	Start of Period 4	Start of Period 5	Start of Period 6	Start of Period 7	Start of Period 8	Start of Period 9	Start of Period 10	Start of Period 11	Start of Period 12	Start of Period 13
2014-15	01/04/2014	27/04/2014	25/05/2014	22/06/2014	20/07/2014	17/08/2014	14/09/2014	12/10/2014	09/11/2014	07/12/2014	04/01/2015	01/02/2015	01/03/2015
2015-16	01/04/2015	03/05/2015	31/05/2015	28/06/2015	26/07/2015	23/08/2015	20/09/2015	18/10/2015	15/11/2015	13/12/2015	10/01/2016	07/02/2016	06/03/2016
2016-17	01/04/2016	01/05/2016	29/05/2016	26/06/2016	24/07/2016	21/08/2016	18/09/2016	16/10/2016	13/11/2016	11/12/2016	08/01/2017	05/02/2017	05/03/2017
2017-18	01/04/2017	30/04/2017	28/05/2017	25/06/2017	23/07/2017	20/08/2017	17/09/2017	15/10/2017	12/11/2017	10/12/2017	07/01/2018	04/02/2018	04/03/2018
2018-19	01/04/2018	29/04/2018	27/05/2018	24/06/2018	22/07/2018	19/08/2018	16/09/2018	14/10/2018	11/11/2018	09/12/2018	06/01/2019	03/02/2019	03/03/2019
2019-20	01/04/2019	28/04/2019	26/05/2019	23/06/2019	21/07/2019	18/08/2019	15/09/2019	13/10/2019	10/11/2019	08/12/2019	05/01/2020	02/02/2020	01/03/2020
2020-21	01/04/2020	03/05/2020	31/05/2020	28/06/2020	26/07/2020	23/08/2020	20/09/2020	18/10/2020	15/11/2020	13/12/2020	10/01/2021	07/02/2021	07/03/2021
2021-22	01/04/2021	02/05/2021	30/05/2021	27/06/2021	25/07/2021	22/08/2021	19/09/2021	17/10/2021	14/11/2021	12/12/2021	09/01/2022	06/02/2022	06/03/2022
2022-23	01/04/2022	01/05/2022	29/05/2022	26/06/2022	24/07/2022	21/08/2022	18/09/2022	16/10/2022	13/11/2022	11/12/2022	08/01/2023	05/02/2023	05/03/2023
2023-24	01/04/2023	01/05/2023	28/05/2023	25/06/2023	23/07/2023	20/08/2023	17/09/2023	15/10/2023	12/11/2023	10/12/2023	07/01/2024	04/02/2024	03/03/2024

Part 3 - Availability

Explanatory Note:

Availability is a measure of the proportion of time that Equipment on an Out-Station Site is operating to Specification. Availability is a function of:

- the total time that the Equipment should be operating (Site Elapsed Time); and
- the time during which the Equipment is operating to specification (Available Time).

In practice, Available Time is determined from the time during which the Equipment is not operating due to Faults raised in SFM (Unavailable Time), hence:

$$\text{Availability} = \frac{(\text{Site Elapsed Time} - \text{Unavailable Time})}{\text{Site Elapsed Time}} \times 100\%$$

Site Elapsed Time, Unavailable Time, and hence Availability, are all calculated on a continuous 24 hours per day 7 days per week basis.

The impact of failures at locations with multiple Safety Cameras or at the In-Station are reflected by automatically raising Faults on each of the individual Safety Camera Out-Station Sites affected using Virtual Faults that are taken into account when calculating the Availability of each Site and the Equipment.

Availability can be measured for an individual Out-Station Site or for a number of Out-Station Sites together (for example, all of the Safety Camera Sites) and over a predetermined time period (for example, a Reporting Period).

Availability is measured from Fault Definitions and Repair Definitions properly selected in SFM and confirmed by the Authority in accordance with the conditions detailed in this Part 3.

8. Availability Calculation

- 8.1 The Availability of each Out-Station Site, for the purpose of the Minimum Site Availability SLI as in Annex A of Schedule 5, and Contract Availability, for the purposes of calculating the Financial Incentive (Bonus Payments or Availability Abatements) pursuant to paragraph 4 of Part 2 of this Schedule 4, will be calculated for each Reporting Period in accordance with the following paragraphs. Availability calculations are automatically completed by SFM following the end of each Reporting Period in accordance with paragraphs 8.8 and 8.9 of Part 3 of this Schedule 4.
- 8.2 The Minimum Site Availability and Contract Availability Result for the purposes outlined in paragraph 8.1 will be calculated on or after the third calendar day following the end of each Reporting Period on the basis of

Faults notified to the Contractor prior to the end of the Reporting Period. These Availability calculations will take account of Fault and Repair details entered in SFM within 2 (two) calendar days of the end of the Reporting Period provided these have been confirmed by the Authority.

- 8.3 The Availability calculations set out in paragraph 8.2 above will only include the following:

- 8.3.1 Faults confirmed before the end of the Reporting Period;
- 8.3.2 Faults that were not fully Cleared prior to the Start of the Reporting period; and
- 8.3.3 Repairs related to paragraphs 8.3.1 and 8.3.2 above entered within 2 (two) calendar days after the end of the Reporting Period.

For the avoidance of doubt, only unavailable time incurred up to the end of the Reporting Period will be included in the Availability calculations for that Reporting Period.

- 8.4 Where confirmed Faults are found to have "No Fault Found", or "Cancelled by FCC" or identified as "Erroneous Site" (as indicated by the relevant Repair being entered and confirmed in SFM) then, provided that the Repair is entered in SFM within 2 (two) calendar days of the end of the relevant Reporting Period, the Site to which the Fault applies will not be counted as Unavailable as a result of the Fault. If the Repair record is entered into SFM later than 2 (two) calendar days following the end of the relevant Reporting Period, the affected Site will be included up until the end of the Reporting Period and no retrospective calculation will be applied to Financial Incentives calculated for that Reporting Period.
- 8.5 It is the responsibility of the Contractor to ensure that Repair details are entered into SFM in a timely manner and that they accurately reflect the actions taken to correct each Fault, including requests for Exceptions in SFM in respect of Excusing Causes. The process for claiming Exceptions in respect of Excusing Causes through SFM is as set out in paragraph 9.6 of Part 3 of this Schedule 4 below.
- 8.6 It is the responsibility of the Authority to ensure that all Repairs entered into SFM within 2 (two) calendar days of the end of a Reporting Period are confirmed or rejected prior to the calculation of Availability under paragraph 8.2 above for the purposes of determining Financial Incentives.
- 8.7 The measure of Cosmetic Availability applies to all Out-Station Sites and is used as a SLI for the Equipment. For the avoidance of doubt, the Cosmetic Availability measure is not included in the calculation of Contract Availability. Cosmetic Availability does not affect the Contract Availability Result in a Reporting Period or the Minimum Site Availability measure used as a SLI.
- 8.8 Availability for each individual Site during a Reporting Period will be calculated as follows:

$$\text{Availability (per Out-Station Site)} = \frac{\text{Site Elapsed Time} - \text{Site Unavailable Time}}{\text{Site Elapsed Time}} \times 100\%$$

where:

8.8.1 Site Elapsed Time means the total time during the Reporting Period for which Equipment should be Available at that Site; and

8.8.2 Site Unavailable Time means the total time during which Equipment is Unavailable at that Site during the Reporting Period, but excluding Unavailable time where the Unavailability is not due to the fault of the Contractor as set out in paragraph 9 below.

8.9 Contract Availability during a Reporting Period will be calculated as follows:

$$\text{Contract Availability} = \frac{\sum (\text{Site Elapsed Time}) - \sum (\text{Site Unavailable Time})}{\sum (\text{Site Elapsed Time})} \times 100\%$$

where:

8.9.1 \sum (Site Elapsed Time) means the total time at all Sites during which Equipment should be Available at each of those Sites during the Reporting Period; and

8.9.2 \sum (Site Unavailable Time) means the sum of the times at each Site during which Equipment is Unavailable during the Reporting Period, but excluding Unavailable time where the Unavailability is not due to the fault of the Contractor as set out in paragraph 9 below.

9. General

9.1 Where Equipment which is Commissioned and Taken-Over or decommissioned during a Reporting Period, this will affect the Availability calculations set out in paragraph 8 above as follows:

9.1.1 the Site Elapsed Time for the Availability Category applicable to that item of Equipment will start from the time when the Equipment is Taken-Over;

9.1.2 the Site Elapsed Time for the item of Equipment will end at the time when the Equipment is decommissioned; and

9.1.3 when calculating the Site Unavailable Time will be calculated in line with paragraph 8.8 above.

9.2 For the purposes of calculating Availability pursuant to paragraph 8.2 above, the Fault is deemed to start affecting Availability when it is confirmed in SFM by the Authority and ends when a Repair Definition that fully clears the Fault

is selected in SFM provided that this Repair Definition entry is also confirmed by the Authority. Each confirmed Repair Definition will be deemed to take effect from the time when it was entered in SFM.

9.3 Repair Definitions and Fault Definitions are held in SFM. An indicative list of Fault Definitions and their effect on Availability used by SFM as the basis for calculating Availability as at the date of this Contract is set out at Annex 6. These will be reviewed during Mobilisation to ensure the Fault Definitions therein are relevant to the operation of the Contractor's system. The effect of a Repair on Availability can be modified by users at the point of data entry.

9.4 If the Authority wishes to propose a change to any of the Fault Definitions and/or Repair Definitions in SFM and/or to propose new descriptions, the following process will be followed (and the Change Control Procedure will not apply):

9.4.1 the Authority will notify the Contractor of its proposed changes;

9.4.2 the Contractor will have 10 (ten) calendar days from notification of the proposed changes under paragraph 9.4.1 above to raise queries and objections regarding the proposed changes; and

9.4.3 during the 10 (ten) calendar day period set out in paragraph 9.4.2 above, the Authority and the Contractor will use their reasonable endeavours to try to agree the proposed changes. If the Parties are unable to agree the proposed changes within such 10 (ten) calendar day period, then the dispute will be referred to the Dispute Resolution Process.

The Contractor may propose changes to Fault Definitions and Repair Definitions in SFM or to propose new descriptions from time to time which the Authority will consider reasonably but will not be bound to accept.

9.5 Following agreement of proposed changes pursuant to the process set out in paragraphs 9.4.1-9.4.3 (inclusive) above or final resolution pursuant to the Dispute Resolution Procedure, the agreed changes will be implemented. Changes to Fault Definitions or Repair Definitions will be implemented in such a way that they have no impact on historical Performance Measures. The Authority will maintain and manage an audit trail for all such changes to Fault Definitions and Repair Definitions used in SFM in calculating Availability.

9.6 The Contractor may request an Exception in SFM related to the Fault, specifying:

9.6.1 an Excusing Cause or any other reason that the Authority agrees to accept;

9.6.2 an expected end date and time ("Lift" date and time).

Acceptance of the Excusing Cause or other reason is required from the Authority and is signified by confirmation of the requested Exception entered in SFM.

Exceptions are raised against an individual Fault and, for the avoidance of doubt, it is not necessary for the Contractor to apply for relief, as specified in Clause 32, to request an Exception. However, in order to claim an Exception in respect of the failure of a Third Party, the Contractor must comply with the Exception Rules for Third Party Suppliers as detailed in Clause 32.8.

9.7 The period of time for which a confirmed Exception applies starts from the time when the Exception is entered into SFM and ends:

9.7.1 when the Lift date, entered as described in paragraph 9.6 above, is automatically applied by SFM; or

9.7.2 on the date and time the Exception is manually Lifted in SFM; or
when a Clear relating to the excepted Fault is confirmed by the Authority.

9.8 The period of time for which a confirmed Exception applies will be deducted from the Unavailable time calculated for the Fault.

9.9 At the end of the Exception, Unavailable time will once again be calculated in respect of the Site affected immediately prior to the Exception being entered into SFM. It is the responsibility of the Contractor to ensure that the Fault is dealt with appropriately after the Exception has been Lifted.

9.10 In the event that any Faults on a Site overlap in time, the overlapping portion will only be counted once for the purposes of calculating Availability.

9.11 If, at the time of a Planned Event, a Site is affected by a Fault, Availability will continue to be affected adversely until the Fault is rectified or an Excusing Cause is raised and confirmed by the Authority.

9.12 The Contractor may raise queries regarding Availability records at each Contract progress meeting provided that these queries relate to unresolved issues raised under the provisions of Clause 13 (Charges and Payment). If the Contractor does not raise any queries relating to Availability records at a Contract progress meeting, the Contractor will be deemed to have accepted the records for the preceding Reporting Periods.

10. **Availability Category Functional Requirements**

10.1 Cosmetic Availability applies to all Safety Camera on-street Sites. Faults affecting Cosmetic Availability are raised in respect of Cosmetic Damage.

10.2 There is one further availability category applicable to Safety Camera on-street Sites and the requirements set out below will apply as determined by the Fault Definitions and Repair Definitions issued by SFM.

Availability Category	Requirement
Enforceable	<ul style="list-style-type: none"> • Detection equipment fully functional, including interface with third-party equipment (where applicable). • Secondary Check Marks (where applicable) in suitable condition. • Capture evidence of offences in line with MPS requirements. • Out-Station Site Able to communicate with In-Station. • Successfully transmit usable evidence to MPS in format required by MPS. • Site has mains power or failure has been reported to relevant Electricity Transmission Providers.

In addition, if there is not a valid inspection certificate for a Site, all availability categories applicable to the Site will be considered Unavailable and a corresponding Fault will be raised in SFM.

ANNEX 6 INDICATIVE LIST OF SFM FAULT DEFINITIONS AND THEIR EFFECT ON AVAILABILITY CATEGORIES

Fault Definition	Enforceable
RECUT RED LIGHT CAMERA DETECTOR	OUT
REPAIR RED LIGHT CAMERA DETECTOR	OUT
DAMAGED PIT COVER	OUT
PREVENTATIVE MAINTENANCE - ITEMS TO REPLACE IN TEXT	-
POOR REINSTATEMENT	OUT
NO OUTPUT FROM RED LIGHT CAMERA DETECTOR	OUT
PERMANENT OUTPUT FROM RED LIGHT CAMERA DETECTOR	OUT
INTERMITTENT OUTPUT FROM RED LIGHT CAMERA DETECTOR	OUT
RECONNECT AND CHECK RED LIGHT CAMERA DETECTOR	OUT
LATE PLANNED INSPECTION	OUT
FAULT AS TEXT	OUT
SAFETY CAMERA OUT OF ALIGNMENT	OUT
SAFETY CAMERA FLASH UNIT FAILURE	OUT
SAFETY CAMERA FLASHING ON GREEN	OUT
SAFETY CAMERA MIMICS UNSPECIFIED FAILURE	OUT
SAFETY CAMERA MIMICS OUT OF SYNC	OUT
NO ELECTRICITY SUPPLY	OUT
EARTH LOOP IMPEDANCE FAULT	OUT
ELECTRICITY SUPPLY REPORTED, OTHER PEOPLES RESPONSIBILITY	OUT
DAMAGED SAFETY CAMERA EQUIPMENT	OUT
VANDAL DAMAGED SAFETY CAMERA EQUIPMENT	OUT
SAFETY CAMERA FAULTY / MISSING SECONDARY CHECK MARKINGS	OUT
RTA DAMAGED SAFETY CAMERA EQUIPMENT	OUT
RED LIGHT CAMERA CALIBRATION REQUIRED	OUT
SPEED CAMERA CALIBRATION REQUIRED	OUT
SAFETY CAMERA TEAM INVESTIGATING COMPLEX FAULT	-
REMOVE/DECOMMISSION SAFETY CAMERA	-
REINSTATE/REPAIR SAFETY CAMERA	OUT
STOP LINE FADED OR WORN	OUT
SITE UNSPECIFIED FAILURE	OUT
DIGITAL SPEED CAMERA DETECTION FAULT	OUT
NO DATA WRITTEN TO DVD, NO OFFENCES BEING RECORDED	OUT
UNSPECIFIED FAULT, SITE OUT OF SERVICE (DETAILS IN TEXT)	OUT

Fault Definition	Enforceable
PROCESSOR UNSPECIFIED FAILURE	OUT
HEARTBEAT FAILURE	OUT
REMOTE LINK FAILURE	OUT
PROCESSOR NO POWER	OUT
FLASH CARD/LED FAILURE	OUT
UNPROCESSED FLASH CARD COMMAND	OUT
FLASH UNSPECIFIED FAILURE	OUT
FLASH (ZOOM WIDE 1/2 AS TEXT)	OUT
FLASH (INTERMITTENT AS TEXT)	OUT
IMAGE UNSPECIFIED FAILURE	OUT
IMAGE NOT IN FOCUS	OUT
IMAGE (ZOOM IN/OUT AS TEXT)	OUT
IMAGE (NEEDS REPOSITIONING)	OUT
NO DATA WRITTEN TO DVD	OUT
NO OFFENCES RECORDED	OUT
DISC DRAWER OPEN	OUT
SITE IN MAINTENANCE MODE	OUT
UNABLE TO CONTACT SITE	OUT
INVESTIGATION BY TECH SUPPORT REQUIRED	-
SITE MEETING REQUEST - DETAILS IN TEXT	-
STREET FURNITURE OBSCURED BY FOLIAGE REPORTED TO HIGHWAY AUTHORITY	-
INVESTIGATION BY FCC SAFETY CAMERA TEAM REQUIRED	-
SUPPLEMENTARY WORKS REQUIRED - DETAILS IN TEXT	-
INVESTIGATION REQUIRED - DETAILS IN TEXT	-
DUCT / PITS REQUIRED	-
STREETWORKS DEFECT - DETAILS IN TEXT	-
INVESTIGATION BY DATA MANAGEMENT REQUIRED	-
REMOVE OBSOLETE / REDUNDANT EQUIPMENT	-
VERMIN INFESTATION	OUT
GRAFFITI REMOVAL REQUIRED	-
GRAFFITI REMOVAL URGENTLY	-
SITE ENGINEER LOGGED ON	-
FAULT REPORTED BY LTCC	-
SAFETY CAMERA FAULT	OUT
MAINTENANCE CONTRACTOR INVITED TO WITNESS COMMISSIONING	-

Part 4 – Early Termination

11. Early Termination

11.1 The table below states the costs that would become payable to the Contractor should the Authority terminate the Contract without cause in line with Clause 27.3.1.

TABLE 1 – EARLY TERMINATION FEE

Year	Description of cost elements	Cost elements (£)	Total (£)
2014/15	Amounts due for works completed and work in progress on project up to a maximum of:		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
2015/16	Amounts due for works completed and work in progress on project up to a maximum of:		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
2016/17	Lost profit (based on 6 months of service)		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 3 weeks labour cost)		
2017/18	Lost profit (based on 6 months of service)		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 6 weeks labour cost)		
2018/19	Lost profit (based on 6 months of service)		

	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 9 weeks labour cost)		
2019/20	Lost profit (based on 6 months of service)		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 12 weeks labour cost)		
2020/21	Lost profit (based on 6 months of service)		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 15 weeks labour cost)		
2021/22	Lost profit (based on 6 months of service)		N/A
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 18 weeks labour cost)		
2022/23	Lost profit (based on 6 months of service)		NA
	Break costs as incurred (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 21 weeks labour cost)		

2023/24	Lost profit (based on 6 months of service)		NA
	Break costs (estimated at 7.5% of annual charge)		
	Unrecovered service set-up costs		
	Redundancy costs as incurred (estimated at 24 weeks labour cost)		
2024/25	NIL	NIL	NA

RISK REGISTER

12. Risk Register

12.1 The table below states the total amount of risk and the breakdown of that cost.

12.2 This Risk Register corresponds to Module Gb – Project Delivery.

TABLE 2 – RISK REGISTER

Risk	Mitigation	Probability (A)	Impact (B)	Score (A x B)	Risk Price £
Instation Capacity / Integration					
DFBO Collaboration					
Lighting Solution					
Road Safety Assessment					
Road Layout Changes					

SCHEDULE 5

Performance Measures, Service Failure Points and Abatements

Part 1 – Performance Measures

1. Performance Measures

1.1 In this Schedule 5, the following words will have the following meanings save to the extent the context otherwise requires:

“Performance Measures” has the meaning set out in paragraph 1.2 below;

“Service Failure Point” or “SFP” means the points issued by the Authority for failure to meet the Service Level Indicators as provided for in Annex A to this Schedule 5; and

“Warning Notice” means a notice issued by the Authority pursuant to paragraphs 5 and 6 of this Schedule 5 if a specified value of Abatements applies in any Reporting Period, being respectively the “Threshold one Warning Notice” and “Threshold two Warning Notice”.

1.2 The Contractor will perform the Services in accordance with:

- the Availability Targets;
- the Service Level Indicators (SLIs);
- the Response Times for Emergency Faults;
- the timescales for Periodic Inspection;
- registration under the Contractor’s Health and Safety Assessment Scheme or equivalent; and
- retention of Home Office Type Approval,

(together **“Performance Measures”**).

1.3 If the Contractor fails to meet any of the Performance Measures and unless a Relief Event or Excusing Cause applies or this is due to a Force Majeure Event then:

1.3.1 Availability Abatements may become due to the Authority as calculated pursuant to paragraph 4 of Part 2 of Schedule 4;

1.3.2 Service Failure Points will be issued pursuant to paragraph 2 of Part 2 of this Schedule 5; and

1.3.3 the Periodic Service Abatement may be applied as calculated pursuant to paragraph 3 of Part 2 of this Schedule 5.

Part 2 – Service Failure Points and Abatements

2. Service Failure Points (SFPs)

- 2.1 The Contractor's performance against the Performance Measures will be measured at the end of each Reporting Period. SFPs will be issued at the end of each Reporting Period where the Contractor's performance does not meet the required service levels. Note that some SLIs are measured over more than one Reporting Period. SFPs for failure to meet Availability Targets are calculated automatically by SFM at the end of each Reporting Period.
- 2.2 SFPs are issued for failure to meet the Performance Measures over the measurement period in line with the SLI Table in Annex A to this Schedule 5.

3. Periodic Service Abatement

- 3.1 In addition to the Financial Incentive set out in paragraph 4 of Part 2 of Schedule 4 (which may have an Abatement value or a Bonus value), in any Reporting Period, further Abatements may be due from the Contractor to the Authority. These Abatements form the Periodic Service Abatement, as follows:

$$\begin{array}{ccccccccc} \text{Periodic Service} & & & & & & & & \\ \text{Abatement (£)} & = & & & & & & & \\ & & \text{Total} & & \text{Total} & & \text{Total} & & \text{Health \& Safety} & & \text{HOTA} \\ & & \text{Service} & & \text{Emergency} & & \text{Periodic} & & \text{Abatement} & & \text{Abatement} \\ & & \text{Failure} & + & \text{Fault} & + & \text{Inspection} & + & & + & \\ & & \text{Abatement} & & \text{Abatement} & & \text{Abatement} & & \text{Abatement} & & \text{Abatement} \\ & & \text{(£)} & & \text{(£)} & & \text{(£)} & & \text{(£)} & & \text{(£)} \end{array}$$

where:

- Total Service Failure Abatement;
- Total Emergency Fault Abatement;
- Total Periodic Inspection Abatement;
- Health & Safety Abatement; and
- HOTA Abatement

are as calculated in paragraphs 3.2 to 3.6 of Part 2 of this Schedule 5; and

- the Periodic Service Abatement is applied in accordance with paragraph 2 of Part 2 of Schedule 4.

3.2 Service Failure Abatements (SFAs)

- 3.2.1 SFAs will apply if the total SFPs resulting from SLIs in respect of a Reporting Period exceed the following levels:

SFPs per Reporting Period	Number of SFAs
Up to 5	nil
6	1
Every additional 2	1

- 3.2.2 SFPs and SFAs will be calculated by the Authority on a daily basis in SFM and the results will be available to the Contractor.
- 3.2.3 SFAs resulting from SFPs will not be applied for the first three (3) Reporting Periods of the Contract. However, SFPs for some SLIs may accrue from the Contract Commencement Date.
- 3.2.4 The final SFP and SFA totals for each Reporting Period will be included in the SFM Reporting Period end reports.
- 3.2.5 The Total Service Failure Abatement is:

$$\text{Total Service Failure Abatement (£)} = \frac{\text{number of SFAs for SLIs}}{\text{}} \times \text{Service Failure Abatement value (£)}$$

where:

- 3.2.5.1 The Number of SFAs in respect of SLIs is calculated in accordance with paragraph 3.2.1 of this Schedule 5; and
- 3.2.5.2 The value of each SFA is as follows:

SFA Value
REDACTED

and is indexed in accordance with paragraph 7 of Part 2 of Schedule 4.

3.3 Emergency Fault Abatements (EFAs)

- 3.3.1 If the Contractor fails to make safe an Emergency Fault and report to SFM within the required make safe time of 2.5 hours (two and one half hours) an Abatement will be due.
- 3.3.2 The amount due to the Authority in respect of each such failure will be calculated as follows:

$$\text{Emergency Fault Abatement (£)} = \frac{\text{Emergency Abatement Unit Rate}}{\text{Rate}} \times \text{Emergency Response Multiplier}$$

where:

3.3.2.1 Emergency Abatement Unit Rate is as follows:

Emergency Abatement Unit Rate Value
REDACTED

and is indexed in accordance with paragraph 7 of Part 2 of Schedule 4; and

3.3.2.2 Emergency Response Multiplier means the appropriate multiplier set out in column 2 of the following table:

Hours exceeding appropriate Required Make Safe Time for Emergency Faults	Emergency Response Multiplier
up to and equal to 1 hour	1
greater than 1 hour and up to and equal to 2 hours	2
greater than 2 hours	3

3.3.3 The Total Emergency Fault Abatement for each Reporting Period will be the total of the individual Emergency Fault Abatements (if any) incurred by the Contractor in such Reporting Period.

3.3.4 If a failure to meet the Required Make Safe Time covers more than one Reporting Period, any Abatement will be calculated and reported in the Reporting Period in which the Fault is finally cleared.

3.4 Periodic Inspection (PI) Abatement

3.4.1 If the Contractor fails to carry out annual PI works within the inspection window as set out in paragraph 5.4.1.3 of the Maintenance Services section of the Specification, either by completing the PI before the window beings (early) or after the window ends (late), SFM will automatically apply an Abatement.

3.4.2 The PI Abatement will be due for the Reporting Period that SFM notes the failure and subsequent Reporting Periods where the PI remains outstanding (where the inspection is late).

3.4.3 The Total Periodic Inspection Abatement for each Reporting Period is:

$$\begin{array}{ccccc} \text{Total Periodic} & & \text{number of PIs} & & \text{Periodic} \\ \text{Inspection} & = & \text{Abatements} & \times & \text{Inspection} \\ \text{Abatement(£)} & & \text{incurred} & & \text{Abatement} \\ & & & & \text{value (£)} \end{array}$$

where:

3.4.3.1 number of PIs Abatements incurred is as reported by SFM; and

3.4.3.2 The value of each PI Abatement is as follows:

PI Abatement Value
REDACTED

and is indexed in accordance with paragraph 7 of Part 2 of Schedule 4.

3.4.4 For the avoidance of doubt, a PI Abatement will apply in addition to the Availability impact of the fault raised for the missed inspection window.

3.5 Health and Safety (H&S) Abatement

3.5.1 If the Contractor fails to retain Contractor's Health and Safety Assessment Scheme (CHAS) registration, or equivalent, an Abatement will be due.

3.5.2 Failure to retain CHAS registration, or equivalent, will be assessed by failure of the Contractor to demonstrate continued registration three months from the issue date of an annual audit report.

3.5.3 The value of the Abatement applied in each Reporting Period which registration remains lapsed as follows:

Period after CHAS Registration (or equivalent) has lapsed	H&S Abatement as percentage of RMP		
		-----	-----
First three (3) Reporting Periods	5 (five)%	-----	-----

Subsequent Reporting Periods	15 (fifteen) %	-----	-----
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3.6 Home Office Type Approval (HOTA) Abatement

3.6.1 Any loss of type approval for the Equipment will mean an Abatement is due.

3.6.2 The HOTA Abatement will be applied in each Reporting Period for which type approval remains missing as follows:

Loss of Home Office Type Approval (HOTA)	HOTA Abatement as percentage of RMP
Every Reporting Period approval is missing	25 (twenty-five)%

Part 3 – Abatement Thresholds & Remedies

4. Abatement Thresholds

- 4.1 If the value of the Total Periodic Abatement in any one Reporting Period is equal to, or greater than, the following threshold percentages of the Regular Maintenance Payment due in the same Reporting Period, then without prejudice to the Authority's other rights and remedies including the right to receive Abatements under paragraph 3 of Part 2 of this Schedule 5 and paragraph 4 of Part 2 of Schedule 4, the Authority will have a right impose the appropriate remedy outline in the table below and detailed in paragraphs 5, 6 and 7 of Part 3 of this Schedule 5:

Threshold	Percentage Trigger	Remedy
one	10%	<ul style="list-style-type: none">• Issue Warning Notices to the Contractor.• Require written notification from the Contractor of corrective action.
two	15%	<ul style="list-style-type: none">• Issue Warning Notices to the Contractor.• Require the Contractor to prepare and execute Improvement Programme to restore service to acceptable.
three	25%	<ul style="list-style-type: none">• Terminate the Contract for Contractor default.

where:

Total Periodic Abatement is the sum of:

- Financial Incentive as calculated in paragraph 4 of Part 2 of Schedule 4 where this is an Abatement; and
- the Periodic Service Abatement as defined in paragraph 3 of this Schedule 5 and as applicable for that Reporting Period.

- 4.2 For the avoidance of doubt, the Authority will be entitled to exercise any remedy provided the relevant threshold trigger has been reached. It is not necessary for the Authority to have applied a lower level remedy before applying a higher level remedy or, in particular but without limitation, to have issued any Warning Notices prior to the right to terminate the Contract arising. Further, the right to exercise a remedy will arise once the relevant

threshold trigger is reached and it is not necessary for the Authority to wait until the end of a Reporting Period.

5. Threshold One Remedies

5.1 If threshold one is triggered in any Reporting Period, the Authority will have the right to serve a written Warning Notice on the Contractor (Threshold one Warning Notice), setting out details of the performance measures which have been breached, clearly indicating that it is a “Threshold one Warning Notice” and containing a reminder to the Contractor of the implications of such Warning Notice.

5.2 The Contractor will, within 5 (five) Working Days of such Warning Notice, provide in writing to the Authority the corrective action it proposes to take to achieve future compliance with the relevant performance measure(s).

5.2.1 The proposed action will be considered at the Contract review meeting for the Reporting Period in which the threshold was triggered or at another appropriate meeting arranged between the Authority and the Contractor.

5.2.2 The Authority will provide written approval of the proposed corrective action or other alternative action as will be agreed (such approval not to be unreasonably withheld or delayed).

5.2.3 If the Authority reasonably notifies the Contractor that it is withholding its approval identifying its concerns and reasons for so doing, the Contractor will, within a further 5 (five) Working Days of such Warning Notice, provide the Authority with revised proposed corrective action identifying how the concerns and reasons given by the Authority have been addressed. Such approval will be provided in writing and not to be unreasonably withheld or delayed.

5.2.4 The Contractor will start the corrective action (original or revised) following approval by the Authority and will submit a report to the Authority within seven (7) calendar days of the end of the following Reporting Period evidencing how the corrective action has been implemented and summarising the results achieved.

5.2.5 The Contractor will continue to submit reports within seven (7) calendar days of the end of each subsequent Reporting Period until either the Total Periodic Abatement has been below the threshold one trigger percentage for two consecutive Reporting Periods and/or CHAS Registration, or equivalent, is regained, at which point the Threshold one Warning Notice will expire.

5.2.6 The Authority will have the right to invoke threshold two remedies in accordance with paragraph 6 below, even though the threshold two percentage may not have been exceeded, if:

5.2.6.1 the Authority reasonably withholds its approval to any revised corrective action; or

5.2.6.2 following written approval by the Authority of a corrective action (including any alternative or revised corrective action), the Contractor fails, within 28 (twenty-eight) calendar days, to implement such corrective action; or

5.2.6.3 the Threshold one Warning Notice has not expired, as defined in paragraph 5.2.5 above, within four Reporting Periods of the Reporting Period in which it was issued.

6. Threshold Two Remedies

6.1 If threshold two is triggered in any Reporting Period or if threshold two remedies are invoked in accordance with paragraph 5.2.6 above, the Authority will have the right to serve a written Threshold two Warning Notice on the Contractor. The Warning Notice will set out details of the performance measures which have been breached, clearly indicate that it is a Threshold two Warning Notice and contain a reminder to the Contractor of the implications of such Warning Notice.

6.2 The Contractor will, within 5 (five) Working Days of such Warning Notice, provide in writing to the Authority an improvement programme to achieve future compliance with the relevant performance measure(s). This will include detailed costings and resource allocation for each element of the proposed programme for the written approval of the Authority. Where the Threshold two Warning Notice is in respect of performance measures, for which the Contractor has already received a Warning Notice in the previous 12 months, the Contractor will ensure that their improvement programme proposes specific revised or new measures to improve performance in such areas.

6.2.1 The proposed improvement programme will be considered at the Contract review meeting for the Reporting Period in which the threshold was triggered or at another appropriate meeting arranged between the Authority and the Contractor.

6.2.2 The Authority will provide written approval of the proposed improvement programme or other alternative action as will be agreed (such approval not to be unreasonably withheld or delayed).

6.2.3 If the Authority reasonably notifies the Contractor that it is withholding its approval identifying its concerns and reasons for so doing, the Contractor will, within a further 5 (five) Working Days of such Warning Notice, provide a revised proposed improvement programme, identifying how the concerns and reasons given by the Authority have been addressed, to the Authority for approval. Such approval will be provided in writing and not to be unreasonably withheld or delayed.

6.2.4 Written authorisation of the approved improvement programme will be provided to the Authority by the current holder of the position held by the person who signed the Contract on behalf of the

Contractor or, if the position no longer exists, by an officer of similar standing within the Contractor's current organisation.

- 6.2.5 The Contractor will commence the improvement programme (original or revised) following approval by the Authority and will submit a report to the Authority within seven (7) calendar days of the end of the following Reporting Period evidencing how the improvement programme has been implemented, progress against the programme and the results achieved.
- 6.2.6 The Contractor will continue to submit reports within seven (7) calendar days of the end of each Reporting Period evidencing progress against the programme and the results achieved until the improvement programme is completed and the Total Periodic Abatement has been below the threshold one trigger percentage for two consecutive Reporting Periods and/or CHAS Registration, or equivalent, is regained, at which point the Threshold two Warning Notice will expire.
- 6.2.7 For the duration of the Threshold two Warning Notice, the Authority will be entitled to become actively involved in the supervision, management and execution of the improvement programme. The Authority may also require the Contractor to provide interim written progress summaries in addition to the Reporting Period end reports.
- 6.2.8 The Authority will have the right to invoke threshold three remedies in accordance with paragraph 7 below, even though the threshold three percentage may not have been exceeded, if:
 - 6.2.8.1 following written approval by the Authority of a corrective action (including any alternative or revised corrective action), the Contractor fails, within 42 (forty-two) calendar days, to implement such corrective action; or
 - 6.2.8.2 the Total Periodic Abatement, as defined in paragraph 4 of Part 3 of this Schedule 5, is equal to or exceeds the threshold two trigger percentage for five out of any consecutive six Reporting Periods; or
 - 6.2.8.3 CHAS Registration, or equivalent, remains incomplete for five out of any consecutive six Reporting Periods.

7. Threshold Three Remedies

- 7.1 If threshold three is triggered in any Reporting Period or if threshold three measures are invoked in accordance with paragraph 6.2.8 above, the Authority will have the right to terminate this Contract with immediate effect in accordance with Clause 27.1.6 by serving written notice on the Contractor.

ANNEX A – Service Level Indicators (SLIs)

							Applicable Service Level Indicator for each Contract Year				
SLI	Outcome to be achieved	Service Level Indicator	Unit of measurement	Measurement period	SFP Allocation	Evidence	2014 -15	2015 - 16	2016 - 17	2017 - 18	Post April 2018
Theme:											
Cosmetic											
1	Cosmetic faults are resolved in a timely manner. The Authority's clients and stakeholders can visibly see that items are well maintained.	No Cosmetic Fault or Fault without Availability Categories affected is unresolved for more than number of weeks indicated.	Number of Cosmetic or Non-Availability affecting faults cleared	1 Reporting Period	1 SFP for each fault exceeding Service Level Indicator	SFM Report	8	8	8	8	8
2	All Equipment maintained in a state of good repair with no cosmetic defects. The Authority's clients and stakeholders can visibly see that Equipment is well maintained.	Cosmetic Availability for the Equipment should not be less than the percentage shown.	Lowest percentage of Equipment Cosmetic Availability	3 Reporting Periods	1 SFP for breaching Service Level Indicator	SFM Report	60	65	70	75	75

							Applicable Service Level Indicator for each Contract Year				
SLI	Outcome to be achieved	Service Level Indicator	Unit of measurement	Measurement period	SFP Allocation	Evidence	2014 -15	2015 - 16	2016 - 17	2017 - 18	Post April 2018
Theme:											
Safety to General Public											
3	Reducing incidents involving the general public at Sites, where the Contractor is undertaking Services.	Number of claims for compensation received by the Authority, where it is reasonably judged that the Contractor is liable.	Number	3 Reporting Periods	1 SFP for each incident over the Service Level Indicator	Minutes of Maintenance meeting	0	0	0	0	0
Theme:											
Site Data Quality											
4	Ensure all the site specific risks for each work place are known before personnel attend Site. Hazard Registers are correctly maintained. Relevant information is entered in the Hazard Register on Site Commissioning.	Following a Site inspection by the Authority, a hazard is found that should have been identified by the Contractor but is not recorded in the Hazard Register updated by the Contractor.	Number of omissions	1 Reporting Period	1 SFP for exceeding the Service Level Indicator Plus 1 SFP for each additional failure	Inspection Reports	1	0	0	0	0

							Applicable Service Level Indicator for each Contract Year				
SLI	Outcome to be achieved	Service Level Indicator	Unit of measurement	Measurement period	SFP Allocation	Evidence	2014 -15	2015 - 16	2016 - 17	2017 - 18	Post April 2018
5	To ensure that the Authority always receives accurate Site status information.	Number of Sites inspected where the Site status and/or log book entry does not match the information given to the Authority.	Number	1 Reporting Period	1 SFP for exceeding the Service Level Indicator. Plus 1 SFP for each additional 2 failures	Inspection reports	3	2	1	1	1
Theme:											
Asset Condition											
6	Sites should be fully Commissioned on the agreed Commissioning Date with all Equipment and connections ready for takeover. All associated works should be completed, with the exception of those delayed due to Third Party Suppliers.	Percentage of Take-Over Certificates issued with Snagging items, where the item Snagged is the responsibility of the Contractor.	Percentage	3 Reporting Periods	1 SFP for exceeding the Service Level Indicator	SFM Report	15	10	7	7	7

							Applicable Service Level Indicator for each Contract Year				
SLI	Outcome to be achieved	Service Level Indicator	Unit of measurement	Measurement period	SFP Allocation	Evidence	2014 -15	2015 - 16	2016 - 17	2017 - 18	Post April 2018
7	Site information is kept up-to-date following Periodic Inspections	Number of Periodic Inspections where the completed Periodic Inspection report is not input into SFM within 14 calendar days of the inspection.	Number	3 Reporting Periods	1 SFP for exceeding the Service Level Indicator Plus 1 SFP for each additional 5 failures	SFM Report	5	5	4	3	2
Theme:											
Evidence provided to Metropolitan Police Service (MPS)											
8	Offence "evidence packs" are available to MPS	Failure to provide evidence data to MPS on any day where evidence data exist.	Days	1 Reporting Period	1 SFP for exceeding Service Level Indicator	Report from MPS of no data uploaded for whole system	0	0	0	0	0
9	"Evidence packs" fit for MSP purpose	Percentage of evidence packs in a Reporting Period that are not deemed usable by MPS that are attributed to the Contractor, Contractor Personnel or the Equipment.	Percentage	1 Reporting Period (2 periods in arrears)	1 SFP for exceeding Service Level Indicator	Report of failed "evidence packs" from MPs	1	1	1	1	1

							Applicable Service Level Indicator for each Contract Year				
SLI	Outcome to be achieved	Service Level Indicator	Unit of measurement	Measurement period	SFP Allocation	Evidence	2014 -15	2015 - 16	2016 - 17	2017 - 18	Post April 2018
Theme:											
Minimum Site Availability											
10	The Availability of individual Sites should not fall below minimum acceptable levels.	Out-Station Sites where the Site Availability result at the end of the Reporting Period falls below a minimum of 60%.	Number	1 Reporting Period	1 SFP per site above SLI level	SFM Report	2	1	0	0	0

SCHEDULE 6

Change Control and Contract Variation

1. Principles

- 1.1 Both parties will conduct all discussions relating to proposed changes to this Contract in good faith.
- 1.2 The Contractor will use its reasonable endeavours to suggest changes from time to time that would result in a benefit to the Authority.
- 1.3 Until such time as a Contract Change Note (“**CCN**”) (in the form of the pro forma set out in the Appendix to this Schedule) has been signed by both parties, the Contractor will continue to fully perform its obligations in accordance with this Contract in all respects.
- 1.4 Any work undertaken in connection with any proposed change to this Contract by the Contractor or the Contractor Personnel (other than that which has previously been agreed as evidenced by a CCN in accordance with the provisions of paragraph 1.3 above) will be undertaken entirely at the expense and liability of the Contractor.
- 1.5 Any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed change to this Contract, including but not limited to the submission of any written communications, prior to the signing by both Parties of the relevant CCN, will be without prejudice to the rights of either Party.
- 1.6 The Contractor will not make any charge for investigating a proposed change to this Contract or producing an Impact Assessment in accordance with paragraph 2.7.

2. Change Proposed by the Authority

- 2.1 The Authority will be entitled to request a change in accordance with this paragraph 2. In relation to such requested change, unless and until a written CCN has been executed by the authorised representative of the Authority in accordance with the provisions of this paragraph 2, the Contractor will, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the existing terms of this Contract.
- 2.2 If the Authority wishes to request a change, it will serve on the Contractor a Change Control Request setting out:
 - 2.2.1 the Authority’s reasons for proposing the change;
 - 2.2.2 sufficient details of the change to enable the Contractor to provide an Impact Assessment in accordance with paragraph 2.7;

- 2.2.3 the date by which the Authority wishes the change to be implemented (“**CCN Effective Date**”); and
 - 2.2.4 any dates by which a decision or response is critical.
- 2.3 As soon as reasonably practicable and in any event within the periods set out below the Contractor will either deliver to the Authority:
 - 2.3.1 an Impact Assessment in accordance with paragraph 2.7 within twenty (20) Working Days of receipt of the Change Control Request, or
 - 2.3.2 subject to paragraph 2.4, a notice setting out in detail the grounds on which the Contractor objects to the proposed change (an “**Objection Notice**”).
- 2.4 The Contractor will only be entitled to object to a Change Control Request relating to a change to the extent it can demonstrate to the Authority’s reasonable satisfaction that the change would, if implemented, contravene any Applicable Law.
- 2.5 Objections will be dealt with as follows:
 - 2.5.1 if the Authority disagrees with the objections raised by the Contractor in the Objection Notice, the Contractor and the Authority will meet with a view to establishing whether the Contractor’s objections are valid;
 - 2.5.2 if, within ten (10) Working Days of receipt by the Authority of any Objection Notice, the validity or otherwise of the Contractor’s objections remain to be agreed, the question of validity will be referred to the Dispute Resolution Procedure; and
 - 2.5.3 if the Authority agrees with the objections in the Objection Notice and this is notified to the Contractor in writing, or it is determined by the Dispute Resolution Procedure that the objections in the Objection Notice are valid, the relevant Change Control Request will be deemed to be withdrawn.
- 2.6 If, following receipt of an Objection Notice, it is agreed in writing by the Parties or determined by the Dispute Resolution Procedure that the objections in an Objection Notice are not valid the Contractor will deliver to the Authority an Impact Assessment in accordance with paragraph 2.7 within twenty (20) Working Days, of the date of such agreement or determination.
- 2.7 The Impact Assessment will include the following:
 - 2.7.1 sufficient details of the change (including an estimate of the costs or savings of implementing the change);

- 2.7.2 information and details of any impact on existing interfaces or of any additional interfaces required in connection with the proposed change;
- 2.7.3 a detailed cost/benefit and risk/reward analysis of the change;
- 2.7.4 any amendment required to this Contract as a result of the change;
- 2.7.5 any impact or possible impact of (including without limitation all risks and possible issues associated with or resulting from) the change on:
 - 2.7.5.1 the provision of the Services or the Contractor's ability to comply with its obligations under this Contract;
 - 2.7.5.2 any Milestone Date which will or is likely to be affected;
 - 2.7.5.3 the Specification; and/or
 - 2.7.5.4 the Equipment and/or the systems of Third Parties, as applicable;
- 2.7.6 confirmation that:
 - 2.7.6.1 the Impact Assessment has been drawn up in accordance with the pricing principles set out in Schedule 4;
 - 2.7.6.2 there has been no material omission or inaccuracy in the facts and pricing assumptions provided by it, on which any proposed adjustments to the Contract Price or other payments are based, and which are set out or referenced in the Impact Assessment; and
 - 2.7.6.3 in estimating the costs on which any proposed payments are based it has complied with best accountancy and financial accounting practice,

in each case unless this Contract expressly prohibits any increase in the Contract Price or additional costs or expenses for the Authority;
- 2.7.7 the proposed timescale for implementation of the Change (having regard to any information provided by the Authority pursuant to paragraphs 2.2.3 and 2.2.4) and the steps and measures (in as much detail as practicable in the circumstances) that the Contractor intends to take in order to implement the change, including:
 - 2.7.7.1 an outline of the Contractor's detailed obligations;
 - 2.7.7.2 the programme for implementing the change and any Milestones;

2.7.7.3 the commencement date of the change; and

2.7.7.4 any proposed date for acceptance.

2.8 Following receipt of the Impact Assessment by the Authority:

2.8.1 as soon as practicable after the Authority receives the Impact Assessment, the Contractor and the Authority will discuss, further develop and attempt to agree in writing and finalise the Impact Assessment (including pricing and payment if applicable);

2.8.2 in the discussions referred to in paragraph 2.8.1, the Contractor will:

2.8.2.1 provide evidence that the Contractor has used all reasonable endeavours (including, where practicable, the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;

2.8.2.2 demonstrate how any expenditure to be incurred or avoided is being measured in a cost effective manner; and

2.8.2.3 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the change, has been taken into account in the Impact Assessment;

2.8.3 as a result of the Impact Assessment or discussions, the Authority may revise or withdraw the Change Control Request relating to the change. Following the receipt of any revised Change Control Request, the Contractor will as soon as practicable notify the Authority of any revisions to the Impact Assessment; and

2.8.4 if the Contractor and the Authority cannot agree on the contents of the Impact Assessment after a period of twenty (20) Working Days following the date of the first meeting to discuss the Impact Assessment or, if the Contractor is required to notify the Authority of any revisions to the Impact Assessment, a period of twenty (20) Working Days following the date of receipt by the Authority of such notification, the matters in dispute will be determined in accordance with the Dispute Resolution Procedure.

2.9 Within twenty (20) Working Days of an Impact Assessment being agreed or determined pursuant to paragraph 2.8, the Authority will:

2.9.1 issue to the Contractor a completed pro forma CCN (which will constitute a CCN) requiring the Contractor to implement the change in accordance with the Impact Assessment, as so agreed or determined; or

- 2.9.2 notify the Contractor that the Authority is withdrawing the relevant Change Control Request.
- 2.10 Each CCN issued in accordance with paragraph 2.9.1 will be raised by the Authority's Procurement Manager and will be uniquely identified by a sequential number (referred to as a Variation Number) such amendment detailing the terms of the Impact Assessment, as agreed or determined pursuant to paragraph 2.8 (including all necessary amendments to the Contract and related documentation required as a result of the implementation of the change to the extent that the same has been expressly authorised in the CCN or Impact Assessment).
- 2.11 Two copies of each CCN will be signed by the Contractor's Contract Manager and submitted to the Authority's Procurement Manager in accordance with the provisions of Clause 49 (Notices) not less than 10 (ten) Working Days (or such other period as may be agreed between the Parties) prior to the CCN Effective Date. Following signature by the Authority, one copy of the signed CCN will be returned to the Contractor by the Authority.
- 2.12 A CCN signed by a duly authorised representative of both Parties will constitute a change to this Contract.
- 2.13 The Contractor will as soon as practicable, following issue of the CCN in accordance with paragraph 2.10, implement the relevant change in accordance with the terms of the Impact Assessment, as agreed or determined pursuant to paragraph 2.8.
- 3. Change Proposed by the Contractor**
- 3.1 The Contractor will be entitled to request changes in accordance with this paragraph 3. In relation to each such requested change, unless and until a written CCN has been issued by the Authority in accordance with the provisions of this paragraph 3, the Contractor will, unless otherwise expressly agreed in writing by the Authority, continue to supply the Services in accordance with the existing terms of this Contract.
- 3.2 If the Contractor wishes to propose a change, the Contractor will provide to the Authority a Change Control Request together with an Impact Assessment relating to such requested change. Such Impact Assessment will contain the detail set out in paragraph 2.7 and unless agreed otherwise by the Authority at the Authority's absolute discretion, the cost of preparation of such Impact Assessment will be borne by the Contractor.
- 3.3 Upon receipt of a Change Control Request and Impact Assessment from the Contractor in accordance with paragraph 3.2 above, the provisions of paragraph 2.8 will apply, mutatis mutandis.
- 3.4 Within twenty (20) Working Days of an Impact Assessment being agreed or determined pursuant to paragraph 3.3, the Authority will:
- 3.4.1 issue to the Contractor a completed pro forma CCN (which will constitute a CCN) requiring the Contractor to implement the change

in accordance with the Impact Assessment, as so agreed or determined; or

- 3.4.2 notify the Contractor that it is rejecting the Change Control Request.
- 3.5 For the avoidance of doubt, the Authority will not be required to pay the Contractor any amounts (including costs and expenses) which the Contractor may have incurred in the preparation of the Change Control Request or the Impact Assessment, unless otherwise agreed by the Authority at its absolute discretion.
- 3.6 Upon notice of a CCN being issued by the Authority the provisions of paragraphs 2.10 to 2.13 will apply in respect of the change (*mutatis mutandis*).

Appendix to Schedule 6
CHANGE CONTROL NOTE

Contractor Name:	Contract Reference No:
Address:	Variation No:
Post Code:	Date:

Contract dated [] between (1) the Authority and (2) the Contractor relating to the supply, installation and maintenance of speed cameras (the “Contract”).

Pursuant to Clause 47 of the Contract, authority is given for the Contract to be varied as detailed below. The duplicate copy of this form will be signed by or on behalf of the Contractor and returned to the Authority’s Procurement Manager as an acceptance by the Contractor of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
Value of Contract before this Variation	
Reduced cost to the Authority	
Extra cost to the Authority	
TOTAL	

ACCEPTANCE BY THE CONTRACTOR	
Date	Signed

ACCEPTANCE BY THE AUTHORITY	
Date	Signed

SCHEDULE 7

Deed of Novation

THIS DEED is made the [] day of []

BETWEEN:

- (1) **Transport Trading Limited** a company registered in England and Wales (Company Registration Number 03914810) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Authority**”); and
- (2) [], a company registered in England and Wales (Company Registration Number []) whose registered office is at [] (the “**Contractor**”); and
- (3) [] a company registered in England and Wales (Company Registration Number []) whose registered office is at [] (the “**New Company**”).

WHEREAS:

- (A) The Authority has a contract dated [] Contract Reference Number [] with the Contractor for the decommissioning and removal of certain existing wet film safety cameras and the supply, installation and maintenance of new digital safety cameras on roads in the Greater London area (the “**Contract**”).
- (B) The Authority wishes to transfer its benefit and burden (or part of it) under the Contract to the New Company.
- (C) The Contractor and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:
 - 1.1 “**Transfer Date**” means [];
 - 1.2 “**Transferred Part**” means all that part of the undertaking of the Authority that consists of [*describe part of undertaking that the New Company will be taking responsibility for*].
2. With effect on and from the Transfer Date (and only in so far as the Contract relates to the Transferred Part):
 - 2.1 the New Company undertakes to perform the obligations of the Authority under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Authority;
 - 2.2 the Contractor releases and discharges the Authority from all demands and claims whatsoever in respect of the Contract and accepts the liability of the

New Company in relation to the Contract in lieu of the liability of the Authority and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been party to the Contract at all times in lieu of the Authority;

2.3 for the avoidance of doubt, it is expressly agreed that:

2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Contractor against the Authority accrued under or in connection with the Contract prior to the date of this Deed are exercisable and enforceable by the Contractor against the New Company; and

2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Authority against the Contractor accrued under or in connection with the Contract prior to the date of this Deed are exercisable by the New Company against the Contractor.

2.4 The Authority transfers its rights and obligations under the Contract to the New Company.

IN WITNESS whereof this contract has been executed as a deed and delivered on the day and year first above written.

Signed as a deed)
for and on behalf of)
[CONTRACTOR])
acting by)

Signature (Director)

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

Signed as a deed)
for and on behalf of)
[NEW COMPANY])
acting by)

Signature (Director)

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

Signed as a deed)
for and on behalf of)
TRANSPORT TRADING)
LIMITED)
acting by)

Signature (Director)

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

SCHEDULE 8

Contractor Confidential Information

Information Class/Type	Grounds for Exemption	Date can be made available

SCHEDULE 9
Mobilisation Plan

N/A

SCHEDULE 10

Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: Transport Trading Limited [*insert address*]

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 Contractor*] (the "**Contractor**") in respect of the decommissioning and removal of certain existing wet film safety cameras and the supply, installation and maintenance of new digital safety cameras on roads in the Greater London area (the "**Services**") on the condition that the obligations of the Contractor under the Contract be guaranteed by a Guarantor.

We are [*recite the relationship of the Guarantor to the Contractor*], and we warrant to you that this description of our relationship with/to the Contractor 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 Contractor of any and all its obligations, undertakings and responsibilities under the Contract and we will forthwith make good any default thereunder on the part of the Contractor; and
 - (ii) the due and punctual payment by the Contractor 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 Contractor

when and as the same will 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 Contractor in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we will on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Contractor were the primary obligor. Any payment under this Guarantee will be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) This Guarantee will be a continuing security and will remain in full force and effect until all obligations to be performed or observed by the Contractor under or arising out of the Contract have been duly and completely performed and observed and the Contractor will 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 will be duly made if sent by first class recorded delivery post to us.
- (e) You will be entitled to enforce this Guarantee without first notifying the Contractor of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Contractor 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 Contractor 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 will still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We will 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 Contractor in the Contract.
- 2. Our obligations hereunder are those of primary obligor and will remain in full force and effect and will 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 Contractor (including, without limitation, any increase in the Contractor'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 Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor (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 Contractor 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 Contractor; or

- (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (g) any legal limitation, disability or incapacity relating to the Contractor or discharge by operation of law or any change in the constitution, name or style of the Contractor 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 Contractor 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 Contractor 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 will not exercise any right of subrogation or any other right or remedy which we may have against the Contractor 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 Contractor in competition with you for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us or take or hold any security from the Contractor in respect of any liability of ours hereunder. We will 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 will be construed in accordance with the laws of England. The courts of England will 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 will 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 will, to the extent required, be severed from this Guarantee and will be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this will not affect any other provisions of this Guarantee which will 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])
acting by a Director and the)
Secretary or by two Directors) _____
Director

Director/Secretary

OR

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

Director/Secretary

SCHEDULE 11

Form of Legal Opinion for Use with Guarantee

To: Transport Trading Limited [*insert address*]

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 Transport Trading Limited (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;

- (c) 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
- (d) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (e) 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;
- (f) 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;
- (g) 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];
- (h) 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;
- (i) 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;
- (j) 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;

- (k) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
 - (l) 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;
 - (m) 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;
 - (n) 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

SCHEDULE 12

Exit Plan

1. Scope

1.1 This Schedule 12:

- (A) sets out the strategy to be followed by the Parties on the termination or expiry of this Contract; and
- (B) requires the Contractor to develop an Exit Plan that will separately account for:
 - (1) the cessation of the Services and the optional removal of the Equipment; and
 - (2) the transfer of the Equipment and Services to the Authority or a Replacement Contractor, which will require the Contractor to support an orderly, controlled transition of responsibility for the provision of the Services and Equipment from the Contractor to a Replacement Contractor (if appropriate), at the Authority's direction, with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Authority by means of the implementation of the Exit Plan in the following circumstances for termination:
 - (a) cessation of the Services at the expiry of the Initial Term (or any extension thereof);
 - (b) transfer of the Services and Equipment due to an Insolvency Event;
 - (c) transfer of the Services and Equipment or cessation of the Services and the optional removal of the Equipment due to a termination under Clauses 27.1 (excluding 27.1.4) or 27.2.

2. Exit Strategy

2.1 The Contractor will ensure that the Exit Plan that it prepares in accordance with paragraph 3.1 deals as a minimum with those areas set out in this paragraph 2.1, together with such other provisions as the Contractor deems necessary or the Authority may reasonably request from time to time, including:

- (A) the name and contact details of each party's representative who will act as the primary point of contact for all exit related matters;
- (B) the timing and process for jointly establishing an exit team of suitably skilled representatives of the Parties to manage the implementation of

the Exit Plan (“**Exit Team**”), and replacements thereof including the following information:

- (1) the name and contact details for each member of the Exit Team and his role;
 - (2) the Exit Team will consist of no more than five (5) representatives from each Party;
 - (3) reporting lines for each member of the Exit Team;
 - (4) liaison lines between the Authority and the Contractor and any Replacement Contractor or Third Party;
 - (5) responsibilities for approval of documentation; and
 - (6) escalation processes;
- (C) unless the Parties agree otherwise, the Exit Plan will cover the period commencing on the Trigger Date (as defined in paragraph 4.1 below) and ending on the Termination Date or expiry date (as appropriate);
- (D) a project plan detailing the timeframes for implementation of each part of the Exit Plan and any milestones that need to be met by the Contractor or the Authority or any Replacement Contractor;
- (D) details of the management processes and controls to be used in the implementation of the Exit Plan;
- (E) a list of the meetings that will take place during the implementation of the Exit Plan. Unless agreed otherwise in writing between the Parties, the Exit Team will meet at least once a week from the Trigger Date;
- (F) a list of the Equipment that is capable of delivery by leaving that Equipment in situ in a safe and secure condition, and any other Equipment that is to be transferred to the Authority or to a Replacement Contractor including the following information:
- (1) an outline of the process and timeframes for the transfer of the Equipment to the Authority, including the transfer of any relevant and required HOTA certification, if applicable; and
 - (2) the procedure and timeframe for the transfer back of Equipment owned by the Authority or leased to the Contractor by the Authority, if appropriate;
- (G) a list of the design documents that are capable of delivery and any other documents that are to be transferred to the Authority or to a Replacement Contractor, including an outline of the process, timeframes and terms of the transfer of the items to the Authority or the Replacement Contractor;

- (H) an outline of the procedures for the transfer and/or removal of data from the Equipment and any other systems of the Contractor or any Third Party;
- (I) an outline of any special transition provisions relating to the transfer or removal of any software or the transfer or termination of any software licences;
- (K) the procedure and timeframe for the hand back or destruction of Equipment and/or any other documents containing the other Party's Intellectual Property Rights or Confidential Information as expressly required by this Contract;
- (L) a list of all Contractor internal and Third Party support arrangements used in the delivery of the Services;
- (M) a list of the Contractor Personnel on an anonymous/grade basis who are or may be involved in the provision of the Services and a summary of their terms of employment;
- (N) a list of all Sub-Contracts or other relevant contracts (if any);
- (O) the procedure, structure and timeframe for training the employees of the Authority or the Replacement Contractor as the case may be;
- (P) a list of any and all approvals, consents, licences, permissions, certificates and statutory agreements (including HOTA), permits or authorisations which are necessary, desirable or required by Applicable Law or by any competent authority obtained, or to be obtained by the Contractor for the performance of the Services, the occupation and use of any premises used in the performance of the Services, the performance of services replacing the Services or any other transfer or hand-back envisaged under this paragraph 2.1;
- (Q) a full list of the information relevant to the Contractor's provision of the Services including, but not limited to, volumes processed, data volumes stored, performance against the Service Levels, maintenance statistics and fault statistics; and
- (R) any other information or action pertaining to the Exit Plan required by the Authority to ensure a smooth and timely transfer to the Authority or Replacement Contractor as the case may be.

3. **Development and Review of Exit Plan**

- 3.1 The Contractor will prepare an Exit Plan during the Mobilisation Period and submit it to the Authority for approval within three (3) months of the Contract Commencement Date. As outlined in paragraph 1.1 of this Schedule, there will be different reasons for termination of the Contract and thus implementing the Exit Plan, and, therefore, the Contractor must ensure that the Exit Plan fully and properly accounts separately for:

- (A) the cessation of the Services, including the option for the removal of the Equipment; and
 - (B) the transfer of the Equipment and Services.
- 3.2 As a minimum, the Contractor will ensure that the Exit Plan includes:
 - (A) those areas set out in paragraph 2.1;
 - (B) any other information that the Contractor determines is required to enable the cessation of the Services and the optional removal of the Equipment or the transfer of the Services and Equipment to a Replacement Contractor to the maximum level of detail as it is reasonably possible to determine at the time of preparation of the Exit Plan; and
 - (C) such other provisions as the Contractor deems necessary or the Authority may request from time to time in relation to expiry or termination of the Contract.
- 3.3 The Contractor will, on a bi-annual basis starting on the first anniversary of the Contract Commencement Date and at any other time the Authority or the Contractor deems necessary throughout the Term:
 - (A) review and revise the Exit Plan to take into account changing technologies and any changes to the scope or nature of the Services and Equipment, including any changes agreed pursuant to the Contract; and
 - (B) agree with the Authority the scope and detail of any necessary revisions to the Exit Plan and promptly submit such revised Exit Plan to the Authority for approval.
- 3.4 Without limitation to the generality of the foregoing, the Contractor will make such amendments to the Exit Plan as the Authority may require from time to time.
- 3.5 The Contractor will promptly implement the approved Exit Plan in accordance with its terms on the termination or expiry of the Contract howsoever arising, unless and until the date that the Authority has approved the Service and Equipment Transfer/Cessation Plan, in which case the provisions of paragraph 6.1 will apply from such date.

4. **Service and Equipment Transfer/Cessation Plan**

- 4.1 Without prejudice to paragraph 3, the Contractor will:
 - (A) if requested by the Authority from time to time;
 - (B) if a notice of termination is served in respect of this Contract; or

(C) at the point where there is nine (9) months of the Initial Term or extended Term, as appropriate, remaining,

(each of the events and/or dates referred to in paragraphs 4.1(A), 4.1(B) and 4.1(C) being referred to, as appropriate, in this Schedule 12 as the “**Trigger Date**”),

(1) promptly produce a detailed service and equipment transfer plan (the “**Service and Equipment Transfer/Cessation Plan**”) by developing and refining the Exit Plan as necessary to envisage either:

(a) the hand-over of the:

(i) Services; and

(ii) Equipment,

to the Authority or a Replacement Contractor; or

(b) the:

(i) winding-down and cessation of the Services (as the case may be);

(ii) sale or removal of the Equipment (or parts thereof),

as instructed by the Authority; and

(2) deliver such Service and Equipment Transfer/Cessation Plan to the Authority for its review and approval within thirty (30) Working Days of the relevant Trigger Date (or, where paragraph 4.1(B) above applies, such earlier date as the Authority may specify (acting reasonably)).

4.2 The Contractor will:

(A) ensure that the Service and Equipment Transfer/Cessation Plan deals as a minimum with:

(1) developing in more detail those areas set out in the Exit Plan; and

(2) such other provisions as the Contractor deems necessary in accordance with Good Industry Practice or the Authority may require from time to time; and

(B) revise and update the Service and Equipment Transfer/Cessation Plan in accordance with any reasonable instructions of the Authority from time to time,

in each case so as to establish a detailed plan and management structure for all activities required for exit of the Contractor under the specific conditions applying at the time and enable either the cessation of, or the smooth and orderly transition to a Replacement Contractor of, the Services and Equipment within the specified timescales.

- 4.3 Production, revision and updating of both the Exit Plan and the Service and Equipment Transfer/Cessation Plan will be at the Contractor's sole cost and expense.

5. **Disclosure of Exit Documents**

- 5.1 The Contractor acknowledges that, notwithstanding any of the Authority's obligations of confidentiality under this Contract, the Authority may at any time disclose the:

(A) Exit Plan; and/or

(B) Service and Equipment Transfer/Cessation Plan,

to Third Parties who are tendering or involved in the tendering process for the re-letting or re-procurement of the Equipment and/or Services or substantially similar equipment and/or services on termination or expiry of this Contract, with the exception of any information regarding the Contractor's Equipment that the Authority (acting reasonably) agrees is commercially sensitive.

6. **Implementation of Service and Equipment Transfer/Cessation Plan**

- 6.1 Upon approval of the Service and Equipment Transfer/Cessation Plan by the Authority following a Trigger Date, the Contractor will implement the Service and Equipment Transfer/Cessation Plan in accordance with its terms.

- 6.2 The Contractor will promptly comply with all reasonable instructions from the Authority with regard to the implementation and execution of the Service and Equipment Transfer/Cessation Plan including:

(A) co-operating with any Replacement Contractor and Third Party, including in relation to transfer of Contractor Personnel and the transfer of data; and

(B) making such Key Personnel not comprised within the Re-Transferring Personnel available to the Replacement Contractor for a reasonable period of time after expiry or termination as the case may be to be agreed between the Contractor and the Authority in order to assist in the transfer of responsibility for the provision of the Services.

7. **Assignment of Licences and Relevant Contracts**

Licences

7.1 If the Services are transferred to the Authority or any Replacement Contractor in accordance with Clauses 28.2 or 28.3.1, the Contractor will ensure that:

- (A) each of the Sub-Contracts and any other contracts relating to the provision of the Services entered into by the Contractor; and
- (B) the HOTA certification relating to the Equipment as referred to in the Service and Equipment Transfer/Cessation Plan,

as required in accordance with paragraph 2.1 of this Schedule 12 are assigned, transferred or novated (at no cost) to the Authority or the Replacement Contractor, at the Authority's direction.

Relevant Contracts

7.2 Upon receipt from the Contractor of all required Third Party consents in respect of a Sub-Contract or a contract relating to the provision of the Services entered into by the Contractor or certification to which paragraph 7.1 above applies (a "**Relevant Contract**"), the Contractor will, as soon as reasonably practicable, assign, transfer or novate the Relevant Contract to which the Third Party consent relates to the replacement Contractor, as the Authority may direct (the date from which such assignment, novation or transfer becomes effective being the "**RC Transfer Date**").

7.3 Until such time as it can be assigned, novated or transferred pursuant to paragraph 7.2 above, in respect of each Relevant Contract, the Contractor will unless contractually prevented from so doing, sub-contract the rights and obligations of the Contractor under such contracts to the Authority or the Replacement Contractor, as the Authority may direct, on the same terms, *mutatis mutandis*, and for the same rates of remuneration (without imposing any margin) as apply to the contracts concerned at all times (the date from which each such sub-contracting becomes effective being the "**RC Sub-Contract Date**").

7.4 Where prevented from sub-contracting pursuant to paragraph 7.3 of this Schedule 12, the Contractor will hold the rights and benefits under the Relevant Contract in trust for the Authority or the relevant Replacement Contractor absolutely from the Termination Date until such Third Party consent is obtained and the Relevant Contract is so assigned, transferred or novated (the date from which each such holding of rights and benefits on trust becomes effective being the "**RC Trust Date**"). The Contractor will, whilst so holding the rights and benefits under the Relevant Contract in trust as aforesaid, in the performance of its obligations and the exercise of its rights under the Relevant Contract, seek and act at all times in accordance with the instructions of the Authority in order to secure the performance of the Relevant Contract and will deliver to (or will procure that there is delivered to) the Authority, as soon as practicable following receipt by the Contractor, any notice or other document concerning or relating to the Relevant Contract.

7.5 If:

- (A) the Contractor holding a Relevant Contract on trust for the benefit of the Authority or a Replacement Contractor would result in the breach of the Relevant Contract; or
- (B) any Third Party consent is not obtained by the Termination Date,

then the Relevant Contract will be deemed to have not been transferred to the Authority (or such Replacement Contractor) and, in either case, the Parties will make such other reasonably practicable arrangements between themselves which will, without (in the case of paragraph 7.5(A) above) giving rise to such a breach, and so far as is practicable, secure rights for the Authority or the relevant Replacement Contractor equivalent to those it would have enjoyed had the benefit of the Relevant Contract been transferred to it and for relieving the Contractor from all liability under the Relevant Contract with effect from the Termination Date.

- 7.6 Notwithstanding any other provision of this Contract or any document effecting any assignment, novation or transfer in accordance with this Schedule 12, a Replacement Contractor will not have any liability for any claim which may be made against the Contractor for or in respect of any breach by the Contractor prior to the relevant RC Sub-Contract Date or the RC Transfer Date (as applicable) of any term or obligation under any of the Relevant Contracts or failure by the Contractor prior to the relevant RC Sub-Contract Date and/or the RC Transfer Date (as applicable) to perform any of its obligations thereunder.

Contractor to indemnify the Authority and/or Replacement Contractor

- 7.7 The Contractor will indemnify the relevant Replacement Contractor (and the Authority if the Authority is not the Replacement Contractor) against the amount of any claim which may be made against them for or in respect of any breach by the Contractor prior to the RC Transfer Date or RC Sub-Contract Date (as appropriate) of any term or obligation under any of the Relevant Contracts or failure by the Contractor or the Replacement Contractor prior to the RC Transfer Date or RC Sub-Contract Date (as appropriate) to perform any of its obligations thereunder. A Replacement Contractor will have the right to enforce the terms of this paragraph 7.7.

The Authority to indemnify Contractor

- 7.8 The Authority will:

- (A) indemnify the Contractor against the amount of any claim which may be made against it for or in respect of any breach by the Authority (or a Replacement Contractor (as applicable)) of any obligation under any Relevant Contract to the extent that such term or obligation is subcontracted to the Authority or a Replacement Contractor (as applicable) pursuant to paragraph 7.3 from the relevant RC Sub-Contract Date; and/or

- (B) reimburse the Contractor for any amounts properly paid as charges in respect of the services received by the Authority (to the extent such services are solely received by the Authority) under any Relevant Contract to the extent that the Contractor holds the rights and benefits under the Relevant Contract on trust for the Authority pursuant to paragraph 7.4 from the relevant RC Trust Date,

in each case until such date (if any) as the sub-contracting or holding on trust ceases to be effective in accordance with paragraph 7.5 provided that:

- (A) the Authority will be entitled to assume conduct of the defence of each such claim; and
- (B) the Contractor provides all information reasonably required by the Authority in connection with the defence of each such claim.

8. Transfer of Data to the Authority and/or Replacement Contractor

8.1 The Contractor will carry out data checking, verification, cleansing, review, quality analysis and assurance, integrity testing and migration twelve months prior to contract expiry or as otherwise directed in writing by the Authority (acting reasonably) from time to time (at the sole cost and expense of the Contractor). The Contractor will provide updates to design documents that include the data dictionary, logical data model and any other relevant design documents to the Authority twelve months prior to contract expiry. The Contractor will provide a decommissioning project plan twelve months prior to the expiry date. The Contractor will also provide an outline of the steps and processes required to decommission all of the assets; data; interfaces and buildings that have been used to deliver the service with the decommissioning project plan. The Contractor will ensure that they begin carrying out activities detailed within the decommissioning plan twelve months prior to the expiry date.

8.2 The Contractor will ensure

- (A) all data or data extracts are supplied to Replacement Contractor (or the Authority if applicable) and/or any Third Parties nominated by the Authority or the Replacement Contractor;
- (B) a full extract of database in a format to be agreed with the Authority to be delivered in a secure data transfer at no extra cost to the Authority six months prior to contract expiry;
- (C) all data being migrated to the Replacement Contractor (or the Authority or the MPS, as applicable) remain available to and useable by the Authority, and Third Parties during such migration;
- (D) the migration of data to the Replacement Contractor (or the Authority or MPS, as applicable) envisaged under this paragraph 8 does not result in data loss, corruption or impairment;

- (E) all data migrated to the Replacement Contractor (or the Authority or MPS, as applicable) is accurate, up to date and complete;
- (F) all data migrated to the Replacement Contractor (or the Authority or MPS, as applicable) is reconciled, which will include carrying out referential integrity checks between each part of the Equipment to ensure that data stored in each part of the Equipment are consistent and correct; and
- (G) all data is fit for the purposes of their use and processing in connection with the Services or services materially similar to the Services (provided that such services involve the use and processing of data in a materially similar format to the Services).

8.3 The Contractor will promptly at its own expense remedy any breach by the Contractor of paragraph 8 of this Schedule 12. Should it fail to do so within such period as the Authority may reasonably specify, the Authority will be entitled to take such action to remedy such breach as the Authority deems appropriate (including using one or more Third Parties) and the Contractor will promptly on demand reimburse to the Authority all costs and expenses (including the costs and expenses of a Replacement Contractor or of the TfL Group).

9. **Right to Continued Use of Contractor Premises**

In circumstances in which any of the Contractor's premises are required by the Authority to be continued to be used after the expiry or termination of this Contract by the Authority and/or the Replacement Contractor for a reasonable period of time sufficient to enable the transfer of responsibility for the provision of the Services and Equipment, the Parties will discuss and agree in good faith the commercial and other terms upon which such Contractor premises will be made available (provided that both the Authority and the Contractor will be under an obligation to act reasonably in such discussions and any resulting commercial terms agreed will in any event be fair and reasonable in all the prevailing circumstances).

10. **Withdrawal from the Premises**

10.1 After the occurrence of the Trigger Date and on or before the Termination Date or expiry date (as appropriate) and in accordance with the Service and Equipment Transfer/Cessation Plan or at such other time as the Authority may by notice in writing to the Contractor specify the Contractor will:

- (A) effect an orderly withdrawal from all or some of the Authority or MPS Premises, as applicable, and surrender the same and any Equipment to be transferred to the Authority pursuant to Clause 28 (Consequences of Termination) on the basis of a timetable to be set out in the Service and Equipment Transfer/Cessation Plan;
- (B) at the request of the Authority, procure that the benefit of all manufacturers' warranties in favour of the Contractor or any Sub-

Contractor in respect of the Equipment which are to be transferred to the Authority pursuant to Clause 28 (Consequences of Termination) and any and all mechanical, electronic and electrical equipment or hardware included in the premises are assigned to such Replacement Contractor as the Authority may direct.

11. **Contractor Personnel and Training**

- 11.1 Within ten (10) Working Days of the Trigger Date, the Authority and the Contractor will meet with a view to agreeing that such Contractor Personnel as identified by the Authority (acting reasonably) will continue to be engaged in the provision of the Services during the provision of the exit management services or the nine (9) month period prior to the expiry date (as appropriate).
- 11.2 If requested to do so by the Authority, the Contractor will provide familiarisation training at such times as the Authority may reasonably require for any of the Authority Personnel and employees of the Replacement Contractor in order to ensure that such employees obtain a sound knowledge and understanding of the Services and Equipment. Such training will be subject to agreement through the Change Control Procedure.

12. **Rights to Continued Support Services**

- 12.1 The Contractor will, after the termination or expiry of this Contract, if required by notice in writing from the Authority, provide to such Replacement Contractor as the Authority may direct, continued support and/or maintenance of any elements of the Services and Equipment provided by the Contractor which are to continue to be used by such Replacement Contractor (as appropriate in the administration or operation of the Services), and for the support and/or maintenance of which the proprietary knowledge or skills of the Contractor is required, including but not limited to correction of defects, provision of upgrades and replacements and design services:
- (A) for a period of time to be agreed between the Contractor and the Authority; and
 - (B) on commercial and other terms which reflect the Contractor's then standard terms for the provision of such services to its clients (or, in the absence of any such standard terms, on such commercial and other terms as may be agreed between the Contractor and the Authority, provided that both the Authority and the Contractor will be under an obligation to act reasonably in such discussions and any resulting commercial terms agreed will in any event be fair and reasonable in all the prevailing circumstances).

13. **Continued Performance**

Except as otherwise expressly specified in this Schedule 12, the Contractor will at all times during exit continue to perform its other obligations, including in respect of the achievement of the Service Levels and accrual of Service Failure Points, pursuant to the provisions of this Contract.

SCHEDULE 13

Equality and Diversity Requirements

1. Definitions

- 1.1 The following definitions and terms apply to the Authority's Equality and Diversity Requirements set out in this Schedule 13:

"BAME"	means Black and Minority Ethnic businesses, as defined in paragraph 1.3 of Appendix A to this Schedule 13;
"Diversity Infraction"	means any breach (pursuant to paragraph 7 of this Schedule 13) by the Contractor of its obligations specified in the Authority's Equality and Diversity Requirements, provided that the Authority has issued the relevant notices to the Contractor. On the occurrence of a Diversity Infraction, the Authority is entitled (but not obliged) to terminate the engagement of the Contractor in accordance with Clause 27.1.14 of the Contract;
"Equality and Diversity Requirements"	means the Contractor's Equality and Diversity Requirements as set out in this Schedule 13, unless otherwise changed in accordance with the Contract;
"Equality Policy"	means the Contractor's "Equality and Diversity Policy" as set out in Appendix B to this Schedule 13, as up-dated from time to time;
"Local Community"	means those areas of London affected by the Services from time to time;
"SME"	means small and medium enterprises, as defined in paragraph 1.2 of Appendix A to this Schedule 13;
"Supplier Diversity Plan"	means the Contractor's "Supplier Diversity Plan" as set out in Appendix C to this Schedule 13, as up-dated from time to time;
"Training Plan"	means the Contractor's "Diversity Training Plan" as set out in Appendix D to this Schedule 13, as up-dated from time to time.

2. Equality Policy

- 2.1 In the performance of the Contract and for the Term, the Contractor will:

- 2.1.1 comply at all times with the Equality Policy;
- 2.1.2 procure that each of its Sub-Contractors (and, in respect of indirect sub-contractors, use reasonable endeavours to procure that those indirect sub-contractors) adopt and implement an equality and

diversity policy in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as the Equality Policy.

- 2.2 Where any Sub-Contractors or any indirect sub-contractor has, pursuant to paragraph 2.1, above, or otherwise, adopted an equality and diversity policy, the Contractor will procure (and in respect of indirect subcontractors will use reasonable endeavours to procure) that a copy of such policies (and any amendments thereto) are provided to the Authority as soon as reasonably practicable following such adoption.

3. Diversity Training

- 3.1 In the performance of the Contract and for the Term, the Contractor will comply at all times with the Diversity Training Plan in relation to all of its employees engaged in the performance of the Contract.
- 3.2 The Contractor will procure that each of its Sub-Contractors (and, in respect of indirect sub-contractors, will use reasonable endeavours to procure that those indirect sub-contractors), adopt a diversity training plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as the Diversity Training Plan.
- 3.3 Where any Sub-Contractors or any indirect sub-contractor has, pursuant to paragraph 3.2, above, or otherwise, adopted a diversity training plan, the Contractor will procure (and in respect of indirect sub-contractors will use reasonable endeavours to procure) that a copy of such diversity training plans (and any amendments thereto) are provided to the Authority as soon as reasonably practicable following such adoption.

4. Supplier Diversity

- 4.1 In the performance of the Contract, and for the Term, the Contractor will at all times comply with the Supplier Diversity Plan.
- 4.2 The Contractor will procure that each of its Sub-Contractors (and, in respect of indirect sub-contractors, use reasonable endeavours to procure that they), adopt a similar supplier diversity plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive as the Supplier Diversity Plan.
- 4.3 Where any Sub-Contractors or any indirect sub-contractor has, pursuant to paragraph 4.2 above, or otherwise, adopted a supplier diversity plan, the Contractor will procure (and in respect of indirect sub-contractors will use reasonable endeavours to procure) that a copy of such plans (and any amendments thereto) are provided to the Authority as soon as reasonably practicable following such adoption.

5. Monitoring And Reporting

- 5.1 Notwithstanding the Contractor's general obligations under paragraphs 2 to 4 of this Schedule 13, the Contractor will collate data in respect of:

5.1.1 its own organisation; and

5.1.2 from each and every Sub-Contractors (including indirect sub-contractors) engaged on the Contract,

so as to comply with paragraph 5.2 of this Schedule 13.

5.2 Without prejudice to any other obligations of the Contractor under the Contract, the Contractor will provide the Authority on the Contract Commencement Date and subsequently every 12 months thereafter or such other frequency as the Authority may reasonably request with the following information:

5.2.1 the percentage of its employees and, to the extent reasonably possible of the employees of its subcontractors and indirect subcontractors engaged in the performance of the Contract who are:

		Contractor %	Sub- contractors %
(i)	Female		
(ii)	Of non-white British origin or who classify themselves as being non-white British		
(iii)	Permanent residents in the Local Community		
(iv)	Disabled		

5.2.2 the proportion of its subcontractors and indirect subcontractors that are:

	Subcontractors %	Indirect sub- contractors %
SME		
BAME		
Suppliers from other under-represented or protected groups (as defined in the Supplier Diversity Definitions)		
Suppliers demonstrating a diverse workforce composition (as defined in the Supplier Diversity Definitions)		

5.3 The Contractor will ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Authority, pursuant to paragraph 5.2 of this Schedule 13.

6. Diversity Infractions

- 6.1 Without prejudice to any other right or remedy of the Authority under the Contract, if the Contractor or any of its Sub-Contractors or indirect sub-contractors commits a Diversity Infraction, the Authority will be entitled (but not obliged) to act as follows:
- 6.1.1 if a Diversity Infraction is committed by the Contractor then the Authority may serve written notice upon the Contractor identifying in reasonable detail the nature of the Diversity Infraction, and the Contractor will cease committing and will remedy, at its own cost, the Diversity Infraction within 28 (twenty-eight) calendar days of receipt of such notice (or such longer period as may be specified in the notice); or
 - 6.1.2 if the Diversity Infraction is committed by a Sub-Contractor of the Contractor or indirect sub-contractor, the Authority may serve written notice upon the Contractor identifying in reasonable detail the nature of the Diversity Infraction, and the Contractor will procure that the Sub-Contractor or indirect sub-contractor ceases committing and remedies, at its own cost, the Diversity Infraction within 28 (twenty-eight) calendar days of receipt by the Contractor of such notice (or such longer period as may be specified in the notice). If the Contractor fails to procure the remedy of the Diversity Infraction as committed by its Sub-Contractor or indirect sub-contractor, the Authority may serve a further written notice upon the Contractor and within 28 (twenty-eight) calendar days of receipt of such further notice (or such longer period as may be specified in the notice), the Contractor will terminate at its own cost, the engagement of the relevant Sub-Contractor engaged in the performance of the Contract or procure the termination of the relevant indirect sub-contractor's contract and will procure performance of the affected works or services by another person who complies with the obligations specified in Clause 18 and paragraphs 2 to 5 of this Schedule 13.
- 6.2 It is a fundamental term and condition of the Contract that the Contractor complies at all times and in all respects with its obligations under paragraphs 6.1.1 and 6.1.2 of this Schedule 13.
- 6.3 Where, following the receipt of a notice given pursuant to paragraph 6.1, above, the Contractor:
- 6.3.1 fails to remedy a Diversity Infraction to the satisfaction of the Authority or
 - 6.3.2 in the case of paragraph 6.1.2, above, fails to terminate the engagement of its defaulting Sub-Contractor under its contract with the defaulting Sub-Contractor or in respect of an indirect sub-contractor procures the termination of the indirect sub-contractors

contract and procures performance by another person on the terms specified in paragraph 6.1.2 of this Schedule 13,

the Contractor is in breach of the Contract and the Authority is entitled (but not obliged) to terminate the engagement of the Contractor.

7. Equality And Diversity Audit

7.1 Without prejudice to any other review or audit of the Contractor's performance under the Contract, the Authority, or an authorised representative, may from time to time, undertake any audit or check of any and all information regarding the Contractor's compliance with Clause 17 and paragraphs 2 to 5 of this Schedule 13. The Authority's rights of audit pursuant to this paragraph include access to:

7.1.1 any and all documents and records of the Contractor;

7.1.2 where applicable, any and all documents and records of any Sub-Contractors and indirect sub-contractors,

(together the "Minimum Records"). The Authority's rights of audit under this paragraph 7.1 are limited to information which the Contractor is entitled to disclose in accordance with the Data Protection Act 1998, provided that the Contractor has used all reasonable endeavours to obtain any necessary consent in accordance with paragraph 5.3 above and provides information in an aggregated or anonymised form where this has not been obtained.

7.2 The Contractor will ensure that it will, and that any Sub-Contractor and indirect sub-contractor will, maintain and retain the Minimum Records for a minimum of six (6) years after the later date of either the:

7.2.1 expiry of the Term, or

7.2.2 completion of any Services,

with respect to all matters in respect of the Contractor's compliance with Clause 18 and paragraphs 2 to 5 of this Schedule 13.

7.3 The Contractor will ensure that each Sub-Contract between it and its Sub-Contractors, and where applicable subject to the provisions of paragraphs 1 to 3 of this Schedule 13 each Sub-Contract between its Sub-Contractors and any indirect sub-contractor and each Sub-Contract between each indirect sub-contractor, contains rights of audit in favour of and enforceable by the Authority substantially equivalent to those granted by the Contractor to the Authority pursuant to paragraphs 7.1 and 7.2 of this Schedule 13.

7.4 The Authority will use reasonable endeavours to co-ordinate and manage the number, scope, timing and method of undertaking audits so as to ensure that:

7.4.1 the period of notice for any audit is no less than 7 (seven) calendar days;

7.4.2 any audit is conducted during Working Hours; and

the Contractor (and each subcontractor, where applicable) is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract or relevant subcontract, as the case may be.

7.5 The Contractor will ensure that the Contractor Personnel, and where applicable subject to the provisions of paragraphs 2 to 5 of this Schedule 13 any indirect sub-contractor's personnel, promptly provide all reasonable cooperation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

7.5.1 the grant or procuring of access to any premises used in the Contractor's performance of the Contract or in the relevant Sub-Contractor's or indirect sub-contractor's performance of its subcontract, whether the Contractor's own premises or otherwise;

7.5.2 the grant or procuring of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the Contractor's performance of the Contract or in the relevant Sub-Contractor's or indirect sub-contractor's performance of its subcontract, wherever situated and whether the Contractor's own equipment or otherwise; and

will comply with the Authority's reasonable requests for access to senior personnel engaged in the Contractor's performance of the Contract or the relevant Sub-Contractor's or indirect sub-contractor's performance of its subcontract.

8. Equality And Diversity Revisions

8.1 Upon the Authority exercising its right to extend the Initial Term (or any later extension thereof) and at the request of the Authority, the Contractor will submit, within two (2) weeks of the Authority's request, a revised Equality Policy, Diversity Training Plan, Supplier Diversity Plan and Communications Plan (as the case may be) for approval by the Authority. In each case, such revised policy and/or plans will be based on the existing policy or plan and will be in accordance with the Authority's then current equality and inclusion policy (details and copies of which will be provided to the Contractor at the relevant time). The Authority, within two (2) weeks of receipt, will confirm whether the revised policy and/or plans are accepted or rejected and, if rejected provides reasons. The Contractor will have due regard to such reasons and/or any comments made by the Authority and will as necessary prepare and submit revised policies and/or plans as the case may be for approval by the Authority. The Parties will in good faith agree the revised policy and/or plans and once agreed the revised policy and/or plan will become the Equality Policy, Diversity Training Plan and Supplier Diversity Plan for the purposes of the Contract.

8.2 For the Term, the Contractor will appoint a senior manager to be responsible for the implementation of the Equality Policy, Diversity Training Plan and

Supplier Diversity Plan and will notify the Authority of the individual so appointed and, without prejudice to paragraphs 5 and 7 of this Schedule 13, such senior manager will provide to the Authority a written report on the implementation of the Equality Policy, Diversity Training Plan and Supplier Diversity Plan (in a form to be agreed between the Authority and the Contractor) 12 months after the Contract Commencement Date and subsequently every 12 months thereafter.

SCHEDULE 13 - APPENDIX A

1. Authority Procurement Supplier Diversity Definitions

1.1 Diverse Suppliers

For the purposes of The Authority's Procurement Supplier Diversity Programme, the "Diverse Suppliers" comprise the following four sub-sets:

- A. Small and Medium Enterprises (SMEs);
- B. Black Asian and Minority Ethnic businesses (BAMEs);
- C. Suppliers from other under-represented or protected groups;
- D. Suppliers demonstrating a diverse workforce composition.

More detailed explanations of the four subsets (A-D) are given below.

1.2 Small and Medium Enterprises (SMEs)

1.2A Small Enterprise is a business which meets at least two of the following criteria:

- i) Turnover per annum of up to £5.6 million;
- ii) Balance Sheet total of no more than £2.8 million;
- iii) 50 employees or fewer.

Note: The criteria in 1.2A (ii) and (iii) will also be applied to group accounts where the turnover for the group does not exceed the figure stated in 1.2A (i).

1.2B A Medium Enterprise is a business which meets at least two of the following criteria:

- i) Turnover per annum of up to £22.8 million;
- ii) Balance Sheet total of no more than £11.4 million;
- iii) 250 employees or fewer.

Note: The criteria in 1.2B (ii) and (iii) will also be applied to group accounts where the turnover for the group does not exceed the figure stated in 1.2B (i).

1.3 Black Asian and Minority Ethnic (BAME) businesses

A Black Asian and Minority Ethnic business (BAME) is a business which is 51% or more owned by members of one or more minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The

monitoring ethnic classification groups used by the Authority for monitoring purposes are:

- Ethnic group
- Racial origin
- White British
- Irish
- Any other White background
- Mixed White & Black Caribbean
- White & Black African
- White & Asian
- Any other Mixed background
- Asian or Asian British Indian
- Pakistani
- Bangladeshi
- Any other Asian background
- Black or Black British Caribbean
- African
- Any other Black background
- Chinese or other Ethnic Group Chinese
- Any other Ethnic Group

1.4 Suppliers from other under-represented groups or protected groups

A supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups under the headings below (where not covered by previous definitions):

- i) Gender - women;
- ii) Disability – people with physical and sensory impairments, learning difficulties and mental health requirements;
- iii) Sexual orientation – lesbians, gay men, bisexual and transgender people; and
- iv) Age – older people (aged 60 or over), young adults (aged 24 or under).

A supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (e.g. religious, faith or belief groups).

1.5 Suppliers demonstrating a diverse workforce composition

A supplier that has a workforce composed of 51% or more of people from one or more minority ethnic groups (as listed under the ethnic classifications in paragraph 1.3 above) and/or under-represented and/or protected groups as listed in paragraph 1.4 above.

APPENDIX 4: EQUALITY & DIVERSITY - NA

SCHEDULE 13 - APPENDIX B
EQUALITY AND DIVERSITY POLICY

N/A

SCHEDULE 14

Authority Obligations

1. Installations

- 1.1 The preferred location of the Out-Station Sites and the outcome of the Authority's site surveys will be provided to the Contractor on award of Contract.
- 1.2 The Authority will provide a schedule of Installations, as per Section 6 and Appendix 1 of the Specification, at the start of the Contract to the Contractor.
- 1.3 Every month throughout the Equipment Installation Programme, the Authority will agree, with the Contractor, the list of sites for each intermediate milestone group two (2) months in advance.
- 1.4 The Authority will ensure Electricity Supply Pillars are fit for purpose. The Authority will provide the output from the site surveys that the Authority has undertaken as information only. It is the Contractor's responsibility to collect the necessary information on each site required for the purposes of Installations.
- 1.5 The Authority will ensure that suitable power provision is available at each Site, as outlined in the Specification.
- 1.6 The Authority may provide to the Contractor, no less than two (2) months in advance, a list of safety camera sites to be decommissioned.

2. Training

- 2.1 The Authority will arrange for training sessions for Contractor employees to outline the processing of permits.
- 2.2 The Authority will provide SFM training initially and then once per year for the Term for a minimum of five (5) of the Contractor's employees.

3. Commissioning

- 3.1 The Authority will provide resources to commission each site with the Contractor as set out in the Specification. The Contractor will agree the commissioning plan with the Authority one (1) month in advance of the start of each intermediate milestone group at regular contract meetings, as outlined in Schedule 17 Contract Management.
- 3.2 The Authority will manage, with the Metropolitan Police Service (MPS), the commissioning of each site by the MPS. The Authority intends that this is undertaken at the same time as the Authority's commissioning process, however, if the two commissioning do not coincide, the Contractor will not be required to provide resources for the MPS to undertake its commissioning on a different date.

SCHEDULE 15

Authority Policies

This Schedule 15 sets out the Authority Policies that are applicable to the Services and which the Contractor is required to comply with pursuant to Clause 18.1.1, unless and to the extent that such provisions are contrary to the Contractor's obligations under this Contract. Copies of such policies are available upon request.

1. TfL Equality and Inclusion Policy
2. TfL IM Policy Framework
3. TfL Information Access Policy
4. TfL Information and Records Management Policy
5. TfL Information Re-use Policy
6. TfL Information Security Policy
7. TfL Corporate Governance Policy
8. TfL Privacy and Data Protection Policy
9. TfL Resilience Management Policy Framework
10. GLA Group Responsible Procurement Policy
11. TfL Risk Management Policy
12. TfL Supplier Diversity Policy
13. TfL Code of Conduct Policy
14. TfL Anti-Fraud and Corruption Policy
15. TfL Health, Safety & Environment Policy.

SCHEDULE 16

not used

SCHEDULE 17

Contract Management

1. Scope and Definitions

- 1.1 This Schedule sets out the contract management procedures.
- 1.2 The objective of this Schedule is to ensure that a successful working relationship is maintained that will enable:
 - 1.2.1 the implementation of the Services in a timely manner; and
 - 1.2.2 the Authority to monitor the Contractor's performance of the Services.

PART A : EQUIPMENT INSTALLATION PROGRAMME CONTRACT MANAGEMENT

2. Scope

This Part A describes the management and reporting procedures to be undertaken by the Parties from the Contract Commencement Date in relation to the Equipment Installation Programme.

3. Weekly Progress Meetings

- 3.1 Weekly progress meetings will be held between the Contractor and the Authority. The frequency of the weekly progress meetings may be varied from time to time by mutual agreement. The Authority will make the final decision as to whether the weekly progress meeting will or will not go ahead. Contractual meetings will be held at the Authority's office.
- 3.2 The Contractor will appoint an Out-Station Installation Manager. The Contractor will ensure that the Out-Station Installation Manager is available to attend the weekly progress meeting.
- 3.3 Should the Out-Station Installation Manager be unavailable to attend the weekly progress meeting then an appropriate replacement must attend instead. The Contractor must inform the Authority two days prior to the scheduled weekly progress meeting, of whom will be attending in place of the Outstation Installation Manager. This should be the exception and not the norm.
- 3.4 The objective of the weekly progress meeting is to track progress against the agreed Equipment Installation Programme.
- 3.5 Prior to the commencement of the Equipment Installation Programme the Authority and the Contractor will discuss the Equipment Installation Programme and the Authority will, in its discretion, consider if any updates/changes are required to the Equipment Installation Programme. The

agreed project plan and progress against it will form the basis of discussion at the weekly progress meeting.

- 3.6 If the Authority decides that a written weekly progress report is required, it will provide a standard format to the Contractor in which the report should be presented. If the Contractor already has a standard report template that it believes is suitable, then the Contractor may propose this to the Authority as an alternative. The Authority at its sole discretion will confirm whether the proposed template may be used instead of the standard template provided by the Authority.
- 3.7 With reference to paragraphs 1.7, 1.8 and 1.9 of Part 1 of Schedule 4, examples of a Relief Event or an Excusing Cause that may prevent installation of a Site and which the Authority will consider are:
- 3.7.1 ongoing roadworks by a third party preventing installation works;
 - 3.7.2 resurfacing of carriageway required by the Highway Authority prior to the installation of vehicle detection equipment;
 - 3.7.3 planned carriageway resurfacing by the Highway Authority due to take place;
 - 3.7.4 any other planned works by the Highway Authority;
 - 3.7.5 no available mains power supply at time of proposed installation,
- in each case provided that the above have not arisen due to (or are prolonged by) any act, omission or negligence of the Contractor and/or any Contractor Personnel. This list is not exhaustive.

PART B : EQUIPMENT MAINTENANCE CONTRACT MANAGEMENT

4. Scope

This Part B describes the management and reporting procedures to be undertaken by the Parties from the Services Commencement Date in relation to Equipment Maintenance.

5. Equipment Maintenance Contract Progress Meetings

- 5.1 Contract progress meetings (six weekly) will be held between the Contractor and the Authority. The frequency of the progress meetings may be varied from time to time by mutual agreement. The Authority will make the final decision as to whether the contract progress meeting will or will not go ahead. Contractual meetings will be held at the Authority's office.
- 5.2 The Contractor will ensure that the Contractor's Contract Manager and an engineer are available to attend the Contract progress meeting. The engineer or his nominated delegate may invite any other person to attend or request that named members of the Contractor's staff attend the meeting.

- 5.3 Should the Contractor's Contract Manager be unavailable to attend the Contract progress meeting then an appropriate replacement must attend instead. The Contractor must inform the Authority two days prior to the scheduled weekly progress meeting, of whom will be attending in place of the Contractors Contract representative. This should be the exception and not the norm.
- 5.4 The objective of the Contract progress meeting is to cover
- 5.4.1 financial overview;
 - 5.4.2 confirmation of Availability scores, SLI's, SFP's, and payments;
 - 5.4.3 the maintenance cycle; and
 - 5.4.4 Health & Safety; and
- any specific points that need addressing from the following:
- 5.4.5 Fault trends;
 - 5.4.6 accuracy and population of SFM;
 - 5.4.7 Availability;
 - 5.4.8 development of SFM;
 - 5.4.9 other.

SCHEDULE 18

Sub-Contractor Warranty

THIS AGREEMENT made the _____ day of _____ 20____

BETWEEN

- (1) **Transport Trading Limited** a company registered in England and Wales (Company Registration Number 03914810) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Authority**”); and
- (2) [] a company registered in England and Wales under number [] and having its registered office at [] (the “**Sub-Contractor**”).

WHEREAS

- (A) The Authority has entered into an agreement dated [] day of [] 20[] (the “**Contract**”) with [] (the “**Contractor**”) for the decommissioning and removal of certain existing wet film safety cameras and the supply, installation and maintenance of new digital safety cameras on roads in the Greater London area (the “**Services**”); and
- (B) By a contract dated [] day of [] 20[] (the “**Sub-Contract**”) the Contractor appointed the Sub-Contractor to provide [insert description of sub-contracted services] (the “**Sub-Contract Services**”).

IT IS AGREED THAT:

1. Without prejudice to any other warranties expressed in the Sub-Contract or implied by law, the Sub-Contractor warrants and undertakes to the Authority that:
- 1.1 it will provide the Sub-Contract Services in a good and workmanlike manner in accordance with the Contract;
- 1.2 the Sub-Contract Services:
- 1.2.1 will be carried out with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type, and complexity to the Sub-Contract Services;
- 1.2.2 will be provided using materials and goods which are of sound and satisfactory design and quality and in accordance with the standards referred to in the Contract;
- 1.2.3 will be provided in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons using, operating or subsequently maintaining any equipment or using any

premises referred to in the Contract, or of any other person, and in a safe, economic and efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard;

- 1.2.4 will be provided in accordance with the best industry principles and practices in the activity concerned and in accordance with the standards referred to in the Contract;
- 1.3 it will comply with all the requirements of any Act of Parliament, Statutory Instrument or Order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Sub-Contractor's business and/or the Authority's business from time to time in force which are or may become applicable to the Sub-Contract Services;
- 1.4 all materials and/or goods supplied under the Sub-Contract and any equipment (or any part thereof) designed or replaced by the Sub-Contractor will be new and will in all respects be fit for the purposes for which such is intended (awareness of which purposes the Sub-Contractor acknowledges) and in particular, but without limitation, will be capable of operation as part of any system referred to in the Contract or Sub-Contract and be so fit at least for the Contract period and will have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials and goods;
- 1.5 it has complied and will continue to comply with the terms of, and will regularly and diligently carry out, its obligations under the Sub-Contract;
- 1.6 it will procure that any sub-contractor engaged by it who undertakes any part of the Sub-Contract Services will enter into warranties in favour of the Authority in terms identical (save as to the parties) to those set out in this Contract, insofar as the terms contained in this Contract are relevant to the scope of such sub-contractor responsibility; and
- 1.7 the obligations contained in this Contract will apply to the Sub-Contractor's agents, employees and suppliers, provided that the Sub-Contractor will have no greater liability to the Authority hereunder than it would have had if the Authority were the Contractor.
2. Each warranty referred to in Clause 1 will be construed as a separate warranty and will not be limited or restricted by reference to, or reference from, the terms of any other warranty or any term of the Sub-Contract.
3. In addition and without prejudice to the warranties given in Clause 1 above, the Sub-Contractor hereby grants to the Authority the same warranties as contained in the Contract.
4. The Sub-Contractor will (at its own expense) upon request by the Authority prove to the Authority's reasonable satisfaction that the goods, materials and workmanship comply with the standards required by the Contract.

5. The Sub-Contractor will, save insofar as it is delayed by any event in respect of which the Contractor is granted an extension of time under the Contract for completion of the Services:
 - 5.1 execute, complete and maintain the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
 - 5.2 ensure that the Contractor will not become entitled to any extension of time for completion of the Services or to claim an additional payment under the Contract due to any failure or delay by the Sub-Contractor.
6. The Sub-Contractor will from time to time supply the Authority and the Contractor with such information as either may reasonably require.
7. Where the copyright in any drawings, designs, specifications, calculations, sketches and other documents ("copyright material") prepared by the Sub-Contractor in connection with the Sub-Contract Services is the property of the Sub-Contractor, the Sub-Contractor hereby grants to the Authority a worldwide, perpetual, royalty-free, non-exclusive and irrevocable licence to copy and use such copyright material for any purposes related to the Contract including but not limited to the completion, modification, extension, maintenance and reinstatement of the Sub-Contract Services, as well as operating, maintaining, modifying, repairing, configuring, replacing, correcting, extending, interfacing with, integrating with, connecting into and adjusting any equipment provided under the Contract and/or continuing any element of the Sub-Contract Services and the Authority will be entitled to assign such rights to any nominee or successor and sub-license such rights to any third party.
8. The parties hereby agree that:
 - 8.1 This Agreement will be personal to the Sub-Contractor who will not be entitled to assign or sub-contract any part of the Sub-Contract or this Contract without the prior written consent of the Authority;
 - 8.2 The Authority may assign the benefit of this Contract to any third party;
 - 8.3 The rights and remedies contained in this Contract are cumulative and will not exclude any other right or remedy available to either party in law or equity.
9. Nothing in the Sub-Contractor's tender or any specification, drawing, programme or other document put forward by or on behalf of the Sub-Contractor and no approval, consent, comment, acknowledgement, confirmation or advice at any time given by or on behalf of any person will operate to exclude or limit the Sub-Contractor's liability for any breach of its obligations hereunder.
10. Any provisions relating to dispute resolution which are set out in the Contract will be deemed to apply to this Contract as if they were set out herein (*mutatis mutandis*).

11. If any dispute of any kind whatsoever (the “Dispute”) arises between the parties in connection with this Contract or the Sub-Contract Services which raises issues which are in the opinion of the Authority the same as or substantially the same as issues raised in a related dispute (the “Related Dispute”) between the Authority and the Contractor and such Related Dispute has already been referred to a mediator appointed under provisions to that effect contained in the Contract, then the Sub-Contractor hereby agrees that the Authority may, at its discretion, by giving notice in writing to the Sub-Contractor, refer the Dispute to the mediator appointed to determine the Related Dispute. In this event such conciliator will have power to give such directions for the determination of the Dispute and the Related Dispute as he/she may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him/her.
12. Both the Authority and the Sub-Contractor acknowledge that in entering into this Contract they are not relying upon any representation, warranty, or assurance made or given by the other party or any other person, whether or not in writing at any time prior to the execution of this Contract which is not expressly set out herein provided that nothing in this Clause 12 excludes any liability which one party would otherwise have in respect of any statement it has made fraudulently to the other party.
13. Any notice to be given to either party hereunder will be deemed to be duly given if it is delivered by hand or sent by registered post or recorded delivery:
 - 13.1 in the case of the Authority to the Authority's address for notices as set out in the Contract; and
 - 13.2 in the case of the Sub-Contractor to: []and any such notices will be deemed to be received 2 working days after being posted, if sent by registered post or recorded delivery, or immediately, if delivered by hand.
14. It is agreed that nothing in this Contract will negate or diminish any duty or obligation owed to the Authority by the Sub-Contractor.
15. This Agreement will be governed by and construed according to laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.
16. Subject to Clause 16.1 below, any person who is not a party to this Contract will not have any benefit from or any rights under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.
 - 16.1 The Contracts (Rights of Third Parties) Act 1999 will apply to the Contract to the effect that any member of the TfL Group (as such term is defined in the Contract) will have the right to enforce any provision contained in the Contract against the Sub-Contractor to the extent that such provision confers

a benefit or purports to confer a benefit on that member of the TfL Group (as such term is defined in the Contract).

- 16.2 Notwithstanding Clause 16.1 above, the parties are entitled to waive time, vary any term of the Contract or rescind the Contract (if applicable) without the consent of any or all members of the TfL Group (as such term is defined in the Contract).

IN WITNESS whereof this Contract has been executed as a deed and delivered on the day and year first above written.

Signed as a deed)
for and on behalf of)
TRANSPORT TRADING)
LIMITED)
acting by)

Signature (Director)

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

Signed as a deed)
for and on behalf of)
[SUB-CONTRACTOR])
acting by)

Signature (Director)

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

SCHEDULE 19

Special Conditions

1. Examination of Sites, Special Requirements and Protection of Public and Private Services

- 1.1 The Contractor will be deemed to have examined the Sites, the Equipment thereon and the documentation for the Equipment during the tender period (meaning the period prior to signature of this Contract) and to have satisfied itself concerning these. No claims for extra payment due to the conditions existing at the Sites, defects in the Equipment and/or their documentation will be payable to the Contractor.
- 1.2 The Contractor will obtain and be conversant with the latest editions of the Special Requirements of the statutory undertakers. The Contractor will comply with the said Special Requirements. Compliance with such Special Requirements will not relieve the Contractor of any of its obligations and liabilities under this Contract and fulfilment of such other obligations and liabilities will not relieve it of its responsibility to comply with the said Special Requirements.
- 1.3 The position of the statutory undertakers' mains and services and public authorities' drains and sewers shown on any drawings that may be issued under this Contract will be regarded as being approximate only. The Engineer does not guarantee either the accuracy of the information or that the location of such apparatus is as shown on these drawings and no warranty will be implied as to the position, depth, size or gradient thereof. The Contractor will make its own enquiries of the statutory undertakers or public authorities and will satisfy itself as to the exact position of any such apparatus and the depths, sizes and gradients thereof. The Contractor will be responsible for any damage whatsoever, howsoever caused by the Contractor or the Contractor's Personnel to any such apparatus.
- 1.4 The Contractor will be deemed to have taken into account the inherent variability of conditions and circumstances to be found within existing highways and drainage systems and the like and the fact that public and private utilities' information will not be issued by the Engineer for the generality of Services but that the presence of such services must be anticipated and established by the Contractor.

2. Road Works and Signing

The Contractor will provide for the efficient protection of the public and in order to prevent mishaps and accidents whilst carrying out its duties herein, will guard and protect its plant, tools and materials and provide all necessary signs, lights, barriers and the like.

3. Electricity/Communications and Other Services

The Contractor will be entitled to use for the purposes of the Services such supplies of electricity, communications and other services as may be available therefor on the Site and pay to the Authority or its agent for such use such sums as may be reasonable in the circumstances, and will at its own expense provide any apparatus necessary for such use.

4. **Construction Industry Scheme**

4.1 Where the Construction Industry Scheme applies to any payment made in relation to this Contract, the Contractor warrants to the Authority that:

4.1.1 it is registered under the Construction Industry Scheme with gross payment status; and

4.1.2 within ten (10) Working Days of receipt of written notification from HM Revenue & Customs (or, if later, of receipt of a decision of the First-tier Tribunal) revoking its gross payment status, it will notify the Authority in writing of the date upon which its gross payment status ceased or will cease.

4.2 The Authority may make all payments under this Contract net of any deduction or withholding which it is required by law to make under the Construction Industry Scheme. If it does so, it is to account to HM Revenue and Customs for the tax it withholds in accordance with the requirements of the Construction Industry Scheme.

4.3 For the purpose of this paragraph 4, the “**Construction Industry Scheme**” means the tax deduction scheme for the construction industry operated by HM Revenue and Customs under Chapter 3 of Part 3 of the Finance Act 2004 and The Income Tax (Construction Industry Scheme) Regulations 2005.

5. **Construction (Design and Management) Regulations 2015**

5.1 For the purposes of the Construction (Design and Management) Regulations 2015 (the “**CDM Regulations**”) the Authority is the Client (as defined in the CDM Regulations) in respect of the Services (in so far as they consist of or include construction work as defined in the CDM Regulations).

5.2 Without prejudice to any other obligation of the Contractor to comply with the requirements of the CDM Regulations, the Authority appoints and/or reserves the right to appoint as part of the Services the Contractor to act as either or both of the following:

5.2.1 CDM Co-ordinator pursuant to Regulation 14(1) of the CDM Regulations;

5.2.2 Principal Contractor pursuant to Regulation 14(2) of the CDM Regulations.

5.3 The Contractor accepts and/or agrees to accept any such appointment if so appointed and agrees to carry out all obligations imposed by the CDM

Regulations on the CDM Co-ordinator and/or the Principal Contractor as the case may be.

- 5.4 The Parties will provide each other with all necessary assistance which they may reasonably require in order to fulfil their respective obligations pursuant to any appointment made under paragraph 5.2.

6. **New Roads and Street Works Act 1991, Traffic Management Act 2004 and Civil Contingencies Act 2004**

- 6.1 The Contractor will be aware of, and so far as it affects any Services under this Contract, comply with the requirements of the New Roads and Street Works Act 1991. In particular the Contractor will, before undertaking any Services involving any opening in any Highway, forward the appropriate notifications to the Authority for onward transmission to the relevant Highway Authority.

- 6.2 The Contractor will be aware of, and so far as it affects any Services under this Contract comply with, the requirements of the Traffic Management Act 2004 and the Civil Contingencies Act 2004 (including any permitting requirements).

- 6.2.7 all relevant approvals, consents, permissions (including any from Third Parties) and within the lawful requirements of local and public authorities. The site design process shall verify all calculations and design activities and seek Approval in Principle from the Technical Approval Authority (TAA) as specified by the *Engineer*. The verification activities must be undertaken by a Chartered Civil or Structural Engineer Competent in Highways Structures and approved by the TAA. and

- 6.3 Where the Contractor carries out Minor Civil Engineering Works it will be entirely responsible for any Site investigation necessary to carry out this work, and will make all necessary inquiries of the relevant statutory undertakers in accordance with paragraph 1.

7. **Timber Standards**

- 7.1 For the purposes of this paragraph 7, unless the context indicates otherwise, the following expressions will have the following meanings:

“Independent Report”

means an independent report by an individual or body:

- (a) whose organisation, systems and procedures conform to:
 - (i) ISO Guide 65:1996 (EN 45011:1998); and
 - (ii) general requirements for bodies operating product certification systems; and
- (b) who is accredited to audit against forest management standards by a national or

international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies;

“Legal Timber”

means Timber in respect of which the organisation that felled the trees and/or provided the Timber from which the wood supplied under this Contract derived:

- (a) had legal rights to use the forest;
- (b) holds a register of all local and national laws and codes of practice relevant to forest operations; and
- (c) complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes;

**“Recycled Timber”
and “Reclaimed
Timber”**

means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms ‘recycled’ and ‘reclaimed’ are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. Recycled or Reclaimed Timber must be capable of being evidenced as such to the Authority’s satisfaction in order to satisfy this definition;

**“Sustainable
Timber”**

means Timber, which in order to meet the Authority’s criteria for sustainable timber, must be:

- (a) Recycled Timber; or
- (b) Sustainably Sourced Timber; or
- (c) a combination of (a) and (b);

**“Sustainably
Sourced Timber”**

means Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council (FSC) or equivalent. Where it is not practicable to use Forest Stewardship Council (FSC) standard accredited timber, the Authority will accept timber accredited through other

schemes approved by the Central Point of Expertise on Timber (CPET), as listed below:

- (a) Canadian Standards Association (CSA);
- (b) Programme for the Endorsement of Forest Certification (PEFC); or
- (c) Sustainable Forestry Initiative (SFI),

or such other source as the Contractor may demonstrate to the Authority's satisfaction is equivalent;

“Timber”

means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber; and

“Virgin Timber”

means timber supplied or used in performance of this Contract that is not Recycled Timber.

7.2 The Contractor's Obligations and the Authority's Rights

- 7.2.1 The Contractor will ensure that all Timber supplied or used in the performance of this Contract will be Sustainable Timber. If it is not practicable for the Contractor to meet this condition the Contractor must inform the Authority in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The Authority reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Where the Authority exercises its right to reject any Timber, the provisions of paragraph 7.2.4 will apply.
- 7.2.2 Without prejudice to paragraphs 7.2.1 and 7.4.2, all Virgin Timber procured by the Contractor for supply or use in performance of this Contract will be Legal Timber.
- 7.2.3 The Contractor will ensure that Virgin Timber it procures for supply or use in performance of this Contract will not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.
- 7.2.4 The Authority reserves the right to reject at any time any Timber that does not comply with the conditions of this Contract or the Specification. Where the Authority exercises its right to reject any Timber, the Contractor will supply contractually compliant

alternative Timber, at no additional cost to the Authority and without causing delay to the performance of this Contract.

- 7.2.5 The Contractor will maintain records of all Timber supplied and used in the performance of this Contract. Such information will be made available to the Authority promptly if requested at any time.

7.3 Authority's Reporting Requirements

- 7.3.1 Unless the Authority has given its written approval in accordance with paragraph 7.2.1 that Timber that is not Sustainable Timber may be used, then, if requested, the Contractor will promptly provide evidence to the Authority's satisfaction that the Timber is Sustainable Timber.
- 7.3.2 Upon a request by the Authority referred to in paragraph 7.3.1, in the event that the Contractor does not promptly provide such evidence, or the evidence provided does not satisfy the Authority's requirements, then (and without prejudice to paragraph 7.4.1), the Authority reserves the right to retain 25% of any monies payable to the Contractor under this Contract until such date as the Authority is in receipt of such evidence and the Authority is satisfied that the evidence establishes that the Timber is Sustainable Timber.
- 7.3.3 The Contractor will report quarterly on its use of Sustainable Timber in the performance of this Contract.
- 7.3.4 The Contractor will report on the amount of Timber that has been supplied to the Authority in accordance with paragraph 7.2.1 which is not Sustainable Timber.

7.4 Verification

7.4.1 Evidence of Sustainable Timber

The Authority reserves the right to determine whether the evidence supplied by the Contractor is sufficient to satisfy it that the Specification and the conditions of this Contract have been fully complied with. In the event that the Authority is not so satisfied, the Contractor will, on written request by the Authority, commission and meet the costs of an Independent Report to:

- 7.4.1.1 verify the source of the Timber; and
- 7.4.1.2 assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

7.4.2 Evidence of Legal Timber

- 7.4.2.1 The Contractor will, before delivering any Virgin Timber under this Contract, obtain documentary evidence to

the Authority's satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the Authority, the Contractor will submit such documentary evidence to the Authority either prior to delivery or at such other times as the Authority may require. For the avoidance of doubt, the Contractor will identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

- 7.4.2.2 The Authority reserves the right at any time during the execution of this Contract and for a period of 6 years from final delivery of any Timber under this Contract to require the Contractor to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.

8. **Waste Electrical and Electronic Equipment Regulations 2006**

- 8.1 For the purposes of this paragraph 8, unless the context indicates otherwise, the following expressions will have the following meanings:

“WEE Equipment” means any Equipment which falls within the scope of the WEEE Regulations; and

“WEEE Regulations” means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007).

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

8.2.1 all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and

8.2.2 all Waste Electrical and Electronic Equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEEE Equipment and the WEEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.

- 8.3 The Contractor will indemnify and keep indemnified the Authority as a result of any Losses which it incurs as a result of any failure on the part of the Authority or the relevant producer to comply with the terms of this paragraph 8.

9. **Euro - Continuity of Contract**

- 9.1 The Parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under this Contract or any transaction, or give either Party the right unilaterally to alter or terminate this Contract or any transaction.
- 9.2 The words “an event associated with economic and monetary union in the European Union” will include each and any combination of the following:
- 9.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);
 - 9.2.2 the fixing of conversion rates between a member state’s currency and the new currency or between the currencies of member states;
 - 9.2.3 the introduction of that new currency as lawful currency in a member state;
 - 9.2.4 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;
 - 9.2.5 the disappearance or replacement of a relevant rate option or other price source for the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen; or
 - 9.2.6 the withdrawal of any member state from a single or unified European currency.

10. **London Living Wage**

- 10.1 For the purposes of this paragraph 10, unless the context indicates otherwise, the following expressions will have the following meanings:
- “London Living Wage”** the basic hourly wage of £8.55 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Contractor.
- 10.2 Without prejudice to any other provision of this Contract, the Contractor will:
- 10.2.1 ensure that none of its employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 10.2.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;

- 10.2.3 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time;
 - 10.2.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and
 - 10.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- 10.3 Any breach by the Contractor of the provisions of this paragraph 10 will be treated as a material breach capable of remedy in accordance with Clause 27.1.2.

11. **Fleet Operator Recognition Scheme Membership**

- 11.1 For the purposes of this paragraph 11, unless the context indicates otherwise, the following expressions will have the following meanings:

“Approved Driver Training”	means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at: www.fors-online.com ;
“Bronze Membership”	means the minimum level of FORS membership, the requirements of which are more particularly described at: www.fors-online.org.uk ;
“Class VI Mirror”	means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;
“Close Proximity Sensor”	means a device consisting of a sensor system that detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged;
“Collision Investigation”	means the investigation of a collision in order to ascertain its cause and to ascertain what procedures may be implemented to prevent recurrence of the collision;
“Collision Report”	means a report detailing the results of the Collision Investigation and those procedures, which have been put in place in order to prevent recurrence of the collisions;
“Driver”	means any employee of the Supplier and his

	Subcontractors (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while Providing the Goods and Services;
“DVLA”	means the Driver and Vehicle Licensing Agency;
“FORS”	means the Fleet Operator Recognition Scheme, which is an accredited membership scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Membership Terms”	means the terms of the membership agreement of the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk ;
“Freight”	means any commodity moved by a vehicle, including but not limited to, raw and processed materials, goods, waste, servicing and construction equipment, money and valuables, post and parcels;
“Freight Vehicle”	means a Lorry or a Van;
“Fresnel Lens”	means a clear thin plastic lens that is press fitted to a lorry window on the passenger side and allows the driver to see that which is in the vehicle’s blind spot;
“Initial Collision Report”	means a report detailing the circumstances of the collision including time, location, weather conditions, possible cause(s) of the collision, damage and/or injury caused, the identity of the driver, model of vehicle, type of Freight being carried at the time (if relevant) and the licence plate number;
“Lorry”	means a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986; and
“Van”	means a vehicle with a MAM not exceeding 3,500 kilograms including a van, a car-derived van or other vehicle designed for carrying Freight (excludes passenger cars, motorcycles, mopeds and bicycles).

- 11.2 Where the Contractor operates Freight Vehicles, it will within 90 days of executing the Contract:
- 11.2.1 (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to membership of FORS (the “Alternative Scheme”); and
 - 11.2.2 have attained the standard of Bronze Membership of FORS (or higher) or the equivalent within the Alternative Scheme.
- 11.3 The Contractor will maintain the standard of Bronze Membership (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Membership Terms or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Contractor has attained Silver or Gold Membership of FORS, the maintenance requirements will be undertaken in accordance with the periods set out in their FORS Silver or Gold membership agreement.
- 11.4 The Contractor will use its best endeavours to ensure that those of its Sub-Contractors who operate Freight Vehicles will comply with paragraphs 11.2 and 11.3 as if they applied directly to the Sub-Contractor.

Safety Equipment on Vehicles

- 11.5 The Contractor will ensure that every Lorry, which it uses to provide the Services, will:
- 11.5.1 have Side Guards, unless the Contractor can demonstrate to the reasonable satisfaction of the Authority that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - 11.5.2 have a Close Proximity Sensor;
 - 11.5.3 have a Class VI Mirror; and
 - 11.5.4 bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Driver Licence Checks

- 11.6 The Contractor will ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Contractor’s risk scale, provided that the Contractor’s risk scale has been approved in writing by the Authority within the last 12 months:
- 11.6.1 0 – 3 points on the driving licence – annual checks;
 - 11.6.2 4 – 8 points on the driving licence – six monthly checks;

11.6.3 9 – 11 points on the driving licence – quarterly checks; or

11.6.4 12 or more points on the driving licence – monthly checks.

Driver Training

11.7 The Contractor will ensure that each of its Drivers who has not undertaken:

11.7.1 Approved Driver Training in the last three years, undertakes Approved Driver Training within 60 days of the Contract Commencement Date;

11.7.2 a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or an equivalent safety module provided by the Alternative Scheme).

Collision Reporting

11.8 Within 15 days of the Contract Commencement Date, the Contractor will provide to the Authority a Collision Report. The Contractor will provide to the Authority an updated Collision Report on a quarterly basis and within five working days of a written request from the Authority.

FORS Reports

11.9 Within 30 days of its becoming a member of FORS or of the Alternative Scheme, the Contractor will make a written report to the Authority at fors@tfl.gov.uk detailing its compliance with paragraphs 11.5, 11.6 and 11.7 of this Schedule 19 (the “Safety, Licensing and Training Report”). The Contractor will provide updates of the Safety, Licensing and Training Report to the Authority at fors@tfl.gov.uk on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.

Obligations of the Contractor Regarding Subcontractors

11.10 The Contractor will procure that each of its Sub-Contractors that operates the following vehicles will comply with the corresponding provisions of this Contract as if those Sub-Contractors were a party to this Contract:

11.10.1 For Lorries – paragraphs 11.5, 11.6, 11.7 and 11.8 of this Schedule 19; and

11.10.2 For Vans – paragraphs 11.5.4, 11.6, 11.7 and 11.8 of this Schedule 19.

Failure to Comply with Freight-related Obligations

11.11 Without limiting the effect of Clause 27 of the Contract, if the Contractor fails to comply with paragraphs 11.2 to 11.10 (inclusive) of this Schedule 19 in whole or part:

- 11.11.1 the Contractor will have committed a material breach of this Contract; and
- 11.11.2 the Authority may refuse the Contractor, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Authority.

SCHEDULE 20

Transfer of Employment

1. Definitions

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

“Authority Employee”	means any employee of the Authority (or TfL Group) immediately prior to or on the Contract Commencement Date or the Services Commencement Date;
“Current Contractor”	means a provider of services similar to any part of the Services immediately before the Contract Commencement Date or the Services Commencement Date;
“Current Contractor Employee”	means any employee of the Current Contractor immediately prior to or on the Contract Commencement Date or the Services Commencement Date;
“Employment Costs”	means wages, holiday pay, employment benefit, costs, redundancy costs and unfair dismissal costs and awards in respect of all Re-Transferring Personnel;
“Further Transfer Date”	means the date of the transfer of employment of the Re-Transferring Personnel from the Contractor to the Authority or any Replacement Contractor;
“Re-Transferring Personnel”	<p>means any of the Contractor Personnel who:</p> <ul style="list-style-type: none">(a) will transfer to the employment of either the Authority or the Replacement Contractor pursuant to TUPE; or(b) accepts an offer of employment from the Authority or a Replacement Contractor (as appropriate), <p>upon the expiration or termination (in whole or in part) of this Contract.</p>

2. Transfer of Employees to Contractor

- 2.1 It is understood and acknowledged by the Parties that TUPE does not apply to this Contract on the Contract Commencement Date or the Services Commencement Date (as applicable) in respect of any Authority Employees

or any Current Contractor Employees and that there are no Authority Employees or any Current Contractor Employees who will transfer to the Contractor pursuant to TUPE.

2.2 The Contractor will promptly when requested by the Authority (but not (subject to the obligations in the remainder of this Schedule) more than twice in any year and not more than 7 days after the date of any notice to terminate this Contract given by either Party for any reason whatsoever) provide, and use its best endeavours to procure that any relevant Sub-Contractor provides, the following information to the Authority:

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

such information together being the “**Staffing Information**”.

2.3 The Contractor will notify the Authority in as much detail as possible as soon as practicable and in any event within 5 days of the Contractor becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.

2.4 The Contractor warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.

2.5 Subject to paragraph 2.6, the Contractor will provide the Authority with a final Staff List (the “**Final Staff List**”) not less than 14 days before the date of expiry or earlier termination of the Contract.

- 2.6 If the Contract is terminated by the Authority in accordance with Clause 27.1 then the Final Staff List will be provided by the Contractor to the Authority within 14 days of the date of termination of the Contract.
- 2.7 The Contractor warrants that as at the date of expiry or earlier termination of the Contract:
- 2.7.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
 - 2.7.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
 - 2.7.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority and the same will be complete and accurate.
- 2.8 From the earlier of:
- 2.8.1 the date falling 12 calendar months before the date of expiry of the Contract; or
 - 2.8.2 if the Contract is terminated by the Authority in accordance with Clause 27.1, the date of the relevant termination notice; or
 - 2.8.3 if either Party refers a dispute in accordance with Clause 61, the date of such referral,
- the Contractor will not and will procure that its Sub-Contractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 2.8.4 terminate or give notice to terminate the employment or engagement, or replace, the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
 - 2.8.5 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
 - 2.8.6 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
 - 2.8.7 increase to any significant degree the proportion of working time spent on the Services by any of the Contractor's Personnel; or
 - 2.8.8 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.

- 2.9 The Contractor will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in paragraph 2.8 regardless of when such notice takes effect.
- 2.10 For the avoidance of doubt, the Contractor confirms that the Authority will be permitted to disclose any information provided to it under this paragraph 2 in summary form to any person who has been invited to tender for the provision of the Services (or similar services) (or any part thereof) and to any Replacement Contractor.
- 2.11 To the extent that the Current Contractor and the Contractor are the same legal entity as each other or are part of the same corporate group as each other or are in a sub-contracting relationship (of any tier) with each other the provisions of this Schedule under which the Authority owes any obligations to the Contractor will have no effect.

3. Transfer of Employees on Expiry or Termination

- 3.1 To any extent that TUPE applies on or about the expiration or termination (including any partial termination) of the Contract and/or the appointment of a Replacement Contractor, the following will apply:

3.1.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10) from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Replacement Contractor (as appropriate).

3.1.2 During the period commencing on the earlier of:

3.1.2.1 the date falling 12 calendar months before the Further Transfer Date; or

3.1.2.2 if the Contract is terminated by the Authority in accordance with Clause 27.1, the date of the relevant termination notice,

and ending on the Further Transfer Date the Contractor will:

3.1.2.3 provide the Authority with access to such employment records as the Authority may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Replacement Contractor (as appropriate);

3.1.2.4 allow the Authority to have copies of any of the documents referred to in paragraphs 2 and 3; and

- 3.1.2.5 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Contractor (as appropriate).

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

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

- 3.1.3.1 is under notice of termination;
- 3.1.3.2 is on long-term sick leave;
- 3.1.3.3 is on maternity, parental or adoption leave;
- 3.1.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- 3.1.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Contractor (as appropriate);
- 3.1.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
- 3.1.3.7 has received a written warning (other than a warning that has lapsed);
- 3.1.3.8 has taken or been the subject of a grievance procedure within the previous two years; or
- 3.1.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Replacement Contractor (as appropriate) under TUPE.

- 3.1.4 The Contractor undertakes to each of the Authority and any Replacement Contractor (as appropriate):

- 3.1.4.1 that it will continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the

Re-Transferring Personnel up to the Further Transfer Date;

3.1.4.2 to pay to the Re-Transferring Personnel all sums to which they are entitled from the Contractor and/or any Sub-Contractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and

3.1.4.3 to comply in all respects with its information and consultation obligations under the TUPE and to provide to the Authority or Replacement Contractor (as appropriate) such information as the Authority or Replacement Contractor may request in order to verify such compliance.

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

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

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

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

3.1.6 The Contractor will indemnify, keep indemnified and hold harmless each of the Authority and any Replacement Contractor from and against all Losses which the Authority and/or the Replacement Contractor (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

3.1.6.1 any failure by the Contractor to comply with its obligations under paragraph 3;

3.1.6.2 any act or omission by or on behalf of the Contractor in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the Contractor's indemnity will only apply in respect of such employees insofar as and to the extent that any such act or omission occurred on or

before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the Contractor; and/or

- 3.1.6.3 any claim or demand or other action taken against the Authority and/or Replacement Contractor by any person employed or engaged by the Contractor (other than Re-Transferring Personnel) who claims (whether correctly or not) that the Authority or Replacement Contractor has inherited any liability from the Contractor in respect of them by virtue of TUPE.

- 3.2 The Contractor will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 6 years following the date of expiry or earlier termination of the Contract the Authority will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

- 3.2.1 is still an employee or Sub-Contractor of the Contractor or any of the Contractor's associated companies; and

- 3.2.2 was at any time employed or engaged by the Contractor in order to provide the Services to the Authority under this Contract,

and such access and consultation will be provided free of charge and thereafter be charged at reasonable rates for the time spent by the Contractor and/or its employees or sub-contractors on such consultation. The Contractor will further procure that all such persons co-operate with the Authority's requests.

4. **General**

The Contractor will procure that any Sub-Contractor (of any tier) will comply in full with the provisions of this Schedule. Any references to any obligation or act or omission of the Contractor will be deemed to include any such Sub-Contractor.

IN WITNESS whereof this Contract has been executed as a deed and delivered on the day and year first above written.

Signed as a deed)
for and on behalf of)
TRANSPORT TRADING)
LIMITED)
acting by)

Signature (Director)

REDACTED

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

Signed as a deed)
for and on behalf of)
[CONTRACTOR] acting by)

Signature (Director)

REDACTED

Print name and position

Date:

Signature (Director/Company Secretary)

Print name and position

Date:

REDACTED