



Agreement Reference Number: TfL 94360

Date: 17 October 2019

**Resourcing for Planned Closures**

**Framework Agreement  
for the Provision of Services**

**between**

**Transport for London**

**and**

**Transport Investigation Limited**

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**THIS AGREEMENT** is made the 17<sup>th</sup> day of October 2019

**BETWEEN:**

- (1) Transport for London a statutory corporation whose principal place of business is at 55 Broadway, London, SW1H 0BD (“**the Contracting Authority**”); and
- (2) Transport Investigations Limited, a company registered in England and Wales (Company Registration Number 03467582) whose registered office is at Unit 65 The Oaks, Manston Business Park, Ramsgate, Kent, CT12 5FD (“**the Service Provider**”).

**RECITALS:**

- A. The Parties wish to enter into a framework agreement which will enable the Authority, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Services of the type described in Schedule 3.
- B. The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under any Call-Off Contract.
- C. This framework agreement can be utilised by the Contracting Authority or any other member of the TfL Group.
- D. The terms and conditions of this Agreement provide that the Greater London Authority or any of its other functional bodies may, if the Service Provider so agrees, contract with the Service Provider on the terms set out in this Agreement.

**THE PARTIES AGREE THAT:**

In consideration of the payment of five pounds (£5.00) by the Authority to the Service Provider (receipt of which the Service Provider acknowledges), it is agreed that:

**1. Definitions and Interpretations**

In the Agreement (including the Recitals):

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

“**Affected Party**” has the meaning given to it in Clause 29.3;

“**Agreement**” this framework agreement, including the Schedules and all other documents

	referred to in this Agreement;
<b>“Agreement Commencement Date”</b>	the date for commencement of this Agreement specified in Schedule 1;
<b>“Agreement Reference Number”</b>	the reference number for this Agreement as set out in Schedule 1;
<b>“Authority”</b>	the Contracting Authority and or any TfL Group member utilising this Agreement;
<b>“Business Day”</b>	any day excluding Saturdays, Sundays or public or bank holidays in England;
<b>“Call-Off Contract”</b>	a call-off contract in the form set out in Schedule 6 that has been executed by the Service Provider and the Authority, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;
<b>“Call-Off Contract Number”</b>	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
<b>“Call-Off Co-ordinator”</b>	the person named as such in a Call-Off Contract or such other person as notified to the Service Provider by the Authority;
<b>“Call-Off Term”</b>	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
<b>“Cessation Plan”</b>	a plan agreed between the Parties or determined by the Authority pursuant to Clause 31: <ul style="list-style-type: none"> <li>(a) to give effect to a Declaration of Ineffectiveness; or</li> <li>(b) to give effect to a Public Procurement Termination Event;</li> </ul>
<b>“Charges”</b>	the charges payable by the Authority, in consideration of the due performance of the Services, as specified in or calculated in accordance with a Call-Off Contract;
<b>“Confidential Information”</b>	all information (whether written or

verbal) that by its nature may reasonably be regarded as confidential to the Authority (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;

**“Contract Information”**

- (i) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and
- (ii) data extracted from the invoices submitted pursuant to Clause 7 which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

**“Data Protection Legislation”**

means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic

Communications (EC Directive)  
Regulations 2003;

**“Declaration of Ineffectiveness”** a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a) or 118(3) the Utilities Contracts Regulations 2016;

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

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

**“Insolvency Event”** any of the following:

- (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Service Provider or the Holding Company;

- (c) being a company, either or both of the Service Provider 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) either or both the Service Provider or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying; or
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider or the Holding Company under the law of any applicable jurisdiction for those purposes;

**“Intellectual Property Rights”**

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

**“Key Personnel”**

the Service Provider’s key personnel named as such in Schedule 1 or any relevant Call-Off Contract;

**“Losses”**

all costs (including legal costs and costs of enforcement), expenses, liabilities

(including any tax liability), injuries, direct, 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, proceedings and judgments;

<b>“Milestone”</b>	an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;
<b>“Mini-Competition”</b>	a competitive process which the Authority may from time to time utilise to select a service provider to carry out Services from time to time;
<b>“Parties”</b>	the Authority and the Service Provider (including their successors and permitted assignees) and <b>“Party”</b> shall mean either of them as the case may be;
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Project Plan”</b>	the plan (if any) set out in a Call-Off Contract in relation to the performance and timing of the Services under a Call-Off Contract which may include Milestones;
<b>“Procurement Manager”</b>	the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Authority;
<b>“Proposal”</b>	the Service Provider’s offer to provide Services in response to a Request Form. A Proposal must include a draft Call-Off Contract signed by the Service Provider;
<b>“Public Procurement Termination Event”</b>	has the meaning given to it in Clause 31.7;
<b>“Public Procurement Termination Grounds”</b>	any one or more of the grounds described in either Regulation 73(1) of

the Public Contracts Regulations 2015 or Regulation 89(1) of the Utilities Contracts Regulations 2016;

**“Request Form”**

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

**“Required Date”**

the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the Services are required to be provided as set out in the Project Plan;

**“Service Provider Equipment”**

the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under any Call-Off Contract;

**“Service Provider’s Manager”**

the person who is identified as the Service Provider’s Manager in the Call-Off Contract for the relevant Services;

**“Service Provider’s Personnel”**

all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

**“Services”**

(a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under a Call-Off Contract as detailed in such Call-Off Contract including any variations to such services and/or activities pursuant to Clause 34; and

(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract;

<b>“Specification”</b>	the specification and other requirements set out in Attachment 1 of the Call-Off Contract;
<b>“Supply Chain Finance Option”</b>	has the meaning given to it in paragraph 1 of Part B of Schedule 7;
<b>“Term”</b>	the period during which this Agreement continues in force as set out in Schedule 1;
<b>“TfL”</b>	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
<b>“TfL Group”</b>	TfL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any <b>“member of the TfL Group”</b> shall refer to TfL or any such subsidiary;
<b>“TfL Premises”</b>	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group (including for the avoidance of doubt the Authority);
<b>“Transparency Commitment”</b>	means the Authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority’s own published transparency commitments; and
<b>“VAT”</b>	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
  - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
  - 1.7.2 the conflict is with a provision in Schedule 2 (Special Conditions of Agreement), in which case the provisions in Schedule 2 shall prevail; or
  - 1.7.3 the conflict is with a provision in Attachment 3 (Special Conditions of Call-Off), in which case the provisions in Attachment 3 shall prevail;
- 1.8 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
  - 1.8.1 each Call-Off Contract;
  - 1.8.2 these Clauses;
  - 1.8.3 the Schedules;
  - 1.8.4 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;

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

## **2. Framework Agreement**

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

## **3. CALL-OFF PROCEDURE**

- 3.1 At any time during the duration of this Agreement, the Authority may identify Services which at its sole discretion it wishes to let under the terms of this Agreement.
- 3.2 Where the Authority opts to appoint the Service Provider direct without the need for a Mini-Competition, it will issue to the Service Provider a Request

Form substantially in the form set out in Schedule 5A, specifying the Services to be provided, in which event:

- 3.2.1 the Service Provider shall promptly confirm receipt of such Request Form;
  - 3.2.2 the Service Provider shall respond to the Request Form by completing a Proposal as an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;
  - 3.2.3 after receipt of an acceptable Proposal, the Authority will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return the same to the Authority within 10 Business Days of receipt. The Call-Off Co-ordinator will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Service Provider.
- 3.3 Where the Authority opts to undertake a Mini-Competition it will issue to those Service Providers on the framework that are the subject of this Agreement, that it assesses in its sole discretion, are capable of providing the Services to the Authority's satisfaction, a Request Form as set out in Schedule 5B, specifying the Services to be provided. In the event that the Service Provider receives such a Request Form:
- 3.3.1 the Service Provider shall immediately confirm receipt of such Request Form;
  - 3.3.2 the Service Provider shall respond to a Request Form by completing a Proposal as an offer capable of acceptance or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;
  - 3.3.3 the Authority will award the relevant Call-Off Contract to the Proposal that is the most economically advantageous with reference to the assessment criteria set out in the Request Form as they relate to the Service(s) in question.

- 3.4 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the parties.
- 3.5 A Request Form and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. The Authority shall not be obliged to consider or accept any Proposal submitted by the Service Provider.
- 3.6 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Authority.
- 3.7 The Authority is not obliged to approve or sign any Call-Off Contract.
- 3.8 Unless otherwise expressly agreed in writing with the Authority, the Service Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this Clause 3.
- 3.9 Where reasonably requested to do so by the Greater London Authority (“**GLA**”) or any of its other functional bodies (currently, the London Legacy Development Corporation, the Mayor’s Office for Policing and Crime, the London Fire Commissioner and the Old Oak and Park Royal Development Corporation) (“**Functional Bodies**”) and provided the Service Provider is willing to so contract, the Service Provider shall contract with the GLA or appropriate Functional Body on the terms of this Agreement mutatis mutandis. The GLA or the Functional Bodies cannot affect or amend this Agreement and each Call-Off Contract is specifically between the Service Provider and the GLA or appropriate Functional Body and the TfL Group shall in no way be liable for the GLA or appropriate Functional Bodies obligations arising out of such Call-Off Contract.

#### **4. TERM OF AGREEMENT AND CALL-OFF CONTRACTS**

- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 Each Call-Off Term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 4.3 A Call-Off Contract may expire or be terminated in accordance with its terms or Clause 29 but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

## **5. The Services**

### **5.1 The Service Provider:**

- 5.1.1 shall provide the Services specified in a Call-Off Contract to the Authority in accordance with this Agreement and the terms of the relevant Call-Off Contract;
- 5.1.2 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 the relevant Call-Off Contract;
- 5.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Agreement or relevant Call-Off Contract; and
- 5.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services under any Call-Off Contract.

5.2 Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.

### **5.3 The Service Provider shall provide the Services under each Call-Off Contract:**

- 5.3.1 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 Services and with sufficient resources including project management resources;
- 5.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
- 5.3.3 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
- 5.3.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Call-Off Contract is not being or is unable to be performed.

5.4 Where in the reasonable opinion of the Authority the Service Provider has failed to provide the Services or any part of them in accordance with this

Agreement and/or the relevant Call-Off Contract, the Service Provider shall, without prejudice to any of the Authority's other rights, re-perform the Services or part thereof as requested by the Authority at no additional cost and within such period of time as reasonably specified by the Authority.

## **6. Charges**

- 6.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 7 and in consideration of, and subject to the due performance of the Services by the Service Provider in accordance with the relevant Call-Off Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.
- 6.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.
- 6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

## **7. Payment Procedures and Approvals**

- 7.1 The Service Provider shall invoice the Authority in respect of the Charges:
- 7.1.1 monthly in arrears during the Call-Off Contract Term; or
  - 7.1.2 at such dates or at the end of such other periods as may be specified in the relevant Call-Off Contract; or
  - 7.1.3 if specified in a Call-Off Contract, on completion of each Milestone. It is a condition precedent of the submission of an invoice on completion of a Milestone that all preceding Milestones specified in the relevant Call-Off Contract have been completed.
- 7.2 The Service Provider shall submit invoices to the address set out in each Call-Off Contract or where an electronic format for submission of invoices is set out in each Call-Off Contract, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Agreement Number, relevant Call-Off Contract Number, SAP order number, the Authority account details, the Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

- 7.3 In the event of a variation to the Services in accordance with this Agreement or the relevant Call-Off Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.
- 7.4 The Authority shall consider and verify each invoice, which is submitted in accordance with this Clause 7, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have under the relevant Call-Off Contract:
- 7.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice;
- 7.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.
- The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 7.5 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Procurement Manager or Call-Off Co-ordinator (whether related to payment or otherwise) shall:
- 7.5.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or
- 7.5.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 20, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt under this Agreement or a Call-Off Contract.
- 7.6 Except where otherwise provided in a Call-Off Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Call-Off Contract.

7.7 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Agreement or a Call-Off Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Warranties and Obligations**

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

8.1.1 the Service Provider:

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

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

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

8.1.2 the Agreement and Call-Off Contract is executed by a duly authorised representative of the Service Provider;

8.1.3 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Service Provider shall 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 set out in the relevant Call-Off Contract; and

8.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the relevant Call-Off Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

- 8.2 Each warranty and obligation in this Clause 8 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

## **9. Contractual Management**

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

- 9.2 The Service Provider Manager shall act as the Service Provider's representative for all purposes of this Agreement. In respect of each Call-Off Contract, the Service Provider shall provide the Key Personnel. The Service Provider Manager and the Key Personnel shall procure that they:

9.2.1 diligently supervise the performance of the Services;

9.2.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and

9.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.

- 9.3 The Service Provider may only make any changes to the Service Provider Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority (which shall not be unreasonably withheld).

- 9.4 No act of or omission by or approval from either the Authority, the Procurement Manager, or any Call-Off Co-ordinator in performing any of their respective duties under or in connection with this Agreement or relevant Call-Off Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Contract.

## **10. SERVICE PROVIDER'S PERSONNEL**

- 10.1 The Parties agree that:

10.1.1 the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) do not apply on the Agreement Commencement Date or on the expiry or termination of this Agreement; and

- 10.1.2 where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) apply to any Call-off Contract, the relevant optional clauses will be included in the Call-Off Contract.
- 10.2 Nothing in this Agreement or any Call-Off Contract will render the Service Provider's Personnel, an employee, agent or partner of the Authority or of any member of the TfL Group by virtue of the provision of the Services by the Service Provider under this Agreement or Call-Off Contract and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.
- 10.3 The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract. All Service Provider Personnel deployed on work relating to the Call-Off Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.
- 10.4 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Service Provider) deny access to such Service Provider's Personnel to any TfL Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider's Personnel in the Authority's view have not been properly trained in any way required by a relevant Call-Off Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Authority shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Call-Off Co-ordinator's prior consent in the case of Key Personnel).
- 10.5 The Service Provider shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed on the relevant Call-Off Contract and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 10.2 shall apply to the proposed replacement personnel.
- 10.6 The Service Provider shall indemnify, keep indemnified and hold harmless the Authority from and against all Losses which the Authority or the TfL Group incur or suffer in relation to the Service Provider's Personnel or any person who may allege to be the same (whenever such Losses may arise) or any failure by the Service Provider to comply with Clause 10.4.
- 10.7 The Service Provider shall pay to the Service Provider's Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for this Agreement and the relevant Call-Off Contract and not less than the amounts to which the Service Provider's Personnel are contractually entitled.

## **11. SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 11.1 The Service Provider shall 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 subject to such conditions as the Authority sees fit.
- 11.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
  - 11.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the relevant Call-Off 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;
  - 11.2.2 be responsible for payments to that person; and
  - 11.2.3 remain solely responsible and liable to the Authority for any breach of the relevant Call-Off 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 breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
  - 11.2.4 on or before the Agreement Commencement Date notify the Authority in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Service Provider to the Authority under the Agreement;
  - 11.2.5 promptly notify the Authority in writing of any change to the information notified under Clause 11.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Agreement Commencement Date;
  - 11.2.6 without prejudice to the provisions of Clause 15, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
  - 11.2.7 include a term in each sub-contract (of any tier):
    - 11.2.7.1 requiring payment to be made by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
    - 11.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the

Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements; and

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

11.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as Clause 11.2.7.3 above in any sub-contract it awards.

11.3 The Service Provider shall give notice to the Authority within 10 Business Days where:

11.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and

11.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company, and

11.3.3 (in the case of an unincorporated Service Provider) give notice to the Authority if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.

Upon the occurrence of any of the events referred to at Clauses 11.3.1 – 11.3.3 above, the Authority shall have the right to terminate the Agreement and any relevant Call-Off Contract.

## **12. CONFLICT OF INTEREST**

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

12.2 The Service Provider shall 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 shall notify the Contracting Authority in writing immediately upon

becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and shall work with the Contracting Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Contracting Authority's satisfaction, provided that, where the Contracting Authority is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 29.1.4.

### **13. ACCESS TO PREMISES**

- 13.1 Subject to Clause 10.4 any access to any TfL Premises made available to the Service Provider in connection with the proper performance of the Call-Off Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the Call-Off Contract Term, for the avoidance of doubt, the Service Provider shall be responsible for its own costs of travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:
- 13.1.1 have the use of such TfL Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL Premises;
  - 13.1.2 vacate such TfL Premises upon the termination or expiry of the relevant Call-Off Contract or at such earlier date as the Authority may determine;
  - 13.1.3 not exercise or purport to exercise any rights in respect of any TfL Premises in excess of those granted under this Clause 13.1;
  - 13.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time; and
  - 13.1.5 not damage the TfL Premises or any assets on the TfL Premises.
- 13.2 Nothing in this Clause 13 shall create or be deemed to create the relationship of landlord and tenant in respect of any TfL Premises between the Service Provider and any member of the TfL Group.
- 13.3 The Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in any Call-Off Contract.

### **14. COMPLIANCE WITH POLICIES AND LAW**

- 14.1 The Service Provider, at no additional cost to the Authority:
- 14.1.1 undertakes to procure that all the Service Provider's Personnel comply with all of the Authority's policies and standards that are relevant to the

performance of the Services, including the provisions set out in Schedule 8 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 TfL Premises or accessing the Authority's computer systems. The Authority shall provide the Service Provider with copies of such policies and standards on request;

- 14.1.2 shall provide the Services in compliance with and shall ensure that the Service Provider's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Service Provider's business or the Authority's business, from time to time in force which are or may become applicable to the Services. The Service Provider shall promptly notify the Authority if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this Clause 14.1.2;
- 14.1.3 without limiting the generality of Clause 14.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 14.1.4 acknowledges that the Authority is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty;
- 14.1.5 where possible, shall provide the Services in such a manner as to:
  - 14.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - 14.1.5.2 eliminate unlawful discrimination; and
  - 14.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 14.1.6 where applicable and without limiting the generality of Clause 14.1.2, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it;

- 14.1.7 without prejudice to any other provision of this Clause 14.1 or the Schedules, shall comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of TfL's Traffic Manager as may be made available to the Service Provider from time to time. For the purposes of this Clause 14.1.7, "Traffic Manager" means TfL's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and
- 14.1.8 shall promptly notify the Service Provider's Personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this Clause 14.1 shall be borne by the Service Provider.

- 14.2 Without prejudice to Clause 14.1, the Service Provider shall comply with the Authority's workplace harassment policy as updated from time to time (copies of which are available on request from the Authority) and with the Authority's Code of Conduct (which is available on the Authority's website, [www.tfl.gov.uk](http://www.tfl.gov.uk)).
- 14.3 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:
- 14.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 14.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
- 14.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- 14.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

## 15. London Living Wage

- 15.1 For the purposes of this Clause 15, the following expressions have the corresponding meanings:

<b>"CCSL"</b>	the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Authority from time to time;
<b>"London Living Wage"</b>	the London rate for the basic hourly wage

as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk));

**“Subcontractor”**

a sub-contractor (of any tier) of the Service Provider.

15.2 The Service Provider acknowledges and agrees that the Mayor of London pursuant to section 155 of the Greater London Authority Act 1999 has directed that members of the Authority Group ensure that the London Living Wage be paid to anyone engaged by any member of the Authority Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Authority’s estate in the circumstances set out in Clause 15.3.1.

15.3 Without prejudice to any other provision of this Agreement and any Call-Off Contract, the Service Provider shall:

15.3.1 ensure that its employees and procure that the employees of its Sub-contractors engaged in the provision of the Services:

15.3.1.1 for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and

15.3.1.2 on the Authority’s estate including (without limitation) premises and land owned or occupied by the Authority,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

15.3.2 ensure that none of:

15.3.2.1 its employees; nor

15.3.2.2 the employees of its Sub-contractors;

engaged in the provision of the Services be paid less than the amount to which they are entitled in their respective contracts of employment;

15.3.3 provide to the Authority such information concerning the London Living Wage as the Authority or its nominees may reasonably require from time to time, including (without limitation):

15.3.3.1 all information necessary for the Authority to confirm that the Service Provider is complying with its obligations under Clause 15; and

15.3.3.2 reasonable evidence that Clause 15.3.1 has been implemented;

15.3.4 disseminate on behalf of the Authority to:

15.3.4.1 its employees; and

15.3.4.2 the employees of its Sub-contractors;

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

15.3.5 cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):

15.3.5.1 allowing the CCSL to contact and meet with the Service Provider's employees and any trade unions representing the Service Provider's employees;

15.3.5.2 procuring that the Service Provider's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and any trade unions representing the Sub-contractors' employees,

in order to establish that the obligations in Clause 15.3.1 have been complied with.

15.4 For the avoidance of doubt the Service Provider shall:

15.4.1 implement the annual increase in the rate of the London Living Wage; and

15.4.2 procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

15.5 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its Sub-contractors.

15.6 Without limiting the Authority's rights under any other termination provision in this Agreement or any Call-Off Contract, the Service Provider shall remedy any breach of the provisions of this Clause 15 within four (4) weeks' notice of the same from the Authority (the "**Notice Period**"). If the Service Provider remains in breach of the provisions of this Clause 15 following the Notice

Period, the Authority may by written notice to the Service Provider immediately terminate this Agreement and/or any Call-Off Contract.

## **16. CORRUPT GIFTS AND PAYMENT OF COMMISSION**

The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Contracting Authority or any member of the TfL Group nor favour any employee, officer or agent of the Contracting 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 Contracting Authority or any member of the TfL Group other than as a representative of the Authority, without the Authority's prior written approval.

## **17. EQUIPMENT**

### **17.1 Risk in:**

17.1.1 all Service Provider Equipment shall be with the Service Provider at all times; and

17.1.2 all other equipment and materials forming part of the Services (title to which will pass to the Authority) ("**Materials**") shall be with the Service Provider at all times until completion of the Services in accordance with the relevant Call-Off Contract,

regardless of whether or not the Service Provider's Equipment and Materials are located at TfL Premises:

17.2 The Service Provider shall ensure that all Service Provider's Equipment and all Materials meet all minimum safety standards required from time to time by law.

## **18. QUALITY AND BEST VALUE**

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

## **19. RECORDS, AUDIT AND INSPECTION**

19.1 The Service Provider shall, and shall procure that its sub-contractors shall:

19.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and the relevant Call-Off

Contract and all transactions entered into by the Service Provider for the purposes of this Agreement and the relevant Call-Off Contract (including time-sheets for the Service Provider's Personnel where such records are material to the calculation of the Charges) ("**Records**"); and

19.1.2 retain all Records during the Term and Call-Off Term and for a period of not less than 6 years (or such longer period as may be required by law), except Records containing Personal Data (as defined in Data Protection Legislation) which shall only be retained for as long as necessary following termination or expiry of this Agreement or relevant Call-Off Contract ("**Retention Period**").

19.2 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 Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services (including compliance with Clause 14.1) and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

## **20. 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 Agreement or any other contract between the Contracting Authority and the Service Provider may be deducted by the Authority from monies due or which may become due to the Service Provider under this Agreement or under any other contract with any member of the TfL Group who may recover such amount as a debt.

## **21. INDEMNITY**

21.1 Subject to Clause 21.2, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the Authority and the other members of the TfL Group (including their respective employees, sub-contractors and agents) (the "**Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement or any relevant Call-Off Contract by the Service Provider (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees or sub-contractors).

21.2 The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement

or Call-Off Contract by the Authority and/or any other member of the TfL Group including by any of their respective employees or agents.

## **22. INSURANCE**

22.1 The Service Provider will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in the sum of £5 million per claim (in terms approved by the Authority) in respect of the following to cover the Services (the "**Insurances**") and will ensure that the Authority's interest is noted on each and every policy or that any public liability, product liability or employer's liability insurance includes an Indemnity to principal clause:

22.1.1 public liability to cover injury and loss to third parties;

22.1.2 insurance to cover the loss or damage to any item related to the Services;

22.1.3 product liability; and

22.1.4 professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the product liability insurance referred to in Clause 22.1.3 or, if applicable, the public liability insurance referred to in Clause 22.1.1. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such other period as the Authority may stipulate) following the expiry or termination of the Agreement or relevant Call-Off Contract.

22.2 The insurance cover will be maintained with a reputable insurer.

22.3 The Service Provider will produce evidence to the Contracting Authority and or the Authority on reasonable request of the insurance policies set out in Clause 22.1 and payment of all premiums due on each policy.

22.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 22.1 being or becoming void, voidable or unenforceable.

22.5 In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Authority.

## **23. THE AUTHORITY'S DATA**

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

23.2 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

## **24. INTELLECTUAL PROPERTY RIGHTS**

24.1 The Service Provider hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by and on behalf of the Service Provider in the provision of the Services (the "**Products**") provided that such assignment shall not include items not prepared or developed for the purposes of the relevant Call-Off Contract.

24.2 The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

24.3 The Service Provider shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Authority.

24.4 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within the Charges.

## **25. PRIVACY, DATA PROTECTION AND CYBER SECURITY**

25.1 The Service Provider shall comply with all of its obligations under Data Protection Legislation and, if Processing Personal Data on behalf of the Authority, shall only carry out such Processing for the purposes of providing the Services in accordance with this Agreement, any relevant Call-Off Contract and Schedule 2.

25.2 The Service Provider must follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

## **26. CONFIDENTIALITY AND ANNOUNCEMENTS**

26.1 Subject to Clause 27, the Service Provider will keep confidential:

26.1.1 the terms of this Agreement and all Call-Off Contracts; and

26.1.2 any and all Confidential Information that it may acquire in relation to the Authority.

- 26.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 26.1.
- 26.3 The obligations on the Service Provider set out in Clause 26.1 will not apply to any Confidential Information which:
- 26.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 26); or
  - 26.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
  - 26.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 26.4 The Service Provider shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.
- 26.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or any Call-Off Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the Authority. The Authority shall have the right to approve any announcement before it is made.
- 26.6 The provisions of this Clause 26 will survive any termination of this Agreement or Call-Off Contract for a period of 6 years from termination.

## **27. FREEDOM OF INFORMATION AND TRANSPARENCY**

- 27.1 For the purposes of this Clause 27:
- 27.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
  - 27.1.2 **"Information"** means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and

- 27.1.3 **“Information Access Request”** means a request for any Information under the FOI Legislation.
- 27.2 The Service Provider acknowledges that the Authority:
- 27.2.1 is subject to the FOI Legislation and agrees to assist and cooperate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
  - 27.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 27.3 Without prejudice to the generality of Clause 27.2, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
- 27.3.1 transfer to the Procurement Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Access Request relevant to this Agreement or a Call-Off 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) Business Days of receiving such Information Access Request; and
  - 27.3.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.
- 27.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 27.5 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 27.6 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 26.1 and Clause 27, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 27.7 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.

27.8 The Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 27.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

## **28. Dispute Resolution**

28.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract (“**Dispute**”) before resorting to litigation.

28.2 If the Dispute is not settled through discussion between the Procurement Manager and a representative of the Service Provider within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“**Senior Personnel**”) of each of the Parties for resolution.

28.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the other Party (“**Notice**”) to commence such process and the Notice shall identify one or more proposed mediators.

28.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.

28.5 Where a dispute is referred to mediation under Clause 28.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

28.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties’ authorised representatives, shall be final and binding on the Parties.

28.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 42.

28.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 28.

28.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 28 and Clause 28 shall not apply in respect of any circumstances where such remedies are sought.

## **29. Breach and Termination of Agreement**

29.1 Without prejudice to the Authority's right to terminate at common law, the Contracting Authority may terminate this Agreement and the Contracting Authority or the Authority may terminate any current Call-Off Contract immediately upon giving notice to the Service Provider if:

29.1.1 in addition and without prejudice to Clauses 29.1.2 to 29.1.6 (inclusive), the Service Provider has committed any material or persistent breach of this Agreement (in the case of the Contracting Authority) or Call-Off Contract (in the case of the Contracting Authority and or the Authority) and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or

29.1.2 the Service Provider is subject to an Insolvency Event; or

29.1.3 in the event that there is a change of ownership referred to in Clause 11.3 or the Service Provider is in breach of Clause 11.3; or

29.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 12; or

29.1.5 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or

29.1.6 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or

29.1.7 the Service Provider fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

29.2 Without prejudice to any of the Contracting Authority's and/or the Authority's other rights, powers or remedies (whether under this Agreement or otherwise) if the Service Provider is in breach of any of its warranties and/or obligations under Clause 8 and/or any of its other obligations in respect of the Services under this Agreement or Call-Off Contract, the Service Provider shall, if required to do so by the Contracting Authority and/or Authority, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 29.2 shall prevent the Contracting Authority and/or Authority from procuring the provision of any Services or any remedial action in respect of

any Services from an alternative service provider and, where the Contracting Authority and/or Authority so procures any Services or any remedial action, the Contracting Authority and/or Authority shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Contracting Authority and/or Authority and attributable to the Contracting Authority and/or Authority procuring such Services or remedial action from such alternative contractor.

- 29.3 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the relevant Call-Off Contract (the "**Affected Party**") then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Call-Off Contract immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this Clause 29.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 29.4 Without prejudice to the Contracting Authority's right to terminate this Agreement or Contracting Authority and/or Authority to terminate the relevant Call-Off Contract under Clause 29.1 or to terminate at common law, the Authority may terminate this Agreement or the Contracting Authority and/or Authority relevant the Call-Off Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 29.4 may be disapplied by notice to that effect in Schedule 1.
- 29.5 To the extent that the Contracting Authority has a right to terminate this Agreement or the Contracting Authority and/or Authority the relevant Call-Off Contract under this Clause 29 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider 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" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Contracting Authority's and/or the Authority's opinion a proportionate adjustment would not be reasonable in such manner as the Contracting Authority and/or Authority may determine.

### **30. Consequences of Termination or Expiry**

- 30.1 Notwithstanding the provisions of Clause 26, wherever the Authority chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information

concerning the Services as the Authority may require for the purposes of such tender and shall also comply with all requirements as are set out at Schedule 9. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.

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

30.3 Upon expiry or termination of this Agreement or relevant Call-Off Contract (howsoever caused):

30.3.1 the Service Provider shall, at no further cost to the Authority:

30.3.1.1 take all such steps as shall be necessary to agree with the Authority a plan for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover; and

30.3.1.2 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.

30.3.2 the Authority shall (subject to Clauses 20, 30.1 and 30.4 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the relevant Call-Off Contract up to the date of termination or expiry calculated so far as is possible in accordance with the rules set out in the Call-Off Contract or otherwise reasonably determined by the Authority.

30.4 On termination of this Agreement and any relevant Call-Off Contract under Clause 29.1 or a cessation of any Services under Clause 29.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Authority to terminate under Clause 29.1), the Authority may enter into any agreement with any third party or parties as the Authority thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

## **31 Declaration of Ineffectiveness and Public Procurement Termination Event**

- 31.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 30 and Clauses 31.1, 31.2, 31.4 to 31.6 (inclusive) and 31.12 shall apply as from the time when the Declaration of Ineffectiveness is made. The provisions of Clause 30.4 shall apply (mutatis mutandis) as if (for this purpose and no other) the notice of Declaration of Ineffectiveness was a notice by the Authority to terminate the Call-Off Contract under Clause 30.4.
- 31.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 31.1 to 31.6 inclusive.
- 31.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Authority may require the Service Provider to prepare a Cessation Plan in accordance with this Clause 31.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Authority, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 31.3.1 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
  - 31.3.2 minimal disruption or inconvenience to the Authority or to customers of the Services or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 31.2 to 31.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 31.4 Where there is any conflict or discrepancy between the provisions of Clause 30 and Clauses 31.2 to 31.6 (inclusive) and 31.12 or the Cessation Plan, the provisions of these Clauses 31.2 to 31.6 (inclusive) and 31.12 and the Cessation Plan shall prevail.
- 31.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by the Authority) in the event that a Declaration of Ineffectiveness is made.
- 31.6 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider

for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness.

- 31.7 Without prejudice to the Authority's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Authority exercises its right to terminate pursuant to this Clause 31.7 (a "**Public Procurement Termination Event**"), the Authority shall promptly notify the Service Provider and the Parties agree that:
- 31.7.1 the provisions of Clause 30 and these Clauses 31.7 to 31.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event; and
- 31.7.2 if there is any conflict or discrepancy between the provisions of Clause 30 and these Clauses 31.7 to 31.12 (inclusive) or the Cessation Plan, the provisions of these Clauses 31.7 to 31.12 (inclusive) and the Cessation Plan shall prevail.
- 31.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided for in Clauses 31.7 to 31.11 inclusive.
- 31.9 As from the date of receipt by the Service Provider of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 31.9.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Grounds; and
- 31.9.2 minimal disruption or inconvenience to the Authority or to customers of the Services or to public passenger transport services or facilities, in accordance with the provisions of Clauses 31.7 to 31.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.
- 31.10 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 31.11 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan.

Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement as a result of Public Procurement Termination Grounds.

31.12 For the avoidance of doubt, the provisions of this Clause 31 (and applicable definitions) shall survive any termination of the Agreement following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

## **32. Survival**

The provisions of Clauses 1, 5-8 (inclusive), 10, 11.2.2, 11.2.3, 12, 13.1.1, 13.1.2, 13.1.5, 13.2, 17, 19-23 (inclusive), 24.2, 25-28 (inclusive), 30-34 (inclusive), 35-45 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Contract shall do so.

## **33. Rights of Third Parties**

33.1 Save that any member of the TfL Group has the right to enforce the terms of this Agreement or any relevant Call-Off Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"), the Parties do not intend that any of the terms of this Agreement or any relevant Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

33.2 Notwithstanding Clause 33.1, the Parties are entitled to vary or rescind this Agreement or any relevant Call-Off Contract without the consent of any or all members of the TfL Group.

## **34. Contract Variation**

Save where the Authority may require an amendment to the Services and/or this Contract is amended pursuant to the Service Provider's exercise of any Supply Chain Finance Option, this Agreement or any relevant Call-Off Contract may only be varied or amended with the written agreement of both Parties. Save for any variations or amendments to reflect the Service Provider's exercise of any Supply Chain Finance Option (the mechanism for which is set out at Part B of Schedule 7) the details of any variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Part A of Schedule 7 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

### **35. Novation**

- 35.1 The Contracting Authority may novate or otherwise transfer this Agreement and the Contracting Authority and/or Authority any relevant Call-Off Contracts (in whole or in part).
- 35.2 Within ten (10) Business Days of a written request from the Contracting Authority and/or Authority, the Service Provider shall at its expense execute such agreement as the Contracting Authority and/or Authority may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement and any relevant Call-Off Contract to one or more persons nominated by the Contracting Authority and/or Authority.
- 35.3 Subject to Clause 11, this Agreement is personal to the Service Provider who shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement without the prior written consent of the Contracting Authority.

### **36. Non-Waiver of Rights**

No waiver of any of the provisions of this Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 38. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

### **37. Illegality and Severability**

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

### **38. Notices**

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

if delivered by hand, at the time of delivery;

if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business days after being posted; or

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

### **39. Entire Agreement**

#### **39.1 Subject to Clause 39.2:**

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

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

39.2 Nothing in this Clause 39 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

### **40. Relationship of the Parties**

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

### **41. Further Assurance**

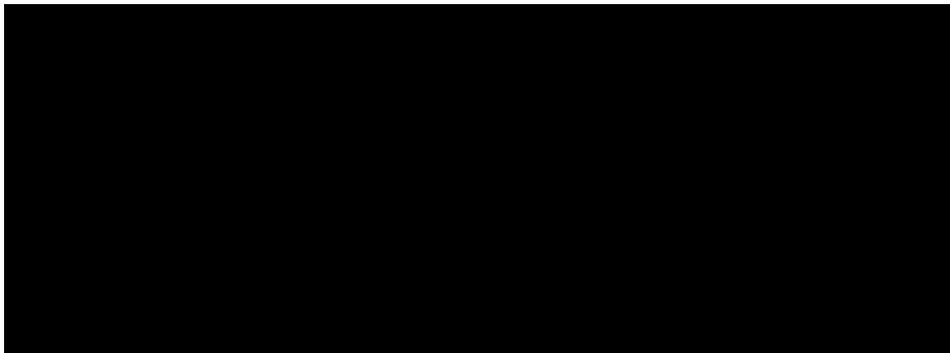
Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement and any relevant Call-Off Contract.

### **42. Governing Law**

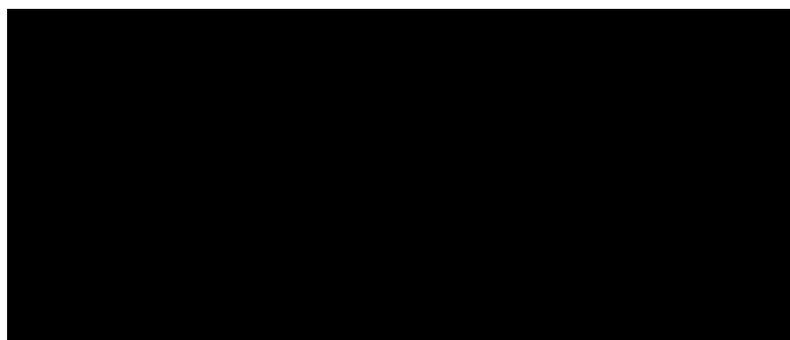
The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 28, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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

Signed by  
for and on behalf of  
the **Contracting Authority**



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



**SCHEDULE 1 - KEY AGREEMENT INFORMATION**

- 1. **Agreement Reference Number:** TfL 94360
- 2. **Name of Service Provider:** Transport Investigations Ltd
- 3. **Agreement Commencement Date:** 02 November 2019
- 4. **Term:** 3 years, with the option for extend for 1 further year.
- 5. **Details of the Procurement Manager**

**Name:** [REDACTED]  
**Address:** 1<sup>st</sup> Floor, North Wing  
 55 Broadway  
 London  
 SW1H 0BD  
**Tel:** [REDACTED]  
**Email:** [REDACTED]

6. **Service Provider’s Key Personnel:**

Name & Position	Contact Details
[REDACTED]	Tel: [REDACTED] Email: [REDACTED]

- 7. **Notice period in accordance with Clause 29.4 (termination without cause):**  
  
90 days
- 8. **Address for service of notices and other documents in accordance with Clause 37:**

**For the Authority:** 1<sup>st</sup> Floor, North Wing  
 55 Broadway  
 London  
 SW1H 0BD  
 For the attention of: [REDACTED]

**For the Service Provider:** Unit 65 The Oaks  
 Manston Business Park  
 Ramsgate  
 Kent  
 CT12 5FD  
 For the attention of: [REDACTED]

**SCHEDULE 2 - SPECIAL CONDITIONS OF AGREEMENT**

**A1 Privacy and Data Protection**

For the purposes of this Clause A1, unless the context indicates otherwise, the following expressions shall have the following meanings:

**“Authority Personal Data”** Personal Data and/or Sensitive Personal Data Processed by the Service Provider or any sub-contractor on behalf of the Authority, pursuant to or in connection with this Contract;

**“Data Controller”** has the meaning given to it in Data Protection Legislation;

**“Data Processor”** has the meaning given to it in Data Protection Legislation;

**“Data Protection Impact Assessment”** an assessment by the Data Controller of the impact of the envisaged Processing on the protection of Personal Data;

**“Data Protection Legislation”** means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

**“Data Subject”** has the meaning given to it in Data Protection Legislation;

**“Personal Data”** has the meaning given to it in Data

- Protection Legislation;
- “Processing”** has the meaning given to it in Data Protection Legislation and **“Process”** and **“Processed”** will be construed accordingly;
- “Restricted Countries”** any country outside the European Economic Area other than the UK following withdrawal from the European Union;
- “Sensitive Personal Data”** sensitive or special categories of Personal Data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with this Contract; and
- “Subject Request”** a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation including the right (i) to be informed, (ii) of access, (iii) to rectification, (iv) to erasure, (v) to restrict processing, (vi) to data portability, (vii) to object and (viii) to automated decision making including profiling.
- A1.1 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that the Authority is a Data Controller solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed, and that the Service Provider is a Data Processor.
- A1.2 Details of the Authority Personal Data to be Processed by the Service Provider and the purposes of such Processing are as follows:
- A1.2.1 The Authority Personal Data to be Processed by the Service Provider (if any) concerns the following categories of Data Subject:
- Staff
- A1.2.2 The Authority Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:
- Names
  - Email addresses
  - Telephone Numbers
- A1.2.3 The Authority Personal Data is to be Processed for the following purpose(s):
- Point of contact during a planned closure

- A1.2.5 The subject matter of the Authority Personal Data to be Processed is:
- To act as a point of contact during a planned closure
- A1.2.6 The duration of the Processing shall be:
- Throughout the life of the agreement
- A1.2.7 The nature of the Processing is:
- Storing
  - Use (i.e. contacting)
- A1.3 Without prejudice to the generality of Clause 23, the Service Provider shall:
- A1.3.1 process the Authority Personal Data only in accordance with written instructions from the Authority to perform its obligations under the Contract;
- A1.3.2 use its reasonable endeavours to assist the Authority in complying with any obligations under Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- A1.3.3 notify the Authority without undue delay if it determines or is notified that an instruction to Process Personal Data issued to it by the Authority is incompatible with any obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- A1.3.4 maintain, and make available to the Authority on its request, documentation which describes the Processing operations for which it is responsible under this Contract including:
- A1.3.4.1 the purposes for which Authority Personal Data is Processed;
  - A1.3.4.2 the types of Personal Data and categories of Data Subject involved;
  - A1.3.4.3 the source(s) of the Personal Data;
  - A1.3.4.4 any recipients of the Personal Data;
  - A1.3.4.5 the location(s) of any overseas Processing of Authority Personal Data;

- A1.3.4.6 retention periods for different types of Authority Personal Data; and
- A1.3.4.7 where possible a general description of the security measures in place to protect Authority Personal Data;
- A1.3.5 where requested to do so by the Authority, assist the Authority in carrying out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation);
- A1.3.6 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, take appropriate technical and organisational security measures which are appropriate to protect against unauthorised or unlawful Processing of Authority Personal Data and against accidental loss, destruction of, or damage to such Authority Personal Data which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the measures);
- A1.3.7 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, provide the Authority with such information as the Authority may from time to time require to satisfy itself of compliance by the Service Provider (and/or any authorised sub-contractor) with Clauses A1.3.6 and A1.3.8, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or the Authority;
- A1.3.8 notify the Authority without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this Clause A1, including the unauthorised or unlawful Processing of Authority Personal Data, or its accidental loss, destruction or damage;
- A1.3.9 having notified the Authority of a breach in accordance with Clause A1.3.8, keep the Authority properly and regularly informed in writing until the breach has been resolved to the satisfaction of the Authority;
- A1.3.10 fully cooperate as the Authority requires with any investigation or audit in relation to Authority Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing

pursuant to the Contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the Authority (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the Contract and after its termination or expiry (for so long as the Party concerned retains and/or Processes Authority Personal Data);

A1.3.11 notify the Authority within two (2) Business Days if it, or any sub-contractor, receives:

A1.3.11.1 from a Data Subject (or third party on their behalf):

A1.3.11.1.1 a Subject Request (or purported Subject Request); or

A1.3.11.1.2 any other request, complaint or communication relating to the Authority's obligations under Data Protection Legislation;

A1.3.11.2 any communication from the Information Commissioner or any other regulatory authority in connection with Authority Personal Data; or

A1.3.11.3 a request from any third party for disclosure of Authority Personal Data where compliance with such request is required or purported to be required by law;

A1.3.12 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause A1.3.11, including by promptly providing:

A1.3.12.1 the Authority with full details and copies of the complaint, communication or request; and

A1.3.12.2 where applicable, such assistance as is reasonably requested by the Authority to enable it to comply with the Subject Request within the relevant timescales set out in Data Protection Legislation;

A1.3.13 when notified in writing by the Authority, supply a copy of, or information about, any Authority Personal Data. The Service Provider shall supply such information or data to the Authority within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in

the request, then within two (2) Business Days from the date of the request;

- A1.3.14 when notified in writing by the Authority, comply with any agreement between the Authority and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Authority Personal Data; and
  - A1.3.15 if required to do so by Data Protection Legislation, appoint a designated Data Protection Officer.
- A1.4 The Service Provider shall not share Authority Personal Data with any sub-contractor without prior written consent from the Authority. The Service Provider shall provide the Authority with such information regarding the proposed sub-contractor as the Authority may reasonably require. The Service Provider shall only share Authority Personal Data with a sub-contractor where there is a written contract in place between the Service Provider and the sub-contractor which requires the sub-contractor to:
- A1.4.1 only Process Authority Personal Data in accordance with the Authority's written instructions to the Service Provider; and
  - A1.4.2 comply with the same obligations which the Service Provider is required to comply with under this Clause A1 (and in particular Clauses 12.1, 17.1, 17.2, 19.1, 21.2, 23 and 24).
- A1.5 The Service Provider shall, and shall procure that any sub-contractor shall:
- A1.5.1 only Process Authority Personal Data in accordance with the Authority's written instructions to the Service Provider and as reasonably necessary to perform the Contract in accordance with its terms;
  - A1.5.2 not Process Authority Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the Authority;
  - A1.5.3 not Process Authority Personal Data in such a way as to:
    - A1.5.3.1 place the Authority in breach of Data Protection Legislation;
    - A1.5.3.2 expose the Authority to the risk of actual or potential liability to the Information Commissioner or Data Subjects;
    - A1.5.3.3 expose the Authority to reputational damage including adverse publicity;

- A1.5.4 not allow Service Provider's Personnel to access Authority Personal Data unless such access is necessary in connection with the provision of the Services;
- A1.5.5 take all reasonable steps to ensure the reliability and integrity of all Service Provider's Personnel who can access Authority Personal Data;
- A1.5.6 ensure that all Service Provider's Personnel who can access Authority Personal Data:
  - A1.5.6.1 are informed of its confidential nature;
  - A1.5.6.2 are made subject to an explicit duty of confidence;
  - A1.5.6.3 understand and comply with any relevant obligations created by either this Contract or Data Protection Legislation; and
  - A1.5.6.4 receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis.
- A1.5.7 not disclose or transfer Authority Personal Data to any third party without the Service Provider having obtained the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract);
- A1.5.8 without prejudice to Clause A1.3.6, wherever the Service Provider uses any mobile or portable device for the transmission or storage of Authority Personal Data, ensure that each such device encrypts Authority Personal Data; and
- A1.5.9 comply during the course of the Contract with any written retention and/or deletion policy or schedule provided by the Authority to the Service Provider from time to time.
- A1.6 The Service Provider shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Authority Personal Data in or to any Restricted Countries without prior written consent from the Authority (which consent may be subject to additional conditions imposed by the Authority).
- A1.7 If, after the Service Commencement Date, the Service Provider or any sub-contractor wishes to Process and/or transfer any Authority Personal Data in or to any Restricted Countries, the following provisions shall apply:
  - A1.7.1 the Service Provider shall submit a written request to the Authority setting out details of the following:

- A1.7.1.1 the Authority Personal Data which will be transferred to and/or Processed in any Restricted Countries;
  - A1.7.1.2 the Restricted Countries which the Authority Personal Data will be transferred to and/or Processed in;
  - A1.7.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Authority Personal Data in Restricted Countries;
  - A1.7.1.4 how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the Authority Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with Data Protection Legislation;
- A1.7.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
- A1.7.3 the Service Provider shall comply with any written instructions and shall carry out such actions as the Authority may notify in writing when providing its consent to such Processing or transfers, including:
- A1.7.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and
  - A1.7.3.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Authority Personal Data in any Restricted Countries enters into a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Authority and the Service Provider in connection with the Processing of Authority Personal Data in (and/or transfer of Authority Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in A1.7.3.1.

- A1.8 The Service Provider and any sub-contractor (if any), acknowledge:
- A1.8.1 the importance to Data Subjects and the Authority of safeguarding Authority Personal Data and Processing it only in accordance with the Authority's written instructions and the Contract;
  - A1.8.2 the loss and damage the Authority is likely to suffer in the event of a breach of the Contract or negligence in relation to Authority Personal Data;
  - A1.8.3 any breach of any obligation in relation to Authority Personal Data and/or negligence in relation to performance or non performance of such obligation shall be deemed a material breach of Contract;
  - A1.8.4 notwithstanding Clause 27.1.1, if the Service Provider has committed a material breach under Clause A1.8.3 on two or more separate occasions, the Authority may at its option:
    - A1.8.4.1 exercise its step in rights pursuant to Clause A16;
    - A1.8.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
    - A1.8.4.2 terminate the Contract in whole or part with immediate written notice to the Service Provider.
- A1.9 Compliance by the Service Provider with this Clause A1 shall be without additional charge to the Authority.
- A1.10 The Service Provider shall remain fully liable for all acts or omissions of any sub-contractor.
- A1.11 Following termination or expiry of this Contract, howsoever arising, the Service Provider:
- A1.11.1 may Process the Authority Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law and will then comply with Clause A1.11.3;
  - A1.11.2 where Clause A1.11.1 does not apply, may Process the Authority Personal Data only for such duration as agreed in Clause A1.2.6 above and following this will then comply with Clauses A1.11.3 and A1.11.4;
  - A1.11.3 subject to Clause A1.11.1, shall on written instructions from the Authority either securely destroy or securely and promptly return to the Authority or a recipient nominated by the Authority (in such

usable format as and to the extent the Authority may reasonably require) the Authority Personal Data; or

- A.1.11.4 in the absence of instructions from the Authority after 12 months from the expiry or termination of the Contract securely destroy the Authority Personal Data.
- A1.12 Authority Personal Data may not be Processed following termination or expiry of the Contract save as permitted by Clause A1.11.
- A1.13 For the avoidance of doubt, and without prejudice to Clause A1.11, the obligations in this Clause A1 shall apply following termination or expiry of the Contract to the extent the Party concerned retains or Processes Authority Personal Data.
- A1.14 The indemnity in Clause 19 shall apply to any breach of Clause A1 and shall survive termination or expiry of the Contract.
- A1.15 The Parties' liability in respect of any breach of Clause 23.1 and this Clause A1 insofar as they relate to fines, court awards, settlements and legal costs shall be unlimited.

### **A3 Personnel Management and Training**

- A3.1 The Service Provider shall provide the Key Personnel and shall procure that they:
  - A3.1.1 diligently supervise the performance of the Services;
  - A3.1.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Authority from time to time); and
  - A3.1.3 be available to the Authority to resolve any issues arising in connection with the Contract at such time period as is specified in Schedule 1.
- A3.2 The Service Provider may only make any changes to the Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Procurement Manager (which shall not be unreasonably withheld).
- A3.3 The Service Provider:
  - A3.3.1 without prejudice to Clause 10.2, undertakes that all the Service Provider's Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;

- A3.3.2 shall ensure that all the Service Provider's Personnel are in possession of valid work permits if they are non-European Community nationals; and
- A3.3.3 subject to Clause A3.5 shall (at its expense) provide or procure the provision of training for the Service Provider's Personnel in respect of all aspects of its performance of the Contract and, as the Authority may require, for any employees, agents and contractors of the Authority in relation to the operation or use of any equipment supplied under the Contract in accordance with the terms set out in Schedule 1.
- A3.4 Without prejudice to the Service Provider's other obligations under the Contract, where training of any or all of the Service Provider's Personnel is required for the purposes of performance of the Contract, the Service Provider shall not assign any Service Provider's Personnel to the performance of the Contract unless and until such Service Provider's Personnel have satisfactorily completed such training.
- A3.5 The Authority will arrange (at its expense) safety training (as referred to in Schedule 8) for those of the Service Provider's Personnel identified at the Service Commencement Date (if any) but, for the avoidance of doubt, such safety training in respect of any other Service Provider's Personnel will be arranged by and be at the expense of the Service Provider. For the avoidance of doubt, the Authority will not be responsible for the remuneration, travel, subsistence or other similar costs and expenses of any of the Service Provider's Personnel attending any training under this Clause A3.5.

### **A.3A Criminal Record Declarations**

A.3A.1 In this Clause A.3A:

A.3A.1.1 **“Relevant Individual”** means any member of the Service Provider's Personnel engaged in any aspect of the provision of the Services and requiring potentially the access to Authority Premises [or Authority Assets]; and

A.3A.1.2 **“Relevant Conviction”** means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

A.3A.2 The Service Provider shall procure from a Relevant Individual a declaration that he has no Relevant Convictions (**“Declaration”**) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to any Relevant Individual being engaged in any aspect of the provision of the Services. The Service Provider shall confirm to the Authority in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the

duration of this contract and the Service Provider shall notify the Authority in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- A.3A.3 The Service Provider is not permitted to engage or allow the engagement of any Relevant Individual any person in any aspect of the provision of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- A.3A.4 The Authority may in accordance with the audit rights set out in Clause 16 audit and check any and all such records as are necessary in order to monitor compliance with this Clause A.3A at any time during performance of this Contract.
- A.3A.5 If the Service Provider fails to comply with the requirements under Clauses A.3A.2 and/or A.3A.3, the Authority may, without prejudice to his rights under Clause 29.1.1, serve notice on the Service Provider requiring the Service Provider to immediately remove or procure the removal of any Relevant Individual who has not provided a Declaration from the Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services unless (in the case of non-compliance with Clause A.3A.2) within 7 days of receipt of the notice the Service Provider confirms to the Authority he has procured all of the Declarations required under Clause A.3A.2.
- A.3A.6 A persistent breach of either or both of Clause A.3A.2 or A.3A.3 by the Service Provider shall constitute a material breach of this Contract which is not capable of remedy and entitles the Authority to terminate the Contract in whole or in part with immediate effect in accordance with Clause 29.1.1.
- A.3A.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall remove or procure the removal of any Relevant Individual who has not provided a Declaration from the Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services.
- A.3A.8 Nothing in this Clause A.3A in any way waives, limits or amends any obligation of the Service Provider to the Authority arising under this Contract and the Service Provider's obligation to provide the Services remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause A.3A.

## **A7 Further Insurance Requirements**

- A7.1 Without prejudice to Clauses 21 and 22 or any other provision of the Contract, the Service Provider shall comply with the provisions of this Clause A7.
- A7.2 Where the Insurances contain a care, custody or control exclusion, the relevant policy shall be endorsed so as to delete the exclusion in respect of any Authority Premises (including contents) that are occupied by the Service Provider for the purpose of performing the Services.
- A7.3 The Service Provider shall:
- A7.3.1 if required by the Authority, use all reasonable endeavours to procure that its public liability insurance extends to indemnify the Authority as principal;
  - A7.3.2 where any Insurance is due for renewal during the Term, the Service Provider shall within 5 Business Days of the date of renewal also provide the Authority with satisfactory evidence that such Insurance has been renewed;
  - A7.3.3 if required by the Authority, procure that prior to cancelling or changing any term of any Insurances, the insurer or insurers under such Insurances give the Authority not less than 30 days' notice of intention to cancel or make such change;
  - A7.3.4 bear the cost of all or any excesses under the Insurances;
  - A7.3.5 not take or shall not fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances;
  - A7.3.6 notify the Authority as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
  - A7.3.7 notify the Authority as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services in excess of £20,000 on any Insurance and, if requested by the Authority and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the Authority may reasonably require) within 3 Business Days of the Authority's request;
  - A7.3.8 subject to Clause A7.4.1, promptly and diligently deal with all claims under the Insurances (or any of them) relating to the Services and in accordance with all insurer requirements and recommendations; and

- A7.3.9 in relation to any claim settled under the Insurances in respect of the Services, and to the extent that the proceeds of such claim are payable to the Service Provider, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the Authority, or any member of the Authority Group or any third party).
- A7.4 In relation to all the Insurances except employer's liability insurance, but subject to the requirements of any insurer under the Insurances, the Service Provider agrees:
- A7.4.1 to use all reasonable endeavours to procure the endorsement in respect of the Insurances set out in Schedule 1 (if any); and
- A7.4.2 that the Authority has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with the Contract.
- A7.5 If the Service Provider is in breach of Clause 22 or this Clause A7, then without prejudice to any of its other rights, powers or remedies, the Authority may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the Authority may recover such premiums from the Service Provider, together with all expenses incurred in procuring such Insurances as a debt.
- A7.6 The Service Provider shall ensure it maintains, throughout the life of the contract, the following minimum insurance requirements;
- A7.6.1 Employer's Liability Insurance - £5million per occurrence or as otherwise required by law (whichever is the greater)
- A7.6.2 Public Liability Insurance - £5million per occurrence
- A7.7 Excluding matters covered by insurance, the Service Provider's liability will be capped at £1million annually.

## **A12 Option to Extend Duration**

- A12.1 The Authority has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of one year by notice in writing to the Service Provider provided that such notice is served at least one month prior to the expiry of the initial duration of the Contract or the expiry of any previous extension, if later.

## **A32 Supplier Diversity**

### A32.1 Compliance

A32.1.1 Without limiting the generality of any other provision of this Contract, the Service Provider:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate, and
- (c) shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate in relation to the Services,

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.

A32.1.2 The Service Provider acknowledges that the Authority as a public authority is subject to a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “**Relevant Protected Characteristic**”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty.

A32.1.3 Where possible, the Service Provider shall provide the Services in such a manner as to:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation.

A32.1.4 The Authority’s Harassment, Bullying and Discrimination Policy (“**Policy**”) as up-dated from time to time (copies of which are available on request from the Authority) requires the Authority's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

- (a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

## A32.2 Strategic Equality & Diversity Plan

A32.2.1 For the duration of this Contract, the Service Provider shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as that agreed with the Authority and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this Contract the expression "**Agreed Strategic Equality & Diversity Plan**" means the strategic equality & diversity plan as negotiated and agreed and attached to the Contract as a Schedule headed "Agreed Strategic Equality & Diversity Plan".

A32.2.2 Where a subcontractor has, pursuant to Clause A32.2 or otherwise, adopted a Strategic Equality & Diversity Plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

## A32.3 Diversity Training

A32.3.1 For the duration of this Contract, the Service Provider shall comply with the Agreed Training Plan in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the

expression "**Agreed Training Plan**" means the diversity training plan set out as agreed and attached to the Contract as a Schedule headed "Agreed Training Plan". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

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 Agreed Training Plan.

A32.3.2 Where a subcontractor has, pursuant to Clause A32.1 or otherwise, adopted a diversity training plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its diversity training plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

#### A32.4 Supplier Diversity

A32.4.1 For the duration of this Contract the Service Provider shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of this Contract the expression "**Agreed Supplier Diversity Plan**" means the supplier diversity plan set out as agreed and attached to the Contract as a Schedule headed "Agreed Supplier Diversity Plan". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a supplier diversity plan in relation to the performance of this Contract which is as least as extensive as the Agreed Supplier Diversity Plan.

A32.4.2 Where a subcontractor has, pursuant to Clause A32.4.1 or otherwise, adopted a supplier diversity plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to the Authority or its nominee as soon as reasonably practicable.

#### A32.5 Communications Plan

A32.5.1 For the duration of this Contract and in all dealings with the Local Community, the Service Provider shall comply with the Agreed Communications Plan. For the purposes of this Contract the expression "**Agreed Communications Plan**" means the communications plan agreed and attached to the Contract as a Schedule headed "Agreed Communication Plan" and the expression "**Local Community**" means those areas of London affected by the Works from time to time.

#### A32.6 Monitoring and Reporting

A32.6.1 Subject to Clause A32.6.2, the Service Provider shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from the date or such other frequency as the Authority may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in clauses A32.2 to A32.5. The annual report should set out:

- (a) the performance of the Service Provider over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with clause A32.6.1(d);
- (b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:
  - (i) female;
  - (ii) of non-white British origin or who classify themselves as being non-white British;
  - (iii) from the Local Community;
  - (iv) disabled;

- (c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups; and
- (d) a plan of action for the forthcoming 12 months showing what the Service Provider plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of “**SME**” and “**BAME**” is as set out in the attached document called TfL Supplier Diversity Definitions.

A32.6.2 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 2018 (as may be amended) in the collection and reporting of the information to the Authority pursuant to clause A32.6.1. The Service Provider shall not include information identifying an individual in any report and shall instead provide such information in aggregate form (including both direct references to individuals and also information which, when used alongside other information, may allow someone to be identified).

#### A32.7 Equality and Diversity Infractions

A32.7.1 If the Service Provider or any of its direct subcontractors commits a Equality & Diversity Infraction, the Authority shall be entitled (but not obliged) to act as follows:

- (a) if a Equality & Diversity Infraction is committed by the Service Provider then the Authority may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Service Provider, the Authority may serve written notice upon the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Service Provider of such notice (or such longer period as may be specified in the notice). If the Service Provider fails to procure the remedy of the Equality & Diversity Infraction, the Authority may serve a further written notice upon the Service Provider and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Service Provider shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in clauses A32.2 to

A32.5 of this Contract.

A32.7.2 It shall be a fundamental term and condition of the Contract that the Service Provider complies with its obligations under clauses A32.7.1(a) to A32.7.1(b). Where, following receipt of a notice given pursuant to clause A32.7.1(a) or A32.7.1(b) the Service Provider fails to remedy an Equality & Diversity Infraction to the satisfaction of the Authority or in the case of clause A32.7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in clause A32.7.1(b) the Service Provider will be in breach of the Contract and the Authority shall be entitled (but not obliged) to terminate the Contract, without further notice to the Service Provider, in accordance with the termination clause in this Contract.

A.32.7.3 For the purposes of this clause A32.7 "**Equality & Diversity Infraction**" means any breach by the Service Provider of its obligations specified in clauses A32.2 to A32.5 of this Contract and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in clauses A32.2 to A32.5 of this Contract.

#### A.32.8 Equality and Diversity Audit

A32.8.1 The Authority or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with clauses A32.2 to A32.5.

A32.8.2 The Authority's rights pursuant to this clause shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of clauses A32.2 to A32.4 indirect subcontractors and shall include the Minimum Records.

A32.8.3 The Service Provider shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A32.2 to A32.5. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of clauses A32.2 to A32.4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A32.2 to A32.4. The Service Provider shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of clauses A32.2 to A32.4 each subcontract between its direct subcontractor and any indirect subcontractor of the Service Provider shall contain rights of audit in favour of and enforceable by the Authority substantially equivalent to those granted by the Service Provider pursuant to clause A32.8.

A32.8.4 The Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking

audits so as to ensure that the Service Provider and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).

A32.8.5 The Service Provider shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of clauses A32.2 to A32.4 indirect subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor's obligations specified in clauses A32.2 to A32.4 wherever situated and whether the Service Provider's own equipment or otherwise; and
- (c) complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor's performance of its subcontract.

A32.8.6 For the purposes of this clause A32.8 the expression Minimum Records means all information relating to the Service Provider's performance of and compliance with clauses A32.2 to A32.5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of clauses A32.2 to A32.4 indirect subcontractor of the Service Provider.

**SCHEDULE 3 - SERVICES**

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## **1. INTRODUCTION**

### **1.1. Background**

- 1.1.1. From time to time it is necessary for TfL to make planned closures of stations for necessary engineering works and/or improvements. When such closures take place TfL require temporary workers to assist customers carrying out their journeys.
- 1.1.2. Temporary Workers are provided at locations where their use can be justified during planned LU track and / or station closures, in addition to planned events e.g. Olympia. They are used to “bridge the gap” between the Station Entrance and any alternative transport provision.
- 1.1.3. The primary role of a Customer Information Assistant (CIA) is to provide information, assistance and reassurance to London Underground (LU) customers outside and close to stations during track and/or station closures, particularly where rail replacement bus services are provided.
- 1.1.4. The primary role of a Luggage Porter (LP) is to assist customers in carrying necessary luggage from a station to a nearby rail replacement bus service.
- 1.1.5. The primary role of the Customer Information Assistant Supervisor (CIAS) is to ensure each CIA and LP arrives at their allocated location on time, fully briefed and understanding the travel advice specific to that location, dressed appropriately including Service Provider branded magenta colour Hi-Vi with wording ‘Customer Information’ and that the correct behaviours are demonstrated.

### **1.2. Objectives**

- 1.2.1. The resourcing, provision and management of Temporary Workers to act as CIAs, LPs and CIASs during planned LU closures and other planned events.

## **2. SCOPE**

### **2.1. General Requirement**

- 2.1.1. In all circumstances, TfL will have no direct employment relationship with any Temporary Worker engaged. No Temporary Worker engaged by TfL will be deemed a TfL employee and TfL will not be deemed the employer of any Temporary Worker provided by the Service Provider.
- 2.1.2. Temporary Worker numbers and locations are specified by the Rail Closure Planning team in order to provide continuity and a best value, high quality, service, especially in cases where rail replacement bus stops are located some distance away from the station they serve. Their locations are initially identified during bus route surveys and closure review feedback.

### **2.2. Locations**

- 2.2.1. Locations can be spread over a wide geographic area across London and its boroughs. Most likely to be outside, or close to, London Underground or National Rail stations, other transport interchanges, airports or event venues.
- 2.2.2. CIAs and LPs will be assigned to specific posts at or close to the designated location whereas CIASs will be mobile and potentially cover a number of locations on any given day.

### **2.3. Working Hours**

- 2.3.1. TfL will inform the Service Provider with full details of dates, locations and coverage times required, typically three to four months in advance of a closure. However there may also be occasions where resources are required at short notice (as little as up to one day in advance).
- 2.3.2. CIA, LP and CIAS working hours may include weekdays, weekends and bank holidays (excluding Christmas Day) at any time of the day or night. Although, the majority of requirements will take place at weekends, between 05:00 to 01:00 Saturday and 00:00 Sunday. Some shifts will commence very early in the morning while others will finish very late at night and shift lengths will vary.
- 2.3.3. On occasion this may include “Night Tube” hours which will be from 01:00 to 05:00.
- 2.3.4. CIAs, LPs and CIASs will be required throughout most of the calendar year.

### **2.4. Further Requirements for Temporary Worker provision**

- 2.4.1. The Temporary Worker team will provide a highly customer focused, friendly and helpful service to all customers, especially those making use of rail replacement bus services provided during planned closures.
- 2.4.2. Temporary Workers must be fully briefed before starting their duty, both verbally and through a bespoke closure briefing document (the Questions and Answers Briefing Pack) relating to their working location(s), supplied by TfL.
- 2.4.3. Temporary Workers must, at all times when on duty, carry with them ID cards indicating who they work for and what their duties involve, and the Questions and Answers Briefing Pack to refer to if necessary.
- 2.4.4. CIAs and LPs must be easily recognised by customers and TfL staff, be smartly attired as specified by TfL and wear the Customer Information Hi-Vi, which is supplied by the Service Provider, indicating that they are assisting during a closure. It is important that any clothing and Hi-Vis worn are presentable and in a good condition.

- 2.4.5. At certain, busier, locations it may be necessary to display portable hand-held directional signage, supplied by TfL, while assisting customers.
- 2.4.6. Leaflets or maps, where produced, must be proactively offered to customers and verbal advice given as necessary. Further leaflets or maps should be obtained from TfL/LU operational staff if needed.
- 2.4.7. CIASs must have a thorough understanding of the overall closure strategy and the primary alternative routes, as directed by TfL, from each location. CIASs must also have knowledge of all rail replacement bus services in operation and are responsible for ensuring CIAs and LPs are providing customers with the correct information, as per the Question and Answers Briefing Pack.
- 2.4.8. CIAs and LPs must have thorough understanding of the overall closure strategy and the primary alternative routes, as directed by TfL, from their specific location(s). CIAs must also have knowledge of all rail replacement bus services in operation and a basic understanding of their local bus routes from their specific location(s), as per the Questions and Answers Briefing Pack, in order to directly assist customers.
- 2.4.9. Temporary Workers will be required to observe operation of rail replacement bus service(s) and take action to find out when the next bus will arrive and when there is a significant gap between services and customers are waiting, so customers can be advised accordingly.
- 2.4.10. Temporary Workers are encouraged to provide feedback to TfL about the closure, as this helps us plan future closures more effectively. Feedback should be collated by the Service Provider and communicated to TfL by a representative prior to or at the weekly Closure Review Meeting. TfL retains the right to introduce a requirement for live feedback using appropriate technology.
- 2.4.11. It is the responsibility of Temporary Workers to have a valid ticket if using public transport when travelling to/from a shift or when travelling while on duty. Temporary workers are not provided with travel concessions by TfL.
- 2.4.12. Temporary Workers are not permitted to work anywhere inside LU stations (including tickets halls or on platforms), although toilets and mess rooms may be used where such facilities exist away from secure areas and at the discretion of TfL/LU operational staff.

- 2.4.13. The Service Provider is required to train Temporary Workers to an appropriate standard of customer service, conflict management and knowledge of the London transport network in order to undertake their duties. The Service Provider will also be required to ensure that all of their workers are significantly trained to assist with disabled and mobility impaired customers. This training will be supported by, but at no cost to, TfL and will be based around the Temporary Workers Guidelines and Behaviours detailed in appendix 1.
- 2.4.14. The Service Provider is required to maintain good working relationships with TfL operational staff, bus operating officials and others during the closure. Unacceptable behaviour will result in the Temporary Worker(s) no longer being used.
- 2.4.15. The Service Provider must provide TfL with the names and mobile phone numbers of the CIASs to be deployed during the closure, for inclusion into the Questions and Answers Briefing Pack, no later than 17:00 on the Tuesday before each weekend.
- 2.4.16. Temporary Workers must be fluent in English and where those who are able to speak another language fluently, this should be shown on their ID card or badge in order to identify them to customers whose first language is not English.
- 2.4.17. In emergency situations, Temporary Workers are not permitted to assist with evacuations. Under these circumstances, CIAs and LPs should remove their Hi-Vi and follow the instructions of TfL/LU operational staff or other officials.

## **2.5. Temporary Worker Guidelines and Behaviours**

- 2.5.1. A detailed set of Temporary Worker guidelines and behaviours are contained in appendix 1. The Service Provider is required to be fully conversant with this information as it will form the basis of the Temporary Worker training and performance monitoring.

## **2.6. Equipment and Documentation**

- 2.6.1. Hi-Vis to be used by Temporary Workers are to be supplied by the Service Provider. Hi-Vis must not be left at TfL stations.
- 2.6.2. The Service Provider is required to provide Temporary Workers with smart devices (such as smart phones or tablets), or allow Temporary Workers to make use of their own devices in order to aid the assistance they provide to customers. TfL will provide training information on appropriate smart device usage whilst on duty.

- 2.6.3. TfL may, on occasion, provide the Service Provider with a number of handheld directional signage to assist with specific closures. The distribution and collection of these items to and from Temporary Workers is the responsibility of the Service Provider and any losses or damages will be charged for. These items must not be left at TfL stations for distribution, collection or storage purposes.
- 2.6.4. The Service Provider is responsible for designing and providing each Temporary Worker with an ID card indicating who they are, who they work for, what their duties involve and what languages they speak. These ID cards will be at no cost to TfL and must be worn by Temporary Workers at all times when on duty. The cards must also include a photo and an expiry date, as well as the text “XXXX working in partnership with Transport for London” (where XXXX is the name of the Service Provider).
- 2.6.5. The Service Provider is responsible for developing Job Descriptions for each Temporary Worker role, based on the information contained in this specification. The Service Provider must agree the contents of these Job Descriptions with TfL prior to advertising for Temporary Workers.
- 2.6.6. TfL has a zero tolerance policy towards exploitative zero hours contracts. Given the flexible nature of the work involved on this contract, please indicate in the job descriptions that this work is not for those relying on it as their primary source of income.
- 2.6.7. TfL will provide a Questions and Answers Briefing Pack and (where appropriate) bus timetable to the Service Provider, by email, during the week prior to each closure. It is the responsibility of the Service Provider to distribute these documents to each Temporary Worker either by email, for use on smart devices, or by handing out printed copies.
- 2.6.8. CIASs must have in their possession at all times a mobile telephone, not provided by TfL, in order to maintain communication with CIAs, LPs as well as other organisations and individuals connected to the closure.

## **2.7. Agency Contract Manager**

- 2.7.1. The Service Provider will nominate a contract manager who will:
  - 2.7.1.1. Act as the point of contact with the TfL Contract Manager
  - 2.7.1.2. Ensure any closure is fully resourced as per TfL’s requirements
  - 2.7.1.3. Take responsibility for the distribution of the Question and Answer Briefing Pack to Temporary Workers and ensure that they are fully briefed.
  - 2.7.1.4. Replace Temporary Workers in the event of illness or non-attendance.

- 2.7.1.5. Manage the distribution and collection of Hi-Vis and any other equipment.
  - 2.7.1.6. Manage the attendance of Temporary Workers and ensure they arrive at their designated locations on time.
  - 2.7.1.7. Monitor Temporary Workers performance and behaviours and deal with poor performance.
  - 2.7.1.8. Manage service delivery and contract performance.
  - 2.7.1.9. Provide closure feedback to TfL and attend the weekly Closure Review Meeting.
- 2.7.2. The cost of the Contract Manager will not be billable to TfL. A business mobile phone number of the Service Provider Contract Manager will be provided to TfL.

## **2.8. Referencing**

- 2.8.1. The Service Provider must ensure that all Temporary Workers are fully cleared to work at TfL and the Service Provider will undertake all necessary checks at no cost to TfL. These may include, but are not limited to:
- 2.8.1.1. Fully DBS checked, where appropriate, including CRB number.
  - 2.8.1.2. Proof of identification, address and eligibility to work in the UK.
  - 2.8.1.3. Written proof of any required professional qualifications.
  - 2.8.1.4. Two written work-related references obtained within the last three months prior to the Temporary Worker being put forward for the assignment which have been confirmed and cleared and date back 2 years.
  - 2.8.1.5. Completed and approved pre-employment health questionnaire.
  - 2.8.1.6. Preview of previous organisation work history.
- 2.8.2. TfL reserves the right to amend the requirements for references and clearances, in line with the introduction of any new Government legislation or TfL policy, at no extra cost.
- 2.8.3. TfL may at any time request evidence that any or all of the necessary checks have been undertaken on any or all individual Temporary Worker(s).
- 2.8.4. The Service Provider may be required to ensure that it does not provide Temporary Workers in certain circumstances which may be set out in a recruitment policy. Such circumstances may include:

2.8.4.1. Where the Temporary Worker has previously been an employee of TfL and has left within the last 2 years on grounds of early retirement and/or redundancy.

2.8.4.2. Where the Temporary Worker is an ex-employee of TfL who has been fairly dismissed under TfL's disciplinary or probationary procedures.

## 2.9. Allocation of Work

2.9.1. TfL will communicate and confirm the allocation of work with the Service Provider as follows:

2.9.1.1. Between one and six months in advance, TfL will send an email to the Service Provider's Contract Manager requesting Temporary Worker coverage over a period of up to six months.

2.9.1.2. This email will contain a summary table listing each individual date Temporary Workers are required, the general area of coverage on each date and the total number of hours to be worked per closure. An example is show below:

Week	Date	Day	Line	Closure Limits	CIA Hrs	LP Hrs	CIAS Hrs
6	03/05/2014	Saturday	Central	White City – WR/EB	299:30	299:30	38:15
6	04/05/2014	Sunday	Central	White City – WR/EB	255:15	255:15	33:15
6	05/05/2014	Monday	Central	White City – WR/EB	299:30	299:30	38:15
8	17/05/2014	Saturday	District	Earl's Court – Wimbledon	304:15	304:15	38:45
8	18/05/2014	Sunday	District	Earl's Court – Wimbledon	257:15	257:15	33:00
11	07/06/2014	Saturday	Metropolitan	Moor Park – Amersham/Chesham	87:00	87:00	20:00
11	08/07/2014	Sunday	Metropolitan	Moor Park – Amersham/Chesham	71:00	71:00	17:00
12	14/06/2014	Saturday	Jubilee	North Greenwich – London Bridge	258:00	258:00	20:00
12	15/06/2014	Sunday	Jubilee	North Greenwich – London Bridge	215:00	215:00	17:00

2.9.1.3. In addition to the summary table, a detailed breakdown of each closure will be provided, listing the exact stations/locations Temporary Workers are required at and the coverage times. The Service Provider is responsible for the scheduling of Temporary Workers to ensure full coverage. An example is shown below:

Station	No.	Locations	Saturday 7 June 2014		
Supervisors	1	As required	05:00	01:00	20:00
Northwood	1	Working between station entrance and pick-up bus	05:00	01:00	20:00

		stop			
Moor Park	0				
Rickmansworth	2	Working between station entrance and bus stop	07:00	22:00	15:00
		Working between station entrance and bus stop	09:00	22:00	13:00
Croxley	0				00:00
Watford	0				00:00
Chorleywood	0				00:00
Chalfont & Latimer	1	At southbound bus stop	08:00	20:00	12:00
Amersham	1	Covering both bus stops	07:00	22:00	15:00
Chesham	1	Outside station entrance	08:00	20:00	12:00
Total CIA Hours					87:00
Total Luggage Porter Hours					87:00
Total Supervisor Hours					20:00

- 2.9.1.4. The Service Provider Contract Manager will have up to two weeks to read through TfL's requirements, establish internally whether they can be resourced, and respond to TfL confirming that the work can be undertaken as required.
- 2.9.1.5. The Service Provider must notify TfL at the same time of any work that cannot be undertaken and the reason why.
- 2.9.1.6. On occasion, a requirement for Temporary Workers may arise at short notice. TfL will contact the Service Provider as soon as such a requirement is known, which could be as little as one day in advance, and establish whether the Service Provider can resource the work. No additional costs will be incurred by TfL in the event of the Service Provider undertaking work at short notice.
- 2.9.1.7. On occasion, and sometimes at short notice (as little as one day in advance), closures are cancelled. TfL will contact the Service Provider as soon as it is known Temporary Workers are no longer required and the Temporary Workers will be stood down. No costs will be incurred by TfL in the event of a closure being cancelled, regardless of the notice provided.
- 2.9.1.8. TfL will communicate any changes to Temporary Worker's stations/locations and coverage times to the Service Provider by email and the Service Provider will respond by email to confirm the changes.
- 2.9.1.9. The Service Provider Contract Manager must provide TfL with the names and mobile phone numbers of the CIASs to be deployed during the closure, for inclusion into the Question and Answers Briefing Pack, no later than 17:00 on the Tuesday before each weekend.
- 2.9.1.10. The Service Provider will provide TfL with quotes at least two weeks in advance, and will invoice in a timely manner after completion of work.

## **2.10. Reporting**

- 2.10.1. Following the completion of a planned closure, TfL will require a number of reports from the Service Provider:
- 2.10.1.1. Attendance: in order to cross reference staff numbers ordered against those attended. This will be provided to TfL on a weekly basis on Tuesday by 10am.
- 2.10.1.2. Observation: This is a summary report, of the closure, to be provided to TfL in the 24 hours following the completion of a closure e.g. use of signage and locations, service monitoring of replacement bus service etc. The Service Provider is responsible for ensuring suitable representative attends the TfL weekly Closure Review meeting.

2.10.1.3. Diversity and Inclusion: when reasonably practicable the Service Provider will provide reporting data on customer group volumes.

2.10.1.4. Boarding and Alighting: The Service Provider, on an ad-hoc basis, will collect Rail Replacement bus loading data for planned closures and special events e.g. Olympia events. This data should be supplied to TfL in the format of Excel spreadsheets by no later than 10am on Tuesday.

### **3. SERVICE LEVEL AGREEMENTS (SLAS)/KEY PERFORMANCE INDICATORS (KPIs)**

#### **3.1. Performance Monitoring Overview**

3.1.1. The Service Provider will be monitored on the following criteria:

3.1.1.1. CIAs and luggage porters located as specified within the instructions issued by TfL.

3.1.1.2. The correct numbers of CIAs and luggage porters allocated to any one location as specified within the instructions issued by TfL.

3.1.1.3. Attentiveness to customers as outlined in appendix 1 of this specification, "General Information, dress code and behaviours" and "looking good".

3.1.1.4. Understanding of the closure as outline in appendix 1 of this specification, "General Information, dress code and behaviours".

3.1.1.5. Understanding of the transport network within London as outlined in appendix 1 of this specification, "General Information, dress code and behaviours".

3.1.1.6. Customer service skills as outlined in appendix 1 of this specification, "General Information, dress code and behaviours".

3.1.1.7. Interaction with rail replacement bus services as outlined in appendix 1 of this specification, "When working at a rail replacement bus stop".

3.1.1.8. Interaction with other operational teams involved in closures.

3.1.1.9. Attire, as outlined in appendix 1 of this specification, "General information, dress code and behaviours".

3.1.1.10. Usage of the Questions and Answers Briefing Pack and any other document or equipment which has been specified by TfL to be used at any one location.

3.1.1.11. Timekeeping. If using electronic devices, the Service Provider is responsible for the logging in and logging out of all Temporary Workers when arriving and departing their place of work.

### 3.2. Service Level Agreements

3.2.1. TfL requires the following minimum standards to be adhered to by the Service Provider:

3.2.2. TfL reserves the right to adjust any of the criteria for performance monitoring after one month of providing formal notice to the Service Provider.

3.2.3. All of the SLAs, in the following table, will be measured by TfL on an ad-hoc basis:

<b>Criteria</b>	<b>Reference &amp; Description</b>	<b>Red (Unacceptable)</b>	<b>Amber (Improvement Identified)</b>	<b>Green (Acceptable)</b>
(1) Customer Service	(1.A) Attentiveness to customer (this includes smoking, eating, listening to music, reading non-work materials, standing at a location which is not favourable for engaging with customer)	Less than 75%	75% - 85%	86% or more
	(1.B) Understanding of closure	Less than 75%	75% - 85%	86% or more
	(1.C) Customer journey advice	Less than 75%	75% - 85%	86% or more
	(1.D) Customer complaints	Two substantiated customer complaints of similar nature in three consecutive financial periods, TfL will require formal explanation from the Service Provider, articulating the issue will be addressed	Two substantiated customer complaints of dissimilar nature in three consecutive financial periods	One substantiated customer complaint (or less)
(2) Total customer services	(2.A) Average score for attentiveness,	Less than 75%	75% - 85%	86% or more

	customer journey advice and understanding of the closure			
(3) Attire	(3.A) Wearing correct uniform, clean and tidy appearance.	Less than 90%	90% - 95%	96% or more
(4) CIA & LP coverage	(4.A) Timekeeping (on time for commencement of duty)	Less than 85%	85% - 95%	96% or more
	(4.B) Located as specified (dispensation will be given to CIAs & luggage porters who are on welfare breaks or where the assistance of customers has required the temporary worker to temporarily move from their location).	Less than 75%	75% - 85%	86% or more
	(4.C) Correct number supplied	Less than 90%	90% - 95%	96% or more
(5) Total CIA coverage	(5.A) Average score for (4.A), (4.B) & (4.C)	Less than 85%	85% - 95%	96% or more
(6) Working with other teams		Two substantiated staff complaints in three consecutive financial periods	One substantiated staff complaint in a financial period	No staff complaints
(7) Equipment (if equipment is not used as specified, this will be seen as a breach of contract, TfL reserve the right to withdraw work)	(7.A) Q&A (every CIA & luggage porter is expected to have a copy of the Questions and Answers Briefing Pack within their possession, whether this be a digital or hard copy. TfL reserves the right to randomly check this at anytime)	Less than 90%	90% - 95%	96% or more
	(7.B) Specialist equipment	Less than 90%	90% - 95%	96% or more

	(lollipops, handheld devices etc.) Every Temporary Worker must be in possession of any specialist equipment which TfL has provided the supplier with prior notice			
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3.2.4. All of the SLAs in the following table will be measured via reporting mechanisms from the Service Provider:

<b>Criteria</b>	<b>Reference &amp; Description</b>	<b>Red (Unacceptable)</b>	<b>Amber (Improvement Identified)</b>	<b>Green (Acceptable)</b>
(8) Attendance	(8.A) The number of temporary workers that attended the closure against the planned number of attendees	Less than 95%	96% - 99%	More than 99%
	(8.B) Percentage of workers who arrived on time to their shift.	Less than 95%	96 – 99%	More than 99%
(9) Reporting	(9.A) All reports received on time in line with requirements.	Less than 98%	Less than 100%	100%

### **3.3. Monitoring Performance**

3.3.1. The Service Provider's service levels will be monitored by TfL through a variety of feedback mechanisms (described above, and including reporting and performance review meetings) including attendance by other TfL staff.

3.3.2. Contract performance review meetings will be held quarterly between a representative of TfL and the Service Provider. The agenda of this meeting will discuss the general performance of the contract and will include, but not limited to, specific areas such as:

3.3.2.1. Number of closures managed within the previous review period

3.3.2.2. Review of the Service Provider adhering to the minimum service levels

3.3.2.3. Any escalation route measures taken

3.3.2.4. Any other issues

### **3.4. Escalation route for poor performance**

3.4.1. If the service provider does not meet the minimum service levels required for this Service, it is important that a speedy resolution is in place to remedy and address the poor performance.

3.4.2. The escalation route in the event of poor performance is outline in figure 1 below. This is detailed in the following steps:

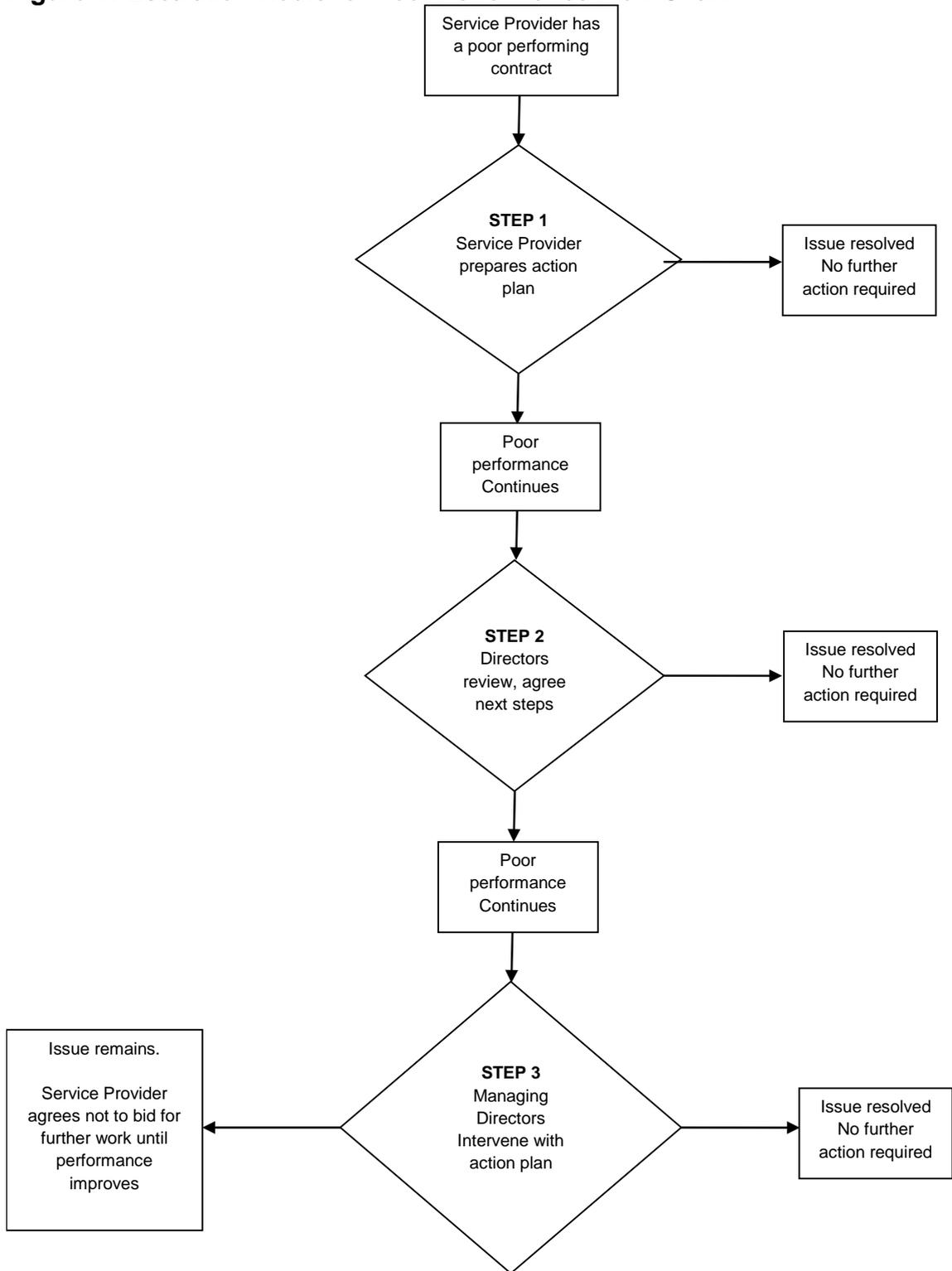
STEP 1 – The Service Provider will commit to resolving poor performance for forming an action plan in collaboration with TfL to be implemented at an agreed date between both parties

STEP 2 – If, by the next contract and performance review meeting, the Service Provider is still under performing, this will be escalated to the sponsors/directors for the Service Provider's organisation to agree next steps

STEP 3 – If the mitigation plan is unsuccessful, TfL's Managing Director and the Service Provider's business owner or most senior management will intervene to meet with the Contract Manager to discuss and agree how to resolve the poor performance.

STEP 4 – If all previous steps have failed, then TfL will terminate the Contract, in accordance with the Contract Terms and Conditions

**Figure 1: Escalation Route for Poor Performance Flow Chart**



## **APPENDIX 1 – GENERAL INFORMATION, ASSISTING DISABLED CUSTOMERS, DRESS CODE AND BEHAVIOURS**



TfL 94360 ITT  
Volume 2 - Appendix 1

## **APPENDIX 2 – QUESTION & ANSWER BRIEFING PACK**



TfL 94360 ITT  
Volume 2 - Appendix 2

## **APPENDIX 3 – SERVICE PROVIDER TENDER SUBMISSION**



Transport  
Investigations Full Te

**SCHEDULE 4 - RATES**

Service	Worker Hourly Rate	Service Provider Percentage (%) Mark-Up	Worker Hourly Charge Rate (Hourly Rate + % Mark-Up)
Customer Information Assistant (Day Shift Hours – 05:00-01:00)	██████	■	██████
Customer Information Assistant Supervisor (Day Shift Hours – 05:00-01:00)	██████	■	██████
Luggage Porter (Day Shift Hours – 05:00-01:00)	██████	■	██████
Customer Information Assistant (Night Shift Hours – 01:00-05:00)	██████	■	██████
Customer Information Assistant Supervisor (Night Shift Hours – 01:00-05:00)	██████	■	██████
Luggage Porter (Night Shift Hours – 01:00-05:00)	██████	■	██████

**SCHEDULE 5 – CLOSURE REQUEST FORM**

*TO BE AGREED AS PART OF MOBILISATION.*

## SCHEDULE 6 - CALL-OFF CONTRACT TEMPLATE

**Framework Number:** TfL 94360

**Call-Off Contract Number:**

**THIS CALL-OFF CONTRACT** is made the            day of

### **BETWEEN:**

- (1) Transport for London a statutory corporation whose principal place of business is at 55 Broadway, London, SW1H 0BD (“**the Contracting Authority**”); and
- (2) Transport Investigations Limited, a company registered in England and Wales (Company Registration Number 03467582) whose registered office is at Unit 65 The Oaks, Manston Business Park, Ramsgate, Kent, CT12 5FD (“**the Service Provider**”).

### **RECITALS:**

- A. The Contracting Authority and the Service Provider entered into an agreement dated [            ] which sets out the framework for the Service Provider to provide certain Services to the Contracting Authority or the Authority (“**the Agreement**”).
- B. The Authority wishes the Service Provider to provide the specific Services described in this Call-Off Contract pursuant to the terms of the Agreement and this Call-Off Contract and the Service Provider has agreed to provide such Services on those terms and conditions set out in the Call-Off Contract.

### **THE PARTIES AGREE THAT:**

#### **1. CALL-OFF CONTRACT**

- 1.1 The terms and conditions of the Agreement shall be incorporated into this Call-Off Contract.
- 1.2 In this Call-Off Contract the words and expressions defined in the Agreement shall, except where the context requires otherwise, have the meanings given in the Agreement. In this Call-Off Contract references to Attachments are, unless otherwise provided, references to attachments of this Call-Off Contract.

#### **2. SERVICES**

- 2.1 The Services to be performed by the Service Provider pursuant to this Call-Off Contract are set out in Attachment 1.

- 2.2 The Service Provider acknowledges that it has been supplied with sufficient information about the Agreement and the Services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the Services under this Call-Off Contract. The Service Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this Call-Off Contract or the Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Services to be provided. The Service Provider shall promptly bring to the attention of the Call-Off Co-ordinator any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document.
- 2.3 The timetable for any Services to be provided by the Service Provider and the corresponding Milestones (if any) and Project Plan (if any) are set out in Attachment 1. The Service Provider must provide the Services in respect of this Call-Off Contract in accordance with such timing and the Service Provider must pay liquidated damages in accordance with the Agreement of such an amount as may be specified in Attachment 1. The Service Provider shall be liable for the ongoing costs of providing Services in order to meet a Milestone.
- 2.4 The Service Provider acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services provided to the Authority under this Call-Off Contract.

### **3. CALL-OFF TERM**

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in Attachment 1 and subject to Clause 4.2 of the Agreement, shall continue in force for the Call-Off Term stated in Attachment 1 unless terminated earlier in whole or in part in accordance with the Agreement.

### **4. CHARGES**

Attachment 2 specifies the Charges payable in respect of the Services provided under this Call-Off Contract. The Charges shall not increase during the duration of this Call-Off Contract unless varied in accordance with the Agreement. The Service Provider shall submit invoices in accordance with the Agreement and the Charges shall be paid in accordance with the Agreement.

### **5. CALL-OFF CO-ORDINATOR AND KEY PERSONNEL**

The Authority's Call-Off Co-ordinator in respect of this Call-Off Contract is named in Attachment 1 and the Service Provider's Key Personnel in respect of this Call-Off Contract are named in Attachment 2.

This Call-Off Contract has been signed by duly authorised representatives of each of the Parties.

**SIGNED**

For and on behalf of the [*Authority*]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED**

For and on behalf of [*the Service Provider*]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment 1 – CLOSURE REQUEST FORM**

[To be completed by the Authority]

## **Attachment 2 – CLOSURE RESPONSE FORM**

[To be completed by the Service Provider]

### **1. Charges**

Charges to be specified on a time and materials or fixed fee basis. If time and materials fee, also specify maximum price for provision of the Services.

### **2. Key Personnel**

The Service Provider's Key Personnel (include grades and areas of responsibility):

### **3. Proposed sub-contractors (if any)**

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

**Attachment 3**

**Special Conditions for Call-Off**

**SCHEDULE 7 - FORM FOR VARIATION**

**PART A**

Agreement Parties: *[to be inserted]*

Call-Off Contract Number: *[to be inserted]*

Variation Number: *[to be inserted]*

Authority Contact Telephone: *[to be inserted]*

Fax: *[to be inserted]*

Date: *[to be inserted]*

**AUTHORITY FOR VARIATION TO AGREEMENT (AVC)**

Pursuant to Clause 34 of this Agreement, authority is given for the variation to the Services and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Service Provider and returned to the Call-Off Co-ordinator as an acceptance by the Service Provider of the variation shown below.

<b>DETAILS OF VARIATION</b>	<b>AMOUNT (£)</b>
<b>ALLOWANCE TO THE AUTHORITY</b>	
<b>EXTRA COST TO THE AUTHORITY</b>	
<b>TOTAL</b>	

.....  
For the Authority

<b>ACCEPTANCE BY THE SERVICE PROVIDER</b>	
<b>Date</b>	<b>Signed</b>

## **PART B – SUPPLY CHAIN FINANCE OPTION RELATED VARIATIONS**

1. The Authority is developing a scheme and system whereby the Service Provider may be permitted, at the Authority's sole discretion, to seek payment of invoices in respect of Charges under this Contract within a time period less than the 30 days of receipt set out Clause 7.4.1 in consideration for a reduction in the Charges due thereunder (the "**Supply Chain Finance Option**").
2. The Service Provider hereby agrees that where such requests are made by the Service Provider and approved by the Authority, by way of such process and/or systems put in place by the Authority acting either on its own behalf or by or via its employees, agents, contractors or otherwise such request, approval and resulting accelerated and reduced payment shall constitute the Service Provider's exercise of the Supply Chain Finance Option and the valid and legally binding:
  - 2.1 variation by the Parties of the related Charges due and payable to the Service Provider under this Contract; and
  - 2.2 waiver by the Service Provider of any right held previously by it to invoice for and be paid the amount by which the Charges are reduced pursuant to its exercise of the Supply Chain Finance Option.

## **SCHEDULE 8 – CONTRACT QUALITY, ENVIRONMENTAL & SAFETY CONSIDERATIONS**

The following Contract QUENSH Conditions are applicable to this Framework Agreement:

- 14.1 - Behaviours
- 14.2 – Control of hours worked
- 14.3 - Knowledge
- 14.4.4 - Training
- 14.5 – Medical requirements
- 14.6 – Identification of Suppliers staff
- 14.7 - Clothing
- 23 – Removal of supplier’s personnel from LU Premises
- 24 - Incidents
- 25 – Notification of regulatory concern or action
- 26 – Confidential Incident Reporting and Analysis System (CIRAS)

The Contract QUENSH Conditions can be accessed via the following link:  
<https://sharelondon.tfl.gov.uk/pt/tms/Management%20System/S1552.pdf#search=QUENSH>

A copy of the completed QUENSH Menu is included below.



VOL6 COMPLETED  
QUENSH Menu.pdf

**SCHEDULE 9 – RE-TENDER COOPERATION**

Not used.