

6.17 For the purposes of the following Clauses:

- (a) 6.9(c)(ii)(A) and 6.9(c)(ii)(B) (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire);
- (b) 6.11(e)(ii)(A) and 6.11(e)(ii)(B) (Scenario 3 – Telecommunications Infrastructure installed by TTL subject to TTL Infrastructure Re-charge Fee); and
- (c) 6.14(a)(i) and 6.14(a)(ii) (Operator Wayleave Agreements),

the information that TTL requires the Concessionaire to deliver to TTL in order for the relevant TfL Group member to grant (or to verify that the relevant TfL Group member has the right to grant) a Concessionaire Wayleave Agreement or an Operator Wayleave Agreement (as applicable) includes the following documents:

- (i) plan of the property (to be included in the Low Level Design (if applicable);
- (ii) TfL's Property Asset Register ("PAR") GIS data screenshot showing the TTL interests;
- (iii) Index Map Search (SIM) result (if required by TfL);
- (iv) if registered, up to date Land Registry title register and plan; and
- (v) if unregistered, copy of title document (provided by TfL on request from the Muniments system).

6.18 Without prejudice to Clause 6.17 (Wayleave Information), TfL shall ensure the Concessionaire has access to all property ownership information held by TTL or other members of the TfL Group (including information available on PAR) in respect of TTL Assets to which the Concessionaire requires access in order to perform its obligations under this Agreement.

Wayleave Variations

6.19 To the extent that any Concessionaire Wayleave Agreement and/or Operator Wayleave Agreement is to be varied, the variation shall be in the form attached at Part C of Schedule 14 (Property Documents).

Duty to Update the Infrastructure Register as to ownership / title

6.20 The Concessionaire shall indicate on the Infrastructure Register the ownership of each element of the Telecommunications Infrastructure and/or new Telecommunications Infrastructure and the date of any:

- (a) transfer of title from TTL or other TfL Group Members to the Concessionaire; or
- (b) vesting of title of any new or replacement infrastructure with TTL or other members of the TfL Group; or
- (c) vesting of title of any new or replacement infrastructure with the Concessionaire.

Wayleave Relief

6.21 If TTL or the relevant TfL Group member does not have the necessary rights to grant:

- (a) a Concessionaire Wayleave Agreement in accordance with Clause 6.9 (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire) or Clause 6.11 (Scenario 3 – Telecommunications Infrastructure installed by TTL or other members of the TfL Group subject to TTL Infrastructure Re-charge Fee); or
- (b) an Operator Wayleave Agreement in accordance with Clauses 6.14 (Operator Wayleave Agreements),

in respect of a location set out in Annexes 1 to 3 of Schedule 2.1 (Services Description), or ceases to have the necessary rights in respect of such a wayleave which has already been granted, then:

- (i) TTL shall notify the Concessionaire of the same;
- (ii) the Concessionaire shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of the same;
- (iii) the Parties shall agree to remove the relevant location from the relevant Annex in Schedule 2.1 (Services Description); and
- (iv) any Milestone (excluding Key Milestones) set out in the Detailed Implementation Plan in respect of that location only which the Concessionaire needs to Achieve in order to meet an associated Key Milestone will be deemed to have been Achieved by its relevant Milestone Date.

6.22 Any Contract Change pursuant to Clause 6.21(b)(iii) (Wayleave Relief) shall be implemented in accordance with the Change Control Procedure. The Concessionaire shall ensure that the relevant Impact Assessment includes details of any steps it can take to eliminate or mitigate the consequences and impact of the events described in Clause 6.21 (Wayleave Relief).

Damage, Nuisance and Interference

6.23 The Concessionaire shall not (and shall procure that the Concessionaire Personnel and/or any others authorised by it shall not) cause any damage to the Property, or to any property of the owners or occupiers of the Property, and shall immediately make good any damage caused and reinstate the Property to TTL's absolute satisfaction or at TTL's discretion, pay full compensation to TTL in respect of any damage caused that TTL makes good and any loss caused to TTL or any other members of the TfL Group due to such damage.

6.24 The Concessionaire shall not (and shall procure that the Concessionaire Personnel and/or any others authorised by it shall not) cause any nuisance, annoyance or disturbance to TTL or other members of the TfL Group or occupiers of the Property, or of any neighbouring land, or to any other person entitled to rights over the Property, provided that the installation of Telecommunications Infrastructure pursuant to this Agreement and in accordance with the obligations on the Concessionaire in respect of such installation, shall not constitute a breach of this Clause.

6.25 In exercising the Concessionaire's rights in respect of any Concessionaire Wayleave Agreement, Operator Wayleave Agreement or in carrying out its obligations under this Agreement, the Concessionaire shall (and shall procure that the Concessionaire Personnel and/or any others authorised by it shall) take all reasonable precautions to avoid any interference with the use of any road, trainline, footpath, cycle path, sewer, drain, watercourse

or other services that may be affected by the Telecommunications Infrastructure and the operation of equipment now or at any time after the date hereof. If TTL can demonstrate to the reasonable satisfaction of the Concessionaire that the Telecommunications Infrastructure is causing interference with the operation of any of the ways, services and equipment described in this Clause, the Concessionaire shall immediately switch off the Telecommunications Infrastructure and not switch it on again until such interference has been cured.

Exclusivity

6.26 TTL for and on behalf of itself and other TfL Group members grants to the Concessionaire:

- (a) the right to be the only entity which TTL and other members of TfL Group use to facilitate the fulfilment of the Purpose; and
- (b) certain exclusive and non-exclusive rights to use / access the TTL Assets set out in Clauses 6.28 (Current TTL Assets), 6.29 (Current TTL Assets) and 6.30 (Future TTL Assets) for the Purpose.

6.27 The granting and exercise of the rights as specified in Clause 6.26 (Exclusivity) are subject to:

- (a) Paragraph 2.1(f) of Schedule 3 (TTL Responsibilities); and/or
- (b) Clause 31 (Loss of Exclusivity); and/or
- (c) there being no breach of rights by TTL or any other member of the TfL Group where TTL grants or has granted to a Third Party under a contract access and/or ability to exploit TTL Assets where:
 - (i) the contract is an Existing Agreement; and/or
 - (ii) such access and exploitation is an ancillary purpose to the main purpose of the contract; and/or
- (d) the extent permitted by applicable Law; and/or
- (e) the Concessionaire ensuring that it has all necessary consents and regulatory approvals.

Current TTL Assets

6.28 Subject to Clause 6.26 (Exclusivity), TTL agrees to grant to the Concessionaire an exclusive right during the Term to use/access for the Purpose:

- (a) all TTL Assets (except Road Tunnels) existing on the Effective Date, and required for the provision of the:
 - (i) Commercial Mobile Services;
 - (ii) the Streetscape Services; and
 - (iii) the Public Wi-Fi Services at the Public Wi-Fi Services Locations;
- (b) all:

- (i) Tunnel Sections;
- (ii) Trackside;
- (iii) Ducts;
- (iv) Stations; and
- (v) Emergency Intervention Points;

on the Effective Date, and required for the provision of the Fibre Services.

6.29 Without prejudice to Clause 6.26 (Exclusivity) the Parties shall work together to identify opportunities to grant to the Concessionaire exclusive or, if not practicable, non-exclusive rights during the Term to use/access for the Purpose any and all Road Tunnels existing on the Effective Date, and required for the provision of the Commercial Mobile Service and/or the Fibre Services.

Future TTL Assets

6.30 Subject to Clause 6.26 (Exclusivity):

- (a) the Parties shall work together to identify opportunities to grant to the Concessionaire exclusive or, if not practicable, non-exclusive rights during the Term to use/access for the Purpose all new TTL Assets; and
- (b) where the TTL Representative is, or is made, aware that there are new TTL Assets to which TTL or the relevant TfL Group Member has the necessary rights to grant exclusive rights to the Concessionaire, the Concessionaire shall have the right of first refusal to the relevant rights over such new TTL Assets.

Protection of Exclusivity Rights

6.31 Save for where the Concessionaire was given and rejected the right of first refusal to have exclusive rights over new TTL Assets in accordance with Clause 6.30 (Future TTL Assets), any decision of the Concessionaire not to use a particular TTL Asset for the Purpose shall not affect the Concessionaire's right to enforce or rely on Clause 6.26 (Exclusivity) to Clause 6.30 (Future TTL Assets) (inclusive) in respect of such TTL Asset.

Pilot Infrastructure

6.32 At any time from and including the Effective Date up to and including the date which is three (3) months after the Effective Date (or such later date agreed between the Parties), the Concessionaire may elect to purchase the Pilot Infrastructure in accordance with Paragraph 5 of Part A of Schedule 7.1 (Fees and Charges) by giving TTL notice in writing.

6.33 Following acknowledgment of receipt by TTL of written notice pursuant to Clause 6.32 (Pilot Infrastructure), the Pilot Infrastructure shall be deemed to be Re-Charged Infrastructure for the purposes of Clause 6.11 (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee).

Optional Services

ESN Service Management Services

- 6.34 At any time after the Effective Date, TTL may require the Concessionaire to provide the ESN Service Management Services for a period as specified by TTL (and if no period is specified then for the remainder of the Term) by giving notice to the Concessionaire in writing. The Concessionaire acknowledges that TTL is not obliged to exercise the option to require the Concessionaire to provide the ESN Service Management Services.
- 6.35 For the avoidance of doubt, none of the provisions of Schedule 13 (ESN Service Management Services) and Schedule 4.1 (Concessionaire Solution) A8 ESN Service Management Services shall have any operative effect unless and until called off by the Parties in accordance with Clause 6.34 (ESN Service Management Services).

Works Funded By Grants Services

- 6.36 At any time after the Effective Date, TTL may require the Concessionaire to provide Works Funded By Grants Services in respect of one (1) or more Works Funded By Grants Groups by giving notice to the Concessionaire in writing.
- 6.37 The Concessionaire acknowledges that TTL is not obliged to take any Works Funded By Grants Services from the Concessionaire and that nothing shall prevent TTL from receiving services that are the same as or similar to the Works Funded By Grants Services from any third party.
- 6.38 Following receipt of TTL's notice pursuant to Clause 6.34 (ESN Service Management Services) or Clause 6.36 (Works Funded By Grants Services) (as appropriate):
- (a) subject to Clause 6.38(b) (Works Funded By Grants Services) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure modified to reflect the fact that the terms and conditions on which the Concessionaire shall provide the relevant Optional Services may have already been agreed;
 - (b) the charges for the Optional Services shall be agreed in accordance with the Change Control Procedure unless the charges for the relevant Optional Services or part thereof have been specified in Schedule 7.1 (Fees and Charges) and are still valid then such specified charges shall apply;
 - (c) for the Works Funded By Grants Services the Concessionaire shall implement the relevant Works Funded By Grants Services in accordance with the Works Funded By Grants Services Detailed Implementation Plan and undertake the assurance activities set out in the Works Funded By Grants Services Assurance Process; and
 - (d) for ESN Service Management Services the Concessionaire shall, from the date agreed in the Change Authorisation Note, provide the ESN Service Management Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators as set out in Schedule 13 (ESN Service Management Services).
- 6.39 For the purposes of Clause 6.38(b) (Works Funded By Grants Services), the Parties agree that the Works Funded By Grants Group Charges set out in Annex 5 of Schedule 7.1 (Fees and Charges) shall be valid until and including the date which is three (3) months after the Effective Date.

Process for dealing with access to TTL Assets under the Electronic Communications Code

- 6.40 TTL shall notify the Concessionaire as soon as reasonably practicable (by email to an address agreed between the Parties) following receipt of:
- (a) a written request from a Code Operator under paragraph 20 of the Electronic Communications Code seeking TTL's or other members of the TfL Group agreement to a Code Right (a "**Code Notice**"); and/or
 - (b) a written request from a Network Provider under regulation 6 of The Communications (Access to Infrastructure) Regulations 2016 (a "**Request Notice**"),
- in respect of an Applicable TTL Asset.
- 6.41 Following receipt of a Code Notice or a Request Notice, TTL shall requests that the Code Operator or Network Provider (as applicable) contacts the Concessionaire to discuss obtaining access to the relevant TTL Asset through the commercialisation activities undertaken by the Concessionaire in the performance of its obligations under this Agreement.
- 6.42 TTL shall keep the Concessionaire informed at appropriate intervals on the status of any Code Notice or Request Notice (including any subsequent application by a Code Operator or a Network Provider to the court or OFCOM (as applicable)).
- 6.43 The Concessionaire may make representations to TTL regarding the response to the Code Notice or the Request Notice (including any subsequent applications to the court or OFCOM). TTL shall take reasonable account of any such representations and shall send a copy of the correspondence regarding the Code Notice or the Request Notice to the Concessionaire.
- 6.44 TTL shall provide the Concessionaire with a copy of:
- (a) any agreements made between TTL or any other member of the TfL Group and a Code Operator or Network Provider (as applicable) in respect of a Code Notice or Request Notice;
 - (b) any order made under the Electronic Communications Code in respect of a Code Notice; and
 - (c) any OFCOM determination or order under The Communications (Access to Infrastructure) Regulations 2016 in respect of a Request Notice,
- as soon as reasonably practicable.
- 6.45 The Parties agree that the Concessionaire shall be entitled to deduct:
- (a) any Code Consideration (less the applicable revenue share percentage); and
 - (b) any Regulations Price (less the applicable revenue share percentage),
- from the Revenue Share Fee. Such deductions will be calculated in accordance with Paragraph 3.1 of Part A of Schedule 7.1 (Fees and Charges).

7 IMPLEMENTATION

Implementation Plan and Delays

- 7.1 The Parties shall comply with the provisions of Schedule 6.1 (Implementation Plans) in relation to the agreement and maintenance of the Detailed Implementation Plans.
- 7.2 The Concessionaire shall:
- (a) comply with the Implementation Plans; and
 - (b) ensure that each Key Milestone is Achieved on or before its Milestone Date.
- 7.3 If the Concessionaire becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
- (a) notify TTL in accordance with Clause 29 (Rectification Plan Process);
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

Testing and Achievement of Milestones

- 7.4 The Parties shall comply with the provisions of Schedule 6.2 (Testing and Assurance).

8 KEY PERFORMANCE INDICATORS

- 8.1 The Concessionaire shall:
- (a) provide the Services in such manner so as to meet or exceed the Target Performance Levels for each Performance Indicator from the relevant Performance Indicator Start Date; and
 - (b) comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 8.2 If in any Measurement Period a KPI Failure occurs, the Concessionaire shall comply with the Rectification Plan Process.

9 SERVICES IMPROVEMENT

- 9.1 The Concessionaire shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 9 (Services Improvement) to ensure the Customer Products remain competitive and maximise the Gross Revenue opportunity. As part of this obligation the Concessionaire shall identify:
- (a) the emergence of new and evolving relevant technologies which could enhance the Services, and those technological advances potentially available to the Concessionaire and its customers;
 - (b) new or potential improvements to the Services including to the quality and performance of the Customer Products and improvements in both Customer and End User experience;

- (c) new or potential improvements to Services that will enhance the exploitation of TTL Assets for the Purpose; and/or
- (d) changes to the Services, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

10 CONCESSIONAIRE EFFECTS

- 10.1 The Concessionaire shall be solely responsible for the cost of carriage of Concessionaire Effects to the Sites, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement for Concessionaire Effects that are not Concessionaire Infrastructure the Concessionaire shall be responsible for the removal and safe disposal of all relevant Concessionaire Effects from the Sites, including the cost of packing, carriage and making good the Sites following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 10.2 All Concessionaire Effects, shall remain at the sole risk and responsibility of the Concessionaire, except that TTL shall be liable for loss of or damage to any of the Concessionaire's property located on TTL Assets which is due to the negligent act or omission of TTL, the TfL Group or authorised third parties acting under the direction or control of TTL or another member of the TfL Group.
- 10.3 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Concessionaire Effects shall not relieve the Concessionaire of its obligation to provide the Services in accordance with this Agreement, including the Target Performance Levels, save where such loss or destruction was caused by:
 - (a) a Force Majeure Event; or
 - (b) TTL's breach of Paragraph 2.1(h) of Schedule 3 (TTL Responsibilities).

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

11 FINANCIAL AND TAXATION MATTERS

Fees, Charges and Invoicing

- 11.1 The Parties shall comply with the provisions of Schedule 7.1 (Fees and Charges).
- 11.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 7.4 (Testing and Achievement of Milestones), 13 (Records, Reports and Audits), 23 (Transparency and Freedom of Information), 24 (Protection of Personal Data) and, to the extent specified therein, Clause 32 (Remedial Adviser) and Clause 33 (Step-In Rights).
- 11.3 If either Party fails to pay any undisputed Charges or Fees (as applicable) properly invoiced under this Agreement, the other Party shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

- 11.4 For the avoidance of doubt, unless explicitly stated to the contrary, TTL will not be liable for any additional costs for the provision of the Services by the Concessionaire or for the Concessionaire's discharge of its obligations under this Agreement.

VAT

- 11.5 The Charges and Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by TTL or the Concessionaire as applicable following delivery of a valid VAT invoice.
- 11.6 The Concessionaire shall indemnify TTL and all other members of the Tfl Group (each an "**Indemnified Party**") on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on each Indemnified Party (including its respective employees, sub-contractors and agents) at any time in respect of the Concessionaire's failure to account for or to pay any VAT relating to payments made to the Concessionaire under this Agreement. Any amounts due under this Clause 11.6 (VAT) shall be paid in cleared funds by the Concessionaire to TTL not less than five (5) Working Days before the date upon which the tax or other liability is payable by TTL or any other member of the Tfl Group and if not shall be subject to set-off in accordance with Clause 11.7 (Set-off and Withholding).

Set-off and Withholding

- 11.7 Without prejudice to TTL's right of common law set-off or equitable set-off or any other rights of set-off arising for the benefit of TTL, which the Concessionaire and TTL hereby expressly acknowledge and agree are preserved for the benefit of TTL, whenever under this Agreement any sum of money shall be recoverable from or payable by the Concessionaire, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Concessionaire:
- (a) under this Agreement; or
 - (b) under any other contract/agreement with TTL, or with other members of the Tfl Group.
- 11.8 If TTL wishes to set-off any amount owed by the Concessionaire to TTL or any other members of the Tfl Group (against any amount due to the Concessionaire pursuant to Clause 11.7 (Set-off and Withholding)) it shall include, where relevant, its reasons for setting off the relevant invoice in the relevant notices that it issues to the Concessionaire pursuant to Paragraphs 12.16 and 12.21 of Part A of Schedule 7.1 (Fees and Charges) and Paragraphs 7 and 8 of Part B of Schedule 7.1 (Fees and Charges).
- 11.9 Subject to Clause 11.10 (Set-off and Withholding), whenever under this Agreement any sum of money shall be recoverable from or payable by TTL, the same may be deducted from any sum then due, or which at any time thereafter may become due, to TTL under this Agreement.
- 11.10 Without prejudice to the invoicing process set out in Paragraph 7 of Part B of Schedule 7.1 (Fees and Charges), the Concessionaire shall not be entitled to retain or set-off any sum of money recoverable from or payable by TTL in respect of any of the following Charges:
- (a) the ESN Implementation Charges;
 - (b) the ESN Monthly Service Managements Services; and

(c) the Works Funded By Grants Group Charges.

- 11.11 If the Concessionaire wishes to set-off any amount owed by TTL to the Concessionaire against any amount due to TTL pursuant to Clause 11.9 (Set-off and Withholding) it shall include, where relevant, its reasons for setting off the relevant invoice in the relevant notices that it issues to TTL pursuant to Paragraphs 12.16 and 12.21 of Part A of Schedule 7.1 (Fees and Charges) and Paragraphs 7 and 8 of Part B of Schedule 7.1 (Fees and Charges).

Financial Distress

- 11.12 The Parties shall comply with the provisions of Schedule 7.4 (Financial Distress).

Promoting Tax Compliance

- 11.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Concessionaire shall:
- (a) notify TTL in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to TTL:
 - (i) details of the steps which the Concessionaire is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as TTL may reasonably require.

Future Opportunities

- 11.14 The Parties shall work together during the Term to identify opportunities to maximise the exploitation of TTL Assets for the Purpose. Where such an opportunity is identified, the Parties shall, for a reasonable period of time, attempt to agree the reasonable terms of the arrangements in relation to the identified opportunity (including by way of additional fixed fee, revenue share, contribution of TTL Assets or investment) in accordance with market practice.

Business Plan and Capital Investment

- 11.15 The Concessionaire acknowledges and agrees to make Capital Investments at the levels specified in the Business Plan. The Capital Investment made by the Concessionaire will be reviewed throughout the Term, in particular following receipt of the Annual Report.
- 11.16 The Concessionaire shall ensure that a Capital Investment Commitment Failure does not occur.
- 11.17 For the purposes of Clause 11.16 (Business Plan and Capital Investment) a "**Capital Investment Commitment Failure**" means that any one (1) or more of the following events have occurred:
- (a) the aggregate sum of the Annual Commercial Mobile Capital Investment from the Effective Date up to and including the Financial Year end is less than the aggregate sum of the Commercial Mobile Capital Investment Commitment from the Effective Date up to and including the Financial Year end; AND either one (1) or more of the following tests have been satisfied as specified in:

- (i) Clause 11.19(a)(i) (Business Plan and Capital Investment); or
 - (ii) Clause 11.20(a) (Business Plan and Capital Investment);
- (b) the aggregate sum of the Annual Fibre Capital Investment from the Effective Date up to and including the Financial Year end is less than the aggregate sum of the Fibre Capital Investment Commitment from the Effective Date up to and including the Financial Year end; AND either one (1) or more of the following tests have been satisfied as specified in:
 - (i) Clause 11.19(a)(ii) (Business Plan and Capital Investment); or
 - (ii) Clause 11.20(b) (Business Plan and Capital Investment);
- (c) the aggregate sum of the Annual Streetscape Capital Investment from the Effective Date up to and including the Financial Year end is less than the aggregate sum of the Streetscape Capital Investment Commitment from the Effective Date up to and including the Financial Year end; AND either one (1) or more of the following tests have been satisfied as specified in:
 - (i) Clause 11.19(a)(iii) (Business Plan and Capital Investment); or
 - (ii) Clause 11.20(c) (Business Plan and Capital Investment);
- (d) the aggregate sum of the Annual Public Wi-Fi Capital Investment from the Effective Date up to and including the Financial Year end is less than the aggregate sum of the Public Wi-Fi Capital Investment Commitment from the Effective Date up to and including the Financial Year end; AND either one (1) or more of the following tests have been satisfied as specified in:
 - (i) the provision within Clause 11.19(a)(iv) (Business Plan and Capital Investment); or
 - (ii) the provisions within Clause 11.20(d) (Business Plan and Capital Investment);

11.18 For the purposes of Clauses 11.17 and 11.21 (Business Plan and Capital Investment) Financial Year end is the previous Financial Year end immediately prior to the issue of then latest Annual Report.

11.19 Annual Test:

- (a) At each Financial Year end for the previous twelve (12) month period prior to such Financial Year end:
 - (i) the Annual Commercial Mobile Capital Investment is less than seventy five per cent (75%) of the Commercial Mobile Capital Investment Commitment;
 - (ii) the Annual Fibre Capital Investment is less than seventy five per cent (75%) of the Fibre Capital Investment Commitment;
 - (iii) the Annual Streetscape Capital Investment is less than seventy five per cent (75%) of the Streetscape Capital Investment Commitment; and

- (iv) the Annual Public Wi-Fi Capital Investment Commitment is less than seventy five per cent (75%) of the Public Wi-Fi Capital Investment Commitment;

11.20 Five Year Review Point Test Period which will commence after the fifth (5th) Financial Year end and annually thereafter:

- (a) the aggregate sum of the Annual Commercial Mobile Capital Investment is less than ninety five per cent (95%) of the aggregate sum of the Commercial Mobile Capital Investment Commitment for the relevant Sample Financial Period;
- (b) the aggregate sum of the Annual Fibre Capital Investment is less than ninety five per cent (95%) of the aggregate sum of the Fibre Capital Investment Commitment for the relevant Sample Financial Period;
- (c) the aggregate sum of the Annual Streetscape Capital Investment is less than ninety five per cent (95%) of the aggregate sum of the Streetscape Capital Investment Commitment for the relevant Sample Financial Period; and/or
- (d) of the aggregate sum of the Annual Public Wi-Fi Capital Investment is less than ninety five per cent (95%) of the aggregate sum of the Public Wi-Fi Capital Investment Commitment for the relevant Sample Financial Period.

11.21 For the purposes of Clause 11.20 (Business Plan and Capital Investment) a **Sample Financial Period** shall be for the five (5) Financial Years immediately preceding the specified delivery date of the latest Annual Report.

11.22 The Concessionaire acknowledges and agrees that:

- (a) a breach by the Concessionaire of Clause 11.16 (Business Plan and Capital Investment) may result in irreparable and continuing damage to TTL or other members of the TfL Group;
- (b) damages alone are not an adequate remedy for any such breach; and
- (c) TTL shall be entitled to apply for the remedies of injunction, specific performance or other equitable relief for threatened or actual breach of Clause 11.16 (Business Plan and Capital Investment).

Worked example for illustrative purposes only

Worked Example 1

Effective Date is 1 July 2021

Review Point is 30 June 2024

Only Commercial Mobile Services is used in this example, in life all Service Lines will be tested individually to assess if a Capital Investment Failure has occurred.

Performance is as set out in the table below:

	01 Jul 21	01 Jul 22	01 Jul 23
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	<i>Total</i>	<i>30 Jun 22</i>	<i>30 Jun 23</i>	<i>30 Jun 24</i>
<i>Commercial Mobile Capital Investment Commitment</i>	<i>110</i>	<i>20</i>	<i>80</i>	<i>10</i>
<i>Annual Commercial Mobile Capital Investment</i>	<i>106</i>	<i>16</i>	<i>70</i>	<i>20</i>

The aggregate sum of the Annual Commercial Mobile Capital Investment is:

$$(16 + 70 + 20) = 106$$

The aggregate sum of the Commercial Mobile Capital Commitment is:

$$(20 + 80 + 10) = 110$$

106 is less than 110, therefore the "Annual Test" and "5 Year Test" tests are applied.

Annual Test:

$$20 / 10 = 200\%$$

Therefore the Annual Test for Commercial Mobile is passed

5 Year Test:

Not tested as the fifth Financial Year End has not yet occurred.

Conclusion: No Capital Investment Failure caused by the Commercial Mobile Services Line.

Worked Example 2:

Effective Date is 1 July 2021

Review Point is 30 June 2023

Performance is as set out in the table below:

	<i>Total</i>	<i>01 Jul 21 30 Jun 22</i>	<i>01 Jul 22 30 Jun 23</i>
<i>Commercial Mobile Capital Investment Commitment</i>	<i>100</i>	<i>20</i>	<i>80</i>
<i>Annual Commercial Mobile Capital Investment</i>	<i>72</i>	<i>16</i>	<i>56</i>

The aggregate sum of the Annual Commercial Mobile Capital Investment is:

$$(16 + 56) = 72$$

The aggregate sum of the Commercial Mobile Capital Commitment is:

$$(20 + 80) = 100$$

72 is less than 100, therefore the "Annual Test" and "5 Year Test" tests are applied.

Annual Test:

$$56 / 80 = 70\%$$

Therefore the Annual Test for Commercial Mobile is failed

5 Year Test:

Not tested as the fifth Financial Year End has yet not occurred.

Conclusion: A Capital Investment Failure has occurred.

Financial Liquidity

11.23 The restrictions described in Clause 11.24 (Financial Liquidity) shall apply where:

- (a) the ratio of Current Assets to Current Liabilities is less than one-to-one (1:1) and/or the Concessionaire's minimum cash balance is less than next Financial Year's Fixed Concession Fee, in each case as shown in the latest Monthly Financial Report, and in such case the Lock-up Period shall commence on the date that the Monthly Financial Report is provided to TTL pursuant to Schedule 8.1 (Governance) and continue until a Monthly Financial Report is provided to TTL pursuant to Schedule 8.1 (Governance) which shows that the ratio of Current Assets to Current Liabilities is once again equal to or more than the ratio of one-to-one (1:1); or
- (b) the Monthly Financial Report for any three (3) months out of any twelve (12) consecutive months (the "**Financial Performance Measurement Period**") disclose that the ratio of Current Assets to Current Liabilities is less than one-to-one (1:1) and/or the Concessionaire's minimum cash balance is less than next Financial Year's Fixed Concession Fee, and in such case the Lock-up Period shall commence at the start of the next month after the Financial Performance Measurement Period and continue for a period of twelve (12) months, regardless of whether the ratio of Current Assets to Current Liabilities, as shown in any subsequent Monthly Financial Report for any month in that Lock-up Period, is equal to or more than one-to-one (1:1); or
- (c) without prejudice to Clauses 11.23(a) and 11.23(b) (Financial Liquidity), the Concessionaire does not provide the Monthly Financial Report on the date required in accordance with Schedule 8.1 (Governance) (TTL having provided BAI with a five (5) day period to rectify such non-provision) and in such case the Lock-up Period shall commence on the date that the Monthly Financial Report should have been provided to TTL and shall continue until the Monthly Financial Report is provided to TTL.

11.24 The Concessionaire may not without TTL's prior written consent:

- (a) declare or pay any dividend or make any other distribution, including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Concessionaire;
- (b) pay management charges or any other payments to any of its Affiliates in excess of those specified in the Business Plan;

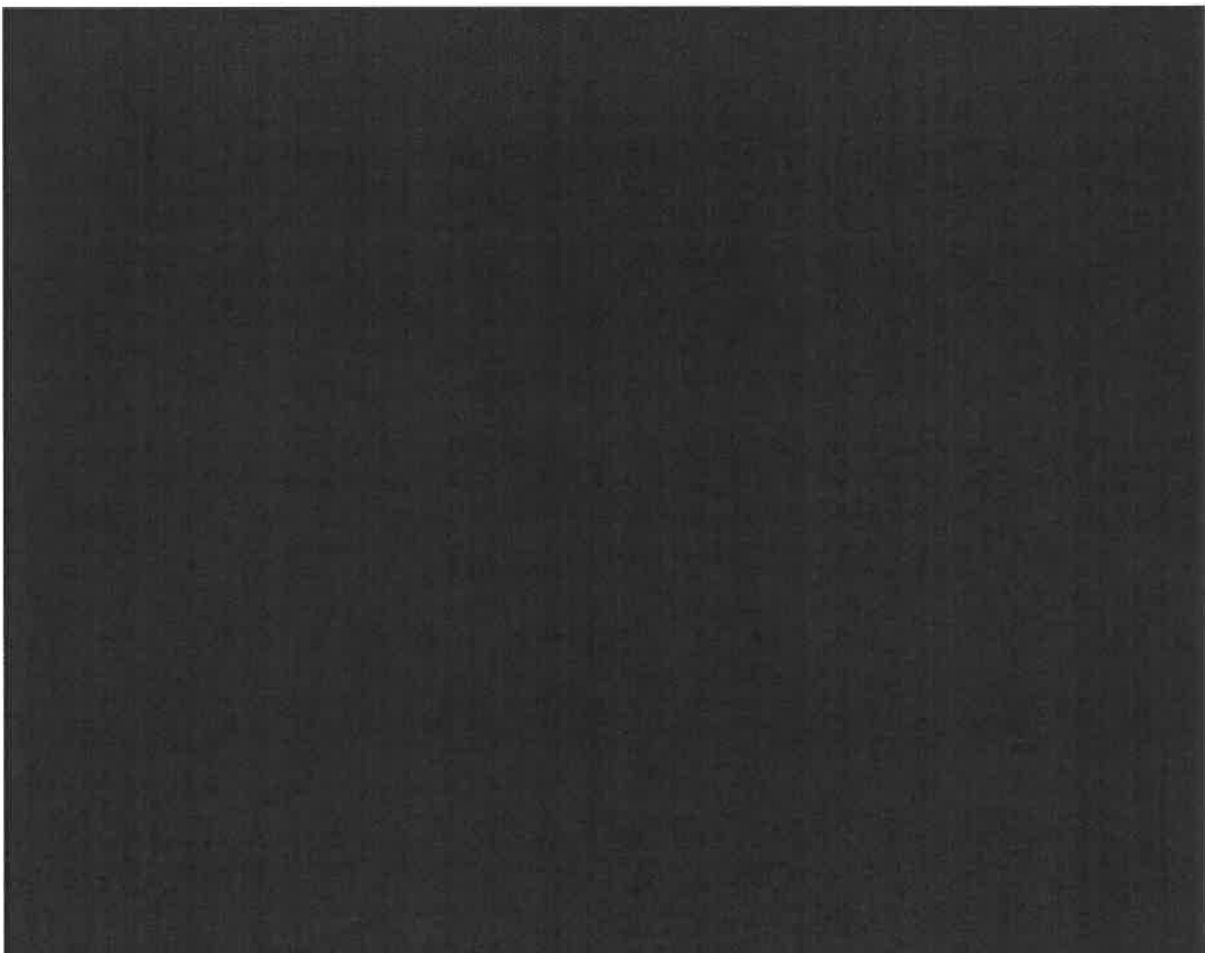
- (c) enter into, or make payment under, any loan (including any loan with any of its Affiliates), or create any Concessionaire Encumbrance over any of its assets;
- (d) enter into any transaction with any of its Affiliates save as specified in the Business Plan; or
- (e) make any acquisition, or dispose, of any assets or property that is not already specified in the Business Plan,

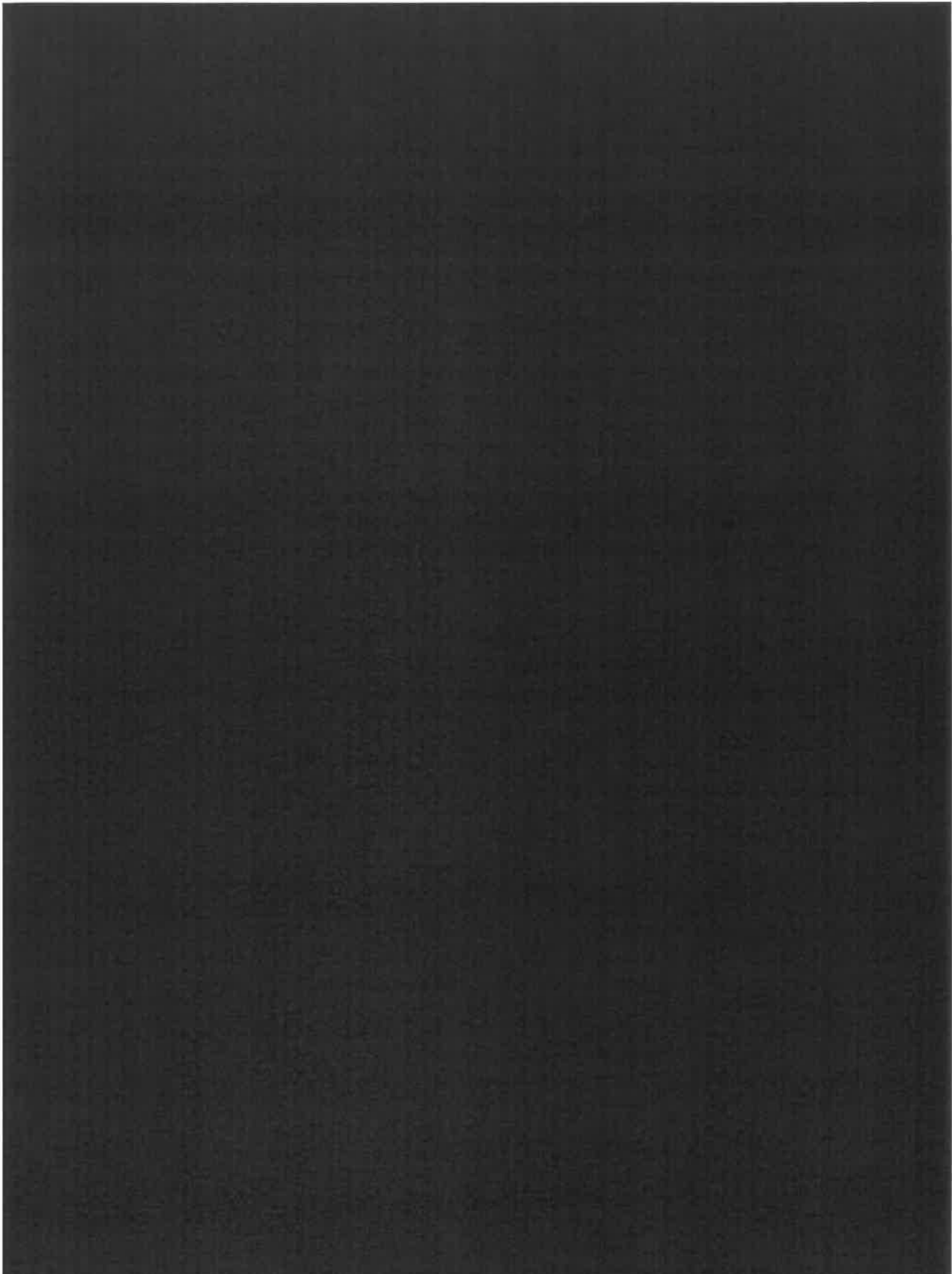
during any Lock-up Period if any of the circumstances referred to in Clause 11.23 (Financial Liquidity) apply.

- 11.25 Where any Lock-up Period referred to in Clause 11.23 (Financial Liquidity) occurs, the next Financial Performance Measurement Period shall not commence until the next month after the end of that Lock-up Period, provided that the Lock-up Period referred to in Clause 11.23 (Financial Liquidity) may apply from the next month after the end of any Financial Performance Measurement Period where any of the circumstances referred to in Clause 11.23 (Financial Liquidity) apply.

Additional Security

- 11.26 The Parties acknowledge that the Guarantee has been delivered to TTL and TTL hereby confirms that the identity and financial position of the Guarantor (as at the Effective Date) meets its requirements in the context of the performance of the Services by the Concessionaire.





11.29 Following receipt of the Concessionaire's proposed additional security options in accordance with Clause 11.27 (Additional Security), TTL shall select in its absolute sole discretion which form (or forms) of additional security it requires.

- 11.30 The Concessionaire shall, if TTL so requires and so notifies the Concessionaire in writing, provide the requested form (or forms) of additional security.
- 11.31 Any failure by the Concessionaire to comply with Clauses 11.27 and/or 11.30 (Additional Security) shall constitute a Financial Distress Event in accordance with Paragraph 2.1(h) of Schedule 7.4 (Financial Distress). Where TTL exercises its right to request additional security in the form of a guarantee from a replacement guarantor in accordance with Clauses 11.27 to 11.30 (Additional Security), the provisions of Clauses 3.8(b) (Warranties) and 11.27 (Additional Security), Schedule 7.4 (Financial Distress) and Schedule 7.5 (Financial Transparency and Audit Rights) and limbs (i), (j), (l) and (m) of the definition of Concessionaire Termination Event shall apply to the replacement guarantor and any references to "Guarantor" shall mean the replacement guarantor.
- 11.32 The Concessionaire has no obligation to propose additional security in accordance with Clause 11.28 (Additional Security) where the Guarantor retains one hundred per cent (100%) of the beneficial interest in the Guarantor Group following any changes to/within the Guarantor Group as more particularly described in Clause 11.27(b) (Additional Security).
- 11.33 Without prejudice to the Concessionaire's obligations under Clause 11.27(c) (Additional Security) and TTL's rights and remedies under Clauses 11.28 to 11.30 (Additional Security), if after the Effective Date, the Guarantor obtains a credit rating from either Standard & Poor's, Moody's or Fitch, the provisions of Clauses 11.27(a) and 11.27(b) (Additional Security) shall not apply.

Minimum Capitalisation Requirements

- 11.34 The Concessionaire warrants and represents that at the Effective Date, the Minimum Share Capital was fully paid up in cash.
- 11.35 The Concessionaire shall ensure that no part of the Minimum Share Capital is repaid until the expiry of this Agreement.

Performance Bond

- 11.36 The Parties shall comply with the provisions of Schedule 11 (Performance Bond).

Funding and Financing Arrangements

- 11.37 If the Concessionaire proposes a change to its funding and financing arrangements which will:

- (a) affect TTL's rights under this Agreement;
- (b) require TTL to enter into:
 - (i) an agreement with a third party; and/or
 - (ii) an additional agreement with the Concessionaire; and/or
- (c) cause the Concessionaire to breach its obligations in Clause 6.5(c)(i) (Concessionaire Covenants),

then such changes will be dealt with under the Change Control Procedure, save that the Parties shall negotiate the relevant Contract Change in good faith.

SECTION D – CONTRACT GOVERNANCE

12 GOVERNANCE

- 12.1 The Parties shall comply with the provisions of Schedule 8.1 (Governance) in relation to the management and governance of this Agreement.

Representatives

- 12.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 12.3 The Concessionaire Representative shall be the person named as such in Schedule 9.2 (Key Personnel). The Concessionaire may, by written notice to TTL, revoke or amend the authority of the Concessionaire Representative or appoint a new Concessionaire Representative.
- 12.4 TTL shall notify the Concessionaire of the identity of the initial TTL Representative within five (5) Working Days of the Effective Date. TTL may, by written notice to the Concessionaire, revoke or amend the authority of the TTL Representative or appoint a new TTL Representative.

13 RECORDS, REPORTS AND AUDITS

- 13.1 The Concessionaire shall, and shall procure that its Sub-contractors shall retain and maintain the Records (including superseded Records) in accordance with the Information and Records Management Policy as referred to in Annex 1 (Bespoke and Industry Standards) of Schedule 2.3 (Standards).
- 13.2 The Concessionaire shall make the Records available to TTL for inspection by TTL on request within ten (10) Working Days, subject to TTL giving reasonable notice and in all circumstances at least three (3) Working Days' notice will always be deemed reasonable.
- 13.3 In relation to the documents retained in electronic form, the Concessionaire shall, and shall procure that its Sub-contractors shall preserve the original metadata together with all subsequent metadata in a format reasonably accessible by TTL.
- 13.4 The Concessionaire shall, and shall procure that its Sub-contractors shall, during the Term and for a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate Records in relation to the provision of the Services and such Records shall be retained in safe storage by the Concessionaire.
- 13.5 The Concessionaire shall comply with the provisions of:
- (a) Schedule 8.1 (Governance) in relation to the provision of the Reports;
 - (b) Schedule 8.4 (Document Management) in relation to the creation and maintenance of documents; and
 - (c) Part A of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the provision of financial reports.

- 13.6 The Parties shall comply with the provisions of Part B of Schedule 7.5 (Financial Transparency and Audit Rights) in relation to the exercise of the Audit Rights by TTL or any Audit Agents.
- 13.7 To the extent that no time limit is specified for the provision of any Report, Record, document or data by the Concessionaire in accordance with this Clause 13.7 (Records, Reports and Audits) then the time limit shall be ten (10) Working Days from the end of the relevant reporting period.
- 13.8 Notwithstanding anything else contained in this Agreement, the Concessionaire shall, and shall procure that its Sub-contractors shall retain all financial Records relating to this Agreement for a period of at least seven (7) years after the end of this Agreement howsoever occasioned. This information shall include original or electronic copies of invoices, receipts, minutes from meetings, accounts, and original deeds.

14 CHANGE

Change Control Procedure

- 14.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

- 14.2 The Concessionaire shall neither be relieved of its obligations to provide the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges, an amendment to the Fees, or a decrease in any Revenue Share Percentage as the result of:
- (a) a General Change in Law which shall include:
 - (i) a change in Law which restricts or prevents the Concessionaire's ability to provide the Services as contemplated under this Agreement, whether from or to locations in the EU or otherwise;
 - (ii) tariffs or levies or any other restrictions imposed upon the provision of the Services from the UK to the EU;
 - (iii) tariffs or levies or any other restrictions imposed upon the provision of services or movement of goods from the EU to the UK; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 14.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 14.2(b) (Change in Law)), the Concessionaire shall:
- (a) notify TTL as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges, the Fees or a Revenue Share Percentage or this Agreement; and

- (ii) whether any relief from compliance with the Concessionaire's obligations is required, including any obligation to Achieve a Key Milestone and/or to meet the Target Performance Levels; and
- (b) provide TTL with evidence:
 - (i) that the Concessionaire has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost or ability to provide the Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges, the Fees or any Revenue Share Percentage.
- 14.4 Any variation in the Charges, the Fees or any Revenue Share Percentage or relief from the Concessionaire's obligations resulting from a Specific Change in Law (other than as referred to in Clause 14.2(b) (Change in Law)) shall be implemented in accordance with the Change Control Procedure.
- 14.5 For the avoidance of doubt, the announcement or occurrence of any of a General Change in Law as specified in Clause 14.2(a) (Change in Law) shall not give the Concessionaire any right to terminate or repudiate the Agreement, suspend the provision of Services or seek to increase the Charges, decrease the Fees, or decrease any Revenue Share Percentage.
- 14.6 For the avoidance of doubt, the occurrence of any Specific Change in Law during the Term shall be deemed to be a Relief Event for the purposes of Clause 34.2 (TTL Cause).

SECTION E – CONCESSIONAIRE PERSONNEL AND SUPPLY CHAIN

15 CONCESSIONAIRE PERSONNEL

- 15.1 The Concessionaire shall:
 - (a) in accordance with the Standards, provide a list of the names of all Concessionaire Personnel requiring admission to TTL Assets, specifying the capacity in which they require admission and giving such other particulars as TTL may reasonably require;
 - (b) ensure that all Concessionaire Personnel:
 - (i) are appropriately skilled, qualified, trained, certified and experienced, including the use of apprentices and graduate schemes where applicable, to provide the Services with all reasonable skill, care and diligence;
 - (ii) have given suitable non-disclosure or confidentiality undertakings (including those contained within any contract of employment) no less onerous than the confidentiality obligations of this Agreement and the Concessionaire hereby assigns the right to seek injunctive relief under such confidentiality undertakings against such individuals to TTL;
 - (iii) will be evaluated for their competency and capability to provide the Services in accordance with Good Industry Practice;

- (iv) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.3 (Standards) and Schedule 2.4 (Security Management); and
- (v) comply with all requirements of TTL concerning conduct at TTL Assets, including the security requirements as set out in Schedule 2.3 (Standards) and Schedule 2.4 (Security Management);
- (c) subject to Schedule 9.1 (Staff Transfer), retain overall control of the Concessionaire Personnel at all times so that the Concessionaire Personnel shall not be deemed to be employees, agents or contractors of TTL or other members of the TfL Group;
- (d) be liable at all times for all acts or omissions of Concessionaire Personnel, so that any act or omission of a member of any Concessionaire Personnel which results in a Default under this Agreement shall be a Default by the Concessionaire; and
- (e) unless specified to the contrary in Schedule 8.5 (Exit Management) procure that the Concessionaire Personnel shall vacate TTL Assets immediately upon the termination or expiry of this Agreement.

15.2 If TTL reasonably believes that any of the Concessionaire Personnel are unsuitable to undertake work in respect of this Agreement, it may refuse admission to the relevant person(s) to TTL Assets.

Key Personnel

15.3 Subject to Clause 15.4 (Key Personnel), the Concessionaire shall comply with the provisions of Schedule 9.2 (Key Personnel) and ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (Key Personnel) lists the Key Roles and names of the persons who the Concessionaire shall appoint to fill those Key Roles at the Effective Date.

15.4 The Concessionaire may replace any Key Personnel (including when carrying out Exit Management) provided that the Concessionaire promptly notifies TTL of the appointment of the replacement Key Personnel to fulfil the Key Role.

15.5 The Concessionaire shall:

- (a) notify TTL promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Concessionaire shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days; and
- (c) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services.

Employment Indemnity

15.6 The Parties agree that:

- (a) the Concessionaire shall both during and after the Term indemnify TTL against all Employee Liabilities that may arise as a result of any claims brought against TTL or other members of the TfL Group by any person where such claim arises from any act or omission of the Concessionaire or any Concessionaire Personnel; and
- (b) TTL shall both during and after the Term indemnify the Concessionaire against all Employee Liabilities that may arise as a result of any claims brought against the Concessionaire by any person where such claim arises from any act or omission of TTL or other member of the TfL Group or any of TTL's or other member of the TfL Group employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

15.7 Where the Concessionaire or any Concessionaire Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Concessionaire shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify TTL against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Concessionaire or any Concessionaire Personnel.

Staff Transfer

15.8 The Parties agree that Schedule 9.1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

16 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

16.1 The Concessionaire shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Concessionaire is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Agreement in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to TTL or any Replacement Concessionaire any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

16.2 Prior to sub-contracting any of its obligations under this Agreement, the Concessionaire shall notify TTL in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration number;
- (b) the scope of any Services to be provided by the proposed Sub-contractor; and

- (c) confirmation that it has included suitable provisions in its Sub-contract to flow down obligations under this Agreement, including the data protection requirements set out in Clauses 21 (Data and Security Requirements) and 24 (Protection of Personal Data);

16.3 TTL may, within ten (10) Working Days of receipt of the Concessionaire's notice issued pursuant to Clause 16.2 (Appointment of Sub-contractors) object to the appointment of the relevant Sub-contractor (in its sole discretion which shall not be disputed) if it reasonably considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of TTL or other members of the TfL Group; and/or
- (b) the proposed Sub-contractor should be excluded in accordance with Clause 16.12 (Exclusion of Sub-contractors).

16.4 If:

- (a) TTL has not notified the Concessionaire that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of the Concessionaire's notice issued pursuant to Clause 16.2 (Appointment of Sub-contractors); and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of TTL in accordance with Clause 16.5 (Appointment of Key Sub-contractors)),

the Concessionaire may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, must notify TTL that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts).

Appointment of Key Sub-contractors

16.5 Where the Concessionaire wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of TTL, such consent not to be unreasonably withheld or delayed. For these purposes, TTL may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of TTL or other members of the TfL Group; and/or
- (b) the proposed Key Sub-contractor should be excluded in accordance with Clause 16.12 (Exclusion of Sub-contractors).

16.6 TTL consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

16.7 Except where TTL has given its prior written consent, the Concessionaire shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Concessionaire to discharge its obligations under this Agreement;
- (b) a right under CRTPA for TTL to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon TTL;
- (c) a provision enabling TTL to enforce the Key Sub-contract as if it were the Concessionaire;
- (d) a provision enabling the Concessionaire to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to TTL or any Replacement Concessionaire without restriction (including any need to obtain any consent or approval) or payment by TTL;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Concessionaire under this Agreement in respect of:
 - (i) obligations to mitigate its losses;
 - (ii) data protection requirements set out in Clauses 21 (Data and Security Requirements) and 24 (Protection of Personal Data);
 - (iii) FOIA requirements set out in Clause 23 (Transparency and Freedom of Information);
 - (iv) security requirements set out in Schedule 2.4 (Security Management);
 - (v) the obligation not to bring TTL or other members of the TfL Group into disrepute (save as may be caused by a failure to comply with Clause 8.1 (Key Performance Indicators) or any similar Default, which shall not be a breach of this Clause) set out in Clause 6.5(i) (Concessionaire Covenants);
 - (vi) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of appropriate financial records; and
 - (vii) the conduct of Audits set out in Part B of Schedule 7.5 (Financial Transparency and Audit Rights);
- (f) provisions enabling the Concessionaire to terminate the Key Sub-contract on notice on terms no more onerous on the Concessionaire than those imposed by TTL under Clauses 36.1 (Termination by TTL) and 37.3 (Payments on Contract Expiry and Termination);
- (g) a provision restricting the ability of the Key Sub-contractor to Sub-contract all or any part of the services provided to the Concessionaire under the Key Sub-contract without first seeking the written consent of TTL, such consent not to be unreasonably withheld or delayed. For these purposes, TTL may withhold its consent to the appointment of a Sub-contractor if it reasonably considers that:
 - (i) the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of TTL or other members of the TfL Group; and/or

- (ii) the proposed Sub-contractor should be excluded in accordance with Clause 16.12 (Exclusion of Sub-contractors);
 - (h) a provision enabling the Concessionaire or TTL to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 32 (Remedial Adviser);
 - (i) a provision enabling the Concessionaire, TTL or any other person on behalf of TTL to step-in on substantially the same terms as are set out in Clause 33 (Step-In Rights); and
 - (j) the provisions set out in Clauses 38.18 to 38.22 (Responsible Procurement).
- 16.8 The Concessionaire shall not terminate or materially amend the terms of any Key Sub-contract without TTL's prior written consent, which shall not be unreasonably withheld or delayed.

Termination of Sub-contracts

16.9 TTL may require the Concessionaire to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to TTL's right of termination pursuant to Clause 36.1(d) (Termination by TTL). For the avoidance of doubt, TTL has no obligation to exercise its rights under this Clause 16.9(a)(i) (Termination of Sub-contracts) prior to or instead of exercising its right to terminate or partially terminate this Agreement under Clause 36.1(d) (Termination by TTL);
 - (ii) the relevant Sub-contractor or any of its Affiliates have brought TTL or other members of the TfL Group into disrepute (save as may be caused by a failure to comply with Clause 8.1 (Key Performance Indicators) or any similar Default, which shall not be a breach of this Clause) by engaging in any act or omission which is reasonably likely to materially diminish the trust that the public places in TTL or other members of the TfL Group, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) TTL has found grounds for exclusion of the Sub-contractor in accordance with Clause 16.12 (Exclusion of Sub-contractors); and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - (i) TTL has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) TTL has not served its notice of objection within sixty (60) days of the later of the date the change of Control took place or the date on which TTL was given notice of the change of Control.