

Agreement Reference Number: TfL 91182/1

Date:

**Temporary Worker
Preferred Supplier List (PSL) Framework Agreement
Engineering Services –**

Lot 1 Civils, Construction and Engineering

between

Transport for London

and

Morson International

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THIS AGREEMENT is made the day

BETWEEN:

- (1) **TRANSPORT FOR LONDON** (the “**Authority**”); and
- (2) **MORSON INTERNATIONAL** a company registered in England and Wales (Company Registration Number 02714555) whose registered office is Adamson House, Centenary Way, Salford, M50 1RD, (the “**Service Provider**”).

RECITALS:

- (A) The Authority has undertaken a procurement exercise for the supply of temporary workers to itself and the other functional bodies of the Greater London Authority.
- (B) The Service Provider has been appointed by the Authority as a preferred Service Provider of the Authority for the supply of temporary workers to the Authority and the Authority's Group.
- (C) The Authority wishes the Service Provider to provide the Services and the Service Provider is willing to provide the Services to the Authority on the terms and conditions set out in this Agreement.
- (D) The Service Provider should be aware that the Authority does not offer any guaranteed spend or minimum volume of the Services that may be delivered under this Agreement and does not offer any exclusivity to the Service Provider.

THE PARTIES AGREE THAT:

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

1. DEFINITIONS AND INTERPRETATION

In this Agreement (including the Recitals):

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

“Agreement”	means this framework agreement, including the Schedules and Appendices and all other documents referred to in this agreement;
“Agreement Commencement Date”	means the date for commencement of this Agreement specified in Schedule 1 ;
“Agreement Reference Number”	means the reference number for this Agreement as set out in Schedule 1 ;
“Assignment”	means the work or services to be carried out by a Temporary Worker for the Client as set out in the notification referred to in Clause 6.3 ;
“Assignment Manager”	means a person or person notified as such to the Service Provider by the Authority from time to time;
“Authorised Sub-contractor”	means a legal entity sub-contractor which provides the Service Provider with Temporary Workers but which is not itself an Employment Business;

“AWR”	means the Agency Workers Regulations 2010 (SI 2010/93);
“Business Day”	means any day excluding Saturdays, Sundays or public or bank holidays in England;
“Cessation Plan”	a plan agreed between the Parties or determined by the Authority pursuant to: (a) Clause 38 to give effect to a Declaration of Ineffectiveness; or (b) Clause 38 to give effect to a Public Procurement Termination Event;
“Charges”	means the charges payable by the Client, in consideration of the due and proper performance of the Services under a Contract, as calculated in accordance with the rates set out in Schedule 5 as the same may be varied from time to time in accordance with Clause 8.3 ;
“Client”	means any member of the Group, including the Authority;
“Confidential Information”	means all information (whether written or oral) that by its nature may reasonably be regarded as confidential by a Party or, in the case of the Authority, any other member of the Group, whether commercial, financial, technical or otherwise including information which relates to the operations, business affairs, customers, Service Providers, products, software, telecommunications, networks, trade secrets, know-how or personnel of a Party or, in the case of the Authority, any other member of the Group;
“Contract”	means a binding agreement for the supply of Temporary Workers formed in accordance with Clause 2.3 ;
“Contract Information”	(i) the Agreement and any Contract in their entirety (including from time to time agreed changes to the Agreement or to any Contract); and (ii) data extracted from the invoices submitted pursuant to Clause 9;
“Declaration of Ineffectiveness”	a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006;
“Disaster”	means any unplanned interruption (whether of information processing facilities or systems or otherwise) which significantly impairs the ability of the Service Provider to perform the Services (in whole or in part) to the standard of the Service Levels and/or in accordance with the other terms of this Agreement or the relevant Contract;
“Disaster Recovery Plan”	means the Service Provider’s plan for its emergency response, back up procedures and business continuity in the event of a Disaster, details of which are set out in Schedule 8 ;

“Dissatisfaction Notice”	shall have the meaning set out in Clause 15.1 ;
“Employment Agency”	means an employment agency as defined in the Employment Agencies Act 1973;
“Employment Business”	means an employment business as defined in the Employment Agencies Act 1973;
“Employment Claims and Liabilities”	means all losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities (including without limitation any liability to tax and any liability to pay a redundancy payment, whether statutory or contractual), and expenses (including, without limitation, legal and other professional fees and expenses) in connection with employment or termination of employment;
“Exit Strategy”	means the exit plan set out in Schedule 10 for the orderly handover of the Services from the Service Provider to the Client or a replacement service provider to be implemented in the event of the termination or expiry of a Contract howsoever arising;
“Extended Period of Hire”	shall have the meaning set out in Schedule 5 ;
“Force Majeure Event”	means 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 (in each case excluding the workforce of the Service Provider) to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“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;
“Functional Body”	means the Greater London Authority or any of its other functional bodies, currently, the London Legacy Development Corporation, the Mayor’s Office for Policing and Crime, the London Fire and Emergency Planning Authority, Old Oak and Park Royal Development Corporation and Transport for London;
“Group”	means the Authority and all of its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to any “member of the Group” shall refer to the Authority or any such subsidiary;
“Holding Company”	means any company which from time to time directly or indirectly controls the Service Provider where “control” is as defined by section 840 of the Income and Corporation Taxes Act 1988;
“Industry Regulator”	means any statutory or non-statutory body with responsibility for regulating (or promoting self-regulation of) the provision of the type of services being offered by the Service Provider;

“Insolvency Event”	means any of the following: (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors; (b) a receiver, administrative receiver or manager, being appointed over all or part of the business of the Service Provider and/or the Holding Company; (c) an administrator being appointed in respect of the Service Provider and/or the Holding Company of the Service Provider and/or the Holding Company becoming subject to an application for administration; (d) being a company, the Service Provider and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency); (e) the Service Provider and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986; (f) being an individual or firm, the Service Provider becoming bankrupt or dying; or any similar event to those in (a) to (f) above occurring in relation to the Service Provider and/or the Holding Company under the law of any applicable jurisdiction for those purposes;
“Intellectual Property Rights”	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
“Interest Rate”	means the rate of interest set out in Schedule 1;
“Introduction Fee”	means the fee payable under clause 16 calculated as set out in Schedule 5;
“London Living Wage”	means the basic hourly wage of £9.15 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Service Provider;
“NPL Recruitment Consultant”	means a person or persons notified as such to the Service Provider by the Authority from time to time.
“NPL Recruitment Manager”	means a person or persons notified as such to the Service Provider by the Authority from time to time
“NPL Recruitment Team”	means the Authority team managing the Temporary Worker recruitment process;

“Parties”	means the Authority and the Service Provider (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Payment Terms”	means the payment procedure set out in Schedule 5 ;
“Premises”	means any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Group (including for the avoidance of doubt, the Authority);
“Public Procurement Termination Event”	means if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred;
“Qualifying Temporary Worker”	means any Temporary Worker who at the relevant time is entitled to the rights conferred by Regulation 5 of the AWR and in particular has been provided to the Client (whether by the Service Provider or any third party) for the qualifying period as defined in Regulation 7 of the AWR subject always to Regulations 8 and 9 of the AWR;
“Recognised Ordering Procedure”	means the ordering procedure notified to the Service Provider by the Authority from time to time;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly;
“Relevant Terms and Conditions”	means the relevant terms and conditions for any particular Qualifying Temporary Worker as defined in Regulation 6 of the AWR;
“Secondary Supplier”	means a second-tier agency or business with whom the Service Provider contracts for the supply of additional Temporary Workers;
“Service Levels”	means the standards of performance to which the Services are to be provided by the Service Provider to the Authority as set out in the Specification (including Appendix 2) and elsewhere in this Agreement as the same may be varied, added to or replaced from time to time by the written agreement of the Parties during the continuance in force of this Agreement;
“Service Provider’s Personnel”	means all such employees, officers, suppliers, sub-contractors, Authorised Sub-contractors and agents of the Service Provider and including the Temporary Workers;
“Services”	means: (a) subject to Clause 36.6 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 this Agreement as detailed in the Specification including any variations to such services and/or activities pursuant to **Clause 19**; 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 this Agreement;

“Services Commencement Date”	means the date for commencement of the Services as set out in each Contract;
“Service Manager”	means the person named as such in Schedule 1 or such other person as approved by the Authority from time to time;
“Special Conditions”	means the Special Conditions set out in Schedule 2 ;
“Specification”	means the specification and other requirements set out in Schedule 4 for the Services;
“System”	means the Authority's hosted electronic recruitment system from time to time for managing the supply of Temporary Workers the system current at the Agreement Commencement Date being Oracle TALEO;
“Temporary Worker”	means a person who is supplied by the Service Provider to the Client for the purpose of carrying out an Assignment;
“Term”	means the period during which this Agreement continues in force as set out in Schedule 1 ;
“Transfer Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Transition Period”	means the period specified in Schedule 3 ;
“Transition Plan”	means the plan set out in Schedule 3 for the orderly handover of the Services (including any preparatory works required to be carried out by the Service Provider) to the Service Provider or Replacement Service Provider during the Transition Period as approved by the Authority;
“Unsuitable Temporary”	shall have the meaning set out in Clause 15.1 ;
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;
1.2	a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
1.3	a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;

- 1.4 a reference to any document other than as specified in **Clause 1.3** and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of this Agreement;
- 1.6 references to Clauses and Schedules and Appendices are, unless otherwise provided, references to clauses of, and Schedules and Appendices to, this 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 and Appendices, the Clauses prevail, except where:
 - 1.7.1 the conflicting part of the Schedule or Appendix is explicitly expressed to take precedence; or
 - 1.7.2 the conflict is with a provision in **Schedule 2**, in which case the provisions in **Schedule 2** shall prevail;
- 1.8 except as otherwise expressly provided in any Contract, and subject to **Clause 1.7**, if there is any inconsistency between any of these Clauses, the Schedules, any Contract or any other document referred to in or incorporated into this Agreement or any Contract, the order of priority for the purposes of construction is:
 - 1.8.1 these Clauses;
 - 1.8.2 the Schedules;
 - 1.8.3 the Appendices;
 - 1.8.4 each Contract;
 - 1.8.5 any other document referred to in or incorporated by reference into this Agreement or any Contract;
- 1.9 the Schedules and Appendices form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.10 the Special Conditions form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.11 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.12 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 confirm the Services to be provided by the Service Provider;
 - 2.1.2 confirm the mechanism and procedures for ordering the Services, including:
 - 2.1.2.1 a mechanism whereby the Client may enter into a Contract with the Service Provider;

- 2.1.2.2 the framework for the Service Provider to administer each Contract; and
 - 2.1.3 set out the obligations of the Parties.
- 2.2 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 or on any Client to procure any Services. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Authority or any Client from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3 Each Contract will be upon the terms and conditions set out in this Agreement, together with the information and any additional special conditions requested by the Authority to the exclusion of all other terms and conditions. Each Contract shall be formed when the Authority submits a notification to the Service Provider in accordance with **Clause 6.3**. Each Contract shall be a binding agreement on the Client and the Service Provider. No contract will come into existence until a notification is issued to the Service Provider by the Authority.
- 2.4 The Service Provider shall procure that the Services must not commence without a Contract being formed in accordance with **Clause 2.3** and that the terms of the Contract are complied with. All Charges in respect of a Contract shall be set out in the relevant Contract and shall not exceed the rates set out in **Schedule 5**.
- 3. **Commencement and Duration**
 - 3.1 This Agreement (but not a 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.
 - 3.2 Each Contract shall commence on the Services Commencement Date and continue for the term set out in the relevant Contract. Unless stated otherwise in a Contract, the term of the Contract and the Services provided pursuant to a 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 Contract.
 - 3.3 A Contract may expire or be terminated in accordance with its terms or **Clause 35** but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Contract or this Agreement.
- 4. **The Services**
 - 4.1 The Service Provider:
 - 4.1.1 shall provide or procure that the Services provided pursuant to each Contract are provided in accordance with this Agreement and the terms of the relevant Contract;
 - 4.1.2 acknowledges that it has sufficient information about the Client, the Specification and the Service Levels and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement and the terms of the relevant Contract;
 - 4.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement or the relevant Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification, Service Levels or otherwise to this Agreement; and

- 4.1.4 shall comply with all lawful and/or reasonable directions of the Client relating to its performance of the Services.
 - 4.1.5 comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to the Service Provider's business and operation and will ensure that it is aware of any forthcoming legislation which may affect its provision of the Services and take all reasonable steps to reduce the impact on any such changes on the Authority or Client.
- 4.2 Notwithstanding anything to the contrary in this Agreement or a Contract, the Service Provider acknowledges that 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 any relevant Contract.
- 4.3 The Service Provider shall provide the Services under each Contract:
 - 4.3.1 with all such due skill, care and diligence normally exercised by employment businesses providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
 - 4.3.2 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; and
 - 4.3.3 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.
- 4.4 In entering into this Agreement, the Authority has relied upon the Service Provider's representation that it is an independent company, business or partnership carrying on a business on its own account and that it has the skills, experience and qualifications to enable it to perform the Services to the standards specified and required by the Authority.
- 4.5 Where reasonably requested to do so by another Functional Body, the Service Provider shall contract with such other Functional Body on the terms and conditions of this Agreement mutatis mutandis, save that the special conditions applicable to the relevant Functional Body shall apply. For the avoidance of doubt, the Authority shall not have any liability to the Service Provider in respect of any contract entered into by the Service Provider and another Functional Body pursuant to this Clause.
- 4.6 For the purpose of this Agreement and each Contract, the Service Provider shall be deemed to act as an Employment Business in respect of the supply of Temporary Workers and an Employment Agency in respect of the introduction of Temporary Workers the Client employs directly in accordance with **Clause 16**. The Service Provider shall at all times comply with the provisions of, and the obligations on an Employment Business or Employment Agency under, the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 4.7 The Service Provider shall not enter into any agreement with its suppliers, Temporary Workers or sub-contractors upon terms that conflict or may conflict with the terms of this Agreement or any relevant Contract.
- 5. **Temporary Workers**
 - 5.1 The Service Provider shall supply Temporary Workers to the Client in accordance with the Recognised Ordering Procedure.
 - 5.2 Prior to introducing a Temporary Worker to the Client, the Service Provider shall at its own cost comply in full with Section 3 of the Specification.
 - 5.3 The Service Provider shall ensure that the Temporary Workers:

- 5.3.1 comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to the Client's business and operation;
 - 5.3.2 are informed of and comply with the Client's working practices and requirements, including policies usually supplied to the Client's employees relating to health and safety, security, business and operational ethics, drugs and alcohol and personal conduct and any other on site regulations specified by the Client for personnel working at the Premises or accessing any computer systems, including policies for email and internet use;
 - 5.3.3 agree to, and comply with the Working at TfL-Working Principles document;
 - 5.3.4 perform their Assignment with all due skill, care and diligence and in accordance with good industry practices and at all times in an honest and professional manner;
 - 5.3.5 are properly briefed about their Assignment and advised of the correct address and times for attendance to work and the relevant department and contact at the Client, including the appropriate reporting lines, their duties, expected length of an Assignment, pay rates and any required safety equipment; and
 - 5.3.6 shall, if required, enter into a confidentiality agreement with the Service Provider on terms and in a form acceptable to the Client.
- 5.4 Without prejudice to the generality of the other provisions of this **Clause 5** where requested by the Authority and in particular for fitter, track and workshop roles, the Service provider will supply three sets of overalls that comply with relevant PPE requirements. For PAYE Temporary Workers and workers engaged as PAYE individuals through service companies, the Service Provider will bear the cost of the overalls and where the Temporary Worker is engaged through a limited company including a limited company through an umbrella company the cost shall be borne by the limited company and the Service Provider will ensure that the three sets of overalls are provided by the limited company and the Service Provider will ensure that the three sets of overalls are provided by the limited company at no cost to the Authority and that PPE requirements are in place and fully complied with.
- 5.5 Without prejudice to the generality of the other provisions of this **Clause 5** where requested by the Authority and in particular for fitter, track and workshop roles, the Service Provider will ensure that all Temporary Workers provide their own protective footwear at no cost to the Authority and the cost of such footwear will be the responsibility of the Temporary Worker or the Service Provider.
- 5.6 The Service Provider shall:
- 5.6.1 observe all reasonable directions and instructions given by the Client in relation to the finding, evaluation and selection of Temporary Workers; and
 - 5.6.2 be available to the Client upon reasonable request for the purposes of consultation and advice relating to the Services and the Temporary Workers from time to time.
- 5.7 The Service Provider shall, and shall procure that all Authorised Sub-contractors shall, at all times comply with the provisions of **Schedule 7** regarding Diversity, Equality and Employment.
- 5.8 The Service Provider acknowledges, and undertakes to inform the Temporary Workers, that the Client reserves the right from time to time to:
- 5.8.1 intercept, for the purposes of monitoring, modifying and interfering with and/or recording, any communication made through any system capable of transmitting

communications including telephone, electronic mail, facsimile, voicemail or internet facility provided by that Client; and

5.8.2 use any information obtained as a result of any intercepted communications referred to in **Clause 5.6.1** for the purposes contemplated in the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

5.9 The Client reserves the right to change the criteria for Temporary Workers as notified to the Service Provider or as otherwise set out in this **Clause 5** in line with any changes in applicable legislation, regulations or codes of practice from time to time at no cost to the Client.

6. **Ordering Procedure**

6.1 During the Term of this Agreement, the Client may in its discretion notify the Service Provider of its requirements for Temporary Workers including any additional information that the Client considers necessary to enable the Service Provider to supply Temporary Workers in accordance with this Agreement. The Service Provider will only process requests submitted in accordance with the Authority's Recognised Ordering Procedure.

6.2 Subject to **Clause 6.1**, the Service Provider shall provide the Client with its proposal for potential Temporary Workers including all relevant information about the proposed candidates. The Service Provider shall ensure that all proposed Temporary Workers match the requirements set out by the Client. The Service Provider shall, where so requested by the Client, supply to the Client a curriculum vitae for each potential Temporary Worker and/or test the Temporary Workers and/or facilitate discussions by or on behalf the Client with such of those candidates as the Client considers potentially suitable. The Service Provider shall make available to the Client the results of any such test or discussions.

6.3 In the event that the Client is satisfied with one or more of the Service Provider's proposed Temporary Workers, it shall notify the Service Provider using the Recognised Ordering Procedure, listing the candidates it wishes to use as Temporary Workers, together with the agreed Charges for such Temporary Workers, the Assignment, the Services Commencement Date and any other relevant details, at which point a Contract shall be formed in accordance with **Clause 2.3**. The notification shall be the Service Provider's authorisation to supply the Temporary Workers to the Client.

6.4 Notwithstanding any other provision of this Agreement or the relevant Contract, the Service Provider shall perform its obligations under the Contract in accordance with the response times set out in the Specification.

6.5 The Service Provider shall immediately notify the Client if the Service Provider is at any time unable to supply Temporary Workers requested by the Authority pursuant to **Clause 6.1**. Nothing in this **Clause 6.5** shall relieve the Service Provider of its obligations under this Agreement or the relevant Contract or otherwise prejudice the rights and remedies of the Client.

6.6 The Service Provider shall not (and does not have any authority to) enter into a contract with a Temporary Worker on behalf of the Client or in the Client's name.

6.7 For the avoidance of doubt, any recruitment process applied to the selection of permanent employees is distinct from and exclusive to this **Clause 6**.

7. **Prohibition on Use of Secondary Suppliers**

7.1 The Service Provider shall provide suitable Temporary Workers from its own resources and, subject to **clause 7.2**, is prohibited from using Secondary Suppliers.

- 7.2 If the Service Provider considers that it is necessary to use a Secondary Supplier in order for it to provide the Services it shall be entitled to request consent to do so from the NPL Recruitment Team. Such consent will only be given in exceptional circumstances and will be subject to the provisions of **clause 7.3**.
- 7.3 Any Secondary Supplier approved under **clause 7.2** will be deemed an Authorised Sub-contractor for the purposes of this Agreement and the Service Provider shall:
- 7.3.1 remain solely responsible and liable to the Client for any breach of this Agreement or the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services 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;
 - 7.3.2 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 Authorised Sub-contractor, to the extent that such information has not already been provided by the Service Provider to the Authority under the Agreement;
 - 7.3.3 promptly notify the Authority in writing of any change to the information notified under Clause 7.3.1 and provide in writing the name, contact details and details of the legal representatives of each such Authorised Sub-contractor who is engaged after the Agreement Commencement Date; and
 - 7.3.4 Without prejudice to the provisions of Clause 22, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such Authorised Sub-contractor.
8. **Charges**
- 8.1 The Service Provider shall invoice the Client in accordance with the procedures set out in **Clause 9** and in consideration of, and subject to the due performance of the Services by the Service Provider, the Client shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the Contract.
- 8.2 The Service Provider shall not be entitled to reimbursement for expenses (including any expenses of the Temporary Workers) unless authorised in advance in writing by the Authority's NPL Recruitment Manager. This authorisation will only be given in exceptional circumstances such as out of London and overseas travel and will also require local director level sign off. Where approved, expenses will be paid by the Service Provider who will then supply an invoice to the Authority on receipt of a Purchase Order number.
- 8.3 The Charges may only be varied in accordance with **clause 19** and **Schedule 5**.
- 8.4 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.
9. **Payment Procedures and Approvals**
- 9.1 The Service Provider shall invoice the relevant Client in respect of the Charges in accordance with the Payment Terms.
- 9.2 No payment by the Client or any act or omission or approval by the Client shall
- 9.2.1 indicate or be taken to indicate the Client'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 Client 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 Contract;
or

9.2.2 prevent the Client 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 28**, the Client shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Client may recover such amount as a debt under this Agreement or a Contract.

9.3 If any sum payable by the Client under the Contract is not paid when properly due then the Service Provider shall be entitled to recover interest on that sum from the due date until payment is made in full, both before and after any judgment, at the Interest Rate. The Parties agree that this **Clause 9.3** is a substantial remedy for late payment of any sum payable under each Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider is not entitled to suspend or delay performance of the Services as a result of any sums being outstanding.

10. **Remuneration of Temporary Workers**

10.1 The Service Provider shall pay, or shall procure that any Authorised Sub-contractor pays, each Temporary Worker for the performance of an Assignment, including without limitation, the payment of any fees or hourly rates and any other payments and disbursements to which the Temporary Worker is entitled to, including but not limited to any holiday pay and any sick pay. The Service Provider is required to ensure that all Temporary Workers are paid correctly within three (3) Business Days of receiving payment from the Client.

10.2 Service Provider agrees to ensure that Temporary Workers pay appropriate income tax and national insurance contributions to the United Kingdom HM Revenue and Customs and in particular that Temporary Workers are not engaged directly or indirectly through any structures intended to avoid this commitment including without limitation through any overseas intermediaries. The Service Provider will promptly adhere to all guidance and instruction provided by the Authority in this regard and will immediately withdraw and replace any Temporary Worker working for the Authority who contravenes this provision.

10.3 Upon request, the Service Provider shall inform the Client of the rate that the Service Provider, or any Authorised Sub-contractor, is paying to the Temporary Worker. The Service Provider shall provide, or procure the provision of, such additional evidence to allow the Authority to verify the rates paid to Temporary Workers as the Authority may reasonably request.

10.4 Pay ranges (minimum and maximum) are determined at the outset of the vacancy arising (on the Vacancy Request Form) and will come from the NPL Rate card owned by the Authority's NPL Recruitment Team. These pay ranges are determined through a benchmarking exercise that will take place at least once a year. The Service Provider will work with the Authority's NPL Recruitment Team to review the rate card ensuring that the Authority's rates are both competitive and affordable.

10.5 New roles arising that do not currently appear on the rate card will have a benchmarked pay range agreed by the Authority's NPL Recruitment Team with input from the Service Provider.

10.6 The actual pay rate for each successful candidate will be discussed and agreed between the Authority's manager for the relevant Assignment and the Authority's NPL Recruitment Team who will then confirm the rate to the Service Provider. No pay rates will be agreed between the Authority's manager for the relevant Assignment and the Service Provider.

10.7 Unsocial hours allowance (for working outside of agreed times) and overtime (for working in excess of agreed contracted hours) is payable at the discretion of the Authority's manager for the relevant Assignment and will not be paid unless prior approval to any changes to pay rates has been given by the Authority's NPL Recruitment Team.

The Service Provider is expected to meet its own administrative/processing costs for all matters covered by legislation currently in force and for any future administrative/processing costs should there be any changes in law during the term of the Agreement.

- 10.8 The Service Provider will calculate pay rates using the Authority's calculator as included in Appendix 6 to the Specification which shall determine the rate of pay and for PAYE Temporary Workers the amount of ENIC as defined by the Authority. The calculator will be amended to make provision for pension calculations as required.
- 10.9 The Service Provider shall not, and shall procure that any Authorised Sub-contractors shall not, withhold any payment due to a Temporary Worker because of any failure by the Client to pay the Service Provider.
- 10.10 For the avoidance of doubt, the Client shall have no liability to any Authorised Sub-contractor arising out of or in connection with the supply of Temporary Workers, including in respect of payments due to any Authorised Sub-contractor.
- 10.11 Unless specified otherwise, the Temporary Worker will normally be expected to work 35 hours per week and will also be expected to take a one hour unpaid lunch break. The above hours may be changed from time to time at the sole discretion of the Authority.

11. London Living Wage

- 11.1 Without prejudice to any other provision of this Agreement the Service Provider shall:
 - 11.1.1 ensure that none of its employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage (unless otherwise directed by TfL);
 - 11.1.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;
 - 11.1.3 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time; and
 - 11.1.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires.
 - 11.1.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage
- 11.2 Any breach by the Service Provider of the provisions of this **Clause 11** shall be treated as a material breach capable of remedy in accordance with **Clause 37.2.1**.

12. Warranties and Obligations

- 12.1 Without prejudice to any other warranties or obligations expressed elsewhere in this Agreement or the Contract or implied by law, the Service Provider warrants, represents and undertakes to the Authority and the Client that:
 - 12.1.1 the Service Provider:
 - 12.1.1.1 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 as

defined in section 736 of the Companies Act 1985) to enter into and to perform the Contract; and

- 12.1.1.2 the Temporary Workers have full capacity to perform their Assignments and all necessary authorisations, licences and permits to work in the United Kingdom and perform their Assignments In particular, the Supplier shall comply with the Immigration Asylum and Nationality Act 2006 and other relevant UK legislation, as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers;
- 12.1.1.3 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
- 12.1.1.4 has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the standard of performance specified in the Service Levels, this Agreement and the Contract;
- 12.1.1.5 is entering into this Agreement and will enter into each 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 each Contract;
- 12.1.1.6 shall at all times employ or engage through the authorised Authorised Sub-contractors sufficient numbers of trained, skilled and competent Temporary Workers to ensure that it can fulfil orders placed by the Client and that it has sufficient resources of such Temporary Workers to cover absences, including holidays or illness;
- 12.1.2 all information contained in the Service Provider's tender for the Services is and remains true, accurate and not misleading, save as may have been specifically disclosed to and acknowledged in writing by the Authority prior to the execution of this Agreement;
- 12.1.3 all information provided to the Authority in respect of each Temporary Worker shall be true, complete and accurate in all material respects;
- 12.1.4 it is of sound financial standing and the Service Provider is not aware of any circumstances prior to the Agreement Commencement Date which may adversely affect such financial standing in the future;
- 12.1.5 it has taken and shall continue to take all steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or Trojan horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client;
- 12.1.6 it has obtained or has made arrangements to ensure that it will obtain all necessary registrations, consents, licences, approvals and permissions to enable it to carry out the Services and will throughout the Term (and the term of any Contract) obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services;

- 12.1.7 without prejudice to **Clause 12.1.5**, it has and shall maintain throughout the Term (and the term of any Contract) all necessary permits, licences and permissions required by any Regulatory Bodies and/or Industry Regulators; and
- 12.1.8 this Agreement is and each Contract will be executed by a duly authorised representative of the Service Provider.
- 12.2 Each warranty and obligation in this **Clause 12** 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 or the Contract.
- 12.3 The Service Provider shall remedy any breach of the warranties or obligations in this **Clause 12** in accordance with **Clause 36.3**. Any failure to remedy the breach shall be deemed to be a material breach not capable of remedy and shall entitle the Authority to terminate the Contract in accordance with **Clause 36.2**.
- 13. **Contract Management**
- 13.1 The Authority authorises the NPL Recruitment Manager to act as the Authority's representative for all purposes of this Agreement and the Service Provider shall deal with the NPL Recruitment Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Authority will nominate a NPL Recruitment Manager in respect of each Contract in relation to matters arising under a Contract, unless the Service Provider is otherwise notified by the Authority.
- 13.2 The Service Manager shall act as the Service Provider's representative for all purposes of this Agreement. The Service Provider shall ensure that the Service Manager:
 - 13.2.1 diligently supervises the performance of the Services;
 - 13.2.2 attends all contract meetings with the Client (the location, frequency and time of which shall be specified by the Temporary Worker Recruitment Manager from time to time); and
 - 13.2.3 is available to the Client to resolve any issues arising in connection with this Agreement or Contract at such time periods as are specified in the relevant Contract.
- 13.3 The Service Provider may only make changes to the Service Manager (except in the event of sickness, incapacity or resignation) with the prior written consent of the Authority (which shall not be unreasonably withheld).
- 13.4 No act of or omission by or approval from either the Authority or the NPL Recruitment Manager in performing any of their respective duties under or in connection with this Agreement or the relevant Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Contract.
- 14. **Service Levels**
- 14.1 The Service Provider shall provide the Services in accordance with the Service Levels and shall ensure that it maintains the requisite technical, operational and specialist abilities and capacity to provide the Services in accordance with the Agreement and the Client's requests for Temporary Workers from time to time.
- 14.2 The provisions of Section 8 of the Specification will apply to the monitoring and measurement of the Service Provider's performance.

15. **Replacement of Temporary Workers**

15.1 Whilst the Service Provider shall use best endeavours to ensure the suitability of the Temporary Worker introduced to the Client, without prejudice to any other rights and remedies of the Client, if:

15.1.1 the Client, in its absolute discretion, decides that a Temporary Worker is unsatisfactory to perform an Assignment; or

15.1.2 a Temporary Worker is not acting in accordance with the terms of the Contract, the Assignment or the requirements of the Client,

in each case an "Unsuitable Temporary", then the Client shall notify the Service Provider of that fact detailing the grounds of its dissatisfaction with the Unsuitable Temporary ("Dissatisfaction Notice") and requiring the Service Provider to provide a suitable replacement in accordance with **Clause 15.2**.

15.2 In the event that a replacement is required under **Clause 15.1** the Service Provider must remove the Temporary Worker and provide a replacement for the Client in the following timescales:

15.2.1 immediately, if the Temporary Worker is in their first seven days of the Assignment; and

15.2.2 within seven days if the Temporary Worker has been working on the Assignment for seven days or more.

15.3 The Service Provider is responsible for the re-deployment or discipline of any Unsuitable Temporary in accordance with all applicable statutory procedures and shall indemnify and keep the Authority and each member of the Group indemnified in respect of any claims arising out of or in connection with the re-deployment or discipline of an Unsuitable Temporary.

15.4 Without prejudice to the Client's other rights and remedies under the Contract or otherwise, the Service Provider shall within the notice period referred to in **Clause 15.2** either:

15.4.1 provide a suitable replacement for the Unsuitable Temporary (at the same or a lower cost as the Unsuitable Temporary) at no additional cost to the Client; or

15.4.2 if no such suitable replacement is available, inform the Client in writing of that fact, in which case the Client:

15.4.2.1 shall not be charged for, or shall be entitled to a pro rata refund of all fees paid in relation to the Unsuitable Temporary; and

15.4.2.2 shall have no further liability in relation to the Unsuitable Temporary.

15.5 Without prejudice to the other provisions of this **Clause 15**, if a Temporary Worker is deemed by the Authority at its sole discretion to be unsuitable for the Assignment within the first five days of commencement of the Assignment then the Service Provider will terminate the Assignment and cancel any charges for the relevant Contract.

15.6 If more than one Unsuitable Temporary is placed on a particular Assignment, the Client shall (in its absolute discretion and without prejudice to the Client's other rights and remedies under the Agreement, a Contract or otherwise) be entitled to terminate such Assignment or Contract with immediate effect without liability to the Service Provider, save for payment for the supply of suitable Temporary Workers to the date of termination of the Assignment or

Contract provided that such Temporary Workers have performed in accordance with the terms of the Contract and the Client's requirements.

- 15.7 If a Temporary Worker becomes unavailable by reason of illness or injury or otherwise during the period of their Assignment to the Client, then without prejudice to the Client's other rights and remedies under the Agreement, a Contract or otherwise the Service Provider, as soon as it becomes aware of such unavailability, shall immediately inform and keep so informed the Client's NPL Recruitment Manager and shall, if required by the Client, provide an equivalent replacement Temporary Worker, having first obtained the NPL Recruitment Manager's written consent to the new Temporary Worker.
- 15.8 Subject to **Clauses 15.6 and 18.2.1**, the Service Provider agrees not to remove any Temporary Worker from providing services to the Client until and unless:
- 15.8.1 for whatever reason, the NPL Recruitment Manager requests a replacement Temporary Worker and provides prior written approval of the replacement Temporary Worker; or
- 15.8.2 for whatever reason, the Client no longer needs the services of the Temporary Worker.
- 15.9 The Service Provider shall immediately notify the Client if any of the information provided to the Client by the Service Provider in respect of a Temporary Worker is or becomes incorrect or inaccurate. Where the Client considers, in its absolute discretion, that the inaccuracy means the Temporary Worker is unsuitable to perform the Assignment in accordance with the terms of the Contract and the Client's requirements, the Service Provider shall provide an equivalent replacement Temporary Worker, having first obtained the NPL Recruitment Manager's written consent to the new Temporary Worker.
16. **Recruitment of Temporary Workers**
- 16.1 Subject to **Clause 16.2**, if the Client employs in its direct employment a Temporary Worker supplied by the Service Provider within the time period specified in **Schedule 5** the Client shall pay an Introduction Fee except where the Client provides written notice to the Service Provider that it wishes the Temporary Worker to be supplied for an Extended Period of Hire.
- 16.2 If a Temporary Worker has been introduced to the Client for a permanent position by a person other than the Service Provider, the Client shall not be obliged to pay to the Service Provider any Introduction Fee in respect of the employment of such Temporary Worker.
- 16.3 The Service Provider shall invoice the Client for any Introduction Fee due to the Service Provider no earlier than one (1) month after the commencement of direct employment of the Temporary Worker in accordance with the payment terms in **Schedule 5**.
- 16.4 If the direct employment of a Temporary Worker is terminated by the Client or the Temporary Worker leaves such employment under its own volition, the Service Provider shall refund the Client the amount of the Introduction Fee in accordance with **Schedule 5**.
- 16.5 The Service Provider shall not solicit any of the Client's employees with the aim of deploying them as Temporary Workers for the purpose of the Contract or any other contract (including any contract with a Functional Body) or otherwise deploying them in work for the Authority or any other Functional Body.
- 16.6 For the avoidance of doubt, no fee shall be payable by the Client in the event that a Temporary Worker chooses to cease working for the Service Provider and to work for another agent or agency on the Client's or any other Functional Body's work (either during the currency of the Contract or on termination or expiry of the Contract).

17. **The Agency Workers Regulations**

- 17.1 Prior to the commencement of any work by a Qualifying Temporary Worker in relation to an Assignment or by a Temporary Worker who during the course of work on that Assignment will become a Qualifying Temporary Worker, the Service Provider shall notify the Client of this fact.
- 17.2 The Service Provider shall and shall procure that any Authorised Sub-contractor shall at all times comply with their obligations under the AWR.
- 17.3 The Client shall at all times comply with its obligations to provide any Temporary Workers with access to collective facilities and amenities and employment opportunities subject to and in accordance with Regulation 12 and 13 of the AWR.
- 17.4 The Service Provider will indemnify and hold harmless the Client and/or any member of the Group for all Losses incurred or payable by it arising out of a breach or alleged breach of the AWR (other than Regulation 12 or 13 of the AWR).
- 17.5 In the event that either party, or any Authorised Sub-contractor of the Service Provider receives an allegation by any Temporary Worker that there has been a breach of the AWR in relation to the supply of that person to the Client by the Service Provider (whether that allegation has been made as a request for information under Regulation 16 of the AWR or otherwise), that party shall provide a copy (if in writing or details) of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.
- 17.6 The Service Provider will within seven days of receiving a written request from the Client provide to it:-
- 17.6.1 the number of Temporary Workers currently being supplied to the Client or any member of the Group;
 - 17.6.2 the parts of the Client or any member of the Group undertaking in which those agency workers are working; and
 - 17.6.3 the type of work those Temporary Workers are carrying out
- together with any other information which the Client may reasonably request in relation to any payments made by the Service Provider or any other Authorised Sub-contractor to any Temporary Workers, in order to ensure compliance with the AWR.
- 17.7 In the event that a Temporary Worker waives his rights to a 48-hour working week and thereafter withdraws his waiver under the Working Time Regulations, the Service Provider will notify the Client of such withdrawal in writing.

18. **Employment Status**

- 18.1 Save for as set out in **Clause 16**, the Parties hereby record their express intention that the Temporary Workers are the employees of the Service Provider or the employees of Authorised Sub-contractor or are individuals retained by the Service Provider or the Authorised Sub-contractor on contracts for services and the Service Provider warrants and undertakes that it will not do anything, and that it shall procure that the sub-contractors shall not do anything, or allow to occur any event or circumstance that might lead to a Temporary Worker having any claim to being, or entitlement to become, an employee of the Authority or any Client. In all circumstances, the Client will have no direct employment relationship with any Temporary Worker engaged. No Temporary Worker engaged by the Client will be

deemed the Client's employee and the Client will not be deemed the employer of any Temporary Worker supplied by the Service Provider.

18.2 Further to, but without prejudice to the generality of, **Clause 18.1**, the Service Provider shall:

18.2.1 ensure that no Temporary Worker is assigned to the Client (whether pursuant to one or more Contracts) for a continuous period of more than 11 months unless the Client has expressly instructed the Service Provider in writing that it wishes to retain the services of such Temporary Worker;

18.2.2 maintain a level of communication with and supervision and control over the Temporary Workers that is appropriate;

18.2.3 make all Temporary Workers aware of the requirements of **Clause 16.5** and of the restrictions on the civil service offering employment to any person without carrying out a fair and open competition (under the Civil Service Order in Council 1995); and

18.2.4 be responsible for all employment related costs, including redundancy costs and other costs associated with the Temporary Workers.

18.3 The provisions of **Schedule 6** shall apply on the commencement and termination of the Contract and the Parties agree to comply with their respective obligations thereunder.

18.4 Nothing in this Agreement or a Contract will render the Temporary Workers or any Authorised Sub-contractor, an employee, agent or partner of the Authority or the Client by virtue of the supply of Temporary Workers or the provision of the Services under the Contract.

19. **Changes to the Services**

19.1 At any time during the Term, the Client may request and the Service Provider may recommend changes to any part or parts of the Services ("Change Request").

19.2 Within five (5) Business Days (or such longer period as may be agreed) of receipt of a Change Request, the Service Provider shall notify the Client in writing of any time required to investigate the effect upon this Agreement or the Contract of implementing such Change Request. If the Client instructs the Service Provider to proceed with such investigation, the parties will follow the procedure set out in the remaining provisions of this Clause. For the avoidance of doubt, the Service Provider will not be entitled to any fees or expenses for investigating the effect of implementing such Change Request.

19.3 Notwithstanding **Clause 19.2**, the Service Provider will submit to the Client as soon as reasonably practicable a full written quotation for such Change Request specifying the increase or decrease (if any) which will be required to the Charges and the changes (if any) which will be required to this Agreement or the Contract, together with such other information as the Client may reasonably request.

19.4 Upon receipt of such quotation, the Client may elect either to:

19.4.1 request such amendments to the change to which such quotation relates as it may require, in which case the Service Provider will amend the quotation accordingly (including any consequential amendment to the Charges) and will resubmit such amended quotation to the Client in accordance with **Clause 18.3**; or

19.4.2 accept such quotation, in which case this Agreement or the Contract, as appropriate, will be amended accordingly; or

- 19.4.3 withdraw the proposed change, in which case this Agreement and the Contract will continue in force unchanged.
- 19.5 Until such time as any change is formally agreed between the parties in accordance with this Clause, the Service Provider shall, unless otherwise agreed in writing, continue to perform and be paid as if such change had not been requested or recommended. For the avoidance of doubt, the Service Provider agrees that any investigation under **Clause 19.2** or the preparation of a quotation under **Clause 19.3** will not cause any delay in the provision of the Services.
- 19.6 No change made necessary directly or indirectly by any default, defect, act or omission of the Service Provider will constitute a formal change under this Clause or will justify an increase in the Charges or vary any programme or schedule of the Services.
- 19.7 No change made necessary directly or indirectly by any change in legislation will constitute a formal change under this **Clause 19** or will justify an increase in the Charges.
20. **Conflict of Interest**
- 20.1 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 the Authority, save to the extent fully disclosed to and approved by the Authority.
- 20.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or Authority and shall work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Agreement and all Contracts immediately upon giving notice to the Service Provider.
21. **Access to Premises**
- 21.1 Subject to **Clause 21.4** any access to the Premises made available to the Service Provider in connection with the proper performance of a Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the term of a Contract. The Service Provider shall:
- 21.1.1 have the use of such 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 Premises;
- 21.1.2 vacate the Premises upon the termination or expiry of the relevant Contract or at such earlier date as the Client may determine;
- 21.1.3 not exercise or purport to exercise any rights in respect of the Premises in excess of those granted under **Clause 21.1**;
- 21.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Client at all relevant times and comply with the Client's security procedures as may be notified by the Client from time to time; and
- 21.1.5 not damage the Premises or any assets or equipment on the Premises or any assets or equipment of the Client.
- 21.2 Nothing in this **Clause 21** shall create or be deemed to create the relationship of landlord and tenant in respect of the Premises between the Service Provider and the Client.

21.3 The Client 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 Contract.

21.4 Without prejudice to any of the Client's other rights, powers or remedies, the Client may (without liability to the Service Provider) deny access to any Service Provider's Personnel to, or remove any of the Service Provider's Personnel from, the Premises if such Service Provider's Personnel in the Client's view does not comply with the Client's requirements or has not been properly verified in accordance with the Client's applicable security policy or trained in any way required by a relevant Contract and/or is otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Service Provider of such denial or removal in writing; the Service Provider shall immediately remove such Service Provider's Personnel from performing the Services and provide a suitable replacement.

22. **Compliance with Policies and Law**

22.1 The Service Provider, at no additional cost to the Authority:

22.1.1 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 as notified to the Service Provider by the Authority including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at the Premises or accessing the Authority's computer systems. The Authority shall provide the Service Provider with copies of such policies and standards on request;

22.1.2 shall provide the Services, and ensure that the Service Provider's Personnel act, in compliance 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 the Service Provider's business and/or the Client's business or operations, from time to time in force which are or may become applicable to the Services. The Service Provider shall promptly notify the Client if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 22.1.2**;

22.1.3 without limiting the generality of **Clause 22.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities and shall procure the observance of the provisions of this sub-clause by any Authorised Sub-contractors;

22.1.4 acknowledges that the Authority is under a duty under section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the Service Provider shall assist and co-operate with the Authority where possible in satisfying this duty;

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

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

22.1.5.2 eliminate unlawful discrimination; and

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

and in providing the Services, the Service Provider shall assist and co-operate, and shall procure that all Temporary Workers co-operate, with the Authority where possible to enable them to satisfy their duty;

22.1.6 shall promptly notify the Service Provider's Personnel and the Client 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 22.1** shall be borne by the Service Provider.

22.2 The Service Provider shall comply with 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 Authority's website, www.tfl.gov.uk).

22.3 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:

22.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

22.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;

22.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

22.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

23. **Corrupt Gifts and Payment of Commission**

The Service Provider shall not, and shall ensure that its employees, agents, and Authorised Sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agents of the Authority or any member of the Group nor favour any employee, officer or Service Provider of the Authority or any member of the Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Authority or any member of the Group other than as a representative of the Authority, without the Authority's prior written approval.

24. **Quality and Best Value**

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

25. **Management Information**

25.1 The Service Provider shall throughout the Term (and thereafter in respect of any extant Contract) provide to the Authority management information and reports (in a format and within the timescales set by the Authority) in respect of the Services as requested by the Authority from time to time.

- 25.2 The Service Provider shall maintain “Records” (as defined at **Clause 26.1.1**) of all Contracts entered into by the Service Provider and the Client. Such Records shall enable the Service Provider to track all requests and Contracts and ascertain their status at any time.
- 25.3 The Service Provider will maintain a comprehensive, accurate and up to date database of Temporary Workers including job/role descriptions, employment terms, benefits, and all such information in respect of the Temporary Workers as shall reasonably be requested by the Client.
- 25.4 The Service Provider shall make this information available to the Authority at the Authority’s request (the Authority giving the Service Provider thirty (30) days’ notice) and shall provide all information and assistance regarding Temporary Workers as the Authority may reasonably require on thirty (30) days’ notice to enable the Authority to maintain adequate visibility of the continuity, quality and performance of the Services, and (if required) to ensure a smooth transition and transfer to a Replacement Service Provider.
- 25.5 The Service Provider shall implement a system to monitor the quality of Temporary Workers provided to the Authority and to facilitate feedback.

26. Records, Audit and Inspection

26.1 The Service Provider shall:

- 26.1.1 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 Contract and all transactions entered into by the Service Provider for the purposes of this Agreement (including time-sheets for the Temporary Workers) (“Records”);
- 26.1.2 retain all Records during the Term (and for the duration of a Contract) and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement or a Contract (“Retention Period”).
- 26.2 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 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 consultation, Including Records and staff of the Authorised Sub-contractors.
- 26.3 The Service Provider shall ensure it is and remains “Link-up” accredited to supply Temporary Workers for the duration of the Agreement under the appropriate categories. Loss of accreditation may result in suspension of any current and new Assignments until such time that the accreditation is regained. The Service Provider will in addition comply with Section 2.23 of the Specification.

27. Set-Off

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

28. Indemnity

- 28.1 The Service Provider shall indemnify, keep indemnified and hold harmless the Authority or the Client from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Authority or

the Client incurs or suffers as a result of any acts or omissions of the Service Provider, its employees, agents or subcontractors.

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

28.3 If any person engaged by the Service Provider or any Authorised Sub-contractor claims in the provision of Services to the Authority or any member of the Group to be employed by the Authority or a member of the Group then the:

28.3.1 Authority or the relevant member of the Group shall notify the Service Provider as soon as it or they become aware of such claim; and

28.3.2 Authority or the relevant member of the Group may terminate the Assignment of such person and the Service Provider will indemnify, keep indemnified and hold harmless the Authority and the Group member from and against all Employment Claims and Liabilities which the Authority or the Group member incurs or suffers in relation to such person arising out of or in connection with their employment and such termination or purported termination (including, for the avoidance of doubt, but without limitation, any redundancy payment, whether statutory or contractual) and against any sums payable to or in relation to such person in connection with any employment up to the date of termination provided such termination takes place within one (1) month of notification as referred to in **Clause 28.3.1**; and

28.3.3 Service Provider shall indemnify the Authority and each member of the Group from or against any Employment Claims and Liabilities which the Authority or any member of the Group incurs or suffers in relation to such person as a result of any act or omission of the Service Provider or any Authorised Sub-contractor.

28.4 Further to **Clause 28.3**, the Service Provider agrees to indemnify the Authority and the other members of the Group in respect of any claims that may be made by the relevant authorities against the Authority or any member of the Group in respect of VAT, income tax demands or penalties or national insurance or similar contributions in relation to the provision of the Services by the Service Provider.

29. Insurance

29.1 The Service Provider will at its sole cost maintain employer's liability insurance cover as required by law (including cover for Temporary Workers engaged in safety critical work) and insurance cover in the amounts set out in **Schedule 1** 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:

29.1.1 public liability to cover injury and loss to third parties and

29.1.2 such other insurance cover as set out in **Schedule 1**.

29.2 The insurance cover will be maintained with a reputable insurer and on terms approved by the Authority.

29.3 The Service Provider will produce evidence to the Authority on reasonable request of the insurance policies set out in **Clause 29.1** and payment of all premiums due on each policy.

29.4 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 29.1** being or becoming void, voidable or unenforceable.

30. The Authority's Data

- 30.1 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, and shall procure that the Temporary Workers shall not, delete or remove any copyright notices contained within or relating to the Authority's data.
- 30.2 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.
31. **Intellectual Property Rights**
- 31.1 The Service Provider agrees and acknowledges that all Intellectual Property Rights created or developed in the provision of the Services or otherwise arising from or in connection with the Services, this Agreement or a Contract, including all Intellectual Property Rights created or developed by or on behalf of the Service Provider or the Temporary Workers, shall vest in and belong absolutely and exclusively to the Authority (or its nominee). The Service Provider hereby assigns, or shall procure the assignment of, with full title guarantee and at no charge or royalty all such Intellectual Property Rights capable of present assignment to the Authority (or its nominee) together with the right to sue for past infringement. Where such future rights cannot be assigned by present assignment the Service Provider agrees to take all such steps and do all such things, including executing all documents, as may be necessary to vest such Intellectual Property Rights in the Authority (or its nominee) on their creation.
- 31.2 The Service Provider shall provide the Authority and the members of the Group with copies of all work and materials relied upon or referred to in the creation or development of the Intellectual Property Rights referred to in **Clause 31.1** and with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such work and materials in connection with the use of such Intellectual Property Rights.
- 31.3 Pursuant to **Clause 31.1**, the Service Provider undertakes that it:
- 31.3.1 has (or that it will have in place prior to the commencement of an Assignment), or will procure that the Authorised Sub-contractors have, contracts with the Temporary Workers such that any Intellectual Property Rights arising out of or in connection with an Assignment shall (subject to the **Clause 31.3.2**) vest in the Service Provider or any Authorised Sub-contractor, as applicable, and that each Temporary Worker is obliged to waive all moral rights and rights of a like nature in such Intellectual Property Rights. The Authority may on demand at any time require the Service Provider to produce all and any Temporary Worker contracts for inspection by the Authority; and
- 31.3.2 will, or will procure that the Temporary Workers will, execute such further documents and do such acts as may be necessary for securing, confirming or vesting absolutely the Authority's (or its nominee's) full rights, title and interest in the Intellectual Property Rights referred to in **Clause 31.1** and for conferring on the Authority (or its nominee) all rights of action in respect of any claim for infringement by third parties.
- 31.4 The Service Provider shall have no right (save where expressly permitted under this Agreement or with the Authority's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of the Authority or the Group.
- 31.5 The Service Provider shall indemnify, keep indemnified and hold harmless the Authority and the other members of the Group (including their respective employees, sub-contractors and agents) against all losses incurred or suffered that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of a third party resulting from the Authority's use of Intellectual Property Rights assigned or licensed,

created, developed or provided by or on behalf of the Service Provider or the Temporary Workers.

32. Protection of Personal Data

32.1 The Service Provider shall at all times:

32.1.1 comply with the obligations on a data controller under the Data Protection Act 1998 and any similar legislation relating to any Personal Data which is processed, collected or maintained by the Service Provider or transferred to the Client or any third party; and

32.1.2 if processing Personal Data on behalf of the Client, shall only carry out such processing for the purposes of providing the Services in accordance with the Contract and shall act in accordance with instructions from the Client.

32.2 Without prejudice to **Clause 32.1**, the Service Provider shall:

32.2.1 take appropriate technical and organisational security measures, that are satisfactory to the Authority, against unauthorised or unlawful processing of Personal Data and against accidental loss, destruction of, or damage to such Personal Data;

32.2.2 provide the Authority with such information as it may from time to time require to satisfy itself of compliance by the Service Provider with **Clause 32.2.1**;

32.2.3 co-operate with the Authority in complying with any subject access request and/or responding to any enquiry made or investigation or assessment of Processing initiated by the Information Commissioner in respect of any Personal Data;

32.2.4 when notified 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 Personal Data;

32.2.5 take reasonable steps to ensure the reliability of personnel having access to Personal Data and to ensure that such personnel are fully aware of the measures to be taken and the Service Provider's obligations under this **Clause 31** when processing Personal Data; and

32.2.6 not Process any Personal Data outside the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) Directive 95/46/EC) without the Authority's prior written consent.

32.3 When the Service Provider receives a written request from the Client for information about, or a copy of, Personal Data, the Service Provider shall supply such information or data to the Client 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 ten (10) Business Days from the date of the request.

32.4 The Client remains solely responsible for determining the purposes and manner in which Personal Data is to be processed on behalf of the Client. The Service Provider shall not share any Personal Data of the Client with any sub-contractor or third party unless there is a written contract in place with the Client which requires the sub-contractor or third party to:

32.4.1 only process the Client's Personal Data in accordance with the Client's instructions to the Service Provider; and

- 32.4.2 comply with the same obligations with which the Service Provider is required to comply with under this **Clause 32**.
- 32.5 Without prejudice to **Clause 32.4**, the Service Provider shall procure that any sub-contractor processes Personal Data in accordance with the Data Protection Act 1998.
- 32.6 For the purpose of this **Clause 32** the term 'Personal Data' means personal data and sensitive personal data as defined in the Data Protection Act 1998 and such other terms are as defined in the Data Protection Act 1998.
- 33. Confidentiality and Announcements**
- 33.1 Subject to **Clause 34**, each Party will keep confidential:
- 33.1.1 the terms of this Agreement and all Contracts; and
- 33.1.2 any and all Confidential Information that it may acquire in relation to the other party.
- 33.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees, and in the case of the Service Provider, the Service Provider's Personnel, including Authorised Sub-contractors, comply with the provisions of **Clause 33.1**.
- 33.3 The Service Provider warrants and undertakes to, and will procure that all of the Service Provider's Personnel including all Authorised Sub-contractors shall, keep confidential any and all Confidential Information that they may acquire in relation to the Client and shall not use such Confidential Information for any purpose other than to perform their obligations under an Assignment. The Service Provider shall be liable for any breach of this Clause committed by any of the Service Provider's Personnel, including sub-contractors.
- 33.4 The obligations on a Party set out in **Clause 33.1** will not apply to any Confidential Information which:
- 33.4.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this **Clause 33**); or
- 33.4.2 is disclosed with the prior written consent of the other Party; or
- 33.4.3 is disclosed by the Authority to another Functional Body in the proper performance of its duties or to ensure compliance by the Authority or any member of the Group with any of its statutory duties and all applicable laws and regulations; or
- 33.4.4 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 33.5 The provisions of this **Clause 33** will survive any termination of this Agreement or Contract for a period of five (5) years from termination.
- 33.6 The Service Provider shall not without the prior written consent of the NPL Recruitment Manager advertise or announce that it is carrying out work for the Client.
- 34. Freedom of Information**
- 34.1 For the purposes of this **Clause 34**:
- 34.1.1 "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 issued by the

- Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 34.1.2 “Information” means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and
- 34.1.3 “Information Request” means a request for any Information under the FOI Legislation.
- 34.2 The Service Provider acknowledges that the Authority:
- 34.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
- 34.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 34.3 Without prejudice to the generality of **Clause 34.2**, the Service Provider shall and shall procure that its Authorised Sub-contractors (if any) shall:
- 34.3.1 transfer to the NPL Recruitment Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Request relevant to this Agreement or a Contract, the Services or any member of the 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 Request; and
- 34.3.2 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.
- 34.4 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 Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 34.5 The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 34.6 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding **Clause 34.1** and **Clause 33**, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 34.7 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.
- 34.8 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 34.6**. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

35. **Dispute Resolution**

The Authority or the relevant Client, as applicable, and the Service Provider shall use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or a Contract ("Dispute") in accordance with **Schedule 9** before resorting to litigation.

36. **Breach and Termination**

36.1 A Client shall be entitled, for whatever reason, to terminate an Assignment by giving to the Service Provider written notice which will be 24 hours' notice of termination during the first thirty (30) days of the Assignment and, thereafter, one (1) week's notice. The Service Provider will procure that a Temporary Worker gives not less than one (one) week's notice should the Temporary Worker wish to cease work under an Assignment. The Authority reserves the right to change these notice periods upon notice in writing to the Service Provider.

36.2 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement or the Client may terminate any Contract immediately upon giving notice to the Service Provider if the Service Provider:

36.2.1 has committed any material or persistent breach of this Agreement or a Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Business Days (or such other timeframe as specified 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

36.2.2 in accordance with sections 8.5 and 8.7 of the Specification if any of the KPIs are at a red warning level with regard to the Service Levels;

36.2.3 fails to verify the employment status for a Temporary Worker resulting in an illegal appointment of that Temporary Worker;

36.2.4 is subject to an Insolvency Event; or

36.2.5 provides the Authority or the Client with any false or misleading information with regard to its ability to perform the Services; or

36.2.6 is prevented, restricted or prohibited from carrying out the Services for whatever reason; or

36.2.7 undergoes a change in ownership or control in breach of **Clause 39**; or

36.2.8 uses a Secondary Service Provider to provide Temporary Workers without consent; or

36.2.9 commits any of the money laundering related offences listed in the Public Contract Regulations 2006.

36.3 Without prejudice to any of the Authority's or the Client's other rights, powers or remedies (whether under the Contract or otherwise) if the Service Provider is in breach of any of its warranties and/or obligations under **Clause 12** and/or any of its other obligations in respect of the Services under the Contract, the Service Provider shall, if required to do so by the Authority or the Client, 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 36.3** shall prevent the Authority or the Client from itself performing or procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Authority or the Client so performs or procures any Services or any remedial action, the Authority and the Client shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Authority or the

Client and attributable to the Authority or the Client performing or procuring such Services or remedial action from such alternative contractor.

36.4 Neither Party (including for the purpose of this Clause, the Client) shall be deemed to be in breach of this Agreement or any Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations to the extent that such failure or delay is due to a Force Majeure Event. If a Party is affected by a Force Majeure Event ("Affected Party"), it will:

36.4.1 give written notice to the other Party, specifying the nature and extent of the Force Majeure Event, immediately on becoming aware of the Force Majeure Event and will at all times use all reasonable endeavours to bring the Force Majeure Event to an end and, whilst the Force Majeure Event is continuing, to mitigate its severity including without limitation by operating the Disaster Recovery Plan; and

36.4.2 not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.

If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on the Affected Party's performance of its obligations under the Contract, 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 this Agreement or the Contract immediately upon giving notice to the Affected Party. If this Agreement or the Contract is terminated in accordance with this **Clause 36.4** 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.

36.5 Without prejudice to the Authority's right to terminate this Agreement or a Client's right to terminate a Contract under **Clause 36.2** or any rights of termination at common law, the Authority may terminate this Agreement or a Client may terminate a 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 36.5** may be disapplied by notice to that effect in **Schedule 1**.

36.6 To the extent that the Authority has a right to terminate this Agreement or a Client has a right to terminate a Contract under this **Clause 36** then, as an alternative to termination, the Authority or a Client 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 or the Client'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 Authority's or the Client's opinion a proportionate adjustment would not be reasonable in such manner as the Authority or the Client may determine.

36.7 For the purpose of **Clause 36.2.1**, a persistent or a material breach that is not capable of remedy, includes if the Authority forms the view that as a result of such breach there is a significant risk that the Service Provider has or will compromise the Authority's or a Client's performance of its statutory functions, or any statutory duties to which the Authority or a Client may become subject from time to time, or, if the Services were to continue, would be likely to compromise such performance in the future.

37. **Consequences of Termination or Expiry**

37.1 Notwithstanding the provisions of **Clause 33**, 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 (whether for purposes related to Transfer

Regulations or otherwise). The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

37.2 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.

37.3 Upon expiry or termination of this Agreement or a Contract (howsoever caused):

37.3.1 the Service Provider shall, at no further cost to the Authority or the Client:

37.3.1.1 implement and comply with the Exit Strategy and take all steps as necessary to implement the orderly handover of the Services to the Client or a replacement service provider, such that the Services can be carried on with the minimum of interruption and inconvenience and to effect such handover, which shall include an obligation to promptly provide a copy of all relevant records in whatever format the Client or a replacement service provider may reasonably require and any information the Client or a replacement service provider may require for purposes related to the Transfer Regulations or otherwise;

37.3.1.2 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; and

37.3.1.3 promptly deliver up to the Client all documents and records relating to or otherwise in connection with the Contract and all Assignments including a copy of all relevant records in whatever format the Client may reasonably require and all property and materials supplied by or on behalf of the Client, including any Confidential Information and Intellectual Property Rights of the Client;

37.3.2 with effect from the date of termination, and until such time as the Exit Strategy has been completed, the Service Provider agrees to continue the provision of the Services to the Client as the Client may require in accordance with the terms and conditions of this Agreement or a Contract, except that it will be entitled to be paid for such Services and all other actions necessary to implement this Clause at the Charges that were in force on or immediately prior to termination or, where the Charges do not apply to such Services, at such other charges as pre-agreed with the Client. Such charges will be payable by the Client within thirty (30) Business Days of the Client receiving an invoice therefore containing a break-down of the employees, charging rates and their costs incurred in connection with this Clause;

37.3.3 the Client shall (subject to **Clauses 37.3.4** and **37.4** 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 this Agreement and a Contract up to the date of termination or expiry calculated so far as is possible in accordance with **Schedule 6** or otherwise reasonably determined by the Client; and

37.3.4 the Authority or the Client shall not be liable to the Service Provider for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with any expiry or termination or as a result of a reduction of Services under **Clause 35.6**.

- 37.4 On termination of this Agreement or a Contract under **Clause 36.2** or a cessation of any Services under **Clause 36.6** (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 or the Client to terminate under **Clause 36.2**), the Authority or the Client may enter into any agreement with any third party or parties as the Authority or the Client 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 or the Client in having such services carried out and all other costs and damages reasonably incurred by the Authority or the Client in consequence of such termination. The Authority or the Client may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.
- 37.5 Subject to **Clause 37.6**, upon the expiry of the Agreement:
- 37.5.1 if the Service Provider is not reappointed by the Authority, the Service Provider will: (i) inform its Temporary Workers that it is no longer the preferred supplier of the Authority; and (ii) provide its Temporary Workers with a list, provided by the Authority to the Service Provider, of agencies who are the preferred suppliers to the Authority under a new agreement; or
 - 37.5.2 if the Service Provider is reappointed by the Authority as a preferred supplier, the Service Provider will enter into a new agreement with the Authority in accordance with the terms of a standard form agreement for preferred suppliers of the Services; and
- 37.6 Subject always to any provision for notice periods (or any other statutory time period) contained in the applicable law, including but not limited to the Employment Agencies Act, the Service Provider will:
- 37.6.1 accept or agree to the transfer of Temporary Workers to or from its organisation, as applicable, without passing on any charge to the Authority; and
 - 37.6.2 assist the Authority, the Client and any replacement service provider in respect of the handover of the Services including complying with the Authority's instructions with regard to all aspects of the handover including Authority timescales. Such instructions may include the termination of Contracts existing at the date of termination and assisting the Client or any new provider (at no additional cost to the Client) to enter into arrangements for Temporary Workers undertaking Assignments at termination to continue to provide services to the Client for the unexpired period of Contracts terminated at that point with no loss of continuity in the services provided to the Client.
- 38. Declaration of Ineffectiveness and Public Procurement Termination Event**
- 38.1 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 37 and Clauses 38.1 to 38.5 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of **Clause 37** and this **Clauses 38.1 to 38.5** (inclusive) or the Cessation Plan, the provisions of this **Clauses 38.1 to 38.5** (inclusive) and the Cessation Plan shall prevail.
- 38.2 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.
- 38.3 As from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness, 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:

- 38.3.1 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
- 38.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,
- in accordance with the provisions of **Clauses 38.1 to 38.5** (inclusive) and to give effect to the terms of the Declaration of Ineffectiveness.
- 38.4 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 38.4 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 Contract pursuant to **Clauses 38.1 to 38.5** (inclusive).
- 38.5 Without prejudice to the Authority's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25, the Authority is entitled to terminate this Agreement in the event of a Public Procurement Termination Event. If the Authority exercises its right to terminate pursuant to this **Clause 38.5**, the Authority shall promptly notify the Service Provider and the Parties agree that **Clauses 38.6 to 38.10** (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of **Clause 37** and these **Clauses 38.6 to 38.10** or the Cessation Plan, the provisions of these **Clauses 38.6 to 38.10** and the Cessation Plan shall prevail.
- 38.6 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.
- 38.7 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.8.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and
- 38.8.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,
- in accordance with the provisions of **Clauses 38.6 to 38.10** (inclusive) and to give effect to the terms of the Public Procurement Termination Event
- 38.8 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 38.9 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 pursuant to **Clauses 38.6 to 38.10** (inclusive).

39. **Change of Ownership**

39.1 The Service Provider shall:

- 39.1.1 not without the prior written consent of the Authority undergo any change in the ownership or control of the Service Provider where such change relates to 50% or more of the issued share capital or voting rights of the Service Provider; and
- 39.1.2 give notice to the Authority in the event that there is any change in the ownership or control of the Holding Company where such change relates to 50% or more of the issued share capital or voting rights of the Holding Company, such notice to be given within ten (10) Business Days of the date on which such change takes effect.

40. **Disaster Recovery**

40.1 The Service Provider will ensure that at all times that the Disaster Recovery Plan is adequate, at the least, to minimise the effect of any Disaster.

40.2 The Disaster Recovery Plan will be tested in accordance with the provisions of **Schedule 8**. It will be deemed to be adjusted as necessary to take into account any change to the Services made in accordance with **Clause 19** or as otherwise agreed by the Parties in writing.

40.3 Where the Service Provider can demonstrate to the reasonable satisfaction of the Client that a Disaster was caused by a Force Majeure Event the provisions of **Clause 36.4** will apply but only to the extent that such Disaster prevents the Service Provider from satisfying its obligations and, provided that the Service Provider complies with the provisions of **Clauses 36.4.1** and **36.4.2**, the requirement to comply with the Service Levels will cease to apply until such time as the provision of the Services are resumed or ought to have been resumed, whichever is the earlier, in accordance with the Disaster Recovery Plan.

40.4 Where a Disaster arises from circumstances other than those set out in **Clause 40.3**, the Service Provider's liability to comply with the Service Levels will continue in accordance with the provisions of this Agreement.

40.5 In the event of a Disaster affecting either or both Parties, the Service Provider will immediately implement the Disaster Recovery Plan and will continue to provide those elements of the Services which are not affected by the Disaster to the Client in accordance with the provisions of this Agreement. In respect of any part of the Services which are affected by the Disaster, the Service Provider will comply with the Disaster Recovery Plan, the rest of this **Clause 40** and this Agreement.

41. **Survival**

The provisions of **Clauses 1, 4, 8 - 12** (inclusive), **26 - 35** (inclusive), **42 - 50** (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement or a Contract. 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 Contract shall do so.

42. **Rights of Third Parties**

42.1 The Service Provider acknowledges that:

- 42.1.1 the Authority is procuring the Services for itself and each Client; and
- 42.1.2 each Client has the right to request and receive the provision of the Services and the supply of Temporary Workers under a Contract in accordance with this Agreement. In such circumstances:

- 42.1.2.1 the Client will be treated as if they were the Authority for the purpose of this Agreement;
 - 42.1.2.2 without prejudice to **Clause 42.1.3**, any loss suffered or incurred by a Client arising out of or in connection with this Agreement to the extent not recovered by the Client pursuant to **Clause 42.1.3** will for the purpose of this Agreement be regarded as being suffered by the Authority; and
 - 42.1.3 each Client will be entitled to enforce (or request the Authority to enforce on their behalf) the terms of this Agreement and the terms of any Contracts with that Client against the Service Provider.
- 42.2 Save that:
- 42.2.1 any Functional Body as set out in **Clause 4.5**;
 - 42.2.2 a Replacement Service Provider under **Schedule 8**; and
 - 42.2.3 any member of the Group, the Authority or the Client
- has the right to enforce the terms of this Agreement or any relevant Contract in accordance with this 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 Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 42.3 Notwithstanding the rest of this **Clause 42**, the Parties are entitled to vary or rescind this Agreement or any relevant Contract without the consent of any Client or any other person set out in **Clause 42.2**.
43. **Most Favoured Customer**
- If at any time during the Term, the Service Provider offers to any other customer or prospective customer any more favourable or better terms, including charges, discounts, warranties, benefits or other terms, in relation to the supply of the same or similar services to the Services, the Service Provider shall immediately notify the Client of the better terms, and shall offer to amend the terms of this Agreement and any Contract (including existing Contracts) so that the Client may also receive the Services on the better terms.
44. **Variations**
- 44.1 Save where the Client may require an amendment to the Services in accordance with **Clause 19** or a variation to the Charges in accordance with **Clause 8.3** in which case the terms of those provisions will apply, the terms of this Agreement may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Authority may dictate and shall not be binding upon the Parties unless completed in accordance with such form of variation.
- 44.2 In the event that an amendment is implemented pursuant to the provisions of **Clause 44.1** and such change is to the terms of the Contract, the Client and the Service Provider shall agree implementation of the change to extant affected Contracts as follows:
- 44.2.1 the change shall not be implemented in any extant Contracts; or
 - 44.2.2 the Service Provider shall give each Client that is the party to each such affected extant Contract the option to implement the change in their Contract pursuant to the procedure for contract change set out in the relevant Contract.

45. **Novation**

45.1 The Authority may novate or otherwise transfer this Agreement and the Client may novate or otherwise transfer any relevant Contracts (in whole or in part).

45.2 Within ten (10) Business Days of a written request from the Authority or the Client, the Service Provider shall at its expense execute such agreement as the Authority or the Client may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement and any relevant Contract to one or more persons nominated by the Authority or the Client.

45.3 The Service Provider 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 Authority.

46. **Non-Waiver of Rights**

No waiver of any of the provisions of this Agreement or any relevant 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 46**. 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.

47. **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.

48. **Notices**

48.1 Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated in the Purchase Order 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:

48.1.1 If delivered by hand, at the time of delivery;

48.1.2 If delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

48.1.3 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.

49. **Entire Agreement**

49.1 Subject to **Clause 49.2**:

49.1.1 this Agreement and any relevant Contract and all documents referred to in this Agreement and any relevant 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

49.1.2 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 or any member of the Group 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.

49.2 Nothing in this **Clause 49** excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

50. **Relationship of the Parties**

Nothing in this Agreement or any relevant Contract constitutes, or shall be deemed to constitute, a partnership between the Parties or a relationship or employer and employee or principal and agent. Except as expressly provided in this Agreement or any relevant 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.

51. **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 Contract.

52. **Governing Law**

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to **Clause 35**, 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.

THIS 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 Authority

)
)
)

Signature

Print name and position
Date:

Signed by
for and on behalf of
Service Provider

)
)
)

Signature

Print name and position
Date:

SCHEDULE 1

Key Agreement Information

1. **Agreement Reference Number:** TfL 91182/1
2. **Name of Service Provider:** Morson International
3. **Agreement Commencement Date:**
4. **Term:** A period of three (3) years from the Agreement Commencement Date. TfL may, at its sole discretion, extend the Agreement by a further 12 months.

[REDACTED]

6. **Details of the Authority's NPL Recruitment Manager**

[REDACTED]

7. **Details of the Service Provider's Service Manager**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. **Notice period in accordance with Clause 35.5 (termination without cause):** ninety (90) days

10. **Address for service of notices and other documents in accordance with Clause 48:**

For the Authority:

[REDACTED]

For the Service Provider:

[REDACTED]

SCHEDULE 2

Special Conditions

1. IT Systems

- 1.1 The Authority will be entitled to post its requirements for Temporary Workers on the System.
- 1.2 The Service Provider shall access the System to review the Authority's requirements for Temporary Workers and shall submit to the Authority through the System curriculum vitae for proposed Temporary Workers in accordance with the terms of the Agreement.
- 1.3 The Service Provider shall be provided with a password to enable it to access the System. The Service Provider shall ensure that:
 - 1.3.1 the password is kept secure and only disclosed to authorised personnel of the Service Provider; and
 - 1.3.2 only authorised personnel of the Service Provider access and submit information (including curriculum vitae) to the Authority through the System; and
 - 1.3.3 the Service Provider shall immediately notify the Authority of any breach or suspected breach of security.
- 1.4 The Service Provider shall:
 - 1.4.1 make proper use of and comply with all reasonable instructions and/or procedures issued by the Authority in relation to the use of the System;
 - 1.4.2 notify the Authority immediately of any faults in the System or problems accessing and using the System;
 - 1.4.3 implement up-to-date anti-virus measures in accordance with industry good practice from time to time in relation to its access to the System and any materials that the Service Provider submits through the System;
 - 1.4.4 on request from the Authority, provide to the Authority such information to evidence the Service Provider's compliance with paragraph 1.4.3 or allow the Authority to audit the Service Provider's systems to ensure compliance with paragraph 1.4.3;
 - 1.4.5 ensure that no computer virus is introduced to the System or any of the Authority's computer equipment or systems by any act, omission or negligence of the Service Provider or the Service Provider's Personnel; and
 - 1.4.6 not, and shall procure that the Service Provider's Personnel shall not:
 - 1.4.6.1 modify, merge, interface or combine the whole or any part of the System with any other software or systems;
 - 1.4.6.2 upload any materials or other documents onto the System, except as expressly permitted under this paragraph 1;
 - 1.4.6.3 infringe the rights of any person in relation to the System;
 - 1.4.6.4 do anything which could affect the functionality or performance of the System, or render it inoperable or more difficult to use; or

- 1.4.6.5 cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of the System.
- 1.5 The Service Provider acknowledges that the Authority is not holding itself out as a professional provider of information technology systems or services relating to the System, and as such, the Authority gives no warranties or representations with regard to the System.
- 1.6 Without limiting any other terms or conditions of the Agreement, the Service Provider shall not (and shall ensure that the Service Provider's Personnel, including the sub-contractors shall not) do anything which constitutes an offence under the Computer Misuse Act 1990.
- 2. **Assistance to the Authority**
- 2.1 Without limiting the provisions of the Specification or any other terms and conditions of the Agreement, the Service Provider shall (and shall ensure that the subcontractor and the Temporary Workers shall) provide to the Authority such information, assistance, access, attendance of personnel and co-operation as the Authority may reasonably require from time to time:
 - 2.1.1 to enable the Authority to meet its obligations to provide audited accounts, reports and returns pursuant to regulations, directions or guidance applicable to the Authority or as required by external agencies;
 - 2.1.2 to answer enquiries (including from government bodies, the general public, members or officials of the Authority, Parliament and Members of Parliament, and third parties entitled to request or receive information from the Authority); and
 - 2.1.3 for any investigation by a relevant agency, body or ombudsman (and without limiting any other of the Authority's rights or remedies, the Authority shall be entitled to recover from the Service Provider any payment ordered or required to be paid by the Authority under such investigation which arises because of a direct or indirect breach of the Agreement or a Contract or a negligent act or omission of the Service Provider or subcontractor or a Temporary Worker).
- 2.2 The above information, assistance, access, attendance of personnel and co-operation shall be provided at no additional charge to the Authority.
- 3. **Authority's Operations and Reputation**
- 3.1 The Service Provider shall (and shall ensure that the Authorised subcontractor(s) and the Temporary Workers shall):
 - 3.1.1 take all reasonable care to ensure that the provision of the Services does not interfere with the operations of the Authority or any Client; and
 - 3.1.2 not take any action which might or shall:
 - 3.1.2.1 harm or be prejudicial to the public confidence in the Authority or any Client or to its public image; or
 - 3.1.2.2 bring the Authority or any Client into disrepute.
- 3.2 Without limiting paragraph 3.1 above, the parties shall work together to endeavour to maintain the public image of the Authority and each Client, where the provision, delivery or receipt of the Services may be part of (or may otherwise affect) that public image.

4. **Security**

- 4.1 The Service Provider shall not (and shall ensure that the subcontractors and Temporary Workers shall not) do any act or make any omission, which has or could reasonably be expected to have an adverse impact upon the security of the business and operations of the Authority or any Client.
- 4.2 Without limiting paragraph 4.1, the Service Provider shall comply (and shall ensure that the subcontractors and Temporary Workers shall comply) with the provisions of the Specification and the Authority's (and any Client's) standards, policies, procedures and regulations, regarding security including those differing standards and requirements that are applicable at each Premises.
- 4.3 Without prejudice to paragraph 4.2, when requested by the Authority the Service Provider shall procure that all Temporary Workers have been security cleared by the Authority to a security level of Counter Terrorist Check or higher before they commence work in relation to the Services and thereafter, the Service Provider shall procure that such security clearances are applied for upon their expiry. If the Authority gives consent to Temporary Workers working on the Services with a security clearance lower than Counter Terrorist Check, the Authority may require as a condition of such consent, that:
- 4.3.1 the Service Provider procure that such Temporary Workers sign a confidentiality undertaking in the form specified by the Authority; and
 - 4.3.2 the Service Provider shall notify the Authority in writing in advance if the Service Provider wishes to make any significant future change to the role of such Temporary Workers and within a reasonable period of receipt of such notice the Authority shall notify the Service Provider if it requires that such Temporary Workers be security cleared by the Authority to a security level of Counter Terrorist Check, before the change in their role can be implemented. If the Authority does, at its absolute discretion, require that such Temporary Workers be so cleared, the Service Provider shall not change their role until they have been cleared by the Authority to a security level of Counter Terrorist Check.
- 4.4 If upon expiry of any security clearances the Authority refuses to renew the security clearance, the Parties shall discuss in good faith to reach agreement as to how to mitigate any impact on the provision of the Services arising from such non-renewal of security clearance, but without prejudice to paragraph 4.6.
- 4.5 The Service Provider shall, and shall procure that the subcontractors shall, seek security clearance from the Authority for:
- 4.5.1 Temporary Workers who are both proposed to be assigned or engaged in the delivery of the Services; and
 - 4.5.2 a reasonable number of additional staff who would be available for call out at short notice to enable the day to day operation of the Services.
- 4.6 The Authority shall be entitled at any time for security reasons to require the Service Provider by notice in writing not to appoint or to remove from the provision of the Services any Temporary Worker.

SCHEDULE 3

Transition Plan

The Transition Plan shall be submitted by the Service Provider and reviewed and agreed by the Authority within 3 months of the Agreement Commencement Date.

SCHEDULE 4

Services Specification

1. General

- 1.1. The Service Provider, as part of a Preferred Supplier List (PSL), will be required to source Temporary Workers and payroll sourced and gifted Temporary Workers in the following Lot:

Lot 1 - Civils, Construction and Engineering

A list of existing engineering roles is enclosed in Appendix 1.

The Service Provider must understand the Authority's requirements through proactive engagement with key business stakeholders including meeting key stakeholders to discuss the recruitment challenges such as hard to fill roles. All engagement with stakeholders will be agreed in advance with the Authority's NPL Recruitment Manager or the Authority's NPL Recruitment Consultants. The term 'NPL' refers to 'Non Permanent Labour' which is the provision of temporary workers. 'The Authority's NPL Recruitment Manager' refers to the manager responsible for temporary workers at either Transport for London, the Greater London Authority (GLA) or any of the functional bodies. The Authority's NPL Recruitment Consultants work for the Authority's NPL Recruitment Manager at Transport for London, the GLA or any of the functional bodies and carry out recruitment operations acting as the contact point for the Service Provider for the management of recruitment campaigns on a day to day basis. The term 'Assignment Manager' refers to the hiring manager or line manager in the business area for whom the hire is being made and unless where specifically specified below, the Service Provider shall interact wholly with the Authority's NPL Recruitment Manager and the Authority's NPL Recruitment Consultants who shall act on their behalf.

- 1.2. The Service Provider will be required to have a named Service Manager who will act as escalation point and primary contact. The Service Manager will have an onsite presence at least once a week, liaising with the Authority's NPL Recruitment Manager to agree location.
- 1.3. The Service Provider must be capable of measurement through a Performance Scorecard which details Service Level Agreements (SLAs) and Key Performance Indicators (KPIs) (see Appendix 2).
- 1.4. The Service Provider will undertake payrolling and people management activity including managing performance, conduct, grievances and disciplinary issues for all Temporary Workers, both sourced and gifted to them by the Authority.
- 1.5. The Service Provider shall have an open book policy for pay and charge rates.

2. The Recruitment Process

- 2.1. The Service Provider shall provide off site resource to work with the Authority's NPL Recruitment Team. This should include the Authority's NPL Recruitment Consultants who will source candidates and liaise with the Authority's NPL Recruitment Team during the shortlisting, interview and offer stage. Initial campaign planning discussions and onboarding of successful candidates will be undertaken by the Authority's NPL Recruitment Team.
- 2.2. The Service Provider shall be available to the Authority's NPL Recruitment Team by phone and email between 08:30 and 17:30 hours Monday to Friday for the purposes of consultation and advice relating to the service provided and the Temporary Workers supplied.
- 2.3. The Service Provider is required to respond to enquiries from the Authority's NPL Recruitment Team within three (3) hours of the enquiry being made. The response should be by way of an acknowledgement and where feasible a resolution of the enquiry.
- 2.4. The Service Provider will use the Authority's Applicant Tracking System ("ATS"), currently Oracle Taleo, to submit CV's. The Service Provider's workers should have the requisite knowledge and skills to use the ATS. However, where Taleo has been bespoke for the Authority, the Authority will provide training / guidance to the Service Provider at no cost. Training on the current ATS typically takes 15 minutes. The current ATS (Taleo) is a simple web-based agency portal which alerts the Service Provider to active vacancies and enables the Service Provider to attach and submit CV's against a requirement. The Service Provider is not

required to use the full functionality of the ATS. The portal in use with Taleo is similar to other portals available on the market. A replacement ATS is unlikely to yield a substantially different requirement and minimal training is required to attach CV's

- 2.5. The Authority uses both SAP and Oracle for Temporary Worker onboarding, timesheeting, invoicing and provision of some management information.
- 2.6. The merged Tubelines Limited uses an MS Excel spreadsheet-based recruitment system for applicant tracking with a manual vacancy approval process and a project has commenced for migration to Oracle Taleo which is expected to be in place in time for this contract. Tubelines use an Oracle system managing payment to suppliers via BACS. It also handles timesheet generation for Temporary Workers and some management reporting.
- 2.7. The Service Provider must work with the Authority to facilitate any systems changes to improve efficiency.
- 2.8. The Authority's NPL Recruitment Team will release roles to all Service Providers on the Preferred Supplier List for the Lot via its ATS or alternative means as required at the same time, with details of the Role, including requirements for key skills, knowledge and experience and any qualifications (including safety) ("**Required Capabilities**"). The Service Provider must ensure that any candidates put forward match the requirements.
- 2.9. The charge rates will be supplied to the Service Provider via the ATS or via a separate email from the Authority's NPL Recruitment Consultant.
- 2.10. The Service Provider will filter curricula vitae ("**CVs**") to ensure that they match the Authority's form and content requirements. Unless otherwise specified by the Authority, the Service Provider must not provide more than three (3) CVs per vacancy. Unless otherwise instructed by the Authority, CVs must be uploaded directly to ATS within three (3) Business Days. The relevant skills, knowledge, experience and qualifications (including safety) must be highlighted for ease of reference for the Assignment Manager.
- 2.11. The requirement to supply CVs may be called upon by the Authority immediately after the contract award date. The Service Provider must be capable of responding to all such requests.
- 2.12. Before supplying a CV for a role, the Service Provider must make contact with the candidate and gain their permission for their CV to be submitted for the role.
- 2.13. Where two or more Service Providers supply the same candidate's CV for a role, the Service Provider that has posted the candidate's CV onto Taleo first, as defined by the date and time stamp on the Taleo system, will own the candidate for that specific role.
- 2.14. If requested, the Service Provider will arrange for a candidate(s) to undertake competency tests, to ensure that required capabilities are met prior to being assigned to the Authority and the assessment and results will be made available to the Authority on request. This will be at no extra cost to the Authority.
- 2.15. The Service Provider will provide the Authority with a list of available tests to assess whether the candidate has the Required Capabilities. The Authority will advise the Service Provider of the tests which it approves for use with candidates ("**Approved Tests**"). For psychometric tests, the Service Provider shall use tests that are from suppliers that are on the Authority's psychometric test supplier framework except by written consent of the Authority.
- 2.16. All tests must be conducted in accordance with industry standards and best practice. This includes that psychometric tests shall be conducted in accordance with the British Psychological Society Psychological Testing Centre (PTC) guidelines (see appendix 3)
- 2.17. The Service Provider shall provide results and feedback to the candidate in a form requested by the Authority. Where the Authority requires, the Service Provider shall provide feedback to candidates.
- 2.18. The Assignment Manager will, in most cases, wish to interview candidates prior to engagement. Once a suitable Candidate has been selected by the Authority, the Assignment Manager will update the ATS candidate status and notify the Service Provider via the Authority's NPL Recruitment Team. The Service Provider will then notify the shortlisted candidates and the unsuccessful candidates. The Service Provider will brief candidates regarding the interview format.

- 2.19. Records of shortlisted CVs must be retained in ATS for equality and audit purposes. CVs should not normally be sent by e-mail.
- 2.20. For all candidates selected for interview, the Service Provider will ensure that they are suitably prepared and arrange interviews and assessments as requested.
- 2.21. No Temporary Worker supplied to the Authority by the Service Provider, should be through offshore based umbrella companies or any other type of offshore employment intermediaries.
- 2.22. The Service Provider will manage all payroll and people management activity activities for the Temporary Workers that they source as well as those gifted to them by the Authority.
- 2.23. The Service Provider will provide the Temporary Worker with the following information before they begin the Assignment which will be detailed on Temporary Worker Assignment Checklist:
- Location of place of assignment
 - Organisation/Department
 - Who to report to
 - When to report
 - Duties
 - Expected length of assignment
 - Pay rates
 - Hours to be worked
 - The Authority will not pay travel expenses to and from their place of work and encourages walking, cycling and the use of public transport
 - Procedures and policies which they must adhere to as detailed in The Authority's Workplace Principles' document (see Appendix 4)
 - The Authority's defined 'Behaviours' which outline the required competencies and behaviour required by Transport for London, the GLA or functional body (e.g. 'Accountable' and 'Active')
 - Details of appropriate health and safety risk assessments
 - Any required safety equipment to undertake the role
- 2.24. Temporary Workers should only be trained within the Authority in specific courses/subjects which they would not be able to obtain elsewhere e.g. TfL specific systems, processes and procedures. Local induction and site specific training will be provided where necessary.
- 2.25. The default language for all Temporary Workers and services shall be English and this requirement shall extend to oral communications and all written communications and instructions including any training or technical material provided by any Temporary Worker following the modification, renewal or replacement of any asset.

The Authority may permit the presence of Temporary Workers supplied by the Service Provider who are not competent in the English language provided that the Service Provider can demonstrate to the satisfaction of the Authority that:

(a) such team members will receive the required safety training/briefing (including any emergency procedures) before commencing work;

(b) the Service Provider will make appropriate arrangements to ensure that instructions are effectively communicated to, and understood by, all such team members.

3. Referencing and compliance

- 3.1. The Service Provider shall bear the cost of all pre-engagement screening as defined in Section 3.
- 3.2. The Service Provider must ensure that all Temporary Workers are referenced to work for the Authority before they commence their assignment and the Service Provider will undertake all necessary checks at no cost to the Authority. All pre-engagement checks, including referencing, ID and criminality checks are to be carried out by the time the Temporary Worker starts on their first day of assignment with the Authority. There will be no exceptions in regard to ID, Right to Work in the UK, Visa requirements and legally required checks as defined by the Asylum and Immigration Act and other legislation as required by the Home Office. . In exceptional circumstances, for urgent hires where the hire is for not for an operational role in London Underground or a safety-critical role or for the avoidance of doubt, any role requiring a safety critical licence and where an individual is required to start work before references are received, a two week period is

permitted for finalising references. If, at the end of a four week period since the Temporary Worker started references are not complete, the Service Provider must flag the compliance issue to the Authority's NPL Recruitment Manager and upon request, remove the Temporary Worker from site and suspend the assignment until the references are received unless written authorisation is received from the Authority's NPL Recruitment Manager.

3.3. Mandatory requirements for all Temporary Worker roles include:

- Identity checks & right to work in the UK
- Proof of address
- Employment history – two recent (one within last 3 months minimum) written work related references which have been confirmed and cleared and date back to 2 years maximum. For certain roles, the Authority reserves the right to request the Temporary Worker be referenced for 5 years
- Reasonable adjustments and Health & Safety assessment
- Basic Criminal Disclosure (Disclosure Scotland)

A basic criminal disclosure such as provided by 'Disclosure Scotland' shall be carried out for each and every Temporary Worker supplied by the Service Provider. There shall be no exceptions. The cost of the disclosure shall be borne entirely by the Service Provider or the Temporary Worker. The Service Provider shall supply the result of the disclosure and the certificate number and indicate the nature of any criminal disclosures to the Authority who will make an engagement decision based on the Authority's agreed guidelines, risk and best practice. The Service Provider is not required to provide the original certificate to the Authority and shall retain it securely in line with legislative and best practice data protection and criminality legislation. The Service Provider must retain the reference number of the disclosure certificate until the expiry of the contract:

- In exceptional circumstances, for urgent hires where an individual requires a basic Disclosure Scotland criminality check and where the hire is for not required for an operational role on the London Underground Network or a safety-critical role or for the avoidance of doubt, any role requiring a safety critical licence, a Temporary Worker may start in advance of the final clearance certificate being issued providing that the following measures are in place:
 - Agreement is received by the manager responsible for recruitment in the business area and written agreement is received from the Authority's NPL Recruitment Manager
 - A Disclosure Scotland basic disclosure check application number is recorded by the Service Provider and notified to the Authority's NPL Recruitment Consultant before the temporary worker commences on site or assignment
 - The check is complete before the start of the fourth week of assignment
 - If a satisfactory result for a basic Disclosure Scotland criminality check is not received by the start of the fourth week (21 calendar days), in line with the requirement above, this must be raised with the Authority's NPL Recruitment Consultant who will notify the Authority's NPL Recruitment Manager and unless explicit written authorisation is given by a member of the NPL recruitment team, the temporary worker's assignment must be suspended and be removed from site until such a result is received
 - To ensure the temporary worker hired by the Service Provider is the same person who attends site on the first and subsequent days of assignment, a copy of the temporary worker's photo with their name shall be supplied to the Authority's NPL Recruitment Consultant managing the recruitment for the Authority for forwarding to the Assignment Manager on the first day of assignment. This may be received by email by the Authority's NPL Recruitment Consultant.
- 3.4. Candidates submitted for interview must have the legal right to work in the United Kingdom and, where necessary, hold a valid visa. On no account must candidates be sent for interview if they do not meet this requirement.
- 3.5. For selected Temporary Worker roles the following pre-employment screening will be provided by the Service Provider:
- Occupational Health questionnaire
 - Occupational Health medical
 - Occupational Health drug and alcohol test
 - Enhanced criminality disclosure, the disclosure certificate number shall be retained by the Service Provider

- Qualifications and / or professional membership
- Drivers Licence
- Financial Probity
- Government Security Clearance

3.6. The Service Provider will ensure that copies of the following documents are received and available to the Authority upon request before the start date, countersigned by a member of the Service Provider's team with the words 'I confirm this is a true copy of the original seen by me today' together with a printed name, signature and date and these shall be retained by the Service Provider for the duration of the Service Provider's contract with the Authority:

- Proof of right to work in the United Kingdom as defined by the Home Office (authorised documents that form a defence from List 1 and List 2) (see appendix 5)
- Visa (if required)
- Work Permit (if required)
- Proof of address from a utility bill (a letter from any government department or organisation, bank or building society statement or credit card statement but a mobile phone bill is not acceptable) dated within 3 months of the start date.

As part of the supplier performance monitoring, the Authority will arrange for compliance audits to be undertaken by a 3rd party to ensure that all pre-employment screening is undertaken as agreed. Non compliance of pre-employment screening requirements may result in termination of the contract.

3.7. The Service Provider is required to make best endeavours to ensure that it does not provide Temporary Workers in certain circumstances such as:

- where the Temporary Worker has previously been an employee of the Authority and has left within the last 2 years on grounds of early retirement and/or redundancy; or
- where the Temporary Worker is an ex-employee of the Authority who has been fairly dismissed under the Authority's disciplinary or probationary procedures or has resigned prior to disciplinary action being taken.

3.8. See Pre-Engagement Screening matrix for more detail on referencing requirements (see appendix 6). The Service Provider is required to adhere to data protection principles. The Authority's NPL Recruitment Consultant will determine the pre-engagement as defined in the pre-Engagement Screening matrix.

- No Temporary Worker who requires an Enhanced criminality disclosure check (DBS) or Government Security Clearance shall commence assignment before a disclosure result or clearance certificate has been received without the written authority of the Authority's NPL Recruitment Manager. In all cases, a submission and reference number from the Disclosure and Barring Service must be received prior to assignment. Where exceptions are made the Authority will ensure the Temporary Worker is under the direct supervision of a manager or worker who has received satisfactory clearance at the same level. If a satisfactory result for an enhanced criminality check is not received by the start of the fourth week (21 calendar days), in line with the requirement above, this must be raised with the Authority's NPL Recruitment Consultant who will notify the Authority's NPL Recruitment Manager and unless explicit written authorisation is given by a member of the NPL Recruitment Team, the Temporary Worker's Assignment must be suspended and the Temporary Worker be removed from site until such a result is received

3.9. The Service Provider shall ensure that each Temporary Worker is provided with the following documents and require a signature on Contractor Record of Assignment or the Authority's temporary worker checklist which should arrive with the Authority's NPL Recruitment Consultant the working day before the start date by 5pm and a copy kept by the Service Provider for audit purposes along with signed documents:

- Conflict of Interest form
- Criminality Declaration form
- Relevant Authority, TfL or subsidiary company Code of Conduct
- Workplace Principles including Health and Safety documents and checklists, drug and alcohol requirements

3.10. London Underground hires: Temporary Workers attending any of LU's safety training courses shall not have performed work in the previous 11 hours preceding the start of the course and should be sufficiently alert and awake to derive full benefit from the course.

- 3.11. London Underground hires: For Temporary Workers on assignment with or for London Underground Limited, the Service Provider will ensure Temporary Workers supplied are competent, having attended and achieved the required standard in agreed courses in accordance with London Underground Limited (LUL) Contract QUENSH Conditions (Quality, Environmental, Safety and Health) as appropriate.
- 3.12. London Underground hires: Selected London Underground Roles - some roles may require access to London Underground infrastructure and may therefore require Sentinel cards. In order to sponsor individuals who require a Sentinel card the Service Provider, must registered and be Achilles "Link Up" accredited in the appropriate categories. Failure to obtain or loss of this accreditation, may result in suspension of any current and new assignments until such time that the accreditation is achieved or regained. Registration and any periodic training and testing costs to maintain individual cards shall met by the Service Provider. Where a medical examination and Drugs and Alcohol certification is required for new cards, the responsibility for ensuring this is carried out is the sole responsibility of the Service Provider and all costs shall be the responsibility of the Service Provider.
- 3.13. London Underground hires: The Service Provider shall ensure that 'Competency Management' is in place for all Temporary Workers and that it is paid for where required to carry out the role. This includes but is not limited to all certifications listed as essential on the job description and person specification, expected to be in place including Controller of Site Certification (COSS), Protection Master (or equivalent) and all London Underground licences required to work on track and stations and to comply with legislation, the Authority and subsidiary company policies and working practices.
- 3.14. London Underground hires: Where requested by the Authority's NPL Recruitment Consultant the Service Provider shall provide CVs and Temporary Workers for week work (Monday to Friday) who are briefed and who have agreed to be available to work at weekends and/or nights as required on an ad hoc basis as required when subject to the limits of the working week as defined by the Working Time Regulations as directed under QUENSH'.
- 3.15. All hires: The Service Provider shall ensure that where required for the role, a satisfactory medical examination is carried out and a result provided to the Authority before a Temporary Worker commences assignment and there shall be no exceptions to this requirement. The Service Provider will pay for all such costs. For Temporary Workers on assignment to London Underground, where a medical examination is required, the Service Provider shall comply with LU's medical requirements as set out in LU Standards S1601 'Management arrangements to assure medical fitness' and S1602 'Corporate medical standard for personnel requiring safety on the track certification'. See Appendix 9 and Appendix 10.
- 3.16. All hires: Where required, a DAMSP (Drugs Alcohol Medical Screening Programme) Certificate shall be in place and carried out by the Service Provider at all times where they are undertaking Safety Critical Activities. The Service Provider should conduct unannounced drugs and alcohol testing of at least 5% of their workforce that undertake Safety Critical Activities per annum.
- 3.17. All hires: When required by the Authority, the Service Provider's Temporary Workers shall co-operate by providing breath tests or specimens for analysis in the following circumstances:
 - (a) prior to starting the Assignment or an approved training course;
 - (b) annually;
 - (c) unannounced and on a random basis in addition to testing for any other reason;
 - (d) when suspected of an infringement of a legal requirement;
 - (e) following an incident.
- 3.18. Failure to comply with this requirement (3.17 above) may result in civil or criminal action against the Temporary Worker, the Service Provider or both. Testing will be undertaken at the Service Provider's expense. Information on laboratories approved by The Authority for alcohol and drugs screening will be available on request. Records of testing shall be produced by the Service Provider on request or at specified intervals. Records of individuals who have failed to meet the Authority's requirements shall be supplied to the Authority on request.
- 3.19. London Rail, London Overground hires (working on Network Rail Managed Infrastructure (NRMI): The Service Provider must, at their own cost, supply and ensure that all Temporary Workers carry with them at all times a Sentinel smart card.
- 3.20. London Rail, London Overground hires (working on the Network Rail Managed Infrastructure (NRMI): The Service Provider must complete the RISQS (Rail Industry Service Qualification Scheme) questionnaire, and agree to be audited over a one and a half day and a half to three day period (depending on the amount of core modules supplied) and will receive a grading and licence to supply contractors to Network Rail who are

working on or near the track that require PTS (Personal Track Safety) staff. The Service Provider will ensure the safety of the temporary or contract member of staff that they supply/ the Service Provider shall act as either primary sponsor or sub sponsor and each has specific rules and responsibilities that must be adhered to.

3.21. London Rail (working on the Network Rail Managed Infrastructure (NRMI): The Service Provider shall appoint a Compliance Manager who has the support of administrative staff, Health and Safety advisors and QMS or Quality Management systems advisors who will ensure compliance is checked and monitored

3.22. London Rail (working on the Network Rail Managed Infrastructure (NRMI) roles and responsibilities for sponsorship:

The following requirements are to ensure the safety of the Temporary Worker and the workers around him or her. TfL are committed to avoiding “double shifting”, ensuring that no Temporary Worker operates machinery or equipment for which they are not qualified or trained. The Authority should have clear visibility of whom is operating on or off the network, who they are working with, where they are and the times that they are working, at all times.

All Sponsors

The Sponsor is responsible for the following, regardless of whether they are a Primary Sponsor or Sub-Sponsor of the Temporary Worker;

- Providing the Safety Critical Equipment required to enable the Temporary Worker to undertake their competencies trackside and ensuring that it is fit for purpose, in accordance with the Sentinel Management System
- Maintaining all records associated with any works undertaken by a Temporary Worker on NRMI, as is required by the Sentinel Management System
- Maintaining a minimum contracted insurance level for works undertaken by the Temporary Worker

Primary Sponsor

The Primary Sponsor shall establish a ‘Contract of Sponsorship’ with each Temporary Worker they intend to Sponsor.

The Primary Sponsor shall undertake checks of a Temporary Worker’s suitability to work on NRMI prior to engaging in a Contract of Sponsorship.

As part of the Contract of Sponsorship, Primary Sponsors shall provide Temporary Worker under their Contract of Sponsorship with:

- a) A valid Sentinel Smart Card
- b) An induction briefing which will include as a minimum the rules and responsibilities of the Sentinel Scheme
- c) Suitable PPE, so marked as to identify who the Temporary Worker is responsible to when on NRMI, and suitable training to be able to use that protective equipment effectively
- d) Regular briefings on changes to standards, Rule Book updates and Sentinel Scheme Rule updates
- e) Training and assessment to ensure competence at required intervals
- f) Safety Critical Equipment to enable the Individual to undertake their role (jointly with any Sub-sponsor)
- g) Personal issue information such as handbooks and relevant information
- h) Advice, guidance or instruction on any restrictions based on medication and other medical fitness issues
- i) Mentoring support to develop the competence of the Temporary Worker
- j) Clear contractual arrangements between the Primary Sponsor and the Temporary Worker, and whether Sub-Sponsors are permitted

Regardless of the employment status of the Temporary Worker, the Primary Sponsor through the Contract of Sponsorship shall fulfil the role of the employer for the purposes of health and safety.

The Primary Sponsor who enters into the Contract of Sponsorship with an Individual is also responsible for:

- Monitoring and management of the working hours of Temporary Workers under their Contract of Sponsorship. Shifts worked with Sub-Sponsors must be considered in the monitoring of working hours and the management of fatigue
- Agreeing any sub-sponsorship arrangements with the Temporary Worker and granting permission to any Sub-sponsor to use their resources
- Enacting the Local Investigation process where any suspected breach of the Sentinel Scheme Rules becomes apparent
- Collating information from Sub-sponsors to enable conclusion of the Local Investigation
- Maintaining records of Local Investigations and requesting a Formal Review where a Scheme Outcome is recommended following a Local Investigation
- Providing a reason for de-Sponsoring a Temporary Worker

- Conducting a Local Investigation before de-Sponsoring an Individual for any breach of the Sentinel Scheme Rules
- Collating and maintaining all records associated with the Contract of Sponsorship of an Individual as required by the Sentinel Management System (see Section 3)
- Requesting a temporary Suspension or issuing a temporary Take Down of competence pending the conclusion of Local Investigation where appropriate.

Sub-Sponsor

The Sub-sponsor must request permission to use a Temporary Worker from their Primary Sponsor. The Sub-sponsor must receive confirmation of sub-sponsorship status before resourcing the Temporary Worker to work.

The Sub-sponsor is responsible for providing all information to the Primary Sponsor to enable the Primary Sponsor to manage the overall safety of the Temporary Worker. This includes, but is not limited to information on working hours, safety incidents, competencies used and short-falls of competence.

The Sub-sponsor must notify the Primary Sponsor of any alleged breach of the Sentinel Scheme Rules as soon as is reasonably practicable after becoming aware of such allegation, and co-operate in collecting information and evidence to enable the Primary Sponsor to conduct a Local Investigation.

The Sub-sponsor must co-operate with the Primary Sponsor in the management of working hours. Where a risk assessment has been conducted and extra working hours approved, this information must be provided to the Primary Sponsor.

The sponsors accountabilities and responsibilities are as follows:

Regardless of the engagement status of the Temporary Worker, The Primary Sponsor through the Contract of Sponsorship shall fulfil the role of the employer for the purposes of health and safety.

The Primary Sponsor which enters into the Contract of Sponsorship with a Temporary Worker is also responsible for:

- Monitoring and management of working hours of Temporary Workers under their Contract of Sponsorship. Shifts worked with Sub-Sponsors must be considered in the monitoring of working hours and the management of fatigue
- Agreeing any sub-sponsorship arrangements with the Individual and to grant permission to any Sub-sponsor to use their resources
- Enacting the Local Investigation process where any suspected breach of the Sentinel Scheme Rules becomes apparent
- Collating information from Sub-sponsors to enable conclusion of the Local Investigation.
- Maintaining records of Local Investigations and requesting a Formal Review where a Scheme Outcome is recommended following a Local Investigation
- Providing a reason for de-Sponsoring Temporary Worker
- Conducting a Local Investigation before de-Sponsoring an Individual for any breach of the Sentinel Scheme Rules
- Collating and maintaining all records associated with the Contract of Sponsorship of an Individual as required by the Sentinel Management System
- Requesting a temporary Suspension or issuing a temporary Take Down of competence pending the conclusion of Local Investigation where appropriate.

Sub-Sponsor

The Sub-sponsor must request permission to use a Temporary Worker from their Primary Sponsor. The Sub-sponsor must receive confirmation of sub-sponsorship status before resourcing the Temporary Worker to work.

The Sub-sponsor is responsible for providing all information to the Primary Sponsor to enable the Primary Sponsor to manage the overall safety of the Individual. This includes, but is not limited to information on working hours, safety incidents, competencies used and competence short-falls.

The Sub-sponsor must notify the Primary Sponsor of any alleged breach of the Sentinel Scheme Rules as soon as is reasonably practicable after becoming aware of such allegation, and co-operate in collecting information and evidence to enable the Primary Sponsor to conduct a Local Investigation.

The Sub-sponsor must co-operate with the Primary Sponsor in the management of working hours. Where a risk assessment has been conducted and extra working hours approved, this information must be provided to the Primary Sponsor.

Individual Cardholder

The Temporary Worker shall carry their Sentinel Smart Card at all times while working on NRMI and will co-operate with their Primary Sponsor to keep the personal information held in the Sentinel Scheme Database and printed on the Sentinel Smart Card up to date.

The Temporary Worker shall follow the rules of personal accountability for working safely on NRMI, including compliance with the Lifesaving Rules.

The Temporary Worker has a responsibility to manage their Sponsor relationships and at all times when working on the NRMI an Individual has a responsibility to:

- Know the identity of their Primary Sponsor
 - Know which Sub-Sponsor they are working for (when they are not working for their Primary Sponsor)
 - Provide the correct name of the Sponsor they are working for when booking into site
- Individuals are required to notify the Primary Sponsor if they no longer wish to be sponsored by them so that they can be de-sponsored. Change of sponsorship can be requested online through My Sentinel.
- Individuals can access their personal records on the Sentinel Scheme Database. This can be requested from their Primary Sponsor, or by direct access to the My Sentinel area of the Sentinel website.

As mentioned above, in order to supply, the supplier must have certain organisational structures in place to ensure that they are compliant with the above;

Competence Management System

The Sponsor shall have a competence management system in place to flag the training and assessment interventions and for undertaking mentoring required for Temporary Workers for whom they are the Primary Sponsor, in advance of their expiry. The Sponsor shall then arrange training, assessment and mentoring to take place in advance of expiry, where the competence is still required.

Management of Working Hours

Primary Sponsors shall have a Fatigue Risk Management System in place for Temporary Workers they have entered in to a Contract of Sponsorship with.

The Sentinel Scheme Database will provide data on when cards are authenticated for each Individual under their contract of sponsorship, whether on behalf of the Primary Sponsor, or the associated Sub-sponsor.

The Primary Sponsor shall use the data from Sentinel as part of their Fatigue Risk Management System.

Sub-sponsors shall notify the Primary Sponsor of any approved excessive working hours, along with the associated risk assessment to enable the Primary Sponsor to manage any fatigue risk associated with the Temporary Worker.

The Primary Sponsors' Fatigue Risk Management System should proactively predict fatigue and therefore prevent excessive working hours, this is to avoid relying solely on the Sentinel Smart Card to alert exceeding of hours once it has occurred on site.

Provision of PPE and other Personal Issue Equipment

Primary Sponsors shall have a process in place for the provision of Person Protective Equipment (PPE) and other personal issue equipment to each Individual for which they are the Primary Sponsor, and suitable training to be able to use that protective equipment effectively. PPE must be of a minimum standard to comply with both Network Rail and the Primary Sponsor's PPE Policy.

This process shall include documenting the provision and routine check of PPE to ensure it is maintained and fit for purpose. The process shall also provide details for the provision of additional or replacement equipment when lost or damaged.

Sub-sponsors must provide further PPE as required by any task based risk assessment they conduct.

Provision of PPE and other Personal Issue Equipment

Primary Sponsors shall have a process in place for the provision of Person Protective Equipment (PPE) and other personal issue equipment to each Individual for which they are the Primary Sponsor, and suitable training to be able to use that protective equipment effectively. PPE must be of a minimum standard to comply with both Network Rail and the Primary Sponsor's PPE Policy.

This process shall include documenting the provision and routine check of PPE to ensure it is maintained and fit for purpose. The process shall also provide details for the provision of additional or replacement equipment when lost or damaged.

Sub-sponsors must provide further PPE as required by any task based risk assessment they conduct.

4. Response Times

- 4.1. Once a Temporary Worker has commenced their Assignment the Service Provider must have a process in place to ensure that the Temporary Worker's next of kin can be reached 24 hours a day in case of emergency. This process should be shared with the Authority's NPL Recruitment Manager.

5. Assignment Manager/Temporary Worker Check

- 5.1. The Service Provider shall contact the Assignment Manager on the first day of the assignment of a new Temporary Worker and at the end of the 1st week to ensure everything is satisfactory. Likewise the Temporary Worker, to ensure that the role is as briefed and that the Temporary Worker has everything they need. The Service Provider shall confirm to the Authority's NPL Recruitment Team in writing that contact has been made and provide details of any issues raised with remedial action taken.

6. Timesheets and Invoices

- 6.1. As part of the onboarding process the Temporary Worker will be set up on the Authority's SAP or Oracle system by the Authority's NPL Recruitment Team and a purchase order is then generated.
- 6.2. Once the Temporary Worker has commenced their Assignment they will be required to complete their timesheets electronically using the Authority's SAP or Oracle Timesheeting system. It is the responsibility of the Service Provider to ensure that their Temporary Workers are aware of this and they are given adequate guidance and complete the timesheets on time on a weekly basis.
- 6.3. Assignment Managers will be required to approve the timesheet on a weekly basis. It is the responsibility of the Service Provider to ensure that Assignment Managers are aware of this and they are given adequate guidance to approve these on time.
- 6.4. By way of exception where a Temporary Worker requires payment and for any reason as identified by the Authority's NPL Recruitment Consultant or the Authority's NPL Recruitment Manager, if it is requested that a Temporary Worker is paid, the Service Provider shall effect payment on written instruction immediately or as soon as is practically possible and at no extra cost to the Authority. The Authority will provide evidence to the Service Provider that the payment being authorised is available on the SAP or Oracle self billing system and that payment will be made to the Service Provider in due course.

7. Temporary Worker Payment Variations

- 7.1. **Working Time Directive** - The Service Provider is required to make changes to the pay/charge rates for those Temporary Workers eligible under the Working Time Directive and to advise the Authority's NPL Recruitment Team two (2) weeks in advance of this taking effect.
- 7.2. **Agency Workers Regulations** - The Service Provider is required to make changes to the pay/charge rates for those Temporary Workers eligible under the Agency Workers Regulations and to advise the Authority's NPL Recruitment Team two (2) weeks in advance of this taking effect.
- 7.3. **Pensions auto enrolment** - The Service Provider is required to make changes to the pay/charge rates for those Temporary Workers affected by the Pensions Auto Enrolment legislation and to advise the Authority's NPL Recruitment Team two (2) weeks in advance of this taking effect.
- 7.4. **Pay rate increases/reductions** - The Service Provider is required to make the necessary increase/decrease to the pay/charge rates of Temporary Workers, having received authorisation from the Authority's NPL Recruitment Team and or eForm authorisation, and advise the Authority's NPL Recruitment Team once the change has been implemented.

8. Performance, Quality of Service and Management Information

- 8.1. The Authority will monitor and review the performance of the Service Provider on an operational basis (periodically) and a strategic basis (quarterly) against the following areas:

- Candidate supply
 - Ratio of CVs supplied to CVs shortlisted by The Authority
 - CVs highlighting applicability to each role
 - CV submission timescale
 - Candidate quality at interview
 - Role fulfilment
- Temporary Worker competence
 - Percentage of Temporary Workers not deemed competent
- Issue resolution
 - Percentage of issues resolved in agreed timescale
- Management Information supply
 - Standard reporting
 - Exception reporting

8.2. The Service Provider will be required to supply on four (4) weekly basis, a Performance Scorecard covering all the specific SLAs/KPIs related to the areas above and detailed in Appendix 2.

8.3. The Authority reserves the right to amend the requirements of the SLA performance scorecard, including adding additional SLAs/KPIs to support performance improvement of the Agreement. Permanent changes to the SLA/KPI structure should be agreed at the quarterly strategic meeting. These should be proposed in advance and agreed and introduced on this basis. There may be a need to introduce short term scorecard measures due to operational requirements and these may be required on a more rapid basis if they are clearly linked to delivery objectives and this can be demonstrated. Where possible all parties should accommodate these for a period no longer than 3 months.

8.4. The Service Provider shall provide the Services in accordance with the Service Levels and shall ensure that it maintains the requisite technical, operational and specialist abilities and capacity to provide the services in accordance with the Agreement and the Authority's requests for Temporary Workers.

8.5. If at any time three or more of the KPIs are at a red warning level, then without prejudice to the Authority's other rights and remedies under the Agreement or otherwise, the Authority will:

- notify the Service Provider and require it to attend performance management meetings and/or to provide the reason for the failure to achieve the Service Levels and its proposed method of remedy;
- remedy such failure (provided the failure in question is remediable) to the reasonable satisfaction of the Authority within a timescale set by the Authority; and
- use reasonable endeavours to ensure that such a failure to achieve the Service Levels or failure to carry out its obligations under or in connection with the Agreement is not repeated during the continuance in force of the Agreement.

8.6. In the event that the remedial procedure has been implemented the Agreement and any current Contract will continue except where there is another instance of three (3) or more KPIs at red level in any other four (4) week period, in which case the Authority reserves the right to terminate the Agreement and any current Contract without notice.

8.7. Notwithstanding the provisions above, in respect of the KPIs which are deemed to be at a red level where there is a single failure to meet them, the Authority reserves the right to terminate the Agreement and any Contract without notice and not follow the remedial process.

9. Transitioning of Temporary Workers from the existing Preferred Supplier List

9.1. The Authority will brief all existing Temporary Workers of the new PSL arrangements in writing and will issue them with a list of all suppliers from the designated Lot, inviting them to choose which Service Provider they wish to transfer over to. An anonymised list of existing Temporary Workers is attached (Appendix 11). Temporary workers currently on assignment to TfL will be migrated from existing suppliers to the new Service Provider on the Gifted rate.

9.2. The Authority will supply the Service Provider with a list of all Temporary Workers that have opted to work through them. No contact is to be made, in relation to the migration, with the Temporary Workers by the Service Provider until the Authority has supplied this list.

9.3. The Service Provider will deliver a Transition and Engagement Plan that will include the following, all of which must be undertaken by the Service Provider:

- Initial written and verbal communication with existing suppliers and continued proactive engagement up to the date of migration
- Initial written and verbal communication with migrating Temporary Workers¹
- Group briefing sessions on-site at any Authority location
- Induction sessions at Authority locations as requested, where all relevant Temporary Worker documentation is collected and recorded in line with UK data protection requirements. It is essential that the Service Provider's tracking systems are sufficiently robust and that the staff gathering the documentation are aware of their obligations to keep all personal data secure
- FAQ packs
- Where requested, one to one sessions at Authority locations to deal with outstanding issues/queries
- Email helpline with 24 hour turnaround response to enquiries (non automated), available after initial contact has been made with Temporary Workers in writing¹
- Phone helpline available between 08:30 and 17:00 (Mon to Fri), available after initial contact has been made with Temporary Workers in writing¹
- Senior resource available to deal with Temporary Workers and Assignment Managers who escalate migration issues to the Authority
- Migration Tracker Reports – content and frequency to be defined by the Authority's NPL Recruitment Team
- Dedicated project management, administrative support and systems capability to effectively handle the increased demand that migrations create, including the range of queries from both Temporary Workers and their Assignment Managers
- Additional resource to be made available with two (2) Business Days at the request of the Authority if any transition milestones are not met
- Weekly transition management phone conferences with the Authority's NPL Recruitment Team with follow up action notes supplied by the Service Provider within 24 hours
- Remedial action proposed and implemented where Temporary Workers are identified as non compliant with the relevant UK legislation.

9.4. The Service Provider will work with the Authority and existing suppliers to ensure a smooth transition of Temporary Workers. This includes working with other Service Providers within the PSL to ensure that communications with existing Temporary Workers is consistent in terms of content, style and timing of delivery.

10. Market Insight

10.1. The Service Provider shall provide regular market insight briefings to the Authority's NPL Recruitment Team and other Authority stakeholders. This can be in the form of face to face briefing sessions and/or briefing papers.

10.2. The Service Provider shall participate in twice yearly planning and strategy workshops along with other Service Providers both within their specific Lot and the wider Engineering PSL.

Appendices

1. Existing Engineering roles by Lot
2. Performance Scorecard for Engineering NPL Services Contract
3. British Psychological Society Psychological Testing Centre (PTC) guidelines
4. Working at TfL – Workplace Principles
5. Proof of right to work in the UK – Home Office List
6. Pre-engagement Screening Matrix for Temporary Workers
7. Incident Resolution – Governance Matrix
8. Pay/Charge Rate calculator
9. Management Arrangements to Assure Medical fitness (LU)
10. Corporate Medical Standard for personnel requiring safety on the track accreditation
11. Anonymised list of existing Temporary Workers (detailed)

**Existing Engineering roles by Lot
REDACTED**

Performance Scorecard for Engineering NPL Services Contract

Ref.	Review cycle	Title	Measure/Description	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)	Provided by	Monitored by
SLA 1		Candidate supply	A minimum of 3 quality candidates submitted to NPL Recruitment Team within 3 Business Days, highlighting where candidates meet the key requirements of the role. Role dependent exceptions to this SLA will be agreed in writing with the NPL Recruitment Team and excluded from the calculation.					
KPI 1.1	4 weekly	Ratio of CVs supplied to CVs shortlisted by The Authority	The average number of CVs submitted by Service Provider shortlisted for interview excluding any agreed deviation as per SLA1.	Red: 5:1 or greater, i.e. less CV's are shortlisted for interview than is the case for Amber ratios	Between 3:1 and 5:1 inclusive	Lesser than or equal to 3:1, i.e. more CV's are selected for interview than is the case for Amber and Red ratios	Service Provider	The Authority
KPI 1.2	4 weekly	CVs highlighting applicability to each role	Service Provider is required to highlight in yellow on each CV submitted the relevant aspect of each candidate's ability in relation to the key requirement of each vacancy.	99%	N/A	100% of CVs submitted	Service Provider	The Authority
KPI 1.3	4 weekly	CV submission timescale	All CVs to be submitted within 3 working days of release on ATS. Timescales outside of those on the right and agreed in writing with the NPL Recruitment Team.	Greater than or equal to 4.1 days	Between 3.1 and 4 days	Less than or equal to 3 days	Service Provider	The Authority
KPI 1.4	4 weekly	Candidate quality at interview	Average score on candidates submitted by Service Provider. Excludes any candidates that have not been graded. Requires a minimum of 10 candidates or 50% of the hires, whichever is the greater, in one period to be graded, to be applicable	Less than or equal to 2.99	Between 3 – 3.99	Greater than or equal to 4	Service Provider	The Authority
KPI 1.5	4 weekly	Role fulfilment	Ranking of total roles filled made by Service Provider compared to other Service Providers in same Lot	Below 20% fills (offers) of the total fills in the lot	20% and below 33.3% fills (offers) of the total fills in the lot	33.3% or above fills (offers) of the total fills in the lot	Service Provider	The Authority

Ref.	Review cycle	Title	Measure/Description	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)	Provided by	Monitored by
SLA 2		Temporary Worker competence	Each Assignment Manager is required to grade each Temporary Worker at the end of their assignment. Candidates graded as either '1. Did not match requirements' or '2. Some improvements required' must have reasons/detail included on the report.					
KPI 2.1	4 weekly	Percentage of Temporary Workers not deemed competent	Percentage of Temporary Workers where Assignment Manager has graded them as either 1 or 2: 1. Did not match requirements 2. Some improvements required 3. Good 4. Very Good 5. Outstanding	95% or scores, or below, being rated as 3 (acceptable) or above	95.1% to 97.9% of ratings being scored 3 (acceptable) and above	98% of ratings being scored 3 (acceptable) and above	Service Provider	The Authority
SLA 3		Issue resolution	Incidents and issues to be graded. Definition and examples of what may constitute each level is included in the governance matrix at Appendix 7					
KPI 3.1	4 weekly	Percentage of issues resolved in agreed timescale	Escalation and issue resolution: Level 1: responded to within 1 working day Level 2: responded to within 3 working days Level 3: responded to within 5 working days	Less than 75% of all issues responded to in the appropriate timeframe	Between 75.1%-89.9% of all issues responded to in the appropriate timeframe	90% of all issues responded to in the appropriate timeframe	Service Provider	The Authority
SLA 4		Management Information supply	Provision of timely management information to The Authority					
KPI 4.1	4 weekly	Standard reporting	Periodic and Quarterly report covering all SLAs/KPIs submitted to The Authority on the 2 nd Friday after period end (as per The Authority's period end dates)	Less than 100%	N/A	100%	Service Provider	The Authority
KPI 4.2	4 weekly	Exception reporting	Provision of exception reporting within 2 working days of request being submitted by The Authority	Less than 90%	90% to 99%	100%	Service Provider	The Authority
KPI 4.3	4 weekly submitted quarterly	Equality and Inclusion	Statistics measuring the following categories against CV submission, shortlisted, Interviewed and Offered: Gender; Transgender status; Religion; Ethnicity	Less than 100%	N/A	100%	The Authority	N/A

Testing guidelines – British Psychological Society, Psychological Testing Centre



Code of Good
Practice for Psycholog

Working at TfL – Workplace Principles



Working at TfL -
principles for Temporal

Proof of right to work in the UK – Home Office List



Home Office -
right_to_work_checkl

Pre - Engagement Screening Matrix



Pre-engagement-ten
der-document.xls

The Authority reserves the right to amend the requirements for references and clearances in line with any introduction of new Government legislation or the Authority's policy at no extra cost.

Incident Resolution – Governance Matrix

Governance Matrix – issue log classification		
No.	Level	Description
1	Serious issue	Serious complaint from the Assignment Manager to the Authority or from the Authority including failure to comply with legislation or adhere to contractual issues including pay, pay rate and AWR
2	Important issue	Escalated or repeated Service Issue including pay failures or errors
3	Service issue	Recruitment related service to the business or HR is below standard as defined by SLA and KPI including CV submission timescales and CV quality, responsiveness. Standard of email or verbal communication falls below requirements

Pay/Charge Rate Calculator
REDACTED

Appendix 8

Management Arrangements to Assure Medical fitness (LU)



S1601 Management
Arrangements to assu

Corporate medical standard for personnel requiring safety on the track certification



S1602 Corporate
Medical Standard (tra

Anonymised List of Existing Temporary Workers (detailed)
REDACTED

SCHEDULE 5

Charges

SCHEDULE 5A – MARK UPS

REDACTED

SCHEDULE 5B - INTRODUCTION FEE

The Introduction Fee or Temporary to Permanent Fee will be calculated by applying the Tendered Percentage Figure shown in Table 1 as Temp to Perm Fee, to the full time salary of the Temporary Worker for the first year in their new post. If the Temporary Worker has been appointed to a part time or fixed term contract the Introduction Fee will be calculated on 9/12 of the first year's pay due to the Temporary Worker.

The Introduction Fee or Temporary to Permanent Fee will only be payable if the Temporary Worker is employed by the Client within the restricted period of 14 weeks of the first day of the Temporary Worker's Assignment (taking account of whether the period has been interrupted by a non-working period of more than 42 days in which case a new 14 weeks period starts).

SCHEDULE 5C - PAYMENT TERMS

The Group operates a "self-billing" system for the payment to agents for the services of contractors. This functions as follows:

1. The Authority or other Group Member shall submit to the Service Provider weekly electronic invoices showing the Charges payable by the relevant Group Member to the Service Provider in relation to each week of a Temporary Worker's Assignment. Weeks shall be measured as starting on a Sunday and finishing on a Saturday. Details of the Charges relating to more than one Temporary Worker may be collated on the same invoice if convenient.
2. Each such invoice shall be accompanied by supporting details, contained in an electronic copy of the relevant timesheet, electronically approved by the NPL Recruitment Manager.
3. VAT shall be shown as a separate charge on each invoice. Other information may appear on timesheets as agreed between the Parties (for example, Temporary Worker's name, Temporary Worker's unique identifying number, week to which the invoice relates).
4. The Service Provider shall be responsible for educating the Temporary Workers about the system of electronic time sheet completion (or other system advised by the Authority).
5. Once the TfL Group Member has produced a valid and undisputed invoice accompanied by a valid timesheet, the TfL Group Member shall pay this by BACS within 30 days of the date of the valid and undisputed invoice.
6. The Service Provider will ensure that all contracts entered into by the Service Provider pursuant to this Agreement provide for the Service Provider to consider and verify invoices submitted to it in a timely fashion and for payment to be made not later than the end of a period of 30 days from the date a relevant invoice is regarded as valid and undisputed.
7. The NPL Recruitment Manager shall have no obligation to approve timesheets, which have been incorrectly completed and are therefore, invalid. The TfL Group Member shall have no obligation to raise invoices against invalid timesheets but shall assist the Temporary Worker concerned in correcting the timesheet in order to make it valid.

8. Any queries regarding invoicing should be directed to the NPL Recruitment Manager. Any queries regarding progress of payments should be directed to the Authority's Accounts Payable Department or as advised by the Authority from time to time.
9. To satisfy HM Customs and Excise, the Service Provider shall confirm in writing on its company letterhead that it accepts the Authority's self-billing process, in a form approved by the Authority. The provision of such a letter shall be a condition precedent to the payment of the Charges.

SCHEDULE 6

Employment Provisions

For the purposes of this Schedule:

“Current Service Provider” means provider of services substantially similar to the Services immediately before the Services Commencement Date (which may or may not be the

“Employment Costs” means wages, holiday pay (except where stated otherwise), employment benefit, costs, redundancy costs and unfair dismissal costs and awards in respect of all Transferring Staff;

“Further Transfer Date” means the date of the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Replacement Service Provider;

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;

“Replacement Service Provider” means any replacement Service Provider or provider to the Authority of the Contract (or any part of it);

“Re-Transferring Personnel” means any Service Provider’s Personnel who:

- (a) will transfer to the employment of either the Authority or the Replacement Service Provider pursuant to the Regulations; or
- (b) accepts an offer of employment from the Authority or a Replacement Provider (as appropriate),

upon the expiration or termination (in whole or in part) of this Agreement;

“Transfer of Provision”; means the transfer of the provision of the Services from the provision by the Current Service Provider to the provision by the Service Provider;

“Transferring Staff” means such employees as are named in an Appendix to the Contract.

PART A: Transfer of Employees to Service Provider

1. It is understood and acknowledged by the Parties that the Regulations apply to the Transfer of Provision and accordingly, pursuant to the Regulations, the contracts of employment between the Current Service Provider and the Transferring Staff will have effect from the Services Commencement Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be subject to the provisions of **paragraph 2**).
2. The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the Services Commencement Date.
3. The Service Provider will comply and will procure that its sub-contractors comply with the Statement of Practice and the Code.
4. All Employment Costs in respect of the period:
 - 4.1 up to the Agreement Commencement Date (whether or not due for payment at that date) will be the responsibility of the Current Service Provider; and
 - 4.2 on and after the Commencement Date will be the responsibility of the Service Provider, and will, if necessary, be apportioned on a time basis between the Current Service Provider and the Service Provider.
5. The Service Provider will indemnify, keep indemnified and hold harmless the Authority from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Authority incurs or suffers arising out of or in connection with:
 - 5.1 any act or omission by or on behalf of the Service Provider in respect of any person employed or engaged by it including, on or after the Agreement Commencement Date, the Transferring Staff;
 - 5.2 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission and/or, communication made to the Transferring Staff before the Agreement Commencement Date by, on behalf of and/or at the instruction of the Service Provider;
 - 5.3 any failure by the Service Provider to provide sufficient information to the Current Service Provider to enable it to comply with its information and consultation obligations under the Regulations;
 - 5.4 the employment or termination of employment by the Service Provider of any Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the Agreement Commencement Date; and/or
 - 5.5 any actual, proposed or anticipated changes made by the Service Provider to the terms and conditions of employment of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

6. The Service Provider will provide the Current Service Provider, as soon as practicable, but in any event in good time before the Agreement Commencement Date with all information which the Current Service Provider may reasonably require to enable it to comply with its information and consultation obligations under the Regulations.
7. The Service Provider warrants and undertakes to the Authority that all information given to the Authority regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
8. Promptly when requested by the Authority (but not more than twice in any year) and not more than seven (7) days after the date of any notice to terminate this Agreement given by either party for any reason whatsoever, provide and use its best endeavours to procure that any relevant subcontractor provides the following information to the Authority:
 - 8.1 a list of current Service Provider's Personnel and subcontractors (each identified as such in the list) (the "**Staff List**");
 - 8.2 all material terms and conditions relating to the employment or engagement of the persons listed on the Staff List;
 - 8.3 written job descriptions of the persons listed on the Staff List;
 - 8.4 all other information which the Service Provider or subcontractors know or ought to know about its or their rights, powers, duties and liabilities under or in connection with the contracts of employment of the persons listed on the Staff List including without limitation their job titles, grades or seniority, dates of commencement of continuous employment, remuneration (salary and benefits) and pension rights; and
 - 8.5 in the situation where notice to terminate this Agreement has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Contract, whom the Service Provider considers will not transfer under the Regulations for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer, such information together being the "**Staffing Information**".
9. The Service Provider will notify the Authority in as much detail as possible as soon as practicable and in any event within five (5) days of the Service Provider becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
10. The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
11. Subject to **paragraph 12** below, the Service Provider will provide the Authority with a final Staff List (the "**Final Staff List**") not less than fourteen (14) days before the date of expiry or earlier termination of the Contract.
12. If the Contract is terminated by the Authority or the Client in accordance with **Clause 37** then the Final Staff List will be provided by the Service Provider to the Authority within fourteen (14) days of the date of termination of the Contract.
13. The Service Provider warrants that as at the date of expiry or earlier termination of the Contract:
 - 13.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

- 13.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- 13.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
- 14. From the earlier of:
 - 14.1 the date falling six (6) calendar months before the date of expiry of the Contract; or
 - 14.2 if the Contract is terminated by the Authority or the Client in accordance with **Clause 37**, the date of the relevant termination notice
the Service Provider will not and will procure that its Subcontractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
 - 14.3 terminate or give notice to terminate the employment or engagement, or replace the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
 - 14.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
 - 14.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
 - 14.6 increase or decrease to any significant degree the proportion of working time spent on the Services by any person on the Final Staff List or any Re-transferring Personnel; or
 - 14.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.
- 15. The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in **paragraph 14** regardless of when such notice takes effect.
- 16. For the avoidance of doubt, the Service Provider confirms that the Authority will be permitted to disclose any information provided to it under Part A of this Schedule in summary form to any person who has been invited to tender for the provision of the Services (or similar services) and to any Replacement Service Provider.

PART B TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION

1. If the Regulations apply on the expiration or termination of the Contract and/or the appointment of a Replacement Service Provider the following will apply:

1.1 the contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).

1.2 During the period commencing on the earlier of:

1.2.1 the date falling six (6) calendar months before the Further Transfer Date;
or

1.2.2 if the Agreement or the Contract is terminated by the Authority or the Client in accordance with **Clause 36**, the date of the relevant termination notice,

and ending on the Further Transfer Date the Service Provider will:

1.2.3 provide the Authority with access to such employment records as the Authority may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate);

1.2.4 allow the Authority to have copies of any of the documents referred to in this Schedule; and

1.2.5 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate).

If the Re-Transferring Personnel are employed or engaged by sub-contractors, the Service Provider will procure such sub-contractors provide the Authority or Replacement Service Provider (as appropriate) with the same level of access and information.

1.3 The Service Provider warrants to each of the Authority and the Replacement Service Provider (as applicable) that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Authority and the Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

1.3.1 is under notice of termination;

1.3.2 is on long-term sick leave;

1.3.3 is on maternity, parental or adoption leave;

- 1.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
 - 1.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Service Provider (as appropriate);
 - 1.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
 - 1.3.7 has received a written warning (other than a warning that has lapsed);
 - 1.3.8 has taken or been the subject of a grievance procedure within the previous two (2) years; or
 - 1.3.9 has objected, or has indicated an intention to object, in accordance with the Regulations to his or her employment transferring to the Authority or Replacement Service Provider (as appropriate) under the Regulations.
- 1.4 The Service Provider undertakes to each of the Authority and any Replacement Service Provider (as appropriate):
- 1.4.1 that it will continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Personnel up to the Further Transfer Date;
 - 1.4.2 to pay to the Re-Transferring Personnel all sums to which they are entitled from the Service Provider and/or any sub-Contractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and
 - 1.4.3 to comply in all respects with its information and consultation obligations under the Regulations and to provide to the Authority or Replacement Service Provider (as appropriate) such information as the Authority or Replacement Service Provider may request in order to verify such compliance.
- 1.5 In respect of the Re-Transferring Personnel the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:
- 1.5.1 up to and including the Further Transfer Date the Service Provider will be responsible for the Employment Costs;
 - 1.5.2 after the Further Transfer Date the Authority and/or Replacement Service Provider (as appropriate) will be responsible for the Employment Costs,

except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday pay.

1.6 The Service Provider will indemnify, keep indemnified and hold harmless each of the Authority and any Replacement Service Provider from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Authority and/or the Replacement Service Provider (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

1.6.1 any failure by the Service Provider to comply with its obligations under Part B of this Schedule;

1.6.2 any act or omission by or on behalf of the Service Provider in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the Service Provider's indemnity will only apply in respect of such employees insofar as and to the extent that any such act or omission occurred on or before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the Service Provider; and/or

1.6.3 any claim or demand or other action taken against the Authority and/or Replacement Service Provider by any person employed or engaged by the Service Provider (other than Re-Transferring Personnel) who claims (whether correctly or not) that the Authority or Replacement Service Provider has inherited any liability from the Service Provider in respect of them by virtue of the Regulations.

1.7 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Agreement and for six (6) years following the date of expiry or earlier termination of the Contract the Authority will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

1.7.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

1.7.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this Agreement,

and such access and consultation will be provided free of charge and thereafter be charged at reasonable rates for the time spent by the Service Provider and/or its employees or sub-contractors on such consultation. The Service Provider will further procure that all such persons co-operate with the Authority's requests.

The Authority and the Service Provider agree that it is intended that the benefit of **paragraphs 1.3, 1.4 and 1.6** of this **Part B of Schedule 6** shall in the Authority's discretion be assigned or and/or assumed by the Replacement Service Provider and the Service Provider agrees to do all things (including executing documents) necessary to give effect to such assignment or assumption.

SCHEDULE 7

Diversity, Equality and Employment

1. Introduction

1.1 Without prejudice to the other provisions in this Agreement relating to the Service Providers Personnel, this Schedule 8 sets out the Service Provider's obligations in respect of:

1.1.1 supporting the Authority in meeting its positive legal duty to pay due regard to the need to eliminate discrimination and to promote equality of opportunity and good relations in carrying out its functions, including those delivered on its behalf by an external Service Provider.

1.1.2 supporting the Authority in the implementation of the Skills and Employment Strategy; and

1.1.3 ensuring that the Service Provider attracts a diverse pool of temporary candidates with the skills required by the Authority throughout the term of the Agreement and any extended term.

1.2 In this Schedule 8, the following terms shall have the corresponding meanings:

"Agreed DEEP Plan"	means the Service Provider's diversity, equality and employment plan set out at Appendix 2 (<i>Initial/Agreed DEEP Plan</i>) to this Schedule 7, to be prepared in accordance with the DEEP Plan Template and Approved by the Authority;
"Initial DEEP Plan"	means the initial diversity equality and employment plan set out at Appendix 2 (<i>Initial/Agreed DEEP Plan</i>), submitted by the Service Provider prior to the Start Date and to be agreed between the Parties in accordance with paragraph 2 of this Schedule 7;
"Monthly DEEP Monitoring Report"	means the report to be prepared by the Service Provider in the form set out at Appendix 3 (<i>Monthly DEEP Monitoring Report Template</i>) and submitted to the Authority in accordance with the provisions of paragraph 5 of this Schedule 7;
"Relevant Employment Vacancy"	means an employment vacancy notified to the Service Provider by a NPL Recruitment Manager from the Authority;
"Skills and Employment Strategy"	means the Authority's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy dated October 2008 is provided at Appendix 1 (<i>Skills and Employment Strategy</i>) to this Schedule 7;
"DEEP Co-ordinator"	has the meaning set out in paragraph 3.1 of this Schedule 7;
"DEEP Infraction"	means any breach by the Service Provider of any of its

“DEEP Plan Template”	obligations under this Schedule 7; means the template for the DEEP Plan set out at Appendix 2 (<i>DEEP Template</i>) to this Schedule 7, to be completed by the Service Provider;
“Diversity Works for London”	means the programme delivered by the London Development Agency to help businesses implement diversity in the workplace.
“Gold Standard”	The Gold Standard is the Diversity Works for London accreditation for businesses achieving the highest level of the online diversity toolkit.

2. **Agreed DEEP Plan**

2.1 Based on the Initial DEEP Plan, the Service Provider shall:

2.1.1 further develop the Initial DEEP Plan to reflect the comments and requirements of the Authority; and

2.1.2 submit a revised copy of the Initial DEEP Plan to the Authority for Approval within twenty (20) Working Days of the Agreement Commencement Date.

2.2 If the Initial DEEP Plan is:

2.2.1 approved, it shall be adopted immediately and become the Agreed DEEP Plan; or

2.2.2 not approved, the Service Provider shall amend the Initial DEEP Plan and re-submit it to TfL for approval within the time period agreed in writing between the Parties. If the Authority do not approve the Initial DEEP Plan following its resubmission, the matters preventing such approval shall be resolved in accordance with the Procedure in Scheme 10 of Dispute Resolution,

2.3 Without limiting any other provision of this Agreement, the Service Provider shall:

2.3.1 comply with provisions of the Agreed DEEP Plan; and

2.3.2 at no additional cost to the Authority and subject to the provisions of paragraph 2.4 below, review and amend the Agreed DEEP Plan:

- 2.3.2.1 three (3) Months prior to the Agreement Commencement Date; and
 - 2.3.2.2 annually not later than each anniversary of the Agreement Commencement Date or at such other times requested by the Authority, to reflect:
 - 2.3.2.3 good industry practice;
 - 2.3.2.4 any changes to the nature of the Services; and
 - 2.3.2.5 any amendments proposed by the Service Provider or the Authority.
- 2.4 Any changes or amendments to the Agreed DEEP Plan shall be subject to Clause 43 of the Agreement and shall not be implemented until approved by the Authority.
- 3. **DEEP Co-ordinator**
 - 3.1 Within twenty (20) Working Days of the Agreement Commencement Date, the Service Provider shall nominate a member of Service Provider's Personnel with the necessary skills and authority to be the DEEP Co-ordinator to:
 - 3.1.1 be responsible for the implementation and on-going development and maintenance of the Agreed DEEP Plan; and
 - 3.1.2 act as the single point of contact between the Authority nominated personnel on all matters concerning the Agreed DEEP Plan.
- 4. **Local Community Relations**
 - 4.1 The Service Provider acknowledges and accepts that members of the TfL Group work closely with the Authority and Third Party organisations to implement the Skills and Employment Strategy.
 - 4.2 Accordingly, the Service Provider shall:

- 4.2.1 at the time of placing an advertisement for a Relevant Employment Vacancy, notify the relevant member of the Authority personnel (and/or any third parties nominated by the Authority) of such advertisement, providing details of the:
 - 4.2.1.1 relevant employment vacancy;
 - 4.2.1.2 date of the advertisement; and
 - 4.2.1.3 publication in which the advertisement is scheduled to appear or appeared (as applicable); and
- 4.2.2 attend a maximum of two (2) events each year, at a time and location specified by the Authority, to publicise employment and training opportunities arising from the provision of the Services.

5. **Monitoring and Reporting**

The Service Provider shall provide the Authority periodically with a Monthly DEEP Monitoring Report [as set out in the, Contract Requirements], detailing the Service Provider's performance against the Agreed DEEP Plan.

6. **Diversity Works for London**

- 6.1 The Service Provider shall register with the Diversity Works for London programme within thirty working days of the Agreement Commencement Date.
- 6.2 The Service Provider shall complete the Diversity Works for London diagnostic tool within three months of the Agreement Commencement Date.
- 6.3 The Service Provider shall commit to achieving the Gold Standard before the second anniversary of the Agreement Commencement Date.

APPENDIX 1 TO SCHEDULE 7

Skills and Employment Strategy

A copy of the Skills and Employment Strategy can be obtained from:

<http://www.tfl.gov.uk/assets/downloads/corporate/Skills-and-employment-strategy-march09.pdf>

APPENDIX 2 TO SCHEDULE 7
DEEP Template

The following DEEP Plan shall be reviewed by the Authority and developed where appropriate with the Service Provider.

Initial Diversity, Equality and Employment (DEEP) Delivery Plan

Title: Delivery Against the Authority's Priorities

Content: (Max 500 words)

Describe the steps that will be taken to ensure that temporary work opportunities arising from the contract are made available to all of London's diverse communities. Responses should reflect the level of opportunity with the categories of worker you supply and include:

- How you will promote registration for temporary work with the Authority to London's diverse communities;
- How you will ensure the Authority's representative (or any third party nominated by the Authority) is notified of a Relevant Temporary Employment Vacancy at the time of placing an advertisement;
- Any links you will establish with employment agencies and unemployment programmes so that, as temporary vacancies arise, the long-term unemployed and Londoners from diverse communities are targeted and made aware of these opportunities.
- How you will actively address issues of under representation in the categories your organisation services, for example of women in engineering.

Title: Diversity Works for London***Content: (Max 250 words)***

Describe the steps that will be taken to ensure that temporary work opportunities arising from the contract are made available to all of London's diverse communities. Responses should reflect the level of opportunity with the categories of worker you supply and include:

- Your timescale for completing the DWfL self-assessment tools
- Your target date for achieving the Gold Standard
- Management actions you will put in place to ensure the Gold Standard is achieved within your target date

Title: SLNT Monitoring & Co-ordination**Content: (Max 250 words)**

- Describe who will be responsible for implementing, managing and reporting DEEP activity within your company:
- What are the administrative and management arrangements that will be operated in relation to your DEEP activity?
- How will the proposed role/ structure interact with the Authority?

Title: DEEP Implementation Arrangements

Content: (Max 250 words)

What arrangements you will put in place to put the plan into action during contract implementation including:

- The transfer of knowledge from bid team to the project team
- Engagement with TfL to develop the agreed DEEP Delivery Plan
- Appointment of the DEEP Co-ordinator and establishment of the required administration, management and reporting structures

APPENDIX 3 TO SCHEDULE 7
Monthly DEEP Monitoring Template

SCHEDULE 8

Disaster Recovery

The Disaster Recovery Plan shall be submitted by the Service Provider and reviewed and agreed by the Authority within 3 months of the Agreement Commencement Date.

SCHEDULE 9

Dispute Resolution

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 ("Dispute") before resorting to litigation.
2. If the Dispute is not settled through discussion between the NPL Recruitment Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("Senior Personnel") of each of the Parties for resolution.
3. If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("Notice") that a structured mediation or negotiation be entered into with the assistance of a mediator.
4. If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) 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.
5. Where a dispute is referred to mediation under **paragraph 3** above, 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.
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.
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 forty (40) Business Days of the service of the Notice either Party may commence proceedings in accordance with **Clause 51**.
8. For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this **Schedule 9**.
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 Schedule and this Schedule shall not apply in respect of any circumstances where such remedies are sought.

SCHEDULE 10

Exit Strategy

Scope

In accordance with clause 35 of the Agreement, this Schedule sets out each Party's obligations in the event of termination or expiry of the Agreement. The purpose of this schedule is to provide both parties with a guide on the joint action to be taken in the event of a planned or unplanned exit from the Agreement. Each Party should conduct its obligations under this Schedule with a view to ensuring minimal disruption to the ongoing business.

1. Exit Plan Approvals Process

Role	Signature	Date
<i>[Insert title of relevant individuals (from Customer and Service Provider), e.g. account director/manager, risk manager, business owner, etc.]</i>		

2. Exit Strategy Document Review Dates

This document should be reviewed as part of the service management activity prior to the commencement of this agreement and at least [6] monthly thereafter. Any proposed changes to this document will be discussed and agreed by both Parties.

3. Types of Exit

For the purposes of this Schedule there are two types of exit:

(A) Planned Exit

Planned exits are where both parties expect the exit at a particular point in time. This effectively equates to the point of completing the envisaged term.

(B) Unplanned Exit

This refers to a termination of the contract prior to its full term. Unplanned exits tend to be more difficult and could require the exit process to be completed in tighter timescales than those under a planned exit. Maintaining SLAs, regulatory requirements and customer expectations in conjunction with brand principles would be important considerations during an unplanned exit.

4. Exit Management Process

4.1 Set up an Exit Management Team

A joint Exit Management Team will be established, led by an Exit Project Manager appointed through procedures agreed between both parties. The joint Exit Management Team will manage the exit process and seek to agree a detailed and updated Exit Plan. Key set up activities will include:

- Agreeing a timetable and allocation of responsibilities
- Confirm contractual obligations of both Parties
- Establishing governance requirements
- Establishing reporting line and requirements
- Creating appropriate business briefs and securing funding as appropriate
- Developing and delivering appropriate exit plans that minimise disruption to both parties

- Continually reviewing the business requirements of the exit programme and updating as appropriate

4.2 Useful documents

Useful documents for the Exit Management Team include:

- a copy of this agreement;
- minutes of any service review meetings that are held between the Parties; and
- management information results and/or reports for up to 12 months before the exit.

4.3 Roles and Responsibilities

Title	Exit Responsibilities
Key Business Owner/Sponsor	• Overall responsibility for delivering the exit programme • Accountable for decision to exit • Responsible for ensuring budget agreed for exit programme
Joint Exit Management Board to include: • Each Party's business sponsor • Exit project manager • Relevant business area representatives	• Forum for raising issues by representative of both parties • Resolution of escalated issues • Management of risk • Ensure regulatory compliance
Exit Project Manager	• Preparing and Managing the overall Exit Plan and ensuring that all agreed workstreams work effectively • Accountable for the successful delivery of all of the components of the exit programme, on time, within budget and to the required level of quality with no loss of operational services or service quality • Management of the programme risks, issues and escalation • Reporting to the Programme Board and/or Sponsor at regular intervals
Workstream Managers	• Overall responsibility to deliver individual workstreams of Exit Programme • Ensuring that all workstreams communicate appropriately throughout the programme • Reporting progress, issues and risks to the Project Manager
Workstream Team	• Conduct the project work assigned within each workstream • Report to the Workstream Manager regularly with progress and issues
Customer Commercial Director	• Manage the relationship between Customer and the Service Provider up to and following the Termination date

Title	Exit Responsibilities
Customer Account Director	• Ensure the appropriate levels of service are delivered to the Service Provider at a higher level up to and following the Termination Date
Communications Team	• Responsibility for communication plan

5. Exit Management Tasks

There are a number of tasks and activities to be completed in the course of termination of the Agreement and these are listed below. These tasks will be developed in the light of specific requirements.

Obligations	Date on which service to be completed/ period during which relevant transitional service is to be provided	Responsibility <i>[i.e. Customer and/or Service Provider]</i>
Processing of existing business/business as usual including maintenance of business continuity plan	•	•
Project Management – Appoint Project Manager and agree resource	•	•
-Provide information regarding the Services as requested by TfL -Provide information regarding Transfer Regulations as requested by TfL or a replacement Service Provider	•	•
Comply with obligations regarding Staff Transfer as set out under Part B of Schedule 7 Employment Provisions, of the Agreement	•	•
Return of documentation	•	•
Payment of outstanding invoices	•	•
Return of TfL Data	•	•

Obligations	Date on which service to be completed/ period during which relevant transitional service is to be provided	Responsibility <i>[i.e. Customer and/or Service Provider]</i>
Post termination communication	•	•
Communication Plan	•	•