



Contract Reference Number: ICT11627 (ICT11333)

Date: March 2015

**Term Services Agreement for the Supply of Software
and Maintenance**

**Operational Modelling
Micro-Simulation**

between

Transport for London (TfL)

and

Transport Simulation Systems (TSS)

OJEU REF: TED19_TFL 02/06/2014- ID-000064.

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THIS AGREEMENT is made on the date set out on the front page of this Agreement

BETWEEN

- (1) **Transport for London (TfL)** (the **“Authority”**)
- (2) The party set out in **Schedule 1** as being the Service Provider (the **“Service Provider”**)

BACKGROUND

- (A) The Authority wishes to procure and the Service Provider wishes to supply certain software and/or services, as set out below.
- (B) The parties have agreed to enter into this Agreement to define their contractual rights and liabilities in relation to such supply.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:

“Acceptance”	date on which an Acceptance Certificate is issued
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“Acceptance Certificate”	certificate issued by the Authority when the Software has been installed and implemented and has successfully passed the Acceptance Tests in accordance with Schedule 6
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“Acceptance Criteria”	criteria referred to in Schedule 6 for testing the Software (or relevant part thereof)
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“Acceptance Tests”	tests that the party or parties, as set out in Schedule 6 , will carry out using the test data and expected results, prepared by the party
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or parties as set out in **Schedule 6**, to determine whether the Software or any part of the Software complies with the Acceptance Criteria

“Additional Services” services detailed in the **Annex** called **Additional Services** in **Schedule 0**, if any

“Agreed Equality Policy” equality policy agreed between the Authority and the Service Provider as set out in **Schedule 9**, if any

“Agreement” this Agreement, its Schedules, Annexes and Appendices (if any) and any other document expressly incorporated into this Agreement by virtue of any provision of this Agreement

“Agreement End Date” date set out in **Schedule 1** as the Agreement End Date

“Authority Premises” land or premises (including temporary buildings) owned or occupied by or on behalf of the Authority and/or any member of the TfL Group

“Authority Software” software to be provided by the Service Provider to the Authority under this Agreement which is not Third Party Software or Service Provider Software, as may be updated, replaced or amended from time to time

a **“Business Day”** a day other than a Saturday or Sunday or a public or bank holiday in England

“Business Hours” hours set out in **Schedule 1**

“Cessation Plan”	a plan agreed between the parties or determined by the Authority pursuant to Clause 25A to give effect to a Declaration of Ineffectiveness
“Change of Control”	change of the control of a company, and “control” shall be as defined by Section 840 of the Income and Corporation Taxes Act 1988
“Charges”	charges set out in Schedule 2
“Commencement Date”	the date of this Agreement
“Commercially off the Shelf software or “COTS software”	means software of the Service Provider or a Third Party which is commercially available to persons or companies, whether Third Party or otherwise
“Confidential Information”	all information in respect of the business of the Authority and/or any of the TfL Group Members including, without prejudice to the generality of the foregoing, any ideas; business methods; pricing or financial information; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services including information concerning the Authority's and/or the TfL Group Members' relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Authority and/or TfL Group Members and any other information which, if disclosed, will be liable to cause harm to the

Authority and/or a Tfl Group Member

“Contract Information”

(i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted pursuant to **clause 4** which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount

“Copy”

individual copy on electromagnetic recording material of one or more of the programs constituting the Software

“Declaration of Ineffectiveness”

a declaration of ineffectiveness in relation to this Agreement 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

Deliverable(s)

Goods and/or Services, as the context permits

“Disaster”

unplanned interruption (whether of information processing facilities or systems or otherwise), including fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions, which impairs the ability of the Service Provider to perform the Services (in whole or

in part and other than in some superficial manner) to the standard of the Service Levels and/or in accordance with this Agreement

“Disaster Recovery Plan” Service Provider’s plan for its emergency response, back-up procedures and business continuity in the event of a Disaster

“Dispute” dispute or difference that may arise out of or in relation to this Agreement

“Dispute Resolution Procedure” procedure for resolving/attempting to resolve disputes, as set out in **clause 38**

“Documentation” technical and user documentation (including report guides, user manuals, technical manuals, computer operation manuals, installation and support manuals, operating standards, specifications and training materials and the Specification) that describe in detail the configuration, installation, intended operation and maintenance of the Software (as applicable) as such written material may be updated from time to time in accordance with this Agreement

“DPA” Data Protection Act 1998 and related secondary legislation

“e-GIF” UK Government’s “e-government interoperability framework” standard, as may be updated or replaced from time to time, details of which are available on the Cabinet

Office website, www.govtalk.gov.uk

“Exit Plan”	plan for dealing with the exit of the Services upon termination or expiry, as agreed between the parties in writing and updated in accordance with Schedule 10
“Euro Compliant”	functioning and able to function accurately in any currency of the United Kingdom and the European Union, including any currency in use or currencies in concurrent use following partial or complete European Economic and Monetary Union
“FOI Legislation”	Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, 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 (but excluding any strikes, lock-outs or other industrial disputes of or relating to employees of the party whose obligation to perform is thereby affected, or employees of such party’s sub-contractors) 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 if those events should have been negated by implementation by the Service Provider of its’ Disaster Recovery Plan or insofar as the event 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

“**GLA**”

the Greater London Authority

“**Holding Company**”

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

“**Information**”

information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority

“**Information Request**”

request for any Information under the FOI Legislation

“**Initial Tests**”

tests that the Service Provider must carry out on the Software to determine whether it is in accordance with the Specification before the Software is submitted for Acceptance Tests in accordance with **Schedule 5**

“Insolvency Event”

any of the following:

- (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager or administrator being appointed over all or part of the business of the Service Provider and/or the Holding Company;
- (c) 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);
- (d) 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;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying;
or
- (f) any similar event to those in (a) to (e) above occurring in relation to the

Service Provider and/or the Holding Company under the law of any applicable jurisdiction

“Insurance” or “Insurances”	insurances, as set out in Annex A of Schedule 1
“Intellectual Property Rights” or “IPR”	any and all patents, trade marks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto
“Key Milestone Dates”	key dates for delivery of the Software, the Services, or parts thereof, as may be specified in the Project Plan
“Key Personnel”	Service Provider’s key personnel set out in Schedule 1 , as may be updated by agreement in writing from time to time
“Liquidated Damages Period”	period in which Liquidated Damages shall be paid, as set out in Schedule 1 , if any
“Liquidated Damages”	financial damages as set out in Schedule 1 , if any
“Losses”	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms

include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments

“Maintenance Services” maintenance services for the Software as detailed in **Annex B** of **Schedule 2**, called **“Maintenance Services”**, if any

the “parties” the parties to this Agreement

“Personal Data” has the meaning given to it by section 1(1) of the Data Protection Act 1998

“Processing” has the meaning given to it by section 1(1) of the Data Protection Act 1998 and **“Process”** and **“Processed”** will be construed accordingly

“Project Plan” plan in relation to any part of the provision of the Software and/or Services as set out in **Schedule 4** or as agreed between the parties in writing from time to time

“Schedules” schedules attached to and forming part of this Agreement

“Security Policy” the TfL Group’s security polic(y)(ies), the current version(s) of which is/are as set out in **Schedule 6**, as such security polic(y)(ies) may be updated by the Authority in writing from time to time

“Service Credits” service credits as set out in the **Annexes** to **Schedule 0**, if any

“Service Level Period” period in which Service Credits shall be paid,

as set out in **Schedule 0**, if any

“Service Levels” standards of performance to be achieved for the Services as set out in **Schedule 0**, if any

“Service Provider Software” Software where the IPR is to be retained by the Service Provider, as agreed between the parties, as set out in **Schedule 1**, as such software may be updated, replaced or amended from time to time, if any

“Service Provider’s Equipment” equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services or the Software and in which title is not intended to pass to the Authority under this Agreement, as set out in **Schedule 1**, if any

“Service Provider’s IPR” parts of the Software or Services which exist prior to the commencement of this Agreement which are owned by the Service Provider and the Intellectual Property Rights in which are to be retained by the Service Provider, as specified in **Schedule 1**, if any

“Service Provider’s Personnel” employees, officers, suppliers, sub-contractors and agents of the Service Provider engaged in the performance of any of the Services and including the Key Personnel

“Services” services required from the Service Provider in building and supplying the Software; the Maintenance Services, if any; and the Additional Services, if any, in each case as

are specified in **Schedule 0** (including its **Annexes**), together with any services, functions and responsibilities (including any incidental services, functions and responsibilities) not specifically set out in this Agreement but which are within the scope of the Services and which are reasonably to be inferred from this Agreement; and any other services from time to time agreed between the parties in writing to be supplied by the Service Provider to the Authority under this Agreement

“Site(s)”

Authority Premises, as specified in **Schedule 1**

“Software”

Service Provider Software, the Authority Software, and the Third Party Software

“Specification”

either the TfL Group’s Statement of Requirements or the TfL Group’s written specification for the Software, as set out in **Schedule 3**, which may be updated by agreement in writing from time to time by both parties and where a full Specification has not yet been agreed between the parties, any “Specification” shall mean the TfL Group’s Statement of Requirements until such time that the full agreed Specification has been signed off between the parties in writing after which point “Specification” shall be deemed to refer to such fully agreed specification

“Statement of

high level Statement of Requirements of the

Requirements”	Authority for the Software, as set out in Schedule 3 , if applicable, as may be updated or superseded by a full specification in writing from time to time
“Successor Authority”	person created by statute or subordinate legislation to assume all (or part of) the TfL Group’s functions
“TfL”	Transport for London, a statutory corporation whose principal place of business is at Windsor House, 50 Victoria Street, London SW1H 0TL
“TfL Group”	the Authority and the other companies or organisations related to TfL, as set out in Schedule 1
“TfL Group Member”	any member of the TfL Group
“TfL Group’s Liability Cap”	amounts set out in Schedule 1
“Third Party”	person, partnership, company or any other undertaking not being the Service Provider or a TfL Group Member
“Third Party IPR”	parts of the Software or Services which are owned by a third party, the Intellectual Property Rights in which the Authority has expressly agreed are to be retained by a third party as specified in Schedule 1 , as may be updated, replaced or amended from time to time
“Third Party Software”	third party software to be provided to the Authority under this Agreement which is specified as Third Party Software in

Schedule 1, as may be updated, replaced or amended from time to time

**“Transparency
Commitment”**

the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Authority is committed to publishing its contracts, tender documents and data from invoices received

“Virus”

program code or set of instructions intentionally or recklessly constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations including trojan horses, logic bombs, time bombs, data disabling code or any similar materials of any nature

“Warranty Period”

warranty period(s) set out in **Schedule 1**

- 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, unless the context otherwise requires, shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted (whether in whole or in part) by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether in place before or after the date of this Agreement;
- 1.4 except as specified in **clause 1.3** or expressly elsewhere in this Agreement, a reference to any document 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, Schedules, Annexes and Appendices are, unless otherwise provided, references to clauses of and Schedules, Annexes and Appendices to this Agreement and any reference to a paragraph in any Schedule or Annex or Appendix (if any) shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule or Annex or Appendix;
- 1.7 in the event, and only to the extent, of any conflict between the clauses, the Schedules, the Annexes, and the Appendices (if any), the clauses prevail, except where:
- 1.7.1 the conflicting part of the Schedule, Annex or Appendix is explicitly expressed to take precedence; or
- 1.7.2 the conflict is with a provision in **Annex B** of **Schedule 1** (Special Conditions of Contract), in which case the provisions in **Annex B** of **Schedule 1** shall prevail;
- 1.8 the Schedules, Annexes and Appendices (if any) form part of this Agreement and, subject to **clause 1.7**, will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the Commencement Date and shall, unless and until terminated in accordance with its terms, continue in force until the earlier of:
- 2.1.1 the completion of the Services; or

2.1.2 the Agreement End Date,

(being the “**Term**”).

3. **SERVICE PROVIDER’S OBLIGATIONS**

3.1 The Service Provider shall supply the Software and perform the Services in accordance with the terms and conditions of this Agreement.

3.2 The Service Provider shall perform its obligations in relation to the Acceptance Tests in accordance with **Schedule 6**.

3.3 The Service Provider:

3.3.1 acknowledges that it has sufficient information about the TfL Group and its requirements for the Software and/or the Services and that it has made all appropriate and necessary enquiries to enable it to supply the Software and perform the Services in accordance with this Agreement;

3.3.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the TfL Group’s requirements for the Software and/or the Services or otherwise;

3.3.3 shall comply with all lawful and reasonable directions of the Authority relating to its supply of the Software and performance of the Services;

3.3.4 shall, when required, give to the Authority such written or oral advice or information regarding the Software and/or the Services as the Authority may reasonably require;

3.3.5 where a format for electronic receipt of orders by the Service Provider is set out in **Schedule 1**, shall, unless the Authority requires otherwise, receive orders in such format and shall maintain its systems to ensure that it is able to do so throughout the Term; and

- 3.3.6 shall provide training to the Authority's personnel (including its employees, officers, suppliers, sub-contractors and agents) as specified in **Schedule 2**.
- 3.4 Notwithstanding anything to the contrary in this Agreement, the TfL Group's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.
- 3.5 The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Agreement and shall give the Authority, if so requested, full particulars of all such persons who are or may be at any time employed on performing the Agreement. The Service Provider shall ensure that all Service Provider's Personnel deployed on work relating to the Agreement shall be properly managed and supervised.
- 3.6 Subject to the provisions of this **clause 3**, the Service Provider shall maintain the continued involvement of the Key Personnel in the performance of the Services and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and **clause 3.7** shall apply to the proposed replacement personnel.
- 3.7 The Service Provider will only use personnel to perform the Services who:
- 3.7.1 are suitably qualified and experienced to perform their role in performing the Services;
 - 3.7.2 hold up to date and comply with professional certifications and qualifications relevant to the Services they are providing; and
 - 3.7.3 in these and any other respects are acceptable to the Authority.
- The Supplier shall demonstrate compliance with this **clause 3.7** as required by the Authority from time to time.
- 3.8 Without prejudice to any of the Authority's other rights, powers or remedies (including under **clause 3.7**), the Authority may (without liability to the

Service Provider) deny access to such Service Provider's Personnel to any Authority Premises if such Service Provider's Personnel in the Authority's view have not been properly trained in any way required by this Agreement and/or are 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 in writing and in which case the Service Provider shall immediately remove such Service Provider's Personnel from performing the Services and provide a suitable replacement (with the Authority's prior written consent in the case of Key Personnel).

- 3.9 If the Authority requests, for bona fide reasons, that any member of the Service Provider's Personnel should cease to be involved in the supply of the Software or the performance of the Services under this Agreement, it shall notify the Service Provider in writing and state the reasons for the request. If the Service Provider agrees to the request (such agreement not to be unreasonably withheld) the said member shall be removed immediately and the Service Provider shall provide a suitably and similarly qualified replacement as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed. The removal of a member of the Service Provider's Personnel will not relieve the Service Provider from performance of its obligations under this Agreement nor provide grounds for an extension of time for the supply of the Software or the performance of the Services.
- 3.10 The Service Provider shall not (except where the individuals are clearly not required for the performance of that part of the relevant Services) assign any of the Key Personnel to other duties which would prevent them from or interfere with their ability to properly carry out their duties in respect of the Services without the prior consent of the Authority. This shall not prevent the Service Provider from allowing members of the Service Provider's Personnel to take sickness, maternity, paternity, compassionate, religious or holiday leave or to attend a reasonable number of training courses.
- 3.11 In the event that a member of the Key Personnel resigns or shall for any reason cease to be engaged in the provision of the Services, the Service

Provider shall ensure that a suitably and similarly qualified replacement who is acceptable to the Authority is appointed as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed; that there is a reasonable hand-over period (and that the costs of bringing the replacement up to the required level of knowledge are borne by the Service Provider); and that the performance of the Services are not affected. The Authority shall not unreasonably withhold agreement to the appointment of such replacement.

- 3.12 The Service Provider acknowledges and agrees that it shall be wholly responsible for the acts and omissions of the Service Provider's Personnel regardless of whether or not they are employees of the Service Provider. The Authority shall be wholly responsible for the acts or omissions of its personnel and any other person, entity or agent acting on its behalf (other than the Service Provider).
- 3.13 The parties shall each comply with their respective obligations set out in **Schedule 10**. Within sixty (60) days of the Commencement Date, the parties shall agree an Exit Plan in accordance with the provisions of **Schedule 10**.

4. **CHARGES AND PAYMENTS**

- 4.1 Subject to the Service Provider complying with and performing properly its obligations under this Agreement, the Service Provider shall be entitled to invoice the Authority in accordance with this **clause 4**.
- 4.2 In consideration of the proper performance of the Services and the supply of the Software in accordance with this Agreement, the Service Provider may invoice the Authority the Charges in respect of the Software and the Services at the amounts and on the basis set out in **Schedule 2**. Where no invoicing dates are set out in **Schedule 2**, then the Service Provider shall be entitled, within thirty (30) days following the end of each calendar month, or upon a milestone payment date set out in any Project Plan (as applicable), to submit an invoice in respect of the Charges arising during such month or upon achievement of such milestone (as applicable). For the avoidance of doubt, the Service Provider may not invoice the Authority for payments in relation to

Key Milestone Dates or any other agreed payment milestones until such time that the Service Provider has delivered the applicable Services and/or parts of the Software and has fully performed its obligations in relation to such Key Milestone Dates or other agreed payment milestones.

- 4.3 Any sum payable by one party to the other under this Agreement will be exclusive of Value Added Tax (“**VAT**”) and any other similar tax which may be chargeable and which will be payable in addition to the sum in question at the rate for the time being prescribed by law on delivery of a valid VAT invoice.
- 4.4 The Service Provider shall submit invoices to the postal address stated in **Schedule 1** (or as otherwise specified by the Authority from time to time) or, where an electronic format for submission of invoices is set out in **Schedule 1**, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Contract Reference Number, SAP order number, the Service Provider’s name and address, a separate calculation of VAT and an adequate description of the Services provided.
- 4.5 If the Authority considers (acting reasonably) that any sums, fees or other charges claimed by the Service Provider in any invoice have been correctly calculated and that such invoice is correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (“**BACS**”)) or such other method as the Authority may choose from time to time within thirty (30) days of receipt of such invoice, or within such other time period as may be agreed under **Schedule 1**.
- 4.6 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority (whether related to payment or otherwise) shall:
- 4.6.1 indicate or be taken to indicate the TfL Group’s acceptance or approval of the Services or Software or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the

Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of this Agreement; or

- 4.6.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to **clause 4.8**, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt.
- 4.7 In the event that the United Kingdom joins the European Economic and Monetary Union, the Authority shall require the Service Provider, at no additional charge, to convert any sums payable in connection with this Agreement from sterling to Euros in accordance with EC Regulation Number 1103/97.
- 4.8 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority arising out of or attributable to this Agreement or any other contract between the Authority or any TfL Group Member and the Service Provider (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) may be deducted by the Authority from monies due or which may become due to the Service Provider under this Agreement or the Authority may recover such amount as a debt. The TfL Group's rights under this **clause 4.8** will be without prejudice to any other rights or remedies available to the Authority under this Agreement or otherwise.
- 4.9 If the Authority receives an invoice which the Authority reasonably believes specifies a Charge which is not valid or properly due or in respect of which any Service has not been duly and properly provided or where the Authority reasonably believes the invoice has not been calculated correctly or if the invoice contains any other error or inadequacy ("**Disputed Charge**"):
- 4.9.1 the Authority shall pay to the Service Provider the part of the Charges under that invoice which is not a Disputed Charge;

- 4.9.2 the Authority may withhold payment of the Disputed Charge in that invoice and, in that case, the Authority shall promptly (and in any event within thirty (30) days after receipt of the invoice) notify the Service Provider of the nature of the dispute and the parties shall commence, within five (5) days after the receipt of the TfL Group's notice, to resolve the dispute in accordance with the dispute resolution procedure set out in **clause 38**; and
- 4.9.3 once the dispute has been resolved, the Authority shall pay any amount due as part of that resolution within ten (10) days of such resolution.
- 4.10 Except where otherwise provided in this Agreement, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under this Agreement.
- 4.11 Interest shall accrue at the interest rate of two percent (2%) above the base rate of HSBC Bank plc from time to time on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under this Agreement in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

5. **SOURCE CODE, ESCROW AND VERIFICATION SERVICES**

- 5.1 The source code to any Software in which the Intellectual Property Rights are, or are to be, owned by the Authority, together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code, shall be supplied to the Authority when that part of the Software is supplied to the Authority ("**the Authority Materials**").

- 5.2 The source code to any Software forming part of the Service Provider's IPR and/or Third Party IPR, together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code ("**Escrow Materials**") shall, where requested by the Authority in **Schedule 1**, be subject to source code deposit arrangements and verification services to be entered into, on such terms as are reasonably acceptable to the Authority, within thirty (30) days of the TfL Group's request to do so (whether in relation to part or all of the Software) for the benefit of the TfL Group and its authorised agents with either NCC International Limited ("**NCC**") (on NCC's then standard terms) or any other reputable escrow agent agreed to by the Authority and providing for the release of the source code of such Software in the event of insolvency (or analogous events) of the Service Provider, inadequate performance of support or maintenance obligations (if any) or cessation of trade by the Service Provider.
- 5.3 Where requested by the Authority, the Service Provider shall procure that NCC (or such other escrow agent as the Authority considers appropriate) enters into the escrow/verification agreement. The charges payable to NCC or other escrow agent shall be borne by the Authority, unless set out otherwise in **Schedule 1**.
- 5.4 The Service Provider shall at all times ensure that the Escrow Materials deposited with NCC or other escrow agent are capable of being used to generate and maintain and adapt the latest version of the Software and the Service Provider shall deliver to NCC or other escrow agent an updated copy of the Escrow Materials as and when necessary for this purpose or when requested to do so by the Authority.
- 5.5 This **clause 5** shall survive termination of this or part of this Agreement.

6. **THE TFL GROUP'S OBLIGATIONS**

- 6.1 The Authority shall:

- 6.1.1 purchase the Software and the Services in accordance with the terms of this Agreement;
- 6.1.2 subject to **clauses 4.8** and **4.9**, pay all sums, fees and other charges due under this Agreement upon the dates provided for under this Agreement;
- 6.1.3 allow the Service Provider access to Sites in accordance with **clause 11**;
- 6.1.4 provide the Service Provider, on request and within a reasonable period thereafter, with information and assistance that the Service Provider may reasonably require.

7. **DOCUMENTATION**

- 7.1 All Documentation prepared by the Service Provider pursuant to this Agreement shall, unless otherwise agreed by the parties, meet the following minimum requirements:
 - 7.1.1 it and all referenced portions of other documents shall be clearly and concisely written; and
 - 7.1.2 where applicable, it shall specify and describe the policy, specification or other subject matter in sufficient detail and in an easy to follow manner, so as to enable the TfL Group's staff or contractors trained and skilled to the level fairly expected of a person in the relevant position, to make full and efficient use of the Documentation for the purposes for which it was requested and/or written; and
 - 7.1.3 it shall not refer to any document not provided to or already in the possession of the Authority; and
 - 7.1.4 unless the Authority requests that such Documentation be subject to the Acceptance Tests, it shall be submitted to the Authority for approval and be subject to approval by the Authority in accordance with **clause 7.2**.

7.2 The Documentation to be submitted to the Authority for approval in accordance with **clause 7.1** shall be subject to one (1) draft correction cycle as specified in this **clause 7.2**. Unless agreed otherwise, the Authority shall, within five (5) days of the Service Provider submitting the Documentation either notify the Service Provider in writing of its approval of the Documentation (as applicable) or provide the Service Provider with its reasons in writing why such item(s) (or any part of it) is not approved whereupon the Service Provider shall make the required amendments and re-submit the revised Documentation to the Authority and the foregoing provisions shall apply. If the revised Documentation is not approved by the Authority and/or if the Service Provider does not accept the TfL Group's reasoning in relation to such non-approval, representatives of the parties will use their respective reasonable endeavours to resolve, in good faith, such non-approval/non-acceptance (as applicable) within thirty (30) days of the Authority submitting its reasons for such non-approval or (if later) the Service Provider's notification of non-acceptance of the TfL Group's reasons for non-approval (whichever is applicable). If, following the expiration of such period, the Documentation has not been approved by the Authority, the matter shall be referred for resolution in accordance with **clause 38**.

8. **PERFORMANCE AND DELAY**

8.1 In respect of each of the Services to be performed under this Agreement, the Service Provider shall provide or complete the performance of such Service(s) on or before the applicable date specified in the applicable Project Plan or, in the event no such date is specified, promptly having regard to the nature of the project ("**Milestone**"). Time for the supply of the Software and provision of the Services shall be of the essence of this Agreement.

8.2 The Service Provider shall notify the Authority in writing as soon as reasonably practicable after becoming aware of any actual or likely failure to comply with any Milestone. Such written notice shall contain a detailed explanation of the causes of, and responsibility for, the delay, details of actions taken and to be taken by the Service Provider (and, to the extent that the Service Provider considers that the Authority is responsible for such

delay, actions it requests be taken by the Authority) to remedy such delay and any effects such delay may have on the performance of the Services or supply of the Software and on the ability to meet the next Milestone or any other applicable Milestone. Without prejudice to any liability of either party, both parties shall use their reasonable endeavours to overcome and/or mitigate any such actual or anticipated delay.

8.3 If the Service Provider shall fail (to the extent that such failure was not directly due to any failure by the Authority to comply with its obligations under this Agreement) to provide the Service(s) or supply the Software in accordance with this Agreement by the Milestone then notwithstanding anything else contained in this Agreement the Service Provider shall not be entitled to any payment for any additional time spent and materials used by the Service Provider in providing the Service(s).

8.4 The Service Provider shall deliver the applicable parts of the Software and Services on or before the Key Milestone Dates. Save where such failure is caused by any omission by the Authority, the Authority shall be entitled to Liquidated Damages, if applicable, in relation to any failure by the Service Provider to meet such Key Milestone Dates. The parties agree that such Liquidated Damages are a genuine and reasonable pre-estimate of the loss which the Authority would suffer during the Liquidated Damages Period arising from a failure by the Service Provider to provide the Software and/or Services (or parts thereof) as contemplated in this **clause 8.4**. The Liquidated Damages shall be the TfL Group's only financial remedy for failure to meet the Key Milestone Dates during the Liquidated Damages Period unless the Service Provider has failed to provide the undelivered parts of the Software and/or Services it has previously failed to provide by the end of the Liquidated Damages Period in which case the Authority shall be entitled to bring a claim for further damages in respect of financial losses suffered during and after such Liquidated Damages Period. The provisions of this **clause 8.4** shall be without prejudice to the TfL Group's other rights and remedies under this Agreement, including the TfL Group's rights to seek injunctive relief in any court of competent jurisdiction and/or to claim damages.

8.5 Where Service Levels and/or Service Credits are set out in **Schedule 0**, the Service Provider agrees that the Services shall comply in all respects with the Service Levels, and the Authority shall be entitled to the Service Credits in relation to any failure by the Service Provider to meet such Service Levels. Save where such failure is caused by any omission by the Authority, the parties agree that such Service Credits are a genuine and reasonable pre-estimate of the loss which the Authority would suffer during the Service Level Period arising from a failure by the Service Provider to provide the Services as contemplated in this **clause 8.5**. The provisions of this **clause 8.5** shall be without prejudice to the TfL Group's other rights and remedies under this Agreement, including the TfL Group's rights to seek injunctive relief in any court of competent jurisdiction and/or to claim damages where the loss suffered exceeds the Service Credits.

9. **WARRANTIES AND OBLIGATIONS**

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

9.1.1 the Service Provider:

9.1.1.1 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), if any, to enter into and to perform this Agreement; and

9.1.1.2 is aware of the purposes for which the Services and the Software are required and acknowledges that the TfL Group is reliant upon the Service Provider's expertise and knowledge in the supply of the Software and the provision of the Services; and

9.1.1.3 is entering into this Agreement 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;

9.1.2 this Agreement is executed by a duly authorised representative of the Service Provider;

9.1.3 all materials, equipment and goods recommended, used or supplied by the Service Provider in connection with this Agreement shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, sound in design, fit for purpose, shall comply with all statutory requirements and regulations relating to their sale and use and shall be in conformance in all respects with the requirements of the TfL Group including the Specification;

9.1.4 the Service Provider shall provide the Services:

9.1.4.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced companies providing services of a similar scope, type and complexity to the Services with sufficient resources including project management resources;

9.1.4.2 in conformance in all respects with the requirements of the Authority and so that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;

9.1.4.3 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;

9.1.4.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Agreement is not being or is unable to be performed;

- 9.1.5 each part of the Software will, on the date on which it is supplied in accordance with this Agreement and for the Warranty Period thereafter, fulfil the TfL Group's requirements and comply with the Specification, and that if any part of the Software materially fails to comply in accordance with this **clause 9.1.5** at any time during the Warranty Period the Service Provider shall comply with **clause 9.3**;
- 9.1.6 without prejudice to **clause 9.1.5**, the Software (whether supplied or recommended for purchase by the TfL Group in connection with this Agreement) will be fully compatible with the TfL Group's computer and system infrastructures (including its' operating environment) set out in any Invitation to Tender (as may be superseded by the Specification) or notified to the Service Provider in writing from time to time;
- 9.1.7 the Service Provider shall fully co-operate with the TfL Group's agents, representatives or contractors (including other suppliers of computing products and services) and supply them with such information, materials and assistance as the Authority may reasonably request or authorise from time to time;
- 9.1.8 all of the Service Provider's liabilities, responsibilities, and obligations shall be fulfilled in compliance with all applicable laws, enactments, orders, regulations, codes of practice, licences, waivers, consents, registrations, approvals, and other authorisations of competent authorities ("**Applicable Laws**") and that the TfL Group's possession and/or use of the Software and/or its receipt of the benefit of the Services will not place the Service Provider or any of those persons so named in this clause in breach of any Applicable Law(s), provided that the Service Provider shall have no liability under this clause in respect of any breach of such Applicable Law(s) to the extent such breach is caused by the negligent, wilful or fraudulent act and/or omission of the Authority. The Change Control Provisions shall apply in the event that a change in law requires changes to the Software to be implemented by the Service Provider

where the changes are peculiar to the business of the Authority or the TfL Group;

9.1.9 the Service Provider shall:

9.1.9.1 not introduce into any of the TfL Group's computer systems anything, including any computer program code, Virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

(a) impair the operation of the Software or any other computer systems or programs in the possession of the TfL Group or impair the receipt of the benefit of the Service(s); or

(b) cause loss of, or corruption or damage to, any program or data held on the TfL Group's computer systems,

and this **clause 9.1.9.1** shall apply notwithstanding that any such things are purported to be used for the purposes of protecting the Service Provider's IPR, Third Party IPR, the Service Provider's contractual rights or other rights; or

9.1.9.2 not damage the reputation of the TfL Group;

9.1.10 the media on which any Software is supplied will be free from material defects in materials and workmanship under normal use;

9.1.11 it shall not and shall ensure that its Personnel and subcontractor's do not, without the TfL Group's prior written consent (such consent to be signed off by an authorised signatory of the Authority), include in the Software any third party software code which materially conforms to either (a) the then current Open Source definition laid down by the Open Source Initiative; or (b) any generally accepted replacement for or alternative to such Open Source definition at the relevant time;

9.1.12 the Service Provider shall ensure that the Software and any software, electronic or magnetic media, hardware or computer system recommended by the Service Provider for use in connection with this Agreement shall:

9.1.12.1 where specified by the Authority in **Schedule 1**, be Euro Compliant;

9.1.12.2 not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;

9.1.12.3 not cause any damage to, loss of or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any the TfL Group Member and/or any third party, on which it is used or with which it interfaces or comes into contact; and

9.1.12.4 be compliant with e-GIF,

and any variations, enhancements or actions undertaken by the Service Provider in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Service Provider's compliance with this **clause 9.1.12**.

Subject to **clause 9.1.8**, in all cases the costs of compliance with this **clause 9.1** shall be borne by the Service Provider.

9.2 The Service Provider shall ensure that the benefit of any and all warranties which it receives in respect of any Third Party Software are passed on to the TfL Group such that the TfL Group can enforce those warranties directly against such Third Party Software licensors.

9.3 Without prejudice to any other rights, powers or remedies the Authority may have, in the event of any breach(es) of the warranties set out at **clauses 9.1.3, 9.1.4, 9.1.5, 9.1.6, 9.1.8, 9.1.9, 9.1.10, 9.1.11** and **9.1.12** the Service Provider shall promptly (and, if applicable, in accordance with any relevant Service Level) supply such services as are necessary to remedy such breach(es) and to prevent the re-occurrence of such breach(es) in the future. To the extent that any such breach(es) re-occurs (notwithstanding, in relation to the limited warranty contemplated in **clause 9.1.5**, the fact that the relevant Warranty Period may have ended) then, subject to the cause of the said re-occurrence being the same or similar to that which caused the initial breach(es), the Service Provider shall forthwith supply such further Services as are necessary to remedy such breach(es) and to prevent any further re-occurrence thereof. Any Services required to be performed pursuant to this **clause 9.3** shall be performed at no additional cost to the Authority.

9.4 Each warranty and obligation in this **clause 9** 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.

10. **CONFLICT OF INTEREST**

10.1 The Service Provider warrants that it does not have an interest in any matter where there is or is likely to be a conflict of interest with the Agreement or any member of the TfL Group and that (except as provided below) it shall not act for any person, organisation or company where there is or is likely to be such a conflict of interest. This clause shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is, as at the date of this Agreement, providing services provided that the Service Provider shall:

10.1.1 not act for any such client in respect of any transactions between any member of the TfL Group and such client; and

10.1.2 ensure that the personnel acting in any capacity for any such client are different from the personnel involved in performing this

Agreement or in any other work which the Service Provider carries out in relation to any member of the TfL Group;

10.1.3 ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of the TfL Group; and

10.1.4 inform the Authority of all such existing clients where there could be a conflict of interest and the steps that it is taking to ensure compliance with **clauses 10.1.1 to 10.1.3** inclusive.

10.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services and shall work with the Authority or any member of the TfL Group to do whatever is necessary to manage such conflict to the TfL Group's satisfaction.

10.3 If the Service Provider is in breach of **clause 10.1** or if the Authority is not satisfied on the issue of any conflict of interest in accordance with **clause 10.2**, the Authority may terminate this Agreement and any other contracts between the Service Provider and any member of the TfL Group immediately.

11. **ACCESS TO THE AUTHORITY PREMISES**

11.1 Any access to any Authority Premises made available to the Service Provider in connection with the proper performance of this Agreement 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 this Agreement in accordance with this Agreement provided, for the avoidance of doubt, that the Service Provider shall be responsible for its own costs of travel including any congestion charging and/or low emission zone charging. The Service Provider shall:

- 11.1.1 have the use of such Authority 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 Authority Premises;
 - 11.1.2 vacate such Authority Premises upon the termination of this Agreement or at such earlier date as the Authority may determine. If the Service Provider is asked to vacate the Authority Premises before the termination of this Agreement, the Service Provider shall not be liable for any delay in the supply of the Software or the performance of the Services to the extent so caused by the request to vacate (provided such request is not due to the Service Provider's breach or default);
 - 11.1.3 not exercise or purport to exercise any rights in respect of any the Authority Premises in excess of those granted under this **clause 11**;
 - 11.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Authority at all relevant times; and
 - 11.1.5 not damage the Authority Premises or any assets of the TfL Group.
- 11.2 Nothing in this **clause 11** shall create or be deemed to create the relationship of landlord and tenant in respect of any of the Authority Premises between the Service Provider and any TfL Group Member.
- 11.3 Unless agreed otherwise in writing between the parties (referencing this Agreement), the Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider.
- 11.4 The Service Provider shall, while on the Authority Premises, comply with all of the TfL Group's security procedures and requirements notified to it from time to time, including the Security Policy, and shall ensure that all of the Service Provider's Personnel comply with all such procedures and requirements.
- 11.5 The Authority reserves the right, acting reasonably:

11.5.1 to refuse to admit to any of the Authority Premises any of the Service Provider's Personnel who fail to comply with any of the TfL Group's procedures, requirements, policies and standards referred to in **clause 12**;

11.5.2 to instruct any of the Service Provider's Personnel to leave any of the Authority Premises at any time and such Service Provider's Personnel shall comply with such instructions immediately.

11.6 The Service Provider shall promptly notify the Service Provider's Personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services.

12. **COMPLIANCE WITH POLICIES AND LAW**

12.1 The Service Provider undertakes to procure that all of the Service Provider's Personnel comply with all of the TfL Group's policies and standards that are relevant to the performance of the Services (including where the GLA is the Authority the GLA's Dignity at Work policy as updated from time to time and with the GLA's Code of Ethics as updated from time to time, and where TfL is the Authority, TfL's workplace harassment policy as updated from time to time (copies of which are available on request from TfL) and with TfL's Code of Conduct (which is available on TfL's website, www.tfl.gov.uk)), including those relating to safety, security, business ethics, drugs and alcohol, the Security Policy, and any other on-site regulations specified by the Authority for personnel working at the Authority Premises or being granted access to the Sites in accordance with **clause 11**. The Authority shall provide the Service Provider with copies of such policies and standards on request. In the event that the Services are being provided to both the GLA and TfL, then the policies and standards of each of the GLA and TfL shall apply as appropriate.

12.2 The TfL Group's workplace harassment policy as set out in **clause 12.1** ("**Policy**") requires the TfL Group's own staff and those of its contractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

- 12.2.1 ensure that its staff, and those of its sub-contractors, working on the Authority Premises are fully conversant with the requirements of the Policy;
 - 12.2.2 fully investigate allegations of workplace harassment in accordance with the Policy; and
 - 12.2.3 ensure that appropriate, effective action is taken where harassment is found to have occurred.
- 12.3 The Authority is committed to the improvement of business performance and the minimisation of risks and disruption to the TfL Group's and the Service Provider's respective employees, agents and subcontractors and customers of the TfL Group and those interfacing with the TfL Group transport networks through the effective management of health, safety and environmental issues and the Service Provider shall demonstrate its support for such commitment by:
- 12.3.1 implementing an effective health, safety and environmental management system; and
 - 12.3.2 maximising opportunities for environmentally responsible procurement and maximising environmental opportunities and minimising environmental risks,
- and shall communicate its methodology for doing so to the Authority.
- 12.4 If required by the Authority under **Schedule 1**, the parties shall agree an equality policy and if so, for the duration of this Agreement, the Service Provider shall comply with the Agreed Equality Policy.
- 12.5 Without prejudice to the generality of the foregoing, the Service Provider acknowledges that the Authority is under a duty:
- 12.5.1 where the Authority is TfL by virtue of a Mayor's direction under section 155 of the Greater London Authority Act 1999 (in respect of section 404(2) of the Greater London Authority Act 1999), and where

the Authority is the GLA under section 404(2) of the Greater London Authority Act 1999, to have due regard to the need:

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

12.5.1.2 to eliminate unlawful discrimination; and

12.5.1.3 to promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and

12.5.2 under section 76A of the Sex Discrimination Act 1975 and section 71 of the Race Relations Act 1976, to have due regard to the need to eliminate unlawful discrimination on grounds of sex or marital status and/or race and to promote equality of opportunity and good relations between persons of different racial groups;

and, in providing the Services, the Service Provider shall assist and cooperate with the Authority and any TfL Group Member where possible to enable the Authority and any other TfL Group Member to satisfy its duty.

12.6 The Service Provider:

12.6.1 shall not unlawfully discriminate;

12.6.2 shall procure that the Service Provider's Personnel do not unlawfully discriminate; and

12.6.3 shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate

in relation to the Services, within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations

2003, the Employment Equality (Age) Regulations 2006, and any other relevant enactments in force from time to time relating to discrimination in employment.

12.7 Without prejudice to **clauses 12.5** and **12.6**, the Service Provider shall:

12.7.1 assist and co-operate with the Authority where possible to enable the Authority to comply with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections; and

12.7.2 where the GLA is the Authority:

12.1.7.1 comply with policies developed by the Authority with regard to compliance with the Authority's duties referred to in **clauses 12.5** and **12.7.1** as are relevant to the Agreement and the Service Provider's activities;

12.7.2.2 obey directions from the Authority with regard to the conduct of the Services in accordance with the duties referred to in **clauses 12.5** and **12.7.1**;

12.7.2.3 assist, and consult and liaise with, the Authority with regard to any assessment of the impact on and relevance to this Agreement of the duties referred to in **clauses 12.5** and **12.7.1**;

12.7.2.4 on entering into any contract with a sub-contractor in relation to this Agreement, impose obligations upon the sub-contractor to comply with this **clause 12.7** as if the sub-contractor were in the position of the Service Provider;

12.7.2.5 provide to the Authority, upon request, such evidence as the Authority may require for the purposes of determining whether the Service Provider has complied with this

clause 12.7. In particular, the Service Provider shall provide any evidence requested within such timescale as the Authority may require, and co-operate fully with the Authority during the course of the Authority's investigation of the Service Provider's compliance with its duties under this **clause 12.7**; and

12.7.2.6 inform the Authority forthwith in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, or the Equality Act 2010.

12.8 If, pursuant to or in consequence of performing its obligations under this Agreement, the Service Provider gains access to any computer system of any TfL Group Member including any software, hardware, firmware, database, data or file, whether directly or remotely:

12.8.1 all access shall be strictly limited to that part of the computer software, hardware, firmware, database, data or files (as the case may be) as is required for proper performance of its obligations under this Agreement;

12.8.2 the Service Provider shall comply with all reasonable security audit and other procedures and requirements of any TfL Group Member in relation to access; and

12.8.3 the Service Provider shall ensure that only the Service Provider's Personnel shall be permitted access and such access shall be to the extent strictly necessary for the proper performance of their duties in relation to the obligations of the Service Provider pursuant to this Agreement.

- 12.9 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:
- 12.9.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 12.9.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 12.9.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 12.9.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 12.10 Without limiting the generality of **clause 9.1.8**, the Service Provider shall comply with the Bribery Act 2010 and any guidance issued from time to time by the Secretary of State under it.

13. **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

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

14. **EQUIPMENT**

- 14.1 Risk in:

14.1.1 all of the Service Provider's Equipment shall be with the Service Provider at all times; and

14.1.2 all other equipment and materials forming part of the Services ("**Materials**") shall be with the Service Provider at all times unless or until ownership and risk transfers in accordance with the **Annexes to Schedule 0** of this Agreement,

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

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

14.3 All of the Service Provider's Equipment which the Service Provider brings to the Authority Premises shall be removed by the Service Provider on termination of this Agreement and the Authority shall provide the Service Provider with such access to the Authority Premises as is reasonably required to enable such removal.

15. **QUALITY AND BEST VALUE**

15.1 The Service Provider acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and, as such, the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. Accordingly, the Service Provider shall, where reasonably requested by the Authority, participate in any relevant best value review and shall maintain an effective and economical programme for quality management, planned and developed in conjunction with any other functions of the Service Provider necessary to satisfy the requirement contemplated in this Agreement.

15.2 Where the GLA is the Authority then in accordance with the statutory requirement set out in section 61(3) of the Greater London Authority Act 1999, the Service Provider shall send such representatives as may be

requested to attend the Greater London Assembly for questioning in relation to the Agreement. The Service Provider acknowledges that it may be liable to a fine or imprisonment if it fails to comply with a summons to attend.

16. RECORDS, AUDIT AND INSPECTION

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

16.1.1 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 all transactions entered into by the Service Provider for the purposes of this Agreement (including time-sheets for the Service Provider's Personnel where such records are material to the calculation of any sums due under this Agreement) ("**Records**");and

16.1.2 retain all Records during the term of this Agreement and for a period of not less than six (6) years (or such longer period as may be required by law) following termination of this Agreement ("**Retention Period**").

16.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services (including compliance with **clause 12**). The Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider is not, without due cause, disrupted or delayed in the performance of its obligations under this Agreement.

16.3 The Service Provider grants to the Authority and its agents the right, at any time, on two (2) Business Days' notice, to audit and/or test the security and robustness of the Software, the Services and/or the Service Provider's compliance with the TfL Group's requirements on security, data integrity and

protection against breach of confidentiality. Such audits and tests may include penetration testing and ethical hacking and the Service Provider grants consent for such tests and audits to be performed notwithstanding any provisions contained within the Computer Misuse Act 1990 or the Police and Justice Act 2006. In view of the fact that such audits and testing may be intended to simulate a criminal attack, the Service Provider agrees not to take any action against the TfL Group or its agents performing the audits or tests and that the TfL Group and their agents shall not be responsible or liable for any loss, damage, expenses or claims incurred by the Service Provider as a result of such tests or audits, including any loss or damage caused to the Service Provider's systems or the Service Provider's business or any third party claims brought against the Service Provider relating to or arising out of such tests or audits except to the extent that it would be unlawful for the Authority not to be responsible or liable. The Service Provider agrees to indemnify the TfL Group and its agents against any loss, damage or expenses that the TfL Group or its agents may incur by reason of claims, actions, demands or proceedings brought against the TfL Group or its agents by third parties, including the Service Provider's suppliers, arising out of or in connection with such audits or tests.

16.4 For the purposes of exercising its rights under **clauses 16.2** and **16.3**, the Service Provider shall provide the Authority and/or any person nominated by the Authority with all reasonable co-operation including:

16.4.1 granting access to any premises, equipment, plant, machinery or systems used in the Service Provider's performance of this Agreement, and where such premises, equipment, plant, machinery or systems are not the Service Provider's own, using all reasonable endeavours to procure such access;

16.4.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;

- 16.4.3 making all Records available for inspection and providing copies of any Records if requested; and
- 16.4.4 making the Service Provider's Personnel available for discussion with the Authority.
- 16.5 Any audit, inspection and/or testing by the Authority pursuant to **clause 16.3** shall not relieve the Service Provider or any of its sub-contractors from any obligation under this Agreement or prejudice any of the TfL Group's rights, powers or remedies against the Service Provider.
- 16.6 The Service Provider shall promptly, to the extent reasonably possible in each particular circumstance, comply with the TfL Group's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Services.
- 16.7 This **clause 16** shall survive termination of this Agreement.

17. **CONTRACT MANAGEMENT AND CHANGE CONTROL**

- 17.1 The Service Provider shall provide the Authority with a written report on a monthly basis in respect of the Services performed in the preceding month or at the intervals set out in **Schedule 1**, if different. Such reports shall be provided within ten (10) Business Days of the end of the relevant calendar month or interval set out in **Schedule 1**. Unless agreed otherwise in writing, a review meeting shall be held within ten (10) Business Days thereafter between representatives of the parties to discuss such report and any other matters relating to the status and performance of this Agreement generally.
- 17.2 Any reports to be provided to the Authority under **clause 17.1** will contain at least the following and any other agreed items:
 - 17.2.1 written status summary;
 - 17.2.2 requests for action from the Authority;
 - 17.2.3 activities completed during the period;

- 17.2.4 activities to be completed in the next period and by whom;
- 17.2.5 perceived risk factors and the strategies being used to minimise them; and
- 17.2.6 where applicable to the relevant Service(s) being provided, measurement of the Service Provider's performance against the Service Levels and details of any Service Credits accrued,

in a form to be agreed between the Authority and the Service Provider.

- 17.3 Any and all changes to the Services and the Software to be supplied shall be made in accordance with the Change Control Provisions set out in **Schedule 0**.

18. **INSURANCE**

- 18.1 The Service Provider shall at its sole cost obtain and maintain the Insurances.

- 18.2 The Service Provider shall:

- 18.2.1 procure that its public liability insurance extends to indemnify the Authority as principal;

- 18.2.2 procure the Authority's interest is noted on each and every policy or that its public liability insurance, employer's liability insurance and product liability insurance includes an Indemnity to Principal clause;

- 18.2.3 provide evidence satisfactory to the Authority prior to the Commencement Date and at least five (5) Business Days prior to each anniversary of the Commencement Date that the Insurances have been effected and are in force. Where any Insurance is due for renewal during the term of this Agreement, the Service Provider shall within five (5) Business Days after the date of renewal also provide the Authority with satisfactory evidence that such Insurance has been renewed;

- 18.2.4 where the Insurances contain a care, custody or control exclusion, procure that the relevant policy is endorsed so as to delete the exclusion in respect of any of the Authority Premises (including contents) that are occupied by the Service Provider for the purpose of performing the Services;
- 18.2.5 if required by the Authority, procure that prior to cancelling or changing any term of any Insurances, such that it no longer meets the requirements set out in this Agreement, the insurer or insurers under such Insurances give the Authority not less than thirty (30) days' notice of intention to cancel or make such change;
- 18.2.6 bear the cost of all or any excesses under the Insurances;
- 18.2.7 notify the Authority as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
- 18.2.8 notify the Authority as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services in excess of £100,000 or the figure set out in **Schedule 1**, if different, on any Insurance and, if requested by the Authority and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the Authority may reasonably require) within three (3) Business Days of the TfL Group's request;
- 18.2.9 promptly and diligently deal with all claims under the Insurances (or any of them) relating to the Services and in accordance with all insurer requirements and recommendations; and
- 18.2.10 in relation to any claim settled under the Insurances in respect of the Services and to the extent that the proceeds of such claim are payable to the Service Provider, pay the proceeds to the person who

suffered the loss or damage that gave rise to the claim (whether the Authority, a TfL Group Member or any third party).

- 18.3 If the Service Provider is in breach of **clause 18.2** and does not remedy such breach within thirty (30) days of notice from the Authority to do so, then without prejudice to any of its other rights, powers or remedies, the Authority may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the Authority may recover such premiums from the Service Provider, together with all expenses incurred in procuring such Insurances as a debt.
- 18.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the Insurances being or becoming void, voidable or unenforceable.
- 18.5 In relation to Insurances which must be held for a period which extends beyond termination, this **clause 18** shall survive termination of this Agreement.

19. **THE TFL GROUP'S DATA**

- 19.1 The Service Provider acknowledges the TfL Group's ownership of Intellectual Property Rights which may subsist in the TfL Group's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to TfL Group's data.
- 19.2 The Service provider shall at any time when any of the TfL Group's data is in its control or possession preserve the integrity of such TfL Group's data and to prevent any corruption or loss of TfL Group's data.

20. **INTELLECTUAL PROPERTY RIGHTS**

- 20.1 Except for any of the Service Provider's Software, the Third Party Software, the Service Provider's IPR and Third Party IPR, all Intellectual Property Rights of whatever nature in the Software and the Services ("**the Authority Rights**") whether created by the Service Provider or any of the Service Provider's Personnel shall or shall on creation of the same be and remain

vested in the Authority. Prior to such vesting, the Service Provider grants the TfL Group a perpetual, royalty-free, worldwide and transferable licence to use, adapt, translate, support and sub-licence the Authority Rights to the extent necessary for the Authority, the TfL Group and its other authorised agents to receive its rights under this Agreement, including with respect to the right to test the Software and/or Services. The Service Provider shall do all such acts and execute all such deeds and documents as shall be necessary or desirable to perfect the right, title and interest of the Authority in and to such Intellectual Property Rights, including ensuring that the Service Provider's Personnel assign all such Intellectual Property Rights owned by them either direct to the Authority or to the Service Provider to enable the Service Provider to comply with its obligations hereunder and waive any moral rights they may otherwise have, in each case at no cost to the Authority.

- 20.2 Nothing in this **clause 20** shall prevent the Service Provider from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not constitute or relate to a disclosure of Confidential Information or an infringement by the Service Provider of any Intellectual Property Right.
- 20.3 To the extent that any TfL Group Member provides the Service Provider for the purpose of or in connection with providing the Services or supplying the Software with any materials in which any TfL Group Member owns (or is licensed by a third party to use) the Intellectual Property Rights, the Service Provider acknowledges and agrees that nothing in this Agreement grants to the Service Provider any right, title or interest in such materials other than a limited non-exclusive right to use those materials solely for the purposes of providing the Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the TfL Group Member or (if applicable) its third party licensors.
- 20.4 The Service Provider warrants and shall ensure that the possession and/or use by the TfL Group of the Software, and the performance by the Service Provider of the Services shall not constitute any infringement or

misappropriation of any Intellectual Property Rights or any other legal or equitable right of any person and that the Service Provider owns or has obtained valid licences to or of all such Intellectual Property Rights and other rights which are necessary for the performance of its obligations under this Agreement.

20.5 If any third party claims that the possession and/or use of the Software and/or the receipt of the Services (“**Indemnified Deliverables**”) by any TfL Group Member and/or the provision by the Service Provider of any Indemnified Deliverable under or in connection with this Agreement constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third party (“**IPR Claim**”), the Service Provider shall indemnify, keep indemnified and hold harmless the TfL Group Members (including their respective employees, sub-contractors and agents) from and against all Losses arising from or incurred by reason of any such IPR Claim (including the defence and any settlement of such IPR Claim).

20.6 In the event of a claim pursuant to **clause 20.5**:

20.6.1 the Authority shall promptly notify the Service Provider of the claim;

20.6.2 the Service Provider shall, at its own cost and expense, control the defence of such IPR Claim and any related proceedings or settlement negotiations, except that the Authority shall be entitled to take any action which it deems necessary if the Service Provider fails to take action, or (in the TfL Group’s reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the Authority, prejudice the interests of the TfL Group; and

20.6.3 at the cost and expense of the Service Provider, the Authority shall take all reasonable steps to co-operate with the Service Provider in the defence or settlement of such IPR Claim.

20.7 If any Indemnified Deliverable becomes the subject of any IPR Claim and, as a result of such IPR Claim, a court of competent jurisdiction grants an

injunction preventing the use by the Service Provider or any TfL Group Member of any of such Indemnified Deliverable or there is substantial risk of such injunction being granted or the IPR Claim is settled on the basis that the Indemnified Deliverable cannot be used, the Service Provider shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:

20.7.1 obtain for the TfL Group Members the right to continue to possess, use and/or receive the benefit of the relevant Indemnified Deliverable(s); or

20.7.2 replace or modify the relevant Indemnified Deliverable(s) so that it becomes non-infringing without detracting from the functionality or performance of the overall Software or Service and provided that any such replacement or modification shall not prevent the Service Provider's compliance with the warranties contained at **clause 9**.

20.8 The Service Provider shall have no liability under or in connection with this Agreement for any infringement caused solely and directly by:

20.8.1 the combination of the relevant Indemnified Deliverable with other products, data or information not supplied by the Service Provider unless the combination was made or approved by the Service Provider;

20.8.2 the modification of the Indemnified Deliverable unless the modification was made or approved by the Service Provider;

20.8.3 the supply by or on behalf of the Authority of any of the materials specified at **clause 20.3**; or

20.8.4 breach by the Authority of any of the terms of this Agreement and/or any licence terms in respect of the Indemnified Deliverable to which the Authority is subject pursuant to the terms of this Agreement.

20.9 If any third party claims that the possession and/or use by the Service Provider of any of the materials provided to the Service Provider as

contemplated in **clause 20.3** (the “**Authority Deliverables**”) constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third party, the Authority shall indemnify, keep indemnified and hold harmless the Service Provider (including their respective employees, sub-contractors and agents) from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a full indemnity basis) and damages awarded by a court of competent jurisdiction or agreed to be paid by way of settlement of such claim provided that:

20.9.1 the Service Provider promptly notifies the Authority of such claim;

20.9.2 the Authority shall, at its own cost and expense, be entitled to control the defence of such claim and any related proceedings or settlement negotiations; and

20.9.3 at the cost and expense of the Authority, the Service Provider takes all reasonable steps to co-operate with the Authority in the defence or settlement of such claim.

20.10 The Authority shall not be liable under **clause 20.9** or otherwise for any infringement:

20.10.1 caused by the combination of the relevant Authority Deliverables with other products, data, or information not supplied by the Authority;

20.10.2 caused by any use by the Service Provider of any of the Authority Deliverables other than strictly for the purpose of the Service Provider performing its obligations under this Agreement; or

20.10.3 caused by breach by the Service Provider of any of the terms of this Agreement.

20.11 If any of the Authority Deliverables become the subject of any claim as described in **clause 20.9** and, as a result of such claim, a court of competent jurisdiction grants an injunction preventing the TfL Group’s and/or the Service Provider’s use of any such of the Authority Deliverables or there is substantial risk of such injunction being granted or the claim is settled on the

basis that the Authority Deliverables cannot be used, the Authority shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:

20.11.1 obtain for the Service Provider the right to continue to possess and/or use the relevant Authority Deliverables;

20.11.2 with all such assistance from the Service Provider (including the provision of Additional Services) as may be agreed in accordance with **clause 32**, replace or modify the relevant Authority Deliverables so that it becomes non-infringing without detracting from the functionality or performance of the Authority Deliverables so as to prevent the Service Provider from complying with its obligations under this Agreement; or

20.11.3 if it is not commercially reasonable to perform either of the above options, the Authority and the Service Provider shall cease use of the infringing the Authority Deliverables in which case the parties' representatives shall meet and, in good faith, explore all possible amendments to the Services which are required as a result of such cessation of use. Any such amendments shall be considered and (where applicable) agreed in accordance with **clause 32**.

20.12 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Third Party IPR used in connection with this Agreement have been paid and no such amounts shall be payable by the Authority or any TfL Group Member except to the extent such amounts are included within the Charges.

20.13 This **clause 20** shall survive termination of this Agreement.

21. **GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY**

21.1 Neither party excludes or limits its liability to the other party in respect of:

21.1.1 the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

21.1.2 death or personal injury resulting from negligence within the meaning of section 1(1) of the Unfair Contract Terms Act 1977;

21.1.3 to the extent applicable, liability under Part 1 of the Consumer Protection Act 1987 for defects within the meaning of that Act;

21.1.4 **clause 29** (Confidentiality and Transparency);

21.1.5 fraud (including fraudulent misrepresentation); or

21.1.6 any other liability which, by law, it cannot exclude or limit,

but nothing in this clause confers any right or remedy upon a party to which it would not otherwise be entitled.

21.2 The Service Provider does not exclude or limit its liability to the Authority under or in connection with this Agreement:

21.2.1 for breach of Intellectual Property Rights (whether pursuant to **clause 20** (Intellectual Property Rights) or otherwise);

21.2.2 in respect of liability pursuant to **clause 11** (Access to the Authority Premises);

21.2.3 in respect of liability pursuant to **clauses 30 and 31** (Freedom of Information and Data Protection); or

21.2.4 in respect of liability pursuant to **clause 23** (Loss of Software and Data Security).

21.3 Subject to **clauses 21.1** and **21.2**, **clauses 21.3** to **21.8** set out the entire liability of each party (including liability for the acts or omissions of its employees, agents or sub-contractors and, in relation to the Authority, the acts or omissions of the TfL Group) to the other party in respect of:

21.3.1 any breach of its contractual obligations arising under or in connection with this Agreement;

- 21.3.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Agreement; and
- 21.3.3 any damage to property.
- 21.4 Except as provided in **clauses 21.1** and **21.2**, the Service Provider's maximum liability under this Agreement will be as set out in **Schedule 1**.
- 21.5 Except as provided in **clause 21.1**, the entire liability of the Authority and the TfL Group (together) under or in connection with this Agreement will not exceed the TfL Group's Liability Cap.
- 21.6 In the event that a TfL Group Member other than the Authority suffers Losses in circumstances where the Authority would be able to recover such Losses from the Service Provider, such person may recover from the Service Provider an amount equal to the amount that the Authority would have been able to recover had the Losses been suffered by the Authority rather than the other TfL Group Member subject always to the limitations and exclusions of liability contained in this Agreement. In the alternative, the Service Provider agrees that any Losses suffered or incurred by any TfL Group Member arising under or in connection with this Agreement (in this **clause 21.6** collectively "**Group Member Losses**"): (i) will be deemed to have been incurred by the Authority; and (ii) will be recoverable by the Authority from the Service Provider as if they were losses suffered or incurred directly by the Authority but always subject to the limitations and exclusions of liability set out in this Agreement. For the purposes of this **clause 21.6**, any TfL Group Member Losses shall not be deemed to be consequential or indirect or special merely as a result of not being suffered directly by the Authority. For the avoidance of doubt, the Service Provider shall still be entitled, in the case of a remediable breach, to remedy such breach in accordance with the terms of this Agreement.
- 21.7 In the event that the Service Provider is defined under this Agreement to include more than one person, then each such person shall be jointly and

severally liable for all obligations of the Service Provider under this Agreement.

21.8 The exclusions from and limitations of liability set out in this **clause 21** shall be considered severably. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this **clause 21** shall not affect the validity or enforceability of any other clause, sub-clause, paragraph or sub-paragraph of this **clause 21**.

21.9 Subject to **clause 21.10**, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the Authority and the other TfL Group Members (including their respective employees, sub-contractors and agents) (the “**Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or any negligent performance of this Agreement by the Service Provider (including in each case any non-performance or delay in performance of this Agreement) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider.

21.10 The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by the Authority and/or any other the TfL Group Member.

21.11 The provisions of this **clause 21** shall survive the termination of the whole or a part of this Agreement.

22. **FORCE MAJEURE**

22.1 Subject to **clauses 22.4** and **36**, neither party shall be liable for any delay in performing or for failure to perform any of its obligations under this Agreement due to a Force Majeure Event.

22.2 Subject to **clauses 22.4** and **36**, if either party is prevented from performing any of its obligations due to a Force Majeure Event it shall promptly notify the other party in writing of the circumstances of the Force Majeure Event and the other party shall grant a reasonable extension for the performance of this

Agreement. The other party shall in no circumstances be obligated to give an extension which is of a period longer than the Force Majeure Period set out in **Schedule 1**. The Authority may terminate this Agreement on immediate notice in writing if a Force Majeure Event affecting the Service Provider continues for more than the Force Majeure Period set out in **Schedule 1**.

22.3 Subject to **clauses 22.4** and **36**, it is expressly agreed that any failure by the Service Provider to perform, or any delay by the Service Provider in performing, its liabilities, obligations or responsibilities under this Agreement which results from any failure or delay in the performance of its obligations by any person with which the Service Provider shall have entered into any contract, supply arrangement, sub-contract or otherwise, shall be regarded as a failure or delay due to a Force Majeure Event only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract or otherwise as a result of circumstances of a Force Majeure Event.

22.4 In the case of Services or Software which are for business critical or safety critical parts of the TfL Group, its estate or services or which otherwise require continuous uninterrupted service, as indicated by TfL in **Schedule 1**, the Service Provider shall not be excused from performance due to a Force Majeure Event or a Disaster.

23. **LOSS OF SOFTWARE AND DATA SECURITY**

23.1 Without prejudice to its other obligations under this Agreement, the Service Provider shall, during the term of this Agreement and in the course of performing the Services, provide all measures necessary in respect of the prevention of unauthorised access to any TfL Group Member's computer systems, software and data, the prevention of the introduction of known Viruses and shall provide the capability to restore the systems, software and data in the event that the loss of the systems, software or data arises directly or indirectly from any act or omission of the Service Provider (including the Service Provider's Personnel) or whilst such systems, software or data is in

the custody, control or otherwise interfaced with or accessed by the Service Provider.

23.2 The Service Provider shall not, without the consent of the Authority, be entitled to delete any software or data belonging to any TfL Group Member to which the Service Provider has access in performance of its obligations under this Agreement.

23.3 Upon receipt or creation by the Service Provider of the TfL Group's data and during any collection, processing, storage and transmission by the Service Provider of the TfL Group's software or data the Service Provider shall take all necessary precautions to preserve the integrity of such software and data and to prevent any corruption or loss thereof including such precautions as are specified by the Authority from time to time.

23.4 In the event that any of the TfL Group's software or data is corrupted or lost or so degraded as to be unusable due to any act or omission of the Service Provider after its receipt or creation by the Service Provider or during any collection, processing, storage or transmission by the Service Provider of the TfL Group's software or data or otherwise as a result of any default by the Service Provider then, in addition to any other remedies that may be available to the Authority under this Agreement or otherwise:

23.4.1 the Service Provider shall promptly, at the Service Provider's expense, restore or procure the restoration of the TfL Group's software and data to the TfL Group's reasonable satisfaction, as notified in writing, such that the Service Provider has made good the corruption, loss or degradation of the software and data; and

23.4.2 in the event that the Authority itself has to restore or procure the restoration of the Service Provider's software or data, then the Authority shall require the Service Provider to repay the Authority's reasonable costs and expenses incurred in carrying out such restoration.

23.5 In the event that any of the TfL Group's software or data is corrupted or lost or sufficiently degraded as to be unusable otherwise than due to a default by the Service Provider, the Service Provider shall nevertheless carry out such remedial actions to restore the TfL Group's software and data or such other actions as may be necessary to restore the TfL Group's software and data as the Authority may request in writing and the reasonable agreed cost of the remedial actions or such other actions shall be borne by the Authority.

23.6 Without prejudice to the generality of **clauses 23.1** and **23.3**, the Service Provider shall:

23.6.1 before performing any actions in respect of any TfL Group Member's software or data, ensure that it has performed back-ups of such software or data as set out in **Schedule 1** or agreed in writing from time to time or, where none are agreed, as are reasonable in the circumstances; and

23.6.2 perform its obligations in conformance with the Security Policy.

Nothing in this Agreement shall relieve the Service Provider's obligations in this regard.

23.7 The Service Provider shall fully indemnify the Authority and the TfL Group for any and all Losses incurred or suffered by the Authority and/or any the TfL Group Member which results from a breach by the Service Provider of its obligations under this **clause 23**.

23.8 This **clause 23** shall survive termination of this Agreement.

24. **TERMINATION**

24.1 Without prejudice to the TfL Group's right to terminate at common law, the Authority may terminate this Agreement immediately (or on such later date as it shall specify in writing) upon giving notice to the Service Provider if:

24.1.1 the Service Provider has committed any material or persistent breach of this Agreement and in the case of such a breach that is capable of remedy fails to remedy that breach within twenty (20) Business Days

from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;

24.1.2 the Service Provider is subject to an Insolvency Event;

24.1.3 there is a Change of Control or of management personnel of the type referred to in **clause 28.4**; or

24.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with **clause 10**;

24.1.5 the Service Provider commits any of the money laundering offences under the Money Laundering Regulations 2003;

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

24.1.7 a termination circumstance, as referred to in **Schedule 6**, applies.

24.2 Without prejudice to the TfL Group's right to terminate this Agreement under **clause 24.1** or to terminate at common law, the Authority may terminate this Agreement and/or the Maintenance Services and/or the Additional Services at any time without cause subject to giving the Service Provider written notice of the period specified in **Schedule 1**.

24.3 To the extent that the Authority has a right to terminate this Agreement under this **clause 24** then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Software or the Services set out in the **Annexes to Schedule 0** with effect from the date specified in the TfL Group's notice ("**Change Date**") whereupon the provision of the remainder of the Software or the Services will cease and the definition of "the Software" and/or "the Services" shall be deemed amended accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or, if in the TfL Group's opinion a proportionate adjustment would not be reasonable, in such manner as the Authority may reasonably determine.

24.4 Subject to **clause 4.9**, the Service Provider may terminate for non-payment by the Authority. Termination may only occur after a failure to remedy by the Authority within sixty (60) Business Days from the date of written notice by the Service Provider provided that the Service Provider also provides a written notice to the Authority thirty (30) Business Days after the first written notice is served of its intention to terminate if payment is not made within the next thirty (30) Business Days.

24.5 Without prejudice to the Authority's right to terminate the Agreement under **clauses 24.1, 24.2** or at common law, the Authority may terminate the Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of **clause 25A**.

25. **CONSEQUENCES OF TERMINATION/EXIT**

25.1 Except in the case of termination for breach, the Service Provider shall provide the Authority with a statement of account of monies owing to it (if any) for agreement with the Authority. The statement will not include monies withheld under **clause 4.8** or **4.9**.

25.2 On termination of this Agreement, howsoever caused, clauses and Schedules in this Agreement which expressly or impliedly have effect after termination shall remain in effect including **clause 20** (Intellectual Property Rights), **clause 21** (General Exclusions and Limitations of Liability), **clause 29** (Confidentiality and Transparency), **clause 38** (Law and Dispute Resolution) and **Schedule 10** (Exit Management).

25.3 The termination 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.

25.4 Upon termination of this Agreement (howsoever caused) the parties shall perform their respective obligations under **Schedule 10** and the Exit Plan.

25.5 Notwithstanding the provisions of the Exit Plan and **Schedule 10**, whenever the Authority chooses to put out to tender for a replacement service provider for some or all of the Services or Software, the Service Provider shall

disclose to tenderers such information concerning the Services and Software as the Authority may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

25.6 The Authority shall, within thirty (30) days of the statement of accounts being agreed under **clause 25.1**, pay the Service Provider any charges remaining due in relation to any Services properly performed and/or the Software properly delivered in accordance with this Agreement up to the date of termination.

25.7 If the Authority terminates this Agreement other than under **clause 24.2**, then the Authority may, without prejudice to its other rights under this Agreement:

25.7.1 itself complete the supply of the Software and/or the Services, or enter into a contract with a third party to effect such completion and, for the avoidance of doubt, such completion shall be taken to include the creation or procurement of any software; and

25.7.2 the Authority shall be entitled to use or have used on its behalf all know-how and Intellectual Property Rights owned or controlled by the Service Provider used in or in connection with the Software and/or Services (including any Escrow Materials and Source Materials as defined below) free of charge for the purposes of completion and use, amendment, modification and/or enhancement of the Software and Services as envisaged by this Agreement after such completion.

25.8 If the Authority terminates this Agreement in accordance with **clause 24.1.2**, then the Service Provider shall, as of the date of termination of this Agreement, assign to the TfL Group with full title guarantee, all Intellectual Property Rights in the Services and the Software which were due to be transferred to the Authority should the Insolvency Event have not occurred and which are in existence and capable of assignment as of the date of termination.

25.9 Upon termination of this Agreement (howsoever caused) or a cessation of any Services or part thereof, the Authority may enter into any agreement with any third party or parties as the Authority thinks fit to provide any or all of the Services and the Software and, save in the case of a termination by the Authority pursuant to **clause 24.2**, the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the charges or any other sums due to the Service Provider or otherwise recover such costs from the Service Provider as a debt.

25A DECLARATION OF INEFFECTIVENESS

25A.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 25** and this **Clause 25A** 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 25** and this **Clause 25A** or the Cessation Plan, the provisions of this **Clause 25A** and the Cessation Plan shall prevail.

25A.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.

25A.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:

25A.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

25A.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of this **Clause 25A** and to give effect to the terms of the Declaration of Ineffectiveness.

25A.4 Upon agreement, or determination by the Authority, of the Cessation Plan the parties will comply with their respective obligations under the Cessation Plan.

25A.5 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to this **Clause 25A**.

26. **STEP IN RIGHTS**

26.1 If the Authority reasonably believes that it needs to take action in connection with part or all of the Services:

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

26.1.2 to discharge a statutory duty;

26.1.3 because the Services are not being performed to at least the Service Levels;

26.1.4 because the Services are not being performed when due to be performed; and/or

26.1.5 because the Services are not being performed in accordance with the terms of this Agreement,

then, save where such failure to perform is due to the acts or omissions of the Authority or any TfL Group Member and without prejudice to any other rights of the Authority, the provisions set out in this **clause 26** shall apply.

26.2 The Authority shall notify the Service Provider in writing of the following:

26.2.1 the action it wishes to take, which may include stepping-in to provide the affected services by the TfL Group or via a third party;

26.2.2 the reason for such action;

26.2.3 the date it wishes to commence such action;

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

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

26.3 Following service of such notice, the Authority or a third party appointed by the Authority for the purpose shall take such action as is notified under **clause 26.2** and any consequential additional action as the Authority reasonably believes is necessary (the “**Required Action**”) and the Service Provider shall give all reasonable assistance at no additional cost to the Authority or such third party while it is taking such the Required Action.

26.4 Without prejudice to the generality of **clause 26.3**, the Service Provider will co-operate fully with and provide all reasonable assistance to the Authority and/or third party performing the Required Action (“**Step-In Provider**”), including allowing:

26.4.1 the Step-In Provider to use all or any part of the Software and/or provide such access to the Service Provider’s premises as may be reasonably required to assist in the performance of such Services;

26.4.2 the Step-In Provider reasonable access to such management records, software, documentation and equipment which relate to the

Services as is reasonably necessary to enable the performance of the Services; and

26.4.3 the Step-In Provider to manage the Service Provider's business and contractual relationships with sub-contractors, agents and/or third party providers where relevant to the continuing provision of the Services.

26.5 The Step-In Provider will cease to provide the Services and the Service Provider will resume its obligations under this Agreement when the Service Provider can demonstrate to the reasonable satisfaction of the Authority that the Service Provider has rectified the breach that led to the appointment of the Step-In Provider or the Authority confirms it wishes to cease providing the Required Action.

26.6 For so long as and to the extent that the Required Action is taken and this prevents the Service Provider from providing any part of the Services, the Service Provider shall be relieved from its obligations to provide such part of the Services and the Authority shall not be liable to pay Charges for such part of the Services.

26.7 The Service Provider will bear all of the reasonable costs and expenses of the Authority and any third party (including, amongst other things, staff costs) in taking the Required Action and any actions required to be taken by the Authority or such third party to re-transfer the obligation to provide the Services to the Service Provider.

27. **SEVERABILITY**

27.1 If any provision of this Agreement (in whole or in part) is held to be 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 TfL Group'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.

28. **ASSIGNMENT/SUB-CONTRACTING/CHANGE OF OWNERSHIP**

28.1 The Service Provider shall not assign or sub-contract all or any part of the Services or its obligations in relation to providing the Software without the prior written consent of the Authority as to the identity of the relevant sub-contractor, which may be refused or granted consent subject to such conditions as the Authority sees fit.

28.2 Where the Service Provider sub-contracts all or any part of the Services or the provision of the Software to any person, the Service Provider shall:

28.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Services or the provision of the Software or part thereof (as the case may be) which that sub-contractor is required to provide;

28.2.2 be solely responsible for payments to that person;

28.2.3 remain solely responsible and liable to the Authority for any breach of this Agreement or act or omission of a sub-contractor or any performance, non-performance, part performance or delay in performance of any of the Services and/or obligations by any sub-contractor to the same extent as if such breach or act or omission had been made by the Service Provider;

28.2.4 without prejudice to the provisions of **clause 12**, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor; and

28.2.5 where the GLA is the Authority, include a term in each sub-contract requiring payment to be made by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from

receipt of a valid invoice as defined by the sub-contract requirements.

28.3 Where the Authority gives its consent to sub-contracting under **clause 28.1**, the Authority may as a condition of giving its consent to the Service Provider require direct warranties, undertakings, guarantees and/or indemnities from such sub-contractor concerning the provision of the Services and its compliance with the obligations set out in this Agreement in all respects.

28.4 The Service Provider shall give notice to the Authority within ten (10) Business Days in the event that there is:

28.4.1 any change in the control of the Service Provider where such change relates to fifty percent (50%) or more of the issued share capital of the Service Provider; or

28.4.2 any change in the control of the Holding Service Provider where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Service Provider; or

28.4.3 in the case of an unincorporated Service Provider, any change in the management personnel of the Service Provider which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the Service Provider,

such notice to be given:

28.4.4 as soon as reasonably possible upon the Service Provider becoming aware the change of control or of management personnel is going to take place (taking into account any restrictions placed on giving such notice by any recognised stock exchange); and

28.4.5 within ten (10) Business Days of the date on which such change takes effect.

28.5 The Authority may novate or otherwise transfer this Agreement (in whole or in part). Within ten (10) Business Days of a written request from the

Authority, the Service Provider shall, at its own expense, execute such agreement as the Authority may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Agreement to one or more persons nominated by the Authority.

29. **CONFIDENTIALITY AND TRANSPARENCY**

29.1 The Service Provider agrees in respect of Confidential Information disclosed pursuant to this Agreement or discovered further to the operation of this Agreement:

29.1.1 to keep the Confidential Information in strict confidence and secrecy;

29.1.2 not to use the Confidential Information save for complying with its obligations under this Agreement;

29.1.3 subject to **clause 29.1.4**, not to disclose the Confidential Information to a Third Party without prior written consent of the Authority (save that the Service Provider may disclose Confidential Information to any sub-contractors it appoints pursuant to **clause 28** who of necessity need the same in the performance of this Agreement subject to such sub-contractor providing the Authority with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this **clause 29**); and

29.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, agents and sub-contractors (including persons who are appointed from time to time by the Authority to maintain the Software) who of necessity need the same in the performance of this Agreement and in such circumstances to ensure that such employees, agents and sub-contractors are aware of the confidential nature of the Confidential Information subject to any such agents and sub-contractors providing the Service Provider with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this **clause 29**.

- 29.2 The obligations set out in **clause 29.1** shall not apply to any Confidential Information which:
- 29.2.1 the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal otherwise than directly or indirectly from the Authority or any other TfL Group Member;
 - 29.2.2 is lawfully disclosed to the Service Provider without any obligations of confidence, by any person who has not derived it directly or indirectly from the Authority or any other TfL Group Member;
 - 29.2.3 is or has come into the public domain through no fault of the Service Provider or its personnel;
 - 29.2.4 is required by law or by order of a court of competent jurisdiction to be disclosed but only to the extent required by such law or order;
 - 29.2.5 is disclosed with the prior written consent of the Authority; or
 - 29.2.6 is disclosed pursuant to **clause 30**.
- 29.3 The Service Provider acknowledges that damages would not be an adequate remedy for any breach of **clause 29** and that (without prejudice to all other rights, powers and remedies which the Authority may be entitled to as a matter of law) the Authority shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this **clause 29** and no proof of special damages shall be necessary for the enforcement of the provisions of this **clause 29**.
- 29.4 The Service Provider's obligation of confidentiality in this **clause 29** shall survive the termination of this Agreement.
- 29.5 For the avoidance of doubt, **clause 30** shall take precedence over this **clause 29** to the extent of any inconsistency.
- 29.6 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding any other

provision of this Agreement, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.

29.7 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. 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 29.6**. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

30. **FREEDOM OF INFORMATION**

30.1 The Service Provider acknowledges that the Authority:

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

30.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider and, subject to the provisions of this **clause 30**, may ultimately at its discretion disclose such Information.

30.2 Without prejudice to the generality of **clause 30.1**, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

30.2.1 transfer to the Authority each Information Request relevant to this Agreement, the Services, the Software or any TfL Group Member 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

30.2.2 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.

30.3 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.

30.4 This **clause 30** shall survive termination of this Agreement.

31. **DATA PROTECTION**

31.1 The Service Provider shall comply with all of its obligations under the DPA and, if Processing Personal Data on behalf of the TfL Group (“**Authority Personal Data**”), shall only carry out such Processing for the purposes of providing the Services and the Software in accordance with this Agreement and in accordance with any obligations imposed by the Authority in **Schedule 1** and any other instructions from the Authority as may be specified from time to time.

31.2 Without prejudice to the generality of **clause 31.1**, the Service Provider shall:

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

31.2.2 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 31.2.1**;

31.2.3 co-operate with the Authority in complying with any subject access request made by any Data Subject pursuant to the DPA and/or

responding to any enquiry made or investigation or assessment of Processing initiated by the Information Commissioner in respect of any Authority Personal Data;

31.2.4 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 Authority Personal Data;

31.2.5 take reasonable steps to ensure the reliability of Personnel having access to Authority 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 Authority Personal Data; and

31.2.6 not Process any Authority 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 TfL Group's prior written consent and, in the event of such consent, only if the Service Provider has agreed in writing to reasonable provisions imposed by the Authority relating to such Processing.

31.3 When the Service Provider receives a written request from the Authority for information about, or a copy of, Authority Personal Data, the Service Provider shall supply such information or data to the Authority within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within ten (10) Business Days from the date of the request.

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

31.4.1 to only Process Authority Personal Data in accordance with the TfL Group's instructions to the Service Provider; and

31.4.2 to comply with the same obligations with which the Service Provider is required to comply under this **clause 31**.

31.5 This **clause 31** shall survive termination of this Agreement.

32. **AMENDMENT AND WAIVER**

32.1 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 require and which may be substantially in the form set out in **Schedule 7** and shall not be binding upon the parties unless completed in accordance with such form of variation.

32.2 Any waiver of a breach of any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the other terms of this Agreement.

33. **EMPLOYEES**

33.1 Nothing in this Agreement will render the Service Provider's Personnel an employee, agent or partner of the Authority or of any member of the TfL Group by virtue of the provision of the Services by the Service Provider under this Agreement and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.

33.2 Notwithstanding **clause 33.1**, the Service Provider shall indemnify, keep indemnified and hold harmless the TfL Group from and against all liabilities, costs, expenses, injuries, direct or indirect or consequential loss, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Authority or the TfL Group incur or suffer whenever arising or brought by the Service Provider's Personnel or any person who may allege to be the same.

33.3 The Service Provider shall pay to the Service Provider's Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for this Agreement and not less than the amounts to which the Service Provider's Personnel are contractually entitled.

33.4 *NON-SOLICITATION*

33.4.1 Subject to **clause 33.4.2**, neither the Service Provider nor the Authority shall, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:

33.4.1.1 at any time during the Term solicit, induce or entice away or endeavour to solicit, induce or entice away from the other party any person employed by or contracted to that party in a senior and/or skilled capacity where such person is engaged at any time during the term in the performance of this Agreement whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other party;

33.4.1.2 at any time during the Term employ, engage or appoint any person employed by the other party in any senior and/or skilled capacity where such person is engaged at any time during the term in the performance of this Agreement and where such person would commit a breach of his or her contract of employment by leaving the employment of the other party;

33.4.1.3 at any time during the period of twelve (12) months following the end of the Term, solicit, induce or entice away or endeavour to solicit, induce or entice away, from the other party any person employed by or

contracted to the other party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term in the performance of this Agreement (including employees whose employment has transferred to the Authority or a new service provider pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 after the end of the Term) whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other party; or

33.4.1.4 at any time during the period of twelve (12) months following the end of the Term employ, engage or appoint any person employed by the other party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term of this Agreement in the performance of this Agreement and where such person would commit a breach of his or her contract of employment by leaving the employment of the other party.

33.4.2 This **clause 33.4** shall not prevent employment resulting from general recruitment advertising which shall not constitute a breach of **clause 33.4**.

33.5 Subject to **Schedule 1**, the parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 are not envisaged to apply on the Commencement Date or the termination of this Agreement.

33.6 This **clause 33** shall survive termination of this Agreement.

34. **NOTICES**

34.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, prepaid recorded delivery first

class post or facsimile addressed to the addressee at the address stated in **Schedule 1** (or in the absence of such address being set out, the recipient's registered office), or any other address and facsimile number notified to the other party in writing in accordance with this clause as an address to which notices, demands and communications may be sent. The notice, demand or communication will be deemed to have been duly served:

34.1.1 if delivered by hand, at the commencement of the following Business Day;

34.1.2 if delivered by post, seventy-two (72) hours after being posted or, in the case of airmail, ten (10) Business Days after being posted; or

34.1.3 if delivered by facsimile, at the commencement of the following Business Day, provided that a confirming copy is sent by first class post to the other party within twenty-four (24) hours after transmission.

35. **PUBLICITY**

35.1 Subject always to the provisions of **clause** Error! Reference source not found., no announcement, circular, advertisement or other publicity (including any communication with representatives of the general or technical press, radio, television or other communications media) in connection with this Agreement, its subject matter or any ancillary matter will be made or issued by or on behalf of the Service Provider without the prior written consent of the Authority. The Authority shall have the right to approve any such announcement, circular, advertisement or other publicity before it is made.

35.2 The Service Provider agrees and shall ensure that the Authority has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with this Agreement.

36. **DISASTER RECOVERY**

- 36.1 The Service Provider will ensure at all times it has in place a Disaster Recovery Plan and that the Disaster Recovery Plan is adequate to minimise the effect of any Disaster.
- 36.2 Subject to **clause 36.4**, unless the Disaster was caused by a Force Majeure Event which a reasonable disaster recovery plan would not be expected to protect against, the Service Provider's liability to pay the Service Credits will continue to accrue until such time as the Services are performed by the Service Provider in accordance with the provisions of this Agreement and the Service Levels. Without prejudice to the generality of the foregoing, a reasonable disaster plan should protect against incidents involving fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions.
- 36.3 In the event of a Disaster, the Service Provider will immediately implement the Disaster Recovery Plan and will continue to provide those Services which are not affected by the Disaster 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 36** and this Agreement.
- 36.4 In the case of Services or Software which are for business critical or safety critical parts of the TfL Group, its estate or services or which otherwise require continuous uninterrupted service, as indicated by TfL in **Schedule 1**, the Service Provider shall not be excused from performance due to a Force Majeure Event or a Disaster.

37. **INDEMNITY - CONDUCT OF CLAIMS**

- 37.1 In respect of any claim arising under any indemnity contained in this Agreement, the party indemnified ("**indemnified party**") will:
- 37.1.1 as soon as possible give to the party giving the indemnity ("**indemnifying party**") written notice of the claim, circumstance or matter against which that party is claiming to be indemnified, and all

details of the claim from time to time in the knowledge or possession of that party;

37.1.2 where the claim relates to a claim by any third party against that party, not without the prior written consent of the other party (which will not be unreasonably withheld or delayed) admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim; and

37.1.3 where the claim is by a third party against the indemnified party,

37.1.3.1 at the request of the indemnifying party; and

37.1.3.2 provided at all times that the indemnifying party provides to the reasonable satisfaction of the indemnified party security for all costs, charges and expenses,

surrender to the indemnifying party or its insurers the conduct, in the indemnified party's name, of the defence, settlement and/or counterclaim to the third party's claim (provided that the indemnified party will be kept fully informed as to the conduct of such defence, settlement and/or counterclaim).

38. **LAW AND DISPUTE RESOLUTION**

38.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement as well as any non-contractual obligations arising out of or in connection with it shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties agree irrevocably to submit to that jurisdiction.

38.2 If the Dispute is not settled through discussion between the representatives of the parties within a period of seven (7) Business Days of the date on which the Dispute arose, the parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the parties for resolution.

- 38.3 If the Dispute is not resolved within ten (10) 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.
- 38.4 If, within twenty (20) Business Days of the service of the Notice, the parties are unable to agree on a mediator or if the agreed mediator is unable or unwilling to act, 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.
- 38.5 Where a dispute is referred to mediation under **clause 38.4**, 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.
- 38.6 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.
- 38.7 If either party refuses at any time to participate in the mediation procedure or 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 38.1**.
- 38.8 For the avoidance of doubt, the Service Provider shall continue to perform its obligations under this Agreement in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this **clause 38**.
- 38.9 Neither party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this **clause 38**.

39. **RIGHTS OF THIRD PARTIES**

39.1 Save that any TfL Group Member has the right to enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 (“**Third Party Act**”), the parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Third Party Act by any person not a party to it.

39.2 Notwithstanding **clause 39.1**, the parties are entitled to waive time, vary or rescind this Agreement without the consent of any TfL Group Members.

40. **ENTIRE AGREEMENT/RELIANCE ON REPRESENTATIONS**

40.1 This Agreement and the documents and Schedules and Annexes which are incorporated into and form part of this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersede any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.

40.2 The Service Provider acknowledges that this Agreement has not been entered into wholly or partly in reliance on, nor has the Service Provider been given, any warranty, statement, promise or representation made by or on behalf of the Authority other than as expressly set out in this Agreement. To the extent that any such warranties, statements, promises or representations have been given the Service Provider unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

40.3 Nothing in this **clause 40** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

41. **GENERAL**

41.1 Nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or

employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

41.2 The failure or delay by either party to this Agreement in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party to this Agreement 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 right, power or remedy.

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

	throughout the London area.
Warranty Period(s)	6 months from Acceptance in respect of each element of the Software
Euro Compliance Required?	Yes
Time period for payment under clause 4.5 (if different to the 30 day period set out in clause 4.5)	30 days from the Authority's receipt of invoice
Force Majeure Period	a period being no more than 30 days after the first date of the applicable Force Majeure Event
Insurances	See Insurances Annex in this Schedule 1
Level for clause 18.2.8, if different to £100,000	See Annex A
Service Provider's IPR, including any Service Provider Software	NA
Third Party IPR, including any Third Party Software	NA
Details of Software Licences for Third Party Software and which party is going to procure them	NA
Details of agreed back-ups to be provided by the Service Provider in respect of the Data and Software, if any, and intervals in which they are to be performed	NA
Disaster Recovery	

Are the Services or Software for business critical or safety critical parts of the TfL Group, its estate or services or otherwise Services or Software which require continuous uninterrupted service?

No

Liquidated Damages

Liquidated Damages amount: £100 per day

Liquidated Damages Period:

Reports to be provided other than or in addition to those set out under clause 17

NA

Dates for production of reports under clause 17 if more or less than monthly

Monthly in respect of the Services being provided in the previous month

Notice Period for Termination for Convenience in accordance with clause 24

30

Service Provider’s Liability Cap

21.4 Subject to **clauses 21.1 and 21.2**, the Service Provider’s maximum liability under this Agreement will not exceed:

21.4.1 in relation to loss of or damage to tangible property, £10 million per incident; and

21.4.2 in relation to all other loss, the greater of the following per incident:

£10 million; or

an amount equal to 125 % of the aggregate of all amounts paid and/or

payable (to the extent any sums remain outstanding or are subject to a purchase order) by or on behalf of the Authority to the Service Provider under this Agreement.

The TfL Group's Liability Cap

Subject to **clause 21** and, without prejudice to the generality of the foregoing, in particular subject to **clause 21.1**, the entire liability of the TfL Group under or in connection with this Agreement [in any contractual year] will not exceed in aggregate the aggregate of all amounts paid and/or payable (to the extent any sums remain outstanding) to the Service Provider by the Authority under this Agreement[in such contractual year].

Data Protection

As set out in **clause 31** -

Address to send the Authority Notices to

For attention of

Address: 3rd Floor, Petty France, Room 391/392, 55 Broadway, SW1h OBD

Copy to

General Counsel

6th Floor, Windsor House, 50 Victoria Street, London, SW1H 0TL

Facsimile Number: 020 7126 4598

Address to send Service Provider Notices to

For attention of

Address:

9 Devonshire Square, London, EC2M
4YF

Escrow/Verification Provisions

No Detail of services required:

Escrow: No

Verification Services: No

Agreed Equality Policy required?

Yes

See Schedule 9 to this Agreement

**Authority Address where invoices are
to be submitted to**

**Electronic format required (if any) for
submission of orders by the Authority
and of invoices by the Service
Provider**

Yes -

ANNEX A

INSURANCES

1. Insurance to be held by Service Provider in accordance with **clause 18**:
 - (a) Employer's liability insurance in respect of the Service Provider's liability for death, personal injury or occupational disease of any person in the Service Provider's employment in the sum of not less than five million pounds (£5,000,000) per incident or such other minimum level as may from time to time be required by law;
 - (b) Public liability insurance in respect of the Service Provider's liability for loss or damage to property (including property of the Authority or for which it is responsible), breach of any Intellectual Property Rights and against liability for death, injury or occupational disease in the sum of not less than five million pounds (£5,000,000) per occurrence with financial loss extension and shall be endorsed to provide that no act or omission on the part of the Service Provider shall prejudice the TfL Group's rights under such policy as principal;
 - (c) Professional indemnity insurance in a sum normal and customary for a Service Provider in the business of providing services of a similar scope, nature and complexity to the Services but not less than one million pounds (£1,000,000) in the aggregate per annum for the Term and for six (6) years after expiry or termination of this Agreement; and
 - (d) Product liability insurance in the sum of not less than five million pounds (£5,000,000) in the aggregate per annum with financial loss extension.

ANNEX B

SPECIAL CONDITIONS OF CONTRACT

TfL will call off services as and when required. There is no guarantee of volume; however, the minimum value over the life of the contract is £5,000, subject to early termination.

Scope: Call off requirements will consist of Software, Licences, Consultancy, Training, Support and Maintenance associated with Operational Modelling – Micro-Simulation Software Services.

Call off Services:

The process below details how an order is submitted and fulfilled:

The Contracting Authority will submit an email/ Request Form to the Service Provider. Quotations will be issued by email to quote requester in a standard template to provide a consistent format.

In some instances, complex quotations will be issued in an alternative format to enable more detailed technical data to be provided at quotation stage. Each quotation will have a unique reference number.

Following acceptance and the Authority's approval process, an order may be placed with the Service Provider.

Placement: Orders can be accepted by the Service Provider in writing by emails/Request Form. See attached template.

The Service Provider is unable to accept verbal orders.

The Authority will raise a Purchase Order for the approved quotation.

Validation: The Service Provider and the Contracting Authority will agree that all purchase orders must contain the following information:

- Valid Purchase Order
- Invoice Address
- Delivery address, contact and delivery contact telephone number
- Product quantity, description and product number
- Cost Centre (where applicable)
- Project Name (where applicable)
- Valid (GBP) price

Fulfilment: Upon allocation of all ordered items, goods will be despatched to the delivery address and contact provided against the original Purchase Order.

Attachment 1

[To be completed by the Authority]

1. Services to be provided and associated information

[Detail here all (a) Services and (b) deliverables with full descriptions of what is required.

Include a Project Plan that clearly identifies the project milestones against which payments are to be made. This may be as simple as a plan that contains dates for acceptance and completion. If no plan is available, or if the milestones cannot be specified at this stage, you must request the Service Provider to include a proposed plan and milestones in their response.

You should also define other requirements you wish the Service Provider to respond to such as:

- *details of any technical and/or functional specifications and/or any service levels (as applicable) of any Deliverable or Service required by the Authority to be delivered or achieved by the Service Provider;*
- *Working Hours;*
- *CVs of the Personnel to be working on the project;*
- *estimated time-lines for each of the milestones and for the overall project;*
- *the Service Provider's best price offer based on charges (subject to Schedule 4);*
- *the Service Provider's proposal for staged payments or whether pro-rata monthly payments will apply;*
- *any materials, equipment or goods required to provide the Services, including Service Provider IPR deliverables and Third Party IPR deliverables;*
- *any material assumptions or facts relied upon by the Authority in compiling it and any other material information which relates to the Services required to be provided and/or performed;*
- *Service levels, and measurement thereof;*
- *any warranties and/or representations required from the Service Provider.]*

2. Approval process

All returned quotations will be subject to the Authority's approval process

3. The Authority account details

Relevant account code and cost centre:

4. The Authority's Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

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

[Delete as appropriate]

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

Attachment 2

Proposal

[To be completed by the Service Provider]

1. Proposed Solution

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

2. Charges

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

3. Service Team and Personnel

Details of the Service Provider's Manager, and Personnel, including grades and areas of responsibility. Please attach copies of CVs.

4. Experience

An outline of relevant past work or projects including references;

5. Proposed sub-contractors (if any)

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

6. Proposed completion date

[Complete only if different from duration/expiry date stated in Attachment 1]:

7. Insurance

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

8. Other Information

SCHEDULE 2

Services

Details of Software and Services to be provided, including any Additional Services.

Software

Aimsun

Additionally, the Software shall be supplied in accordance with the Provision of Software Annex A set out in this **Schedule 2**.

Maintenance Services

Software in respect of which Maintenance Services are being provided:

Free for the 1st year. Optionally renewable for 10% of the licence cost at the time of renewal.

Maintenance Services Commencement Date: **March 2015**

The Software shall be maintained in accordance with the Maintenance Services Annex set out in this **Schedule 1**.

Additional Services

Description of Additional Services:

Consultancy Services: 15 days per annum (There is no guarantee that these days will be call-off per annum)

Software Development

Training Service:

Additionally, the Additional Services Annex set out in this **Schedule 2** shall apply to Additional Services.

ANNEX A

PROVISION OF SOFTWARE

1. SOFTWARE

1.1 RISK

Risk in the media on which the Software is recorded shall pass to the Authority on delivery of such media to the Authority or Acceptance of the Software (whichever is the latter).

1.2 LICENCE(S)

1.2.1 Prior to commencing work on building the Software and procuring and developing the Software, the Service Provider shall specifically identify any applicable:

1.2.1.1 Service Provider IPR and Service Provider Software intended for supply. The Service Provider grants the TfL Group a perpetual, royalty free, worldwide and transferable licence which permits the TfL Group to use, copy, adapt, translate and sub-licence the use of all Intellectual Property Rights in the Service Provider IPR and Service Provider Software for the benefit of the Authority, the TfL Group, any Successor Authority and the TfL Group's agents with effect from the date of delivery; and

1.2.1.2 Third Party Software intended for supply, agreeing with the Authority in advance (at the TfL Group's option) whether the Authority or the Service Provider is to obtain the licences necessary to use such Third Party Software and the terms upon which such licence should be granted to use such Third Party Software. Unless agreed otherwise agreed in writing, the Service Provider will be

responsible for obtaining any licences required for Third Party Software on the basis of a perpetual, royalty free worldwide and transferable licence which permits the Authority to use, copy, adapt, translate and sub-licence all Intellectual Property Rights in the Third Party Software or parts thereof for the benefit of the Authority, and, where the Authority requires it, any TfL Group Member and/or any Successor Authority and its agents. Should this not be possible the Service Provider shall consult with the Authority with regards to alternative licence terms or alternative third party suppliers.

2. **PROVISION OF SOFTWARE**

The Software shall be provided to the Authority in accordance with this Agreement and the relevant Project Plan.

ANNEX B

MAINTENANCE SERVICES

For the purposes of this **Annex** the following expressions will have the following meanings unless inconsistent with the context:

“Availability”	means the percentage of the Support Hours for which the Software is available
“Configuration Item” or “CI”	means a component or an element of a component of the Software
“Configuration Management”	means the ITIL process of identifying and defining Configuration Items in a system, recording and reporting the status of Configuration Items and Requests for Change, and verifying the completeness and correctness of Configuration Items
“Consultancy Day”	means provision of a resource (as may be specified in Schedule 3) by the Service Provider for one Business Day
“Contract Year”	means a calendar year starting on the day of Go Live and each subsequent anniversary of such date for the duration of the term of this Agreement
“Critical Application”	means any application(s), software, equipment or service which the Authority considers are critical applications for the purposes of allocating priorities under paragraph 4.1 of this Annex B of Schedule 2

“Fault”	means a single root cause event that leads to one or more functional components of the Software not conforming to their Specification or operating manual
“Go Live”	means the date on which the Authority places the Software into live operation other than for testing purposes
“Implementation”	means the act of upgrading the Live Environment to effect a Release
“Incident”	any event which is not part of the standard operation of the Software which causes, or may cause an interruption to or reduction in the quality of the Software. For the avoidance of doubt, this shall include unplanned outages. In this Agreement, an Incident can be either a “Software Error” or a “Fault”
“ITIL”	means Information Technology Infrastructure Library. This is a methodology or framework to set out the best practice for delivery of IT services
“Known Error”	means a Problem or potential Problem when the cause becomes understood, and where an Incident is raised which is a manifestation of it and has a Workaround
“Live Environment”	means those aspects of the Services that constitute the operational environment for the TfL Group Users
“Major Adjustment”	means a modification to the Software requested by the Authority (other than a modification made

necessary or desirable as a result of a Problem or an Incident) which is estimated by the Service Provider to be greater than [twenty (20) Man Days' effort]

“Major Incident” means Incidents categorised as Severity 1 or Severity 2 in paragraph 4 of this **Annex B** of **Schedule 2**

“Major Incident Report” means a report produced following a Major Incident giving a description of the Incident, details of the reasons for the Incident, and rectification plans implemented to ensure the Incident is not repeated

“Man Day” means the effort done by one person during or equivalent to 8 hours

“Man Hour” means the effort done by one person during one hour or a combination of persons and hours to provide an equivalent effort (for example, 12 man hours is the effort done by one person during 12 hours or by two persons during 6 hours or by three persons during 4 hours, and so on)

“Measurement Period” means a calendar month

“Operational Level Agreement” means a definition of the relationship and the interactions between the Service Provider and the Primary Service Provider to support the overall achievement of the Service Levels

“Primary Service Desk” means the service desk provided by the Primary Service Provider – this service is available 24 x 7, three hundred and sixty-five (365) days per year

“Primary Service Provider” or “PSP”	means the TfL Group’s provider(s) of core services including but not restricted to: service desk; desktop support and LAN as more particularly described in paragraph 14.2 of this Annex B of Schedule 2
“Problem”	the underlying cause of one or more Incidents
“Problem Rectification Plan”	means a plan to implement a permanent fix to a Problem, including any proposed changes to CIs, testing of the proposed fix(es) and plans for Release into the Live Environment
“Quarter”	means any successive period of three (3) calendar months measured from the start of the first Contract Year
“Release”	means a collection of new and/or changed CIs which are tested and introduced into the Live Environment together
“Release Management”	means the ITIL process describing how Releases are managed
“Release Note”	means a short document summarising the details of an individual Release. It includes a list of CIs that form the Release
“Request for Change” or “RFC”	means a form, possibly electronic, used to record the details of any request for a change to the CIs or other aspects of the Software
“Resolution (Incident)”	means action that will result in the resumption of

service and the removal or negation of the effect of an Incident

“Resolution (Problem)”

means action that will result in the removal of a Problem and normally the permanent fixing of one or more Incidents, removing the need for associated Workarounds

“Resolve”

means the act of supplying Resolution of an Incident or Problem

“Resolver Group”

means the function of the Service Provider assigned to investigate Incidents and propose Resolution

“Response”

means the first contact back to the TfL Group User subsequent to contacting the Service Desk to raise an Incident and **“Respond”** shall be construed accordingly. This response is to be made by a suitably knowledgeable Resolver Group which may be the Service Desk itself during the same contact as the raising of the Incident

“Restoration”

means action that will result in the resumption of service without the removal of the cause of an Incident. This may be a Workaround and does not necessarily mean that the underlying cause is rectified

“Restore”

means the act of supplying Restoration to an Incident or Problem

“Service Desk”

means the Service Provider’s single point of contact for logging, resolving and management of all requests for support by the TfL Group Users

and the PSP

“Small Functional Adjustment” means a modification to the Software requested by the Authority which is estimated by the Service Provider to be less than [twenty (20) Man Days effort] to build, test and deploy

“Software Error” means any non-compliance by the Software with the features and functionalities set forth in the documentation supplied for the version, causing reproducible errors in the operation of the Software

“Software Support” means Software Error correction (corrective maintenance), technical advice, training, coaching, providing clarifications by telephone, fax, e-mail, and on site at the TfL Group’s premises, to solve any problems that may arise concerning the operation of the Software

“Support Hours” means [] [on Business Days]

“TfL Group User” means those TfL Group persons using the Software

“Version” means a baseline of a Configuration Item which has significant added functionality to its predecessor

“Workaround” means a solution to an Incident or a Problem that does not involve rectifying the underlying cause but rather relies on an alternative method of usage

“Working Hour” means one hour within the Support Hours

References in this **Annex B** of **Schedule 2** and to a “**paragraph**” shall mean a paragraph to this **Annex B** of **Schedule 2** and a reference to a “**clause**” shall mean a clause in the main body of the Agreement unless otherwise specified or inconsistent with the context.

1. Maintenance Services

1.1 The Service Provider agrees to provide the following Maintenance Services to the Authority during Support Hours in respect of the Software:

1.1.1 reasonable assistance in the resolution of Incidents and Problems via a telephone call originated by the Authority;

1.1.2 recommendations relevant to the course of action necessary to recover from a fault, error or failure emanating from the Software or its use;

1.1.3 replacement of a tangible Copy of the Software where that Copy has been accidentally damaged, upon return of the damaged Copy to the Service Provider at no charge other than the Service Provider’s current packaging and shipping charges and the Service Provider’s current charge for the media upon which the replacement Copy is provided;

1.1.4 upon request by the Authority, the diagnosis of Faults in the Software and the rectification of such Faults (remotely or by attendance at the TfL Group’s premises) by the issue of fixes or other such remedy in respect of the Software;

1.1.5 the creation and dispatch to the Authority from time to time of fixes in respect of the Software; and

1.1.6 the creation and dispatch to the Authority from time to time of new Versions and Releases of the Software.

1.2 The Maintenance Services may be performed at one of the Service Provider’s premises or via an approved network link or at the TfL Group’s Premises. In

the event of a modem being utilised the Authority shall at the Service Provider's request initiate the telephone call. If possible, the Authority shall provide access to and copies of such test data as the Service Provider may reasonably require for the performance of the Maintenance Services. The Service Provider shall not disclose such of the information as is contained in the data and which can reasonably be regarded by the Service Provider to be secret and confidential to a Third Party for so long as the same is secret and confidential. The Authority shall provide the Service Provider with reasonable access to the Software during Business Hours to enable the Service Provider to comply with its obligations under this **Annex B** of **Schedule 2**.

1.3 The Charges shall include the provision and implementation of the diagnosis and rectification of a Fault arising in the following Versions of the Software:

1.3.1 the then current Version supplied by the Service Provider to the Authority; and

1.3.2 the Versions which were supplied by the Service Provider to the Authority but have been superseded by the latest Version within the period of two years ending on the date of the request for such diagnosis and rectification by the Service Provider.

The Service Provider will provide diagnosis and rectification services in respect of other Versions as Additional Services.

2. Fault Categorisations and Corrections

2.1 Error Correction

2.1.1 The Service Provider will maintain the Software in such working order as enables it to perform the functions specified in the Specification and the user manuals.

2.1.2 The Authority will notify the Service Provider of any Fault, and provide the Service Provider (in so far as the Authority is reasonably able) with a documented example of the Fault and a description of and the

circumstances in which the Fault arose within a reasonable time of becoming aware of such circumstances.

- 2.1.3 On receipt of a request for correction of any Fault reported by the Authority or identification by the Service Provider of such Fault, the Service Provider will ensure that an appropriately qualified and experienced person commences investigatory and corrective work within the response time specified in paragraph 5 below applicable to the category into which the reported Fault falls. If the reported Fault is either Severity 1 or 2 (as set out below) the Service Provider will diligently continue investigatory and remedial work throughout the Support Hours or such other times as may be mutually agreed between the parties until the reported Incident or Problem has been Restored. Findings from investigatory/remedial work will be fed back to the Authority.
- 2.1.4 Upon the Fault being Restored the Service Provider will supply to the Authority the corrected version of the object code of the Software in machine-readable form for loading into the Live Environment. As soon as reasonably practicable after that the Service Provider will supply the Authority with amendments to the Documentation specifying the nature of the correction and providing instructions for the use of the corrected version of the Software where appropriate.
- 2.1.5 If requested by the Authority the Service Provider will provide, as soon as reasonably practicable, training for designated members of the TfL Group's staff to enable the Authority to make proper use of the corrected version of the Software. Where applicable, the Service Provider will in addition provide the Authority with such assistance as is reasonably necessary to enable the Authority to implement the use of the corrected version of the Software. For the avoidance of doubt, the provision of such training and assistance is included within the Charges, and excludes travel expenses and the Service Provider shall not be entitled to any additional payments in respect of such training.

2.1.6 The Service Provider will notify the Authority promptly of any significant fixes, patches or Workarounds in respect of the Software which are available to correct Faults identified by the Service Provider or the Authority users together with details of any material effects which such fixes, patches or Workarounds may be expected to have.

3. Fault Reporting

3.1 Requests for Support

3.1.1 The Service Provider shall provide a Service Desk and single telephone number through which Support shall be requested. The Authority may request Support by telephone, fax, e-mail (if practicable) or letter, as appropriate to the situation. The TfL Group's staff will contact the TfL Group's Primary Service Desk in the first instance for Support, and if further Support is required, the TfL Group's Primary Service Desk personnel will contact the Service Provider.

3.1.2 The Service Provider shall log all requests for Support, including:

- (a) the date and time of the request;
- (b) how received (telephone, fax, e-mail, letter);
- (c) the name of the person making the request;
- (d) the nature of the request (subject matter); and
- (e) the severity of the request, as specified by the Authority.

3.1.3 The Service Provider shall assign a unique log number to each request and notify this number to the Authority at the time the request is made. This number shall then be used in all follow-up actions and reporting.

- 3.2 The Service Provider shall maintain an accurate and up to date record of all Faults reported, showing the date and time of Fault, nature of the Fault, actions taken, status, expected or actual resolution time and shall provide the same to the Authority upon request.

4. Assignment of Priorities

- 4.1 The severity of the request shall be determined by the Authority, in accordance with the following scale:

Severity 1: a) All or any part of the Critical Applications are unavailable which may result in the failure of business critical activities; and/or

(b) A service or application failure which affects over fifty percent (50%) of potential TfL Group Users of that service or application within a business unit of the Authority; and/or

(c) Incidents reported that in the opinion of the Authority have a high business impact on business-critical units of the Authority; and/or

(d) Any other incident following outside (a) (b) or (c) occurs and such failure, in the TfL Group's opinion, affects the security of the TfL Group's infrastructure or has a detrimental impact on the information management ("IM") operations of the Authority or, in either case, such failure is in the TfL Group's opinion likely to do so.

Severity 2: Business processes are adversely affected resulting in some impact in business operations that do not fall within the scope of Severity Level 1 and:

(a) The Incident has impacted one or more of the TfL Group's business units such that one or more business functions are affected; and either

(b) The Incident affects four (4) or more Users, or shared functions are unavailable (e.g. for the purposes of illustration only, switch or server repairs);
or

(c) The Incident causes a failure of redundant services which increases the risk to the Critical Applications.

Severity 3: TfL Group business processes are adversely affected resulting in some impact in business operations that do not fall within the scope of Severity Level 1 or Severity Level 2, which includes where:

(a) All or part of the applications, software or services are adversely affected, but the impact is on less than four (4) TfL Group Users; and/or

(b) The Incident prevents TfL Group Users from effectively performing business activities and, although important, the TfL Group's business units' key business activities are not adversely affected; and/or

(c) The Incident is limited in scope and scale. This includes equipment failures where, due to redundancy and resilience, TfL Group User service is unaffected; and/or

(d) An enquiry where there is no actual loss of service to the Authority User, but rather a simple need for information that does not require a request for information (“**RFI**”).

Severity 4: All other requests for service where there is no Incident or problem.

4.2 The initial classification of severity is to be made by the Authority and will be confirmed on receipt by the Service Provider. In the event of any disagreement in the classification relating to Severity 1 or 2 reports, this will be escalated by the Service Provider's Programme Manager with his relevant counterpart in the Authority so as to minimise any delay in Response, Restore and Resolve times. While under escalation and until resolved, the Service

Provider will perform the Maintenance Services in accordance with the Severity Level set by the Authority.

5. Response and Resolution Times

5.1 From the time when a request is received by the Service Provider from the PSP, the Service Provider shall Respond within the following timeframes:

Severity	Response	Incident Restore	Incident Resolve
1	15 minutes	1 Support Hour	1 Business Day
2	45 minutes	2 Support Hours	1 Business Day
3	3 hours	8 Support Hours	1 Business Day
4	8 hours	To be agreed between the parties in writing	To be agreed between the parties in writing

For the duration of the Fault Resolution, the originator of the request shall be advised of progress as follows:

- (a) Severity 1 - every thirty (30) minutes during Support Hours or such other times as may be mutually agreed.
- (b) Severity 2 - every thirty (30) minutes during Support Hours or such other times as may be mutually agreed.
- (c) Severity 3 - as agreed with the TfL Group's Nominated Representative (to be named in the Service Model as referred to in paragraph 14 below).
- (d) Severity 4 - as agreed with the TfL Group's Nominated Representative.

5.2 Incident Management

The Service Provider shall comply with the following in respect to Incident management:

Measure	Definition of Measure	Achievement Measure	Baseline Service Levels	Target Service Levels
Severity 1 Incident Respond	For each Severity 1 Incident, the time from a contact arriving at the Service Desk, or from an automated alert, to the time that the Authority (or PSP) is informed that the Incident is being worked on by the appropriate Resolver Group.	Within 15 minutes during Support Hours <i>Service Credit: 0</i>		100%
Severity 1 Incident Restore	For each Severity 1 Incident, the time from a contact arriving at the Service Desk, or from an automatic alert, to the time that the Incident is Restored, a Workaround is agreed or a Problem Rectification Plan to Restore is agreed.	Within 1 Support Hour <i>Service Credit: 3</i>	95% within 2 Support Hours and the remaining 5% within 4 Support Hours	100% within 2 Support Hours
Severity 2 Incident	For each Severity 2 Incident, the time from	Within 45 minutes		100%

Respond	a contact arriving at the Service Desk, or from an automated alert, to the time that the Authority (or PSP) is informed that the Incident is being worked on by the appropriate Resolver Group.	during Support Hours <i>Service Credit: 0</i>		
Severity 2 Incident Restore	For each Severity 2 Incident, the time from a contact arriving at the Service Desk, or from an automatic alert, to the time that the Incident is Restored, a Workaround is agreed or a Problem Rectification Plan is agreed.	Within 2 Support Hours <i>Service Credit: 2</i>	95% within 4 Support Hours	100% within 4 Support Hours
Severity 3 Incident Respond	For each Severity 3 Incident, the time from a contact arriving at the Service Desk, or from an automated alert, to the time that the Authority (or PSP) is informed that the Incident is being worked on by the	Within 3 Support Hours <i>Service Credit: 0</i>		98%

	appropriate Resolver Group.			
Severity 3 Incident Restore	For each Severity 3 Incident, the time from a contact arriving at the Service Desk, or from an automatic alert, the time that the Incident is Restored, a Workaround is agreed or a Problem Rectification Plan is agreed.	Within 8 hours <i>Service Credit: 1</i>	95% within 8 Support Hours with the remaining 5% within 16 Support Hours	98% within 8 Support Hours
Severity 4 Incident Respond	For each Severity 4 Incident, the time from a contact arriving at the Service Desk, or from an automated alert, to the time that the Authority (or PSP) is informed that the Incident is being worked on by the appropriate Resolver Group.	Within 8 Support Hours <i>Service Credit: 0</i>		98%

5.3 Problem Management

The Service Provider shall comply with the following in respect to Problem Management:

Measure	Definition of Measure	Achievement Measure	Baseline Service Levels	Target Service Level
Severity 1 Problem Resolution	The time from a contact arriving at the Service Desk, or from an automatic alert, to the time that the Incident is fully fixed, or that the underlying Problem is fixed and an RFC raised for the Implementation, or that the Incident is identified as a Known Error, or that a Problem Rectification Plan is agreed with the Authority (or the TfL Group's PSP).	Within 1 Business Day <i>Service Credit: 3</i>	95%	100%
Severity 2 Problem Resolution	The time from a contact arriving at the Service Desk, or from an automatic alert, to the time that the Incident is fully fixed, or that the underlying Problem is fixed and an RFC raised for the Implementation, or that the Incident is	Within 1 Business Day <i>Service Credit: 2</i>	95%	100%

Measure	Definition of Measure	Achievement Measure	Baseline Service Levels	Target Service Level
	identified as a Known Error, or that a Problem Rectification Plan is agreed with the Authority (or the TfL Group's PSP).			
Severity 3 Problem Resolution	The time from a contact arriving at the Service Desk, or from an automatic alert, to the time that the Incident is fully fixed, or that the underlying Problem is fixed and an RFC raised for the Implementation, or that the Incident is identified as a Known Error, or that a Problem Rectification Plan is agreed with the Authority (or the TfL Group's PSP).	Within 1 Business Day <i>Service Credit: 1</i>	95%	98%

6. Incident and Problem Management

- 6.1 The parties will work together to define and agree a service model which encapsulates the ITIL best practice for end-to-end service delivery and support which will include Incident and Problem management.

7. Escalation Management

7.1 The parties will work together to define and agree a Service Model which encapsulates the ITIL Best Practice for end-to-end Service Delivery and Support which will include Escalation Management. Such model shall take into consideration the Dispute Resolution Procedure including **clause 38.2**.

8. Configuration Management Database (“CMDB”)

8.1 The Service Provider shall ensure that where Releases are delivered to the Authority, they will deliver such information as is required to update the TfL Group’s CMDB reflecting changes made. This covers but is not restricted to Software version numbers, documentation, and licensing.

8.2 The Service Provider shall ensure that where changes to the Software are made as a result of Fault or Software Error correction, they will deliver such information as is required to update the TfL Group’s CMDB reflecting changes made.

9. Reporting

9.1 The Service Provider’s Nominated Representative shall provide the TfL Group’s Nominated Representative with a monthly service report within five (5) days of the end of each month indicating:

- (a) number of requests for Support, by Severity;
- (b) number of requests cleared;
- (c) number and status of outstanding requests;
- (d) average time to Respond by Severity;
- (e) average time to Resolve by Severity;

- (f) performance against Service Levels as specified in paragraphs 5.2, 5.3, 15.4 and 15.5 of this **Annex B of Schedule 2**;
- (g) Service Credit report (for review at Quarterly Service Review Meeting);
and
- (h) such further matters as the Authority may reasonably require.

9.2 The Authority may request that the Service Provider supply information relating to Major Incidents to the TfL Group's Primary Service Provider. This information shall include diagnostic procedures and resolution details. Such information to be provided for inclusion in Major Incident Reports to be produced by the TfL Group's Primary Service Provider and shall be made available to the Service Provider upon reasonable request.

9.3 The Service Provider will arrange a service review meeting to be held within five (5) Business Days of the end of each Quarter ("**Quarterly Service Review Meeting**") with the Authority at a Site unless mutually agreed otherwise. The agenda for this meeting will include: performance monitoring; summary of activity (lessons learnt, recommendations for Software or service change); Service Credits (as set out in paragraph 19 below) and any other related topics as notified by either party. The Authority shall take minutes of such meetings and distribute them to the Service Provider.

10. Change Management

10.1 The parties will work together to define and agree a service model which encapsulates the ITIL Best Practice for end-to-end service delivery and support which will include Change Management.

10.2 All activities that require changes to the Software are carried out within the Authority Change Management process. These include major adjustments (paragraph 18) and small functional adjustments (paragraph 17) to the Software and the application of patches and bug fixes to resolve incidents.

11. Versions and Releases

- 11.1 The Service Provider will notify the Authority of each new Version or Release of the Software, which from time to time is made available by the Service Provider to users generally.
- 11.2 The provision of each new Version or Release during the Term is included in the Charges.
- 11.3 Under this Agreement, the Authority is entitled to migrate to new Versions of the Software released by the Service Provider during the Term.
- 11.4 Whenever a new Version of the Software is released, the Service Provider will notify the Authority and will inform the Authority of the implications that the new Version will have on the Software and provide Release Notes. The Service Provider will ensure that new Versions of the Software will maintain the functionality of previous Versions unless expressly agreed with the Authority in writing. The Service Provider will ensure that the new Version of the Software will be able to read the files of the previous Versions.
- 11.5 With the acceptance of the migration to a new Version, the Authority is entitled to specify when the new Version of the Software will be introduced which must be within a period of six (6) months after its acceptance.
- 11.6 If required by the Service Provider the Authority will, after the TfL Group's installation and acceptance of a new Version or Release, either return the previous Version or Release and all copies of the whole or any part of it or destroy it and certify in writing to the Service Provider that this has been done.

12. Scheduled maintenance/Ad-hoc downtimes

- 12.1 All downtime must be scheduled and approved under the Authority Change Management process (which will be notified to the Service Provider within the Service Model referred to in paragraph 14.1) and must take place outside Support Hours unless specifically authorised by the Authority or where this is

part of a major incident recovery plan.

- 12.2 Requests for downtime must not impact any additional up-time required by the Authority outside Support Hours.

13. Nominated Representatives

- 13.1 For the purposes of receipt of the Maintenance Services, the TfL Group's Nominated Representative shall be the Contract Manager as stated in **Schedule 1**.

- 13.2 For the purposes of provision of the Maintenance Services, the Service Provider's Nominated Representative is: [SUPPLIER TO INSERT]. The Service Provider undertakes to keep the Authority informed of any changes to their Nominated Representative.

14. Service Model

- 14.1 It is expressly the intention of the parties to work together to define and agree a Support Model which encapsulates the ITIL Best Practice for end-to-end Service Delivery and Support.

- 14.2 The Authority have outsourced responsibility for certain of the TfL Group's IT environment to its Primary Service Provider. The scope of services provided under this arrangement includes: service desk; desktop support; infrastructure (server; LAN/WAN, messaging); and applications. The Authority expects that initial contact will be made to the Service Provider via this Primary Service Provider. Management of problems, incidents, change/release will be via this Primary Service Provider.

- 14.3 The Authority wishes to ensure that the TfL Group Users do not suffer any adverse impact on Services provided to them under this Agreement as a result of the interface between the Service Provider and the Primary Service Provider. Accordingly, it is expressly the intention of the Authority that the Service Provider enters into an Operational Level Agreement ("**OLA**") with the

Primary Service Provider to ensure that end-to-end Service Levels are achieved in respect to Problem and Incident resolution. The Service Provider agrees with the Authority that the Service Provider shall comply with its obligations under the Operational Level Agreement.

15. Availability, Capacity and Service Assurance Activities

15.1 The Software will be available during the Support Hours subject to the remaining provisions of this paragraph 15 and the Maintenance Services will be provided during the Support Hours. The Service Provider warrants that it will have the capability to provide the Maintenance Services 24 x 7 x 365/366 subject to any request by the Authority for such availability being dealt with under the change control provisions of this Agreement.

15.2 Maximum outages of the Software should not exceed one (1) hour during Support Hours and there should be no more than two unplanned outages of up to [one (1) hour per week (in any month)] and no more than [four (4)] unplanned outages in any three (3) consecutive months.

15.4 Other Service Levels

15.4.1 The table below sets out certain Service Levels which the Service Provider shall meet or exceed in providing the Services.

15.4.2 The Measurement Window for each Service Level is over a calendar month, except where stated otherwise.

Service Levels:

Ref	Service Level Name	Service Level definition	Measure(s)	Metric Service Level
1	Security activities.	<p>The Service Provider will carry out security and system administration activities forming part of the Services in accordance with the Measures listed in the next column (“Measures”).</p> <p>Without prejudice to any other remedy of the Authority or obligation of the Service Provider for breach of Service Levels, if the Service Provider</p>	<p>(a) No security incidents occurring owing to inappropriate TfL Group User permissions.</p> <p>(b) Each security patch delivered as required unless the Authority directs otherwise.</p> <p>(c) No administration passwords in use for longer than 3 months.</p> <p>(d) No inactive or unauthorised accounts.</p>	At least 3 of the 4 Measures must be met
		<p>fails to comply with this Service Level the Service Provider shall before the start of the next calendar month</p>		

		produce a documented service improvement plan for the impacted Service Levels and, once agreed by the Authority in writing, promptly implement such plan		
2	Customer Satisfaction Scorecard score.	The Authority may from time to time provide the TfL Group Users with Customer Satisfaction Scorecards (the form of which shall be agreed with the Service Provider prior to first use).	All Customer Satisfaction Scorecards will show an TfL Group User rating of the Services as 'satisfactory' or higher.	80% of TfL Group Users ratings score as 'satisfied' or higher in TfL Group User surveys.
		The Service Provider will achieve a level of response in accordance with the Measure for each Customer Satisfaction Scorecard survey carried out.		

	Call abandonment rate.	The Service Provider shall seek to minimise the number of calls for support from the Authority which are abandoned by TfL Group.	100% minus X, where X is the percentage of all calls received by the Service Desk that are abandoned by the caller after a 15 second period has elapsed from the point that the call is received or after any agreed initial announcement/menu has ended.	No more than 4% of Calls are abandoned.
3		Users/the applicable TfL Group representative or agents before being answered, in accordance with the Measure.		
4	Major Incident Report	The Service Provider shall ensure that the period from the Restore time in respect of each Severity Level 1 or 2 Incident to the delivery of the Major Incident Report to the agreed Authority recipient will be in accordance with the Measure.	All Major Incident Reports for Severity Level 1 and 2 Incidents will be delivered within 3 Business Days of the Incident Restore time.	90%

5	Response to RFCs, including project scoping requests, non standard products and RFIs (for legislative requests).	The Service Provider shall ensure that the time from receipt of the RFC to implementing the requested action or providing a response to the request indicating timescales for implementation agreed with the applicable TfL Group representative or agents are in accordance with the Measure.	All requests will be implemented within 3 Business Days or, if not achievable within 3 Business Days the Service Provider will provide a response within 3 Business Days from time of Service Request indicating and agreeing the time to implement with the applicable TfL Group representative or agent.	80%
6	Capacity Management	The Service Provider shall ensure that agreed capacity levels are maintained in accordance with the Measure.	No capacity levels will be allowed to fall below the agreed threshold levels in the Specification, if any, except by prior notification to and agreement with the Authority.	100%
7	Agreed Server "housekeeping activities"	The Service Provider will carry out all activities specified in the "Measure" column in accordance with the Measure.	Configuration Items updated in the CMDB by the Service Provider shall be accurately updated. [Other activities to be entered here]	100%

		<p>Without prejudice to any other remedy of the Authority for breach of Service Levels, if the Service Provider fails to comply with this Service Level the Service Provider shall within a timescale agreed with the Authority produce a documented service improvement plan for the impacted Service Levels and, once agreed by the Authority in writing, promptly implement such plan.</p>	<p>[This Service Level is based on the percentage of the above Measures that have been met in all regards in the relevant Calendar Month. “In all regards” for this purpose means that (i) the activity specified for a Measure above has been completed; and (ii) any obligations contained in any service improvement plan due to be performed in the relevant month in respect of that Measure have been successfully completed.]</p>	
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16. Place for Provision of Maintenance Services

- 16.1 As a general rule, all Maintenance Services will be rendered at the Service Provider's premises.
- 16.2 If the parties so agree or when it is absolutely necessary, Maintenance Services shall be rendered on site at the TfL Group's premises.
- 16.3 Any travel needed to provide services at the TfL Group's premises will be made as soon as possible, depending on the urgency of the Maintenance Services required and of the availability of the Service Provider, but not later than eight (8) Business Days after the date when the parties have agreed on the need for travel.
- 16.4 The Service Provider warrants that its members of staff and/or third parties it employs shall not perform any activity at the TfL Group's premises without supervision by and/or explicitly prior to approval from persons authorised by the Authority.
- 16.5 The Service Provider shall then perform its activities taking into account the instructions given by the Authority.

17. Introduction of Small Functional Adjustments to the Software

- 17.1 New functionalities in the Software must be requested in writing by the Authority, describing the adjustment to be introduced in the Software.
- 17.2 Within a maximum period of ten (10) Business Days after the date of a request for a variation to the Software by the Authority, the Service Provider will evaluate the feasibility of the required change and provide a quotation to implement the required changes including its estimate of the Man Hours and time required to implement such adjustment. Initiation of such changes will commence within twenty (20) Business Days of the TfL Group's acceptance of such quotation unless agreed otherwise provided the required contractual process has been followed and that the Service Provider complies with the TfL

Group's Change and Release Management process as set out in the service model to be defined and agreed as part of this Agreement.

- 17.3 The Service Provider will not implement the adjustment before the acceptance of the estimate by the Authority.
- 17.4 Notwithstanding the estimate provided by the Service Provider, the actual time spent by the Service Provider in carrying out the evaluation and providing the quotation together with time spent implementing the required adjustments will be charged to the Authority at the Extra Work/Additional Support rate set out in **Schedule 3**. The Service Provider will not be entitled to exceed the quotation without the prior agreement of the Authority.
- 17.5 The Authority will test the functional adjustment in accordance with **Schedule 6** or such other arrangements as the parties may agree.
- 17.6 The Authority will review the deliverables against the acceptance criteria in **Schedule 6**. The Authority reserves the right to accept and/or reject such deliverables. The Authority will advise why such deliverables are rejected.
- 17.7 For the purposes of Service Credit measurement, a Service Credit of two (2) per request for change will be applied for non-compliance with the time periods specified in paragraph 17.2.
- 17.8 The maximum number of Service Credits for which the Service Provider will be liable under paragraph 17.7 will be limited to ten (10) Service Credits in any one Quarter, no matter how many requests for change the Authority submits.

18. Major Adjustments and Exceptional Activities

- 18.1 The rendering of services concerning Major Adjustments and other activities which do not fall under the scope of this Schedule and shall be subject to Change Control Provisions in **Schedule 7** or by way of Additional Services, as may be agreed between the parties in writing.

19. Service Credits – Not applicable on this contract

ANNEX C

ADDITIONAL SERVICES

1. SERVICE PROVIDER'S OBLIGATIONS

1.1 The Service Provider shall provide such Additional Services as specified in **Schedule 1** upon payment of the Additional Services Charge specified in or calculated in accordance with **Schedule 2**.

1.2 The Additional Services may take the form of all or any of the following:

1.2.1 the provision of a set number of man days of consultancy (whether for the preparation of further or bespoke software, a software specification or otherwise) as specified in **Schedule 1**;

1.2.2 the supply of further or bespoke software, a software specification, or such other items as specified in **Schedule 1**;

1.2.3 the provision of training and consultancy services as specified in **Schedule 1**.

1.3 The provision of the Additional Services by or on behalf of the Service Provider for the Authority shall be subject to the terms of this Agreement.

2. ADDITIONAL SERVICE CHARGES

The Additional Services Charges shall be levied by the Service Provider for the Additional Services provided by the Service Provider as set out in **Schedule 2**.

SCHEDULE 2

Charges

All values are in Pounds Sterling, before VAT

TFL Licenses:

10 licences of Aimsun 8 Expert, plus Adaptive Control Interface, plus Aimsun API, plus Planning Software Interface:

Licence 1	
Licences 2-4 (25% discount)	
Licences 5-9 (50% discount)	
Licence 10 (75% discount)	
Special discount (Adaptive Control Interface module offered for free)	

The software covers both Tactical and Micro-simulation level.

Cost breakdown. Licence purchase: [REDACTED]
Software Update, Subscription (years 1-3) total: [REDACTED]

Included in the above is:

- Software Update Subscription entitles you to receive free software updates during this period.
- Attendance fee for 5 TfL staff to the 1-day UK Aimsun Users' Meeting for years 2015, 2016 and 2017, including train fare from-to venue, refreshments, lunch and overnight accommodation (when required).
- Attendance fee for 2 TfL staff to the to the European Aimsun Users' Meeting for years 2015, 2016 and 2017, including flights from and to the meeting, three nights' accommodation at the host venue, all meals, travel to and from the airport, two seats on the training course held on day 3.
- Attendance fee for 1 TfL staff to the North American Aimsun Users' Meeting for year 2015 or 2016 or 2017, including flights from and to the meeting, six nights' accommodation at the host venue, attendance on training course, subsistence and travel to and from the airport.
- 4 packs of Technical Support (total of 32 hours).

Consultancy

Consultancy Rates	Onsite Consultancy		Offsite Consultancy	
Position	Day Rate	Hourly Rate	Day Rate	Hourly Rate
Junior Consultant	████	████	████	████
Consultant	████	████	████	████
Senior Consultant	████	████	████	████
Principal Consultant	████	████	████	████
Managing Consultant	████	████	████	████
Director / Partner	████	████	████	████

Training

Cost for training at TfL offices:

One day, for class of up to 8 attendees

	1 Day Rate	1/2 Day Rate
Software Training	████	████

Schedule 3

Special Terms

The minimum value over the life of the contract is £5,000, subject to early termination.

SCHEDULE 4

Inclusive of TfL's Volume 2 ITT for Operational Modelling – Micro-Simulation requirements and TSS proposal to the requirements

SCHEDULE 5

Project Plan

SCHEDULE 6

Acceptance Testing

1. For the avoidance of doubt, the provisions of this **Schedule 6** shall apply but shall be subject to any specific acceptance provisions as may be agreed in writing by the parties in addition or by way of amendment.

1.1 The Software (“**Test Items**”) shall be subject to and shall be required to satisfy the Acceptance Tests, to demonstrate that they comply with the Acceptance Criteria (together with the other requirements of this Agreement) before being accepted by the Authority.

1.2 Specific Provisions

1.2.1 Software Tests

The following is intended to allow any software to be delivered in phases (if agreed between the parties) in which case the following will apply independently to each phase:

On or before the date specified within the Project Plan, the Service Provider and the Authority will produce a set of tests and a set of results which are designed to prove that the Software performs in accordance with the Specification. It will be prepared by the Service Provider and agreed by the Authority and will include:

- List of key functionality;
- Description of the test steps;
- Pass/fail criteria including the results expected to be achieved by processing such data (“**Acceptance Criteria**”);
- Issue resolution method and timescales; and
- Issue prioritisation.

For this purpose, the Authority will define test data which the Service Provider will verify.

In the event that the Software is delivered in a phased manner, there will be software testing to prove that the combination of phases perform in accordance with the Specification.

1.3 General provisions

1.3.1 In the case of all testing set out in this **Schedule 6**, and save where otherwise agreed by the parties in the relevant Project Plan, the Service Provider shall give the Authority as much notice as possible when the relevant part of the Test Item is ready for testing and, unless the Authority request that the Service Provider perform the tests, the Authority shall give the Service Provider notice in accordance with the Project Plan of the days on which the tests shall be performed by the Authority. The Service Provider shall attend such tests in accordance with this **Schedule 6**.

1.3.2 In the case of any tests and other detail and documentation that is to be agreed under this **Schedule 6**:

1.3.2.1 The parties shall meet together in user groups to discuss the tests, the expected results, the documentation, the testing to be carried out in relation to each and every element of the testing and any other detail that is to be agreed in accordance with this **Schedule 6** as well as the Acceptance Criteria (together the “**Test Procedures**”); and

1.3.2.2 The Service Provider shall be afforded, in each and every case, the opportunity to comment on the suitability of the Test Procedures and the Service Provider shall incorporate all reasonable comments into such Test Procedures and pass those to the Authority for further comment and agreement. Should the parties be unable to agree any of the Test Procedures from time to time, the parties shall escalate the matter in accordance with the dispute resolution procedure set out in **clause 38**.

- 1.3.3 The Service Provider shall formally document each set of Acceptance Tests and the results thereof.
- 1.4 The Authority shall sign an Acceptance Certificate promptly following successful completion of the Acceptance Tests for the Test Items. Such Acceptance Certificate shall not be of any effect unless signed by the TfL Group's Service Manager. The Authority shall have no obligation to sign an Acceptance Certificate in relation to any relevant Acceptance Tests unless the Service Provider can demonstrate that the Acceptance Tests have been carried out in accordance with the agreed procedure and the results of the Acceptance Tests objectively demonstrate that all of the Acceptance Criteria have been met. The Authority shall act reasonably in this regard.
- 1.5 If any of the Test Items fails to successfully pass and satisfy all Acceptance Tests applicable to it, the Authority shall (if the Service Provider is not specified as being responsible for carrying out the Acceptance Tests) notify the Service Provider in writing ("**Failure Notice**") setting out (where possible) in reasonable detail the suspected nature of the defects giving rise to such failure or failures. In the event the Service Provider receives a Failure Notice or in the event the Service Provider has performed the Acceptance Tests itself unsuccessfully then the Service Provider shall (at its own expense) use its best endeavours to adapt, modify and/or otherwise correct the relevant Test Items to which the Failure Notice relates or, where there is no Failure Notice, the Test Items that have previously failed, in both cases to the extent necessary for those Test Items to comply with the applicable Acceptance Criteria and resubmit the relevant Test Items for further Acceptance Tests ("**Re-Tests**") within (or, at the latest, by the expiry of) a correction period reasonably specified by the Authority provided that if any Test Items shall not have passed the applicable Acceptance Tests by any completion date set out in the Project Plan for those items (or such further period of time as the Service Provider and the Authority shall agree in writing), the Authority shall be entitled (in its discretion and without prejudice to its other rights under this Agreement):

- 1.5.1 to grant further periods of time during which the Service Provider shall be required to adapt, modify and/or otherwise correct the relevant Test Items to which the Failure Notice relates to the extent necessary for that Test Items to comply with the applicable Acceptance Criteria and thereafter re-submit the relevant Test Items for further Re-Tests; or
- 1.5.2 to sign an Acceptance Certificate accepting such Test Items and agree with the Service Provider a list of exceptions to be attached to the Acceptance Certificate which the Service Provider shall then rectify within the timescales set out in the list or if none are set out then within a reasonable time and should the Service Provider fail to ensure that such exceptions are remedied within such timescale(s) the Authority shall be entitled to exercise (in its discretion) the rights set out in paragraph 1.5.3 or paragraph 1.5.4 or paragraph 1.5.5; or
- 1.5.3 to sign an Acceptance Certificate accepting the Test Items under the Agreement for all purposes under the Agreement subject to an agreed refund in respect of the fees (including any fees in respect of the Services paid and/or payable) in respect of the failing Test Items) or (where such fees cannot reasonably be calculated) subject to an adjustment downwards to the overall fees paid and/or payable under the Agreement to fairly reflect the extent to which the Test Items to be provided or performed (as applicable) in accordance with the Agreement (operating as a whole) is impaired by the failure of the relevant Test Items, such adjustment to be agreed between the parties (both acting fairly and reasonably). In default of such agreement, the Authority be entitled to exercise the rights set out at paragraph 1.5.4 or elsewhere in this paragraph 1; or
- 1.5.4 to reject the Test Items (meaning any or all of them) and serve notice on the Service Provider immediately terminating the Agreement without liability to the Service Provider including any liability to pay any outstanding fees which, at the time of (and but for) such termination, remain outstanding and following giving the Service

Provider a right to remedy/rectify at least once in accordance with either paragraph 1.5.1 or 1.5.2, the Authority shall be entitled (in its discretion and without prejudice to its other rights under this Agreement). In the event of any termination pursuant to this paragraph 1.5.4, the Service Provider shall (within fourteen (14) days of the date of such termination) repay to the Authority all fees paid to the Service Provider under the terminated Agreement; or

- 1.5.5 to (i) itself complete the supply of the Software and Test Items, or to enter into a contract with a third party to effect such completion; and (ii) the Service Provider shall pay to the Authority the amount by which the reasonable cost to the Authority of completion of the Software and/or Services pursuant to this paragraph 1.5.5 exceeds the agreed fees, and the Authority may deduct the said amount from such amounts (if any) as are due to the Service Provider or to recover such amount as a debt due from the Service Provider; and (iii) the Authority shall be entitled to use or have used on its behalf all know-how and Intellectual Property Rights owned or controlled by the Service Provider used in or in connection with the Software and/or Services free of charge for the purposes of completion in accordance with this paragraph 1.5.5 and use, amendment, modification and/or enhancement of the Software as envisaged by this Agreement after such completion.
- 1.6 The Service Provider shall ensure that any corrections made as a result of any failure to pass an Acceptance Test or to be approved in accordance with paragraph 1 shall not adversely impact on any previously successful Acceptance Test or (as applicable) approval procedure in respect of any other Test Item or deliverable(s) or Service(s) (as the case may be). To the extent that any such adverse impacts occur, the Service Provider shall be liable to the Authority in respect of the TfL Group's reasonable costs in conducting Re-Tests or (as applicable) re-running the relevant approval procedure.

- 1.7 Any dispute as to whether any Acceptance Test has been passed or whether any failure to provide approval is reasonable in the circumstances shall be referred for resolution in accordance with **clause 38**.
- 1.8 Acceptance of the Software shall not relieve the Service Provider from performing its other obligations under this Agreement and shall not limit the warranties provided by the Service Provider under **clause 9**.

SCHEDULE 7

Change Control Procedures

1. Principles

- 1.1 Where the Authority or the Service Provider sees a need to change any of the Services (which includes for the purposes of this **Schedule 0** any aspects of the Software), the TfL Group's Service Manager may at any time request, and the Service Provider's Service Manager may at any time recommend, such amendment only in accordance with the formal Change Control Procedure ("**CCP**") as set out at paragraph 2 below.
- 1.2 Neither party shall unreasonably withhold its agreement to any amendment (which includes not recommending changes to any Services which are not reasonably necessary).
- 1.3 Until such time as an amendment to the Services is made in accordance with this Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform the Services in compliance with its terms prior to such amendment.
- 1.4 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant amendment to the Services shall be without prejudice to the rights of either party.
- 1.5 Any work undertaken by the Service Provider which has not been otherwise agreed in accordance with the provisions of this **Schedule 0** shall be undertaken entirely at the expense and liability of the Service Provider.

2. Procedures

- 2.1 Discussion between the Authority and the Service Provider concerning an amendment to the Services shall result in any one of the following:
 - 2.1.1 no further action being taken;

- 2.1.2 a request to amend the Services by the Authority; or
- 2.1.3 a recommendation to amend the Services by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two (2) copies of a Change Control Note (“**CCN**”) signed by the Service Provider to the Authority within seven days of the date of the request or such other period as the Service Managers shall agree (acting reasonably).
- 2.3 A recommendation to amend by the Service Provider shall be submitted direct to the Authority in the form of two (2) copies of a CCN signed by the Service Provider at the time of such recommendation and the Authority shall give its response within fourteen (14) days or such other period as the Service Managers shall agree (acting reasonably).
- 2.4 Each CCN shall contain:
 - 2.4.1 the title of the amendment;
 - 2.4.2 the originator and date of the request or recommendation for the amendment;
 - 2.4.3 the reason for the amendment;
 - 2.4.4 full details of the amendment including any specifications;
 - 2.4.5 the price, if any, of the amendment;
 - 2.4.6 a timetable for implementation together with any proposals for acceptance of the amendment;
 - 2.4.7 a schedule of payments, if appropriate;
 - 2.4.8 details of the likely impact, if any, of the amendment on other aspects of the Services including to:
 - 2.4.8.1 the timetable for the provision of the amendment;
 - 2.4.8.2 the personnel to be provided;

- 2.4.8.3 the amended charges payable under the Services (as now amended);
 - 2.4.8.4 the Documentation to be provided;
 - 2.4.8.5 the training to be provided;
 - 2.4.8.6 working arrangements; and
 - 2.4.8.7 other contractual issues;
 - 2.4.9 the date of expiry of validity of the CCN; and
 - 2.4.10 provision for signature by the Authority and by the Service Provider.
- 2.5 For each CCN submitted the Authority shall, within the period of the validity of the CCN:
- 2.5.1 allocate a sequential number to the CCN; and
 - 2.5.2 evaluate the CCN and, as appropriate:
 - 2.5.2.1 request further information, or
 - 2.5.2.2 arrange for two (2) copies of the CCN to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
 - 2.5.2.3 notify the Service Provider of the rejection of the CCN.
- 2.6 A CCN signed by the Authority and by the Service Provider shall constitute an amendment to the Services and to the Agreement and otherwise no amendment shall have been agreed.

Change Control Note

Change Request No

Agreement No.....dated.....

Title of Amendment.....

Originator.....

The following change is requested to the Agreement identified above

Change Request (to be completed by the Authority)
<p>Description of Change:</p> <p>Reason/Justification:</p> <p>Affected Area(s):</p> <p>Price:</p> <p>Timetable for implementation:</p> <p>Schedule of Payments:</p> <p>Details of likely impact, if any, of the amendment on other aspects of the Services-</p> <ul style="list-style-type: none">• the timetable for the provision of the amendment;• the personnel to be provided;• the amended charges payable under the Services (as now amended);

- the Documentation to be provided
- the training to be provided;
- working arrangements;
- other contractual issues.

I request that the described change be considered for inclusion in the Agreement

Signature

Date/...../.....

Approved by the Authority:

Signature

Date/...../.....

SCHEDULE 8
Security Policy

See TfL Appendices

TfL Information Security Policy

TfL Code of Connection

SCHEDULE 9

Agreed Equality Policy

In accordance with TfL's Equality and Diversity Policy

SCHEDULE 10

Exit Management

[DRAFT]

1. Definitions

In this Schedule, the following expressions shall have the following meanings unless inconsistent with the context:

"Assets"	means all assets and rights used by the Service Provider to provide the Services in accordance with this Agreement but excluding the Authority and the TfL Group's own assets
"Assets Register"	the register of Assets, sub-contracts and other relevant agreements to be created and maintained by the Service Provider throughout the Term pursuant to paragraph 3.1.1 of this Schedule
"Emergency Exit"	any termination of this Agreement which is a (i) termination of the whole or part of this Agreement in accordance with clause 24 (Termination), except where the period of notice given under that clause is greater than or equal to six (6) months; or (ii) wrongful termination or repudiation of this Agreement by either party
"Exclusive Assets"	those Assets which are used exclusively

	in the provision of the Services
"Exit Manager"	the person appointed by each party pursuant to paragraph 3.5 of this Schedule for managing the parties' respective obligations under this Schedule
"Net Book Value"	the net book value of the relevant Asset(s) being its purchase price less an amount equal to the amortisation of such item in a straight line and depreciation at the time such value is to be calculated
"Non-Exclusive Assets"	those Assets (if any) which are used by the Service Provider in the provision of the Services but which are also used by the Service Provider for other purposes
"Ordinary Exit"	any termination of this Agreement which occurs: (i) pursuant to clause 24 (Termination) where the period of notice given by the party serving notice to terminate pursuant to such clause is greater than or equal to six (6) months; or (ii) as a result of the expiry of the Term
"Registers"	has the meaning set out in paragraph 3.1 of this Schedule
"Replacement Service Provider"	means any replacement supplier or provider to the Authority of the Agreement (or any part of it)
"Termination Assistance Notice"	has the meaning set out in paragraph 6.10 of this Schedule

"Termination Assistance Period"	the period specified in the Termination Assistance Notice in which the Service Provider shall provide the Termination Services as may be extended pursuant to paragraph 6.11 of this Schedule
"Termination Services"	the services and activities to be performed by the Service Provider pursuant to the Exit Plan, including those activities listed in paragraph 6.15 of this Schedule and any other services required pursuant to the Termination Assistance Notice
"Transferring Contracts"	shall have the meaning set out in paragraph 8.2.2 of this Schedule .

2. Overview

The Service Provider is required to ensure the orderly transition of the Services from the Service Provider to the Authority and/or any Replacement Service Provider in the event of termination (including partial termination) or expiry of this Agreement. This Schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt and unless the Authority requires otherwise in writing, the Service Provider shall be responsible for the overall management of the exit and service transfer arrangements in accordance with this Schedule and the Exit Plan.

3. Agreement Life Obligations

3.1 During the Term, the Service Provider shall:

3.1.1 at the TfL Group's election (which if requested at any time in writing, shall be deemed to be an obligation of the Service Provider under this Agreement) maintain a register of all Assets, detailing their ownership

and status as either Exclusive Assets or Non-Exclusive Assets and the Net Book Value of such Assets, and detailing all sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services or any particular set of Services requested by the Authority (for example, Maintenance Services);

3.1.2 maintain a configuration management database (which at the TfL Group's request shall be part of the TfL Group's own Configuration Management Database ("**CMDB**")) or document detailing any technical infrastructure through which the Service Provider shall provide/provides the Services. This document should be of sufficient detail to permit the Authority and/or Replacement Service Provider to understand how the Service Provider provides the Services and to enable the smooth transition of the Services with the minimum of disruption,

(collectively the "**Registers**"). The Service Provider shall maintain the Registers in such format as is agreed between the parties and shall update the Registers from time to time and in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

3.2 The Service Provider shall ensure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

3.3 The Service Provider shall (unless otherwise agreed by the Authority in writing) procure that all sub-contracts and other agreements with third parties, which are necessary to enable the Authority and/or any Replacement Service Provider to perform the Services in accordance with this Agreement or the Replacement Services, shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Service Provider upon the Service Provider ceasing to provide

the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.

- 3.4 Where the Service Provider is unable to procure that any sub-contract or other agreement referred to in paragraph 3.3 above which the Service Provider proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Service Provider without restriction or payment, the Service Provider shall promptly notify the Authority of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Service Provider seeking an alternative subcontractor, to be agreed with the Authority.
- 3.5 Each party shall appoint an Exit Manager and provide written notification of such appointment to the other party within sixty (60) days of the Commencement Date. The Service Provider's Exit Manager will be responsible for ensuring that the Service Provider and its employees, agents and subcontractors comply with this Schedule and the Exit Plan. The Service Provider shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Service Provider as are reasonably necessary to enable the Service Provider to comply with the requirements set out in this Schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination/expiry of this Agreement and all matters connected with this Schedule, the Exit Plan and each party's compliance with them.

4. Obligations to Assist on Re-Tendering of Services

- 4.1 Subject to paragraph 5.2 of this **Schedule**, on reasonable notice but in any event within fourteen (14) days of a written request from the Authority, the Service Provider shall provide to the Authority and/or (subject to the potential Replacement Service Provider entering into reasonable written confidentiality undertakings) to its potential Replacement Service Provider, the following material and information in order to facilitate the preparation by the Authority of

any invitation to tender and/or to facilitate any potential Replacement Service Provider undertaking due diligence:

- 4.1.1. details of the Software and the Service(s);
- 4.1.2. details of the Assets (including make, model and Asset number) and of the Net Book Value of such Assets and details of their condition and physical location;
- 4.1.3. details of and information relating to the use of the Assets (including technical specifications);
- 4.1.4. an inventory of the TfL Group's data in the Service Provider's possession or control;
- 4.1.5. a copy of the Registers, updated by the Service Provider up to the date of delivery of such Registers; and

5. Exit Plan

- 5.1 The Service Provider will, within thirty (30) days after the Commencement Date, deliver to the Authority an Exit Plan which sets out the Service Provider's proposed methodology for achieving an orderly transition of the Services from the Service Provider to the Authority and/or its Replacement Service Provider on the expiry or termination of this Agreement and which complies with the requirements set out in paragraphs 5.2 and 5.3 below. Within thirty (30) days after the submission of the Exit Plan, the parties shall use their respective reasonable endeavours to agree the contents of the Exit Plan. The Service Provider shall draft the final agreed Exit Plan taking into account the TfL Group's required changes, if any. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.2 The Exit Plan will contain, as a minimum:
 - 5.2.1. separate mechanisms for dealing with Ordinary Exit and Emergency Exit. The provisions relating to Emergency Exit shall be prepared on the

assumption that the Authority may require that the Service Provider ceases to provide all or some of the Services and that the Service Provider instead provides the full level of assistance as the Authority shall require to enable the Authority or its sub-contractors or a Replacement Service Provider to provide all or part of the Services, including the completion of the Software if not yet completed and particularly taking into account the TfL Group's rights under **clauses 25.7, 25.8 and 25.9**;

5.2.2. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and

5.2.3. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

5.3 In addition, the Exit Plan shall:

5.3.1 document how the Software is made up and works (if completed) or document how to complete the Software and how the Software is and will be made up and work (if not yet completed);

5.3.2 document which and how the Services will transfer to the Replacement Service Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the TfL Group's technology components from any technology components operated by the Service Provider or its subcontractors (where applicable);

5.3.3 specify the scope of the Termination Services that may be required for the benefit of the Authority) and any charges that would be payable for the provision of such Termination Services, if any, and detail how such services would be provided (if required by the Authority), during the Termination Assistance Period. Any and all applicable charges shall be

calculated at all times in accordance with paragraph 10 of this Schedule;

5.3.5 address each of the issues set out in this Schedule to facilitate the transition of the Services from the Service Provider to the Replacement Service Provider and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;

5.3.6 provide a timetable and identify critical issues for providing the Termination Services; and

5.3.7 set out the management structure to be put in place and employed during the Termination Assistance Period.

5.4 The Service Provider will review and (if appropriate) update the Exit Plan in the first month of each contractual year (commencing with the second contract year) to reflect any and all changes in the Services. Following such update the Service Provider will submit the revised Exit Plan to the Authority for review. Within thirty (30) days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this Schedule and the changes that have occurred in the Services since the Exit Plan was last agreed. The Service Provider shall draft the final version of the updated agreed Exit Plan taking into account the TfL Group's required changes, if any. If the parties are unable to agree the contents of the revised Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6. Termination Services

General

6.1. During the Termination Assistance Period or such shorter period as the Authority may require, the Service Provider will continue to provide the Services (as applicable) and will, at the request of the Authority pursuant to paragraph 6.10, provide the Termination Services.

- 6.2 The costs of providing these Termination Services, if any, shall be as stated at paragraph 10 below.
- 6.3 During the Termination Assistance Period, the Service Provider will, in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Service Provider. The Service Provider will use all reasonable endeavours to reallocate resources to provide these services without additional costs. However, if this is not possible any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan or are not without charge as a result of being incurred due to the Authority terminating under **clause 24.1** or **24.2**, will be subject to the Change Control Procedure, discussion and agreement (which will not be unreasonably withheld or delayed by either party).
- 6.4 During the Termination Assistance Period, the Services and the Termination Services will be provided at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with paragraph 6.5.
- 6.5 Where the Service Provider demonstrates to the TfL Group's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet a particular Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.
- 6.6 At the TfL Group's request and on reasonable notice, the Service Provider will deliver up-to-date Registers to the Authority.
- 6.7 The parties acknowledge that the migration of the Services from the Service Provider to the Authority and/or its Replacement Service Provider may be

phased, as required by the Authority, such that certain of the Services are handed over before others.

- 6.8 Within fourteen (14) days after service of notice of termination by either party or not more than seven (7) months and no less than six (6) months prior to the expiry of this Agreement, the Service Provider will submit for the TfL Group's written approval an Exit Plan in a final form that could be implemented immediately.
- 6.9 The parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Plan as soon as reasonably possible. The Service Provider shall draft the final version of such updated agreed Exit Plan taking into account the TfL Group's required changes, if any. If the parties are unable to agree the contents of the Exit Plan within thirty (30) days following its delivery to the Authority then such dispute shall be resolved in accordance with the Dispute Resolution Procedure. If and until the agreement of the final form Exit Plan, the Service Provider shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as this still applies).

Notification of Requirements for Termination Services

- 6.10 The Authority shall be entitled to require the provision of Termination Services by notifying the Service Provider in writing ("**Termination Assistance Notice**"). The Termination Assistance Notice shall specify the:
- 6.10.1 date from which Termination Services are required which shall be no earlier than six (6) months prior to expiry of this Agreement or from the service by either party of any notice to terminate, as the case may be;
- 6.10.2 the nature of the Termination Services required; and
- 6.10.3 the period during which it is anticipated that Termination Services will be required which shall continue no longer than eighteen (18) months after the date that the Service Provider ceases to provide the Services.

6.11 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Service Provider to such effect no later than twenty-one (21) days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than twenty-one (21) days written notice upon the Service Provider to such effect.

Termination Obligations

6.12 The Service Provider shall comply with all of its obligations contained in the Exit Plan and this Schedule.

6.13 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule):

6.13.1 the Service Provider will return to the Authority and then erase from any computers, storage devices and storage media that are to be retained by the Service Provider after the end of the Termination Assistance Period any and all Authority Software and TfL Group data;

6.13.2 the Service Provider will return to the Authority such of the following as is in the Service Provider's possession or control:

6.13.2.1 all copies of the Authority Software and any other software licensed by the Authority to the Service Provider under this Agreement where such licences are to extend beyond termination;

6.13.2.2 all materials created by the Service Provider under this Agreement, the Intellectual Property Rights in which are owned by the Authority;

6.13.2.3 any parts of the ICT environment and any other equipment which belongs to the Authority; and

6.13.2.4 any items that have been on-charged to the Authority, such as consumables;

6.13.3 the Service Provider will transfer all TfL Group data (in complete, uncorrupted form) in its possession or control to the Authority save to the extent (and for the limited period) that such data is required for the purposes of providing any services to the Authority under this Schedule or the Exit Plan;

6.13.4 the Service Provider shall vacate any Sites;

6.13.5 each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services.

16.14 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Service Provider in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Scope of the Termination Services

6.15 The Termination Services to be provided by the Service Provider shall include such of the following services as the Authority may specify in writing:

6.15.1 ceasing all non-critical Software changes (by agreement with the Authority);

- 6.15.2 notifying its subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- 6.15.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or Replacement Service Provider after the end of the Termination Assistance Period;
- 6.15.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services);
- 6.15.5 providing details of work volumes and staffing requirements over the (twelve) 12 month period immediately prior to the commencement of the Termination Services;
- 6.15.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- 6.15.7 in relation to the Maintenance Services, providing the Authority with any problem and incident logs which have not previously been provided to the Authority;
- 6.15.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
- 6.15.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are

appropriate for the continuation of the Services after the Termination Assistance Period;

- 6.15.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or its Replacement Service Provider;
- 6.15.11 making available to the Authority and/or the Replacement Service Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the Authority at the time of termination or expiry;
- 6.15.12 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 6.15.13 generating a computer listing of the Source Code of the Software in a form and on media reasonably requested by the Authority and providing details of where any Source Code to which the Authority shall be entitled to access is held;
- 6.15.14 agreeing with the Authority a handover plan for all of the Service Provider's responsibilities. The Service Provider will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- 6.15.15 delivering copies of the production databases (with content listings) to the TfL Group's and/or the Replacement Service Provider's operations staff (on appropriate media) as reasonably requested by the Authority;
- 6.15.16 assisting with the loading, testing and implementation of the production databases;

- 6.15.17 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- 6.15.18 in respect of the Software where Maintenance Services are being provided, providing historical performance data for the previous twelve (12) months;
- 6.15.19 assisting in the execution of a parallel operation of the Maintenance Services until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services end on a date no later than the end of the Termination Assistance Period);
- 6.15.20 the provision of an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 6.15.21 answering all reasonable questions from the Authority and/or its Replacement Service Provider, if any, regarding the Services;
- 6.15.22 agreeing with the Authority and/or the Replacement Service Provider a plan for the migration of the configuration management database to the Authority and/or the Replacement Service Provider. The Service Provider will fully co-operate in the execution of the agreed plan, providing skills and expertise of a reasonably acceptable standard;
- 6.15.23 the provision of access to the Authority and/or the Replacement Service Provider during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Service Provider:
 - 6.15.23.1 to information and documentation relating to the Services that is in the possession or control of the Service Provider or its subcontractors (and the Service Provider agrees and shall procure that its subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

6.15.23.2 following reasonable notice and during the Service Provider's normal business hours, to members of the Service Provider Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Service Provider or its subcontractors.

Disputes Relating to Termination Services

6.16 Where there is any dispute between the parties regarding the manner in which the Termination Services are to be performed, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

7. Knowledge Transfer

7.1 During the Termination Assistance Period, the Service Provider will:

7.1.1 transfer all training material and provide appropriate training to those Authority and/or Replacement Service Provider staff responsible for internal training in connection with the provision of the Services;

7.1.2 provide for transfer to the Authority and/or the Replacement Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and

7.1.3 provide the Service Provider and/or Replacement Service Provider with access to such members of the Service Provider's or its subcontractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Service Provider or its subcontractors.

7.2 To facilitate the transfer of knowledge from the Service Provider to the Authority and/or its Replacement Service Provider, the Service Provider shall provide a detailed explanation of the procedures and operations used to

provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Service Provider.

7.3 The information which the Service Provider shall provide to the Authority and/or its Replacement Service Provider pursuant to paragraph 7.1 above will include:

7.3.1 copies of up-to-date procedures and operations manuals;

7.3.2 product information;

7.3.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority;

7.3.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule, if any;

7.3.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;

7.3.6 details of physical and logical security processes and tools which will be available to the Authority; and

7.3.7 any and all relevant interface information.

7.4 During the Termination Assistance Period the Service Provider shall grant any agent or personnel (including employees, consultants and contractors) of the Replacement Service Provider and/or the Authority or its sub-contractors access, during Business Hours and upon reasonable prior written notice(which can be as little as five (5) Business Days), to any Service Provider sites for the purpose of effecting a prompt knowledge transfer provided that any such agent or personnel (including employees, consultants and contractors) having access to any such sites under this paragraph shall sign a confidentiality

undertaking in favour of the Service Provider (in such form as the Service Provider shall reasonably require).

8. Assets, Sub-Contracts and Software

8.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Service Provider will not, without the TfL Group's prior written consent:

8.1.1 terminate, enter into or vary any sub-contract;

8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

8.1.3 terminate, enter into or vary any licence for software in connection with the Services.

8.2 Within thirty (30) days of receipt of the up-to-date Registers provided by the Service Provider pursuant to paragraph 6.6 above, the Authority will provide written notice to the Service Provider setting out:

8.2.1 which of the Exclusive Assets the Authority requires and which of the Non-Exclusive Assets the Authority would like to be transferred to the Authority and/or its Replacement Service Provider; and

8.2.2 which sub-contracts and other agreements specified in paragraph 3.3 above the Authority requires to be assigned or novated to the Authority and/or its Replacement Service Provider (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Service Provider to provide the Services at the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Service Provider, the Service Provider will provide all reasonable assistance to the Authority and/or its Replacement Service Provider to enable it to determine which Assets and

Transferring Contracts the Authority and/or its Replacement Service Provider requires in order to provide the Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, the Service Provider shall assign to the Authority (and/or its nominated Replacement Service Provider), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those Exclusive Assets identified by the Authority pursuant to paragraph 8.2 above. Such Exclusive Assets will be acquired by the Authority for a consideration equal to their Net Book Value.
- 8.4 In respect of those Non-Exclusive Assets that the Authority has identified pursuant to paragraph 8.2, the Service Provider will either:
 - 8.4.1 sell such Assets to the Authority and/or its Replacement Service Provider at an agreed price; or
 - 8.4.2 offer or procure for the Authority and/or its Replacement Service Provider the use, rental or licensing of such Assets (as appropriate) in each case for such period of time and on such commercial and other terms as may be agreed between the parties, acting reasonably.
- 8.5 The Service Provider shall assign or procure the novation to the Authority of the Transferring Contracts. The Service Provider shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 8.6 The Authority shall:
 - 8.6.1 accept assignments from the Service Provider or join with the Service Provider in procuring a novation of each Transferring Contract;
 - 8.6.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Service Provider, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that

Transferring Contract, or as applicable, procure that a Replacement Service Provider does the same.

8.7 The Service Provider shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the contract to the Authority and/or the Replacement Service Provider has been effected.

8.8 The Service Provider shall indemnify, keep indemnified and hold the Authority (and/or the TfL Group's nominee or the Replacement Service Provider, as applicable) harmless from and against each loss, liability and cost arising out of any claims made by a counterparty to a Sub-contract which is assigned or novated to the Authority (and/or Replacement Service Provider) pursuant to paragraph 8.5 above in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

9. Service Provider Personnel

9.1 The Authority and Service Provider agree and acknowledge that, in relation to the Service Provider's employees and personnel, **clause 33** or **clause 33** as supplemented and amended by **clause A7** of **Annex B** of **Schedule 1** (if applicable) shall apply. ***[Retain if detailed TUPE schedule is used or TUPE will apply (the cross references refer to that detailed schedule. Otherwise, delete].***

10. Charges

10.1 In relation to all assistance and services (whether Termination Services or otherwise) provided by the Service Provider pursuant to this Schedule and the Exit Plan:

10.1.2 such assistance and services shall be free of charge in the event of termination by the Authority in accordance with **clauses 24.1, 24.2** or **24.3**; and

10.1.2 in all other circumstances than those set out in paragraph 10.1.1 above (including Ordinary Exit upon natural expiry of the Agreement),

the Service Provider shall be entitled to charge for such assistance and services, such charges to be calculated at the agreed hourly rates set out in **Schedule 3** or, in the absence of agreed hourly rates, at no more than the Service Provider's current standard hourly rates used with its customers at the relevant time.

- 10.2 Where Charges apply in accordance with paragraph 10.1.2 above, during the Termination Assistance Period (or for such shorter period as the Authority may require the Service Provider to provide the Termination Services), the Authority shall pay such Charges to the Service Provider in respect of the Termination Services monthly in arrears upon production of a properly executed invoice in accordance with **clause 4**.

SIGNED BY the duly authorised representatives of the parties on the date stated on the front page of this Agreement.

SIGNED by [REDACTED]

duly authorised to sign [REDACTED]

for and on behalf of

Transport for London (TfL)

in the presence of:

Witness Signature: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

Occupation: [REDACTED]

SIGNED by [REDACTED]

duly authorised to sign for

and on behalf of

Transport Simulation Systems Limited (TSS)

in the presence of: [REDACTED]

Witness Signature: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

Occupation: [REDACTED]

APPENDICES