

- 29.5 The Service Provider shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of the Authority.
- 29.6 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used by the Service Provider in connection with the Contract (other than the Intellectual Property Rights made available by the Authority to the Service Provider pursuant to the Contract) have been paid and are included within the Charges.
- 29.7 The Service Provider shall:
- 29.7.1 promptly notify the Authority upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right which affects or may affect the provision or receipt of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and
 - 29.7.2 indemnify, keep indemnified and hold harmless the Authority from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Authority by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Authority of the Products (or any of them) or any of the items licensed in accordance with Clauses 29.3 or 29.4 or anything arising from the provision of the Services and from and against all costs and damages of any kind which the Authority may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.
- 29.8 The Authority shall, at the request of the Service Provider, give the Service Provider all reasonable assistance for the purpose of the Service Provider contesting any such claim, demand, or action referred to in Clause 29.7.1 and the Service Provider shall:
- 29.8.1 reimburse the Authority for all costs and expenses (including legal costs) incurred in doing so;
 - 29.8.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and
 - 29.8.3 consult with the Authority in respect of the conduct of any claim, demand or action and keep the Authority regularly and fully informed as to the progress of such claim, demand or action.
- 29.9 If a claim or demand is made or action brought to which Clause 29.7 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may (without prejudice to 29.7), after consultation with the Authority, at its own expense and within a reasonable time and subject to all other applicable provisions of the Contract (including those relating to Change), modify or substitute any or all of the Products so as to avoid the infringement or the alleged infringement, provided that the terms of the

Contract shall apply mutatis mutandis to such modified or substituted Products and such Products are accepted by the Authority.

29.10 The Authority's interest in and obligations with respect to any programming, materials or data to be obtained from third-party vendors, regardless of whether obtained with the assistance of the Service Provider, shall be determined in accordance with the agreements and policies of such vendors.

30 PROTECTION OF PERSONAL DATA

30.1 The Service Provider shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Authority, shall only carry out such Processing for the purposes of providing the Services in accordance with the Contract.

30.2 For the purposes of this Clause 30, unless the context indicates otherwise, the following expressions shall have the following meanings:

"Authority Personal Data"	Personal Data and/or Sensitive Personal Data Processed by the Service Provider on behalf of the Authority;
"Data Controller"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Data Processor"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Data Subject"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Data Protection Legislation"	the Data Protection Act 1998 (as interpreted in accordance with Directive 95/46/EC) including all regulations made under it and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any amendment or re-enactment of any of them; any other legislation relating to privacy and/or the processing of Personal Data (as amended from time to time); and any guidance or statutory codes of practice issued by the Information Commissioner in relation to such legislation;
"Personal Data"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Privacy Impact Assessment"	a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Authority Personal

	Data;
"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;
"Restricted Countries"	any country outside the European Economic Area with the exception of those countries which are specifically recognised by the EU as providing an adequate level of protection for personal data;
"Sensitive Personal Data"	has the meaning given to it by section 2 of the DPA; and
"Subject Access Request"	a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted pursuant to Data Protection Legislation.

30.3 With respect of the Parties' rights and obligations under the Contract, the Parties acknowledge that the Authority is a Data Controller and that the Service Provider is a Data Processor.

30.4 Details of the Authority Personal Data to be Processed by the Service Provider and the purposes of such Processing are as follows:

30.4.1 Categories of Data Subject

The Authority Personal Data to be Processed by the Service Provider (if any) concerns the following categories of Data Subjects:

Customers and members of the public.

30.4.2 Categories of Authority Personal Data

The Authority Personal Data to be Processed concerns the following categories of Personal Data and/or Sensitive Personal Data:

Customer contact details, order history and payment information.

30.4.3 Purpose(s) of the Processing

The Authority Personal Data is to be Processed for the following purpose(s):

for credit/debit card authorisation, settlement and authentication and for provision of customer support, risk management, fraud screening and associated reporting

30.4.4 Permitted offshore Processing

The Authority Personal Data is to be Processed in the following Restricted Countries:

United States of America

subject to the Authority and Service Provider contemporaneously entering into the Model Clauses as attached hereto as Schedule 16.

30.5 Without prejudice to the generality of Clause 30.1, the Service Provider shall:

- 30.5.1 process the Authority Personal Data only in accordance with instructions from the Authority to perform its obligations under the Contract, however, the Authority's transmission of a transaction request to the Service Provider shall constitute instruction to process the Personal Data contained with such transmission;
- 30.5.2 use its reasonable endeavours to assist the Authority in complying with any obligations under Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- 30.5.3 maintain, and make available to the Authority on its request, documentation, a central register or an inventory which describes the processing operations for which it is responsible and specifies: the purposes for which Authority Personal Data are processed including the legitimate interests pursued by the Authority or any Authority Group member where processing is based on this lawful basis; the categories of Personal Data and Data Subjects involved; the source of the Personal Data; the recipients of the Personal Data; and the location(s) of any overseas processing of those Personal Data;
- 30.5.4 take appropriate technical and organisational security measures against unauthorised or unlawful Processing of Authority Personal Data and against accidental loss, destruction of, or damage to such Authority 30.5.3 Personal Data;
- 30.5.5 without prejudice to Clause 30.3.4, wherever the Service Provider uses any mobile or portable device for the transmission or storage of Authority Personal Data, ensure that each such device encrypts Authority Personal Data;
- 30.5.6 provide the Authority with such information as the Authority may from time to time require to satisfy itself of compliance by the Service Provider (and/or any authorised sub-contractor) with Clause 30.5.4 and 30.5.5, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or the Authority;
- 30.5.7 where requested to do so by the Authority or where Processing Authority Personal Data presents a specific risk to privacy, carry out a Privacy Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant statutory requirements) and make the results of such an assessment available to the Authority;

- 30.5.8 notify the Authority within two (2) Business Days if it, or any sub-contractor, receives:
 - 30.5.8.1 from a Data Subject (or third party on their behalf):
 - 30.5.8.1.1 a Subject Access Request (or purported Subject Access Request);
 - 30.5.8.1.2 a request to rectify, block or erase any Authority Personal Data; or
 - 30.5.8.1.3 any other request, complaint for communication relating to the Authority's obligations under Data Protection Legislation;
 - 30.5.8.2 any communication from the Information Commissioner or any other regulatory authority in connection with Authority Personal Data; or
 - 30.5.8.3 a request from any third party for disclosure of Authority Personal Data where compliance with such request is required or purported to be required by law;
 - 30.5.9 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 30.5.8, including by promptly providing:
 - 30.5.9.1 the Authority with full details and copies of the complaint, communication or request; and
 - 30.5.9.2 where applicable, such assistance as is reasonably requested by the Authority to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation.
 - 30.5.10 when notified in writing by the Authority, supply a copy of, or information about, any relevant 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 five (5) Business Days from the date of the request.
 - 30.5.11 when notified in writing by the Authority, comply with any agreement between the Authority and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Authority Personal Data;
- 30.6 The Authority remains solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed. However, the Parties acknowledge that Personal Data will be made available to the Service Provider in relation to or in the course of performing its obligations under this Agreement in relation to which the Service Provider shall act as a Data Controller or co-Data Controller with the Authority. The Service Provider shall not share any Authority Personal Data with any sub-contractor or third party

without prior written consent from the Authority (in the Contract or otherwise) and unless there is a written contract in place with the sub-contractor which requires the sub-contractor or third party to:

- 30.6.1 only Process Authority Personal Data in accordance with the Authority's instructions to the Service Provider; and
 - 30.6.2 comply with the same obligations with which the Service Provider is required to comply with under this Clause 30 (and in particular Clauses 20.1, 24.1, 24.2, 26.1, 28.1, 28.3, 30.1 and 31).
- 30.7 The Service Provider agrees that, and shall procure that any sub-contractor shall agree that, Authority Personal Data:
- 30.7.1 must only be Processed in accordance with the Authority's obligations to comply with Data Protection Legislation and by such of their personnel as need to view or otherwise access Authority Personal Data;
 - 30.7.2 must only be used as instructed by the Authority and as reasonably necessary to perform the Contract in accordance with its terms;
 - 30.7.3 must not be used for any other purposes (in whole or part) by any of them (and specifically but without limitation must not be copied or referred to in whole or part through training materials, training courses, discussions or negotiations or contractual arrangements with third parties or in relation to proposals or tenders with the Authority (or otherwise), whether on renewal of the Contract or otherwise, without the prior written consent of the Authority); and
 - 30.7.4 must not be used so as to place the Authority in breach of Data Protection Legislation and/or to expose it to risk of actual or potential liability to the Information Commissioner, Data Subjects and/or reputational damage and/or to any order being made against the Authority preventing, suspending or limiting the Processing of Authority Personal Data.
- 30.8 The Service Provider shall, and shall procure that any sub-contractor shall:
- 30.8.1 not disclose or transfer Authority Personal Data to any third party or their own personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Authority Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under the Contract);
 - 30.8.2 notify the Authority within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of security and/or of the Contract and/or Clause 30 in relation to Authority Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any Authority Personal Data;
 - 30.8.3 keep the Authority properly and regularly informed consequently;
 - 30.8.4 fully cooperate with the reasonable instructions of the Authority in relation to the Processing and security of Authority Personal Data in

- accordance with the Contract and in compliance with Data Protection Legislation (including procuring access to sub-contractor premises);
- 30.8.5 cooperate as the Authority requires with any investigation or audit in relation to Authority Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Contract, in relation to Data Protection Legislation or in relation to any actual or suspected breach), whether by any relevant regulatory body, including the Information Commissioner, the police, any other statutory law enforcement agency or otherwise and shall do so both during the Contract and after its termination or expiry (for so long as the Party concerned retains and/or Processes Authority Personal Data);
- 30.8.6 take all reasonable steps to ensure the reliability and integrity of all Service Provider's Personnel who can/or do access Authority Personal Data;
- 30.8.7 ensure all Service Provider's Personnel who can/ do access Authority Personal Data are informed of its confidential nature and do not publish, disclose or divulge any of the Personal Data to any third party without the prior consent of the Authority;
- 30.8.8 ensure all Service Provider's Personnel who can/ do access Authority Personal Data have undergone adequate training in relation to the use, care, protection and handling of Personal Data in accordance with Data Protection Legislation and the Contract, understand such obligations and comply with them and ensure that such training is updated at reasonable intervals; and
- 30.8.9 comply during the course of the Contract with any written retention and/or deletion policy or schedule provided to it by the Authority from time to time.
- 30.9 The Service Provider shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Authority Personal Data in or to any Restricted Countries without prior written consent from the Authority (which consent may be subject to additional conditions imposed by the Authority).
- 30.10 If, after the Service Commencement Date, the Service Provider or any sub-contractor wishes to Process and/or transfer any Authority Personal Data in or to any Restricted Countries, the following provisions shall apply:
- 30.10.1 the Service Provider shall submit a written request to the Authority setting out details of the following:
- 30.10.1.1 the Authority Personal Data which will be transferred to and/or Processed in any Restricted Countries;
- 30.10.1.2 the Restricted Countries which the Authority Personal Data will be transferred to and/or Processed in;
- 30.10.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Authority Personal Data in Restricted Countries;

- 30.10.1.4 how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the Authority Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with Data Protection Legislation;
- 30.10.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner, in connection with, the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
- 30.10.3 the Service Provider shall comply with any instructions and shall carry out such actions as the Authority may notify in writing when providing its consent to such Processing or transfers, including:
 - 30.10.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into the Contract or a separate data processing agreement between the Parties; and
 - 30.10.3.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Authority Personal Data in any Restricted Countries enters into a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Service Provider in connection with, the Processing of Authority Personal Data in (and/or transfer of Authority Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in 30.10.3.1.
- 30.11 The Service Provider and any sub-contractor (if any), acknowledge:
 - 30.11.1 the importance to Data Subjects and the Authority of safeguarding Authority Personal Data and Processing it only in accordance with the Contract;
 - 30.11.2 the loss and damage the Authority is likely to suffer in the event of a breach of the Contract or negligence in relation to Authority Personal Data;
 - 30.11.3 any breach of any obligation in relation to Authority Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of Contract;
 - 30.11.4 notwithstanding Clause 34.1.1, if the Service Provider has committed a material breach under Clause 30.11.3 on two or more separate occasions, the Authority may at its option:
 - 30.11.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
 - 30.11.4.2 terminate the Contract in whole or part with immediate written notice to the Service Provider.

30.12 If the Service Provider Processes payment card data under the Contract, it shall ensure that it is and that its internal processes and procedures, information technology systems and any equipment that it provides or is provided on its behalf pursuant to the Contract are compliant with PCI DSS. In addition the Service Provider shall

30.12.1 at least once every 12 months appoint a PCI DSS Qualified Security Assessor ("QSA") to validate that the Service Provider is compliant with (including as set out above) PCI DSS when providing the Services;

30.12.2 without prejudice to any other audit and inspection rights that the Authority has under the Contract, provide the Authority with copies of any reports and other documents provided by or to the QSA in respect of each such validation; and

30.12.3 where the QSA recommends that certain steps should be taken by the Service Provider, promptly take those steps and demonstrate to the Authority that those steps have been taken without charge to the Authority.

30.13 Compliance by the Service Provider with this Clause 30 (Protection of Personal Data) shall be without additional charge to the Authority.

30.14 Following termination or expiry of the Contract, howsoever arising, (or the applicable End Date, if later) the Service Provider:

30.14.1 may Process the Personal Data only for so long as to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with Clause 30.14.2);

30.14.2 subject to Clause 30.14.1, shall:

(a) on written instructions from the Authority either securely destroy or securely and promptly return to the Authority or a recipient nominated by the Authority (in such usable format as and to the extent the Authority may reasonably require) the Authority Personal Data and relevant records and documentation accordingly; or

(b) in the absence of instructions from the Authority after 12 months from the expiry or termination of the Contract securely destroy the Authority Personal Data and relevant records and documentation accordingly.

Authority Personal Data may not be Processed following termination or expiry of the Contract (or the applicable End Date, if later) save as permitted by this Clause 30.14. Notwithstanding the foregoing, each Party may retain Personal Data that is (i) stored on archival files and (ii) required for compliance with Applicable Law, Payment Network Rules or its obligations pursuant to this Agreement, provided that such Party continues to maintain confidentiality of such Personal Data pursuant to the terms of the Contract.

30.15 For the avoidance of doubt, and without prejudice to Clause 30.14 the obligations in this Clause 30 shall apply following termination or expiry of the

Contract to the extent the Party concerned retains or Processes Authority Personal Data.

- 30.16 The indemnity in Clause 26 shall apply to any breach of Clause 30 and shall survive termination or expiry of the Contract.
- 30.17 The Authority represents and warrants to the Service Provider that it complies and will comply with its obligations as a Data Controller under the Act, including, without limitation, providing proper notices to its Customers about how Personal Data may be used and stored by the Authority and the Service Provider; providing to its Customers the ability to opt out of such use, and implementing and executing procedures for deleting stored Personal Data at the request of its Customers.
- 30.18 The Authority and Service Provider both recognise that this Clause 30 may be materially affected by developments in data protection legislation, and that consequently these clauses may require revision once updated legislation comes into force.

31 CONFIDENTIALITY, ANNOUNCEMENTS AND TRANSPARENCY

- 31.1 Subject to Clause 32, the Service Provider will keep confidential:
 - 31.1.1 the terms of the Contract; and
 - 31.1.2 any and all Confidential Information that it may acquire in relation to the Authority.
- 31.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under the Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 31.1.
- 31.3 The obligations on the Service Provider set out in Clause 31.1 will not apply to any Confidential Information:
 - 31.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 31);
 - 31.3.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - 31.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 31.4 The Service Provider shall keep secure all materials containing any information in relation to the Contract and its performance.
- 31.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the Authority. The Authority shall have the right to approve any announcement before it is made.

31.6 The Service Provider shall:

31.6.1 at the Authority's request and in any event upon the termination or expiry of the Contract, promptly deliver to the Authority or destroy as the Authority may direct all documents and other materials in the possession, custody or control of the Service Provider (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information. Notwithstanding the foregoing, the Service Provider may retain Confidential Information that is (i) stored on archival files and (ii) required for compliance with Applicable Law, payment network rules or its obligations pursuant to the Contract, provided that it continues to maintain confidentiality of such Confidential pursuant to the terms of the Contract; and

31.6.2 not, except where provided in this Clause 31 or with the prior written consent of the Authority, disclose to any person the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.

31.7 The Service Provider acknowledges that damages would not be an adequate remedy for any breach by it of this Clause 31 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 the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 31 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 31.

31.8 Notwithstanding Clause 32, the Authority shall have the same obligations as those imposed on the Service Provider under this Clause 31 in respect of those categories of confidential information set out in Schedule 15 ("**Service Provider Confidential Information**"), except that the Authority may:

31.8.1 disclose the Service Provider Confidential Information where the Authority considers that it is obliged to do so under any of the legislation referred to in Clause 32;

31.8.2 use the Service Provider Confidential Information to the extent necessary to obtain the benefit of the Service Provider's performance under the Contract;

31.8.3 disclose the Service Provider Confidential Information to any member of the Authority Group; and

31.8.4 disclose such Service Provider Confidential Information as may be required to be published in the Official Journal of the European Union and any associated tender documentation; and

31.8.5 disclose such Service Provider Confidential Information as may be required to transition the Service to a Successor Operator.

31.9 The provisions of this Clause 31 will survive any termination of the Contract for a period of 6 years from termination.

32 FREEDOM OF INFORMATION AND TRANSPARENCY

32.1 The Service Provider acknowledges that the Authority:

- 32.1.1 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
 - 32.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 32.2 Without prejudice to the generality of Clause 32.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
- 32.2.1 transfer to the Contract Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Access Request relevant to the Contract, the Services or any member of the Authority Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and
 - 32.2.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and copies of all such Information that the Authority requests and such details and copies shall be provided within 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.
- 32.3 The Authority shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 32.4 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 32.5 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 31.8 and this Clause 32, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 32.6 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.
- 32.7 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 32.6. The Authority shall make the final decision regarding both publication and redaction of the Contract Information.

33 DISPUTE RESOLUTION

- 33.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract ("**Dispute**") before resorting to litigation.
- 33.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute

in writing to the Director of Customer Experience (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.

- 33.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the other Party ("**Notice**") to commence such process and the notice shall identify one or more proposed mediators.
- 33.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 33.5 Where a dispute is referred to mediation under Clause 33.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 33.6 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.
- 33.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 51.
- 33.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 33.
- 33.9 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 33 shall not apply in respect of any circumstances where such remedies are sought.

34 BREACH AND TERMINATION OF CONTRACT

- 34.1 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate the Contract immediately (or so as to be effective at such future time as the Authority may specify) upon giving notice to the Service Provider if:
- 34.1.1 in addition and without prejudice to Clauses 34.1.2 to 34.1.8 (inclusive), the Service Provider has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;
- 34.1.2 the Service Provider is subject to an Insolvency Event;

- 34.1.3 in the event that there is a change of ownership referred to in Clause 17.3 or the Service Provider is in breach of Clause 17.3;
 - 34.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 18;
 - 34.1.5 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
 - 34.1.6 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
 - 34.1.7 the Service Commencement Date has not occurred prior to the SCD Long-Stop Date; or
 - 34.1.8 the Compliance Certificate for the Final Service Transition Milestone is not achieved prior to the Transition Long-Stop Date.
- 34.2 Without prejudice to any of the Authority's other rights, powers or remedies (whether under the Contract or otherwise) if the Service Provider is in breach of any of its warranties, or obligations either under Clause 12 or any other provision of the Contract, the Service Provider shall, if required to do so by the Authority, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and obligations. Nothing in this Clause 34.2 shall prevent the Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Authority so procures any Services or any remedial action, the Authority shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Authority and attributable to the Authority procuring such Services or remedial action from such alternative contractor.
- 34.3 Subject to Clauses 34.4 and 34.6, neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event and, provided that, where that Party is the Service Provider, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Service Provider and the Service Provider has complied with Clause 34.4. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("**the Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this Clause 34.3 then without prejudice to any rights and liabilities which accrued prior to termination (and, in the case of the Service Provider, to it having complied with Clause 34.4), the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 34.4 If a Force Majeure Event occurs which affects the Service Provider, the Service Provider will:

- 34.4.1 promptly upon becoming aware of the Force Majeure Event give notice to the Authority setting out details of the nature, extent and anticipated duration of the Force Majeure Event, the expected impact of the Force Majeure Event on its ability to perform its obligations and the steps it is taking and/or proposes to take to comply with Clause 34.4.2,
 - 34.4.2 use its reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end, including taking such steps as may be reasonably required by the Authority;
 - 34.4.3 keep the Authority informed of all developments relating to the Force Majeure Event and the steps being taken to comply with Clause 34.4.2, including by providing regular written updates in respect of all the matters covered by the notice given under Clause 34.4.1 and by attending such meetings and supplying such information as may reasonably be required by the Authority from time to time,
 - 34.4.4 continue to perform all of its obligations under the Contract, the performance of which is not affected by the Force Majeure Event; and
 - 34.4.5 to the extent it is able to do so notwithstanding the occurrence of the Force Majeure Event, provide all such assistance to the Authority and/or such other persons as the Authority may request in connection with the Authority securing an alternative supply of those Services which the Service Provider is delayed in or prevented from supplying due to the Force Majeure Event (including by providing and permitting the use by the Authority or its nominee of assets, equipment and personnel).
- 34.5 A Party will not be in breach of the Contract or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under this Agreement to the extent that this is due to a Force Majeure Event affecting the other Party. In particular, if the Service Provider is the Party affected by the Force Majeure Event the Authority will have no liability to pay Charges to the Service Provider in respect of any Services which the Service Provider does not supply due to the Force Majeure Event.
- 34.6 Nothing in Clause 34.3 will relieve the Service Provider from its obligations under the Contract to create, implement and operate the Disaster Recovery Plan and the Major Incident Plan. Accordingly, if a Force Majeure Event affecting the Service Provider occurs which is an event or circumstance that is within the scope of the Disaster Recovery Plan or the Major Incident Plan, or would have been had the Service Provider and/or Disaster Recovery Plan and/or Major Incident Plan complied with Clause 9 (Major Incident Management), then Clause 34.3 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure would have arisen even if the Disaster Recovery Plan and/or Major Incident Plan had complied with, and had been fully and properly implemented and operated in accordance with, Clause 9 and the terms of the Disaster Recovery Plan and/or the Major Incident Plan (as the case may be) in respect of that Force Majeure Event.

- 34.7 Without prejudice to the Authority's right to terminate the Contract under Clause 34.1 or to terminate at common law, the Authority may terminate the Contract at any time after the Initial Term without cause subject to giving the Service Provider written notice of the period specified in Schedule 1 (Key Contract Information), provided that this Clause 34.7 may be dis-applied by notice to that effect in Schedule 1.
- 34.8 Without prejudice to the Authority's right to terminate the Contract under Clauses 34.1, 34.7 or at common law, the Authority may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 38.
- 34.9 To the extent that the Authority has a right to terminate the Contract under this Clause 34 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted in accordance with Clause 41.
- 34.10 Without prejudice to the Service Provider's right to terminate at common law, the Service Provider may by providing not less than three (3) months' written notice, terminate the Contract if the Authority fails to pay any undisputed sum in accordance with Clause 11 which is in excess of £10,000 (ten thousand pounds sterling) and has subsequently failed to remedy such breach within sixty (60) days of written notice of such breach from the Service Provider provided that in the case of such termination:
- 34.10.1 the Authority shall be responsible for making such payments to the Service Provider as have accrued and are properly payable in respect of the period prior to the Expiry Date but;
- 34.10.2 in no circumstances shall the Authority have any other liability to the Service Provider in respect of or connected with such termination, including (without limitation) any loss of anticipated profit.

35 CONSEQUENCES OF TERMINATION OR EXPIRY

- 35.1 Notwithstanding termination of the Contract pursuant to Clause 34 or expiry in accordance with Clause 2, any applicable Handback Period shall apply pursuant to Schedule 11 (Handback of Service) and the provisions of the Contract shall continue until the Expiry Date.
- 35.2 [NOT USED]
- 35.3 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 35.4 Upon expiry or termination of the Contract (howsoever caused):
- 35.4.1 the Service Provider shall;
- 35.4.1.1 in accordance with Schedule 11 (Handback of Service) take all such steps as shall be necessary for the orderly handover of Services to the Authority (or its nominee), such

that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover; and

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

35.4.2 the Authority shall (subject to Clauses 25, 35.1 and 35.5 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 7 (Pricing Schedule) or otherwise reasonably determined by the Authority.

35.5 On termination of all or any part of the Contract, 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 (save where terminated under Clause 34.7) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

36 HANDBACK OF SERVICES

36.1 The Service Provider will comply with the Service Provider's obligations under Schedule 11 (Handback of Services) in order to ensure, amongst other things, Service continuity and minimisation of disruption to customers at the end of the Contract and during the Handback Period.

36.2 Cooperation in Relation to Handback of Services

Without limiting Clauses 24 (Records, Audit and Inspection) and 37 (Transfer of Employees on Expiry or Termination), the Service Provider shall pro-actively co-operate and work with the Authority Group and/or any Successor Operator(s):

36.2.1 from the earliest of:

36.2.1.1 two years following the Service Commencement Date; or

36.2.1.2 the date on which any notice to terminate the Contract is issued by the Authority or the Service Provider,

until the Expiry Date ;

36.2.2 by providing such services, advice, assistance, support, information, documentation, data, access and taking such steps as are reasonably requested by the Authority including;

36.2.2.1 as described in the Handback Plan and/or the Handback Programme;

- 36.2.2.2 in respect of the provision of the Services (or services which are substantially similar to the Services);
- 36.2.2.3 in respect of the Contract System and/or the Service Levels;
- 36.2.2.4 in relation to any Intellectual Property Rights within the scope of Clause 29 and subject always to Clause 31;
- 36.2.2.5 to enable the Authority (and/or another member of the Authority Group and/or any Successor Operator(s)) to understand how to replace Proprietary Tools and how to transfer Data from Proprietary Tools to replacement tools and;
- 36.2.2.6 in respect of the Authority otherwise drafting any notice, invitation, request or other tender or negotiation process and/or providing any due diligence or other information for recipients of such a notice, invitation, request or other process,

whether or not the Service Provider or a member of the Service Provider Group is a recipient of or invited by the Authority Group to be involved in such process; and

36.2.3 in order to:

- 36.2.3.1 facilitate (i) the invitation of bids from, (ii) the selection of, and (iii) the appointment of, any Successor Operator(s)
- 36.2.3.2 prepare for an orderly and smooth transfer to any member of the Authority Group and/or any Successor Operator(s) of the provision of the Services (or services substantially similar to the Services) and/or the Contract System (or any relevant part thereof);
- 36.2.3.3 minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and any interfacing systems and Services.,

36.3 Handback Plan and Service End Dates

- 36.3.1 The Authority anticipates that the transfer of the Services to a Successor Operator may take place on the basis of a transition on a single “**End Date**” (which in those circumstances would also be the Expiry Date) or alternatively, on a phased step down of Services with completion of each phase or service being an “**End Date**” (and the last of such dates being the Expiry Date).
- 36.3.2 The Authority may, in its absolute discretion and by giving written notice in the form of a Variation to the Service Provider:
 - 36.3.2.1 specify an End Date in relation to the termination of any particular Service and/or part of the Contract System having regard for the proper management and transitioning of the relevant Service or part of the Contract System and any phasing of various individual End Dates; and/or

- 36.3.2.2 revise or delay the relevant End Date for any reason including where the Authority Group and/or any Successor Operator is not ready to take over responsibility for the Service (or any replacing service) and/or the Contract System (or any part thereof),

provided that the Authority shall not specify or require as an End Date any date which is a) prior to the effective date of any notice to terminate the Contract or any part thereof taking effect in relation to any termination of that Service pursuant to Clause 34 or b) otherwise (where no such notice to terminate has been given) prior to the end of the Initial Term (or, where extended in accordance with Clause 2.2, the end of the relevant Extension Year). The Service Provider shall continue to provide the relevant Service and/or part of the Contract System and any other required activities pursuant to the Contract until the relevant End Date.

36.4 Handback Procedure

36.4.1 The Authority shall provide to the Service Provider as much information as is reasonably practicable regarding the Authority's proposed arrangements for the performance of the Services (or services similar to the Services) by the Successor Operator(s) and/or any member of the Authority Group (as the case may be) (the "Successor Plan"). If there are changes to the Successor Plan, the Authority shall update such information and shall provide such updated information to the Service Provider.

36.4.2 The Service Provider shall prepare and provide the following in accordance with of Schedule 11 (Handback of Services):

36.4.2.1 the Handback Plan and any updates thereto;

36.4.2.2 the Handback Programme and any updates thereto; and

36.4.2.3 the Handback Status Reports and any updates thereto

36.5 No additional charges will be payable to the Service Provider for the services provided pursuant to this Clause 36. However:-

36.5.1 if the Service Provider is required to produce more than 2 iterations of each of the Handback Plan or the Handback Programme, other than as result of any failure by the Service Provider to comply with its obligations and not counting revisions to those documents to take into account the reasonable comments of the Authority in accordance with the provisions of Schedule 11 (Handback of Services); and

36.5.2 carrying out the Handback Plan

the requirements shall be chargeable activity which is not included in the Charges and shall be determined pursuant to the Variation procedure.

37 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION.

37.1 Notwithstanding Clause 14.1, if the parties determine that TUPE will apply on the expiry or termination of the Contract (or any part of it), the Service Provider will promptly provide (and procure that its Sub-Contractors provide) within 7

days of a request by the Authority or within 7 days of any notice to terminate the Contract being given pursuant to Clause 34 of the Contract, the following information to the Authority (subject always to the Data Protection Legislation as defined in Clause 30.2 above):

- 37.1.1 an anonymised list of current Service Provider Personnel, identifying who is employed or engaged by the Service Provider and who is employed or engaged by a Sub-Contractor (the "Provisional Staff List");
- 37.1.2 such of the information specified in Appendix 1 to this Clause 37 as is reasonably requested by the Authority in respect of each individual included on the Provisional Staff List;
- 37.1.3 a list of all persons employed or engaged by the Service Provider, who have been engaged by the Service Provider or any Sub-Contractor during the preceding six months in the provision of the Services,
- 37.1.4 a list of those individuals referred to in Clauses 37.1.1 and 37.1.3 whom the Service Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer,

such information together being the "**Provisional Staffing Information**".

- 37.2 The Service Provider will notify the Authority as soon as practicable and in any event within 5 days of the Service Provider becoming aware of any additional or new Provisional Staffing Information and/or any changes to any Provisional Staffing Information already provided.
- 37.3 The Service Provider will make reasonable endeavours to ensure that any Provisional Staffing Information which it supplies (including any copies of it) will be materially complete and accurate and will be kept materially complete and accurate.
- 37.4 Subject to Clause 37.5, the Service Provider will, not less than 28 days before the Service Transfer Date, provide the Authority with a further up-to-date list of all Service Provider Personnel (the "**Final Staff List**") and any updated staffing Information relating to persons on that list (**Final Staffing Information**).
- 37.5 If the Contract is terminated by the Authority in accordance with Clause 34.1, 34.7, 34.8, or 34.9 then the Final Staff List will be provided by the Service Provider to the Authority as soon as practicable and no later than 14 days after a) the date of receipt of the notice by the Service Provider or b) the date of termination of the Contract (whichever is the earlier).
- 37.6 The Service Provider will make best endeavours to ensure:
 - 37.6.1 the Final Staff List and the Final Staffing Information will be complete and accurate in all material respects;
 - 37.6.2 the Final Staff List will identify all Transferring Employees; and

- 37.6.3 prior to the Service Transfer Date, it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Transferring Employees to the Authority.
- 37.7 During the period after which a Provisional Staff List has been provided by the Service Provider (the "**Relevant Period**") the Service Provider will not and will procure that its Sub-Contractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 37.7.1 terminate or give notice to terminate the employment of any Service Provider Personnel or replace any of the Service Provider Personnel (save for any termination for gross misconduct, provided that the Authority is informed promptly of such termination);
 - 37.7.2 deploy or assign any other person to perform the Services who is not included on the most recent Provisional Staff List and Final Staff List unless it is necessary to do so for the proper performance of the Services (or any of the services), in which case the Authority will be promptly notified of the same;
 - 37.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Provisional Staff List and Final Staff List;
 - 37.7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider Personnel; or
 - 37.7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Provisional Staff List and Final Staff List.
- 37.8 The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Provisional Staff List and Final Staff List during the Relevant Period regardless of when such notice takes effect.
- 37.9 The Service Provider agrees that the Authority will (subject to Data Protection Legislation as defined in Clause 30.2) be permitted to disclose any information provided to it under this Clause 37 for the provision of the Services (or similar services) and to any Third Party engaged by the Authority to review the delivery of the Services and to any Successor Operator.
- 37.10 If TUPE applies on the expiry or termination of the Contract or any part of it, the following will apply:
- 37.10.1 The contracts of employment of each of the Transferring Employees will have effect from the Service Transfer Date as if originally made between the relevant individual and the Authority or the Successor Operator (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).

- 37.10.2 Following provision of a Final Staff List the Service Provider will (subject to Data Protection Legislation as defined in Clause 30.2):
- 37.10.2.1 provide the Authority or Successor Operator (as appropriate) with access to such employment and payroll records relating to the Transferring Employees as the Authority or Successor Operator (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Transferring Employees to the Authority or Successor Operator (as appropriate);
 - 37.10.2.2 allow the Authority or Successor Operator (as appropriate) to have copies of any of those employment and payroll records;
 - 37.10.2.3 provide all original employment records relating to the Transferring Employees to the Authority or Successor Operator (as appropriate); and
 - 37.10.2.4 co-operate with the Authority and any Successor Operator in the orderly management of the transfer of employment of the Transferring Employees.

If any of the Transferring Employees are employed or engaged by Sub-Contractors, the Service Provider will procure such Sub-Contractors provide the Authority or Successor Operator (as appropriate) with the same level of access, information and cooperation.

- 37.10.3 The Service Provider warrants to each of the Authority and the Successor Operator that as at the Service Transfer Date (except where the Service Provider has notified the Authority and the Successor Operator (if appointed) in writing to the contrary) the no member of the Transferring Employees to the Service Provider's knowledge:
- 37.10.3.1 is under notice of termination;
 - 37.10.3.2 is on long-term sick leave;
 - 37.10.3.3 is on maternity, parental or adoption leave;
 - 37.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations applicable to their employment;
 - 37.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed as part of the Provisional Staffing Information or Final Staffing Information;
 - 37.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
 - 37.10.3.7 has received a written warning (other than a warning that has lapsed);

- 37.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or
 - 37.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Successor Operator (as appropriate) under TUPE.
- 37.10.4 The Service Provider undertakes to each of the Authority and any Successor Operator that it will (and will procure that its Sub-Contractors will):
- 37.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Transferring Employees and any collective agreements relating to the Transferring Employees up to the Service Transfer Date;
 - 37.10.4.2 pay to the Transferring Employees all remuneration and benefits ("Employment Costs") which they are entitled to receive from the Service Provider or any Sub-Contractor in the period up to the Service Transfer Date;
 - 37.10.4.3 pay to the Authority or the Successor Operator (as appropriate) within 7 days of the Service Transfer Date an apportioned sum in respect of Employment Costs as set out in Clause 37.10.5; and
 - 37.10.4.4 comply in all respects with its information and consultation obligations under TUPE and provide to the Authority or Successor Operator (as appropriate) such information as the Authority or Successor Operator may request in order to verify such compliance.
- 37.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
- 37.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Service Transfer Date;
 - 37.10.5.2 the Authority or (where appointed) any Successor Operator will be responsible for the Employment Costs relating to the period after the Service Transfer Date
- and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Transferring Employee's holiday entitlements.
- 37.10.6 The Service Provider will indemnify and keep indemnified each of the Authority and any Successor Operator from and against all claims, costs, expenses or liabilities whatsoever which the Authority and/or any Successor Operator incur or suffer arising directly or indirectly out of or in connection with:
- 37.10.6.1 any failure by the Service Provider to comply with its obligations under this Clause 37.10;

- 37.10.6.2 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of the Transferring Employee whether occurring before on or after the Further Transfer Date;
- 37.10.6.3 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Authority or the Successor Operator to comply with Regulation 13 of TUPE);
- 37.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Transferring Employee to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Service Transfer Date;
- 37.10.6.5 any claim or demand or other action taken against the Authority or any Successor Operator by any person employed or engaged by the Service Provider (or its Sub-Contractors) (other than the Transferring Employees) who claims (whether correctly or not) that the Authority or Successor Operator has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

37.11 If TUPE does not apply on the expiry or termination of the Contract, the Service Provider will remain responsible for the Service Provider Personnel and will indemnify and keep indemnified the Authority against all claims, costs, expenses or liabilities including legal expenses and other professional fees which the Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Service Provider Personnel or former Service Provider Personnel.

37.12 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of the Contract and for 2 years following the date of expiry or earlier termination of the Contract the Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

37.12.1 is still an employee or Sub-Contractor of the Service Provider or any of the Service Provider's associated companies; and

37.12.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under the Contract,

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

37.13 Clause 40.1 shall be amended so that benefits conferred on the Successor Operator under this Clause 37 shall be enforceable by them.

37.14 The Authority will and will use reasonable endeavours to procure that any other Successor Operator (as appropriate) will comply with its or their obligations under Regulation 13 of TUPE.

Appendix 1 to Clause 37

Information to be provided in respect of those on the Provisional Staff List and Final Staff List

- Approximate amount of time spent on the Services (or any part of the Services specified by the Authority)
- Date of birth
- Role title/designation and role profile
- Annual salary £
- Bonus and commission amount and frequency
- Pay frequency and date
- Overtime - contractual or non-contractual and rates
- Contractual working hours
- Contract type - permanent/temporary
- Geographical area of work / location
- Commencement of employment date
- Continuous service date
- Car allowance
- Pension contributions
 - Employer
 - Employee
 - Including additional info on:
 - who were originally employees of the Authority,
 - who were members of (or eligible to become members of) the TfL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme,
 - whose employment transferred from the Authority to the Service Provider under TUPE; and
 - who were entitled to broadly comparable benefits under the Existing Service Provider's Scheme
- Details of any contracting out certificate
- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of annual pay award
- Annual leave entitlement
- Contractual notice period
- Public holiday /concessionary days entitlement
- Sickness entitlement (in 12 month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual
- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom

- Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided
- Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

38 DECLARATION OF INEFFECTIVENESS

- 38.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 35 and Clauses 38.1 to 38.5 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 35 and Clauses 38.1 to 38.5 (inclusive) or the Cessation Plan, the provisions of Clauses 38.1 to 38.5 (inclusive) and the Cessation Plan shall prevail.
- 38.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- 38.3 As from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 38.3.1 an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and
 - 38.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities;
 - 38.3.3 in accordance with the provisions of Clauses 38.1 to 38.5 (inclusive) and to give effect to the terms of the Declaration of Ineffectiveness.
- 38.4 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 38.5 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 the Contract 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 the Contract pursuant to Clauses 38.1 to 38.5 (inclusive).
- 38.6 Without prejudice to the Authority's right of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25, in the event of a Public Procurement Termination Event, the Authority shall promptly

notify the Service Provider and the Parties agree that the provisions of Clauses 35 to 37 (inclusive) and these Clauses 38.6 to 38.10 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clauses 35 to 37 (inclusive) and these Clauses 38.6 to 38.10 or the Cessation Plan, the provisions of these Clauses 38.6 to 38.10 and the Cessation Plan shall prevail.

38.7 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.

38.8 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

38.8.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and

38.8.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities.

in accordance with the provisions of these Clauses 38.6 to 38.10 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

38.9 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

38.10 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of the Contract 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 the Contract pursuant to these Clause 38.6 to 38.10 (inclusive).

39 SURVIVAL

39.1 The provisions of Clauses 1, 4.1.3, 10, 11, 12.1.4, 14.1, 17.2.2, 17.2.3, 19.1.1, 19.1.2, 19.1.5, 19.2, 22, 24-28 (inclusive), 30-41 (inclusive), 43-49 (inclusive), 50, and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

40 RIGHTS OF THIRD PARTIES

40.1 Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of the

Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

- 40.2 Notwithstanding Clause 40.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

41 CONTRACT VARIATION

- 41.1 Save where the Authority may require an amendment to the Services (in which case the Variation procedure set out in Schedule 9 (Form of Variation) shall apply), the Contract may only be varied or amended with the written agreement of both Parties. The details of any Variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Schedule 9 (Form of Variation) and shall not be binding upon the Parties unless completed in accordance with such form of variation.

42 NOVATION

- 42.1 The Authority may novate or otherwise transfer the Contract (in whole or in part).
- 42.2 Within 10 Business Days of a written request from the Authority, the Service Provider shall at its 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 the Contract to one or more persons nominated by the Authority.
- 42.3 Subject to Clause 17, the Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Authority.

43 NON-WAIVER OF RIGHTS

- 43.1 No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 45. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

44 ILLEGALITY AND SEVERABILITY

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

45 NOTICES

45.1 Any notice, demand or communication in connection with the Contract (including a Notice) will be in writing and may be delivered by hand, prepaid recorded delivery first class post or e-mail addressed to the recipient at its registered office or the address stated in Schedule 1 (Key Contract Information) or any other address notified to the other Party in writing in accordance with this Clause 45 as an address to which notices, invoices and other documents may be sent provided that any notice (or Notice) to be served pursuant to Clause 33 (Dispute Resolution) or Clause 34 (Breach and Termination of Contract) shall not be capable of being served by e-mail. The notice, demand or communication will be deemed to have been duly served:

- 45.1.1 if delivered by hand, at the time of delivery;
- 45.1.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or
- 45.1.3 if e-mail is permitted for such notice, if sent by e-mail to that Party's e-mail address, at the time of sending (or, if sending is not on a Business Day or is after 5pm (at the location of the recipient) on a Business Day, at 9am on the next following Business Day), provided that a confirming copy is delivered by hand or sent by first class post to the other Party within 24 hours after sending the e-mail.

46 ENTIRE AGREEMENT

46.1 Subject to Clause 46.2:

46.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which the Contract does not contain; and

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

46.2 Nothing in this Clause 46 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

47 COUNTERPARTS

47.1 The Contract 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.

48 RELATIONSHIP OF THE PARTIES

48.1 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

49 FURTHER ASSURANCE

49.1 The Service Provider shall provide Assurance to the Authority in accordance with the requirements of Schedule 14 (Assurance) in order to provide clarity and visibility to the Authority in relation to the Service Providers compliance with its obligations under the Contract.

49.2 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

50 AUTHORITY EVENTS

50.1 The Service Provider will immediately give notice to the Authority if the Service Provider becomes aware that an Authority Event has arisen or is likely to arise. That notice must include:

50.1.1 details of that Authority Event (including the date of occurrence);

50.1.2 details of the delay (if any) to completion of Transition or the likely impact (if any) on performance of the relevant Services; and

50.1.3 a calculation of the increased costs (if any) that the Service Provider is likely to incur as a direct result of that Authority Event in completing Transition or performing the Services (as the case may be),

in each case in sufficient detail to enable the Authority to reasonably understand, consider and assess the same and the likely impact on the Service Provider's obligations under the Contract.

50.2 The Service Provider will promptly supply to the Authority such further information relating to any Authority Event and the rights claimed by the Service Provider under this Clause 50 as the Authority may reasonably request from time to time.

50.3 If the Service Provider does not provide any information required to be provided under Clauses 50.1 or 50.2 on the date when it should be provided then the Service Provider's rights to be relieved from performance of its obligations and/or to be reimbursed for additional costs incurred by it pursuant to this Clause 50 will not apply to the extent relief would not have been required or costs incurred had the information been provided within the required timescale.

50.4 Subject to Clauses 50.1, 50.2, 50.5, 50.6, and 50.7, if an Authority Event occurs then if that Authority Event directly:

50.4.1 results in a delay to any Transition Milestone being achieved, or to the Service Commencement Date or to the completion of Transition beyond the SCD Long Stop Date or the Transition Long Stop Date (as the case may be), the relevant Transition Milestone Date, and/or

the SCD Long Stop Date and/or the Transition Long Stop Date (as the case may be) will be postponed to such future date as is reasonable given the nature and extent of the relevant Authority Event;

50.4.2 following the Service Commencement Date, affects performance of, or results in a delay to, performance of the Services (or part of them) then the Service Provider's obligation to perform the affected Services (including its obligation to meet Service Levels (and reduce the Charges by way of crediting Service Credits (where appropriate)) will be deemed to be amended, or delayed (as appropriate), to the extent reasonable to reflect the relevant Authority Event provided that nothing in this Clause 50.4.2 will extend the Term; or

50.4.3 causes the Service Provider to incur additional costs, the Service Provider will (subject to Clause 50.5.3) be able to recover such reasonable additional costs from the Authority that directly flow from the relevant Authority Event in accordance with the principles set out in Clause 50.6.

50.5 The Service Provider will only be entitled to the rights contained in Clause 50.4 if:

50.5.1 the Service Provider has at all times acted in accordance with good industry practice and used all reasonable endeavours to:

50.5.1.1 mitigate the effects of the relevant Authority Event;

50.5.1.2 continue to perform all of its obligations under the Contract in accordance with its terms; and

50.5.1.3 minimise any additional costs incurred by or on behalf of the Service Provider as a result of the relevant Authority Event;

50.5.2 the Service Provider has complied in full with all of the provisions of this Clause 50, and

50.5.3 in respect of the ability to recover additional costs pursuant to Clause 50.4.3, the additional costs which the Service Provider would be entitled to recover in respect of the relevant Authority Event exceed £2,000 ("**the Threshold**") provided that:-

50.5.3.1 for the purpose of determining whether the Threshold is exceeded, each act, omission, incident or circumstance which constitutes an Authority Event shall be considered individually and there will be no aggregation of such acts, omissions incidents or circumstances; but subject to that,

50.5.3.2 if the Threshold is exceeded for any individual act, omission, incident or circumstance which constitutes an Authority Event, the Service Provider shall be entitled to recover the whole amount and not just the excess.

50.6 The additional costs that the Service Provider can recover pursuant to Clause 50.4.3 will be calculated in accordance with the principles in paragraph 7 (Value for Money) of Schedule 9 (Form of Variation), as if the

relevant Authority Event had been a Variation, and shall take into account any savings made by the Service Provider in connection with the Authority Event.

- 50.7 The Service Provider will verify and justify such costs by reference to its accounting records and the Authority will be granted full access to any relevant records in accordance with Clause 24 (Records, Audit and Inspection).
- 50.8 The Service Provider will give notice to the Authority of all amounts which it believes are due to it pursuant to Clause 50.4.3 not less than 20 Business Days prior to the date on which the Authority is proposed to be invoiced for the same and will provide details of all relevant calculations.
- 50.9 If the Parties do not agree upon:-
- 50.10 any amounts invoiced (or proposed to be invoiced) by the Service Provider to the Authority pursuant to this Clause 50, either Party may refer the dispute to the Dispute Resolution Procedure and pending resolution the amounts in dispute will not be payable by the Authority. Any sums due to the Service Provider following resolution of such dispute will be added to the instalment of the Charges due next following such resolution and, if no such Charges are due, as a debt due within 30 Business Days of the resolution of the dispute.
- 50.11 The Service Provider will have no rights pursuant to Clause 50.4 unless and until the extent of the Service Provider's entitlement to relief from performance of, or right to delay performance of the Services or complete Transition (as appropriate) has been agreed by the Parties in writing. If the Parties cannot agree upon whether or not a Authority Event has arisen and/or the extent or consequences of a Authority Event or the extent of any relief due to the Service Provider under Clause 50.4 the matters in dispute will be referred to the Dispute Resolution Procedure.
- 50.12 The Service Provider's sole remedies in respect of any Authority Event will be as set out in this Clause 50. The Service Provider will have no right to terminate the Contract pursuant to Clause 34 (Breach and Termination of Contract) (or otherwise) in respect of any Authority Event.

51 GOVERNING LAW

- 51.1 The Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 33, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Authority has the right in its absolute discretion to enforce a judgment and take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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

Signed by for and on behalf of the Authority	Print name. [REDACTED] Position [REDACTED] Signature [REDACTED] Date..... [REDACTED]
Signed by for and on behalf of the Service Provider	Print name. [REDACTED] Position..... [REDACTED] Signature... [REDACTED] Date..... [REDACTED]

SCHEDULE 1 - KEY CONTRACT INFORMATION

- 1) **Contract Reference Number:** TBC
- 2) **Commencement:**
 - a) **Contract Commencement Date:** 28 April 2016
 - b) **Service Commencement Date:** 01 May 2016
- 3) **Initial Term:** The duration of the Contract shall be an initial period of three (3) years from the Service Commencement Date.
- 4) **Payment (see Clauses 11.1, 11.2 and 11.4):**

Clause 11.1

The invoice period shall be every month in arrears during the Term.

Clause 11.2

Where the Service Provider wishes to invoice electronically, the Service Provider shall use the format detailed in the EP2P Vendor Handbook, to be provided by the Authority electronically.

Clause 11.4

Payment must be made within 30 days of receipt of invoices.

- 5) **Address where invoices shall be sent:**

Transport for London
Accounts Payable
PO Box 45276
14 Pier Walk
SE10 1AJ

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

Email address: etrading@tfl.gov.uk

- 6) **Details of the Authority's Contract Manager**

Name:
Address:

Tel:
Email :

