



**Transport
for London**

Terms and Conditions

Dated 21 JUNE 2021

Transport for London contracting through its wholly-owned subsidiary Transport Trading Limited

and

BAI Communications Ltd

Transport for London
5 Endeavour Square
London
United Kingdom
E20 1JN

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Dated

Between:

- (1) **Transport for London contracting through its wholly owned subsidiary Transport Trading Limited**, a company registered in England and Wales under company number 03914810 of 5 Endeavour Square, London, United Kingdom E20 1JN ("**TTL**"); and
- (2) **BAI Communications Ltd** a company registered in England and Wales under company number 10090890 whose registered office is at Level 4 4 Kingdom Street, London, W2 6BD (the "**Concessionaire**"),

(each a "**Party**" and together the "**Parties**").

RECITALS

- A Transport for London is a functional body of the Greater London Authority and manages transport services across London, contracting with companies via, amongst other entities, its wholly owned subsidiary Transport Trading Limited.
- B On 9 June 2018, TfL advertised in the Official Journal of the European Union (reference 2018/S 109-249097) and following a competitive procedure, and by the means of an invitation to submit a final tender, requested prospective concessionaires to submit proposals to obtain a concession from TTL for the commercialisation of certain TTL assets (and potentially those of certain other public bodies) through investment in and operation of a public communication network and to provide certain limited services relating to the operation of the emergency services telecommunications network as well as other ancillary services.
- C The Concessionaire is a leading provider of commercial telecommunications infrastructure services and has experience in investing in commercial telecommunications networks that are equivalent to the Services.
- D On the basis of the Concessionaire's response to the advertisement and a subsequent tender process, TfL selected the Concessionaire and TTL granted the Concessionaire the concession and the attendant rights to enable the provision of the Services.
- E The Concessionaire will provide the Services to its customers to create a long term revenue generating opportunity, the benefit of which will be shared between the Concessionaire, TTL and others providing assets whilst TTL shall facilitate the performance of its obligations under this Agreement and for all other members of the TfL Group.
- F The London Boroughs and the GLA Group may provide the Concessionaire with rights to certain assets for the purpose of providing the Services.
- G The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

It is agreed as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

1.1 Subject to Clauses 1.2 and 1.3 (Definitions and Interpretation), in this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

1.2 The following Annexes of this Agreement have their own defined terms which may be inconsistent with the meanings set out in Schedule 1 (Definitions). Therefore for the following Annexes of this Agreement only, the definitions set out in Schedule 1 (Definitions) do not apply:

- (a) Annex 1 (Bespoke and Industry Standards) of Schedule 2.3 (Standards);
- (b) Annex 2 (Work Related Road Risk) of Schedule 2.3 (Standards);
- (c) Annex 6 (Confidentiality Agreement) of Schedule 7.1 (Fees and Charges);
- (d) Annex 1 (EDI Action Plan Guidance) of Part C of Schedule 12 (Responsible Procurement);
- (e) Schedule 13 (ESN Service Management Services); and
- (f) Schedule 14 (Property Documents).

1.3 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (h) unless otherwise provided and save for references in Annexes 2 (Work Related Road Risk) and 3 (Standards Concession Form) of Schedule 2.3 (Standards), Annex 6 (Confidentiality Agreement) of Schedule 7.1 (Fees and Charges), Schedule 10 (Guarantee) and Schedule 11 (Performance Bond), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and

references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;

- (i) references to this Agreement are references to this Agreement as amended from time to time;
- (j) where there is an obligation on the Concessionaire to complete an activity and no timescale is specified, the relevant activity should be completed in a reasonable timescale; and
- (k) any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; or
 - (ii) any EU institution or EU authority or other such EU body,

shall be read on and after Exit Day as reference to a UK institution, authority or body to which its function were transferred.

1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Concessionaire shall notify TTL and the Parties shall update this Agreement with a reference to the replacement hyperlink.

1.5 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Clauses;
- (b) Schedule 1 (Definitions);
- (c) Schedules 2.1 (Services Description) and its Annexes;
- (d) Schedule 2.2 (Performance Levels) and its Annex;
- (e) any other Schedules and their Annexes, other than:
 - (i) Annex 1 of Schedule 2.4 (Security Management);
 - (ii) Annexes 1 – 4 of Schedule 6.2 (Testing and Assurance);
 - (iii) Annex 2 of Schedule 8.4 (Document Management);
 - (iv) Annex 2 of Schedule 8.5 (Exit Management)

- (v) Annex 2 of Part A of Schedule 12 (Responsible Procurement)
 - (vi) Schedule 4.1 (Concessionaire Solution) and any documents referenced within it; and
 - (vii) and Schedule 4.5 (Business Plan) and any documents referenced within it);
 - (f) Parts B and C of Schedule 4.5 (Business Plan);
 - (g) Schedule 4.5 (Business Plan) (other than Parts B and C) and any documents referenced within it;
 - (h) Schedule 4.1 (Concessionaire Solution) and any documents referenced within it, Annex 1 of Schedule 2.4 (Security Management), Annexes 1 – 4 of Schedule 6.2 (Testing and Assurance), Annex 2 of Schedule 8.4 (Document Management), Annex 2 of Schedule 8.5 (Exit Management), Annex 2 of Part A of Schedule 12 (Responsible Procurement); and
 - (i) Schedule 13 (ESN Service Management Services) in so far as its provisions relate to Change for reasons of national security.
- 1.6 The Schedules and their Annexes form part of this Agreement.
- 1.7 The Parties acknowledge and agree that TTL shall not be imputed to have knowledge of all TTL or other TfL Group members or UK Government policy.
- 1.8 TTL is procuring the Services for itself and on behalf of other members of the TfL Group. Subject to Clause 46 (Third Party Rights), the other members of the TfL Group shall receive the benefit of the Services provided under the Agreement and TTL shall be responsible for any obligations owed to the Concessionaire to be performed by itself or other TfL Group members under this Agreement.
- 1.9 Where the Concessionaire is required to provide any Documents to TTL under this Agreement, the same may be provided to or made available to any TTL Personnel.

2 DUE DILIGENCE

- 2.1 The Concessionaire acknowledges that, subject to the Allowable Assumptions:
- (a) TTL has delivered or made available to the Concessionaire all of the information and documents that the Concessionaire considers necessary or relevant for the performance of its obligations under this Agreement;
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with TTL before the Effective Date) of all relevant details relating to:
 - (i) TTL Requirements;
 - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future:

- (A) TTL IT System;
 - (B) TTL Infrastructure; and
 - (C) Sites including that the TTL Assets may be used lawfully for the Concessionaire's proposed use thereof;
- (iii) the operating processes and procedures and the working methods of TTL and other members of the TfL Group;
- (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of TTL Effects; and
- (v) the existing contracts if any (including any licences, support, maintenance, wayleaves, easements, leases and other agreements) relating or granting access to the:
 - (A) TTL IT System;
 - (B) TTL Infrastructure; and
 - (C) Sites,

referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Concessionaire under this Agreement and/or which the Concessionaire will require the benefit of for the provision of the Services; and
- (d) it has advised TTL in advance of the Effective Date in writing of:
 - (i) each aspect, if any, of the
 - (A) TTL IT System;
 - (B) TTL Infrastructure; and
 - (C) Sites,

that is not suitable for the provision of the Services; and
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for and, to the extent that such costs are to be payable to the Concessionaire, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or TTL Responsibilities as applicable.

- 2.2 The Concessionaire shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor, subject to Clause 2.4 (Due Diligence), shall the Concessionaire be entitled to recover any additional costs or charges, any amendment to the Fees, or a decrease in any Revenue Share Percentage or the recovery/set-off of any loss of revenue prior to the Concessionaire calculating the Revenue Share Percentage, arising as a result of:

- (a) any unsuitable aspects of the:
 - (i) TTL IT System;
 - (ii) TTL Infrastructure; and
 - (iii) Sites;
- (b) any misinterpretation of TTL Requirements; and/or
- (c) any failure by the Concessionaire to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 No claim by the Concessionaire for an increase in the Charges, an amendment to the Fees, or a decrease in any Revenue Share Percentage shall be allowed because the Concessionaire has misunderstood or misinterpreted anything detailed in Clause 2.1 (Due Diligence). The Concessionaire shall not be released from any risk or obligations imposed on or undertaken by them under this Agreement for this reason or because the Concessionaire did not or could not foresee any matters which might affect or have affected the provision of the Services. Unless specifically referenced to the contrary in this Agreement, the Concessionaire shall not be entitled to rely upon any survey, report, document or other information whatsoever prepared by or on behalf of TTL relating in whole or in part to the extent of the Services, conditions of or affecting the:

- (a) TTL IT System;
- (b) TTL Infrastructure;
- (c) Sites;
- (d) means of communication with and access to the:
 - (i) TTL IT System;
 - (ii) TTL Infrastructure; or
 - (iii) Sites,
- (e) the supply of and conditions affecting labour and the suitability; or
- (f) nature and extent of the:
 - (i) TTL IT System;
 - (ii) TTL Infrastructure; or
 - (iii) Sites,

and TTL makes no representation or warranty as to the accuracy or completeness of any such survey, report, document, or information or for any representation or statement contained therein whether made negligently or otherwise in respect of such survey, report, documentation, or information.

- 2.4 The Parties shall comply with the provisions of Paragraph 10 of Part B of Schedule 7.1 (Fees and Charges) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

- 3.1 TTL represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits, proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 3.2 TTL and other members of the TfL Group make no warranty, either express or implied, regarding the title (save for the implied warranty of title for the Re-Charged Infrastructure on the date of title transfer in accordance with Clause 6.11(c) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee)) functionality, capacity, condition, access rights, ability to grant rights to use and suitability for use in the Services of the:

- (a) TTL Effects; or
- (b) TTL IT System.

- 3.3 Other than where TTL and other members of the TfL Group expressly grant such rights to the Concessionaire under Clauses 6.9 (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire) to 6.19 (Wayleave Variations) (inclusive), TTL and other members of the TfL Group make no warranty, either express or implied, regarding the Sites including title, functionality, capacity, condition, access rights, ability to grant rights to use, suitability for use in the Services and that TTL Assets may be used lawfully for the Concessionaire's proposed use thereof.

- 3.4 The Concessionaire represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;

- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or any of its Affiliates) that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Concessionaire as part of the procurement process, including its response to the ITPD, ISFT, ISFT-U and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Concessionaire has otherwise disclosed to TTL in writing prior to the date of this Agreement;
- (i) it has notified TTL in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights which are necessary for the performance of the Concessionaire's obligations under this Agreement;
- (k) it will in performing its obligations not do anything that prevents TTL or other members of the TfL Group complying with all applicable laws and codes of practice;
- (l) it shall not undertake any actions which are beyond the performance of the Concessionaire's obligations under this Agreement (including the Services) which would be likely to lead to TTL or other members of the TfL Group being classified as an Internet Service Provider in respect of any or all of the Services;
- (m) it shall use its reasonable endeavours to provide TTL with such assistance as TTL may reasonably require in order to try to ensure that TTL or other members of the TfL Group are not classified as an Internet Service Provider in relation to any or all of the Services;
- (n) the Business Plan is a true and accurate reflection of the Concessionaire's operational and financial objectives for the Services and how they will be achieved, the investment commitments and costs which the Concessionaire will incur in performing the Services and its other obligations under this Agreement, and the Concessionaire does not have any other internal financial model, business plan, plans or documents in relation to the Services which are inconsistent with the Business Plan;

- (o) the Concessionaire will represent and warrant that the contents of each Annual Report will be a true and accurate reflection of the Concessionaire's previous and forthcoming activities;
- (p) the Concessionaire Infrastructure complies with the relevant TTL Requirements and is fit for purpose;
- (q) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (r) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Concessionaire or Key Sub-contractors or for their dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Concessionaire's or Key Sub-contractor's assets or revenues;
- (s) to the best of its knowledge and belief there are no negotiations, arrangements (whether contractual or otherwise) made or planned in relation to changes to/within the Guarantor Group as more particularly described in Clause 11.27(b) (Financial Liquidity);
- (t) the Guarantor holds one hundred per cent (100%) of the beneficial interest in the Guarantor Group; and
- (u) the Annex 3 (Key Details of Guarantor Group) of Schedule 7.4 (Financial Distress) is true and accurate and not misleading.

3.5 Each of the representations and warranties set out in Clauses 3.1 and 3.4 (Warranties) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

3.6 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.4 (Warranties) has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.7 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which TTL may have in respect of breach of that provision by the Concessionaire.

3.8 The Concessionaire undertakes (and, as the case may be, procures to undertake) that:

- (a) TTL is given immediate notice in writing of any proposed disposal or transfer (whether in whole or part) of any interest in the Concessionaire or any Affiliate (whether by group restructuring, private sale or an offer to the public), or any proposed amendments to the memorandum or articles of association (or equivalent documents) of the Concessionaire or any Affiliate, that would or might reasonably be expected to lead to a change of Control in the Concessionaire, such notice to confirm the identity of the person or persons who will be obtaining Control of the Concessionaire as a result of such event; and
- (b) TTL is given immediate notice in writing of any proposed dissolution, voluntary winding up or liquidation of the Guarantor, any holding company of the

Concessionaire or the Concessionaire and of the proposed appointment of any receiver, administrative receiver, liquidator, administrator or person holding similar office over the Guarantor, any holding company of the Concessionaire or the Concessionaire or any of their assets.

- 3.9 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

- 4.1 This Agreement shall come into force on the Effective Date and unless terminated at an earlier date by operation of Law or in accordance with Clause 36 (Termination Rights) shall terminate:
- (a) on the last day of the Initial Term; or
 - (b) on the last day of the Extension Period if called off in accordance with Clause 4.2 (Term);
- 4.2 Provided that the Extension Period Business Plan has been submitted to TTL in accordance with Clauses 5.5 and 5.6 (Business Plan and Extension Business Plan Submission), TTL may in its absolute discretion (by giving the Concessionaire at least twenty-four (24) months' notice before the end of the Initial Term) extend the Initial Term for the Extension Period.

5 BUSINESS PLAN AND EXTENSION BUSINESS PLAN SUBMISSION

- 5.1 The Business Plan will be supported by the Concessionaire's Financial Model and shall accurately summarise the detailed information contained in the Financial Model.
- 5.2 The Concessionaire shall comply with the Business Plan Narrative.
- 5.3 The:
- (a) Business Plan Narrative;
 - (b) capital investment commitments set out in:
 - (i) Commercial Mobile Services – 'Pro Forma A (i)' Row 93;
 - (ii) Fibre Services – 'Pro Forma A (ii)' Row 89;
 - (iii) Streetscape Services – 'Pro Forma A (iii)' Row 88; and
 - (iv) Wi-Fi Services 'Pro Forma A (iv)' Row 88,of the Business Plan Financial Summary; and
 - (c) the Commercial Mobile Services Revenue Share Percentage, Fibre Services Revenue Share Percentage, Public Wi-Fi Services Revenue Share Percentage, and Streetscape Services Revenue Share Percentage,

may only be changed in accordance with the Change Control Procedure.

- 5.4 In addition to any requirements under the Change Control Procedure, at the request of TTL the Concessionaire will provide copies of all models and other information relating to the proposed change to the Business Plan and the Concessionaire shall permit TTL to undertake an Audit in accordance with the provisions of Schedule 7.5 (Financial Transparency and Audit Rights) or engage a third party to do so, to ensure alignment between the Concessionaire's Financial Model and proposed amendments to the Business Plan.
- 5.5 Unless otherwise agreed with TTL, the Concessionaire shall submit a revision to the Business Plan to cover the remainder of the Initial Term and the Extension Period (the "**Extension Period Business Plan**") to TTL thirty (30) months before the end of the Initial Term.
- 5.6 The Concessionaire shall ensure that the Extension Period Business Plan:
- (a) contains commercial terms which are materially similar to those in the Business Plan; and
 - (b) is consistent with the format of the Business Plan.
- 5.7 Following receipt of the Extension Period Business Plan, TTL shall review and comment on the Extension Period Business Plan within twenty (20) Working Days.
- 5.8 The Concessionaire shall provide such assistance and further information as TTL requires for the purposes of the review described in Clause 5.7 (Business Plan and Extension Business Plan Submission).
- 5.9 If TTL elects to extend the Initial Term in accordance with Clause 4.1(b) (Term), the Extension Period Business Plan shall replace the Business Plan from the date as specified in the Extension Period Business Plan or to the extent that no date is specified the start of the Extension Period.

6 SERVICES

Standard of Services

- 6.1 Subject to Clause 6.34 (ESN Service Management Services) and Clause 6.36 (Works Funded By Grants Services), the Concessionaire has been granted the concession (for the commercialisation of certain TTL Assets (and potentially those of certain other public bodies) through investment in and operation of a public communication network) and shall provide the Services from the Effective Date.
- 6.2 The Concessionaire shall ensure that the Services:
- (a) comply in all respects with the Services Description; and
 - (b) are supplied in accordance with the Concessionaire Solution and the provisions of this Agreement.
- 6.3 The Concessionaire shall:
- (a) perform its obligations under this Agreement, including in relation to the Services and Telecommunications Infrastructure in accordance with:

- (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) in a professional manner and with reasonable care and skill;
 - (v) using appropriately experienced, trained and qualified personnel;
 - (vi) in a manner that does not hinder or prevent TTL's or other members of the Tfl Group compliance with Laws; and
 - (vii) the Concessionaire's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.3(a)(i) to 6.3(a)(vi) (Standard of Services); and
- (b) deliver the Services using efficient business processes and ways of working having regard to TTL's obligation to ensure value for money.

6.4 In the event that the Concessionaire becomes aware of any inconsistency between the requirements of Clauses 6.3(a)(i) to 6.3(a)(vii) (Standard of Services) the Concessionaire shall immediately notify the TTL Representative in writing of such inconsistency and the TTL Representative shall, as soon as practicable, notify the Concessionaire which requirement the Concessionaire shall comply with.

Concessionaire Covenants

6.5 The Concessionaire shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that obtaining and maintaining the same are TTL Responsibilities maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) the Concessionaire IT System and the Concessionaire Infrastructure and the Third Party Infrastructure (where such Third Party Infrastructure is Service Critical Infrastructure) in the performance of the Services will be free of all encumbrances (except as agreed in writing with TTL); and
 - (ii) when carrying out its obligations under this Agreement, it:
 - (A) takes reasonable measures to minimise any disruption to the Services; and
 - (B) minimises any disruption to TTL's or other members of the Tfl Group operations;

- (d) co-operate with:
 - (i) TTL;
 - (ii) the other members of the TfL Group (excluding TTL);
 - (iii) the Secretary of State for Home Department as such reasonably relates to ESN;
 - (iv) the Secretary of State or the Government Department responsible for public transport in London (for the time being) the Office of Rail and Road, or any person or body who has statutory responsibilities in relation to transport in London including their employees, agents and sub-contractors;
 - (v) the Department of Culture, Media & Sport ("**DCMS**") as reasonably relates to Fibre Services funded by DCMS grant;
 - (vi) a functional body of the Greater London Authority;
 - (vii) any GLA Group or London Borough that has or wishes to provide GLA Group And London Borough Assets;
 - (viii) Other Suppliers; and
 - (ix) any actual or prospective Replacement Concessionaire,

and provide reasonable information (including any documentation), advice and assistance in connection with the Services to enable TTL or such bodies to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or part of them) to TTL and/or to any Replacement Concessionaire;
- (e) provide TTL with such assistance as TTL may reasonably require during the Term in respect of the Services;
- (f) gather, collate and provide such information and co-operation as TTL may reasonably request for the purposes of ascertaining the Concessionaire's compliance with its obligations under this Agreement;
- (g) notify TTL in writing within one (1) month of any change of Control taking place;
- (h) notify TTL in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court of administrative body or arbitration tribunal pending, or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (i) ensure that neither it, nor any of its Affiliates, brings TTL or other members of the TfL Group into disrepute (save as may be caused by a failure to comply with Clause 8.1 (Key Performance Indicators) or any similar Default, which shall not be a breach of this Clause) by engaging in any act or omission which is reasonably likely to materially diminish the trust that the public places in TTL or other members of the TfL Group, regardless of whether or not such act or omission is related to the Concessionaire's obligations under this Agreement; and

- (j) manage closure or termination of Services and end of life of Telecommunications Infrastructure to take account of TTL disposals requirements, including recycling and scope for re-use, and all applicable Standards.
- 6.6 Unless otherwise provided in this Agreement, an obligation on the Concessionaire to do, or to refrain from doing, any act or thing shall include an obligation upon the Concessionaire to procure that all Sub-contractors and Concessionaire Personnel also do, or refrain from doing, such act or thing including a responsibility to mitigate loss.
- 6.7 Without prejudice to Clauses 20.2 and 20.3 (IPRs Indemnity) and any other rights and remedies of TTL howsoever arising, the Concessionaire shall:
- (a) remedy any breach of its obligations in Clauses 6.5(b) to 6.5(c)(ii) (Concessionaire Covenants) inclusive within five (5) Working Days of becoming aware of the breach or being notified of the breach by TTL where practicable or within such other time period as may be agreed with TTL (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 6.5(a) and Clauses 6.5(d) to 6.5(f) (Concessionaire Covenants) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by TTL; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work.

TTL Responsibilities

- 6.8 TTL shall comply with its responsibilities set out in Schedule 3 (TTL Responsibilities).

Property Matters

Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire

- 6.9 This Clause applies to Concessionaire Infrastructure installed by the Concessionaire.

Rights and Obligations

- (a) At and following the Effective Date, the Concessionaire:
 - (i) has the risk; and
 - (ii) shall comply with its obligations,

regarding Concessionaire Infrastructure (including to insure, maintain and/or replace, refresh, performance (including Clause 8 (Key Performance Indicators) and ESN Service Management Services).

Title

- (b) Title to the Concessionaire Infrastructure vests in the Concessionaire upon its creation.

Concessionaire Wayleaves

- (c) Where:

- (i) the Concessionaire is required to prepare and submit Low Level Design(s) in accordance with requirements CMT1(k), CMT1(l) and FST1(b) of Schedule 2.1 (Services Description); or
- (ii) there is no requirement under this Agreement for the Concessionaire to submit Low Level Design(s) for the relevant TTL Asset and the Concessionaire requires access to such TTL Asset in order to perform its obligations under this Agreement,

then the Concessionaire shall as soon as reasonably practicable:

- (A) deliver to TTL a Draft Concessionaire Wayleave Agreement completed with such information as TTL requires in order to grant a Concessionaire Wayleave Agreement; and
- (B) provide sufficient information to verify the relevant TfL Group member's right to grant a Concessionaire Wayleave Agreement (including evidence of title),

for the relevant Low Level Design(s) (whether relating to one (1) or more TTL Assets) and/or for the relevant TTL Asset(s) (whether relating to one (1) or more) as appropriate.

- (d) As soon as reasonably practicable after TTL has notified the Concessionaire that it has:
 - (i) approved the relevant Low Level Design(s) or, where Low Level Design(s) are not required, approved the requirement to access the TTL Asset; and
 - (ii) satisfied itself of the relevant TfL Group member's right to grant the Concessionaire Wayleave Agreement; and
 - (iii) approved the Draft Concessionaire Wayleave Agreement provided under Clause 6.9(c)(ii)(A) (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire),

the Concessionaire shall prepare and deliver to TTL the Concessionaire Wayleave Agreement in the form of the Draft Concessionaire Wayleave Agreement approved under Clause 6.9(d)(iii) (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire) in duplicate executed / signed (but not dated) for execution and/or signature and dating by the relevant TfL Group member(s).

- (e) As soon as reasonably practicable after TTL has received the Concessionaire Wayleave Agreement in duplicate under Clause 6.9(d) (Scenario 1 – Concessionaire Infrastructure installed by the Concessionaire) TTL shall procure that the relevant TfL Group member(s) shall execute and/or sign in duplicate and complete the Concessionaire Wayleave Agreement and then shall deliver as soon as reasonably practicable thereafter to the Concessionaire one (1) copy of the completed Concessionaire Wayleave Agreement.

Scenario 2 – Telecommunications Infrastructure installed by the Concessionaire subject to ESN Implementation Charges

- 6.10 This Clause applies to Telecommunications Infrastructure installed by the Concessionaire which is subject to ESN Implementation Charges.

Rights and Obligations

- (a) At and following the Effective Date, the Concessionaire:
 - (i) has the risk;
 - (ii) has rights to use:
 - (A) such Telecommunications Infrastructure which is Passive Infrastructure for the Purpose and the provision of ESN Coverage; and
 - (B) such Telecommunications Infrastructure which is Active Infrastructure for the provision of ESN Coverage; and
 - (iii) shall comply with its obligations,regarding Telecommunications Infrastructure (including to insure, maintain and/or replace, refresh, performance (including Clause 8 (Key Performance Indicators) and ESN Service Management Services).

Concessionaire's general access rights

- (b) The Parties acknowledge and agree that no Concessionaire Wayleave Agreement is required as the Concessionaire has sufficient access rights under the general provisions of this Agreement.

Title

- (c) Title to the Telecommunications Infrastructure subject to ESN Implementation Charges shall vest with TTL immediately upon its creation and such Telecommunications Infrastructure so installed shall become TTL Infrastructure on such vesting.
- (d) TTL shall pay the Concessionaire for such Telecommunications Infrastructure that has become TTL Infrastructure in accordance with Schedule 7.1 (Fees and Charges).

Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee

- 6.11 This Clause applies to Telecommunications Infrastructure installed by TfL and subject to the TTL Infrastructure Re-charge Fee (the "**Re-Charged Infrastructure**").

Rights and Obligations

- (a) At and following the Effective Date the Concessionaire:
 - (i) has the risk;
 - (ii) has rights to use for the Purpose; and

- (iii) shall comply with its obligations,

regarding Telecommunications Infrastructure (including to insure, maintain and/or replace, refresh, performance (including Clause 8 (Key Performance Indicators) and ESN Service Management Services).

Title

- (b) Unless and until transfer as set out below in Clause 6.11(c) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee), title remains with TfL.
- (c) On the Commercial Mobile Services Commencement Date, TTL shall invoice the Concessionaire for the TTL Infrastructure Re-Charge Fee in accordance with Paragraph 12.17 of Part A of Schedule 7.1 (Fees and Charges) and title shall pass to the Concessionaire on receipt of such payment and the Re-Charged Infrastructure shall become Concessionaire Infrastructure.

Concessionaire's general access rights

- (d) Until title transfers to the Concessionaire under Clause 6.11(c) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee), the Parties acknowledge and agree that no Concessionaire Wayleave Agreement is required as the Concessionaire has sufficient access rights under the general provisions of this Agreement.

Wayleaves on Commercial Mobile Services Commencement Date

- (e) Where:
- (i) there is a transfer of title of Re-Charged Infrastructure as set out in Clause 6.11(c) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee); or
- (ii) for Re-Charged Infrastructure where there is no requirement under this Agreement for the Concessionaire to submit Low Level Designs and the Concessionaire requires access rights in order to perform its obligations under this Agreement,

then the Concessionaire shall as soon as reasonably practicable:

- (A) deliver to TTL a Draft Concessionaire Wayleave Agreement completed with such information as TTL requires in order to grant a Concessionaire Wayleave Agreement; and
- (B) provide sufficient information to verify the relevant TfL Group member's right to grant a Concessionaire Wayleave Agreement (including evidence of title),

for the relevant TTL Assets(s) (whether relating to one (1) or more).

- (f) As soon as reasonably practicable after TTL has notified the Concessionaire that it has:

- (i) satisfied itself of its right to grant the Concessionaire Wayleave Agreement; and
- (ii) approved the Draft Concessionaire Wayleave Agreement provided under 6.11(e)(ii)(A) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee),

the Concessionaire shall prepare and deliver to TTL the Concessionaire Wayleave Agreement in the form of the Draft Concessionaire Wayleave Agreement approved under Clause 6.11(f)(ii) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee) in duplicate executed / signed (but not dated) for execution and/or signature and completion by the relevant TfL Group member(s).

- (g) As soon as reasonably practicable after TTL has received the Concessionaire Wayleave Agreement in duplicate under 6.11(f) (Scenario 3 – Telecommunications Infrastructure installed by TfL subject to TTL Infrastructure Re-charge Fee) TTL shall procure that the relevant TfL Group member(s) shall execute and/or sign in duplicate and complete the Concessionaire Wayleave Agreement and then shall deliver as soon as reasonably practicable thereafter to the Concessionaire one (1) copy of the completed Concessionaire Wayleave Agreement.

Scenario 4 – TTL Infrastructure installed by TfL not subject to the TTL Infrastructure Re-charge Fee

- 6.12 This Clause applies to TTL Infrastructure installed by TfL not subject to the TTL Infrastructure Re-charge Fee.

Rights and Obligations

- (a) At and following the Effective Date the Concessionaire:
 - (i) has the risk;
 - (ii) has rights to use:
 - (A) such TTL Infrastructure which is Passive Infrastructure for the Purpose and the provision of ESN Coverage; and
 - (B) such TTL Infrastructure which is Active Infrastructure for the provision of ESN Coverage; and
 - (iii) shall comply with its obligations,

regarding TTL Infrastructure (including to insure, maintain and/or replace, refresh, performance (including Clause 8 (Key Performance Indicators) and ESN Service Management Services).

Title

- (b) Title to TTL Infrastructure not subject to the TTL Infrastructure Re-charge Fee is and remains with TfL.

Concessionaire's general access rights

- (c) The Parties acknowledge and agree that no Concessionaire Wayleave Agreement is required as the Concessionaire has sufficient access rights under the general provisions of this Agreement.

GLA Group And London Borough Assets or Third Party Assets

- 6.13 Where the Concessionaire requires access to or rights over GLA Group And London Borough Assets or Third Party Assets, the Concessionaire shall make its own arrangements with the relevant party with TTL providing reasonable assistance.

Operator Wayleave Agreements

- 6.14 For Operator Wayleave Agreements:

- (a) where the Concessionaire is required to prepare and submit Low Level Design(s) in accordance with requirement SST1(b) of Schedule 2.1 (Services Description) the Concessionaire shall:

- (i) deliver to TTL a Draft Operator Wayleave Agreement completed with such information as TTL requires in order to grant an Operator Wayleave Agreement; and
- (ii) provide sufficient information to verify the relevant TfL Group member's right to grant an Operator Wayleave Agreement (including evidence of title),

for the relevant Low Level Design(s) as appropriate.

- (b) As soon as reasonably practicable after TTL has notified the Concessionaire that it has:

- (i) approved the relevant Low Level Design(s); and
- (ii) satisfied itself of its right to grant the Operator Wayleave Agreement; and
- (iii) approved the Draft Operator Wayleave Agreement provided under Clause 6.14(a)(i) (Operator Wayleave Agreements),

the Concessionaire shall prepare and deliver to the Operator the Operator Wayleave Agreement as approved under Clause 6.14(b)(iii) (Operator Wayleave Agreements) in triplicate executed / signed (but not dated) for execution and/or signature and dating by the Operator and relevant TfL Group member(s).

- 6.15 The Concessionaire shall procure that the Operator executes / signs but not dates upon receipt in triplicate the Operator Wayleave Agreement delivered to the Operator under Clause 6.14(b) (Operator Wayleave Agreements).

- 6.16 As soon as reasonably practicable after TTL has received the Operator Wayleave Agreement in triplicate, the relevant TfL Group member(s) shall execute and/or sign in triplicate and complete the Operator Wayleave Agreement and as soon as reasonably practicable thereafter provide one (1) copy of the completed Operator Wayleave Agreement to each of the Concessionaire and the Operator.

Wayleave Information