

Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;

A1.8.3 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:

A1.8.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and

A1.8.3.2 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 A1.8.3.1.

A1.9 The Service Provider and any sub-contractor (if any), acknowledge:

A1.9.1 the importance to Data Subjects and the Authority of safeguarding Authority Personal Data and Processing it only in accordance with the Contract;

A1.9.2 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;

A1.9.3 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;

A1.9.4 notwithstanding Clause 26.1.1, if the Service Provider has committed a material breach under Clause A1.9.3 on two or more separate occasions, the Authority may at its option:

A1.9.4.1 exercise its step in rights pursuant to Clause A16;

- A1.9.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
 - A1.9.4.2 terminate the Contract in whole or part with immediate written notice to the Service Provider.
- A1.10 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 this Contract are compliant with the Payment Card Industry Data Security Standard as updated from time to time ("PCI DSS"). In addition the Service Provider shall:
 - A1.10.1 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;
 - A1.10.2 without prejudice to any other audit and inspection rights that the Authority has under this 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
 - A1.10.3 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.
- A1.11 Compliance by the Service Provider with this Clause A1 shall be without additional charge to the Authority.
- A1.12 Following termination or expiry of this Contract, howsoever arising, the Service Provider:
 - A1.12.1 may Process the Personal Data only for so long and to the extent as is necessary to properly comply with its non contractual obligations arising under law (and will then comply with Clause A1.12.2);
 - A1.12.2 subject to Clause A1.12.1, 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 save as permitted by this Clause A1.12.

- A1.13 For the avoidance of doubt, and without prejudice to Clause A1.12, the obligations in this Clause A1 shall apply following termination or expiry of the Contract to the extent the Party concerned retains or Processes Authority Personal Data.
- A1.14 The indemnity in Clause 18 shall apply to any breach of Clause A1 and shall survive termination or expiry of the Contract.

A20 TRANSFER OF EMPLOYEES TO SERVICE PROVIDER

A20.1 Clause 8.1 shall be deleted and replaced with the following.

A20.2 For the purposes of this Clause A20 and Clause A21, unless the context indicates otherwise, the following expressions shall have the following meanings:

A20.2.1 **“Current Service Provider(s)”** means the provider or providers of services substantially similar to the Services immediately before the Service Commencement Date;

A20.2.2 **“Employment Costs”** means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);

A20.2.3 **“Employment Liabilities”** means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);

A20.2.4 **“Final Staff List”** has the meaning set out in **Clause A21.4**;

A20.2.5 **“Further Transfer Date”** means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Authority or any Replacement Service Provider when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Replacement Service Provider occurs;

A20.2.6 **“Relevant Period”** means the period starting on the earlier of:

- (a) the date falling 6 calendar months before the date of expiry of the Contract; or
- (b) if the Contract is terminated by either Party in accordance with Clause 26.3 or by the Authority in accordance with Clause 26.1, 26.2, 26.4 or 26.5, the date of the relevant termination notice;

and ending on the Further Transfer Date;

A20.2.7 **“Replacement Service Provider”** means any replacement supplier or provider to the Authority of the Services (or any

- part of the Services) and any Sub-Contractor to such replacement supplier or provider;
- A20.2.8 **“Re-Transferring Personnel”** means any Service Provider’s Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Authority or the Replacement Service Provider pursuant to TUPE with effect from the Further Transfer Date;
- A20.2.9 **“Staff List”** has the meaning set out in **Clause A21.1**;
- A20.2.10 **“Staffing Information”** has the meaning set out in **Clause A21.1**;
- A20.2.11 **“Sub-Contractor”** means any subcontractor to the Current Service Provider(s), the Service Provider or the Replacement Service Provider as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them);
- A20.2.12 **“Transfer of Services”**; means the transfer of the provision of the Services from the Current Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;
- A20.2.13 **“Transferring Staff”** means such employees of the Current Service Provider(s) (and any Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services the names of whom as at the date of this Contract are listed in Appendix 1 to this Clause A20; and
- A20.2.14 **“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- A20.3 It is understood and acknowledged by the Parties that TUPE applies to the Transfer of Service and accordingly, pursuant to TUPE, the contracts of employment between the Current Service Provider and any Sub-Contractor and the Transferring Staff will have effect from the Contract Commencement Date as if originally made between the Service Provider and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of **Clause A20.4**).
- A20.4 The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Contract Commencement Date

A20.5 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:

A20.5.1 the Current Service Provider(s) will be responsible for any Employment Costs relating to the period up to Contract Commencement Date; and

A20.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Contract Commencement Date,

and Employment Costs will if necessary be apportioned on a time basis between the Current Service Provider(s) and the Service Provider.

A20.6 The Authority warrants to the Service Provider that none of the Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.

A20.7 The Service Provider will indemnify and keep indemnified the Authority and the Current Service Provider(s) (and its Sub-Contractors) from and against all Employment Liabilities which the Authority or the Current Service Provider(s) (or its Sub-Contractors) incur or suffer arising out of or in connection with:

A20.7.1 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of any person employed or engaged by it (or its Sub-Contractors) (including the Transferring Staff) on or after the Contract Commencement Date;

A20.7.2 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE;

A20.7.3 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the Service Provider (or its Sub-Contractors) before the Contract Commencement Date;

A20.7.4 the employment or termination of employment by the Service Provider (or its Sub-Contractors) of any Transferring Staff on or after the Contract Commencement Date;

A20.7.5 any actual or proposed changes by the Service Provider (or its Sub-Contractors) to the terms and conditions of employment or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

- A20.8 The Service Provider will provide the Current Service Provider(s) (or its Sub-Contractors), as soon as practicable, but in any event in good time before the Contract Commencement Date with all information which the Current Service Provider (or its Sub-Contractors) may reasonably require to enable it to comply with its information and consultation obligations under TUPE and, if requested, will confirm to the Authority when it has done so and provide a copy to the Authority.
- A20.9 The Service Provider warrants and undertakes to the Authority that all information given to the Current Service Provider(s) (or its Sub-Contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
- A20.10 **Clause 30.1** shall be amended so that benefits conferred on the Current Service Provider or its Sub-Contractors under this **Clause A20** shall be enforceable by them.

APPENDIX 1 TO CLAUSE A20
List of Transferring Staff

Account Manager for TfL BOD's Survey – Huntress Group

A21 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION

- A21.1 The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Authority (but not more than twice in any 12 month period) and not more than 7 days after the date of any notice to terminate this Contract given by either Party, the following information to the Authority:
- A21.1.1 an anonymised list of current Service Provider's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the "**Staff List**");
 - A21.1.2 such of the information specified in Appendix 1 to this **Clause A21** as is requested by the Authority in respect of each individual included on the Staff List;
 - A21.1.3 in the situation where notice to terminate this Contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, 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 "**Staffing Information**".
- A21.2 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 Staffing Information and/or any changes to any Staffing Information already provided.
- A21.3 The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- A21.4 Subject to **Clause A21.5**, the Service Provider will provide the Authority with a final Staff List (the "**Final Staff List**") and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.
- A21.5 If the Contract is terminated by either Party in accordance with **Clause 26.1** or by the Authority in accordance with **Clause 26.1, 26.2** or **26.5** 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 the date of termination of the Contract.
- A21.6 The Service Provider warrants that as at the Further Transfer Date:

- A21.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
 - A21.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
 - A21.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
- A21.7 During 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):
- A21.7.3 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that the Authority is informed promptly of such termination);
 - A21.7.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
 - A21.7.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
 - A21.7.6 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider's Personnel; or
 - A21.7.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- A21.8 The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in **Clause A21.7** regardless of when such notice takes effect.
- A21.9 The Service Provider agrees that the Authority will be permitted to disclose any information provided to it under this **Clause A21** in anonymised form to any person who has been invited to tender 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 Replacement Service Provider.

A21.10 If TUPE applies on the expiry or termination of the Contract or the appointment of a Replacement Service Provider, the following will apply:

A21.10.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Replacement Service Provider (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).

A21.10.2 During the Relevant Period the Service Provider will:

A21.10.2.1 provide the Authority or Replacement Service Provider (as appropriate) with access to such employment and payroll records as the Authority or Replacement Service Provider (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate);

A21.10.2.2 allow the Authority or Replacement Service Provider (as appropriate) to have copies of any of those employment and payroll records;

A21.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate); and

A21.10.2.4 co-operate with the Authority and any Replacement Service Provider in the orderly management of the transfer of employment of the Re-Transferring Personnel.

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

A21.10.3 The Service Provider warrants to each of the Authority and the Replacement Service Provider that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Authority and the

Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

A21.10.3.1 is under notice of termination;

A21.10.3.2 is on long-term sick leave;

A21.10.3.3 is on maternity, parental or adoption leave;

A21.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;

A21.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Service Provider (as appropriate);

A21.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

A21.10.3.7 has received a written warning (other than a warning that has lapsed);

A21.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

A21.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Replacement Service Provider (as appropriate) under TUPE.

A21.10.4 The Service Provider undertakes to each of the Authority and any Replacement Service Provider that it will (and will procure that its Sub-Contractors will):

A21.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;

A21.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Sub-Contractor which fall due in the period up to the Further Transfer Date;

A21.10.4.3 to pay to the Authority or the Replacement Service Provider (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in **Clause A21.10.5**; and

A21.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Replacement Service Provider (as appropriate) such information as the Authority or Replacement Service Provider may request in order to verify such compliance.

A21.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

A21.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;

A21.10.5.2 the Authority or (where appointed) any Replacement Service Provider will be responsible for the Employment Costs relating to the period after the Further 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 Re-Transferring Personnel's holiday entitlements.

A21.10.6 The Service Provider will indemnify and keep indemnified each of the Authority and any Replacement Service Provider from and against all Employment Liabilities which the Authority and/or the Replacement Service Provider incurs or suffers arising directly or indirectly out of or in connection with:

A21.10.6.1 any failure by the Service Provider to comply with its obligations under this **Clause A21.10**;

A21.10.6.2 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;

A21.10.6.3 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

Replacement Service Provider to comply with Regulation 13 of TUPE);

A21.10.6.4 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 Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;

A21.10.6.5 any claim or demand or other action taken against the Authority or any Replacement Service Provider by any person employed or engaged by the Service Provider (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the Authority or Replacement Service Provider has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

A21.11 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 Employment Liabilities 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.

A21.12 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this 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:

A21.2.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

A21.2.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this 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.

A21.13 Clause 30.1 shall be amended so that benefits conferred on the Replacement Service Provider under this Clause A21 shall be enforceable by them.

APPENDIX 1 TO CLAUSE A21

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

- 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 - Perm/Temp
- Geographical Area Of Work / Location
- Commencement of Employment Date
- Continuous Service Date
- Car Allowance
- Pension Contributions
 - 1) Employer
 - 2) 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 Current Contractor'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

A30 LONDON LIVING WAGE

For the purposes of this Clause A30, unless the context indicates otherwise, the expression “**London Living Wage**” means a basic hourly wage (as at the date of this Contract) of £9.40 (before tax, other deductions and any increase for overtime) but as is updated from time to time and notified to the Service Provider.

- A30.1 The Service Provider acknowledges and agrees that the Mayor of London pursuant to section 155 of the GLA Act has directed that members of the Authority Group ensure that the London Living Wage is paid to anyone engaged by any member of the Authority Group who is required to discharge contractual obligations in Greater London or on the Authority's estate.
- A30.2 Without prejudice to any other provision of this Contract, the Service Provider shall:
- A30.2.1 ensure that none of its employees engaged in the provision of the Services (in Greater London or on the Authority's estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - A30.2.3 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;
 - A30.2.4 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time;
 - A30.2.5 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and
 - A30.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- A30.3 For the avoidance of doubt the Service Provider shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.
- A.30.4 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its sub-contractors.

A30.5 Any breach by the Service Provider of the provisions of this Clause A30 shall be treated as a material breach capable of remedy in accordance with Clause 26.1.1.

A33 SUPPLIER DIVERSITY

A33.1 Compliance

A33.1.1 Without limiting the generality of any other provision of this Contract, the Service Provider:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate, and
- (c) shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate in relation to the Services,

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.

A 33.1.2 The Service Provider acknowledges that the Authority as a public authority is subject to a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty.

A.33.1.3 The Service Provider acknowledges where the Authority is the GLA, the GLA is under a duty under section 404(2) of the Greater London Authority Act 1999 and where the Authority is TfL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination;
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and
- (d) in providing the Services, the Service Provider shall assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty.

A33.1.4 TfL's Harassment, Bullying and Discrimination Policy ("Policy") as updated from time to time (copies of which are available on request from

TfL) requires TfL's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

- (a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

A33.2 Strategic Equality & Diversity Plan

A33.2.1 For the duration of this Contract, the Service Provider shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as that agreed with TfL and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this Agreement the expression "Agreed Strategic Equality & Diversity Plan " means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to the Contract as a Schedule headed "Agreed Strategic Equality & Diversity Plan".

A33.2.2 Where a subcontractor has, pursuant to Clause A33.2 or otherwise, adopted a Strategic Equality & Diversity Plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.3 Diversity Training

A33.3.1 For the duration of this Contract, the Service Provider shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached to the Contract as a Schedule headed "Agreed Training Plan". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Training Plan.

A33.3.2 Where a subcontractor has, pursuant to Clause A33.1 or otherwise, adopted a diversity training plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide

a copy of its diversity training plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.4 Supplier Diversity

A33.4.1 For the duration of this Contract the Service Provider shall at all times comply with the "Agreed Supplier Diversity Plan". For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached to the Contract as a Schedule headed "Supplier Diversity Plan". The Service Provider shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement

a supplier diversity plan in relation to the performance of this Contract which is as least as extensive as the Agreed Supplier Diversity Plan.

A33.4.2 Where a subcontractor has, pursuant to Clause 33.4.1 or otherwise, adopted a supplier diversity plan, the Service Provider shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A 33.5 Communications Plan

A33.5.1 For the duration of this Contract and in all dealings with the Local Community, the Service Provider shall comply with the Agreed Communications Plan. For the purposes of this Contract the expression "Agreed Communications Plan" means the communications plan agreed and attached to the Contract as a Schedule headed "Agreed Communication Plan" and the expression "Local Community" means those areas of London affected by the Works from time to time.

A33.6 Monitoring and Reporting

A33.6.1 Subject to Clause A33.6.2, the Service Provider shall use reasonable endeavours to provide TfL on the date of this Contract and subsequently every 12 months from the date or such other frequency as TfL may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in clauses A33.2 to A33.5. The annual report should set out:

- (a) the performance of the Service Provider over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the

Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with clause A33.6.1 (d)

- (b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;
 - (iv) disabled
- (c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.
- (d) a plan of action for the forthcoming 12 months showing what the Service Provider plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the attached document called TfL Supplier Diversity Definitions.

A33.6.2 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to TfL pursuant to clause A33.6.1.

A33.7 Equality and Diversity Infractions

A33.7.1 If the Service Provider or any of its direct subcontractors commits a Equality & Diversity Infraction, TfL shall be entitled (but not obliged) to act as follows:

- (a) if a Equality & Diversity Infraction is committed by the Service Provider then TfL may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Service Provider, TfL may serve written notice upon the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Service Provider of such notice (or such longer period as may be specified in the notice). If the Service Provider fails to procure the remedy of the Diversity Infraction, TfL may serve a further written notice upon the Service Provider and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Service Provider shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in clauses A33.2 to A33.5 of this Contract.

A33.7.2 It shall be a fundamental term and condition of the Contract that the Service Provider complies with its obligations under clauses A33.7.1 (a) to A33.7.1(b). Where, following receipt of a notice given pursuant to clause A33.7.1(a) or A33.7.1(b) the Service Provider fails to remedy a Diversity Infraction to the satisfaction of TfL or in the case of clause A33.7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in clause A33.7.1(b) the Service Provider will be in breach of the Contract and TfL shall be entitled (but not obliged) to terminate the Contract, without further notice to the Service Provider, in accordance with the termination clause in the Contract Conditions.

A.33.7.3 For the purposes of this clause A33.7 "Equality & Diversity Infraction" means any breach by the Service Provider of its obligations specified in clauses A33.2 to A33.5 of this Contract and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in clauses A33.2 to A33.5 of this Contract.

A.33.8 Equality and Diversity Audit

A33.8.1 TfL or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with clauses A33.2 to A 33.5

- A33.8.2 TfL's rights pursuant to this clause shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of clauses A33.2 to A33.4 indirect subcontractors and shall include the Minimum Records.
- A33.8.2 The Service Provider shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.5. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of clauses A33.2 to A33.4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.4. The Service Provider shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of clauses A33.2 to A33.4 each subcontract between its direct subcontractor and any indirect subcontractor of the Service Provider shall contain rights of audit in favour of and enforceable by TfL substantially equivalent to those granted by the Service Provider pursuant to clause A33.8.
- A33.8.3 TfL shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).
- A33.8.4 The Service Provider shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of clauses A33.2 to A33.4 indirect subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor's obligations specified in clauses A33.2 to A33.4 wherever situated and whether the Service Provider's own equipment or otherwise; and
- (c) complying with TfL's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor's performance of its subcontract.

A33.8.5 For the purposes of this clause A33.8 the expression Minimum Records means all information relating to the Service Provider's performance of and compliance with clauses A33.2 to A33.5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of clauses A33.2 to A33.4 indirect subcontractor of the Service Provider.